Paragraphs 28, 29, and 30

Trainee Handout

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Objectives

* Describe the purposes for and circumstances under which a temporary evaluation can be granted under the provisions of 38 CFRs 4.28, 4.29, and 4.30.
* Determine the information needed and actions to take to prepare the claims for a determination of entitlement.
* Identify the considerations to be made in evaluating the evidence for a determination of entitlement.

References

* [38 USC 1151, Benefits for persons disabled by treatment or vocational rehabilitation](https://www.law.cornell.edu/uscode/text/38/1151)
* [38 CFR 3.31, Commencement of the period of payment](http://vbaw.vba.va.gov/bl/21/publicat/Regs/Part3/3_31.htm)
* [38 CFR 4.28, Prestabilization rating from date of discharge from service](http://vbaw.vba.va.gov/bl/21/publicat/Regs/Part4/4_28.htm)
* [38 CFR 4.29, Ratings for service-connected disabilities requiring hospital treatment or observation](http://vbaw.vba.va.gov/bl/21/publicat/Regs/Part4/4_29.htm)
* [38 CFR 4.30, Convalescent ratings](http://vbaw.vba.va.gov/bl/21/publicat/Regs/Part4/4_30.htm)
* [M21-1 Part IV, Subpart ii, 2, J, Compensation Under 38 CFR 4.28, 38 CFR 4.29, and 38 CFR 4.30 and Other Temporary Total Evaluations](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014579/M21-1-Part-IV-Subpart-ii-Chapter-2-Section-J-Compensation-Under-38-CFR-428-38-CFR-429-and-38-CFR-430-and-Other-Temporary-Total-Evaluations)

Topic 1: Paragraph 28 Benefits

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| Under the provisions of each of the CFRs discussed in this training, the Veteran may be entitled to a temporary 100% evaluation for a service-connected condition if the standards under the law are met. This training reviews each of the provisions and the requirements that must be met to grant the temporary 100% evaluation. The first potential temporary 100% entitlement addressed in this training is found under 38 CFR 4.28 – Prestabilization rating from date of discharge from service, also known as Prestabilization Ratings or Paragraph 28 benefit.**Purpose of the Benefit**The evaluations under 38 CFR 4.28 are provided to assure earliest payment to those Veterans separated from service with a significant unstabilized disability at a time when they are most likely in need and least likely to be self-sufficient.If a Veteran has an unstable, significantly disabling service-connected (SC) disability at the time of separation that will continue for an indefinite period* Prepare a prestabilization rating for the unstabilized disability(ies) without waiting for further development or examination on the disability(ies), and
* Defer a decision on any issues that are not ready for a decision.

The prestabilization ratings under 38 CFR 4.28 should be prepared as “open ratings.”A prestabilization rating is not appropriate in the following instances:* A total 100% prestabilization rating should not be assigned in any case in which a total rating is immediately assignable either under the regular provisions of the rating schedular, or based on individual unemployability
* A 50% prestabilization rating in any case in which an evaluation of 50 percent or higher would otherwise be immediately assignable under the regular provisions of the rating schedule

**Evidence Needed**A prestabilization rating will be assigned if service treatment records (STRs) show the existence of an unstabilized condition stemming from any disease or injury for which service connection may be awarded. Development action should be taken to obtain the needed STRs for evaluation, particularly records such as Physical Evaluation Board (PEB), Medical Evaluation Board (MEB), and other reports and discharge paperwork that show the disability as unstabilized or the reason for release from service. The evidence should be provided to the rating activity for review and determination of entitlement.**Decisions for Entitlement**Under 38 CFR 4.28, the rater may assign a 50-percent or 100-percent evaluation, based on the evidence found in the STRs. The evaluation will be based on the severity of the disability and the Veteran’s likelihood of gainful employment and self-sufficiency in light of the disability(ies):* 100-percent prestabilization rating – if there is an unstabilized condition resulting in severe disability, and substantially gainful employment is not feasible or advisable
* 50-percent prestabilization rating – if there are unhealed or incompletely healed wounds or injuries, and material impairment of employability is likely

In general, the effective date of entitlement for paragraph 28 benefits should be the day following release from active duty (RAD +1). But an end date to the entitlement is typically determined by the results of a future examination.When assigning a prestabilization rating, set a future control date for a VA examination of all SC disabilities between 6 and 12 months following separation from service. After the rating activity receives the report of the examination, completed 6 to 12 months following separation, it must reevaluate the SC disability(ies) to which it assigned a prestabilization rating.If there is an indication of possible entitlement to Special Monthly Compensation (SMC), but records are insufficient to make a determination, the RVSR will:* Evaluate disabilities in a prestabilization rating at the level of loss that is shown, and
* Request an immediate examination to determine the full extent of disability.
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Topic 2: Paragraph 29 Benefits

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| Another set of circumstances under which the VA can grant a temporary 100% evaluation is under the provisions of 38 CFR 4.29 – Ratings for service-connected disabilities requiring hospital treatment or observation. These benefits are more commonly referred to as Hospitalization Ratings or Paragraph 29 benefits.**Purpose of the Benefit**The purpose of this benefit is to pay the Veteran temporarily at the 100% rate for their service-connected condition that has required hospitalization for more than 21 days. The understanding is that hospitalization for an extended period may have an impact on the Veteran’s ability to earn a living and be financially self-sufficient during that time. The manual states if a 100% rating cannot be assigned under other provisions of the rating schedule, VA can assign this temporary 100% rating to the Veteran when:* The period of hospitalization occurred at a VA or an approved hospital (including a uniformed service facility also known as military treatment facility) or hospital observation at VA expense and was in excess of 21 days for medical treatment of an SC disability, or
* The disability requiring hospitalization in excess of 21 days for medical treatment is a condition for which compensation is payable under either 38 USC 1151 or 38 USC 1160.

It is important to note that the provisions of 38 CFR 4.29 do not apply when a Veteran is:* Treated as a resident in a State Veterans’ home (potential exception being hospitalization for an SC disability in medical facility located at State Veterans’ home)
* Currently received a total rating for the disability for which hospitalization was required
* A resident in a VA domiciliary program (potential exception being if they are also receiving treatment in excess of 21 days in a day hospital program if the treatment given is consistent with hospital care for an SC disability while concurrently required to be housed in a VA domiciliary), or
* A participant in a live-in/work out program being utilized to facilitate transition to community living

When considering mental health treatment programs for hospitalization ratings, the decision maker should focus on what types of services the Veteran is receiving and not whether one specific type of program would qualify for benefits. Only treatment consistent with hospital care warrants an award of benefits under 38 CFR 4.29. Notification of Veterans in-patient and out-patient care under a VHA mental health program is provided by VHA directly to the regional office through a *Report of Hospitalization*. This information is sufficient to establish that hospital care was provided (M21-1 IV.ii.2.J.2.g).Please note: Consideration for this benefit may be extended to incarcerated Veterans if confined to a prison hospital for treatment of a SC disability in excess of 21 days (M21-1 IV.ii.2.J.2.d).**Evidence Needed**A hospital rating under the provisions of 38 CFR 4.29 can be prompted based on receipt of a specific claim from a Veteran or based on receipt of a *Report of Hospitalization* at a VA hospital. The Veteran must submit his/her claim for benefits under the provisions of 38 CFR 4.29 on a prescribed form along with medical evidence of hospitalization. If the Veteran neglects to provide medical evidence to substantiate his/her hospitalization, development to the Veteran is needed to identify and obtain those records. Once the medical records are received, a review of the records are required to ensure the timeframe of hospitalization over 21 days has been met. When the review is complete, forward the claim to the rating activity for a decision. If no records are obtained, the claim is sent to the rating activity for review and a decision will be provided to the Veteran. Since the Veteran submitted the claim, a decision must be provided by VA, regardless of whether the decision is a grant or denial of the benefit.Reviews that are prompted based on receipt of *Report of Hospitalization*, do not require a prescribed form from the Veteran. Again, the medical records should be reviewed to ensure the hospitalization is due to a SC condition and that the timeframe over 21 days has been met. If this requirement is met, the claims folder is forwarded to the rating activity for a decision.If the *Report of Hospitalization* that prompted the review shows the hospitalization was not in excess of 21 days, VA will not provide a formal denial by rating decision, since there was no claim initiated by the Veteran. If this determination is made, follow the procedures as outlined in M21-1, Part III, Subpart ii, 2.B.3.e for disposing of the pending EP and annotation of the claim folder.**Decisions for Entitlement**When the evidence establishes entitlement to a hospitalization rating, whether prompted by a claim from a Veteran or receipt of a *Report of Hospitalization*, the rating activity will consider:* Effective dates of the grant and discontinuation of the temporary 100%, unless grant is left “open-ended”
* Post-hospitalization evaluation
* Competency for treatment for mental disorders, and
* Other entitlements such as SMC.

For most grants of this benefit, the effective date of grant is the date of hospital admission or the first day that that treatment begins for the service-connected disability, with a couple of exceptions as outlined in M21-1 IV.ii.2.J.2.h. The effective date to end entitlement to the temporary 100% due to hospitalization should be the last day of the month that hospitalization ended, based on M21-1 IV.ii.2.J.3.a. If the hospitalization report is received before the Veteran is discharged from the hospital, the rating activity should provide an open-ended rating. Upon completion of the open-ended rating decision, a diary is set for reevaluation every three months. This diary will generate a work item for which it is the authorization activity’s responsibility to determine whether the Veteran continues to be hospitalized. This process helps to prevent the continued payment of the temporary 100% evaluation once the Veteran is no longer hospitalized. The process and responsibilities of the authorization activity (VSRs) are discussed in further detail in M21-1 IV.ii.2.J.2.i.For more information concerning specific diagnostic codes (DCs) that provide either definite or indefinite periods of schedular temporary total evaluation, please reference M21-1 IV.ii.2.J.5 and M21-1 IV.ii.2.J.6, respectively.The assignment of a post-hospitalization evaluation is part of the process of rating the hospitalization issue. The post-hospitalization evaluation may result in the following:* An increased evaluation may be warranted and awarded,
* A reduced evaluation may be warranted by evidence and the actions would require due process under 38 CFR 3.105(e),
* If the medical evidence does not establish that a change is warranted, the evaluation in effect prior to hospitalization should be assigned

The evaluation prior to the hospitalization is not subject to review as a part of the hospitalization rating. Also, when the claim for a temporary 100% due to hospitalization has been initiated by the Veteran, the claim is not necessarily a claim for increase. If a claim for hospitalization submitted by a Veteran must be denied, the rating activity should not routinely address the evaluation of the SC issue unless a separate claim for increase has been received.The rating activity should address other considerations and entitlements, if applicable. If the condition being evaluated for temporary 100% is a mental disorder, the rating must also address competency. If the grant of temporary 100% results in a grant of entitlement to Special Monthly Compensation (SMC), the rater should address this entitlement as well.The information above is by no means an exhaustive list of all factors that could impact the determinations made in the rating decision. The rating activity will want to consider other references and regulations that may have impact on the decision made.  |

Topic 3: Paragraph 30 Benefits

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| The final set of circumstances in this training under which the Veteran may be granted a temporary 100% entitlement for a service-connected condition is under 38 CFR 4.30 – Convalescent ratings, also referred to as Paragraph 30 benefits.**Purpose of the Benefit**The purpose of this benefit is to pay the Veteran temporarily at the 100% rate for their service-connected condition while they heal and return to a healthy state, which is commonly referred to as convalescence. The understanding is that during this convalescence period the Veteran’s ability to earn a living and be financially self-sufficient during that time may be severely impacted.Effective March 1, 1989, 38 CFR 4.30 provides for a temporary 100% evaluation without regard to the other provisions of the rating schedule if treatment of an SC disability resulted in:* Surgery necessitating at least one month convalescence
* Surgery with severe postoperative residuals (38 CFR 4.30(a)(2) which include by are not limited to
	+ Incompletely healed surgical wounds
	+ Stumps of recent amputations
	+ Therapeutic immobilization of one major joint or more
	+ Application of a body cast
	+ The necessity for house confinement, or
	+ The necessity for continued use of a wheelchair or crutches (regular weight-bearing prohibited)
* Immobilization of at least one major joint by cast without surgery, including procedures performed at an outpatient clinic

There are times when the provisions of 38 CFR 4.30 are not applicable. The use of a convalescent rating is unnecessary if* A temporary total rating under 38 CFR 4.29 is in effect at the time of hospital discharge, and
* The conditions requisite for extensions under 38 CFR 4.29 for an adequate convalescent period are present.

**Evidence Needed**Entitlement to a temporary total disability rating for convalescence requires that a report rendered at the time of a hospital discharge or an outpatient release indicate that a surgical procedure had been performed for treatment of a service-connected disability and would require at least one month convalescence for the Veteran to return to a healthy state. Although a convalescence rating necessitates that surgical intervention must have occurred, there is no requirement that the surgical report be of record when other medical evidence establishes the date of admission, date of discharge, the type of procedure performed, and/or other information relevant to arriving at the convalescence determination. In other words, the *Report of Hospitalization* is not required if other medical records provide the sufficient information concerning the surgery and dates listed above.Additionally, entitlement under 38 CFR 4.30 can be established solely by a work excuse from a medical provider if there is* A clear connection between the claimant’s inability to return to previous employment and surgery or cast immobilization, and
* No contrary evidence of record.

When there is contrary evidence of record, a work excuse will be weighed as one piece of evidence for consideration.A convalescence rating under the provisions of 38 CFR 4.30 can be prompted based on receipt of a specific claim from a Veteran or based on receipt of a *Report of Hospitalization* at a VA or uniformed services facility. The specific claim from the Veteran for temporary 100% due to convalescence would need to be received on the prescribed claim form.If the Veteran did not provide the medical records indicating surgical information or work excuse, development to the Veteran is needed to identify and obtain those records. Review obtained medical records for evidence confirming date and type of surgery/procedure. . Remember, the condition for which the procedure was performed should be service-connected. After completion of the records review, forward the claim to the rating activity for a decision. If no records are obtained, the claim will still need to be reviewed by the rating activity and a decision must be provided to the Veteran. Since the Veteran submitted the claim, a decision must be provided by VA, regardless of whether the decision is a grant or denial of the benefit.For reviews that are prompted based on receipt of *Report of Hospitalization*, a prescribed form is not required from the Veteran. Again, the medical records should be reviewed to ensure the convalescence is due to a surgery/procedure for a SC condition. If this requirement is met, the claims folder will be sent to the rating activity for a decision.If the *Report of Hospitalization* that prompted the review shows the convalescence benefit is not warranted (not due to a surgery/procedure for a SC condition), VA will not provide a formal denial by rating decision, since a claim was not initiated by the Veteran, but rather the review was initiated by the receipt of the report. If this determination is made, follow the procedures as outlined in M21-1, Part III, Subpart II, 2.B.3.e for disposing of the pending EP and annotation of the claim folder. .**Decisions for Entitlement**When the evidence establishes entitlement to a convalescence rating, whether prompted by a claim from a Veteran or receipt of a *Report of Hospitalization*, a few things need to be considered by the rating activity:* Effective dates of the grant and discontinuation of the temporary 100%,
* Impact to secondary conditions
* Post-convalescence evaluations
* Extension of a convalescence rating and diagnostic codes (DCs) with definite and indefinite periods of schedular temporary total evaluations
* Other potential entitlements including Special Monthly Compensation (SMC)

For most grants of this benefit, the temporary total evaluation is assigned effective from the date of hospital admission or outpatient treatment and will continue for a period of one, two, or three months (depending on what the facts support) from the first day of the month following such hospital discharge or outpatient release. Considerations for secondary disabilities when the primary disability is the one requiring surgical or other treatment necessitating convalescence:* When secondary disabilities associated with the primary disability exist, the evaluation for the secondary disabilities will not be routinely discontinued or reduced during the period of convalescence established for the primary disability unless the evidence of record factually supports a reduced evaluation.
* When a reduction in a secondary disability is factually supported, apply due process (38 CFR 3.105(e)) as warranted by the facts of the case.
* Evaluations for secondary disabilities may be considered when determining entitlement to SMC. When evaluating the post-convalescence impairment, consider whether a change in evaluation for the primary and all secondary disabilities is warranted based on the evidence of record.

Post-convalescence evaluation must be considered for the condition for which the temporary 100% evaluation for convalescence has been awarded. Generally, unless required by the diagnostic code, reexamination is not required following a period in which a temporary total rating was assigned. The rating activity must review the evidence of record and assign a new post-convalescence evaluation based on the residual disability following the convalescence period. The post-convalescence evaluation is not compared to the temporary 100% when considering if due process is needed. If the post-evaluation is equal to or greater than the pre-convalescence evaluation of the condition, no reduction or discontinuation is created. However, if the residual disability is less disabling than the rating in effect prior to the assignment of temporary total disability under 38 CFR 4.30, so that assigning the appropriate post-convalescence evaluation would result in a reduction or discontinuation in compensation payments made under the running award, the rating activity should:* Assign the temporary 100% convalescent evaluation,
* Assign evaluation in effect prior to temp 100% effective immediately thereafter, and
* Propose reduction in accordance with 38 CFR 3.105(e) to the lower rate supported by the evidence.

Extensions of temporary total awards are authorized when justified by the facts. A temporary total evaluation awarded for surgeries and immobilizations can be extended to a total duration of six months, in incremental amounts of one, two, or three months. Anything beyond 6 months must have VSCM approval.Also, the rating activity should consider the impact of the diagnostic code of the condition and the definite or indefinite period indicated for schedular temporary total evaluations. As an example, for a total joint replacement, the schedular 100% evaluation for 1 year following implantation of the prosthesis, under 38 CFR 4.71a, does not commence until after an initial award of a 1-month convalescent rating under 38 CFR 4.30 following hospital discharge. For more information concerning specific diagnostic codes (DCs) that provide either definite or indefinite periods of schedular temporary total evaluation, please reference M21-1 IV.ii.2.J.5 and M21-1 IV.ii.2.J.6, respectively.The information above is by no means an exhaustive list of all factors that could impact the determinations made in the rating decision. The rating activity will want to consider other references and regulations that may have impact on the decision made.  |

Practical Exercise

Directions: Answer the questions below using the information provided in the Trainee Handout as well as the regulations (CFRs) and the references (M21-1) for additional assistance.

1. Describe the purpose of each of the following benefits:
	1. Paragraph 28
	2. Paragraph 29
	3. Paragraph 30
2. Which benefit(s) allows for the grant of either temporary 100% or temporary 50%? Which benefit(s) allows for the grant of temporary 100% only?
3. The receipt of what two documents prompts the start of a claim for Paragraph 29 or Paragraph 30 benefits?
4. For Paragraph 29 benefits, the Veteran must be hospitalized for a service-connected disability for over \_\_\_\_ days.
5. For each of the benefits, what evidence is needed for review by the rating activity in order to grant the benefit?
	1. Paragraph 28
	2. Paragraph 29
	3. Paragraph 30