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# United States Senate

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February 26, 2021

The Honorable Denis McDonough  
Secretary of Veterans Affairs  
810 Vermont Ave NW  
Washington, DC 20420

Dear Mr. Secretary:


We write today regarding the Department of Veterans Affairs' (VA) role in establishing presumptive service-connection for disabilities associated with Agent Orange exposure after the National Academies of Sciences, Engineering, and Medicine (NASEM) completes its scientific review of the evidence. With respect to Vietnam veterans, we understand the statutory requirement to issue regulations following NASEM's findings under the Agent Orange Act of 1991 expired in 2015. However, the VA Secretary may still make decisions regarding presumptions based on findings from NASEM or other research entities under section 501(a) of title 38, United States Code, which gives the Secretary broad authority to prescribe regulations with respect to "the nature and extent of proof and evidence" establishing a veteran's right to benefits. We are asking you to exercise this authority to make a decision regarding the association between Agent Orange exposure in Vietnam and Hypertension.

Under the Agent Orange Act of 1991, NASEM was mandated to conduct biennial reviews of the evidence linking health conditions to exposure to Agent Orange. That law also required the VA to respond to these reviews within 60 days. While the Agent Orange Act of 1991's requirements have expired, the review conducted by NASEM is still the standard by which conditions have been considered for inclusion in VA's list of conditions presumed to be related to Agent Orange exposure. Historically, conditions that NASEM determined to have at minimum a "limited or suggestive evidence of an association" would be added to VA's list of presumptive conditions through regulatory action.

However, when a NASEM review released on November 15, 2018, showed "sufficient evidence of an association" between Hypertension and Agent Orange exposure – placing Hypertension in a category that exceeds previous reviews of more than a dozen other conditions that are currently on VA's presumptive list – VA did not make a decision on the review's findings. This means that Hypertension is the only condition in the category of "sufficient" that is not currently on VA's list of presumed conditions. We were told by the previous Administration that a decision would be forthcoming following the results of two ongoing studies VA initiated that were supposed to have been finalized last year: the Vietnam Era Health Retrospective Observational Study and the Vietnam Era Mortality Study. We request that you determine whether these studies are necessary to reach a final decision. If you determine NASEM's review is not sufficient to act upon, we ask the additional studies' results be made public and that a decision be made by you without further delay.


More than fifty years have passed since Vietnam veterans served and sacrificed for this nation, many of whom continue to suffer the damaging effects of their exposure to Agent Orange. For too long government responses to certain cohorts of veterans have proved that the system to care for those affected by toxic exposures needs reform. The delay associated with this decision is a case-in-point. Although we are asking you to use your existing authority to expedite a decision regarding Hypertension, veterans deserve an enduring framework, supported by science, that utilizes a fair and transparent process set up to serve them for generations to come. We welcome your collaboration with our Committee to establish that enduring framework. Until then, there is no time for further delay, our veterans deserve transparent communication and decisive action. Thank you for your attention to this issue, and we look forward to your response.

Sincerely,



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Jon Tester  
Chairman  
Senate Committee on Veterans' Affairs



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Jerry Moran  
Ranking Member  
Senate Committee on Veterans' Affairs