

**Proposed Plan for Implementing the Provision
of Medical Care Pursuant to Army Regulation 70-25**

To fulfill the obligations under Army Regulation 70-25 (AR 70-25) to provide medical care to former members of the armed forces who the Army exposed to a chemical or biological substance as part of their participation in research, for any injury or disease that is the proximate result of their participation in the research, medical care will be provided to requesting class members as set forth below.

If the class member is determined, under the process set forth below, to have any health condition having a sufficiently strong causal link such that a reasonable person could find that the injury or disease was caused by testing exposure or participation in research, the Army will provide the requisite health care at Department of Defense (DoD) medical treatment facilities (MTFs), whether by using the Secretarial Designee (SECDES) statutory authority, *see, e.g.*, 10 U.S.C. § 1074(c), DoD Instruction 6025.23, AR 40-400,¹ or otherwise.

The Army will implement the following process to determine eligibility for medical care:

1. Notice to the Class. The Army will notify individuals who may qualify for research related medical care of the potential availability of Army provided medical care and the process to apply for such care. The Army will provide individual notification via first class mail to those class members for whom the Army has contact information. The Army will also

¹ The health care provided through this plan is supplemental to the comprehensive care a plaintiff is entitled to receive through the Department of Veterans Affairs (VA) based on his or her status as a veteran. *See* 38 CFR 17.36(b). This plan will have no bearing and has no effect on the provision of care or benefits independently performed by the VA under its own statutory and regulatory requirements, separate from this plan.

provide notice via public media and outreach to the VA and to veteran's service organizations.

2. The Army will use a previously established DoD toll-free number for veterans who believe they may qualify for research related medical care to obtain additional information about potential eligibility for medical care and the process for applying for such care. The Army will make reasonable efforts to assist veterans in determining whether they participated in the relevant research programs by providing internet and toll-free contact information to obtain records of participation in the relevant research programs, to obtain medical records from the VA concerning a diagnosis (the veteran does not have to use a diagnosis from the VA), and to obtain a VA determination concerning service connected disability. The Army will also provide application information to veterans eligible for enrollment in the VA's comprehensive healthcare system. Once a veteran obtains records substantiating research participation, a diagnosis, and any pending or complete VA service connection determination, the veteran may apply (electronically or through the mail) for medical treatment in a military treatment facility.

3. Application: To apply for medical care, an applicant will submit an application to the Army. The application for medical care will consist of a form to be completed by the applicant and treating physician, and documentation to support the applicant's claim, including: any civilian or Army medical records showing a diagnosis the applicant believes is proximately caused by exposure during research, Army personnel records relating to research participation,² any VA service connection decisions³, and a short statement about why the

² To the extent that former research participants do not have records to show participation, the Army will inform applicants how to apply to the Army Board for the Correction of Military Records (ABCMR). Applicants must then provide the ABCMR with sufficient information to prove research participation in order to have their records corrected to validate their participation

physician believes the injury or illness is caused by the exposure during research. Complete applications will include (1) records of participation in relevant research; (2) a medical diagnosis believed caused by research participation; and (3) any VA service connection decision. In the event a class member is unable to pay for a medical examination for purposes of obtaining a diagnosis to support an application, the Army will arrange for the class member to be examined at no cost at the nearest DoD MTF or VA facility. Upon receipt of a complete application, the Army will make the determination required in para. 4 below.

4. Review of Application: Complete applications will be reviewed by a Benefits Application Panel. This Panel will be established by the Army Medical Command (MEDCOM). The panel will consist of at least three medical professionals from either the US Army Medical Research Institute of Chemical Defense (for chemical exposure cases) or the US Army Medical Research Institute of Infectious Disease (for biological exposure cases) and may include additional specialty members based on the type of illness or injury being considered. The panel will conduct a record review of the application, extrinsic medical evidence, VA records, and Army records and will determine, by a preponderance of the evidence, whether the applicant's diagnosed condition was a proximate result of his or her participation in the specific research program.

The Panel's decision will be based on a majority vote. A "proximate result" is defined as a sufficiently strong causal link such that a reasonable person could find that the injury or disease was caused by the research. In evaluating medical care claims under this standard, the

in the medical research programs. Upon record correction to indicate research participation, a Veteran can apply for SECDES medical care.

³ The Army will make independent proximate result determinations and will be informed by but not bound to any VA service connection decision.

Panel will reasonably weigh the following evidence:

- (a) the nature of the applicant's participation in the research, to include the type of substance, means of administration, dosage, and frequency of exposure;
- (b) the applicant's health condition during and after his or her research participation, including timing and severity of the onset of symptoms of medical illness, disease, or injury, as supported by the applicant's medical evidence and available records from the DoD and VA;
- (c) the nature of the applicant's current medical condition, as supported by the applicant's submitted medical evidence and available records from the DoD and VA;
- (d) available scientific evidence concerning the long term health effects of the chemical or biological substance to which the applicant was exposed; and
- (e) all information provided by the applicant, to include documents obtained from Defendants during discovery pertaining to the Chem-Bio Database, the Mustard Gas Database, the Chemical, Biological, Radiological & Nuclear Defense Information Analysis Center ("CBRNIAC") Database and other related databases created in conjunction with Battelle Memorial Institute, and the Defense Technical Information Center ("DTIC") repository.

In making its determination the Panel, in its discretion, may equitably weigh the following:

- (a) the medical research occurred over 40 years ago;
- (b) records concerning the research may be limited or incomplete;
- (c) scientific studies on the long-term health effects of certain chemical or biological

substances may be limited or incomplete; and

(d) evidence related to the precise proximate cause of a particular diagnosed medical condition may not be definitive.

5. If the Panel determines there is a sufficiently strong causal link such that a reasonable person could find the applicant's condition was caused by participation in the specific research program claimed, the Panel will submit a recommendation to provide the applicant with necessary medical care for the research related medical condition to the Secretary of the Army or his designee.

6. The Secretary of the Army or his designee will review the Panel's recommendation in accordance with the criteria specified in 32 C.F.R. 108 and DoDI 6025.23 and the Court's orders. If medical care is granted to the applicant, the applicant will be provided with information for the nearest DoD MTF with the capability to treat the approved condition and given a limited access ID card, as necessary, entitling him to receive treatment at the MTF for the specific medical condition, injury, or disease determined to be the proximate result of the research. If the nearest MTF is more than fifty (50) miles from the applicant's home, or in situations where necessary treatment is not available through a MTF, the Army will assist the applicant in requesting health care from the VA. If the necessary treatment is also not available from the VA, the Army will arrange for treatment by and payment of a private medical provider.

7. Final Agency Action: When an application to the Army for medical care is denied, the Army shall inform class counsel. Any disputes regarding the denial of medical care may be presented to the Court as a motion to enforce the injunction.