

Dated: April 23, 1997.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97-11189 Filed 4-30-97; 8:45 am]

BILLING CODE 4910-14-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-A170

Monetary Allowance Under 38 U.S.C. 1805 for a Child Born with Spina Bifida Who Is a Child of a Vietnam Veteran

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) adjudication regulations to provide for payment of a monetary allowance to a child born with spina bifida who is a child of a Vietnam veteran. The intended effect of this amendment is to implement legislation authorizing VA to provide such benefits. A companion document (RIN: 2900-A165) concerning a proposal for the provision of health care for such children is set forth in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Comments must be received by VA on or before June 30, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-A170." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273-7230.

SUPPLEMENTARY INFORMATION: Section 3 of the Agent Orange Act of 1991, Public Law 102-4, 105 Stat. 11, directed the Secretary of Veterans Affairs to seek to enter into an agreement with the National Academy of Sciences (NAS) for a series of reports to review and summarize the scientific evidence

concerning the association between exposure to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam era, and each disease suspected to be associated with such exposure. In its most recent report, entitled "Veterans and Agent Orange: Update 1996," which was released on March 14, 1996, NAS noted what it considered "limited/suggestive evidence of an association" between herbicide exposure and spina bifida in the offspring of Vietnam veterans.

Since VA did not have the statutory authority to provide benefits to children of veterans based on birth defects, the Secretary announced on May 28, 1996, that he would seek legislation to provide an appropriate remedy and submitted proposed legislation to Congress in July of that year. Section 421 of Public Law 104-204 added a new chapter 18 to title 38, United States Code, authorizing VA to provide certain benefits, including a monthly monetary allowance, to children born with spina bifida who are the natural children of veterans who served in the Republic of Vietnam during the Vietnam era. This document amends existing VA adjudication regulations and adds a new section to title 38, Code of Federal Regulations, to implement this new authority.

Section 1805(c) of title 38, United States Code, specifies that receipt of this allowance shall not affect the right of the child, or the right of any individual, based on the child's relationship to that individual, to receive any other benefit to which the child, or that individual, may be entitled under any law administered by VA, nor will the allowance be considered income or resources in determining eligibility for, or the amount of, benefits under any Federal or federally assisted program. We propose to amend 38 CFR 3.261, 3.262, 3.263, 3.272, and 3.275 to reflect this statutory provision as it applies to VA's income-based benefit programs.

Section 1806 of title 38, United States Code, provides that the effective date of the monetary allowance to a child under new chapter 18 will be fixed in accordance with the facts found, but will not be earlier than the date of receipt of application. The effective date of section 421 of Public Law 104-204 will be October 1, 1997, unless other legislation is enacted to provide for an earlier effective date. VA is proposing to amend 38 CFR 3.403 to reflect these statutory provisions.

VA is also proposing to amend 38 CFR 3.503 to specify that this monetary allowance will terminate the last day of the month before the month in which the death of a child occurs. This date is

consistent with the termination provisions of 38 U.S.C. 5112(b) applicable to compensation, pension, and dependency and indemnity compensation benefits administered by VA, and there is no indication in the statute that Congress intended that VA administer this benefit in any different manner. Due to the amendments to 38 CFR 3.403 and 3.503, we are proposing technical amendments to each cross-reference following 38 CFR 3.57, 3.659, 3.703, 3.707, and 3.807.

VA is also proposing to amend 38 CFR 3.105 to specify that, where there is a change in disability status warranting a reduction of the monetary allowance, such reduction in evaluation will be effective the last day of the month following sixty days from the date of notice to the recipient (at the recipient's last address of record) of the contemplated reduction. This is the date stipulated by 38 U.S.C. 5112(b)(6) for reduction of disability compensation benefits under the same circumstances. We are not, however, proposing to incorporate an additional 60-day notice such as that provided before reductions of compensation awards under the provisions of 38 CFR 3.105(e). Since reduction of this monetary allowance would generally be based on private medical evidence that the claimant had authorized to be released to VA, and since the rating criteria for this benefit are generally less complex than those for rating compensation claims, in our judgment, 60 days is enough time for claimants to submit evidence showing that the monthly allowance should not be reduced. We are proposing to apply the provisions of 38 CFR 3.105(h) concerning the opportunity for a predetermination hearing to reductions of this monetary allowance.

Section 3.158 of title 38, Code of Federal Regulations, describes the circumstances under which VA will consider a claim abandoned. Where evidence requested in connection with a claim is not furnished within one year after the date of request, the claim will be considered abandoned and further action will not be taken unless a new claim is received. Should entitlement be established on the basis of this new claim, benefits are awarded effective not earlier than the date of the filing of the new claim. Where benefit payments have been discontinued because a payee's present whereabouts are unknown, payments will be resumed effective the day following the date of last payment if entitlement is otherwise established, upon receipt of a valid current address. In view of the similarity between this benefit and other monetary benefits which VA

administers, and, in order to maintain consistency with respect to the administration of these benefits, we believe it is appropriate to apply these provisions to the monetary monthly allowance for children with spina bifida, and we are proposing to amend 38 CFR 3.158 accordingly.

Pursuant to 38 U.S.C. 1805(b)(3), the amount of the monthly monetary allowance payable to a child with spina bifida will be \$200, \$700, or \$1,200, based on the individual's degree of disability. Section 1805(b)(3) also specifies that these amounts are subject to adjustment under the provisions of 38 U.S.C. 5312, which provide for the adjustment of certain VA benefit rates whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 *et seq.*). We propose to amend 38 CFR 3.27 to reflect that statutory provision.

We propose to add a new § 3.814 to title 38, Code of Federal Regulations, to implement additional provisions of 38 U.S.C. 1805. If a child with spina bifida is the natural child of two Vietnam veterans, new § 3.814 would make clear that that child may receive only one monthly allowance. This limitation is consistent with the provision of 38 U.S.C. 5304(a)(1) that limits a person to not more than one award of pension, compensation, emergency officers, regular or reserve retirement pay based on his or her own service. Such a limit is appropriate in this instance because a child establishes entitlement to this benefit in his or her own right due to being afflicted with spina bifida, and awarding more than one monthly allowance based on the existence of the same disability would constitute a duplication of benefits similar to that prohibited by 38 U.S.C. 5304(a)(1).

We propose to require an applicant for the monetary allowance to furnish certain information contained on a VA form entitled "Application for Spina Bifida Benefits" which is set forth in full in the text portion of proposed § 3.814(b). The information requested is necessary for making determinations regarding eligibility for monetary allowances. Furnishing the Social Security numbers of the natural parent(s) and the child on whose behalf benefits are sought is not mandatory, given the absence, under current law, of statutory authority that would authorize VA to require this information. Nevertheless, voluntary submission of such Social Security numbers would be helpful to VA in establishing an individual's eligibility for the monetary allowance authorized by law. VA would use the Social Security numbers to: (1) Verify that the child's natural parent

was a veteran who served in Vietnam during the specified period; (2) identify medical records; and (3) ensure that awards to deceased beneficiaries are terminated in a timely manner to avoid creation of overpayments.

The term "Vietnam veteran" is defined by the statute as a veteran who performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era. We propose to adopt the statutory language for purposes of new § 3.814. We also propose to define the term *service in the Republic of Vietnam* to include service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam. This is consistent with the definition of *service in the Republic of Vietnam* that appears at 38 CFR 3.307(a)(6)(iii), which sets forth the conditions under which VA presumes that Vietnam veterans were exposed to a herbicide agent during active military service. Since the purpose of this rulemaking is to provide for payment to the children of those same veterans if the children are born with spina bifida, it is appropriate to recognize the same area in which veterans are presumed to have been exposed to herbicides.

The statute defines the term "child" as meaning a natural child of a Vietnam veteran, regardless of age or marital status, who was conceived after the date on which the veteran first entered the Republic of Vietnam during the Vietnam era. In general, the statutes authorizing VA benefits recognize a legitimate child, a legally adopted child, a stepchild who is a member of the veteran's household, or an illegitimate child either acknowledged in writing by the veteran or judicially decreed to be the child of the veteran, as the child of the veteran (See 38 U.S.C. 101(4)(A)). 38 U.S.C. 1801, however, establishes a stricter requirement; in order to be eligible for this benefit a child must be the *natural* child of a Vietnam veteran. We therefore propose to require that, in order to establish entitlement to this benefit, a claimant must provide the types of evidence specified in 38 CFR 3.209 and 3.210 sufficient to demonstrate, in the judgment of the Secretary, that the child on whose behalf benefits are sought is the natural child of a Vietnam veteran.

38 U.S.C. 1805 (b) authorizes VA to make monthly payments at one of three levels based on the degree of disability suffered by the child, as determined in accordance with a schedule for rating such disabilities to be prescribed by the Secretary. Spina bifida is a developmental anomaly characterized by defective closure of the bony

encasement of the spinal cord, through which the cord (myelocoele), meninges (meningocele), or both (meningomyelocoele) may (spina bifida cystica) or may not (spina bifida occulta) protrude (Dorland's Illustrated Medical Dictionary, 27th ed. 1988, 1560, and The Merck Manual, 16th ed. 1992, 2077). Neurological deficit is the main determinant of disability for an individual with spina bifida (Long-term Outcome in Surgically Treated Spina Bifida Cystica, Isao Date, M.D., Yasunori Yagyu, M.D., Shoji Asari, M.D., and Takshi Ohmoto, M.D., *Surg. Neurol.* 1993, 40:471-5). In our judgment, the neurological manifestations that best define the severity of disability are impairment of: Functioning of the extremities; bowel or bladder function; and intellectual functioning.

We propose to designate levels of disability identified as Level I, II, or III, based on an assessment of these neurologic manifestations in eligible individuals. Each of these neurologic manifestations exhibits three clearly identifiable levels of impairment that can be used in determining levels of payment. Functioning of the lower extremities can be assessed from least to most impaired based on (1) the ability to walk without braces or other external support; (2) the ability to walk only with braces or other external support; or (3) the inability to walk. Functioning of the upper extremities can be assessed from least to most impaired based on (1) absence of sensory or motor impairment; (2) existence of sensory or motor impairment not precluding the ability to grasp a pen, feed one's self, perform self care; and (3) existence of sensory or motor impairment severe enough to preclude the ability to grasp a pen, feed one's self, or perform self care. Bowel or bladder function can be assessed from least to most impaired based upon whether an individual is (1) continent of urine and feces; (2) requires drugs or mechanical means to maintain proper bladder or bowel function; or (3) is completely incontinent of urine or feces.

Intellectual function is ordinarily assessed through the use of any of several standardized tests that determine the intelligence quotient (I.Q.). The average or normal I.Q. range is generally considered to be 90 to 110 ("Comprehensive Textbook of Psychiatry" 497 (Harold I. Kaplan, M.D., and Benjamin J. Sadock, M.D., eds., 5th ed. 1989)). The American Association of Mental Deficiency considers an I.Q. of 69 or less to indicate mental retardation. Between these ranges falls an intermediate group with an I.Q. between 70 and 89, considered to be in the range

of dull-normal to borderline mental retardation.

Section 1805(a) authorizes VA to pay a monetary allowance for any disability resulting from spina bifida. We have concluded that any person who has spina bifida, other than spina bifida occulta, suffers some degree of disability. Accordingly, we propose to rate individuals suffering from spina bifida at Level I (the lowest level of disability) if they are able to walk without braces or other external support (although gait may be impaired), have no motor or sensory impairment of the upper extremities, have an I.Q. of 90 or higher, and are continent of urine and feces. Provided that none of their disabilities due to spina bifida are severe enough to meet the requirements of Level III, we propose to rate individuals at Level II (the intermediate level of disability) if they are ambulatory, but only with braces or other external support; or, if they have motor or sensory impairment of the upper extremities but are able to grasp a pen, feed themselves, and perform self care; or, if they have an I.Q. between 70 and 89; or, if they require drugs or intermittent catheterization to maintain proper urinary bladder function, or mechanisms for proper bowel function. We propose to rate individuals at Level III (the highest level of disability) if they are unable to ambulate; or, if they have motor or sensory impairment of the upper extremities severe enough to preclude grasping a pen, self-care or self-feeding; or, if they have an I.Q. of 69 or less; or, if they are completely incontinent of urine or feces. For a child with spina bifida to be evaluated at Level I, each of any existing neurological disabilities would have to fall into the least impaired range described above. If at least one of the claimant's neurological impairments falls into the middle range, the individual would be rated at Level II. Furthermore, if at least one of the disabilities falls into the highest level of impairment, the individual would be rated at Level III.

Children who are less than one year of age, regardless of whether they suffer from spina bifida, are essentially helpless, incontinent, unable to walk, and too young for I.Q. to be measured. Therefore, the above-noted criteria we are proposing are not readily applicable as determinants of disability at that age. We therefore propose that children under the age of one be rated at Level I, unless a pediatric neurologist certifies that, in his or her medical judgment, there is a neurological deficit present that will prevent the child from ambulating, grasping a pen, performing

self-care, or feeding him or herself because of sensory or motor impairment of the upper extremities, or that will make it impossible for the child to achieve urinary or fecal continence. In our judgment, pediatric neurologists are the only physicians with the expertise in this highly specialized area necessary to assess neurological deficits and their likely prognosis in children under the age of one. If such a deficit is present, we propose that the child be rated at Level III. We also propose to require that VA reassess the level of disability in each child at the age of one year, at which time the effects of spina bifida can more readily be determined.

In some cases, symptoms due to spina bifida do not become manifest for several years. Even if the limbs initially appear totally paralyzed, early training and the use of appliances may allow ambulation in childhood (Brain's Diseases of the Nervous System, revised by John N. Walton, M.D., D.Sc., F.R.C.P., 8th ed., 1977, 777). However, children with lesions at the second lumbar level or higher, even if they become ambulatory in childhood, usually will require wheelchairs in the teenage period. Despite initial bowel or bladder incontinence, most older children, with training and the use of medication or appliances, are able to achieve continence (Diseases of the Nervous System, Arthur K. Asbury, M.D., Guy M. McKhann, M.D., and W. Ian McDonald, Ph.D., F.R.C.P., eds., 1986, 712).

VA will reassess the level of disability due to spina bifida whenever it receives medical evidence indicating that a change is warranted. Nevertheless, we propose to require that VA reassess the level of disability due to spina bifida at intervals of not more than five years until the child has reached the age of 21. Required reassessments will assure that the appropriate level of disability is assigned during the period of time when changes in the disabling effects of spina bifida are most likely to occur. Thereafter, we propose to reassess the level of disability only if we receive medical evidence indicating a material change in the level of disability or that the current rating may be incorrect. By the time a child is age 21, the condition has generally stabilized and, in our judgment, required reassessments beyond that age will no longer be necessary.

Because VA medical facilities generally provide examination and care only to veterans, VA lacks pediatric examiners, pediatric neurologists, and other pediatric specialists who might participate in the evaluation and care of children with spina bifida. We therefore propose to accept statements from

private physicians, as well as examination reports from government or private institutions, for the purpose of rating spina bifida claims without further examination, provided they are adequate to permit the evaluation of the effects of spina bifida under the criteria proposed above. Because of the critical need to obtain this information in order to assure assignment of an appropriate rating level, we propose to require that individuals seeking or receiving benefits under this provision authorize the release of pertinent medical records to VA and that children for whom VA schedules an examination, whether at a VA facility or by a private health-care provider under contract, report for that examination. Individuals who fail to authorize the release of pertinent medical records or fail to report for examination would be rated at Level I.

Paperwork Reduction Act of 1995

The Office of Management and Budget (OMB) has determined that proposed 38 CFR 3.814 would contain collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the proposed collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AI70."

Title: Application for Benefits Eligibility.

Summary of collection of information:

The provisions of proposed 38 CFR 3.814 would require applicants for the monetary allowance to submit certain personal identifying information of the child and natural parents, medical status of the child, veteran status of the natural parents, and incompetency details (if applicable and the child is over 18 years old). The types of evidence specified in §§ 3.209 and 3.210

would be sufficient to establish that a child is the natural child of a Vietnam veteran.

Description of the need for information and proposed use of information: VA needs the information to determine eligibility for obtaining the monetary allowance and the appropriate level of payment. Although submission of Social Security numbers is not mandatory, pending the enactment of specific legislation, VA would use the Social Security numbers to: (1) Verify that the child's natural parent was a veteran who served in Vietnam during the specified period; (2) identify medical records; and (3) ensure that awards to deceased beneficiaries are terminated in a timely manner to avoid creation of overpayments.

Description of likely respondents: Individuals seeking the monetary allowance for a child born with spina bifida who is a child of a Vietnam veteran.

Estimated number of respondents: 600–2,000.

Estimated frequency of responses: 1. *Estimated total annual reporting and recordkeeping burden:* 335 hours.

Estimated annual burden per collection: 10 minutes.

Title: Acceptance of Released Statements from Private Physicians or Institutions for the Purpose of Evaluating Spina Bifida Claims.

Summary of collection of information: The provisions of the proposed 38 CFR 3.814(d) would permit VA to accept statements from private physicians, as well as examination reports from government or private institutions, for the purpose of evaluating spina bifida claims without VA examination provided that they are adequate to evaluate the effects of spina bifida under the criteria proposed in the regulation, and would require individuals seeking the monetary allowance to authorize the release of pertinent medical records to VA.

Description of the need for information and proposed use of information: Because VA medical facilities generally provide examination and care only to veterans, VA lacks pediatric examiners, pediatric neurologists, and other pediatric specialists who might participate in the evaluation of children with spina bifida.

Description of likely respondents: Individuals seeking the monetary allowance for a child born with spina bifida who is a child of a Vietnam veteran.

Estimated number of respondents: 600–2,000.

Estimated frequency of responses: 1.

Estimated total annual reporting and recordkeeping burden: 335 hours.

Estimated annual burden per collection: 10 minutes.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

- Enhancing the quality, usefulness, and clarity of the information to be collected; and

- Minimizing the burden of the collections of information on those who are to respond, including responses through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance program number for this benefit.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: March 21, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is proposed to be amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.27, paragraph (c) is redesignated as paragraph (d), a new paragraph (c) is added, and newly redesignated paragraph (d) and its authority citation are revised to read as follows:

§ 3.27 Automatic adjustment of benefit rates.

* * * * *

(c) *Monetary allowance under 38 U.S.C. 1805 for a child born with spina bifida who is a child of a Vietnam veteran.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of Title II of the Social Security Act, VA shall, effective on the dates such increases become effective, increase by the same percentage the monthly allowance under 38 U.S.C. 1805 for a child born with spina bifida who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(b)(3))

(d) *Publishing requirements.* Increases in pension rates, parents' dependency and indemnity compensation rates and income limitation, and the monthly allowance under 38 U.S.C. 1805 for a child born with spina bifida made under this section shall be published in the **Federal Register**.

(Authority: 38 U.S.C. 5312(c)(1), 1805(b)(3))

3. In § 3.105, paragraphs (g) and (h) are redesignated as paragraphs (h) and (i), respectively; in paragraphs (d), (e), (f) and newly redesignated paragraph (h) remove "paragraph (h)" each time it appears and add, in its place, "paragraph (i)"; in newly redesignated paragraph (i)(1) remove "paragraphs (d) through (g)" and add, in its place, "paragraphs (d) through (h)"; in newly redesignated paragraph (i)(2) introductory text, remove "paragraph (d), (e), (f) or (g)" and add, in its place, "paragraph (d), (e), (f), (g) or (h)"; in newly redesignated paragraph (i)(2)(ii) remove "paragraph (f)" and add, in its place, "paragraphs (f) and (g)"; in newly

redesignated paragraph (i)(2)(iii) remove “paragraph (g)” and add, in its place, “paragraph (h)”; and add a new paragraph (g) to read as follows:

§ 3.105 Revision of decisions.

* * * * *

(g) *Reduction in evaluation—monetary allowance to a child with spina bifida under 38 U.S.C. 1805.* Where a change in disability level warrants a reduction of the monthly allowance currently being made, a rating proposing the reduction will be prepared setting forth all material facts and reasons. The beneficiary will be notified at his or her latest address of

record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence to show that the monthly allowance should be continued at the present level. Unless otherwise provided in paragraph (i) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced effective the last day of the month following sixty days from the date of notice to the payee of the proposed reduction.

(Authority: 38 U.S.C. 501)

* * * * *

§ 3.158 [Amended]

4. In § 3.158, paragraphs (a) and (c) are amended by removing “or dependency and indemnity compensation” and adding, in its place, “dependency and indemnity compensation, or monetary allowance under the provisions of 38 U.S.C. 1805”.

5. In § 3.261, paragraph (a)(40) is added to read as follows:

§ 3.261 Character of income; exclusions and estates.

* * * * *

(a) * * *

Income	Dependency (parents)	Dependency and indemnity compensation (parents)	Pension; old-law (veterans, surviving spouses and children)	Pension; section 306 (veterans, surviving spouses and children)	See
(40) Monetary allowance under 38 U.S.C. 1805 for children born with spina bifida who are children of Vietnam Veterans.	Excluded	Excluded	Excluded	Excluded	§ 3.262(y)

* * * * *

6. In § 3.262, paragraph (y) is added to read as follows:

§ 3.262 Exclusions of income.

* * * * *

(y) *Monetary allowance under 38 U.S.C. 1805 for a child born with spina bifida who is a child of a Vietnam veteran.* There shall be excluded from income computation any allowance paid under the provisions of 38 U.S.C. 1805 to a child born with spina bifida who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(d))

7. In § 3.263, paragraph (g) is added to read as follows:

§ 3.263 Corpus of estate; net worth.

* * * * *

(g) *Monetary allowance under 38 U.S.C. 1805 for a child born with spina bifida who is a child of a Vietnam veteran.* There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. 1805 to a child born with spina bifida who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(d))

8. In § 3.272, paragraph (u) is added to read as follows:

§ 3.272 Exclusions from income.

* * * * *

(u) *Monetary allowance under 38 U.S.C. 1805 for a child born with spina bifida who is a child of a Vietnam veteran.* Any allowance paid under the provisions of 38 U.S.C. 1805 to a child

born with spina bifida who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(d))

9. In § 3.275, paragraph (i) is added to read as follows:

§ 3.275 Criteria for evaluating net worth.

* * * * *

(i) *Monetary allowance under 38 U.S.C. 1805 for a child born with spina bifida who is a child of a Vietnam veteran.* There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. 1805 to a child born with spina bifida who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(d))

10. In § 3.403, the introductory text and paragraphs (a)–(e) are redesignated as paragraphs (a), and (a)(1)–(a)(5), respectively, and paragraph (b) is added to read as follows:

§ 3.403 Children.

* * * * *

(b) *Monetary allowance under 38 U.S.C. 1805 for a child born with spina bifida who is a child of a Vietnam veteran (§ 3.814).* An award of the monetary allowance under 38 U.S.C. 1805 to a child with spina bifida who is the child of a Vietnam veteran will be either date of birth if claim is received within one year of that date, or date of claim, but not earlier than October 1, 1997.

(Authority: 38 U.S.C. 1806, 5110(n); sec. 422(c), Pub. L. 104–204, 110 Stat. 2926)

11. In § 3.503, the introductory text and paragraphs (a)–(j) are redesignated as paragraphs (a), and (a)(1)–(a)(10), respectively, and paragraph (b) is added to read as follows:

§ 3.503 Children.

* * * * *

(b) *Monetary allowance under 38 U.S.C. 1805 for a child born with spina bifida who is a child of a Vietnam veteran (§ 3.814).* The effective date of discontinuance of the monthly allowance under 38 U.S.C. 1805 to a child with spina bifida who is the child of a Vietnam veteran will be the last day of the month before the month in which the death of the child occurred.

(Authority: 38 U.S.C. 501)

12. Section 3.814 is added to read as follows:


§ 3.814 Monetary allowance under 38 U.S.C. 1805 for a child born with spina bifida who is a child of a Vietnam veteran.

(a) VA shall pay a monthly allowance based upon the level of disability determined under the provisions of paragraph (c) of this section to or for a child born with spina bifida who is a child of a Vietnam veteran. Receipt of this allowance shall not affect the right of the child, or the right of any individual based on the child's relationship to that individual, to receive any other benefit to which the child, or that individual, may be entitled under any law administered by VA. If a child with spina bifida is the natural child of two Vietnam veterans,

he or she is entitled to only one monthly allowance under this section.

(b) Applicants for the monetary allowance under this section must submit an application to the VA regional office and include the information mandated on the following VA form entitled "Application for Spina Bifida Benefits":

BILL CODE 8320-01-U

 Department of Veterans Affairs		APPLICATION FOR SPINA BIFIDA BENEFITS	
<p>PRIVACY ACT INFORMATION: The social security number and other information on this form is requested under 38 U.S.C. chapter 18, which provides benefits to Vietnam veterans' children with spina bifida. Any information on this form may be disclosed outside VA only if authorized under 38 U.S.C. 5701 and the Privacy Act, including the routine uses identified in the VA system of records, 58VA21/22, Compensation, Pension, Education and Rehabilitation Records - VA, published in the Federal Register. Routine disclosures may be made for the following purposes: Debt collection, civil or criminal law enforcement, communications with members of Congress or other representatives, benefits delivery, administration of programs, and personnel administration. Disclosure of the social security numbers and other requested information is voluntary; however, failure to furnish that information would impose administrative difficulties which may result in a delay in processing your application for spina bifida benefits.</p> <p>RESPONDENT BURDEN: VA may not conduct or sponsor, and respondent is not required to respond to this collection of information unless it displays a valid OMB Control Number. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have comments regarding this burden estimate or any other aspect of this collection of information, call 1-800-827-1000 for mailing information on where to send your comments.</p>			
1. NAME OF CLAIMANT-CHILD (<i>First, middle, last</i>)		2. SOCIAL SECURITY NUMBER OF CLAIMANT-CHILD (<i>If available</i>)	
3. CLAIMANT-CHILD'S DATE OF BIRTH (<i>Mo., day, yr.</i>)		4. CLAIMANT-CHILD'S PLACE OF BIRTH (<i>City and state</i>)	
5. ADDRESS OF CLAIMANT-CHILD (<i>Include number and street or rural route, city or P.O., State and ZIP Code</i>)		6. TELEPHONE NUMBER OF CLAIMANT-CHILD (<i>Include Area Code</i>) ()	
7. NAME(S) OF NATURAL PARENT(S) (<i>Please provide information for both</i>)			
A. FATHER (<i>First, middle, last</i>)		B. MOTHER (<i>First, middle, last</i>)	
8. ADDRESS, TELEPHONE NUMBER AND VETERAN STATUS OF NATURAL PARENT(S)			
A. FATHER (<i>Include number and street or rural route, city or P.O., State and ZIP Code</i>)		C. MOTHER (<i>Include number and street or rural route, city or P.O., State and ZIP Code</i>)	
()		()	
B. VIETNAM SERVICE? (<i>If "Yes," provide dates below</i>) <input type="checkbox"/> YES <input type="checkbox"/> NO (<i>From: To: </i>)		D. VIETNAM SERVICE? (<i>If "Yes," provide dates below</i>) <input type="checkbox"/> YES <input type="checkbox"/> NO (<i>From: To: </i>)	
9. SOCIAL SECURITY NUMBER(S) OF NATURAL PARENT(S)			
A. FATHER		B. MOTHER	
10. VA CLAIM NUMBER(S) OF NATURAL PARENT(S) (<i>If veteran previously applied to VA for any benefit</i>)			
A. FATHER		B. MOTHER	
11. IF CHILD IS UNDER AGE 18 WHO HAS CUSTODY, IF OTHER THAN NATURAL PARENT? (<i>Complete Items 11A, 11B and 11C</i>)			
A. NAME OF CUSTODIAN/GUARDIAN OF CLAIMANT-CHILD	B. RELATIONSHIP TO CHILD <input type="checkbox"/> ADOPTIVE PARENT <input type="checkbox"/> GUARDIAN <input type="checkbox"/> OTHER (<i>Specify</i>)		C. ADDRESS OF CUSTODIAN/GUARDIAN OF CLAIMANT-CHILD
12A. IF CLAIMANT-CHILD IS AGE 18 OR OLDER HAS THE CLAIMANT-CHILD BEEN DECLARED INCOMPETENT? <input type="checkbox"/> YES <input type="checkbox"/> NO (<i>If "Yes," complete Items 12B and 12C</i>)			
12B. NAME AND ADDRESS OF THE COURT WHICH MADE THE FINDING OF INCOMPETENCY?		12C. NAME AND ADDRESS OF THE GUARDIAN	
13. NAME AND ADDRESS OF PRIMARY HEALTH CARE PROVIDER FOR THE CLAIMANT-CHILD			
14A. HAS THE CHILD BEEN DIAGNOSED WITH SPINA BIFIDA? <input type="checkbox"/> YES <input type="checkbox"/> NO (<i>If "Yes," complete Items 14B and 14C</i>)		14B. DATE OF DIAGNOSIS (<i>Mo., day, yr.</i>)	
14C. IF THE CLAIMANT-CHILD HAS BEEN TREATED/HOSPITALIZED FOR SPINA BIFIDA RELATED DISABILITIES WITHIN THE LAST YEAR, PLEASE PROVIDE THE NAME AND ADDRESS OF EACH HOSPITAL OR OTHER INSTITUTION WHERE THE TREATMENT WAS PROVIDED (<i>Use reverse or attach a separate sheet if more space is needed</i>)			
I/We, the undersigned, hereby authorize the hospital or physician shown in Items 13 and 14C to disclose and release to the Department of Veterans Affairs (VA) any information that may have been obtained in connection with the physical examination or treatment of the child.			
15A. SIGNATURE(S) OF PARENT/GUARDIAN/ADULT CHILD		15B. DATE SIGNED	
16A. SIGNATURE OF WITNESS (<i>Required</i>)		16B. DATE SIGNED	
I/We, the undersigned, declare under penalty of perjury that the information provided is true and correct and that the child named in Item 1 above is the natural child of the person(s) named above in Item 7.			
17A. SIGNATURE		17B. DATE SIGNED	
18A. SIGNATURE		18B. DATE SIGNED	

VA FORM
SPD 100- **21-0304**

(c) *Definitions.*

(1) *Vietnam veteran.* For the purposes of this section, the term "Vietnam veteran" means a veteran who performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era. Service in the Republic of Vietnam includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(2) *Child.* For the purposes of this section, the term "child" means a natural child of a Vietnam veteran, regardless of age or marital status, conceived after the date on which the veteran first served in the Republic of Vietnam during the Vietnam era. Notwithstanding the provisions of § 3.204(a)(1), VA shall require the types of evidence specified in §§ 3.209 and 3.210 sufficient to establish in the judgment of the Secretary that a child is the natural child of a Vietnam veteran.

(3) *Spina bifida.* For the purposes of this section, the term "spina bifida" means any form and manifestation of spina bifida except spina bifida occulta.

(d)(1) Upon receipt of competent medical evidence that a child has spina bifida, VA shall determine the level of disability suffered by the child in accordance with the following criteria:

(i) *Level I.* The child is able to walk without braces or other external support (although gait may be impaired), has no sensory or motor impairment of upper extremities, has an IQ of 90 or higher, and is continent of urine and feces.

(ii) *Level II.* Provided that none of the child's disabilities are severe enough to be evaluated at Level III, and the child: is ambulatory, but only with braces or other external support; or has sensory or motor impairment of upper extremities, but is able to grasp pen, feed self, and perform self care; or has an IQ of at least 70 but less than 90; or requires drugs or intermittent catheterization or other mechanical means to maintain proper urinary bladder function, or mechanisms for proper bowel function.

(iii) *Level III.* The child is unable to ambulate; or has sensory or motor impairment of upper extremities severe enough to prevent grasping a pen, feeding self, and performing self care; or has an IQ of 69 or less; or has complete urinary or fecal incontinence.

(2) Provided that they are adequate for assessing the level of disability due to spina bifida under the provisions of paragraph (d)(1) of this section, VA may accept statements from private physicians, or examination reports from government or private institutions, for the purpose of rating spina bifida claims without further examination. In the

absence of such information, VA will schedule an examination for the purpose of assessing the level of disability.

(3) Unless or until VA is able to obtain medical evidence adequate to assess the level of disability due to spina bifida, it will rate the disability of a person eligible for this monetary allowance at no higher than Level I.

(4) Children under the age of one year will be rated at Level I unless a pediatric neurologist certifies that, in his or her medical judgment, there is a neurological deficit that will prevent the child from ambulating; from grasping a pen, feeding him or herself, or performing self care; or from achieving urinary or fecal continence. If such a deficit is present, the child will be rated at Level III. VA will reassess the level of disability of each child to which this provision is applied at the age of one year.

(5) VA will reassess the level of disability due to spina bifida whenever it receives medical evidence indicating that a change is warranted. For individuals between the ages of one and twenty-one, however, it will reassess the level of disability at intervals of not more than five years. Thereafter, it will reassess the level of disability only if evidence indicates there has been a material change in the level of disability or that the current rating may be incorrect.

(Authority: 38 U.S.C. 501, 1805)

13. The Cross-Reference following § 3.57 is amended by removing "§ 3.403(a)" and "§ 3.503(c)" and adding, in their places, "§ 3.403(a)(1)" and "§ 3.503(a)(3)", respectively. Each Cross-Reference following §§ 3.659 and 3.703 is amended by removing "§ 3.503(g)" and adding, in its place, "§ 3.503(a)(7)". Each Cross Reference following §§ 3.707 and 3.807 is amended by removing "§ 3.503(h)" and adding, in its place, "§ 3.503(a)(8)".

[FR Doc. 97-11256 Filed 4-30-97; 8:45 am]

BILLING CODE 8320-01-U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AI65

Provision of Health Care to Vietnam Veterans' Children With Spina Bifida

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to establish regulations regarding Vietnam

veterans' children with spina bifida by providing for the provision of health care needed for the spina bifida or any disability that is associated with such condition. This is necessary for providing health care to such children in accordance with recently enacted legislation. A companion document (RIN: 2900-AI70) concerning a proposal to provide for payment of a monetary allowance to a Vietnam veteran's child with spina bifida is set forth in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Comments must be received by VA on or before June 30, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AI65." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT:

Robert De Vesty, Health Systems Specialist, Office of Public Health and Environmental Hazards (13), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington DC 20420, telephone (202) 273-8456.

SUPPLEMENTARY INFORMATION: This document proposes to amend the "Medical regulations (38 CFR part 17)," by setting forth new §§ 17.900-17.905 regarding the provision of health care to Vietnam Veterans' children with spina bifida. Spina bifida is a congenital birth defect, characterized by defective closure of the bones surrounding the spinal cord. The spinal cord and its covering (the meninges) may protrude through the defect.

The provisions of 38 U.S.C. Chapter 18 (Public Law 104-204, section 421, September 26, 1996) provide for three separate types of benefits for Vietnam veterans' children who suffer from spina bifida: (1) Monthly monetary allowances (2) provision of health care needed for the spina bifida or any disability that is associated with such condition, and (3) provision of vocational training and rehabilitation.

This document proposes to set forth a mechanism regarding provision of health care to Vietnam Veterans' children with spina bifida. In large part the proposed regulations restate statutory provisions.