Appeals Modernization 201 Overview Script

Slide 1

Today, we will be providing an overview of the Appeals Modernization Act of 2017 and how this act will modernize and impact reviews and appeals. The training will also include flowcharts of the proposed new procedural guidance outlining the work you will be doing in the regional office. It will also include information on new notification letter requirements.

Before we proceed, I would like to inform you that we are recording the training and will post to TMS for all field staff to complete. So, I ask that you hold your questions until the end of the presentation. We will field those questions after we stop the recording since it is often difficult to hear questions from the audience on the recording. I also ask that you limit sidebar conversations to writing only so we do not pick that up in the audio during the presentation.

Also, as you will note as we walk through the process, some areas are flexible. This is intentional to meet your resource allocation models. It also provides the opportunity, time permitting, at the end of the training for your feedback on how we could improve the process.

Slide 2

Thank you, Kris. Hello Everyone. Thank you for your time and attention.

Slide 2 provides a brief overview of the Veterans Appeals Improvement and Modernization Act of 2017, which I will refer to as the Act or the new appeals process. It was signed into law August 23, 2017, and becomes effective in Feb. 2019. We have been working on this process for several years with several different stakeholders, including the Veterans Service Organizations. It is one of the most significant statutory changes to affect VA in decades. Our current, or legacy, appeals system was first adopted after World War I and grew into a complex, non-linear process that frustrates Veterans, their families, Veterans’ advocates and taxpayers; not to mention the heavy load it places on you and your staff. The Act allows VA to clear one of the largest obstacles in our continuous efforts to improve the delivery of benefits and services to Veterans and their families by resolving issues of disagreement in a timely manner.

The essential feature of this appeals reform is the framework design. It replaces the current process that can be quite circular with a linear process, which we are referring to as “lanes”. These lanes give claimants clear options on actions available to them after they receive a decision on an issue.

The Act creates 3 new lanes – 2 for reviews and 1 for appeals. The major change is the establishment of “reviews”, which are done at the regional office level; and “appeals”, which are done at the Board of Veterans Appeals or the Court of Appeals for Veterans Claims. Given the time limitations of this training, we will focus our attention on the “review” lanes – which is the work you will be doing at the regional office level. There will be an Appeals Modernization 101 overview training available on TMS, which must be completed by the end of August, that will provide more detailed information on the appeals lane. We have also included on VR&E’s inter and intranet sites links to additional information on the appeals lane, and we will provide additional information on this lane as needed.

I’m in the middle of slide 2 now with a description of the new review lanes, which are:

* Higher-Level Review
* Supplemental Claim Review

As you can see from the slide, these reviews are very similar to our current processes. For example, the HLR is much like the administrative review process. At the most basic level, a higher-level review is a review of a decision that is completed by someone who is higher, or more senior, than the person who made the decision. This person cannot have been involved in the original decision, and must have the authority to overturn the original decision. And the supplement claim review happens every day in your offices – it is basically when a decision has been made and the claimant provides new information for consideration.

The “appeals” lane establishes the opportunity for the claimant to file the Notice of Disagreement directly to the Board of Veterans Appeals, with no involvement at the RO level.

I realize I buried the lead a bit here - If you take nothing more than this from the training today – then it will be a success. Here is the good news - For decisions made on or after the implementation date in February 2019, VR&E no longer has to provide statements of the case (SOC) or supplemental statements of the case (SSOC). The claimant will work directly with the Board on all appeals. You will only have a role in an appeal if it is remanded for a particular action. Otherwise, VR&E is not in the appeals game any longer.

The tradeoff for not having to provide SOC or SSOC is new requirements for our notification letters, which we will discuss during the next slide.

Lastly, the law provides date protection for claims that are continuously pursued. We will look more closely at this language during the presentation. In short, it means as long as the claimant is following the timelines for reviews and/or appeals, the original date upon which the claimant initially requested the review or appeal is protected. This will not impact VR&E as much as it will Compensation Service, but it is a great benefit to the claimant.

Let’s start with a closer look at the new notification requirements.

Slide 3:
Moving on to slide 3 - In order to make an informed and intelligent choice as to which review option makes the most sense, claimants will need a clear and detailed notice when a decision is provided. The new law identifies eight elements of adequate notice. Before we look at those more closely, I want to stress that we already provide 5 of these 8 pieces of information. We are working on an automated letter that will drop in as much information as possible. When issued, this new letter will replace 21 current VR&E letters. So, we will have one decision letter that covers a variety of different scenarios, that uses drop down boxes and prepopulated information as much as possible to lighten the burden on you and your staff. There will be more to come on this letter in the near future. I’m excited to say that we have developed and tested the letter in CWINRS. It works well. We are finalizing the statutes and citations at this point, and reviewing to ensure that we have identified the major decision points in the life of the claim. We will likely release this letter the week before go live in February 2019 to reduce the likelihood that it is used before date implementation date.

Each of the 8 elements are outlined on this slide. To demonstrate these requirements, I’m going to use the example of making an entitlement decision – specifically that the claimant is not entitled because he/she does not have an employment handicap since he/she is suitably employed. The first requirement is:

(1) Identify the Issues adjudicated – for example, entitlement to VR&E benefits and services.

(2) Then we must inform the claimant of the evidence we considered when making the decision. This will vary from case-to-case, so the VRC will have to add this information to the letter, as they currently do.

(3) We also must provide a list of laws and regulations we used to make the decision – we are building this information into the new notification letter, and it will be linked to #1. The letter will have drop down boxes. So, if the VRC chooses not entitled due to no employment handicap, the relevant laws and regulations will automatically populate.

(4) The next item is the identification of findings favorable to the Veteran – this is a new requirement for VR&E, and likely the most challenging. We will provide details on how to populate this portion of the letter as we get closer to the implementation date. I’m considering adding some possible boilerplate language to the letter to aid the VRC on this section as we learn the new process.

(5) We also must show which element(s) were found not to have been satisfied leading to the denial of the claim including an explanation of how the evidence was weighed - this one is a mouthful, but basically it means why you denied the claim. Using the example of entitlement, you may say that you did not identify an employment handicap as the claimant is suitably employed, therefore the claimant is not entitled.

(6) We have to provide notice of how to obtain a copy/access to the evidence used in making the decision – the easiest of the new requirements. We will be able to auto populate this section of the letter with the RO address.

(7) Another new requirement is the notice of the criteria that must be satisfied to grant the claim – unfortunately we will not be able to auto populate for the VRC. Sticking with the same example, this section of the letter may say that you require additional information on the claimant’s current position and/or functional limitations in order to demonstrate an employment handicap.

(8) Lastly, as we do now, we must provide notice of appellate rights and all procedures available to seek further review – this information will be built into the letter.

As I said earlier, our decision letters already include five of the eight noted items, as governed by title 38 of the Code of Federal Regulations (CFR) section 21.420.

Now, let’s move into the meat of the training and look at step-by-step process on how we will complete the reviews at the regional office level. We will start with higher-level reviews.

Slide 4:
Slide 4 demonstrates the Higher-level review process. Before we start, a few notes:

* I realize it the flowchart is quite small, so we will pop out the pertinent boxes as we move through the flowchart.
* You will notice that general terms, such as “VR&E personnel”, “VR&E staff member”, and “case manager” are used. This is intentional to give you the opportunity to make this system work for your resource allocation model. For example, you may have program support that updates Caseflow; or you may from a small office and this duty will fall to the case manager, or perhaps even yourself.
* Lastly, the chart also includes some helpful definitions, citations, and list of acronyms.

Let’s go through step-by-step, beginning with after the decision has been made and the claimant is informed of the decision, which will be on slide 5.

Slide 5:
Let’ s start with the first swim lane, which is titled “post decision”. As we just discussed, the new law requires that we amend our notification letters. We will start using the new letters on all decisions made on or after February 14, 2019. The claimant has one year from the date of the letter to request a review or an appeal, which is the current practice. However, the big change here is that the claimant can now obtain representation at this point. Under the current process, the claimant cannot obtain representation until he/she files a notice of disagreement with the Board of Veterans Appeals.

VR&E will require the use of a specific form to request a higher-level review. However, this enterprise-wide higher-level review request form is currently under review with the Office of Management and Budget, so I do not have it to share with you at this time. More to come on that issue.

Slide 6:

Before we move to the next swim lane, a note about overturning a decision on slide 6. If the decision is overturned at any point in the process, the case is immediately returned to the case manager for action.

Slide 7:
Moving to the second swim lane – titled Higher-level Review at the RO Level – on slide 7. This lane indicates the new process for higher-level reviews. As we move through this lane, we will be highlighting specific sections for your attention.

Slide 8:
Let’s start with the first action – on slide 8. As soon as the VR&E staff member receives the request for a higher-level review, he/she must date stamp the request as this provides date protection for this issue and serves the purpose of starting our processing period. The next action is to enter the request into CaseFlow, which is the system that will replace VACOLS. We will be providing additional training on CaseFlow as we move toward the implementation date. This step is crucial because the law states that one issue can only be in one lane at one time. For example, if the claimant is requesting a higher-level review for the denial of entitlement, but CaseFlow indicates that the claimant has already requested an appeal on this same issue, then we should take specific action, as noted on the next slide.

Slide 9:

If the same issue is in different lanes at the same time, then the VR&E staff member stops action on the higher-level review, sends the claimant a notification letter that he/she must choose which lane they want the issue addressed in, and update CaseFlow. If the issue is not in CaseFlow, then the higher-level review may begin.

Slide 10:
The pop-outs on Slide 10 assumes that the higher-level review request form was received within a year of the notification letter. If not, the chart provides information on the steps to take to stop action on the higher-level review. For the sake of time, we will focus on the completion of the higher-level review.

It is important to note that the higher-level review is very similar to our current administrative review process. **In short, a** higher-level review **is when someone higher on the career ladder, or more senior, than the person who made the original decision will review the evidence at hand (no new evidence may be provided) and readjudicate the decision.**  For example, the VRC did not find the claimant entitled due to the fact he/she was suitably employed and thus had no employment handicap. If the claimant requests a higher-level review, then someone higher than the VRC would need to complete that review. This means that the majority of higher-level reviews will be completed at the Assistant Officer or Officer level, as long as that person was not involved in the original decision, to include providing concurrence on the original decision. This means that we are looking closely at Assistant Officer and Officer duties to see what we can realign to ensure that you have the staff you need to complete the higher-level reviews. For example, if the Officer concurred on the closure, and the claimant disagrees with the decision and requests a higher-level review, then there would be no one at the RO higher than the Officer, to complete the higher-level review. So, we are reviewing those duties now, and will make recommendations on what, if any, of those duties could be delegated to the Assistant Officer and/or a Supervisory VRC. There will be more information to come on this issue as we get closer to the implementation date. Please note, this is just an example. I’m not saying at this point that we would delegate the concurrence of case closures. I’m just using the same example throughout the process for ease of understanding. VR&E determines who completes the higher-level review.

Moving onto the third bullet, one of the major differences in this new process is that the claimant may request that the higher-level review be done at an alternate RO. If so, then your alternate, or sister station, will be the station to complete the higher-level review. The claimant may request an informal conference with the person completing the higher-level review, which is very similar to what occurs now when a claimant asks to speak to a supervisor.

I’m going to skip over the 4th bullet and come back to it.

The last bullet outlines timeliness. As with our administrative reviews, the goal is to complete the higher-level review within 90 days from receipt of the request for a higher-level review. The major difference is we are now required by law to report our progress on those timelines to Congress. So, attention to timelines will be important. We expect to use CaseFlow to monitor those timelines, so it will be imperative that you update CaseFlow as soon as any action is taken. You may also monitor the timeliness in CaseFlow.

Back to the 4th bullet – informal conferences. As we currently do, we will provide informal conferences in the higher-level review lane. The definition of informal conference is provided in new regulations that we are developing and is listed at the bottom of the flowchart.

Slide 11:

An informal conference is a simple discussion of the facts, with no new evidence and no transcript. We will not be providing hearings during the higher-level review process. This will be one of the few times I read the information directly from the presentation, but since it is the language from what will be a new regulation for VR&E, it is important to understand.



The higher-level reviewer will negotiate the format of the informal conference with the claimant and his/her representative. You may do it in person, via video, or telephonically. Again, the important part to remember is there is no new evidence. This is just the opportunity for a discussion of the information, how VR&E came to make the decision, and why the claimant thinks the decision is incorrect, based on the law or fact. A fact may be that in the same scenario we have been using throughout, the VRC utilized the wrong job description when determining that the position was suitable. This is the opportunity for that information to come to light.

Moving on to the possible outcomes of a higher-level review.

Slide 12:

There are 3 possible outcomes for a higher-level review. As noted on slide 12, the first being the decision is upheld, meaning that the higher-level reviewer agrees with the original decision. The claimant is informed of the decision, as well as his/her rights to either provide new evidence for a supplement claim review, or to submit a notice of disagreement directly to the Board to initiate an appeal. As with any action, CaseFlow must be updated. You will hear me say this several times today. I apologize, but it is one of the parts of the law that puts us most at-risk - timeliness.

Slide 13:

Slide 13 discusses another outcome - the decision is overturned, meaning the higher-level reviewer did not agree with the original decision; overturned the decision; and granted the benefit sought. Again, the claimant must be informed of this action and Caseflow must be updated.

Slide 14:

Lastly, as indicated on slide 14, another possible outcome is the higher-level reviewer may identify a duty to assist error. An example of a duty to assist error would be the claimant notes that he sees a private physician for the treatment of depression, but the case manager did not obtain those records for consideration. This automatically triggers a supplemental claim review because new evidence is requested. Therefore, the case is returned to the case manager with instruction to obtain the information and readjudicate the claim. We will discuss timeliness issues with supplemental claim review shortly. And, of course, CaseFlow must be updated.

Slide 15:

Slide 15, the last swim lane provides “Definitions and Citations” taken directly from the law and/ or new regulation. We have covered each of those, with the exception of new and relevant evidence, which we will cover when discussing supplemental claim reviews.

I imagine the looming question that most of you have is where is Central Office’s role in the higher-level review process. As you know, Central Office currently must complete administrative reviews for disagreements on eligibility and entitlement, as well as disagreements over plan development when the Officer is the case manager, per regulation. As we were developing regulatory guidance for this new appeals process, we opted to delete those regulations, and amend a few others. As a result, we are taking out specific reference to reviews done at the Central Office level. That is not to say that we do not expect to be involved at the Central Office level; it is only to say that as we continue to develop more in-depth procedures, we will have a better idea of what will still need to come to Central Office, and what will remain at the RO level. The new law does not address Central Office involvement in the process; and our new regulations on this issue use general terms like “VR&E staff member”, to allow us the opportunity to build the system that works best for all parties involved. We are now accountable to Congress for our timeliness on these reviews, so we are being very intentional on how to develop processes that allow us to meet the timeliness measures, without setting ourselves up for failure. And, we want to ensure that we are adding value to cases that come to Central Office for review. More to come as we continue to negotiate this part of the process.

Let’s move on to the Supplemental Claim review process, which begins on slide 16.

Slide 16:

Like the higher-level review flowchart, we use general terms to provide you flexibility, where you can, to make the process work within your resource model.

The first swim lane is the same as the higher-level review flowchart, with one exception – the claimant can provide new evidence outside the one-year date on the notification letter, if the claimant has continuously pursued the claim. If so, then the claimant’s effective date will be protected. I’m going to jump to the last swim lane so we can discuss protection of the effective date in more formal terms.

Slide 17:

As before, I’ll read this to you since it is from the law:

 

In layman’s terms, the claimant is issued a decision letter on not being found entitle due to being suitably employed. The date of that letter is March 1, 2019. The claimant requests a higher-level review on this issue on June 1, 2019. The higher-level review upholds the decision, meaning the higher-level reviewer agrees that the claimant is not entitled. The higher-level reviewer issues this decision on July 15, 2019. The claimant has a year from that date to determine his/her next step – either provide new evidence for a supplemental claim review or file a notice of disagreement to the Board. Let’s say the claimant opts to go directly to the Board. The Board upholds the decision and informs the claimant of that decision on June 1, 2020. The claimant has one year from the date of the Board’s decision, to provide new evidence in order to protect the effective date. The claimant provides new evidence on May 1, 2021. That new evidence leads to a supplemental claim, and the decision is overturned. In this situation, the effective date of the claim would be the date the Veteran requested the higher-level review – June 1, 2019, even though we are almost 2 years from that date.

Now that we have covered that issue, let’s jump into the supplemental claim review process, beginning on slide 18.

Slide 18:

Moving to the second swim lane, the first actions in the boxes to the immediate left are the same as the higher-level review process. The VR&E staff member must date stamp the request and enter it into CaseFlow. Remember, the issue cannot be at the Board at the same time as a request for a review at the RO level. If so, the chart provides information on how to stop action and inform the claimant; just as we covered in the higher-level review process.

Slide 19:

Slide 19 takes us to the meat of the supplemental claim review process and outlines the main differences between a higher-level review and a supplemental claim review, which include:

* The case manager of record will most likely be the person who completes the supplemental claim review to determine if the new information changes his/her decision. However, the determination of who completes this review is made by VR&E. It does not have to be someone higher than the individual who made the original decision.
* New evidence must be considered.
* Goal is to complete the review of the new information and readjudicate the claim within 125 days. Again, this is a measure we must report to Congress, so timeliness will be a factor for your consideration.

When you think about it, you complete supplemental claims reviews all the time now. How often do you meet with a claimant only to determine he/she does not have enough information to make an entitlement decision? In these instances, the VRC provides next steps instructing the claimant to provide additional information for review. So, we expect this process to not be as much of a change as the higher-level review process.

There are two possible outcomes for a supplemental claim review. Let’s review those next on slide 20.

Slide 20:
Slide 20 discusses what action to take is the decision is upheld – meaning the new evidence did not impact the case manager’s decision. The case manager must inform the claimant of the decision, and provide possible next steps, which include either a higher-level review or a notice of disagreement directly to the Board to initiate a formal appeal. And don’t forget to update CaseFlow.

Slide 21:

Slide 21 discusses what action to take is the decision is overturned – meaning the new evidence changed the decision, and the benefit can now be granted. In short, as we do now, we inform the claimant of the decision and take immediate action. And don’t forget to update Caseflow. I think that is the last time I have to say Caseflow during this presentation.

Slide 22:

We will end with one final new part of the law, a new definition of “new and relevant evidence”.

Our current laws says “new and material”, which is a tighter burden for the claimant. “New and relevant” loosens the definition a bit to “any evidence that tends to prove or disprove a matter in issue”. The intent is to allow the claimant to be heard and provide evidence that he/she thinks may impact the decision.

Slide 23:

This concludes our training. Thank you so much for your time and attention. There will be more specific procedural instructions to come with the updated manual chapter, which we expect to release by the end of the calendar year. We will also be providing additional resources, to include the new notification letter and the new forms for this process. Lastly, we will be providing additional training on CaseFlow, (ah, I was wrong – I had to say it one more time) how to use it to monitor and track reviews and appeals.