

Calendar No. 452103^D CONGRESS
2^D SESSION**S. 1908****[Report No. 103-280]**

To provide for a study of the processes and procedures of the Department of Veterans Affairs for the disposition of claims for veterans benefits.

IN THE SENATE OF THE UNITED STATES

MARCH 8 (legislative day, FEBRUARY 22), 1994

Mr. ROCKEFELLER (for himself, Mr. DECONCINI, Mr. GRAHAM, Mr. AKAKA, Mr. DASCHLE, Mr. WELLSTONE, and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

JUNE 7, 1994

Reported by Mr. ROCKEFELLER, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To provide for a study of the processes and procedures of the Department of Veterans Affairs for the disposition of claims for veterans benefits.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. STUDY OF SYSTEM OF DEPARTMENT OF VETER-**
2 **ANS AFFAIRS FOR DISPOSITION OF CLAIMS**
3 **FOR VETERANS BENEFITS.**

4 (a) IN GENERAL.—The Administrative Conference of
5 the United States shall carry out a study of the Depart-
6 ment of Veterans Affairs system for the disposition of
7 claims for veterans benefits. The Administrative Con-
8 ference shall carry out the study in accordance with this
9 Act.

10 (b) PURPOSE OF STUDY.—The purpose of the study
11 required under this Act shall be to evaluate the Depart-
12 ment of Veterans Affairs system for the disposition of
13 claims for veterans benefits in order to determine—

14 (1) the efficiency of processes and procedures
15 under the system for the adjudication, resolution, re-
16 view, and final disposition of claims for veterans
17 benefits and means of increasing such efficiency, in-
18 cluding the effect of judicial review on such system;

19 (2) means of reducing the number of claims
20 under the system for which final disposition is pend-
21 ing; and

22 (3) means of enhancing the ability of the De-
23 partment of Veterans Affairs to dispose of claims
24 under the system in a prompt and appropriate man-
25 ner.

1 (c) CONTENTS OF STUDY.—The study of the Depart-
2 ment of Veterans Affairs system for the disposition of
3 claims for veterans benefits under this Act shall include
4 an evaluation and assessment of the following:

5 (1) The historical development of the system,
6 including the effect on such development of the pro-
7 vision under the Veterans' Judicial Review Act (divi-
8 sion A of Public Law 100-687; 102 Stat. 4105) of
9 authority for judicial review of claims disposed of
10 under the system.

11 (2) The preparation and submittal of claims by
12 veterans under the system.

13 (3) The processes and procedures under the
14 system for the disposition of claims, including—

15 (A) the scope and nature of the respon-
16 sibility of the Secretary to assist veterans in the
17 development of claims;

18 (B) the scope and nature of the hearings
19 provided for at each stage in the claims disposi-
20 tion process under the system (including hear-
21 ings de novo, hearings before travelling mem-
22 bers of the Board of Veterans' Appeals, hear-
23 ings that are expedited for reason of illness or
24 financial need, and hearings that permit the

1 transmission of evidence or testimony by elec-
2 tronic means);

3 (C) the scope and nature of the review un-
4 dertaken with respect to a claim at each stage
5 in the claims disposition process;

6 (D) the number, Federal employment
7 grade, and experience and qualifications re-
8 quired of the persons undertaking such review
9 at each such stage;

10 (E) the effect on such review of the obliga-
11 tion of the Secretary to afford claimants with
12 the benefit of the doubt when there is an ap-
13 proximate balance of positive and negative evi-
14 dence with respect to a claim;

15 (F) opportunities for the submittal of new
16 evidence; and

17 (G) the availability of alternative means of
18 disposing of claims.

19 (4) The effect on the system of the participa-
20 tion of attorneys, members of veterans service orga-
21 nizations, and other advocates on behalf of veterans.

22 (5) The effect on the system of actions taken
23 by the Secretary to modernize the information man-
24 agement system of the Department, including the
25 utilization of electronic data management systems.

1 (6) The effect on the system of any work per-
2 formance standards utilized by the Secretary at re-
3 gional offices of the Department and at the Board
4 of Veterans' Appeals.

5 (7) The extent of the implementation in the
6 system of the recommendations of the Blue Ribbon
7 Panel on Claims Processing submitted to the Com-
8 mittees on Veterans' Affairs of the Senate and
9 House of Representatives on December 2, 1993, and
10 the effect of such implementation on the system.

11 (8) The effectiveness in improving the system of
12 any pilot programs carried out by the Secretary at
13 regional offices of the Department and of efforts by
14 the Secretary to implement such programs through-
15 out the system.

16 (9) The effectiveness of the quality control
17 practices and quality assurance practices under the
18 system in achieving the goals of such practices.

19 (d) ~~CONSULTATION WITH NON-DEPARTMENT ENTI-~~
20 ~~TIES.~~—Notwithstanding any other provision of law, the
21 Administrative Conference of the United States shall,
22 upon request, provide opportunities in the conduct of the
23 study under this Act for consultation with appropriate
24 representatives of veterans service organizations and of

1 other organizations and entities that represent veterans
2 before the Department of Veterans Affairs.

3 ~~(e) COOPERATION OF SECRETARY.—(1) Not later~~
4 ~~than 90 days after the date of the enactment of this Act,~~
5 ~~the Secretary shall submit to the Administrative Con-~~
6 ~~ference of the United States, and to the Committees on~~
7 ~~Veterans' Affairs of the Senate and House of Representa-~~
8 ~~tives, such information as the Chairman of the Adminis-~~
9 ~~trative Conference shall determine necessary to carry out~~
10 ~~the study required under this Act.~~

11 ~~(2) The information referred to in paragraph (1)~~
12 ~~shall include information on the claims disposed of by the~~
13 ~~Department of Veterans Affairs during the 5-year period~~
14 ~~ending on September 30, 1993, including the following:~~

15 ~~(A) The total number of claims finally disposed~~
16 ~~of during that period.~~

17 ~~(B) The number of claims finally disposed of~~
18 ~~during each fiscal year of that period.~~

19 ~~(C) The number of claims referred to in sub-~~
20 ~~paragraph (A) that were allowed by the Secretary~~
21 ~~solely on the basis of information contained in the~~
22 ~~initial claim for benefits.~~

23 ~~(D) The number of claims referred to in sub-~~
24 ~~paragraph (A) that were allowed by a regional office~~

1 of the Department at each of the various stages in
2 the claims disposition process.

3 ~~(E)~~ The number of claims referred to in sub-
4 paragraph ~~(A)~~ that were allowed by the Board of
5 Veterans' Appeals.

6 ~~(F)~~ The number of claims referred to in sub-
7 paragraph ~~(E)~~ that were reopened after a final deci-
8 sion by the Board of Veterans' Appeals.

9 ~~(f)~~ REPORTS ON STUDY.—(1) Not later than 1 year
10 after the date of the enactment of this Act, the Adminis-
11 trative Conference of the United States shall submit to
12 the Secretary and to the Committees on Veterans' Affairs
13 of the Senate and House of Representatives a preliminary
14 report on the study required under subsection ~~(c)~~. The re-
15 port shall contain the preliminary findings and conclusions
16 of the Administrative Conference with respect to the eval-
17 uation and assessment required under the study.

18 ~~(2)~~ Not later than 18 months after such date, the
19 Administrative Conference shall submit to the Secretary
20 and to such committees a report on such study. The report
21 shall include the following:

22 ~~(A)~~ The findings and conclusions of the Admin-
23 istrative Conference, including its findings and con-
24 clusions with respect to the matters referred to in
25 subsection ~~(c)~~.

1 (B) The recommendations of the Administrative
2 Conference for means of improving of the Depart-
3 ment of Veterans Affairs system for the disposition
4 of claims for veterans benefits.

5 (C) Such other information and recommenda-
6 tions with respect to the system as the Administra-
7 tive Conference considers appropriate.

8 (g) AUTHORIZATION OF APPROPRIATIONS.—There is
9 authorized to be appropriated \$150,000 to the Depart-
10 ment of Veterans Affairs for payment to the Administra-
11 tive Conference of the United States under section 1535
12 of title 31, United States Code, of the cost of carrying
13 out the study and report required under this Act.

14 (h) DEFINITIONS.—For the purposes of this Act—

15 (1) The term “Administrative Conference of the
16 United States” means the Administrative Conference
17 provided for under subchapter V of chapter 5 of title
18 5, United States Code.

19 (2) The term “Department of Veterans Affairs
20 system for the disposition of claims for veterans ben-
21 efits” means the processes and procedures of the
22 Department of Veterans Affairs for the adjudication,
23 resolution, review, and final disposition of claims for
24 benefits under the laws administered by the Sec-
25 retary.

1 (3) The term “Secretary” means the Secretary
2 of Veterans Affairs.

3 (4) The term “veterans service organizations”
4 means any organization approved by the Secretary
5 under section 5902(a) of title 38, United States
6 Code.

7 **SECTION 1. SHORT TITLE.**

8 *This Act may be cited as the “Veterans’ Claims Adju-
9 dication Improvement Act of 1994”.*

10 **TITLE I—STUDY OF CLAIMS**
11 **ADJUDICATION**

12 **SEC. 101. STUDY OF SYSTEM OF DEPARTMENT OF VETER-**
13 **ANS AFFAIRS FOR DISPOSITION OF CLAIMS**
14 **FOR VETERANS BENEFITS.**

15 (a) *IN GENERAL.*—*The Administrative Conference of*
16 *the United States shall carry out a study of the Department*
17 *of Veterans Affairs system for the disposition of claims for*
18 *veterans benefits. The Administrative Conference shall*
19 *carry out the study in accordance with this title.*

20 (b) *PURPOSE OF STUDY.*—*The purpose of the study re-*
21 *quired under this title shall be to evaluate the Department*
22 *of Veterans Affairs system for the disposition of claims for*
23 *veterans benefits in order to determine—*

24 (1) *the efficiency of processes and procedures*
25 *under the system for the adjudication, resolution, re-*

1 *view, and final disposition of claims for veterans ben-*
2 *efits and means of increasing such efficiency, includ-*
3 *ing the effect of judicial review on such system;*

4 *(2) means of reducing the number of claims*
5 *under the system for which final disposition is pend-*
6 *ing; and*

7 *(3) means of enhancing the ability of the Depart-*
8 *ment of Veterans Affairs to dispose of claims under*
9 *the system in a prompt and appropriate manner.*

10 *(c) CONTENTS OF STUDY.—The study of the Depart-*
11 *ment of Veterans Affairs system for the disposition of claims*
12 *for veterans benefits under this title shall include an evalua-*
13 *tion and assessment of the following:*

14 *(1) The historical development of the system, in-*
15 *cluding the effect on such development of the provision*
16 *under the Veterans' Judicial Review Act (division A*
17 *of Public Law 100-687; 102 Stat. 4105) of authority*
18 *for judicial review of claims disposed of under the*
19 *system.*

20 *(2) The preparation and submission of claims by*
21 *veterans under the system.*

22 *(3) The processes and procedures under the sys-*
23 *tem for the disposition of claims, including—*

1 (A) *the scope and nature of the responsibility of the Secretary to assist veterans in the development of claims;*

2 (B) *the scope and nature of the hearings provided for at each stage in the claims disposition process under the system (including hearings de novo, hearings before travelling members of the Board of Veterans' Appeals, hearings that are expedited for reason of illness or financial need, and hearings that permit the transmission of evidence or testimony by electronic means);*

3 (C) *the scope and nature of the review undertaken with respect to a claim at each stage in the claims disposition process;*

4 (D) *the number, Federal employment grade, and experience and qualifications required of the persons undertaking such review at each such stage;*

5 (E) *the effect on such review of the obligation of the Secretary to afford claimants with the benefit of the doubt when there is an approximate balance of positive and negative evidence with respect to a claim;*

6 (F) *opportunities for the submittal of new evidence; and*

1 (G) the availability of alternative means of
2 disposing of claims.

3 (4) The effect on the system of the participation
4 of attorneys, members of veterans service organiza-
5 tions, and other advocates on behalf of veterans.

6 (5) The effect on the system of actions taken by
7 the Secretary to modernize the information manage-
8 ment system of the Department, including the utiliza-
9 tion of electronic data management systems.

10 (6) The effect on the system of any work per-
11 formance standards utilized by the Secretary at re-
12 gional offices of the Department and at the Board of
13 Veterans' Appeals.

14 (7) The extent of the implementation in the sys-
15 tem of the recommendations of the Blue Ribbon Panel
16 on Claims Processing submitted to the Committees on
17 Veterans' Affairs of the Senate and House of Rep-
18 resentatives on December 2, 1993, and the effect of
19 such implementation on the system.

20 (8) The effectiveness in improving the system of
21 any pilot programs carried out by the Secretary at
22 regional offices of the Department and of efforts by
23 the Secretary to implement such programs throughout
24 the system.

1 (9) *The effectiveness of the quality control prac-*
2 *tices and quality assurance practices under the sys-*
3 *tem in achieving the goals of such practices.*

4 (d) *CONSULTATION WITH NON-DEPARTMENT ENTI-*
5 *TIES.*—*Notwithstanding any other provision of law, the Ad-*
6 *ministrative Conference of the United States shall, upon re-*
7 *quest, provide opportunities in the conduct of the study*
8 *under this title for consultation with appropriate represent-*
9 *atives of veterans service organizations and of other organi-*
10 *zations and entities that represent veterans before the De-*
11 *partment of Veterans Affairs.*

12 (e) *COOPERATION OF SECRETARY.*—(1) *Not later than*
13 *90 days after the date of the enactment of this Act, the Sec-*
14 *retary shall submit to the Administrative Conference of the*
15 *United States, and to the Committees on Veterans' Affairs*
16 *of the Senate and House of Representatives, such informa-*
17 *tion as the Chairman of the Administrative Conference*
18 *shall determine necessary to carry out the study required*
19 *under this title.*

20 (2) *The information referred to in paragraph (1) shall*
21 *include information on the claims disposed of by the De-*
22 *partment of Veterans Affairs during the 5-year period end-*
23 *ing on September 30, 1993, including the following:*

24 (A) *The total number of claims finally disposed*
25 *of during that period.*

1 (B) *The number of claims finally disposed of*
2 *during each fiscal year of that period.*

3 (C) *The number of claims referred to in subpara-*
4 *graph (A) that were allowed by the Secretary solely*
5 *on the basis of information contained in the initial*
6 *claim for benefits.*

7 (D) *The number of claims referred to in sub-*
8 *paragraph (A) that were allowed by a regional office*
9 *of the Department at each of the various stages in the*
10 *claims disposition process.*

11 (E) *The number of claims referred to in sub-*
12 *paragraph (A) that were allowed by the Board of Vet-*
13 *erans' Appeals.*

14 (F) *The number of claims referred to in subpara-*
15 *graph (E) that were reopened after a final decision*
16 *by the Board of Veterans' Appeals.*

17 (f) *REPORTS ON STUDY.—(1) Not later than 1 year*
18 *after the date of the enactment of this Act, the Administra-*
19 *tive Conference of the United States shall submit to the Sec-*
20 *retary and to the Committees on Veterans' Affairs of the*
21 *Senate and House of Representatives a preliminary report*
22 *on the study required under subsection (c). The report shall*
23 *contain the preliminary findings and conclusions of the Ad-*
24 *ministrative Conference with respect to the evaluation and*
25 *assessment required under the study.*

1 (2) *Not later than 18 months after such date, the Ad-*
2 *ministrative Conference shall submit to the Secretary and*
3 *to such committees a report on such study. The report shall*
4 *include the following:*

5 (A) *The findings and conclusions of the Admin-*
6 *istrative Conference, including its findings and con-*
7 *clusions with respect to the matters referred to in sub-*
8 *section (c).*

9 (B) *The recommendations of the Administrative*
10 *Conference for means of improving of the Department*
11 *of Veterans Affairs system for the disposition of*
12 *claims for veterans benefits.*

13 (C) *Such other information and recommenda-*
14 *tions with respect to the system as the Administrative*
15 *Conference considers appropriate.*

16 (g) *AUTHORIZATION OF APPROPRIATIONS.—There is*
17 *authorized to be appropriated \$150,000 to the Department*
18 *of Veterans Affairs for payment to the Administrative Con-*
19 *ference of the United States under section 1535 of title 31,*
20 *United States Code, of the cost of carrying out the study*
21 *and report required under this title.*

22 (h) *DEFINITIONS.—For the purposes of this title:*

23 (1) *The term “Administrative Conference of the*
24 *United States” means the Administrative Conference*

1 *provided for under subchapter V of chapter 5 of title*
2 *5, United States Code.*

3 (2) *The term “Department of Veterans Affairs*
4 *system for the disposition of claims for veterans bene-*
5 *fits” means the processes and procedures of the De-*
6 *partment of Veterans Affairs for the adjudication, res-*
7 *olution, review, and final disposition of claims for*
8 *benefits under the laws administered by the Secretary.*

9 (3) *The term “Secretary” means the Secretary of*
10 *Veterans Affairs.*

11 (4) *The term “veterans service organizations”*
12 *means any organization approved by the Secretary*
13 *under section 5902(a) of title 38, United States Code.*

14 **TITLE II—IMPROVEMENTS TO**
15 **CLAIMS ADJUDICATION**

16 **SEC. 201. ELIMINATION OF REQUIREMENT FOR ANNUAL IN-**
17 **COME QUESTIONNAIRES.**

18 *Section 1506 of title 38, United States Code, is amend-*
19 *ed—*

20 (1) *in paragraph (2), by striking out “shall”*
21 *and inserting in lieu thereof “may”; and*

22 (2) *in paragraph (3), by striking out “file a re-*
23 *vised report” and inserting in lieu thereof “notify the*
24 *Secretary”.*

1 **SEC. 202. DOCUMENTS TO BE ACCEPTED AS PROOF OF RE-**
2 **LATIONSHIPS.**

3 *Notwithstanding any other provision of law, the Sec-*
4 *retary of Veterans Affairs shall accept from a claimant a*
5 *photocopy of an appropriate document as proof of the exist-*
6 *ence of a marriage, the dissolution of a marriage, the birth*
7 *of a child, or the death of any family member for the pur-*
8 *pose of acting on such individual's claim for benefits under*
9 *any law administered by the Secretary. The Secretary may*
10 *require the submission of additional documentation in sup-*
11 *port of any document submitted pursuant to this section*
12 *if the document on its face raises a question as to its valid-*
13 *ity, or there is reasonable indication, in the document or*
14 *otherwise, of fraud or misrepresentation.*

15 **SEC. 203. ACCEPTANCE OF PRIVATE PHYSICIAN EXAMINA-**
16 **TIONS.**

17 *Notwithstanding any other provision of law, for pur-*
18 *poses of establishing a claim for disability compensation*
19 *under chapter 11 of title 38, United States Code, or a claim*
20 *for pension under chapter 15 of such title, a medical exam-*
21 *ination report of a private physician provided by a claim-*
22 *ant in support of a claim for benefits may be accepted with-*
23 *out confirmation by an examination by a physician em-*
24 *ployed by the Veterans Health Administration if such re-*
25 *port contains sufficient clinical data to support the diag-*

1 *nosis of a disability or to provide a reliable basis for an*
2 *evaluation of the degree of any such disability.*

3 **SEC. 204. TRANSFER OF MILITARY SERVICE MEDICAL**
4 **RECORDS.**

5 *Not later than 90 days after the date of the enactment*
6 *of this Act, the Secretary of Veterans Affairs shall submit*
7 *to the Committees on Veterans' Affairs of the Senate and*
8 *House of Representatives a report setting forth the status*
9 *of an agreement between the Secretary and the Secretary*
10 *of Defense to provide for the immediate transfer from the*
11 *Department of Defense to the Department of Veterans Af-*
12 *fairs of the medical records of members of the Armed Forces*
13 *upon the separation of such members from active duty.*

14 **TITLE III—MISCELLANEOUS**

15 **SEC. 301. SERVICE CONNECTION FOR CERTAIN DISABIL-**
16 **ITIES RELATING TO EXPOSURE TO IONIZING**
17 **RADIATION.**

18 *Section 5 of the Veterans' Dioxin and Radiation Expo-*
19 *sure Compensation Standards Act (Public Law 98-542; 98*
20 *Stat. 2725; 38 U.S.C. 1154 note) is amended by adding*
21 *at the end the following new subsection:*

22 *“(d) The regulations prescribed under this section may*
23 *not prohibit, or be construed to prohibit, a veteran from*
24 *establishing pursuant to section 1110 or 1131 of title 38,*
25 *United States Code, service connection for a disease or dis-*

1 *ability that the veteran claims to be the result of the veter-*
2 *an's exposure to ionizing radiation during a period of serv-*
3 *ice referred to in subsection (a)(1), notwithstanding that*
4 *such regulations do not specify that the disease or disability*
5 *is a radiogenic disease."*

6 **SEC. 302. ADJUDICATION AND RESOLUTION OF CERTAIN**
7 **CLAIMS RELATING TO MEDICAL MAL-**
8 **PRACTICE.**

9 (a) *ADJUDICATION AND RESOLUTION OF CLAIMS.—*
10 *The Secretary of Veterans Affairs shall—*

11 (1) *take appropriate actions to determine wheth-*
12 *er the injury (or aggravation of an injury) of any*
13 *veteran as the result of the treatment of the veteran*
14 *was the result of medical malpractice on the part of*
15 *the Department of Veterans Affairs (and not of the*
16 *veteran's own willful misconduct); and*

17 (2) *in the case of any injury so determined, pro-*
18 *vide appropriate compensation to the veteran in ac-*
19 *cordance with section 1151 of title 38, United States*
20 *Code.*

21 (b) *STATEMENT OF INTENT AND CONSTRUCTION.—*
22 *Congress enacts the requirement set forth in subsection (a)*
23 *in order to ensure the adjudication and resolution of certain*
24 *claims following the decision in Gardner v. Derwinski, 1*
25 *Vet.App. 584 (1991), aff'd, sub nom. Brown v. Garnder, 5*

1 *F.3d 1456 (Fed. Cir. 1993), cert. granted, 62 U.S.L.W.*
2 *3657 (U.S. Apr. 4, 1994) (No. 93-1128). The requirement*
3 *may not be construed as an expression of Congressional in-*
4 *tent to limit the claims subject to adjudication under sec-*
5 *tion 1151 of title 38, United States Code, to claims related*
6 *to injuries resulting from medical malpractice.*

7 (c) *DEFINITIONS.—In this section:*

8 (1) *The term “treatment”, in the case of a vet-*
9 *eran, means any examination, hospitalization, medi-*
10 *cal or surgical treatment, or course of vocational re-*
11 *habilitation under chapter 31 of title 38, United*
12 *States Code, that is provided to the veteran by the De-*
13 *partment of Veterans Affairs.*

14 (2) *The term “medical malpractice” means any*
15 *carelessness, negligence, error in judgment, lack of*
16 *proper medical skill, or similar instance of indicated*
17 *fault in the treatment of a veteran.*

S 1908 RS—2

Calendar No. 452

103^D CONGRESS
2^D SESSION

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[Report No. 103-280]

A BILL

To provide for a study of the processes and procedures of the Department of Veterans Affairs for the disposition of claims for veterans benefits.

JUNE 7, 1994

Reported with an amendment