38 U.S. Code § 1702

Instructor Lesson Plan

Time Required: One (1) Hour

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| Lesson Description |
| The information below provides the instructor with an overview of the lesson and the materials that are required to effectively present this instruction. |
| TMS # | 3791257 |
| Prerequisites | Prior to this lesson, the RVSRs should have three to six months of VSR experience. Trainees should also have completed the Challenge course for Rating Veterans Service Representatives.  |
| target audience | The target audience for 38 U.S. Code § 1702 is RVSR Entry Level.Although this lesson is targeted to teach the RVSR Entry Level employee, it may be taught to other VA personnel as mandatory or refresher type training. |
| Time Required | One (1) hour |
| Materials/TRAINING AIDS | Lesson materials:* 38 U.S. Code § 1702 PowerPoint Presentation
* 38 U.S. Code § 1702 Trainee Handouts
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| Training Area/Tools  | The following are required to ensure the trainees are able to meet the lesson objectives: * Classroom or private area suitable for participatory discussions
* Seating, writing materials, and writing surfaces for trainee note taking and participation
* Handouts, which include a practical exercise
* Large writing surface (easel pad, chalkboard, dry erase board, overhead projector, etc.) with appropriate writing materials
* Computer with PowerPoint software to present the lesson material

Trainees require access to the following tools: * VA TMS to complete the assessment
* **VA Compensation Intranet**
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| Pre-Planning  | * Become familiar with all training materials by reading the Instructor Lesson Plan while simultaneously reviewing the corresponding PowerPoint slides. This will provide you the opportunity to see the connection between the Lesson Plan and the slides, which will allow for a more structured presentation during the training session.
* Become familiar with the content of the trainee handouts and their association to the Lesson Plan.
* Practice is the best guarantee of providing a quality presentation. At a minimum, do a complete walkthrough of the presentation to practice coordination between this Lesson Plan, the trainee handouts, and the PowerPoint slides and ensure your timing is on track with the length of the lesson.
* Ensure that there are copies of all handouts before the training session.
* When required, reserve the training room.
* Arrange for equipment such as flip charts, an overhead projector, and any other equipment (as needed).
* Talk to people in your office who are most familiar with this topic to collect experiences that you can include as examples in the lesson.
* This lesson plan belongs to you. Feel free to highlight headings, key phrases, or other information to help the instruction flow smoothly. Feel free to add any notes or information that you need in the margins.
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| Training Day  | * Arrive as early as possible to ensure access to the facility and computers.
* Become familiar with the location of restrooms and other facilities that the trainees will require.
* Test the computer and projector to ensure they are working properly.
* Before class begins, open the PowerPoint presentation to the first slide. This will help to ensure the presentation is functioning properly.
* Make sure that a whiteboard or flip chart and the associated markers are available.
* The instructor completes a roll call attendance sheet or provides a sign-in sheet to the students. The attendance records are forwarded to the Regional Office Training Managers.
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| Introduction to 38 U.S. Code § 1702 |
| INSTRUCTOR INTRODUCTION | Complete the following:* Introduce yourself
* Orient learners to the facilities
* Ensure that all learners have the required handouts
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| time required | One (1) hours |
| Purpose of LessonExplain the following: | This lesson is intended to familiarize RVSRs with the subordinate issue of 38 U.S.C.1702. This lesson will contain discussions and exercises that will allow you to gain a better understanding of: * Definition of 38 U.S.C. 1702 and eligibility criteria
* Addressing the issue of SC under 38 U.S.C. 1702
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| Lesson ObjectivesDiscuss the following:Slide 2 Handout 2 | In order to accomplish the purpose of this lesson, the RVSR will be required to accomplish the following lesson objectives.TheRVSRwill be able to: * Understand 38 U.S. Code § 1702 and the required eligibility criteria for the subordinate issue
* Understand when to address 38 U.S. Code § 1702 in a rating decision
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| Explain the following: | Each learning objective is covered in the associated topic. At the conclusion of the lesson, the learning objectives will be reviewed.  |
| Motivation | Explain that during the course of their tenure as a RVSR or DRO, the issue of 1702 is easily forgotten will result in a National Star Error if not addressed.  |
| STAR Error code(s) | Failure to addresss the subordinate issue of 38 U.S.C. 1702 when required will result in an A2, benefit entitlement STAR error.  |
| ReferencesSlide 3 Handout 3 | Explain where these references are located in the workplace.All M21-1 references are found in the [Live Manual Website](https://vaww.compensation.pension.km.va.gov/).* [*Public Law (PL) 110-181*, Section 1708, Service-connection and assessments for mental health conditions in Veterans](https://www.congress.gov/bill/110th-congress/house-bill/4986/text/pl)
* [38 U.S.C. 1702, Presumptions: psychosis after service in World War II and following periods of war; mental illness after service in the Persian Gulf War](https://www.congress.gov/bill/110th-congress/house-bill/4986/text/pl)
* [38 C.F.R. 3.384, Psychosis](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/)
* [38 C.F.R. 4.127, Intellectual disability (intellectual developmental disorder) and personality disorders](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/)
* [M21-1, Part III, Subpart iv, 6.B, Determining the Issues](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?portalid=554400000001034)
* [M21-1, Part IX, Subpart ii, 2.5, SC of Mental Conditions Under 38 U.S.C. 1702](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/)
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| 38 U.S. Code § 1702 |
| Introduction | This topic will allow the trainee to understand the definition of 38 U.S.C. 1702, and the criteria a Veteran must meet in order to be eligible for this benefit.  |
| Time Required | One (1) hour |
| OBJECTIVES/Teaching Points | Topic objectives:* Define 38 U.S.C. 1702
* Identify the eligibility criteria for 38 U.S.C. 1702
* Understand when to address 38 U.S.C. 1702 in the rating decision
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| What is 38 U.S. Code § 1702?*Slide 4**Handout 4* | 38 U.S.C. 1702 creates a presumption of SC for the purpose of eligibility for VA treatment for: * Psychoses based on wartime service, or
* Any mental condition based on Gulf War service

Claims for medical or psychological treatment are normally determined by VHA without referral to VBA. However, a medical facility may require information or a determination from VBA. In 2008, PL 110-181 extended the presumption of eligibility for medical care under 38 U.S.C. 1702 for any mental illness for Gulf War service Veterans. 38 U.S.C. 1702 is considered an unclaimed subordinate issue, which is an issue derived from the consideration or outcome of related issues. Often, the primary and subordinate issues share the same fact pattern.  |

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| 38 U.S.C. 1702 Eligibility CriteriaSlide 5Handout 4 | 38 U.S.C. 1702 provides that SC is presumed for VA treatment purposes for a Veteran of* of any war period who develops a psychosis, or
* of the Gulf War who develops any mental illness

within* two years after the date of separation (under other than dishonorable conditions) from such service, *and*
* two years after the end of the war period.

***Important***: *Both* criteria must be met for the presumption to arise. The presumption that the qualifying disability was incurred in service for treatment purposes does *not* apply if* a qualifying mental ilness develops *more* than two years after the end of the *war period*, even if the condition develops less than*,* or at, two years after *discharge*, or
* a qualifying mental illness develops more than two years after *service discharge* even if that was *during* wartime or *less than, or at*, two years thereafter.

***Note***: It is *not* necessary for the Veteran to have had 90 days of service to qualify.A list of acceptable psychoses is listed in 38 C.F.R. 3.384, whereas mental illness diagnoses must conform to the DSM V. Personality disorders are not considered a mental illness for VA purposes.  |
| When VBA Must Decide the Issue of SC Under 38 U.S.C. 1702Slide 6Handout 5 | VBA MUST decide the issue of SC for a psychosis or other mental condition under 38 U.S.C. 1702 when: * Requested by VHA, or
* RVSR finds the facts support the 38 U.S.C. 1702 criteria in the course of denying service connection (SC) for compensation purposes for:
	+ Psychosis based on wartime service, or
	+ Any mental disorder based on Gulf War service

NOTE: How to address the 1702 request from VHA is discussed further in the manual (M21-1 IX.ii.2.5.d and e) |
| Addressing 38 U.S.C. 1702 in the Rating DecisionSlide 7Handout 6 | Consider the subordinate issue of 38 U.S.C. 1702 for service connection for treatment purposes based on a denial for SC for pyschosis based on wartime service, or mental condition based on Gulf War service:

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| **If the criteria for SC under 38 U.S.C. 1702…** | **Then…** |
| are established,  | * in the rating decision address the subordinate issue as a separate decision from the decision on the mental condition, AND
* ensure the rating codesheet shows "Active Psychosis/GW Mental - SC for Treatment Only" or equivalent.

EXCEPTION: If a previous decision has awarded entitlement, there is no need to address it again.  |
| are not established,  | do not address the matter at all in the rating decision |

**IMPORTANT:** SC for treatment purposes under 38 U.S.C. 1702 is not a subordinate issue and should not be decided in cases for which* 38 U.S.C. 1702 determination has not been requested by VHA
* A bereavement diagnosis is the only diagnosis noted in the mental examination, as this is considered an acute and transitory condition, or
* A claim for SC for compensation purposes of a pyschosis based on any wartime service or any mental illness based on Gulf War service is denied, and under the facts of record, the 38 U.S.C. 1702 presumption would not arise.

**NOTE:** In general, address entitlement to a subordinate issueonly when entitlement can be awarded. Do not put a benefit at issue merely to deny it. |