

Chapter VA 1

GENERAL PROVISIONS

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Note: 2005 Wis. Act 22 repealed and recreated Ch. 45, Stats. Cross-references to Ch. 45, Stats., were corrected under s. 13.92 (4) (b) 7., Stats.

VA 1.001 Definitions. For the purposes of chs. VA 1 to 18, the following terms shall have the designated meanings, unless a different meaning is expressly indicated:

- (1) "Board" means the board of veterans affairs.
- (2) "Department" means the department of veterans affairs.
- (3) "Dependent" has the meaning given under s. 45.01 (6), Stats.
- (4) "Duly authorized representative" means any person authorized in writing by the veteran to act for the veteran, the veteran's guardian if the veteran is adjudicated incompetent, or a personal representative of the estate if the veteran is deceased. Where for proper reason, as determined by the department, no duly authorized representative has been or will be appointed, the applicant's spouse, an adult child, or if the applicant is unmarried, "duly authorized representative" means either of the applicant's parents.
- (4m) "Member" means an individual who is eligible for membership in a veterans home as specified under s. 45.51, Stats.
- (5) "Secretary" means the secretary of the department of veterans affairs.
- (6) "USDVA" means the U.S. department of veterans affairs.
- (7) "Veteran" has the meaning given under s. 45.01 (12), Stats.

History: Cr. Register, April, 1986, No. 364, eff. 5-1-86; cr. (3), Register, February, 1989, No. 398, eff. 3-1-89; correction made under s. 13.93 (2m) (b) 1., Stats., Register, June, 2001, No. 546; correction in (intro.) made under s. 13.92 (4) (b) 7., Stats., Register April 2014 No. 700; **CR 20-011: renum. (intro.), (1), (2), (5) from VA 1.15 and am. (intro.), cr. (3) to (4m), (6), (7) Register September 2021 No. 789, eff. 10-1-21.**

VA 1.01 Department authority. (1) AUTHORITY. Chapters VA 1 to 18 are promulgated under the authority of s. 45.03 (2), Stats., for implementation of ch. 45, Stats.

(2) INTERPRETATION. The department reserves the right to interpret the requirements of ch. 45, Stats., and chs. VA 1 to 18.

(3) LIBERAL APPLICATION OF STATUTES. The department shall interpret and apply the provisions of ch. 45, Stats., in a broad and liberal manner, resolving all reasonable doubt in favor of the veteran, to ensure that available benefits are provided to the veteran and the veteran's eligible dependents as promptly and effectively as possible.

History: Cr. Register, March, 1965, No. 111, eff. 4-1-65; am. Register, October, 1967, No. 142, eff. 11-1-67; **CR 20-011: r. and recr. (title), renum. VA 1.01 to (3) and am., cr. (1), (2) Register September 2021 No. 789, eff. 10-1-21; (1) (title) created under s. 13.92 (4) (b) 2., Stats., Register September 2021 No. 789.**

VA 1.02 Application for benefits. An application for benefits from the department shall be made on a form approved by the department, signed by an eligible dependent, the veteran, or both, or any other person the department may require in connection with the specific benefit application involved. It is unlawful for anyone to charge an applicant, spouse, or dependent a commission for assistance with completing or securing the approval of an application for benefits from the department.

Note: All forms required under this chapter may be obtained on the Department's website at <https://dva.wi.gov>, or by request from the Department of Veterans Affairs,

2135 Rimrock Road, P.O. Box 7843, Madison, WI 53707-7843, or call 800-WIS-VETS (800-947-8387).

History: Cr. Register, March, 1965, No. 111, eff. 4-1-65; r. and recr., Register, November, 1971, No. 191, eff. 12-1-71; am. Register, August, 1972, No. 200, eff. 9-1-72; am. Register, July, 1976, No. 247, eff. 8-1-76; correction made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1998, No. 511; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2010 No. 654; **CR 20-011: am. Register September 2021 No. 789, eff. 10-1-21.**

VA 1.03 Procedure for appeals by applicants for benefits. (1) APPEALABLE ACTIONS. An applicant for benefits from the department may appeal a decision of the department concerning an application. Any applicant for benefits whose benefits have been suspended pursuant to s. 45.03 (16), Stats., may appeal such suspension.

(2) APPLICATIONS PENDING APPEAL FOR DENIAL OF SUSPENSION OF BENEFITS. During the pendency of an appeal of a suspension of benefits from the department, no decision shall be issued by the department concerning any of the appellant's applications for benefits from the department that were pending in the department at the time of the decision to suspend benefits, or that are submitted by the applicant during the pendency of the appeal even if the decision is not related to the matter being appealed. If the final decision in the appeal affirms the suspension of benefits, the department may deny any of the appellant's applications. If the final decision in the appeal reverses the suspension of benefits, the department shall then determine whether the applications should be approved.

(3) TIME AND MANNER FOR FILING APPEAL. An appeal shall be in writing and shall be filed with the department within 60 calendar days after the date of the department's decision. Any questions about time computations for procedural matters shall be resolved by reference to s. 801.15 (1), Stats.

Note: The address to deliver an appeal is: Department of Veterans Affairs, 2135 Rimrock Road, P.O. Box 7843, Madison, WI 53707-7843.

(4) CONDUCT OF HEARING. The hearing on the appeal shall be held before a hearing examiner designated by the department in accordance with all of the following:

(a) The hearing examiner shall have the powers enumerated under s. 227.46, Stats.

(b) The department shall present evidence first unless the hearing examiner varies the order of proceeding in the interest of obtaining the most cogent presentation of the case.

(c) The department may schedule an appellant to appear at an in-person or telephonic hearing.

(d) An appellant may appear with or without counsel or by counsel or other agent of the appellant's choice. If an appellant intends to be represented by counsel, the counsel shall file a notice of appearance with the department.

(5) EVIDENCE. In accordance with s. 227.45, Stats., the hearing examiner may not be bound by common law or statutory rules of evidence. Parties may stipulate to some or all of the facts, and the hearing examiner may base the proposed decision upon the stipulation. All exhibits shall be marked and made available for inspection by the opposing party before being shown to a witness,

unless the exhibit shall have been marked and a copy made available to the opposing party prior to hearing.

(6) RECORD OF APPEAL. A stenographic, electronic, or other record of the hearing shall be kept, and shall be transcribed at the request of any party. Such transcription shall be at the department's expense if the purpose for transcription is deemed reasonable to the department's or hearing examiner's satisfaction. Copies of the tape recordings, transcripts, or other record shall be furnished to any party upon request at the cost of production to the department, except that copies may be provided free of charge to parties who can demonstrate that they are indigent.

(7) PROPOSED DECISION. The hearing examiner shall issue a proposed written decision to the department, including findings of fact, conclusions of law, order, and opinion pursuant to s. 227.46 (2), Stats. The proposed decision shall be served on all parties at least 20 calendar days before it is submitted to the department for final decision unless all parties waive the 20 calendar day period. Each party adversely affected may file objections to the proposed decision, briefly stating the reasons and authorities for each objection, and may file a brief and present oral argument to the department at the time scheduled for a hearing.

(8) FINAL DECISION. The department shall issue in writing the final decision, findings of fact, and conclusion of law.

(9) PETITION FOR REHEARING. A party aggrieved by a final decision may petition the department for a rehearing pursuant to s. 227.49, Stats. Any other party shall have 20 days from the date the petition for rehearing is mailed to them at their last known address to file a reply to the petition. The department shall grant or deny a petition for a rehearing in accordance with s. 227.49, Stats.

History: Cr. Register, March, 1965, No. 111, eff. 4-1-65; r. and recr., Register, January, 1984, No. 337, eff. 2-1-84; am. (4) to (7) and (9), Register, February, 1989, No. 398, eff. 3-1-89; am. (7) to (9), Register, May, 1990, No. 413, eff. 6-1-90; correction in (3) made under s. 13.93 (2m) (b) 6., Stats., Register, June, 1992, No. 438; **CR 20-011: am. (1) to (3), renum. (4) to (4) (intro.), (a) to (d) and am., am. (5), (7) to (9) Register September 2021 No. 789, eff. 10-1-21.**

VA 1.04 Benefits to those who qualify. The department shall assist resident veterans and their eligible dependents in all matters connected with the securing of any aid or benefit that they may be entitled to under federal or state law by reason of service in the U.S. armed forces. Financial assistance from the department may not be extended to veterans or dependents when the need for the aid arises or results from the willful misconduct of the veteran or the beneficiary.

History: Cr. Register, March, 1965, No. 111, eff. 4-1-65; am. Register, October, 1967, No. 142, eff. 11-1-67; am. Register, August, 1993, No. 452, eff. 9-1-93; **CR 20-011: am. Register September 2021 No. 789, eff. 10-1-21; correction made under s. 35.17, Stats., Register September 2021 No. 789.**

VA 1.05 Cooperation with other agencies. In addition to coordinating the activities of all state agencies relating to the medical, educational, economic, or vocational rehabilitation of veterans and their dependents, the department shall cooperate with all federal, state, county, or other agencies whose functions include rehabilitation of veterans.

History: Cr. Register, March, 1965, No. 111, eff. 4-1-65; am. Register, October, 1967, No. 142, eff. 11-1-67; **CR 20-011: am. Register September 2021 No. 789, eff. 10-1-21.**

VA 1.08 False statements. (1) SUSPENSION OF BENEFITS. (a) *Investigation and suspension.* If the department finds after an investigation that any applicant for benefits from the department has willfully made or caused to be made, or conspired, combined, aided or assisted in, agreed to, arranged for, or in any way procured the making of a false or fraudulent affidavit, declaration, certificate, statement, or other writing, the department may suspend or deny all benefits available to such applicant from the department.

(c) *Reinstatement of benefits.* A veteran may petition for reinstatement of suspended benefits. The department after investigation may reinstate benefits. If the department finds that a petition

for reinstatement is made without sufficient cause to justify reinstatement, the department shall deny the petition.

(2) CRIMINAL PROSECUTION. In cases where the department finds after an investigation that a false statement has been made in connection with an application for benefits, the department may forward the relevant facts to the appropriate district attorney for necessary action pursuant to s. 45.03 (16) (b), Stats.

History: Cr. Register, March, 1965, No. 111, eff. 4-1-65; r. and recr., Register, August, 1972, No. 200, eff. 9-1-72; r. (1) (b), Register, January, 1984, No. 337, eff. 2-1-84; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1986, No. 364; **CR 20-011: am. Register September 2021 No. 789, eff. 10-1-21.**

VA 1.10 Release of information and records.

(1m) RECORDS PRIVACY. All records and papers of the department or of a county veterans service office are to be utilized in a manner to best serve the public interest, but the veteran's right of privacy as to information pertaining to military service and to confidential information contained in applications for benefits shall be protected. The release of a veteran's record containing confidential information, protected health information, or personally identifiable information shall conform with the Health Insurance Portability and Accountability Act (HIPAA) and other applicable federal and state confidentiality and privacy laws and regulations.

(2m) VETERANS ADMINISTRATION RECORDS AND SEPARATION DOCUMENTS. Notwithstanding anything to the contrary contained in subs. (6) to (12), separation documents and copies thereof evidencing service in the U.S. armed forces and records and papers in the possession of the department or county veterans service office that are released to the department or county veterans service office, by or from the USDVA, or that contain information provided by the USDVA are confidential. Release of information from such documents, records, or papers may be made only as provided in s. 45.04 (2) and (3), Stats. The department may, however, confirm the veteran status of a person where such confirmation will assist the person in obtaining benefits.

(3) RECORDS ARE CONFIDENTIAL. Records pertaining to any application for benefits, whether pending or adjudicated, shall be deemed confidential and no disclosure shall be made except in the circumstances and under the conditions set forth in subs. (6) to (15).

(6) DISCLOSURE OF MEDICAL INFORMATION. (a) *To veterans.* Information contained in medical records pertaining to applications for benefits from the department that are on file with the department or county veterans service office may be released to the veteran upon receipt of a written request.

(b) *To physicians and hospitals.* Information contained in medical records of a veteran or a member pertaining to medical history, diagnosis, findings, or treatment contained in an application for benefits from the department may be disclosed directly to a physician or hospital upon written request and the submission of a written authorization from the veteran or the member, or in the event the veteran is incompetent, from the veteran's duly authorized representative. This information will be released only with the consent of the patient and on the condition that it is to be treated as a privileged communication in accordance with sub. (1m). The information may be released without the consent of the veteran or the veteran's representative when a written request for the information is received from the USDVA, the United States public health service, the superintendent of a state hospital, a commissioner or head of a state department of mental hygiene, or head of a state, county, or city health department.

(8) DISCLOSURE TO GOVERNMENTAL AGENCIES AND SCHOOLS. (ag) Information contained in department or county veterans service office files pertaining to an application for benefits from the department that is required for official use by any agency of the United States government, by any agency of the state of Wisconsin, by any law enforcement or social service agency of any Wisconsin county or municipality, or by any school participating in the department's grants programs, may be furnished in response

to official requests in accordance with the provision of pars. (ar) to (c). Requests shall include the purpose for which the information is to be used.

(ar) Information relevant to a determination of the amount of benefits, if any, that the veteran or the veteran's eligible dependents may be entitled, information that is requested on behalf of or information that is requested for the purpose of assisting the veteran or the veteran's eligible dependent in obtaining rights and benefits to which the veteran or the veteran's eligible dependent may be entitled, may be released only upon receipt of a written request.

(b) Information that identifies a veteran or the veteran's dependents, and that is requested for purposes other than those set forth in par. (ar), may be released only upon receipt of a written request. Within 5 working days after response to a written request, the department or county veterans service office will make a reasonable effort to contact the individual concerning whom the request has been made and notify the individual of the request for information and provide the individual with a statement of the action taken on such request.

(c) The department may furnish data or statistical information to other agencies but will not provide confidential information, protected health information, or personally identifiable information about a veteran or the veteran's dependents.

(9) **DISCLOSURE TO STATE LEGISLATORS.** Individual members of the senate and assembly may be provided information contained in department or county veterans service office files that pertains to an application for benefits from the department as may be requested in writing, on behalf of a veteran or the veteran's dependents or for the purpose of assisting the veteran or the veteran's dependent to obtain the rights and benefits to which the veteran or the veteran's dependent may be entitled. Committees of the senate and assembly may be provided information contained in department or county veterans service office files that pertains to an application for benefits from the department as may be requested for official use. The department may not provide any information that is considered by law to be nondisclosable without the written consent of the applicant.

(10) **DISCLOSURE TO COUNTY VETERANS SERVICE OFFICERS.** A county veterans service officer may be permitted to inspect records pertaining to any application for benefits in which the county veterans service office is involved. The department may provide information or exhibits from an application for benefits to the applicant only. If the applicant is incompetent, the information may be provided to the applicant's legal representative. Any disclosure of information shall be made in accordance with sub. (1m). The department shall inform a county veterans service officer whose office is involved in an application for benefits of information necessary to complete such application and of action taken by the department.

(11) **DISCLOSURE TO AUDITORS.** Department records and files shall be made available for inspection by, and information contained in department files shall be made available to, the legislative audit bureau or the legislative fiscal bureau in accordance with ss. 13.94 (1) to (4) and 13.95 (1) and (2), Stats., or to independent auditors only for statistical or audit reporting purposes upon the condition that information reported by such auditors or bureaus will not contain any confidential or personally identifiable information.

(12) **APPLICATION STATUS INFORMATION.** Information on the status of an application for a department benefit, or for the establishment of eligibility for a department benefit, may be released to a party having an interest in the veteran or dependent obtaining the benefit applied for or establishing eligibility to apply for a spe-

cific department benefit, or to a person who is calling on behalf of an applicant for a department benefit. The department will not disclose or release confidential information, protected health information, or personally identifiable information pertaining to the application without the written consent of the applicant.

(15) **JUDICIAL PROCEEDINGS.** When records pertaining to an application for benefits are requested for use in any judicial proceedings, the records shall be released only upon service of a proper subpoena. The requester shall return to the department all furnished records upon conclusion of the judicial proceeding unless the records become part of the official court records.

(16) **ADDRESSES OF APPLICANTS.** Addresses of applicants for benefits from the department that are contained in department or county veterans service office records may not be released, except as provided in subs. (6) to (15). This subsection does not apply to the furnishing of addresses by county veterans service officers to the department or vice versa.

History: Cr. Register, March, 1965, No. 111, eff. 4-1-65; am. intro. par., r. and recr. (1), am. (4), (6), (7), (8), (9), (12), r. (13), Register, October, 1967, No. 142, eff. 11-1-67; am. (7), Register, June, 1970, No. 174, eff. 7-1-70; am. (7) and (10), Register, November, 1971, No. 191, eff. 12-1-71; am. (1), (3), (6) (b), (9) and (10), r. and recr. (8), renum. (11) and (12) to be (15) and (16), cr. (11), (12) and (13), am. (16), Register, November, 1980, No. 299, eff. 12-1-80; am. (7), Register, September, 1990, No. 417, eff. 10-1-90; am. (4), (5), (6) (b), (13), Register, August, 1993, No. 452, eff. 9-1-93; correction in (intro.) and (6) (a) made under s. 13.93 (2m) (b) 5., Stats., Register, August, 1993, No. 452; am. (7), Register, May, 1999, No. 521, eff. 6-1-99; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register April 2003 No. 568; **CR 20-011: renum. (intro.), (1) to (1m), (2m) and am., r. (2), am. (3), r. (4), (5), am. (6), r. (7), renum. (8) (intro.), (a) to (8) (ag), (ar) and am., am. (8) (b), (c), (9) to (12), r. (13), am. (15), (16) Register September 2021 No. 789, eff. 10-1-21.**

VA 1.13 Discrimination prohibited. (1) Discrimination against properly qualified persons in the provision of veterans assistance under ch. 45, Stats., on the basis of age, race, religion, color, disability, sex, national origin, sexual orientation, physical condition, developmental disability, military or veteran status, gender identity or expression, marital or familial status, genetic information, political affiliation or beliefs, or arrest or conviction records, is prohibited.

(2) Persons employed by the department shall, if possible, be veterans, with preference given to disabled veterans. Discrimination against qualified persons in the employment of staff on the basis of any of the classes listed under sub. (1) is prohibited.

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76; r. and recr., Register, December, 1979, No. 288, eff. 1-1-80; am. Register, August, 1993, No. 452, eff. 9-1-93; correction made under s. 13.93 (2m) (b) 7., Stats., Register April 2003 No. 568; **CR 20-011: renum. VA 1.13 to (1) and am. Register September 2021 No. 789, eff. 10-1-21; correction in (2) made under s. 35.17, Stats., Register September 2021, No. 789.**

VA 1.14 Periods of war. For the purposes of determining a veteran's eligibility, the department shall use the beginning and ending dates during a period of war, campaign, or expedition as specified under ch. 45, Stats., 38 USC 101, and the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress.

History: Cr. Register, April, 1986, No. 364, eff. 5-1-86; **CR 20-011: r. and recr. Register September 2021 No. 789, eff. 10-1-21.**

VA 1.16 Veteran-owned business. Upon the written request of an owner, the department shall certify as a veteran-owned business a small business, as defined in s. 16.75 (4) (c), Stats., whenever the business is at least 51 percent owned by one or more veterans. An owner shall submit evidence of the ownership interest and veteran status of each owner with the written request for certification.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94; correction made under s. 13.93 (2m) (b) 7., Stats., Register April 2003 No. 568; **CR 20-011: am. Register September 2021 No. 789, eff. 10-1-21; correction made under s. 35.17, Stats., Register September 2021 No. 789.**