

BY TRAVIS JAMES WEST

Helping Military Veterans Receive Benefits



Navigating the complex landscape of Veterans Affairs benefits claims presents challenges for both veterans and the legal professionals who support them. Few Wisconsin attorneys focus solely on VA benefits claims. However, VA issues often arise in other legal contexts, such as estate planning, divorce proceedings, or Social Security Disability Insurance claims. Learn who may assist veterans with VA benefits claims and how to do it.



Federal regulations have long governed who may assist veterans with Veterans Affairs (VA) benefits claims, but the recent rise of unaccredited claims consultants has introduced new legal and ethical considerations. Attorneys who encounter veterans' benefits issues in their practice should understand the evolving regulatory framework, recent legislative efforts, and potential impacts on their clients.

Current Federal Regulations Concerning Representation of Veterans

Since the post-Civil War era, federal law has regulated who may assist veterans with claims for benefits pending before VA. Congress established these regulations to ensure veterans had access to qualified representatives while protecting them from exploitation.¹ By law, accreditation is required for anyone assisting "in the preparation, presentation, and prosecution of claims for VA benefits."² These regulations define three categories of accredited individuals: Veterans Service Organization (VSO) representatives, attorneys, and claims agents.³

VSO representatives operate through state and local governments or established organizations like the VFW, American Legion, and others. Their accreditation requires organizational endorsement and a VA character and fitness assessment. Attorneys must be active members of a state bar, while claims agents must pass a VA-administered examination. Both attorneys and claims agents are subject to ongoing educational requirements. All accredited representatives must adhere to strict standards of conduct outlined in 38 C.F.R. § 14.632, which emphasize faithful execution of duties, truthfulness, and competent representation.

VA's Office of General Counsel (OGC) manages accreditation, enforces conduct standards, investigates violations, and may suspend or revoke accreditation when necessary. This oversight, along with state bar regulation of attorneys, aims to ensure compliance with these requirements.

Veterans Affairs: How Attorneys Get Paid for Work

By law, VSOs provide their services to veterans free of charge. Attorneys and claims agents may charge fees, but only under specific conditions. These include the following: 1) VA must have issued a decision on the initial claim, and 2) the attorney or claims agent must submit both a signed fee agreement and VA Form 21-22a to the VA.

Under 38 U.S.C. § 5904, attorneys may only charge fees after VA has issued an initial claim decision. This prevents attorneys from charging for help with filing an original claim but allows them to charge fees for appealing or challenging unfavorable decisions. Any fee charged must be reasonable and is subject to VA review.⁴ Fees under 20% of the veteran's backpay are presumed reasonable, while fees exceeding 33⅓% are presumed unreasonable. Both presumptions are rebuttable, and unlike claims before the Social Security Administration, there is no cap on total recoverable fees. If fees are limited to 20% or less, VA may pay the representative directly. Fees exceeding this limit must be recovered from the veteran. Fee disputes are initially resolved by the OGC, and either party may appeal to the Board of Veterans Appeals (BVA).

A Changing Landscape: Unaccredited Representation

Since the mid-2010s, many companies have begun assisting veterans with claims without obtaining VA accreditation. These companies frequently describe themselves as claims consultants, benefits advisors, claims coaches, disability advocates, or other titles. Accredited representatives often refer to these companies pejoratively as "claims sharks."

The rise of unaccredited consultants likely resulted from increased demand for alternative assistance. Following the wars in Iraq and Afghanistan, VA faced a substantial claims backlog, causing veterans to seek faster support. Additionally, the VA Appeals Modernization Act of 2017 introduced new appeal options that were designed to streamline the process but



inadvertently added complexity. As the VA shifted to digital services, unaccredited consultants utilized online platforms and advertising to promote their services. The COVID-19 pandemic further accelerated this trend as in-person services became less accessible.

Unaccredited consultants operate without the restrictions placed on VSOs, attorneys, and claims agents, allowing

Reaction to the Development of Unaccredited Claims Consultants

VA's Office of General Counsel has issued cease-and-desist letters to several unaccredited claims consultants. However, the OGC lacks meaningful enforcement authority. As one VA official testified before Congress, "[b]ecause there are no criminal penalties under federal law

To address this issue, Congress began considering the Governing Unaccredited Representatives Defrauding (GUARD) VA Benefits Act in 2022. The bill aims to introduce criminal penalties for individuals assisting with VA claims without proper accreditation. In 2023, Congress began reviewing the competing Preserving Lawful Utilization of Services (PLUS) for Veterans Act, which seeks to allow certain non-accredited consultants to continue assisting veterans while implementing safeguards to prevent fraudulent practices. Supporters argue the PLUS Act balances protecting veterans from exploitation while ensuring access to qualified non-accredited advisors. Critics warn that legitimizing unaccredited consultants may increase exploitation risks.

Since 2022, neither the GUARD Act nor the PLUS Act has secured enough support to pass. Consequently, some states have passed their own versions. In 2023, New Jersey, Maine, and New York enacted laws prohibiting unaccredited individuals from charging veterans for claims assistance and imposing criminal penalties for violations. Conversely, Louisiana adopted a version of the PLUS Act in 2023, allowing private, unaccredited companies to charge up to \$12,500 for assisting with claims.

Understanding the changing landscape of VA claims representation can help attorneys provide accurate guidance to their clients and ensure veterans receive the benefits they deserve.

them more flexibility in structuring fee agreements. Some charge fees based on the value of awarded benefits, while others use flat-fee or subscription models. Notably, unaccredited consultants often charge for filing initial claims, which accredited representatives are prohibited from doing.

specific to this practice, VA's recourse is to report the matter to federal, state, or local agencies for consideration under their rules or laws.⁷⁵ These referrals have resulted in limited enforcement actions, and no major judicial proceedings have significantly curtailed these companies' activities.

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Why This Is Important for Wisconsin Attorneys

Few Wisconsin attorneys focus solely on VA benefits claims. However, VA issues often arise in other legal contexts, such as estate planning, divorce proceedings, or Social Security Disability Insurance (SSDI) claims. Attorneys in these fields may encounter veterans seeking assistance with VA-related concerns.

Attorneys who find themselves in this position should understand the regulatory landscape. VA will only recognize an attorney's direct involvement if the attorney is accredited, submits a fee agreement, and files a VA Form 21-22a. Wisconsin currently has no state law prohibiting attorneys from advising clients on VA claims or appeals. Moreover, Wisconsin has not yet introduced state-level versions of the GUARD Act or PLUS Act. However, advocacy groups are actively working to promote both bills at the state level across the country. Congress has not signaled federal preemption on this issue, and no court has ruled that federal law overrides state efforts.

Attorneys should also be aware that VA's National Work Queue (NWQ), implemented in 2016, distributes claims to any of the 56 regional offices nationwide. For example, a Wisconsin veteran's claim may be assigned to the Newark Regional Office in New Jersey or the New Orleans Regional Office in Louisiana, raising questions about compliance with differing state laws. Courts have not yet resolved whether attorneys must adhere to differing state regulations based on the assigned VA office location.

Coming in May 2025



A Guide to Veterans' Benefits

Veterans have served our country; now it's our turn to serve them. Navigating federal and Wisconsin veterans' benefits can be complex, and many eligible individuals are missing out on crucial support.

A Guide to Veterans' Benefits is a comprehensive tool that equips attorneys with the knowledge to help veterans and their families access the benefits they need and deserve, from health care and disability compensation to burial benefits and appeals.

With potential federal policy changes ahead, staying informed is more important than ever. Whether you practice elder law, disability law, or general client services, this book is essential to help you confidently guide your clients through the system.

The book will be available this May during Military Appreciation Month. Be sure to check out <https://marketplace.wisbar.org/Books/PINNACLE-Print-Books> for updates.

More Resources on Veterans Benefits

Take your expertise further and attend State Bar of Wisconsin PINNACLE's **Understanding and Claiming Veterans Benefits 2025** seminar on April 17, 2025. Here you'll learn practical pointers and insights from the VA claim system to DOD Discharge from two of the book's authors, Shana M. Dunn and Travis James West.

[https://marketplace.wisbar.org/store/products/cle-seminars/ca3776m-\(madison\)understanding-claiming-veteran%27s-benefits-2025/c-25/c-78/p-39202#product-detail-description](https://marketplace.wisbar.org/store/products/cle-seminars/ca3776m-(madison)understanding-claiming-veteran%27s-benefits-2025/c-25/c-78/p-39202#product-detail-description)

Or download **The XYZ's of Advanced Long Term Planning 2024**, an on-demand CLE seminar, in which Peter Harbach and Sarah Kons share insights on the VA's improved Veterans Pension Program along with care and asset planning options.

<https://marketplace.wisbar.org/store/products/cle-seminars/ca3625d-xyz%27s-of-advanced-long-term-planning-2024-ondemand/c-25/c-78/p-35361#product-detail-description> **WL**

Conclusion

As the debate over unaccredited claims consultants continues, Wisconsin attorneys should remain informed about both federal regulations and emerging state-level policies. Understanding the changing landscape of VA claims

representation can help attorneys provide accurate guidance to their clients and ensure veterans receive the benefits they deserve. **WL**

ENDNOTES

¹U.S. Dep't of Just., Off. of Legal Counsel, *The Attorney General's Role as Chief Litigator for the United States* 3 (July 27, 2007), <https://www.justice.gov/olc/file/626846/dl?inline=>. See also *Walters v. National Ass'n of Radiation Survivors*, 473 U.S. 305, 360 (1985) (stating that regulations were "designed to protect the veteran from extortion or improvident bargains with unscrupulous lawyers").

²38 C.F.R. § 14.629(b)(1).

³38 C.F.R. § 14.629.

⁴38 C.F.R. § 14.636(e).

⁵*Veterans Consumer Protection: Preventing Financial Exploitation of Veterans and their Benefits: Hearing Before the S. Comm. on Veterans' Affairs*, 118th Cong. (2023), <https://www.govinfo.gov/con- tent/pkg/CHRG-118shrg53980/html/CHRG-118shrg53980.htm>. **WL**