

are amending § 3.317 to reflect that change.

Section 202(a) also expanded the definition of “qualifying chronic disability” to include a “medically unexplained chronic multisymptom illness (such as chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome) that is defined by a cluster of signs or symptoms.” We believe this provision may be difficult for VA adjudicators to understand and apply consistently due to the highly technical medical aspects of the task of determining whether an illness meets the criteria of “medically unexplained chronic multisymptom illness \* \* \* that is defined by a cluster of signs or symptoms.” Therefore this rulemaking clarifies this category of illnesses by defining the term “medically unexplained chronic multisymptom illness” in new § 3.317(a)(2)(ii) to mean “a diagnosed illness without conclusive pathophysiology or etiology, that is characterized by overlapping symptoms and signs and has features such as fatigue, pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities.” We also state: “Chronic multisymptom illnesses of partially understood etiology and pathophysiology will not be considered medically unexplained.”

This definition is based on the Joint Explanatory Statement for H.R. 1291, the Veterans Education and Benefits Expansion Act of 2001, December 13, 2001, 147 CR 13235 at 13238, which said “it is the intent of the Committees to ensure eligibility for chronically disabled Gulf War veterans not withstanding [sic] a diagnostic label by a clinician in the absence of conclusive pathophysiology or etiology.” The Joint Explanatory Statement also stated, “The compromise agreement’s definition [of medically unexplained chronic multisymptom illness \* \* \* that is defined by a cluster of signs or symptoms] encompasses a variety of unexplained clinical conditions, characterized by overlapping symptoms and signs, that share features such as fatigue, pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities.” *Id.* The Joint Explanatory Statement also said, “The Committees do not intend [sic] this definition to assert that the cited syndromes can be clinically or scientifically linked to Gulf War service based on current evidence, nor do they intend to include chronic multisymptom illnesses of partially understood etiology and pathophysiology such as diabetes or

multiple sclerosis.” *Id.* We are incorporating this guidance into our regulatory criteria for what constitutes such an illness.

The Joint Explanatory Statement also said, “By listing the first three diagnoses as examples, it is the Committees’ intend [sic] to give guidance to the Secretary rather than limit eligibility for compensation based upon other similarly described conditions that may be defined or redefined in the future.” *Id.* We believe that Congress intended that the Secretary have the authority to decide which illnesses satisfy the criteria and to add to this list as he or she becomes aware of them (through advances in medical or other scientific knowledge). As yet, VA has not identified any illness other than the three identified in section 202(a) as a “medically unexplained chronic multisymptom illness,” and we therefore specify in new § 3.317(a)(2)(i)(B)(1) through (3) only chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome as currently meeting this definition. We also provide in new § 3.317(a)(2)(i)(B)(4) that the list may be expanded in the future when the Secretary determines that other illnesses meet the criteria for a “medically unexplained chronic multisymptom illness.”

In addition, section 202(b) changed the phrase “Neurological signs or symptoms” to “Neurological signs and symptoms,” and we are amending 38 CFR 3.317 accordingly.

Section 204 of the Act amended 38 U.S.C. 5503 to eliminate the withholding of benefits for incompetent, institutionalized veterans without dependents. This document therefore removes the VA regulations on this type of withholding (38 CFR 3.557, 3.559, 13.74 through 13.77, and 13.108), and amends § 3.558, to reflect this change. This document amends § 3.852 to remove the references to institutional awards made under 38 U.S.C. 5503(b). (This document also clarifies that the authority for VA to pay benefits to an institution housing an incompetent veteran is 38 U.S.C. 5502.)

In addition, this document generally removes the references to §§ 3.557, 3.559, and 13.108 that are found in title 38. Specifically, this document removes the references to 38 CFR 3.557 contained in 38 CFR 3.353, 3.400, 3.452, 3.454, 3.501, 3.551, 3.552, 3.801, and 3.853. (We are also changing the heading of § 3.452 to more clearly explain the purpose of that regulation.)

We have retained, however, the references to § 3.557 in §§ 3.558, 3.1003, and 3.1007. Although Public Law 107–103 repealed former 38 U.S.C. 5503(b),

the new statute does not require distribution of funds that were properly withheld by VA while former 38 U.S.C. 5503(b) remained in effect, until such time as the veteran regains competency. Also, VA is not obligated under Public Law 107–103 to distribute funds properly withheld under former section 5503(b) to a veteran’s survivors in the event that the veteran dies without regaining competency.

This document removes the reference to 38 CFR 3.559 contained in 38 CFR 3.551. This document removes the references to 38 CFR 13.108 contained in 38 CFR 13.70 and 13.71.

We are removing 38 CFR 13.109 because the provisions of that section only pertain to former section 5503(b) and/or former 38 U.S.C. 5505. Section 5505 expired September 30, 1992 (38 U.S.C. 5505(c)), and was later repealed by the Veterans’ Benefits Improvements Act of 1994, Public Law 103–446, section 1201(g)(4)(A), 108 Stat. 4645, 4687.

Section 206 of the Act amended 38 U.S.C. 1502(a) to authorize VA to consider a veteran to be permanently and totally disabled for the purposes of non-service-connected disability pension if the veteran is: a patient in a nursing home for long-term care due to disability, or determined to be disabled for purposes of Social Security Administration benefits. This document amends 38 CFR 3.3 to reflect these changes, as well as to reflect expressly the other bases already contained in section 1502(a) for considering persons to be totally and permanently disabled.

Section 207 of the Act added a new 38 U.S.C. 1513, under which a veteran who is age 65 or over and meets the military service and income/net worth requirements for non-service-connected pension is eligible for pension without regard to whether the veteran is permanently and totally disabled. This document amends 38 CFR 3.3 to reflect that change.

Section 504 of the Act amended 38 U.S.C. 5503 to extend the \$90 limitation on pension for certain recipients of Medicaid-covered nursing home care to September 30, 2011. This document amends 38 CFR 3.551 to reflect this change.

Section 505 of the Act added a new 38 U.S.C. 5313B to prohibit the payment of benefits to a veteran while he or she is a fugitive felon or to a veteran’s dependent while the veteran or the dependent is a fugitive felon. This amendment includes definitions of the terms “fugitive felon” and “felony.” The amendment’s prohibition applies to compensation, dependency and indemnity compensation, pension,