

How to Access VA Health Care If You Have a Less-than-Honorable Discharge

A Guide for Veterans and their Dependents

Written by Veterans Legal Services and
the Veterans Legal Clinic, Legal Services Center of
Harvard Law School
(Fall 2021)



Table of Contents

1. Overview.....	3
2. How To Apply.....	4
3. Steps.....	6
a. Before Visiting VA.....	6
b. During Your Visit To VA.....	6
c. If You Are Turned Away.....	8
4. Frequently Asked Questions.....	11

Disclaimer:

This guide is neither a solicitation nor an offer to represent you concerning any legal problem. This guide does not constitute legal advice and provides general information only. The information conveyed in this guide is not intended to and does not create an attorney-client relationship with you and the Veterans Legal Services (VLS) or Legal Services Center (LSC) or any attorney at VLS or LSC. Please be aware that unsolicited letters, facsimiles or emails do not create an attorney-client relationship. We will not have an attorney-client relationship with you until and unless you and VLS or LSC enter into a formal agreement of engagement.

Why do I need this guide?

Access to health care is critically important for the mental and physical wellbeing of veterans. Many people who served in the military are eligible for care from the Department of Veterans Affairs (VA). There are multiple ways to apply for VA healthcare and many ways that anyone who served may be eligible, even if they received an other than honorable, bad conduct, or other “less-than-honorable discharge.”

All veterans, regardless of discharge status, should know that they have the right to apply for VA healthcare, to receive a written decision, and to appeal any denial. This guide discusses how to apply for VA healthcare, how to maximize the chances of being approved, and what options are available if you run into difficulty.

Are all former service members eligible for VA healthcare?

No. There are many factors that affect who can get VA healthcare and other VA benefits. Some of these factors include length of service, when you served, the type of discharge you received, whether you were injured in service, and the type of care you need. Because there a lot of factors that affect eligibility for VA healthcare and also a lot of exceptions to the eligibility rules, everyone has the legal right to apply. They also have the right to receive a written decision about their eligibility and to appeal any decision with which they disagree.¹

How To Apply

What is Right for You?

The first step is to decide which way of applying is right for you. VA offers four options:

➤ **Apply by Phone** 📞

- Call the VA toll-free hotline at (877) 222-8387, Monday through Friday, 0800 – 2000 eastern time.

➤ **Apply by Mail** ✉

- Fill out an Application for Health Benefits on VA Form 10-10EZ, which can be downloaded at <https://www.va.gov/vaforms/medical/pdf/10-10EZ-fillable.pdf>.
- Mail the completed form to:

Health Eligibility Center
2957 Clairmont Rd., Suite 200
Atlanta, GA 30329

➤ **Apply Online** 🖥

- Submit your application at <https://www.va.gov/health-care/apply/application/introduction>.
- VA says to expect that the online application takes approximately thirty minutes to fill out and that you will receive a decision in approximately one week. We have sometimes seen longer wait times for a decision.
- **Before starting an online application, it is helpful to have:**
 - Your Social Security number (required).
 - A copy of your discharge paperwork (DD 214).

- Basic personal financial information, including your income and the income of your spouse if you are married.
- Your most recent federal tax return.
- Your health insurance card if you have other health insurance, such as through a job, school, or spouse.

➤ **Apply in Person** 

- Visit a VA hospital or clinic.
- Go to front desk or information desk and state that you want to apply for VA healthcare.
- Although it is not required, it can be helpful to bring a completed and signed copy of the VA Form 10-10EZ at <https://www.va.gov/vaforms/medical/pdf/10-10EZ-fillable.pdf>.
- Not sure where to go? Find a VA healthcare facility at <https://www.va.gov/find-locations/>.

This guide was created primarily to help you apply in person for VA healthcare.

Every VA facility is different and so is every person you will talk to. Some will know more about veterans with less-than-honorable discharges than others. It is important you know your rights in the application process. These tips and Frequently Asked Questions may also be helpful for people applying online or in other ways. If you do choose to apply in person, we want you to know what to expect and what challenges may come up.

(Note: if you chose to apply by phone, online, or by mail, you should have received a written decision on your application. In that case, you may want to skip to the FAQs on page 10).

Step-By-Step

1. Be Prepared: What to Know Before Visiting Your Local VA Healthcare Facility

➤ **Collect Relevant Documents**

- It is not necessary to gather documents before going to a VA healthcare facility, but it may make the process easier.
- If you have a copy of your discharge paperwork (DD 214), bring it on the day of your visit. If you do not have a copy, VA healthcare facility staff should be able to look up your DD 214 for you.

➤ **Know Your Rights**

- **Federal law requires that everyone be given the opportunity to apply** for VA health care and benefits.
- **Federal law requires that VA provide everyone the forms and instructions** necessary to submit an application.²
- **Federal law requires VA to assist everyone with their application** for VA health care and VA benefits.³



2. Be Proactive: Know What to do During Your Visit to a VA Healthcare Facility

➤ **Consider Bringing a Friend or Family Member with You to VA When You Apply for Healthcare**

- Everyone can benefit from a friend or family member's support. It can also help you keep track of the details of your visit.

➤ **Ask to Apply & Know Your Rights**

- When you arrive, tell VA staff that you want to apply for VA healthcare
- If needed, tell VA staff that you have **(1) the right to apply** and **(2) the right to assistance** in applying.

➤ **Request a Review of Your Case**

- Ask VA staff to complete VA Form 20-0986 for you (which was formerly known as VA Form 10-7131). This is the form that VA uses to start the process of deciding whether someone with a less-than-honorable discharge is eligible for VA healthcare.
- Tell the VA staff member that **VA Form 20-0986 must be sent to the VA for review as quickly as possible.**
- Ask for a copy of the completed VA Form 20-0986 and proof that the Form was sent to the Veterans Benefits Administration Regional Office that covers your area.

➤ **Document Your Visit to VA**

- In case you later need to file an appeal, during or shortly after your visit you should write down:
 - The date of your visit.
 - The name and location of the VA healthcare facility.
 - The name of each VA staff person you spoke to.
 - Anything that VA staff tells you about your eligibility or the application process.



3. Be Persistent: What to do if You are Denied the Right to Apply for Health Care

➤ **Don't Panic**

- If a VA staff member tells you that you are ineligible for VA healthcare before you have applied and gotten a written decision, know that you are not alone. Unfortunately, even though this is not supposed to happen, it sometimes does. Some VA staff are unaware of the law or are improperly trained.⁴
- Just because someone is turned away before getting a chance to apply for VA healthcare does not make it right or mean that you are ineligible. You have the right to apply for VA healthcare, and you may be eligible for VA healthcare after a review. That is why it is so important to get a written decision that can be read and appealed.

➤ **Ask for On-Site Help**

- **Supervisors** may be more familiar with veterans' rights and proper procedures. They also may be able to provide you with the required forms and assistance.
- **Patient Advocates** are on-site at VA healthcare facilities as part of the Patient Advocacy Program and should be able to help you too.⁵
 - If, for whatever reason, the on-site Patient Advocate is not available, ***make sure to get their contact information*** and follow up with them after your visit.
- **VA Facility Directors** may also be able to help
 - You can ***submit a complaint in writing*** to the Director and should hear back by phone or letter.

➤ **Visit Another Facility**

- You are not required to apply for care at the VA healthcare facility closest to you. Depending on where you live, there may be other VA healthcare providers in your area where you could try to apply again and perhaps be successful. You can find VA healthcare facilities at <https://www.va.gov/find-locations/>.

➤ **Try Applying by Mail, Phone, or Online**

- If you are unable to apply in person at a VA healthcare facility, **you can apply by mail, by phone, or online.**

➤ **Report the Incident**

- Your right to apply and receive a written decision on your application is guaranteed by federal law.⁶ **VA needs to know if its staff members are not respecting rights.**
- You can report violations of your right to apply for VA healthcare to the VA Office of the Inspector General (**OIG**) at <https://www.va.gov/oig/hotline/complainant-release-preference.asp>
 - You may file your complaint confidentially or anonymously if you want your name kept out of the process or kept from VA entirely.⁷

➤ **Seek Assistance Outside VA**

- There are many veterans advocates across the country who may be able to help you obtain VA healthcare.
- Free legal help may be available from law schools, nonprofits, legal bar associations, or others in your area. These legal services providers may be able to:

- Go with you to the VA healthcare facility to ensure your right apply is recognized and upheld.
 - Reach out to contacts at VA healthcare facility to ensure your application is properly processed.
 - Represent you in a legal case to make VA accept your application and issue a proper decision on your application for healthcare.
 - Find a provider at <https://statesidelegal.org/>.
- Your local Veterans Service Officer (VSO) may also be able to help you apply for VA healthcare and benefits.
 - Find your local VSO at <https://nvf.org/veteran-service-officers/>.

➤ **Spread the Word!**

- Unfortunately, **many people are unaware of their rights** when it comes to seeking VA healthcare or benefits.
- Make sure to let other veterans in your community know that they are entitled to apply and receive a decision about their VA benefit eligibility. Please share this guide with them.

Frequently Asked Questions (FAQs)

Q: Why can it be complicated to apply for VA healthcare?

A: It is not supposed to be complicated. Unfortunately, sometimes VA staff do not know or do not follow the law and will not let someone with a less-than-honorable discharge apply for healthcare. That is wrong. That is why this guide explains what you can do to make sure you are able to exercise your right to apply.

Q: Is it true my discharge status has to be “Honorable” or “General (Under Honorable Conditions)” to get VA healthcare?

A: No. Someone with a less-than-honorable discharge, such as an other than honorable or bad conduct discharge, may still be eligible for VA healthcare. There are many paths to eligibility, such as:

- **Multiple Enlistments:** If you served multiple terms of enlistment and one of those enlistments ended in an Honorable or General discharge, you may be eligible for VA healthcare and other benefits based on that enlistment.
- **Character of Discharge Determination:** VA can review all the facts and circumstances of your service as part of a “Character of Discharge Determination.” VA can then decide that you are fully eligible for VA healthcare.
- **Service-Connected Disabilities:** If you received an other than honorable discharge, you may be eligible for VA healthcare to treat any service-connected physical or mental health disabilities.
- **Mental Healthcare:** If you have an other than honorable discharge and either (a) engaged in or supported combat operations or (b) experienced Military Sexual Trauma (MST) then you should be eligible for mental health treatment and evaluation at VA.
- **Emergency Care:** If you need emergency mental health treatment, VA can provide treatment for up to 90 days.

- **Vet Centers:** You may be able to get mental health, readjustment, or bereavement counseling from a VA Vet Center. You can find the nearest Vet Center online at https://www.va.gov/find-locations/?facilityType=vet_center.
- *Note:* These examples are just brief summaries and each veteran's circumstances may affect their eligibility. That is why it is so important to go apply and find out how the law applies to your specific circumstances.

Q: What is a Character of Discharge Determination?

A: A Character of Discharge Determination is when VA looks at what happened during a veteran's service and the law that applies and then decides whether you are eligible for VA healthcare (and other VA benefits). VA will review your military personnel records and other evidence. Of course, sometimes military service records don't tell the whole story. You have the right to submit evidence as part of the review process and explain why you think VA should find you eligible. You have the right to speak directly to the staff member at VA who will decide your eligibility by asking for a hearing. If you disagree with what VA decides, you can appeal that decision, which could lead to VA approving your eligibility.

It can be helpful to have an advocate as part of the eligibility review process. You can refer to the advocacy resources listed above to see if you can get help with your case.

You can find information about Character of Discharge Determinations online at: <https://www.swords-to-plowshares.org/guides/va-character-of-service-determination-an-alternative-to-discharge-review>.

Q: When is a Character of Discharge Determination supposed to happen?

A: VA will only do a Character of Discharge Determination after you apply for VA healthcare or another VA benefit, such as service-connected disability compensation, VA pension, or a VA home loan. That is why it is important for VA staff to allow someone to apply when they seek healthcare or other benefits from VA. That is also why it is important to make sure that when you apply for VA healthcare, the VA staff member completes and sends the VA 20-0986 Form that starts the eligibility review process.

Q: I was told I had to apply to the Department of Defense and get a discharge upgrade in order to be eligible for VA healthcare. Is that true?

A: No. All people who served in the military—no matter their type of discharge—are entitled to apply for VA healthcare. And, as explained above, many people with an other than honorable, bad conduct, or other less-than-honorable discharge may be eligible for VA healthcare, even without a discharge upgrade.

Q: Even though I don't first have to get a discharge upgrade from the Department of Defense to apply for VA healthcare, can I still apply for a discharge upgrade if I want?

A: Yes. It is up to you if you also want to seek a discharge upgrade from the Department of Defense. You can find information about applying for a discharge upgrade online at <https://www.swords-to-plowshares.org/guides/upgrading-your-discharge>.

Q: I received a favorable Character of Discharge Determination or Discharge Upgrade but VA still won't give me healthcare. What should I do?

A: Start by presenting a copy of your VA Character of Discharge Determination or your new DD 214 to the staff at your local VA

healthcare facility. If that does not work, we urge you to contact one of the advocacy resources listed above. These organizations can help not just with your right to apply for VA healthcare, but also your right to receive VA healthcare after you are found eligible.

Q: I am receiving emergency mental health treatment from VA as part of the 90-day eligibility program. But more than 90 days have passed and VA still hasn't completed its Character of Discharge Determination. Can I still get VA mental health treatment while I wait for a decision?

A: Yes. You can still get mental health treatment until VA decides your Character of Discharge Determination. In emergency situations, VA is supposed to complete that process within 90 days, but that may not happen. Sometimes it can even take more than a year. You are entitled to receive treatment until VA completes the Character of Discharge Determination. If VA decides your Character of Discharge Determination in your favor, then you are also eligible for VA healthcare going forward.

In emergency mental health situations, if VA finds after a Character of Discharge Determination that you are not eligible, VA should try to help you find non-VA healthcare. For example, you may be able to get Medicaid coverage. VA could also send you a bill for the VA healthcare you had been receiving. You can apply for a waiver of those costs or file an appeal. Remember, you can seek legal help if you have any of these issues.

¹ 38 U.S.C. § 501; 38 C.F.R. § 3.103

² 38 U.S.C. § 5102(a); 38 C.F.R. § 3.150.

³ 38 U.S.C. § 5103A; 38 C.F.R. § 3.159.

⁴ VETERANS LEGAL CLINIC AT THE LEGAL SERVICES CENTER OF HARVARD LAW SCHOOL, ET AL., TURNED AWAY: HOW VA UNLAWFULLY DENIES HEALTHCARE TO VETERANS WITH BAD PAPER DISCHARGES 15 (2020).

⁵ 38 U.S.C. § 7309A.

⁶ 38 U.S.C. § 501; 38 C.F.R. § 3.103.

⁷ DEPARTMENT OF VETERANS AFFAIRS, OFFICE OF INSPECTOR GENERAL, <https://www.va.gov/oig/hotline/complainant-release-preference.asp>