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Department of Veterans Affairs' Potential Role in Addressing the COVID-19 Outbreak

March 20, 2020

Congressional Research Service

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R46280



Department of Veterans Affairs' Potential Role in Addressing the COVID-19 Outbreak

The Department of Veterans Affairs (VA) provides a range of benefits to eligible veterans and their dependents. The department carries out its programs nationwide through three administrations and the Board of Veterans' Appeals (BVA). The Veterans Health Administration (VHA) is responsible for health care services and medical and prosthetic research programs. The Veterans Benefits Administration (VBA) is responsible for, among other things, providing disability compensation, pensions, and education assistance. The National Cemetery Administration (NCA) is responsible for maintaining national veterans cemeteries; providing grants to states for establishing, expanding, or improving state veterans cemeteries; and providing headstones and markers for the graves of eligible persons, among other things.

With a vast integrated health care delivery system spread across the United States, VHA is also statutorily required to serve as a contingency backup to the Department of Defense (DOD) medical system during a national security emergency and to provide support to the National Disaster Medical System and the Department of Health and Human Services (HHS), as necessary, in support of national emergencies (also referred to as the "Fourth Mission" of the VHA).

Based on limited information from VA, this report provides an overview of VA's response to the Coronavirus Disease 2019 (COVID-19) pandemic that is affecting communities throughout the United States. It also discusses recent congressional action as it pertains to the veterans' benefits and services, as well as the supplemental appropriations for the department.

R46280

March 20, 2020

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Introduction

The Department of Veterans Affairs (VA) provides a range of benefits and services to veterans who meet certain eligibility criteria. These benefits and services include, among other things, hospital and medical care;¹ disability compensation and pensions;² education;³ vocational rehabilitation and employment services;⁴ assistance to homeless veterans;⁵ home loan guarantees;⁶ administration of life insurance, as well as traumatic injury protection insurance for servicemembers;⁷ and death benefits that cover burial expenses.⁸

The department carries out its programs nationwide through three administrations and the Board of Veterans' Appeals (BVA). The Veterans Health Administration (VHA) is responsible for health care services and medical and prosthetic research programs. The Veterans Benefits Administration (VBA) is responsible for, among other things, providing disability compensation, pensions, and education assistance. The National Cemetery Administration (NCA)⁹ is responsible for maintaining national veterans cemeteries; providing grants to states for establishing, expanding, or improving state veterans cemeteries; and providing headstones and markers for the graves of eligible persons, among other things.

In addition to providing health care services to veterans and certain eligible dependents, the VHA is statutorily required to serve as a contingency backup to the Department of Defense (DOD) medical system during a national security emergency¹⁰ and to provide support to the National Disaster Medical System and the Department of Health and Human Services (HHS) as necessary in response to national crises.¹¹ The department is also required to take appropriate actions to ensure VA medical centers are prepared to protect veteran patients and staff during a public health emergency.¹²

¹ For more information on programs, see CRS Report R42747, *Health Care for Veterans: Answers to Frequently Asked Questions*.

² For more information on programs, see CRS Report R44837, *Benefits for Service-Disabled Veterans*, and CRS Report RS22804, *Veterans' Benefits: Pension Benefit Programs*.

³ For a discussion of education benefits, see CRS Report R42755, *The Post-9/11 GI Bill: A Primer*.

⁴ For details on VA's vocational rehabilitation and employment, see CRS Report RL34627, *Veterans' Benefits: The Vocational Rehabilitation and Employment Program*.

⁵ For detailed information on homeless veterans programs, see CRS In Focus IF10167, *Veterans and Homelessness*.

⁶ For details on the home loan guarantee program, see CRS Report R42504, *VA Housing: Guaranteed Loans, Direct Loans, and Specially Adapted Housing Grants*.

⁷ For more information on insurance programs, see CRS Report R41435, *Veterans' Benefits: Current Life Insurance Programs*.

⁸ For more information on burial benefits, see CRS Report R41386, *Veterans' Benefits: Burial Benefits and National Cemeteries*.

⁹ Established by the National Cemeteries Act of 1973 (P.L. 93-43).

¹⁰ 38 U.S.C. §8111A.

¹¹ 38 U.S.C. §1785.

¹² 38 U.S.C. §8117.

Novel Coronavirus (COVID-19)¹³

On December 31, 2019, the World Health Organization (WHO) was informed of a cluster of pneumonia cases in Wuhan City, Hubei Province of China. Illnesses have since been linked to a disease caused by a previously unidentified strain of coronavirus, designated Coronavirus Disease 2019, or COVID-19. On January 30, 2020, an Emergency Committee convened by the WHO Director-General declared the COVID-19 outbreak to be a Public Health Emergency of International Concern (PHEIC).¹⁴ On January 31, the Secretary of Health and Human Services (HHS) declared a public health emergency under Section 319 of the Public Health Service Act (42 U.S.C. 247d).¹⁵ On March 11, 2020, the WHO characterized the COVID-19 outbreak as a pandemic.¹⁶ Two days later, on March 13, the President declared the COVID-19 outbreak a national emergency, beginning March 1, 2020.¹⁷

The VHA plays a significant role in the domestic response to a pandemic. It is one of the largest integrated direct health care delivery systems in the nation, caring for more than 7.1 million patients in FY2020 and providing 123.8 million outpatient visits¹⁸ at approximately 1,450 VA sites of care.¹⁹ The VHA employs a workforce of 337,908 full-time equivalent employees (FTEs), largely composed of health care professionals.²⁰ In addition, the VHA has a statutory mission to contribute to the overall federal emergency response capabilities.²¹

Scope and Limitations

This report provides an overview of VA's response thus far to this rapidly evolving COVID-19 pandemic. It does not provide an exhaustive description of all of the department's activities, and it is based on very limited publicly available information from VA. It is organized as follows: first, it provides details on VHA's, VBA's, and NCA's response activities; second, it provides

¹³ For more information, see "COVID-19" Hot Topic, at <https://www.crs.gov/>, and CRS Report R46219, *Overview of U.S. Domestic Response to Coronavirus Disease 2019 (COVID-19)*.

¹⁴ WHO, "Statement on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (COVID-19)," January 30, 2020, <https://www.who.int/news-room/statements>. The definition of and procedures for a PHEIC are at <https://www.who.int/ihr/procedures/pheic/en/>. See also CRS In Focus IF10022, *The Global Health Security Agenda (2014-2019) and International Health Regulations (2005)*.

¹⁵ U.S. Department of Health and Human Services (HHS), "Secretary Azar Declares Public Health Emergency for United States for Coronavirus Disease 2019," press release, January 31, 2020, <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>.

¹⁶ WHO, "WHO Director-General's opening remarks at the media briefing on COVID-19," March 11, 2020, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19>.

¹⁷ "Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak," March 13, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>, also at U.S. President (Trump), "Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak," 85 *Federal Register* 53, March 18, 2020.

¹⁸ U.S. Department of Veterans Affairs, *FY2021 Congressional Submission, Medical Programs and Information Technology Programs*, vol. 2 of 4, February 2020, pp. VHA-19 and VHA-20.

¹⁹ *Ibid.*, p. VHA-333. (Sites of care used in this calculation are VA hospitals, community living centers, health care centers, community-based outpatient clinics [CBOCs], other outpatient service sites, and dialysis centers.)

²⁰ *Ibid.*, p. VHA-15.

²¹ 38 U.S.C. §1785; 38 U.S.C. §8117. Also see U.S. Department of Veterans Affairs, Veterans Health Administration, *Veterans Health Administration Comprehensive Emergency Management Program (CEMP) Procedures*, VHA DIRECTIVE 0320.01, April 6, 2017.

details on VA's emergency preparedness ("Fourth Mission") activities to provide support to the overall federal emergency response; and lastly, it briefly describes congressional activity as it pertains to VA and veterans. The **Appendix** provides a summary of VHA's emergency authorities.

Medical Care for Veterans During the COVID-19 Outbreak

VHA's provision of medical care to veterans in response to the COVID-19 outbreak includes implementing mitigation strategies at VHA facilities, as well as testing and treating veterans diagnosed with or suspected of having COVID-19. (A general description of medical care to veterans is provided in other CRS reports.)²²

In late February 2020, VA provided information to congressional oversight committees on the number of positive and presumptive positive cases of COVID-19.²³ On March 13, 2020, the department began publishing this information publicly on its website, which it updates on a regular basis.²⁴ The number of positive diagnoses is likely to grow as testing for COVID-19 becomes more widespread.

VA has reported on the measures it has taken to contain and mitigate further exposure. It has issued guidance for patients, implemented mitigation strategies at VHA facilities, and begun testing patients who present symptoms consistent with COVID-19.

Guidance for Patients

VA is advising veterans who may be sick or who are exhibiting flu-like symptoms not to come to a VA facility. Instead, patients are advised to call their health care providers, even if they already have a scheduled appointment.²⁵ Alternatively, patients can send a secure message through the VHA online portal, My HealtheVet, or schedule a telehealth appointment.²⁶

In addition, VA is advising patients to budget additional time for appointments due to enhanced screening measures at VA facilities. These enhanced screening measures, as well as other mitigation strategies at VHA facilities, are described below.

Mitigation at VHA Facilities

On March 10, 2020, VA announced safeguards to protect nursing home residents and spinal cord injury patients.²⁷ As of that date, no visitors are allowed at either VA nursing homes or spinal cord

²² For more information on the provision of health care to veterans, see CRS Report R42747, *Health Care for Veterans: Answers to Frequently Asked Questions*.

²³ House Committee on Veterans' Affairs, "House Committee on Veterans' Affairs Statement on Actions to Protect VA and Veterans from COVID-19," press release, March 13, 2020.

²⁴ For the most recent number of VA-related cases, see <https://www.publichealth.va.gov/n-coronavirus/>.

²⁵ Veterans can call MyVA311 (844-698-2311) to reach their local VA Medical Center.

²⁶ Veterans can access My HealtheVet at <https://www.myhealth.va.gov/mhv-portal-web/home>. They can access telehealth services at <https://telehealth.va.gov/type/home>. For more information on VA telehealth services, see CRS Report R45834, *Department of Veterans Affairs (VA): A Primer on Telehealth*.

²⁷ U.S. Department of Veterans Affairs, "VA announces safeguards to protect nursing home and spinal cord injury patients," press release, March 10, 2020, <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5400>.

injury/disorder (SCI/D) centers. The only exception to this policy is if a veteran is in the last stages of life, in which case VA allows visitors in the veteran's room only. VA is not accepting any new admissions to nursing homes and is limiting new admissions to SCI/D centers.

VA began implementing enhanced screening procedures at all sites of care to screen for respiratory illness and COVID-19 exposure. Enhanced screening procedures are determined at the local level, so they vary at each facility. However, VA has designed standardized screening questions for each facility.

Each VA medical center is implementing a two-tiered system to mitigate the potential for spread of the virus, creating a zone for active COVID-19 cases and a passive zone for care unrelated to COVID-19.²⁸ VA has canceled all elective surgeries and limited routine appointments.²⁹

COVID-19 Testing and Treatment³⁰

This section describes the current VA policy on testing patients for COVID-19 and treatment following a COVID-19 diagnosis.

COVID-19 Diagnostic Testing

On March 13, 2020, the department began publishing the number of positive cases of COVID-19, and the number of tests conducted, on its public website, which it updates on a regular basis.³¹ Individual medical centers have discretion on where to send samples for testing. Samples can be tested at the Palo Alto VA Medical Center, state public health labs, or private labs.

Individual providers decide whether to test for COVID-19 on a patient-by-patient basis. However, VA has advised providers that patients must be exhibiting respiratory symptoms *and* have another factor, such as recent travel or known exposure to someone who tested positive.

Generally, diagnostic testing is a covered service under VA's standard medical benefits package, which is available to all veterans enrolled in the VA health care system.³² Some veterans are required to pay copayments for care that is not related to a service-connected disability. However, routine lab tests are exempt from copayments.³³ VA has not announced whether cost-sharing for the COVID-19 diagnostic test is included under the exemption for routine lab tests.

The Families First Coronavirus Response Act (P.L. 116-127), enacted on March 18, 2020, allows VA to waive any copayment or other cost-sharing requirements charged to veterans for COVID-19 testing or medical visits during any period of this public health emergency. VA has not publicly announced whether cost-sharing for the COVID-19 diagnostic test will be waived for all veterans who are subject to cost-sharing. (For a discussion of P.L. 116-127, see the "Congressional Response" section of this report.)

²⁸ U.S. Department of Veterans Affairs, *COVID-19 Guidance for Community Providers*, Fact Sheet IB-10-145, March 2020.

²⁹ White House Coronavirus Task Force, Daily Briefing, March 18, 2020.

³⁰ For more information on general COVID-19 testing, see CRS Report R46261, *Development and Regulation of Domestic Diagnostic Testing for Novel Coronavirus (COVID-19): Frequently Asked Questions*.

³¹ <https://www.publichealth.va.gov/n-coronavirus/>.

³² 38 C.F.R. §17.38.

³³ 38 C.F.R. §17.108(e)(11).

COVID-19 Treatment

VA has not indicated whether it has developed a treatment plan for patients diagnosed with COVID-19. Treatment depends largely on the severity of symptoms that each patient experiences.

VA is handling coverage and cost of treatment for COVID-19 as it would for any other treatment for a condition that is not service-connected. Treatment for COVID-19 is a covered benefit under the VA standard medical benefits package. However, some veterans may have to pay copayments for both outpatient and inpatient care.³⁴

Normal coverage rules apply for veterans who report to urgent care or walk-in clinics. To be eligible, a veteran must be enrolled in the VA health care system and must have received VA care in the past 24 months preceding the episode of urgent or walk-in care.³⁵ Eligible veterans needing urgent care must obtain care through facilities that are part of VA's contracted network of community providers.³⁶ These facilities typically post information indicating that they are part of VA's contracted network. If an eligible veteran receives urgent care from a *noncontracted* provider or receives services that are *not* covered under the urgent care benefit, the veteran may be required to pay the full cost of such care.³⁷ Certain veterans are required to pay copayments for care obtained at a VA-contracted urgent care facility or walk-in retail health clinic.³⁸

In addition, normal rules apply for veterans who report to non-VA emergency departments. To be eligible for VA payment or reimbursement, a veteran's non-VA care must meet the following criteria:

- The emergency care or services were provided in a hospital emergency department or a similar facility that provides emergency care to the public.
- The claim for payment or reimbursement for the initial evaluation and treatment was for a condition of such a nature that a prudent layperson would have reasonably expected that delay in seeking immediate medical attention would have been hazardous to life or health.
- A VA or other federal facility or provider was not feasibly available and an attempt to use them beforehand would not have been considered reasonable by a prudent layperson.
- At the time the emergency care or services were furnished, the veteran was enrolled in the VA health care system and had received medical services from the VHA within the 24-month period preceding the furnishing of such emergency treatment.
- The veteran was financially liable to the provider of emergency treatment for that treatment.

³⁴ For more information on copayments for medical care, see CRS Report R42747, *Health Care for Veterans: Answers to Frequently Asked Questions*.

³⁵ A veteran would meet this requirement under any of the following situations: "Care provided in a VA facility, care authorized by VA performed by a community provider, care reimbursed under VA's Foreign Medical Program (38 U.S.C. 1724) or an emergency treatment authority (38 U.S.C. 1725 or 1728) or care furnished by a State Veterans Home" (U.S. Department of Veterans Affairs, "Urgent Care," 84 *Federal Register* 26014, June 5, 2019).

³⁶ <https://vaurgentcarelocator.triwest.com/>.

³⁷ U.S. Department of Veterans Affairs, *Veteran Community Care – Urgent Care*, Fact Sheet, May 2019.

³⁸ For more information on copayments for urgent care, see CRS Report R42747, *Health Care for Veterans: Answers to Frequently Asked Questions*.

- The veteran had no coverage under a health plan contract that would fully cancel the medical liability for the emergency treatment.
- If the condition for which the emergency treatment was furnished was caused by an accident or work-related injury, the veteran is required pursue all claims against a third party for payment of such treatment first.³⁹

Homeless Veterans

Veterans experiencing homelessness live in conditions that could make them particularly vulnerable to COVID-19. Those who are unsheltered lack access to sanitary facilities. For those sleeping in emergency shelters, conditions may be crowded, with short distances between beds, and there may be limited facilities for washing and keeping clean.

While VA itself administers programs to assist veterans experiencing homelessness, there are several grants for nonprofit and public entities to provide housing and services to homeless veterans. These include the Homeless Providers Grant and Per Diem program (transitional housing and services), the Supportive Services for Veteran Families (short- to medium-term rental assistance and services), and Contract Residential Services (housing for veterans participating in VA's Health Care for Homeless Veterans program).⁴⁰

VA released guidance on March 13, 2020, for its grantees that administer programs for veterans who are homeless.⁴¹ The guidance suggests grantees take a number of actions:

- Develop a response plan, or review an existing plan, and coordinate response planning with local entities, including health departments, local VA medical providers, and Continuums of Care.⁴² Plans should address staff health, potential staff shortages, and acquisition of food and other supplies, as well as how to assist veteran clients.
- Prevent infection through methods recommended by the CDC, such as frequent handwashing, wiping down surfaces, and informing clients about prevention techniques.
- In congregate living facilities, such as those provided through VA's Grant and Per Diem program, keep beds at least three feet apart (preferably six, if space permits), sleep head-to-toe, or place barriers between beds, if possible.
- Develop questions to ask clients about their health to determine their needs and how best to serve them. For new clients, interviews should occur prior to entry into a facility (such as over the phone), if possible, or in a place separate from other clients.
- If a client's answers to questions indicate risk of COVID-19, separate them from other program participants (have an isolation area, if possible), clean surfaces,

³⁹ 38 U.S.C. §1725.;38 C.F.R. §§ 17.1000-17.1008.

⁴⁰ For more information, see CRS Report RL34024, *Veterans and Homelessness*.

⁴¹ U.S. Department of Veterans Affairs, *Guidance on the Coronavirus (COVID-19) for VA Grantees Providing Homeless Services*, March 13, 2020, https://www.va.gov/HOMELESS/docs/GPD/providers/GuidanceCOVID-19-VA_Grantees_3-13-20.pdf.

⁴² Continuums of Care are planning boards that coordinate homeless services at the local level. Their role includes coordinating local service providers to apply for Department of Housing and Urban Development Continuum of Care program funding.

and reach out to medical professionals. If isolation is not practical, reach out to other providers who might be able to isolate.

Veterans Benefits Administration (VBA)

On March 18, 2020, the Veterans Benefits Administration (VBA) announced via Facebook and Twitter that all regional offices will be closed to the public starting March 19. While the regional offices are to remain open to ensure the continuity of benefits, the offices are to no longer accept walk-ins for claims assistance, scheduled appointments, counseling, or other in-person services. VBA is directing veterans who have claims-specific questions or any questions to use the Inquiry Routing & Information System (IRIS) or to call 1-800-827-1000.⁴³

A March 16, 2020, *Government Executive* news article explained that VBA is facing “network operability” issues after several regional offices told their employees to telework full time. VBA headquarters, in Washington, DC, then rescinded the telework directives due to the information technology issues. VBA is to continue performing tests on the network throughout the week. According to the article, a VA spokesperson said that regional office directors are to make decisions on work flexibility based on “the circumstances in their communities” but must discuss all plans with “central office leadership.”⁴⁴

Educational Assistance

In FY2020, over 900,000 individuals are expected to receive veterans educational assistance from the GI Bills (e.g., the Post-9/11 GI Bill), Veteran Employment Through Technology Education Courses (VET TEC), Veterans Work-Study, Veterans Counseling, and VetSuccess on Campus (VSOC). As a result of COVID-19, some participants’ training and education may be disrupted, and some participants may receive a lower level of or no benefits. These concerns may directly affect beneficiaries in several ways, including the following:

- Some students may be required to stop out,⁴⁵ discontinue working, or take a leave of absence as a result of their own illness.
- Some training establishments, educational institutions, and work-study providers may close temporarily or permanently.
- Some training establishments, educational institutions, and work-study providers may be required to reduce participants’ hours, enrollment rate, or rate of pursuit.
- Some educational institutions may transition some courses to a distance learning format.
- Some educational institutions may require students living on campus to move off campus.
- Individuals receiving benefits in foreign countries may encounter any of the above circumstances while residing in a foreign country whose COVID-19 situation may differ from that in the United States, or may stop out, discontinue working, or take a leave of absence and return to the United States.

⁴³ <https://www.facebook.com/VeteransBenefits/> and <https://twitter.com/VAVetBenefits>.

⁴⁴ Eric Katz, “Mass Telework Causes Operational Strains for Agencies,” March 16, 2020, *Government Executive*, at <https://www.govexec.com/management/2020/03/mass-telework-causes-operational-strains-agencies/163834/>.

⁴⁵ A stop-out is a student who interrupts his or her enrollment with a break of more than four months before reenrolling.

A related issue is that, in the past, GI Bill benefits could not be paid for pursuit of online courses that had not been previously approved as online courses. Given this limitation, VA requested that school-certifying officials “temporarily refrain from making any adjustments to enrollment certifications” pending subsequent VA guidance and/or legislative action.⁴⁶

On March 12, 2020, VA reminded GI Bill participants and school-certifying officials of its ability to continue paying benefits as participants and institutions react to the COVID-19 emergency. In particular, VA may continue to pay GI Bill benefits for up to four weeks following the temporary closure of an educational institution under an established policy based on an executive order of the President, or due to an emergency situation.⁴⁷ Other limitations noted in the correspondence would be alleviated by recently passed legislation (see the “Congressional Response” section of this report for a discussion of S. 3503).⁴⁸

National Cemetery Administration (NCA)

The National Cemetery Administration (NCA) has provided limited information for the survivors and dependents of veterans who have passed away and are scheduled to be buried in National Cemetery. As of March 18, 2020, NCA has provided some guidance for both families and funeral directors regarding interments and services for veterans.

For families and visitors. VA National Cemeteries remain open to visitors and for interments, but visitors should follow their local communities’ restrictions on visitations and travel. For families who prefer to inter now but hold the committal service at a later date, NCA says it will work to accommodate those requests. For families who prefer to have the committal service now, NCA asks them to adhere to CDC recommendations for group gatherings.

For funeral directors. NCA is asking funeral directors to follow the CDC guidelines and recommendations on group gatherings for families who proceed with full committal services. In addition, NCA informed organizers that it has discouraged all cemetery personnel from handshaking and any unnecessary physical contact with family members and funeral organizers. NCA is to work with the funeral directors and families to accommodate future committal services for those who decide to postpone.⁴⁹

NCA has set up an “Alerts” webpage for the public to check cemetery operating status⁵⁰ and is directing the public to its Facebook and Twitter pages for the most recent operating information.⁵¹

⁴⁶ Email from VBA Education Service to school-certifying officials, March 13, 2020.

⁴⁷ 38 U.S.C. §3680(a)(2) might not apply to GI Bill benefits for pursuit of training establishment or correspondence courses, VET TEC, or work-study. Payments cannot continue into an interval period between enrollment periods.

⁴⁸ The letter indicated that GI Bill benefits could not be paid for pursuit of online courses that have not been previously approved as online courses. For courses that transition from in-residence to online during the term, GI Bill benefit amounts would not change for the remainder of the term; however, for subsequent terms, Post-9/11 GI Bill participants enrolled exclusively in online education would be eligible for one-half the national average of the housing allowance.

⁴⁹ Twitter, Facebook, and emails from National Cemetery Administration, “VA National Cemeteries and COVID-19,” March 11, 13, 17, 2020.

⁵⁰ <https://www.cem.va.gov/alerts.asp>.

⁵¹ <https://www.facebook.com/NationalCemeteries> and <https://twitter.com/VANatCemeteries>.

Emergency Preparedness (“Fourth Mission”)

In 1982, the Department of Veterans Affairs (VA)-Department of Defense (DOD) Health Resources Sharing and Emergency Operations Act (P.L. 97-174) was enacted to serve as the primary health care backup to the military health care system during and immediately following an outbreak of war or national emergency.⁵² Since then, Congress has provided additional authorities to VA to “use its vast infrastructure and resources, geographic reach, deployable assets, and health care expertise, to make significant contributions to the Federal emergency response effort in times of emergencies and disasters.”⁵³

Among other authorities, VHA may care for nonveterans, as well as veterans not enrolled in the VA health care system.⁵⁴ This applies in situations where the President has declared a major disaster or emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5121 et seq.) (the Stafford Act), or where the HHS Secretary has declared a disaster or emergency activating the National Disaster Medical System established pursuant to Section 2811(b) of the Public Health Service Act (42 U.S.C. §300hh-11(b)). The President’s March 13, 2020, declaration of a national emergency under Section 501(b) of the Stafford Act allows VA to use this authority.

According to VA, during declared major disasters and emergencies, service-connected veterans receive the highest priority for VA care and services, followed by members of the armed forces receiving care under 38 U.S.C. Section 8111A, and then by individuals affected by a disaster or emergency described in 38 U.S.C. Section 1785 (i.e., individuals requiring care during a declared disaster or emergency or during activation of the National Disaster Medical System [NDMS]). In general, care is prioritized based on clinical need—that is, urgent, life-threatening medical conditions are treated before routine medical conditions (see the **Appendix**).

During a disaster or emergency, VA can support HHS by providing resources to civilian health care systems.⁵⁵ Furthermore, VA’s National Acquisition Center can assist with acquisition and logistical support, such as by providing ventilators, medical equipment and supplies, and pharmaceuticals. Generally, if a state, tribal, or territorial government needs resources, they can request assistance from the federal government through their local HHS Regional Emergency Coordinator (REC). The HHS REC is to then submit a task order to the HHS Secretary’s

⁵² 38 U.S.C. §811A.

⁵³ U.S. Department of Veterans Affairs, *Department of Veterans Affairs FY 2018 - 2024 Strategic Plan*, Refreshed May 31, 2019, May 31, 2019, p. 35.

⁵⁴ 38 U.S.C. §1785 and 38 C.F.R. §17.86 establish VA authority to provide hospital care and medical services to nonveterans responding to, involved in, or otherwise affected by a disaster or emergency. These individuals may include active duty servicemembers, as well as National Guard and Reserve component members activated by state or federal authority. This authority also allows VA to treat veterans not enrolled in the VA health care system. Unless another federal agency reimburses VA, individuals could be charged for this care. “[I]ndividuals who receive hospital care or medical services under this section [38 C.F.R. §17.86] are responsible for the cost of the hospital care or medical services when charges are mandated by Federal law (including applicable appropriation acts) or when the cost of care or services is not reimbursed by other-than-VA Federal departments or agencies” (38 C.F.R. §17.86).

⁵⁵ For example, during Hurricane Katrina, VHA deployed 1,300 volunteers and staff in a series of 14-day rotations to operate two Federal Medical Stations (FMS) providing medical services to non-VA beneficiaries; operate VHA mobile medical clinics; and deliver food, water, fuel, and supplies to affected medical facilities, among other activities. See House Committee on Veterans’ Affairs, Subcommittee on Oversight and Investigations, *Emergency Preparedness: Evaluating the U.S. Department Of Veterans Affairs’ Fourth Mission*, 111th Cong., 2nd sess., June 23, 2010 (Washington: GPO, 2010), p. 50.

Operations Center (SOC) to be fulfilled by HHS, VA, or another federal agency. VA cannot receive direct requests for assistance from state and local governments.⁵⁶

Congressional Response

Funding and Cost-Sharing

On March 14, 2020, the House passed the Families First Coronavirus Response Act (H.R. 6201). The Senate passed the measure on March 18, and the President signed it into law the same day as P.L. 116-127. The act provides \$30 million for VHA's medical services account to fund health services and related items pertaining to COVID-19.⁵⁷ In addition, the act provides \$30 million for VHA's medical community care account. These funds are available until September 30, 2022. Among other things, the act allows VA to waive any copayment or other cost-sharing requirements for COVID-19 testing or medical visits during any period of this public health emergency.⁵⁸

Education Assistance

S. 3503, as passed by the Senate on March 16, 2020, and then passed by the House on March 19, 2020, allows VA to continue to provide GI Bill benefits from March 1, 2020, through December 21, 2020, for courses at educational institutions that are converted from in-residence to distance learning by reason of an emergency or health-related situation.⁵⁹ S. 3503 further permits VA to pay the Post-9/11 GI Bill housing allowance as if the courses were not offered through distance learning throughout the same period. With the exception of those covered under this S. 3503 exemption, Post-9/11 GI Bill participants enrolled exclusively in distance education are eligible for no more than one-half the national average of the housing allowance.

Emergency Supplemental Appropriations Request⁶⁰

On March 17, 2020, the Administration submitted to Congress a supplemental appropriations request. The Administration seeks \$16.6 billion for FY2020 for VA's response to the COVID-19 outbreak. This includes \$13.1 billion for the medical services account. According to the request, this additional amount would provide funding for "healthcare treatment costs, testing kits, temporary intensive care unit bed conversion and expansion, and personal protective equipment." The request also includes \$2.1 billion for the medical community care account to provide three

⁵⁶ Email from Department of Veterans Affairs, Office of Congressional and Legislative Affairs, March 17, 2020.

⁵⁷ VHA's annual appropriations consist of five accounts: medical services, medical community care, medical support and compliance, medical facilities, and medical and prosthetic research accounts. The first four accounts cover the provision of health care and related services.

⁵⁸ "Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak," March 13, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>; also at U.S. President (Trump), "Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak," 85 *Federal Register* 53, March 18, 2020, and U.S. Department of Health and Human Services (HHS), "Secretary Azar Declares Public Health Emergency for United States for Coronavirus Disease 2019," press release, January 31, 2020, <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>; <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>.

⁵⁹ For examples of additional related legislation introduced, see S. 3450, H.R. 6093, H.R. 6194, and H.R. 6212.

⁶⁰ Letter from Russell T. Vought, Acting Director, Office of Management and Budget, Executive Office of the President, to the Honorable Michael R. Pence, President of the Senate, March 17, 2020.

months of health care treatment provided in the community in response to COVID-19. VA assumes that about 20% of care for eligible veterans will be provided in the community, since community care facilities would be at full capacity with nonveteran patients. Furthermore, the request includes \$100 million for the medical support and compliance account for the provision of 24-hour emergency management coordination overtime payments; for costs associated with travel and transport of materials; and to enable VHA's Office of Emergency Management to manage its response to COVID-19. The emergency supplemental appropriations request also includes \$175 million for the medical facilities account to upgrade VA medical facilities to respond to the virus. The request also includes \$1.2 billion for the information technology systems account to upgrade telehealth and related internet technology to deliver more health care services remotely.

Appendix. VHA Emergency Powers

Table A-1. VHA's Emergency Powers

An Overview of Governing Legal Authorities and VA Regulations and Policies

Issue	Authority	Description
VA Hospital Care and Treatment		
Veterans	38 U.S.C. Chapters 17, 73; 38 C.F.R. §§17.36-17.38	VHA's primary function "is to provide a complete medical and hospital service for the medical care and treatment of veterans" (38 U.S.C. §7301).
Other VA Beneficiaries	38 U.S.C. §1781; 38 C.F.R. §§17.250-17.251	VA may provide health care to certain veterans' spouses, surviving spouses, and children.
Members of the Armed Forces	38 U.S.C. §8111A; VHA Directive 0320 (2013)	VA may furnish hospital care and medical services to members of the Armed Forces during a time of war or national emergency.
Non-VA Beneficiaries, Generally	38 U.S.C. §§1784, 1784A 38 C.F.R. §§17.37, 17.43, 17.95, 17.102	VA may provide hospital care or medical services as a humanitarian service but must charge for such care; VA may also provide treatment for emergency medical conditions and women in labor.
Non-VA Beneficiaries in a Disaster or Emergency	38 U.S.C. §1785; VHA Directive 0320 (2013)	VA may provide hospital care and medical services to individuals responding to, involved in, or otherwise affected by a national disaster or emergency.
Priorities for Providing Medical Care	38 U.S.C. §8111A; 38 C.F.R. §17.49	VA must give treatment priority to veterans with service-connected disabilities rated 50% or greater and to veterans needing care for service-connected disabilities; VA may then give priority to members of the Armed Forces.
Sharing Health Care Resources		
General Authority	38 U.S.C. §8153; VHA Directive 1660.01 (2018)	VA has authority to enter into agreements for the mutual use or exchange of resources with non-VA facilities "to secure health-care resources which otherwise might not be feasibly available" (38 U.S.C. §8513(a)(1)).
Department of Defense	38 U.S.C. §8111; VHA Directive 1660 (2015)	VA and DOD are required to enter into agreements to share health care resources to improve "the access to, and quality and cost effectiveness of" each department's health care services (38 U.S.C. §8111(a)).

Issue	Authority	Description
Quarantine and Isolation		
General Authority	42 U.S.C. §§264, 266; 42 C.F.R. parts 70, 71; State, Local, and Tribal law	VA has no specific authority to involuntarily quarantine or isolate patients, and instead must rely on each state's laws, as well as instructions from the Centers for Disease Control and Prevention, in times of war, the Surgeon General. ^a
VA Provider Liability		
General Liability	28 U.S.C. §§1326(b), 2671-80; 38 U.S.C. §7316	VA health care providers acting within the scope of their employment are shielded from personal liability, but victims of medical malpractice or other injury can sue the United States under the Federal Tort Claims Act (FTCA). ^b
Declared Emergencies and Major Disasters under the Stafford Act	42 U.S.C. §5148	Neither the U.S. government nor VA health care providers are liable for "any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty" in responding to a declared emergency or major disaster. (Robert T. Stafford Disaster Relief and Emergency Assistance Act §305, 42 U.S.C. §5148 [2018]).
Transportation of Employees		
In General	31 U.S.C. §1344(a)	VA may only use government vehicles to transport employees for official purposes, which does not include transportation to or from an employee's residence.
During an Emergency	38 U.S.C. §703(f)	If the Secretary determines an emergency exists, VA may transport employees between their places of employment and the nearest public transportation or, if public transit is unavailable or infeasible, their residences, but the Secretary must "establish reasonable rates to cover the cost of the service" (38 U.S.C. §703(f)(2)).
Credentialing and Privileging Health Care Providers		
In General	38 U.S.C. §7402; VHA Directive 2012-030 (2012)	Health care providers generally must be fully credentialed prior to their initial appointments.

Issue	Authority	Description
Expedited and Disaster Appointments	VHA Directive 2012-030 attachment D	VA provides expedited credentialing procedures in the best interest of patient care and in response to disasters and emergencies.
VA Disaster Emergency Medical Personnel System		
In General	VHA Directive 0320 (2013); VHA Handbook 0320.03 (2008)	The VA Disaster Emergency Medical Personnel System (DEMPS) program allows VA medical providers to register as volunteers to respond to domestic disasters and emergencies by deploying to affected VA facilities or other locations as required.

Source: Adapted and updated by CRS from Department of Veterans Affairs, VA Pandemic Influenza Plan app. B-2 (2006).

- a. Department of Veterans Affairs, VA Pandemic Influenza Plan app. B-2 (2006). For an overview of the federal government's quarantine authority, see *Legal Authorities for Isolation and Quarantine*, Centers for Disease Control and Prevention, <https://www.cdc.gov/quarantine/aboutlawsregulationsquarantineisolation.html> (last visited March 18, 2020).
- b. For more information on the FTCA, see CRS Report R45732, *The Federal Tort Claims Act (FTCA): A Legal Overview*, by Kevin M. Lewis.

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