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HEARING ON PENDING LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

MAY 17, 2017

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HEARING ON PENDING LEGISLATION

WEDNESDAY, MAY 17, 2017

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:30 p.m. in room 418, Russell Senate Office Building, Hon. Johnny Isakson, Chairman of the Committee, presiding.

Present: Senators Isakson, Boozman, Heller, Cassidy, Sullivan, Tester, Murray, Brown, Blumenthal, and Manchin.

OPENING STATEMENT OF HON. JOHNNY ISAKSON, CHAIRMAN, U.S. SENATOR FROM GEORGIA

Chairman ISAKSON. I call the hearing of the Senate Veterans' Affairs Committee to order. I would like to thank all of you for coming and visiting with us today. I want to particularly thank Cindy Rampley—where is Cindy? That is one Georgian who came to see—and Barbara Kennon. Thank you all so much for being here. When the home folks come you have got to brag about them, so I apologize for that.

Let me thank all of you for being here, for a very important hearing of the Senate Veterans' Affairs Committee. I will begin with my opening remarks, which will be very brief, followed by Senator Tester's. After his, he will have to leave for a few minutes to go to Indian Affairs Committee, at which time we will begin the testimony of our distinguished guests, Chairman Hatch and Senator Rubio. Following those we will have the Veterans Administration testimony, followed by questions and answers by the Committee Members, followed by testimony from our VSOs and other important guests, followed by Q&A for them.

Thank you all for being here for what is the most important hearing that we have had in this Committee all year. I am not going to go over every issue, but I am going to say this: we are about to hear testimony on accountability, meaningful accountability, which addresses the concerns that for 2 years have plagued this Committee and plagued the Veterans Administration. We have all come together—I am very appreciative of the Ranking Member and what he has done to make it possible, plus other Members of the Committee, Republican and Democrat alike. We have worked through some thorny issues. We have navigated some rough seas. But, thanks to Senator Tester and the other Members of the minority, as well as the Members of the majority, we have come forward with the legislation you will hear about today.

In terms of the appeals process, we are on the cusp of dealing with what has been the black eye of the Veterans Administration for decades, and that is long backlogs of appeals that are heard over and over and over again without resolution. One of the things I had hoped to accomplish before I left the Committee as its Chairman would be to have meaningfully dealt with that appeals process. We are close to having done it; I worked closely with Senator Blumenthal in that process and will continue to so this Committee can, in fact, deal with it.

Then, as every Member knows, Choice has been a big issue since Choice became an issue, and it became an issue about 3 years ago when this Committee passed the first Choice bill, dealing with the veterans' backlog, veterans' problems, and the veterans' claims. We now are in the process of trying to perfect Choice—and that is my word. We will be talking about some bills that are being introduced today to be completed before this session is over, where with the Choice Act, we waived the sunset unanimously a couple of weeks ago on the floor of the Senate. The bill and its corrections will be in place. Then, we will have dealt with appeals, we will have dealt with Choice, and we will have dealt with accountability, which will be a major accomplishment for this Committee, or any committee in this year. It has been an honor for me to work with the Ranking Member, whom I will introduce now, by simply saying, here is big Jon.

OPENING STATEMENT OF HON. JON TESTER, RANKING MEMBER, U.S. SENATOR FROM MONTANA

Senator TESTER. Thanks, Senator Isakson. I appreciate your work as Chairman, too. You are a straight-up guy. It is a pleasure to work with you, which is a fact.

There are a number of bills on the agenda today that I am excited about, and bills that I think are going to go do some great things for our veterans across this country. These bills are also representative of the bipartisan work of this Committee and they reflect the fact that we are taking our cues directly from the veterans and the organizations who represent them here today.

With that said, I want to also recognize a couple of key Members of our Committee who are not with us here today, Tom Tillis and Mazie Hirono. Both those folks are tough as nails. They are tremendous advocates for veterans and for their States. They are in our thoughts today and we look forward to welcoming them back very soon.

In terms of accountability legislation, I am glad that the Chairman and I could work together with Senator Rubio to make some changes to the House bill. The end result is a compromise in which none of us got all that we wanted, but which better allows the VA to hold bad actors accountable while ensuring employee protections and rights to appeal are protected.

I appreciate the VA and the VSOs for their constructive input and for their strong bipartisan support of this legislation. I am also pleased that the Deborah Sampson Act, which I introduced with Senator Boozman, is on today's agenda. Allison Jaslow with IAVA, it is good to see you again, and thank you for your tremendous advocacy on this legislation.

It is critical that the Members of this Committee hear from you and other women veterans about how and why we need to move forward on this legislation. Women are courageously signing up to serve our country at a higher rate than ever before and we need to make sure that the VA is fully capable of addressing their needs.

We also need to take steps to increase accountability in VA contracting to establish more medical residencies at the VA, to expand the caregiver program, and to reform an outdated appeals process that has left veterans waiting months, or even years, for their claims to be resolved. Many of the bills that we will discuss today will do that just.

Again, thank you, Senator Isakson, for your leadership, and I look forward to the discussion.

Chairman ISAKSON. Thank you, Senator Tester.

To the other Members of the Committee, we will leave the record open for 10 days to submit opening statements that you might want to submit.

I want to echo and repeat what Senator Tester said, both about Senator Hirono as well as Senator Tillis. I understand Senator Tillis is doing well. He had a collapse this morning in a 5K or a 3K, but he is OK. As for Mazie, we all got the report today. She obviously is going to be confronted with dealing with kidney cancer, but she is doing it. She has done everything she has ever done bravely, so she is going to be here with us; we are going to be pulling with her together to pull her all the way through. So, thanks, Jon, for mentioning that, and thanks to all the Members of the Committee for your support for our fellow Committee Members.

Do you want to say something?

STATEMENT OF HON. PATTY MURRAY, U.S. SENATOR FROM WASHINGTON

Senator MURRAY. Mr. Chairman, if I could just say, I will submit my full comments in an opening statement for the record. I know you want to get to many witnesses. I want to thank you for holding this hearing and especially I wanted to mention the bill on caregivers that I have been working on for a long time.

I know time is important here, but this is a critical issue. We have a responsibility to take care of those caregivers. There are a number of important parts of this bill, which I will speak to later during the questioning.

[The prepared statement of Senator Murray follows:]

PREPARED STATEMENT OF HON. PATTY MURRAY, U.S. SENATOR FROM WASHINGTON

Thank you, Mr. Chairman, for holding this hearing. We have some critically important bills on the agenda today that could really improve care for the men and women in our military—something I believe everyone in this room is interested in doing.

CARING FOR OUR VETERANS SHOULDN'T BE A PARTISAN ISSUE.

I think we all agree that our country has a duty to do whatever we can to improve the lives of those who have sacrificed so much for our country.

I was very pleased to introduce my military caregivers legislation that will help us do just that. This program recognizes the sacrifice of the friends and family who take care of our injured servicemembers by offering assistance to ease their burden. This bill would finally open the caregiver program to veterans of all eras, through

a responsible, phased-in approach that will allow VA to manage the additional workload.

I was very concerned when just this year we heard stories from veterans and their caregivers of the inconsistent application of the current program's eligibility rules. We got reports of veterans and their caregivers abruptly losing access to the program, which is a terrible way to treat our military families. The VA must take responsibility for ensuring that consistent, comprehensive guidelines are applied throughout the country to protect the caregivers who have earned this resource.

I believe VA should address these concerns and strengthen the program, while also finally opening up the program to veterans of all eras who desperately need these services.

I am committed to working with my colleagues to make sure VA has the resources it needs to effectively administer this program, which is why I authored an amendment to the Fiscal Year 2017 VA appropriations bill that invested $10 million to hire more caregiver support coordinators, because it's critical we do this right. This additional staff is essential for strengthening the current program and preparing VA to finally meet the needs of veterans of all eras.

This bill also expands the services available for caregivers, and aligns eligibility for VA and DOD services.

Finally, the bill takes a major step toward improving caregiver support for the whole country by coordinating the many services offered across the government.

We know that treating a veteran through the Caregiver Program is far less expensive than through a private nursing home or through a VA nursing home, but most importantly, it helps veterans stay out of the hospital, and have shorter stays when they do have to go in. It allows veterans to be in their own homes, surrounded by their loved ones. Giving veterans a better quality of life is not just the cost-effective thing to do, it's the right thing to do.

This is just common sense, and it's the right thing to do for our veterans and their caregivers. Our veterans shouldn't have to wait any longer for these important improvements to their care.

Finally, thank you to our witnesses and a special thank you to the VSOs for appearing today and for your support for this bill.

Thank you, Mr. Chairman, and I look forward to working with you to get these bills through markup and then through the Senate floor.

Senator BROWN. Mr. Chairman, real quick.

Chairman ISAKSON. Senator Brown.

STATEMENT OF HON. SHERROD BROWN, U.S. SENATOR FROM OHIO

Senator BROWN. Thank you, Mr. Chairman. I echo Senator Murray's words about the importance of this hearing. Welcome, Senator Hatch, and, Mr. Chairman, thank you for your leadership.

I am working one bill particularly, S. 764, the Veterans Education Priority Enrollment Act, which I announced with Youngstown State President Jim Tressel, and am working with Senator Tillis, who is the other sponsor.

There are a number of pieces of legislation with Senator Murray, Senator Moran, Senator Tester, and with the Chairman that will be a priority. It is important this Committee continues to do its bipartisan work together, as we do in the Finance Committee, Mr. Chairman.

Chairman ISAKSON. Well, I thank two great Members of the Committee, Senator Brown from Ohio and my favorite Northwesterner.

Senator MURRAY. Thank you.

Chairman ISAKSON. We will go that far. Anyway, she is in the north and she is on the west.

Senator BROWN. I thought Tester was your favorite Northwesterner.

Chairman ISAKSON. Well, he is not——

Senator BROWN. Is that not west enough? He is not west enough.

Chairman ISAKSON. When he is here, he is my favorite.

Senator BROWN. To me, Mr. Chairman, Iowa is west, so I do not know.

Chairman ISAKSON. Well, you are one of my favorites and you and I have got a mutual friend that tells on both of us.

I just want to add one particular thing, Senator Murray. I would not be here today were it not for a caregiver over the last 12 weeks. So, I do not even see anything more appropriate for us to be dealing with today than the people who make it possible for our soldiers to transition from care to independence. It is the greatest contribution people make in this country and I think it is very appropriate that you brought it up. I thank you for crafting that Bill.

Senator Brown, we will hear your testimony, I mean hear your questions later on.

Senator Rubio has arrived so I am going to introduce both of our special guests from our membership, who will testify, and then we will hear from our two panels.

I had the good pleasure, when I got elected to the U.S. Senate 13 years ago, of meeting Orrin Hatch and getting to know him. He is everything he looks like. He is distinguished, intelligent, kind, generous, and the most knowledgeable person on the financial affairs of the United States of America of any member of the U.S. Senate. It is an honor for us to have him here today to testify. We welcome you, Senator Hatch, for being here today.

I cannot say all those things about Senator Rubio because he is young, he does not have gray hair, has not been here near as long, but he does one hell of a job promoting what he believes in, and he has done a great job on bringing together the accountability bill, which is before us today.

I heard him three times over the weekend, where he did the best job of articulating the hard work that went into both these products. I am so glad that he is here today and a member of the U.S. Senate.

So, I welcome both of you to be recognized for up to 5 minutes. You may submit your remaining remarks for the record, you do not have to submit yourselves to questions, and you are welcome to be excused after your testimony is over.

First of all, Senator Hatch.

STATEMENT OF HON. ORRIN HATCH, U.S. SENATOR FROM UTAH

Senator HATCH. Well, thank you, Mr. Chairman and other Members of the Committee. I appreciate the leadership you provide, and Ranking Member Tester as well.

I welcome the opportunity to join you as a guest of the Committee for this year. Today the Committee will hear testimony on pending legislation, including one of my bills, S. 324, the State Veterans Home Adult Day Health Care Improvement Act of 2017. I appreciate the opportunity to speak in support of this bipartisan legislation and the many veterans whose lives it would improve.

Veterans have served and sacrificed on behalf of our country. It is, therefore, the duty of every Senator here to ensure that our country makes good on the promises we have made to them. Every

person's presence in this room indicates an interest in working for—or working to fulfill our country's commitments to our veterans. How to provide quality long-term care is an important question for everyone, particularly for aging veterans, many of whom need long-term care to live with service-connected disabilities.

Traditionally, long-term care is provided in an institutional setting like a nursing home. Nursing home care for one person can easily cost thousands of dollars a month and that does not include the added cost of specialized health care services which are especially important for some of our most disabled veterans.

Moreover, in many areas, more people are in need of long-term care than there are available beds in nursing homes. This scarcity drives up costs and forces individuals to travel farther away from home and family to access care, in my home State of Utah, and I think other States as well. Our waiting list for State veterans home nursing care is over 600 people long.

Adult day health care is a sensible, cost-saving alternative to traditional long-term care. ADHC is a home- and community-based program that hosts participants in a care setting during the day but allows them to live at home at night, and it provides participants assistance with activities of daily living and coordinates medical, dental, and mental health services. At the end of each day, ADHC participants return home to their family or caregiver.

Most home caregivers for individuals in need of long-term care are spouses and adult children, and this is especially true for veterans. Many caregivers need to work during the day, making care for a disabled family member challenging. ADHC gives caregivers, in many cases veterans' families, the respite and some security in the knowledge that their loved one is safe and in good hands, receiving specialized care.

Medical professionals and adult day care users agree and studies confirm that medical model ADHC provides an equal standard of quality health care services, as nursing home care at less cost to participants. In fact, the ADHC programs this bill opens to veterans, are offered by VA-approved State veterans' nursing homes as an alternative to full-time care. These nursing homes offer ADHC programs because they want to help more of our veterans receive the quality care they need.

My bill helps them to do that. My legislation also enables veterans access to ADHC by setting the per diem rate the Department of Veterans' Affairs pays for these services at 65 percent of the nursing home per diem rate paid for veterans with service-connected disabilities of 70 percent or more. The VA already pays 100 percent of the cost of nursing home care for these veterans. It makes no sense—indeed, it is wrong—to deny veterans the flexibility to maintain their independence and live at home in their communities, especially when we can do so at a lower cost to everyone involved.

My State Veterans Home ADHC Improvement Bill is a cost-neutral, bipartisan bill. It enjoys widespread support from veterans' organizations and is based on the most up-to-date research on the best ways to improve long-term care quality and options.

I want to thank the Committee for considering my bill as part of today's hearing, and I thank the Chairman and Ranking Mem-

ber again for their invitation to join the Committee as a guest. I also wish to thank all those in attendance here today. I trust that my bill will be given open and fair consideration and I hope for its timely passage out of Committee and on to the Senate floor.

I am very grateful to all of you and thank you for inviting me to be able to testify here today.

Chairman ISAKSON. Well, thank you, Senator Hatch. I can assure you it will be open and it will be fair. We are glad to have you on the agenda today and appreciate very much your attendance. Thank you.

Senator HATCH. Thank you. If I can leave I would be happy. [Laughter.]

Chairman ISAKSON. With your seniority, you can do anything you want to do.

Senator HATCH. I like that, Mr. Chairman. Thanks so much.

Chairman ISAKSON. We are delighted to have you, Orrin.

Senator HATCH. Glad to be here.

Chairman ISAKSON. It is now my pleasure to introduce the Senator from Florida, my friend, Marco Rubio.

STATEMENT OF HON. MARCO RUBIO,
U.S. SENATOR FROM FLORIDA

Senator RUBIO. Thank you to the Chairman. Thank you very much for this, to the Ranking Member and to all the Members of the Committee. First, thank you for allowing me to appear today to speak on Senate Bill 10994, the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017.

I want to, at the outset, I know that the majority of people that work at the VA are good, they are hard-working, they are competent, and they serve our Nation's heroes admirably. They act in the best interest of veterans, they are passionate about their work, and many of them are veterans themselves, so nothing in this bill is designed to punish them, stigmatize them, or in any way hurt them. On the contrary, it is designed to reward those who work so hard.

But, it is necessary because the Secretary of the Veterans Administration currently does not have the authority he needs to remove, to demote, or to suspend employees who are unwilling and/or unable to do their jobs, or employees engaged in misconduct or illegal activity.

Americans who do not work for the Federal Government understand that if they violate their employers' policies they will face consequences. They may even lose their jobs. And things should be no different at the Department of Veterans Affairs. Indeed, the Federal employees charged with taking care of military men and women must be held to the highest standard.

The bipartisan legislation that you will consider today has been refined over the course of several years, thanks to you, Mr. Chairman, the Ranking Member, and many others, and it includes real reforms that are aimed at fixing the problems that have plagued the Department for many years. These are formed to ensure the best interest of our veterans come first at the VA.

To craft this legislation, we worked with a number of the veteran service organizations represented here today, including the Para-

lyzed Veterans of America, The American Legion, the Veterans of Foreign Wars, the Concerned Veterans of America, the Reserve Officers Association, Iraq and Afghanistan Veterans of America, American Veterans, the Military Officers Association of America, and several others. The members of these organizations have borne the brunt of the VA's mismanagement and failures. They understand the VA must be properly managed so it can provide timely quality care to our veterans.

I thank these organizations and their members, not just for their service to our country and to their fellow men and women in uniform, but also for helping to inform our policy solutions.

Since the passage of the Veterans Access, Choice, and Accountability Act in 2014, poor performance and misconduct by a few but significant number of VA employees has continued to come to light, and it is clear that there is, sadly, a pervasive lack of accountability. Just to list a few examples, one VA employee was arrested and spent time in jail for armed robbery. Another employee was caught watching pornography on the job. In my home State of Florida there have been several instances of prescription drugs being diverted, gone missing from VA facilities. It is terrible to think that some VA employees may have actively contributed to the opioid epidemic gripping the State of Florida and the country.

In all these cases, the employees involved were ultimately allowed to keep their jobs, or resign with their benefits intact. Other management failures at the VA include construction projects that are over budget and behind schedule, and billions of taxpayer dollars wasted through the illegal use of government purchase cards.

It is clear that under existing civil service rules and pressure from unions and others, VA leaders are not—have not been able to hold individuals accountable for their actions. Over and over again, we have seen the VA attempt to take disciplinary action against an employee, only to see the appeals process prove so complex, lengthy, and lenient that real accountability was virtually impossible to achieve.

So, the bipartisan, common sense provision of the legislation that you will consider will put our veterans first, by reforming the Department's broken civil service system, maintaining appropriate due process protections, and empowering whistleblowers to come forward without having to fear retaliation from bureaucrats who would rather sweep wrongdoing under the rug.

Last week, Secretary Shulkin appeared before the Appropriations Subcommittee on Military Construction and Veterans Affairs, where I asked him about this bill, and what he needs to ensure capable workforce, and he stated, and I quote, "I wish today I could tell you I have the tools to do the right thing, to be able to remove those employees. I do not, so, unfortunately, I need a new set of tools if I am going to be held accountable for turning this system around and doing what we all want to do to serve veterans. So, I thank you for introducing this bill. I think it is necessary."

Mr. Chairman, to the Ranking Member, Senator Tester, to Senators Moran, Heller, and Boozman, thank you for your hard work and leadership on this bill and for considering it today. I am hopeful we will see this bill signed into law soon, so that our veterans

will be more likely to receive the quality health care they earned and deserve.

Thank you again, Mr. Chairman, for having me today, and I look forward to working with you, with your staff on the Committee and others to move the bill forward.

Chairman ISAKSON. Well, thank you, Senator Rubio. For the benefit of the entire audience here today, as well as those watching on the network, Senator Rubio has worked tirelessly over the last 2 years, along with almost every Member, if not every Member of the Committee. There have been a lot of issues that we have worked on. He has been cooperative in working toward those to a responsible bill which brings about accountability and pride in the Department, allows us, for the first time, to be able to, as Members of the Senate Veterans' Affairs Committee to answer tough questions on television in terms of what we have done to keep, or help prevent bad things from happening at the Veterans Administration. The rank and file veterans employees at the Administration are the best in the country. They are fantastic people. But one bad apple can drag down an entire agency, even one as large as the Veterans Administration.

I am appreciative—I want to publicly thank Senator Rubio for his conscientious effort, and Senator Tester for working time and again to go to meetings, to bring people together, so we have a bipartisan bill that deals with the accountability of the VA and the employees in that agency. Thank you, Senator Rubio, for doing that.

You are both—Senator Hatch is already excused. Senator Rubio, you may be excused if you like, and you can stay and listen to the entire hearing if you like.

Senator RUBIO. I will watch it on TV. [Laughter.]

Chairman ISAKSON. That is the right choice.

We have two great panels today. I am going to introduce Panel I. As I call your names, if you will come forward. There will be a nameplate in front of the place where you are to sit. After we hear the opening statements by Panel I we will have questions from Members of the Committee, then we will go to Panel II. After that, we will do both questions of Panel II as well, as Members who come back to catch up with questions on Panel I, if necessary.

First, Dr. Jennifer S. Lee, Deputy Under Secretary for Health for Policy and Services, Veterans Health Administration, U.S. Department of Veterans Affairs; accompanying Dr. Lee are Meghan Flanz, Acting General Counsel, Office of General Counsel; Donnie Hachey—did I do that right? I did it right? OK, well, that is close enough—Chief Counsel for Operations, Board of Veterans' Appeals; David McLenachen, Director of Appeals Management Office, Veterans Benefits Administration; Margaret Kabat, National Director, Caregiver Support Program, Veterans Health Administration; James Ruhlman, Assistant Director for Policy and Procedures, Veterans Benefits Administration; and Phil Parker, Acting Associate Deputy Assistant Secretary, Office of Acquisition, Logistics, and Construction.

Hopefully I did not miss anybody, and I apologize to anybody whose name I did not do a good job with. I apologize for that.

Dr. Lee, you are on board, and I think everybody else is here in a supporting role. Is that correct?

Dr. LEE. It is a team effort.

Chairman ISAKSON. A team effort.

Dr. LEE. Yes, sir.

Chairman ISAKSON. Well, it is my pleasure to introduce Dr. Jennifer Lee, Deputy Under Secretary for Health for Policy and Services, Veterans Health Administration. Dr. Lee.

STATEMENT OF JENNIFER S. LEE, M.D., DEPUTY UNDER SECRETARY FOR HEALTH FOR POLICY AND SERVICES, VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY MEGHAN FLANZ, ACTING GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL; DONNIE HACHEY, CHIEF COUNSEL FOR OPERATIONS, BOARD OF VETERANS' APPEALS; DAVE McLENACHEN, DIRECTOR OF APPEALS MANAGEMENT OFFICE, VETERANS BENEFITS ADMINISTRATION; MARGARET KABAT, NATIONAL DIRECTOR, CAREGIVER SUPPORT PROGRAM, VETERANS HEALTH ADMINISTRATION; JAMES RUHLMAN, ASSISTANT DIRECTOR FOR POLICY AND PROCEDURES, VETERANS BENEFITS ADMINISTRATION; AND PHIL PARKER, ACTING ASSOCIATE DEPUTY ASSISTANT SECRETARY, OFFICE OF ACQUISITION, LOGISTICS, AND CONSTRUCTION

Dr. LEE. Good afternoon, Chairman Isakson, Ranking Member Tester, and Members of the Committee. Thank you for inviting us here today to present our views on several bills that would affect the VA's programs and services. Joining me today are a number of my esteemed colleagues from across the Department, with a wide array of subject matter expertise.

First I would like to thank the Members of this Committee as well as our colleagues from the VSOs for your hard work and commitment to advancing legislation we believe is absolutely critical to modernizing the VA accountability and appeals reform.

The Department also supports many of the bills on today's agenda, or their intent, as they provide us with authorities to better meet the needs of veterans and their families.

Regarding S. 23, VA agrees with the objectives of this bill but does not support the bill, as written, as it may limit VA's ability to maintain distinct identifiers for biologics of human origin and could impair our ability to obtain implants quickly when a clinical need arises.

VA supports the intent of S. 112 as long as additional resources are available. We feel this authority is needed to fully reach the entire homeless population.

While VA does not support S. 324 as written, VA does support growing adult day health care programs in general, as they are an important aspect of the continuum of VA's home- and community-based programs. VA would like the opportunity to establish mutually agreeable adult day health rates with our State veteran home partners.

Although VA agrees with the overall intent of S. 543, we are still examining the effect this bill would have and would appreciate the opportunity to discuss this further with the Committee. VA agrees

there are opportunities to improve oversight of contractors and program management associated with the contracting process.

While VA does not support S. 591, VA does favor providing comprehensive support to family caregivers of veterans of all eras. Currently VA is undergoing an internal review of the caregiver program to ensure current eligibility criteria are applied consistently. VA welcomes further discussion with this Committee about the current program as well as the proposed expansion.

VA does not support S. 609. While VA is very supportive of increasing access to chiropractic care for veterans, we do not believe that it would be prudent to add chiropractic clinics in areas where demand may not exist to justify the investment.

We support much of S. 681, the Deborah Sampson Act. VA has placed a high priority on ensuring equitable and high-quality care for women veterans and we appreciate this Committee's support of this priority. The bill would provide a number of authorities to accelerate and expand our efforts to improve care for women veterans.

VA supports the intent of S. 764, the Veterans Education Priority Enrollment Act, though we do have concerns we would like to discuss with the Committee.

VA strongly supports S. 784, which expresses in a tangible way the Nation's gratitude for the sacrifices made by service-disabled veterans and their surviving spouses and children. The bill would also ensure that the value of dependency indemnity compensation keeps pace with increases in consumer prices.

VA is appreciative of the support for women veterans' issues in S. 804, but has, in fact, initiated several of the actions required by the bill. As some provisions may be duplicative of our current effort, VA does not support the proposed legislation.

VA also supports S. 899, which would require VA to establish a leave transfer program and leave bank for the benefit of certain disabled VA health care professionals.

S. 1024 provides much-needed comprehensive reforms to the VA appeals process, to ensure veterans receive a timely VA decision on their appeal. VA strongly supports the intent of S. 1024 and looks forward to working with the Committee to address concerns with a few provisions, as drafted. The Department stands committed to getting appeals reform accomplished for veterans this year.

VA strongly supports the aims of S. 1094, the Accountability and Whistleblower Protection Act. This would improve our oversight and investigation of whistleblower disclosures and retaliation complaints, and would allow for more timely disciplinary action against employees whose misconduct or performance undermines veterans' and the public's trust in VA care and services. We deeply appreciate the Committee's efforts to meet VA's needs for greater flexibility in dealing with underperforming and misbehaving employees. With the assistance of the Department of Justice, VA looks forward to working with the Committee through the technical assistance process to resolve the few remaining concerns.

VA supports, in principle, the draft bill serving our rural veterans, in the interest of building graduate medical education capacity to better meet the needs of veterans in rural and underserved areas, such as Alaska.

Finally, VA has no objection to the Veteran PEER Act but notes VA already has the authority to execute this program to include more PEER specialists and patient-aligned care teams, subject to the availability of funding.

My written statement provides the Department's full view on each of the bills.

Thank you, Mr. Chairman, and thank you, Ranking Member Tester, for the opportunity to testify before you today. My colleagues and I would be pleased to respond to questions that you or other Members may have at this time.

[The prepared statement of Dr. Lee follows:]

PREPARED STATEMENT OF DR. JENNIFER S. LEE, DEPUTY UNDER SECRETARY FOR HEALTH FOR POLICY AND SERVICES OF VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Good morning, Chairman Isakson, Ranking Member Tester, and Members of the Committee. Thank you for inviting us here today to present our views on several bills that would affect the Department of Veterans Affairs' (VA) programs and services. Joining me today is Ms. Margaret Kabat, National Director, Caregiver Support Program, Veterans Health Administration (VHA); Phil Parker; Acting Associate Deputy Assistant Secretary, Office of Acquisition and Logistics, Office of Acquisition, Logistics, and Construction (OALC); Mr. James Ruhlman, Assistant Director for Policy & Procedures, Veterans Benefits Administration (VBA); Ms. Meghan Flanz, Interim General Counsel; Dave McLenachen, Director, Appeals Management Office, VBA; and Donnie Hachey, Chief Counsel for Operations, Board of Veterans Appeals (BVA).

There are a number of bills on the agenda today, and we are unable at this time to provide views and cost estimates on a few of these provisions. Specifically, we do not have cost estimates on S. 543 and S. 764.

S. 23, BIOLOGICAL IMPLANT TRACKING AND VETERAN SAFETY ACT OF 2017

S. 23 would direct VA to adopt and implement a standard identification protocol for use in the tracking and procurement of biological implants by VA.

Section 2(a) would add a new section 7330B to title 38 to require VA to adopt the unique device identification system developed by the Food and Drug Administration (FDA) for medical devices (or implement a comparable standard identification system) for use in identifying biological implants intended for use in VA medical procedures conducted in medical facilities of the Department. In procuring biological implants under this section, VA would be required to permit a vendor to use any of the accredited entities identified by the FDA as an issuing agency pursuant to 21 Code of Federal Regulations (CFR) § 830.100. The Secretary would be required to implement a system for tracking biological implants from donor to implantation that is compatible with the tracking system to be adopted and implemented. VA would be required to implement inventory controls compatible with the tracking system to enable VA to notify, as appropriate (based on an evaluation by appropriate VA medical personnel), VA patients who are in receipt of biological implants that are subject to a recall. In addition, section 2 of the bill would provide that in cases of conflict between the proposed revision to title 38 and a provision of 21 United States Code (U.S.C.) § 301 et seq. or 42 U.S.C. §§ 262 and 264, (including any regulations issued pursuant to these statutes), the provisions of these other statutes or regulations would apply.

Section 2 of the bill would define the term "biological implant" as any human cell, tissue, or cellular or tissue-based product or animal product: (1) under the meaning given the term "human cells, tissues, or cellular or tissue-based products" in 21 CFR § 1271.3 (or any successor regulation); or (2) that is regulated as a device under 21 U.S.C. § 321(h). Under section 2(c), the standard identification system for biological implants would have to be adopted or implemented not later than 180 days after the Act's enactment. With respect to products that are regulated as a device, the Secretary would be required to adopt or implement such standard identification system in compliance with the compliance dates established by the FDA pursuant to 21 U.S.C. 360i(f).

If the tracking system for biological implants is not operational within 180 days of the bill's enactment, section 2(d) would require the Secretary to submit a written

explanation to the Committees on Veterans' Affairs explaining why the system is not operational for each month until the system is operational.

Initially, we note that section 2(a) of the bill attempts to create a new section 7330B; however, there already is a section 7330B, requiring VA to issue an annual report on the Veterans Health Administration (VHA) and furnishing of hospital care, medical services, and nursing home care. This was enacted last December as part of the Jeff Miller and Richard Blumenthal Veterans Health Care and Benefits Improvement Act of 2016 (Public Law 114–315, section 612(a)). We recommend as a technical matter the bill propose to create a new section 7330C, as that would be the next available statute in the U.S.C., and that references throughout the bill to 7330B be updated to 7330C.

While VA agrees with the bill's intentions, VA does not support section 2 of the bill as written. The bill recognizes the need for a higher standard for human biologics as indicated by the requirement in section 3 for the use of a distinct identifier at all stages in distribution. However, as written, the bill could force VA to treat human tissues the same as other biologics in terms of identification.

Additionally, the bill states that VA shall permit vendors to use any of the FDA accredited entities identified as an issuing agency for a standard identification system for biological implants. This effectively limits VA to the use of FDA's minimum issuing agency accreditation standards. VA already tracks blood and cellular products successfully using ISBT 128 identifiers in its facilities, and as a result, VA should be able to extend this system to ISBT 128-labeled human tissue products providing both electronic health record documentation and inventory control. VA is working with the Department of Health and Human Services (HHS) and other Federal partners to identify the optimal tracking and tracing systems to ensure the highest safety standards for human tissues.

VA intends to institute new recommendations from HHS for tissue tracking. On April 7–8, 2015, the HHS Advisory Committee on Blood and Tissue Safety and Availability voted unanimously to recommend that the HHS Secretary adopt a stepwise, risk-based approach to standardizing the identification, tracking, and tracing of medical products of human origin. In particular, the Committee recommended establishing ISBT 128 labeling as "a universal standard for mandatory implementation of unique donation identifiers for all human tissue products." It suggested that the HHS Secretary promote the integration of transplantation records into searchable, electronic patient records. It further recommended taking steps to ensure that patients are informed when they receive a tissue product and provided a means of tracing it. The Committee asked that the HHS Secretary promote education for health care providers regarding the risks of human tissue transplants, the need for meaningful informed consent, and the necessity of engaging in activities to ensure tracking and tracing of tissue products. Last, it noted the importance of promoting international collaboration and data sharing on outcomes of tissue transplantation.

VA notes that HHS does not consider FDA's Unique Device Identifier (UDI) appropriate for use as a tracking system for all biological implants. Human and animal derived implants, which are not regulated as devices, have different requirements from the devices for which the UDI was created.

Section 3 would add a new section 8129 to title 38 to govern the procurement of biological implants. VA would be limited to procuring human biological implants from vendors that meet several conditions. First, the vendors supplying biological implants of human origin would have to use the standard identification system adopted or implemented by VA under new section 7330B (as added by section 2 of the bill) with safeguards to ensure that a distinct identifier has been in place at each step of distribution from its donor. Additionally, each vendor would have to be registered with the FDA, ensure that donor eligibility determinations and other records accompany each biological implant at all times, and agree to cooperate with all biological implant recalls initiated by the vendor, the manufacturer, or the FDA. Vendors would have to agree to notify VA of any adverse event or reaction report it provides to FDA as required by 21 CFR §§ 1271.3 and 1271.350 or any warning letter from the FDA within 60 days of the vendor's receipt of such report or warning letter. Vendors would also have to agree to retain all records associated with procuring a biological implant for at least 10 years and would have to provide assurances that the biological implants provided are acquired only from tissue processors that maintain accreditation with the American Association of Tissue Banks or a similar national accreditation.

VA would be required to procure biological implants under the Federal Supply Schedules (FSS) of the General Services Administration (GSA) unless such implants are not available under these schedules. VA would be required to accommodate reasonable vendor requests to undertake outreach efforts to educate VA medical professionals about the use and efficacy of biological implants with respect to implants

that are listed on the FSS. In the case of biological implants unavailable on FSS, VA would be required to procure such implants using competitive procedures in accordance with applicable law and the Federal Acquisition Regulation (FAR). The bill would also clarify that 38 U.S.C. § 8123, which addresses procurement of prosthetic appliances, does not apply to the procurement of biological implants.

Additionally, section 3 would establish penalties, in addition to any penalty under another provision of law, for procurement employees who are found responsible for a biological implant procurement transaction with intent to avoid or with reckless disregard of the requirements of this section. Such an official would be ineligible to hold a certificate of appointment as a contracting officer or to serve as the representative of an ordering officer, contracting officer, or purchase card holder.

The new section 8129 would take effect 180 days after the date on which the tracking system required by the new section 7330B is implemented. The bill also contains a special rule for cryopreserved products, allowing VA 3 years to procure biological implants produced and labeled before the effective date of section 8129 without relabeling the products under the standard identification system adopted or implemented under the new section 7330B.

VA does not support section 3 of the bill as drafted. Vendors would be required to retain records for up to 10 years under the bill. VA notes that some institutions permanently retain these records. In particular, some types of biologics may be stored for extended periods prior to use and it may take several years for an adverse outcome to manifest. Disposal of records, in particular, the actual production identifier and donor documentation, will prevent the ability to track human derived biologics to their donor and lead to the use of biologics in VHA that cannot reliably be tracked back to the original donor. Requiring providers to retain records for only 10 years could produce problems in the future, and we believe that permanent record retention would be preferable.

VA also has concerns with the requirement that biological implants be procured from FSS sources (unless the products are not available from these sources). This would unduly restrict VA clinicians' best judgment as to the right implants for a given patient. Clinicians are not involved in the decision to place biological implants on the FSS. Additionally, VHA has determined that biological implants should be procured through national contracts that would take precedence over FSS. VA is developing an appropriate initial contract vehicle to acquire such products.

VA is specifically concerned that enactment of the bill would end the applicability of 38 U.S.C. § 8123 to the procurement of biological implants. This change would have an immediate, measurable, and adverse effect on wait times and patient care. This could result in considerable morbidity in the Veteran population, who would be forced to wait until GSA contracting can arrange for specific implants required to restore function. It is important to stress that, for many patients, there is an optimal window of opportunity for the use of an implant to prevent permanent loss of function. Many of these items are custom made and purchased in low volume or single units and will not be on a GSA contract or be cost effective for the U.S. Government to place on a full contract. Full contracting may take much longer than is clinically appropriate for Veterans. Further, it is not uncommon to purchase inventory in emergency situations from other local hospitals to meet acute needs. This occurs under the authority of 38 U.S.C. § 8123. Limiting this authority as provided in the bill will prevent this activity and could jeopardize timely patient care. VA may then be forced to refer these patients to providers in the community, which could increase costs to the Department and reduce patient care if these community providers are not subject to the same requirements in terms of procurement and tracking of biological implants.

VA is also concerned that the penalties imposed under proposed section 8129(b) could produce unfair results if a procurement employee needs to purchase a product off-contract to meet the immediate needs of a patient and provider. This could be exacerbated by vendors choosing not to contract with VA given the new requirements imposed upon them, thereby eliminating or limiting the availability of products for our patients. Shortages of biologic products could also affect VA's ability to obtain products under contract or through competitive processes. As a result, Veterans' medical care could be delayed. VA recommends this provision either be stricken or revised to apply penalties only for the procurement employees whose off-contract procurement is for irresponsible reasons. This would provide the Secretary the authority to distinguish between cases when a violation was willful and jeopardized patient care and when it was willful, but done with the purpose of supporting patient care.

We estimate that S. 23 would cost $11.2 million in fiscal year (FY) 2018, $33.6 million over 5 years, and $66.3 million over 10 years.

S. 112, CREATING A RELIABLE ENVIRONMENT FOR VETERANS' DEPENDENTS ACT

S. 112 would amend 38 U.S.C. § 2012(a) to permit a grantee receiving per diem payments under the Homeless Providers Grant and Per Diem (GPD) Program to use part of these payments for the care of a dependent of a homeless Veteran who is under the care of such homeless Veteran who is receiving services covered by the GPD grant. This authority would be limited to the time period during which the Veteran is receiving services under the grant.

VA supports the intent of S. 112, conditioned on the availability of additional resources to implement this provision. We feel that this authority is needed to fully reach the entire homeless population. However, full implementation of the legislation would require additional funding to avoid diminished services in VA's full complement of programs for homeless Veterans.

VA estimates this bill would cost $29.8 million in FY 2018, $159.3 million over 5 years, and $347.6 million over 10 years.

S. 324, STATE VETERANS HOMES ADULT DAY HEALTH CARE IMPROVEMENT ACT OF 2017

S. 324 would amend 38 U.S.C. § 1745 to require the Secretary to enter into a contract or agreement with each State Veterans Home (SVH) for payment by VA for adult day health care (ADHC) provided to an eligible Veteran. Eligible Veterans would be those in need of nursing home care for a service-connected disability or who have a service-connected disability rated at 70 percent or more and are in need of nursing home care. Payments for each Veteran who receives medical supervision model adult day health care would be made at a rate that is 65 percent of the payment VA would make if the Veteran received nursing home care, and payment by VA would constitute payment in full for such care. The term "medical supervision model adult day health care" would be defined to mean adult day health care that includes the coordination of physician services, dental services, the administration of drugs, and such other requirements as determined appropriate by the Secretary. Currently, under a grant mechanism, VA pays States not more than half the cost of providing ADHC. States may currently obtain reimbursement for this care from other sources in addition to VA's per diem payments.

VA supports growing ADHC programs in general as they are a part of VA's home- and community-based programs that have been demonstrated to benefit the health and well-being of older Veterans. However, VA does not support this bill as written for several reasons.

First, VA notes that the bill would base payment rates for ADHC on nursing home care rates, though these are two distinctly different levels of care and are furnished for different periods of time. VA pays per diem for three levels of care at SVHs: nursing home care, domiciliary care, and adult day health care. The prevailing nursing home rate is calculated based on the cost of providing nursing home care, and VA negotiated that rate in conjunction with SVHs. Nursing home residents live at the facility and receive 24-hour skilled nursing care, including services after normal business hours with registered nurses involved in care at all times. ADHC is a distinctly different level of care that provides health maintenance and rehabilitative services to eligible Veterans in a group setting during daytime hours only. ADHC participants live at home and only use ADHC services for a portion of time during the day, normally about 8 hours, or one third of the length of time that skilled nursing care is provided. A per diem payment is made only if the participant is under the care of the facility for at least 6 hours (which can be 6 hours in one calendar day, or any two periods of at least 3 hours each in any 2 calendar days of the month). The nursing home rates that would be used to compute the ADHC rates under this bill are based on a formula that was developed in partnership with VA's state home partners and is specific to nursing home care. VA would like the opportunity to thoroughly review the cost of providing ADHC and, as was accomplished for nursing home care, establish a mutually agreeable ADHC rate with our SVH partners. VA believes revising the language to allow for VA to propose a formula for computing ADHC rates and for SVHs to provide comments on the formula would be consistent with the way the nursing home care rates were developed under 38 U.S.C. § 1745. While this bill would specifically apply these payment rates to ADHC programs providing medical supervision, rather than any ADHC program, we still believe basing any ADHC payment rate on the rate for skilled nursing care is inappropriate.

Second, we note that the bill would direct VA to "enter into a contract or agreement" with each SVH. Agreements reached under this provision would still generally be contracts. VA has requested specific authority that would allow VA to enter into individual agreements not subject to certain provisions of law governing

Federal contracts. We request this authority be granted before requiring VA to transition state payments from a grant to a contract mechanism.

We do support the bill's focus on ADHC programs providing medical supervision. A medical supervision model would include physician services, dental services, and administration of drugs, whereas these would not be required for a socialized model.

Additionally, VA expects the numbers of both socialized and medical supervision model ADHCs to increase after publication of the proposed regulation. VA is not able to predict how many SVHs will adopt the new socialized model, nor how the new model's use will affect costs. Until VA has such information, VA recommends against codifying a payment rate, as such a limitation could result in VA overpaying or underpaying states in the future.

VA estimates S. 324 would cost an additional $492,972 in FY 2018, $3.8 million over 5 years, and $11.6 million over 10 years.

S. 543, PERFORMANCE ACCOUNTABILITY AND CONTRACTOR TRANSPARENCY (PACT) ACT OF 2017

S. 543 would amend section 513 of title 38, U.S.C., to require VA to include performance metrics to service contracts under such authority and safeguards that will allow VA to levy financial penalties on service providers who fail to meet established thresholds of quality. The bill proposes to place additional requirements for contracts over $100 million to include requiring the service provider to document its work in a database and submit reports to VA and the Committees on Veterans' Affairs of the House of Representatives and the Senate. VA would be required to submit a report to these Congressional Committees if a service provider fails to meet its contractual obligations or if there are any modifications made on the contract. VA would be required to publish online information on the contract, including any modifications to the contract.

We are still examining the effect this bill would have, and would appreciate the opportunity to discuss this further with the Committee. VA agrees that there are opportunities to improve our oversight of contractors and program management associated with the contracting process; however, we believe the bill could impose undue additional costs to VA and taxpayers, duplicate existing requirements, and/or require clarifying language. Of note, the recently signed Program Management Improvement Accountability Act (Public Law 114–264) requires Agencies to implement program management policies and develop a strategy for enhancing the role of program managers within the Agency. This law aligns to a program execution and governance model VA is currently executing, the Acquisition Program Management Framework (APMF). The APMF has been recognized by the Office of Federal Procurement Policy (under the Office of Management and Budget), the Federal Acquisition Institute, and the Government Accountability Office as addressing the critical needs of stronger program management and governance.

Many of the requirements in section 2 of the bill are already mandated by various parts of the Federal Acquisition Regulation (FAR) and/or Veterans Affairs Acquisition Regulation (VAAR). These regulations govern the process by which VA acquires goods and services by contract with appropriated funds. VA Quality Assurance, for example, requires government-led contract quality assurance at all times and places as may be necessary to determine that the supplies or services conform to contract requirements. Quality Assurance Surveillance Plans (QASP) should be prepared in conjunction with the preparation of the Performance Work Statement. These plans should specify: (1) all work requiring surveillance; and (2) the method of surveillance. Each contract shall designate the place or places where VA reserves the right to perform quality assurance.

Moreover, all major programs should have a Program Management Plan (PMP). PMP should identify key milestones, detail activities necessary to reach milestones, identify risks and issues, and develop strategies to mitigate risks and correct issues. Program Managers should also be measuring the health of the program as it relates to cost, schedule, and execution of contract through metrics.

Importantly, VA regulations recognize that a one-size-fits-all approach does not work for contracting and that there are times when it is not in VA's best interest to be overly prescriptive. Therefore, VA encourages work to be described in terms of required results rather than either "how" the work is to be accomplished or the number of hours to be provided; to enable assessment of work performance against measurable performance standards; and to rely on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost-effective methods of performing the work.

When utilized, such contracts include: (1) a performance work statement (PWS); (2) measurable performance standards (i.e., in terms of quality, timeliness, quantity, etc.) and the method of assessing contractor performance against performance standards; and (3) performance incentives where appropriate. In short, VA incorporates metrics for incentive or award fees into contracts when it is in VA's best interest to do so.

Furthermore, VA Contracting Officers may utilize liquidated damages clauses when appropriate. Before using a liquidated damages clause, VA Contracting Officers must consider the potential impact on pricing, competition, and contract administration. Liquidated damages clauses are only used when: (1) the time of delivery or timely performance is so important that the Government may reasonably expect to suffer damage if the delivery or performance is delinquent; and (2) the extent or amount of such damage would be difficult or impossible to estimate accurately or prove.

Although VA agrees with the overall intent of the proposed legislation, VA would like to express a few concerns with key sections of the legislation.

VA also requests clarity on the types of modifications for which reports would have to be submitted. The FAR identifies many types of contract modifications, some of which may not be of congressional interest.

While VA agrees with much of the language in the bill, there are sections of the legislation where VA recommends modest changes such as placing "contract" with "program" (e.g., "use the appropriate project management accountability system of the Department to ensure that the contract provides an adequate return on the investment of the Secretary" in proposed section 513(b)(2)(B)) to clarify the broader responsibility of the Program Manager in ensuring adequate return on investment of programs that may have one or more contracts.

VA would appreciate the opportunity to discuss the proposed legislation with the Acquisition Community, as well as to conduct a more formal technical review of the proposed legislation at a later juncture. We look forward to ongoing collaboration with the sponsors of this legislation.

VA does not have a cost estimate for this bill at this time.

S. 591, MILITARY AND VETERAN CAREGIVERS SERVICE IMPROVEMENT ACT OF 2017

S. 591 would expand eligibility for VA's Program of Comprehensive Assistance for Family Caregivers, expand benefits available to participants under such program, enhance special compensation for certain members of the uniformed services who require assistance, and make other amendments to increase the provision of benefits.

The Caregivers and Veterans Omnibus Health Services Act of 2010, Public Law 111–163, signed into law on May 5, 2010, provided expanded support and benefits for caregivers of eligible and covered Veterans. While the law authorized certain support services for caregivers of covered Veterans of all eras, other benefits were authorized only for qualified family caregivers of eligible Veterans who incurred or aggravated a serious injury in the line of duty on or after September 11, 2001. These new benefits for approved family caregivers, provided under the Program of Comprehensive Assistance for Family Caregivers, include a monthly stipend paid directly to designated primary family caregivers and medical care under CHAMPVA for designated primary family caregivers who are not eligible for TRICARE and not entitled to care or services under a health-plan contract.

Section 2 of S. 591, the Military and Veteran Caregiver Services Improvement Act of 2017, would remove "on or after September 11, 2001" from the statutory eligibility criteria for the Program of Comprehensive Assistance for Family Caregivers, and thereby expand eligibility under the program to Veterans of all eras who otherwise meet the applicable eligibility criteria. Family caregivers could not receive assistance under this expanded eligibility until FYs 2018, 2020, or 2022 depending on the monthly stipend tier for which their eligible Veteran qualifies. Section 2 would also add "or illness" to the statutory eligibility criteria, and thereby expand eligibility to include those Veterans who require a caregiver because of an illness incurred or aggravated in the line of duty. In addition, the bill would expand the bases upon which a Veteran could be deemed to be in need of personal care services, to include "a need for regular or extensive instruction or supervision without which the ability of the Veteran to function in daily life would be seriously impaired."

This section would also expand the assistance available to primary family caregivers under the Program of Comprehensive Assistance for Family Caregivers to include child care services, financial planning and legal services "relating to the needs of injured and ill Veterans and their caregivers," and respite care that includes peer-oriented group activities. The bill would ensure that in certain circumstances VA accounts for the family caregiver's assessment and other specified factors in de-

termining the primary family caregiver's monthly stipend amount. In addition, the bill would require VA to periodically evaluate the needs of the eligible Veteran and the skills of the family caregiver to determine if additional instruction, preparation, training, or technical support is needed, and it would require certain evaluation be done in collaboration with the Veteran's primary care team to the maximum extent practicable.

Section 2 would also authorize VA, in providing assistance under the Program of Comprehensive Assistance for Family Caregivers, to "enter into contracts, provider agreements, and memoranda of understanding with Federal agencies, states, and private, nonprofit, and other entities" in certain circumstances. It would expand the definition of family member to include a non-family member who does not provide care to the Veteran on a professional basis, and it would amend the definition of "personal care services." The bill would also end the Program of General Caregiver Support Services on October 1, 2022, but would ensure that all of its activities are carried out under the Program of Comprehensive Assistance for Family Caregivers. Finally, the bill would amend the annual reporting requirements for the Program of Comprehensive Assistance for Family Caregivers.

In September 2013, VA sent a report to the Committees on Veterans' Affairs of the Senate and House of Representatives (as required by Section 101(d) of Public Law 111–163) on the feasibility and advisability of expanding the Program of Comprehensive Assistance for Family Caregivers to family caregivers of Veterans who incurred or aggravated a serious injury in the line of duty before September 11, 2001. In that report, VA noted that expanding the Program of Comprehensive Assistance for Family Caregivers would allow equitable access to seriously injured Veterans from all eras (who otherwise meet the program's eligibility criteria) and their approved family caregivers.

In the report, however, VA noted difficulties with making reliable projections of the cost effect of opening the Program of Comprehensive Assistance for Family Caregivers to eligible Veterans of all eras, but estimated a population range of 32,000 to 88,000 additional Veterans in the first year (estimated for FY 2014), at a cost of $1.8 billion to $3.8 billion in the first year (estimated for FY 2014). After VA provided this report to Congress, the RAND Corporation published a report titled, "Hidden Heroes: America's Military Caregivers," which estimates a significantly larger eligible population (1.5 million) that may be eligible if the program were expanded to caregivers of pre-9/11 Veterans and those qualifying due to illness. VA's estimates in its 2013 report did not account for expansion to eligible Veterans with an illness incurred or aggravated in the line of duty, other Veterans who would become eligible for the program based on the amendments in section 2, or the additional assistance that would become available to primary family caregivers under the bill. This estimate also did not factor in a phased implementation of stipend expansion, as contemplated by the bill.

VA cannot responsibly provide a position in support of expanding the Program of Comprehensive Assistance for Family Caregivers without a realistic consideration of the resources necessary to carry out such an expansion, including an analysis of the future resources that must be available to fund other core direct-to-Veteran health care services. This is especially true as VA presses to strengthen mental health services and ensure the fullest possible access to care across the system.

We wish to make it very clear that VA believes an expansion of those benefits that are currently limited by era of service would result in equitable access to the Program of Comprehensive Assistance for Family Caregivers for long-deserving caregivers of those who have sacrificed greatly for our Nation. However, VA cannot endorse this measure before further engaging with Congress on these fiscal constraints, within the context of all of VA health care programs.

Additionally, before expanding eligibility under the Program, we believe it prudent for VA to ensure that the current eligibility criteria are applied in a consistent manner across the program. For example, the National Caregiver Support Program is undergoing an internal review to evaluate consistency in revocations and reductions from the Program and standardize communication with Veterans and Caregivers. On April 17, 2017, VA suspended certain VA-initiated revocations in order to carry out this review.

VA welcomes further discussion of these issues with the Committee.

Section 3 of this bill proposes to add a new section 3319A to title 38 to authorize individuals who are eligible for and participating in a program of comprehensive assistance for family caregivers under 38 U.S.C. § 1720G(a) the opportunity to transfer their unused Post-9/11 GI Bill education benefits to their dependents. Veterans may complete the transfer of entitlement any time during the 15-year period beginning on the date of their last discharge or release from active duty. There is no length of service requirement, and the monthly rate of educational assistance would be the

same rate payable to the individual making the transfer. The Secretary would be authorized to prescribe regulations to carry out this section. We note that the Survivors' and Dependents' Educational Assistance (DEA) program, or chapter 35, currently offers education and training benefits to eligible dependents of members of the Armed Forces and Veterans who have a service-connected disability rated as permanently and totally disabling, including individuals who are eligible for a program of comprehensive assistance for family caregivers. Assistance includes up to 45 months of full-time benefits.

VA supports the intent of section 3 to take care of caregivers; however, VA cannot support this section as written. The transfer of entitlement provisions of the Post-9/11 GI Bill were established as a recruitment and retention tool for the uniformed services. As such, the Department of Defense (DOD) determines eligibility for transfer of entitlement. If enacted, the proposed legislation would require VA to develop procedures to receive requests to transfer entitlement for certain individuals, determine eligibility, and award benefits for the transfer of entitlement program. However, VA notes that Congress would need to identify appropriate offsets for the cost of this legislation

Additionally, under the proposed section 3319A, dependents would receive the same rate of payment as otherwise payable to the individual making the transfer. This is different than the rate payable for a dependent child using transferred entitlement under section 3319. Currently, a dependent child is awarded benefits as if the individual making the transfer were not on active duty. As such, a child is entitled to the monthly housing allowance stipend even though the individual transferring benefits is still on active duty. Under the proposed legislation, a child would not be eligible for the housing allowance while the individual described in 38 U.S.C. § 1720G(a)(2) is on active duty. This change would impact the Long-Term Solution for processing Post-9/11 GI Bill claims, as VA would have to make system modifications in order to apply a blended set of rules for claims involving transferred education benefits.

Section 4(a) would amend 37 U.S.C. 439, providing for special compensation for members of the uniformed services with catastrophic injuries or illnesses requiring assistance in everyday living, by amending the definition of covered members to include those Servicemembers who have a serious injury or illness that was incurred or aggravated in the line of duty and are in need of personal care services as a result of such injury or illness. Section 4(b) would further amend section 439 by requiring VA to provide family caregivers of a Servicemember in receipt of monthly special compensation the assistance available to family caregivers of eligible Veterans under 38 U.S.C. § 1720G(a)(3)(A), other than the monthly caregiver stipend. VA would provide assistance under this subsection in accordance with a memorandum of understanding (MOU) between VA and DOD, and an MOU between VA and the Secretary of Homeland Security. VA would be required to ensure that a family caregiver in receipt of assistance under this subsection is able to transition seamlessly to the receipt of assistance under 38 U.S.C. § 1720G. Section 4(c) would require DOD, in collaboration with VA, to ensure that members of the uniformed services in receipt of monthly special compensation are aware of the eligibility of such members for family caregiver assistance. Section 4(d) would define the term "serious injury or illness," which would replace the term "catastrophic injury or illness," to mean an injury, disorder, or illness that (1) renders the afflicted person unable to carry out one or more activities of daily living; (2) renders the afflicted person in need of supervision or protection due to the manifestation by such person of symptoms or residuals of neurological or other impairment or injury; (3) renders the afflicted person in need of regular or extensive instruction or supervision in completing two or more instrumental activities of daily living; or (4) otherwise impairs the afflicted person in such manner as the Secretary of Defense or Homeland Security prescribes.

Regarding section 4 of the bill, VA defers to DOD and the Department of Homeland Security regarding sections 4(a), 4(c), and 4(d). VA does not support section 4(b) because DOD already provides many of the services and supports available under VA's Program of Comprehensive Assistance for Family Caregivers including health care coverage, mental health services, and respite care. Requiring VA to provide services under its program would result in a duplication of efforts.

Section 5 would authorize the Office of Personnel Management (OPM) to promulgate regulations under which a covered employee, which would include a caregiver defined in 38 U.S.C. § 1720G or a caregiver of an individual receiving compensation under 37 U.S.C. § 439, to use a flexible schedule or compressed schedule or to telework. VA defers to OPM on this section.

Section 6 would amend the Public Health Service Act (42 U.S.C. § 300ii), which governs lifespan respite care, to amend the definition of "adult with a special need"

to include a Veteran participating in the family caregiver program under 38 U.S.C. § 1720G(a). It would also amend the definition of "family caregiver" to include family caregivers under 38 U.S.C. § 1720G. Furthermore, in awarding grants or cooperative agreements to eligible state agencies to furnish lifespan respite care, HHS would be required to work in cooperation with the interagency working group on policies relating to caregivers of Veterans established under section 7 of this bill. Section 6 would also authorize appropriations of $15 million for FYs 2017 through 2022 for these grants. VA defers to HHS on this section.

Section 7 would establish an interagency working group on policies relating to caregivers of Veterans and Servicemembers. The working group would be composed of a chairperson selected by the President, and representatives from VA, DOD, HHS (including the Centers for Medicare & Medicaid Service), and the Department of Labor. The working group would be authorized to consult with other advisors as well. The working group's duties would include regularly reviewing policies relating to caregivers of Veterans and Servicemembers, coordinating and overseeing the implementation of policies relating to these caregivers, evaluating the effectiveness of such policies, developing standards of care for caregiver and respite services, and others. Not later than December 31, 2017, and annually thereafter, the working group would be required to submit to Congress a report on policies and services relating to caregivers of Veterans and Servicemembers.

VA generally supports a working group that would provide a forum for analyzing and evaluating different issues that family caregivers of Veterans and Servicemembers face. Such a working group would be ideally suited to considering in depth the types of issues other provisions of this bill are intended to address and would also be able to evaluate emerging issues.

The Department of Justice advises, however, the bill's method for selecting members of the working group raises Appointment Clause concerns, which DOJ will convey in greater detail under separate cover.

We also note several technical concerns with the legislation in terms of the creation of the working group, its role, the potential applicability of the Federal Advisory Committee Act to such a group, and which agency (if any) would be responsible for initiating, managing, and funding the working group. We would be happy to discuss these issues with you upon your request.

Section 8(a) would require VA to conduct a longitudinal study on Servicemembers who began their service after September 11, 2001. VA would be required to award a grant to or enter into a contract with an appropriate entity unaffiliated with VA to conduct the study. Within 1 year of the date of the enactment of the Act, VA would be required to submit to the Committees on Veterans' Affairs a plan for the conduct of the study. Not later than October 1, 2021, and not less frequently than once every 4 years thereafter, VA would be required to submit to the Committees on Veterans' Affairs a report on the results of the study. Section 8(b) would require VA to provide for the conduct of a comprehensive study on Veterans who have incurred a serious injury or illness and individuals who are acting as caregivers for Veterans. VA would be required to award a grant to or enter into a contract with an appropriate entity unaffiliated with VA to conduct the study. The study would be required to include the health of the Veteran and the impact of the caregiver on the health of the Veteran, the employment status of the Veteran and the impact of the caregiver on that status, the financial status and needs of the Veteran, the use by the Veteran of VA benefits, and any other information VA considers appropriate. No later than 2 years after the date of the enactment of this Act, VA would be required to submit to the Committees on Veterans' Affairs a report on the results of this study.

VA does not support section 8, as it would duplicate research in several ongoing or in-development studies. DOD and VA have a collaboration on the Millennium Cohort Study, a longitudinal cohort study that has and will continue to produce findings on health issues of multiple eras of military service. The Million Veterans Program creates a repository of clinical and genetic information on Veterans, including post-9/11 Veterans, which will provide data for targeted studies on health for years to come. VA's Cooperative Studies Program is developing a study on the respiratory health of Gulf War and post-9/11 Veterans. Finally, a study of the life transitions of military Servicemembers who served in Iraq or Afghanistan is funded and in development.

VA estimates section 8 would cost $4.3 million in FY 2018, $17.5 million over 5 years, and $34 million over 10 years, with additional close out expenses of $3.3 million in FY 2028 for a total cost of $37.3 million.

S. 609, CHIROPRACTIC CARE AVAILABLE TO ALL VETERANS ACT OF 2017

S. 609 would require VA to carry out a program to provide chiropractic care and services to Veterans through VA medical facilities at not fewer than 75 VA medical centers (VAMC) by not later than December 31, 2018, and at all VAMCs by not later than December 31, 2020. It would also modify 38 U.S.C. § 1701 to amend the definition of "medical services" to include chiropractic services, the definition of "rehabilitative services" to include chiropractic services and treatment programs, and the definition of "preventive health services" to include periodic and preventive chiropractic examinations and services.

VA does not support this bill. While adding chiropractic clinics would be consistent with ongoing VA initiatives to improve Veteran access to non-pharmacological pain treatment options, this can be accomplished through VA's existing policies and processes for hiring, credentialing, and privileging chiropractors. Chiropractic treatment has been shown to be clinically effective, cost effective, and in high demand by Veterans. Patients who have access to chiropractic care are less likely to receive opiate medications and spinal surgeries. VA has already been expanding access to chiropractic services for Veterans. Currently, about half of the Level 1a VAMCs have chiropractic clinics, and other facilities offer chiropractic services as well. However, mandating that all VAMCs provide chiropractic services by the end of 2020 is unnecessary. The need for more chiropractic clinics across the VA health care system can most effectively be determined by continually assessing demand for chiropractic services and usage, and adding chiropractic care at those sites as warranted to meet demand. We do not believe it would be prudent as a matter of fiscal or clinical responsibility to increase the number of clinics in areas where demand is insufficient to support investment in such a clinic.

We recommend the legislation not amend the definition of preventive health services in section 1701(9). Chiropractic services are provided as part of the medical benefits package and are administered based on clinical need, similar to all other medical care. It would be inconsistent with the professional standards for other medical disciplines and inappropriate to provide periodic and preventative chiropractic examination and services when there are no clinical indications that such care is needed.

VA estimates S. 609 would cost $1.68 million in FY 2018, $60.23 million over 5 years, and $155.9 million over 10 years.

S. 681, DEBORAH SAMPSON ACT

S. 681 would amend title 38 of the U.S. Code to seek to improve the benefits and services provided by VA to women Veterans in a variety of ways.

Section 101 would require VA to carry out a 3-year pilot program to assess the feasibility and advisability of facilitating peer-to-peer assistance for women Veterans, including those who are separating or are newly separated from service in the Armed Forces, with an emphasis on women who suffered sexual trauma during their service, have Post Traumatic Stress Disorder or suffer from another mental health condition, or are otherwise at risk of becoming homeless. Peer-to-peer assistance would consist of: (1) providing information about VA services and benefits, and (2) employment mentoring. VA would be required to commence the pilot program no later than January 1, 2018, and conduct outreach to inform women Veterans about the pilot program and assistance available under the pilot program. The pilot program may include training and the development of training materials for peer counselors. Under the pilot program, VA would be required to coordinate with specified government and community organizations to facilitate the transition of women Veterans into their communities. VA would also be required, to the degree practicable, to coordinate the pilot program with the Transition Assistance Program carried out under 10 U.S.C. § 1144.

VA supports section 101. Women Veterans who experienced military sexual trauma, who have mental health conditions, and/or who are at risk of becoming homeless face numerous barriers in seeking and accessing assistance, including through VA. Such women Veterans are considered to be among VA's most clinically complex patients. The program that would be required by section 101 has the potential to offer meaningful and powerful support to assist these women Veterans in connecting with needed services and assistance. Although section 101 would focus the provision of information about VA services and benefits and provision of employment mentoring, VA's experience with its existing peer program suggests that perhaps the biggest benefit the program would offer would be role modeling and the instillation of hope, as peer specialists have already overcome many of the obstacles the participants are experiencing.

Section 101 would expand VA's existing, well-established peer support program, which has demonstrated effectiveness in assisting Veterans in outpatient, inpatient, and residential mental health settings who are struggling with issues such as Post Traumatic Stress Disorder, substance use disorders, serious mental illness, and homelessness. These programs include women Veterans, and there are many women Veterans currently working as mental health peer specialists in VA. VA believes that, if enacted, development of this program would have to proceed carefully given the complexity of the clinical needs of the target population. In this context, the bill's proposed creation of a pilot program seems most appropriate.

VA estimates section 101 would cost approximately $723,000 in FY 2018 and approximately $3.7 million over the 3 years of the program.

Section 102 would require VA to expand the capabilities of the Women Veterans Call Center of the Department to include a text messaging capability.

VA supports section 102. To meet the needs of women Veterans, VA needs to provide information and answer questions via methods that are convenient to them. The Women Veterans Call Center routinely answers questions by phone and by chat, and the logical next step would be to provide convenient and accessible information for women Veterans via text messages. VA understands that women Veterans have expressed interest in such a text messaging capability. VA currently includes a text messaging response capability for its Veterans Crisis Line.

VA estimates section 102 would cost approximately $174,000 in FY 2018, $924,000 over 5 years, and $2.0 million over 10 years.

Section 103 would amend section 1712A of title 38, U.S.C., to authorize VA to furnish counseling in group retreat settings to persons eligible for Readjustment Counseling Services from VA. The reintegration and readjustment services furnished would include information on reintegration of the individual into family, employment, and community; financial counseling; occupational counseling; information and counseling on stress reduction; information and counseling on conflict resolution; and such other information and counseling as the Secretary considers appropriate. VA would be required to offer women the opportunity to receive such services in group retreat settings in which the only participants are women. These readjustment and counseling services would be available upon the request of the individual.

VA supports section 103. We agree that providing these retreats is beneficial to women Veterans, and believe other Veteran and Servicemember cohorts could also benefit from this treatment modality. Examples include those who have experienced military sexual trauma, Veterans and their families, and families that experience the death of a loved one while on active duty.

VA estimates that section 103 would cost approximately $467,000 to conduct six retreats in FY 2018, $2.5 million over 5 years, and $5.6 million over 10 years.

Section 201 would require VA to establish a partnership with at least one non-governmental organization to provide legal services to women Veterans, focused on the 10 highest unmet needs of women Veterans as set forth in the most recently completed Community Homelessness Assessment, Local Education and Networking Groups for Veterans (CHALENG for Veterans) survey.

VA supports section 201. The consistency of legal issues arising in VA's annual CHALENG survey strongly suggests a relationship between Veterans' unmet legal needs and the risk of becoming homeless. Legal issues can be a significant barrier to resolving homelessness, as these issues may be discovered in background checks conducted by landlords and employers, subsequently resulting in rejections for leases and employment offers. Additionally, legal issues may result in seizure of income or bank accounts, making it impossible to pay rent, or could result in the suspension of a driver's license, creating significant challenges for Veterans seeking employment or needing health care. A number of organizations stand ready to serve homeless or at-risk Veterans with legal services, but face financial limitations on their capacity to do so. The declining accessibility of civil legal aid, combined with persistent indicators of unmet need for it among Veterans, indicates that this passive approach is no longer viable. Providing additional funding for legal assistance would have a direct bearing on the housing stability of Veteran households. However, male Veterans who are homeless are also in need of legal services, as demonstrated by the CHALENG survey referenced in the proposed legislation. In the most recent CHALENG survey, five of the top ten unmet needs amongst both male and female homeless Veterans are legal needs, such as evictions/foreclosures, outstanding warrants/fines, child support, restoration of drivers' licenses, and discharge upgrades. Consequently, we recommend the bill be modified to make legal assistance available for both male and female Veterans needing such aid.

We note, though, that it is unclear what exactly is contemplated by entering into a "partnership" with a non-governmental organization. Typically, VA provides grants (when authorized by statute) or enters into contracts or cooperative agree-

ments with non-governmental organizations to provide services, particularly to homeless Veterans. However, with only the term "partnership" in the bill, it is unclear that it would provide clear authority for VA to expend Federal funds to support legal services for women Veterans; VA would require more explicit authority in that regard. It is also unclear why the provision only mentions "at least one non-governmental organization," to potentially exclude other public entities from participation. VA would be happy to discuss this section further with the Committee to understand better what is intended, and we would be pleased to provide technical assistance upon request.

Section 202 would amend section 2044(e) of title 38, U.S.C., to authorize additional amounts for the Supportive Services for Veteran Families (SSVF) grant program to support organizations that have a focus on providing assistance to women Veterans and their families. Specifically, section 202 would amend paragraph (1)(E) to strike 2017 and insert 2016, and add a new subparagraph (F) providing that $340 million shall be available to carry out the SSVF grant program for each of FYs 2017 and 2018. In addition, section 202 would add a new paragraph (4) providing that not less than $20 million shall be available under paragraph (e)(1)(F) for the provision of financial assistance to organizations that have a focus on providing assistance to women Veterans and their families.

VA supports section 202. SSVF is designed to rapidly re-house homeless Veteran families and prevent homelessness for those at imminent risk due to a housing crisis. Funds are granted to private non-profit organizations and consumer cooperatives that will assist very low-income Veteran families by providing a range of supportive services designed to promote housing stability. In FY 2016, 13.3 percent of Veterans served by SSVF were women, the largest such percentage of any homeless services program. As women represent only 8 percent of the homeless Veteran population, it is evident that SSVF's unique blend of services and capacity to serve all household members, including dependent children, has been successful at addressing the needs of homeless women Veterans. Further evidence of this success can be found in the composition of SSVF enrolled households headed by women Veterans: 42 percent have dependent children compared to just 18 percent for men. The unique needs of these households led by women Veterans have imposed increased demands upon SSVF grantees, justifying a commensurate increase in resources to organizations providing support to these families.

The SSVF program supports rapid re-housing interventions. Such interventions generally are defined as permanent housing opportunities and, therefore, are likely subject to fair housing laws. It may be helpful for the bill to be amended to indicate that recipient organizations that have a focus on providing assistance to women and their families would still be subject to complying with all Federal fair housing laws.

VA estimates section 202 would result in additional costs of $20 million for FY 2017 and FY 2018.

Section 301 would amend section 1786 of title 38, U.S.C., to extend from 7 to 14 days coverage of newborns of a woman Veteran receiving delivery care.

VA supports section 301. A newborn needing care for a medical condition may require treatment extending beyond the current 7 days that are authorized by law. Additionally, the standard of care is to have further evaluations during the first two weeks of life to check infant weight, feeding, and newborn screening results. Pending these results, there may be a need for additional testing and follow-up. There are also important psychosocial needs that may apply, including monitoring stability of the home environment or providing clinical and other support if the newborn requires monitoring for a medical condition. Extending care to 14 days would provide time for further evaluations appropriate for the standard of care, as well as sufficient time to identify other health care coverage for the newborn.

VA estimates section 301 would cost $8.8 million in FY 2018, $46.6 million over 5 years, and $100.6 million over 10 years.

Section 302 would amend section 1786 of title 38, U.S.C., to clarify that amounts paid by VA for medically necessary travel in connection with health care services furnished under this section would be derived from the Medical Services appropriations account.

VA supports the intent of section 302. While most travel of a newborn is not a concern as the mother and newborn travel together to appointments, for those newborns that require transport from a community hospital to a neo-natal intensive care unit by ambulance or helicopter, VA lacks clear authority currently to pay for this travel if the care is exclusively for the newborn. However, we are concerned the language in this section, which refers only to a source of funding for such travel, does not specifically authorize VA to furnish or pay for such transportation expenses under 38 U.S.C. § 1786.

Depending on how the bill is interpreted, we estimate section 302 could cost approximately $587,000 in FY 2018, $3.95 million over 5 years, and $11.86 million over 10 years.

Section 401 would require VA to retrofit existing VA medical facilities with fixtures, materials, and other outfitting measures to support the provision of care to women Veterans at such facilities. Within 180 days of enactment, VA would be required to submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate a plan to address deficiencies in environment of care for women Veterans at VA medical facilities. There would be authorized to be appropriated $20 million in addition to amounts otherwise available to VA to carry out this section.

While we appreciate the intent of this provision, we do not support section 401. VA currently has the authority, and has made it a priority, to renovate or improve its facilities to protect the privacy, safety, and dignity of women Veterans. We are concerned that subsection (a), for example, would legislate specific requirements that are better addressed through current construction standards. These standards are subject to review and revision on a regular basis, which provides flexibility for VA to identify and prioritize emerging needs. A statutory requirement would provide no such flexibility.

We believe the current process for identifying needs and obligating available resources to remedying them is more appropriate and better for Veterans. While we currently have authority to, and in fact do, conduct routine evaluations of our facilities to identify deficiencies, we would have no objection to a requirement for a recurring, system-wide assessment to identify deficiencies, similar to the requirement contemplated in subsection (b). We recommend that such a review occur only periodically, as some projects can take several years to complete, and that VA be given flexibility to take the time it needs to complete these reviews thoroughly and accurately instead of attempting to complete them within a statutory deadline. Such a revised requirement to review medical facilities would provide a comprehensive list of the specific needs of each facility. We would be happy to discuss our thoughts on this further with the Committee and to provide technical assistance as needed.

Without having completed a current, comprehensive review, we are unable to estimate the cost of section 401. However, we have reason to believe the costs for retrofitting every VA medical facility would be more than the $20 million that would be authorized for appropriation under subsection (c).

Section 402 would require VA to ensure that each VA medical facility has at least one full-time or part-time women's health primary care provider whose duties include, to the extent possible, providing training to other VA health care providers on the needs of women Veterans.

VA fully supports the intent of section 402, but notes that the provision is unnecessary because VA already has authority to employee women's health primary care providers, resources permitting. Currently, approximately 475,000 women Veterans receive care at a VA facility, and there are approximately 2,500 designated women's health providers in our health care system. There are 102 VA sites of care without a designated women's health provider. For many sites, there is no justification to hire a full-time designated women's health provider due to the small number of women Veterans assigned to the clinic, so instead, VA trains an existing provider who will treat both men and women on their panel. There is approximately a 20 percent turnover each year for women's health providers, so training new providers is a constant need.

Section 403 would require VA to ensure that the VA Women Veteran Program Manager program is supported at each VAMC with a Women Veteran Program Manager and a Women Veteran Program Ombudsman, and that such individuals receive the proper training to carry out their duties.

VA supports the intent of section 403 in part. Currently, VHA Directive 1330.01, Health Care Services for Women Veterans, requires each VA health care system to have a full-time Women Veterans Program Manager. To that extent, the legislation is generally consistent with current practice. At the end of FY 2016, VA had 130 permanent Women Veteran Program Managers, 9 acting managers, and 1 vacancy. VA conducts training for these managers both virtually and face-to-face. VA does not support the requirement to appoint a Women Veteran Program Ombudsman, as we think this would be duplicative of services already available to women Veterans through the Patient Advocate Program.

Section 404 would authorize to be appropriated $1 million for each fiscal year for the Women Veterans Health Care Mini-Residency Program to provide opportunities for participation by primary care and emergency care clinicians. The $1 million would be authorized to be appropriated in addition to amounts otherwise made available to VA for purposes of this program.

VA supports section 404. Today, women are the fastest growing subgroup of U.S. Veterans. There are more than 2.2 million women Veterans in the United States, and women make up 15.1 percent of today's active duty military and 18.8 percent of National Guard and Reserve forces; the number of women Veterans is expected to grow in the future. VHA's efforts to train clinicians to meet the needs of an ever increasing number of women Veterans seeking care has included large scale initiatives to deploy core curricula covering the highest priority topics in women's health care (i.e., "Women's Health Mini-Residencies"). VA has developed four mini-residency programs in recent years and offers mini-residency programs as large, national training conferences each year. Since 2008, VA has provided mini-residency training to over 3,000 primary care providers and more recently to approximately 500 primary care nurses and 250 emergency care providers and nurses. However, there is an ongoing need to train additional primary care and emergency care providers in the care of women Veterans to ensure that equitable, high-quality care is provided at all VA sites.

VA estimates section 404 would cost approximately $920,000 in FY 2018, $4.84 million over 5 years, and $9.84 million over 10 years.

Section 501 would require VA to collect and analyze data on each VA program that provides a service or benefit to a Veteran, to disaggregate such data by sex and minority status when the data lend itself to such disaggregation, and to publish the data collected and analyzed, except for such cases in which the Secretary determines that some portions of the data would undermine the anonymity of a Veteran.

VA opposes section 501 because we are concerned about the breadth and potential implications of this legislation. While VA tracks various demographic information about Veterans, it does so only to the extent that these factors are related to eligibility for benefits or services or would assist in the delivery of benefits or services. Many programs and services offered by VBA and the National Cemetery Administration (NCA) do not differ in any way based upon gender, race, ethnicity, or other factors. Many of VHA's programs, though, do collect this information, as it is critical to providing quality health care. Moreover, many of our existing forms do not collect this information, or at least do not require a respondent to report such information (for example, for race or ethnicity). If the legislation is intended to require VA to collect this information, such an effort would increase costs for Veterans and VA. VA could be forced to remove other, more mission-critical collections of information to account for these costs in order to reduce the burden on the public. New requirements could also duplicate other reporting requirements if, for example, this section also applied to grants programs.

We would appreciate the opportunity to discuss this section to better understand specifically what information this provision is intended to produce. VA would be happy to provide such information upon the Committee's request, but we do not believe a statutory requirement to provide such information would be appropriate.

VA is unable to develop a cost estimate for this section at this time because we are unsure of the intended scope and effect of this provision.

Section 502 would require VA, not later than 1 year after the date of enactment, to submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate a report on the availability from VA of prosthetics made for women Veterans, including an assessment of the availability of such prosthetics at each VA medical facility.

VA does not support section 502. VA provides comprehensive prosthetic and sensory aids and services that support and optimize the health and independence of all Veterans, regardless of gender. While VA does not oppose providing a national report at the end of each FY detailing the types of prosthetic items, quantity of items, and amount expended on women Veterans, VA opposes providing an assessment of the availability from VA of prosthetics made for women Veterans, including an assessment of the availability of such prosthetics at each medical facility of the Department. We oppose this provision because the process for procuring prosthetic items for Veterans is initiated by the clinician. Hence, the types of prosthetic items cannot be predicted due to prescription dependency on medical necessity. VA could produce a retroactive report regarding the type of prosthetic items provided to women Veterans, but providing a report on the availability of such items at a specific point in time would not provide meaningful information.

We estimate that section 502 would not have significant costs.

Section 503 would require VA to survey its Internet websites and information resources and publish a website that serves as a centralized source of information about VA benefits and services available to women Veterans. The website would provide women Veterans with information about all services available in the district where the Veteran is seeking such services, including the name and contact information of each women's health coordinator, a list of appropriate staff for other bene-

fits from VBA and NCA, and any other information the Secretary considers appropriate. VA would be required to update the information on the website at least once every 90 days. Outreach conducted under 38 U.S.C. § 1720F(i) would include information about the website. VA would be directed to derive funds for this section from the amounts made available to publish VA internet websites.

VA supports the intent of section 503, but the provision is unnecessary because VA can accomplish the objectives of the provision under existing authority. VA already has in place for each medical center a website specific to women Veterans that highlights the services available and a point of contact at the facility. In addition, VA offers two national websites that offer facility locators on the site. The website required by section 503 would complement this information and could be more accessible to Veterans.

Section 504 would express the sense of Congress that the Secretary should change the motto of VA to be more inclusive. VA defers to Congress in terms of expressing its sense on policy matters.

S. 764, VETERANS EDUCATION PRIORITY ENROLLMENT ACT OF 2017

S. 764 would add a new section, 3680B, to subchapter II of chapter 36 of title 38 U.S.C. that would prohibit the Secretary or a State Approving Agency (SAA) from approving a program of education offered by an institution that allows certain students priority enrollment, unless the institution allows "covered individual[s]" to enroll at the earliest possible time pursuant to such a priority enrollment system. "Covered individual[s]" would be those individuals using educational assistance under chapters 30, 31, 32, 33, or 35 of title 38, U.S.C.; or under chapter 1606 or 1607 of title 10, U.S.C.

VA supports the intent of S. 764 but has some concerns. As currently written, the proposed legislation would not impact programs that are "deemed approved" as per the provisions of 38 U.S.C. § 3672(b)(2)(A), which includes accredited standard college degree programs at public and private, not-for-profit institutions of higher learning. If the intent is to have the requirement apply to programs at all types of institutions, then VA recommends inserting a conforming amendment to add reference to the new proposed section 3680B to the list of requirements affecting "deemed approval" section 3672(b)(2)(A) of title 38, U.S.C.

In addition, while the proposed amendment prohibits the Secretary or a SAA from approving programs that do not meet the specified criteria, it does not clearly require the disapproval of non-compliant programs that were approved prior to enactment or that cease to be compliant after approval. If the disapproval of non-compliant programs is intended to be a requirement as well, then we would recommend that this be specified in the bill as well. In the event that program disapproval is desired, VA would also suggest a future effective date of 12 months from the date of enactment in order to allow time for schools to change their policies and, thus, minimize the disruption of the educational pursuits of beneficiaries that are currently enrolled in such programs.

VA supports the intent of S. 764, and is willing to provide technical assistance as needed to ensure that the bill has the intended outcome.

VA does not have a cost estimate for this bill at this time.

S. 784, VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT (COLA) ACT OF 2017

S. 784 would require the Secretary to increase the rates of disability compensation and Dependency Indemnity Compensation by the same percentage as any increase to Social Security benefits effective on December 1, 2017. The bill would also require VA to publish these increased rates in the *Federal Register*.

VA strongly supports this bill because it would express, in a tangible way, this Nation's gratitude for the sacrifices made by our service-disabled Veterans and their surviving spouses and children. The bill would also ensure that the value of these benefits keeps pace with increases in consumer prices.

VA estimates the cost of this bill to be $1.3 billion in FY 2018, $8.1 billion over 5 years, and $17.5 billion over 10 years. However, the cost of these increases is included in VA's baseline budget because VA assumes that Congress will enact a cost-of-living adjustment each year. Therefore, enactment of the bill would not result in additional costs, beyond what is included in VA's baseline budget.

S. 804, WOMEN VETERANS ACCESS TO QUALITY CARE ACT

S. 804 would seek to improve the provision of health care for women Veterans by VA through several different provisions.

Section 2 would require VA to establish standards to ensure that all VA medical facilities have the structural characteristics necessary to adequately meet the "gen-

der specific" health care needs, including privacy, safety, and dignity, of Veterans at these facilities. VA would be required to promulgate regulations within 180 days of the date of enactment to carry out this section. Within 270 days of the date of enactment, VA would be required to integrate these standards into the prioritization methodology used by VA with respect to requests for funding of major medical facility projects and major medical facility leases. Not later than 15 months after the date of enactment, VA would be required to report to the Committees on Veterans' Affairs of the House and Senate on the standards established under this section, including a list of VA medical facilities that fail to meet the standards; the minimum total cost to ensure that all VA medical facilities meet such standards; the number of projects or leases that qualify as a major medical facility project or major medical facility lease; and where each such project or lease is located in VA's current project prioritization.

VA appreciates the intent of section 2, but we do not believe it is necessary given other actions we are already taking. For example, in 2012, VA developed and published a Space Planning Criteria Chapter for Women Veterans Clinical Service, which identifies space standards for the delivery of primary care services to Women Veterans Clinical services within VA. These space standards support care for women Veterans from basic primary care to ultrasound and mammography services. A standard examination room plan for Women Veterans Clinics was developed including access to bathroom facilities directly connected to the examination room and including such details as privacy curtains, locking hardware, and exam table placement. VA's Medical/Surgical Inpatient Units and Intensive Care Nursing Units Design Guide, developed in 2011 and 2012, addresses the needs of women Veterans. These standards are available online at: www.cfm.va.gov/TIL. Since 2012, the health care needs of women Veterans have been an instrumental consideration in the development and update of the standards that are utilized in the planning and design of all VA facilities to support the delivery of Veterans' health care. Moreover, it is unclear why VA would need to promulgate regulations for this section. Absent the requirement in the bill, VA would not need to promulgate regulations. VA's construction standards have been established through policy for years, and revising our standards through this process is less resource intensive and faster than formal regulations.

Section 3 would require VA, not later than 60 days after the date of enactment, to establish policies for environment of care inspections at VAMCs. These inspections would include an alignment of the requirements for such inspections with the women's health VHA Handbook, a requirement for the frequency of such inspections, and a delineation of the roles and responsibilities of staff at the VAMC who are responsible for compliance. It would also require the Secretary to certify to the Committees on Veterans' Affairs of the House and Senate that the policies required under this section have been finalized and disseminated to VAMCs.

VA also appreciates the intent of section 3 but does not believe this provision is necessary because VA established a Comprehensive Environment of Care (CEOC) Program policy in February 2016. VHA Directive 1608, Comprehensive Environment of Care (CEOC) Program, outlines the requirements of a CEOC Program and assigns responsibilities and accountability from VA Central Office, through the Veterans Integrated Service Network (VISN), to the medical centers, detailing the requirements for leadership involvement, routine environment of care rounds, discipline-based standardized checklists, and a requirement to identify and track deficiencies through resolution. VHA Directive 1608 is aligned with VHA Directive 1330.01, Health Care Services for Women Veterans, and VA believes this meets the intent of the proposed language in the bill. We note that the bill specifically refers to a "women's health handbook," but the current form of this policy is in a Directive. We recommend the language be revised to simply refer to a "policy," rather than either a "handbook" or a "directive" to avoid possible confusion.

Section 4 would require the Secretary to use health outcomes for women Veterans furnished hospital care, medical services, and other health care by VA in evaluating the performance of VAMC directors. It would also require VA to publish on an Internet Web site information on the performance of directors of VAMCs with respect to health outcomes for women Veterans, including data on health outcomes pursuant to key health outcome metrics, a comparison of how such data compares to data on health outcomes for male Veterans, and explanations of this data to help the public understand this information.

VA already is focused on tracking access and outcomes for women Veterans, and on addressing disparities in care, and thus we do not believe section 4 is necessary. VA has a robust method for evaluating ambulatory care using the Healthcare Effectiveness Data and Information Set (HEDIS) measures and inpatient care quality using The Joint Commission ORYX® measure set. VA also evaluates Veteran as-

sessments of their health care experiences by administering the Consumer Assessment of Healthcare Providers and Systems survey that focuses on inpatient and outpatient services. Both the clinical quality measures and Veteran experience measures are collected for men and women, so that comparative analyses and reporting are possible. These results are used to assess individual medical center Directors and to compare facility results to internal and external benchmarks. Results also are posted on a publicly available internet Web site.

Section 5 would seek to increase the number of obstetricians and gynecologists employed by VA. Paragraph (a) of this section would require, not later than 18 months after enactment, that VA ensures that every VAMC have a full-time obstetrician or gynecologist.

VA supports the intent of section 5(a) and already is taking steps to expand access to gynecological care throughout VA. Currently, approximately 76 percent of VAMCs have a gynecologist on staff, and we plan to add this service at roughly another 20 facilities. This will ensure that all facilities with a surgical complexity of intermediate or complex will have a gynecologist on staff. At facilities with a surgical complexity designation of standard or less, we do not believe that there is sufficient patient demand to support a full-time gynecologist or obstetrician. For Veterans needing these services at these facilities, VA uses its community care authorities to ensure these Veterans are able to access care. Moreover, in some areas of the country, particularly in smaller or more rural areas, VA faces recruitment challenges in hiring new staff, and we anticipate we would face similar challenges if this legislation were enacted.

Paragraph (b) of section 5 would require VA, within 2 years of enactment, to carry out a pilot program in not fewer than three VISNs to increase the number of residency program positions and graduate medical education positions for obstetricians and gynecologists (OB-GYN) at VA medical facilities.

VA supports the intent of paragraph (b) of section 5, and would respectfully submit that VA already has this authority and is using it. VA currently funds 31 OB-GYN residency positions across 40 sites. Family Medicine also provides many aspects of gynecological care that meet the needs of women Veterans for which VA funds 154 residency positions at 81 VAMCs. We would welcome Committee feedback as to how we could improve these efforts. While gynecologic services are widely available across VA, the limited number of women Veterans seeking care and the scope of services at some sites makes it difficult to provide the educational resources to fulfill the accreditation needs for training in obstetrics and gynecology. This limits an approach to national increases in these residency positions. A three VISN pilot program would be limited in its ability to start within 2 years given the need to develop relationships with residency programs in this area, as well as understand the needs of women Veterans in those VISNs.

Section 6 would require VA to develop procedures to share electronically certain information with State Veterans agencies to facilitate the furnishing of assistance and benefits to Veterans. The information would include military service and separation data, a personal email address, a personal telephone number, and a mailing address. Veterans would be able to prevent their information from being shared with State Veterans agencies by using an opt-out process to be developed by VA. VA would be required to ensure that the information shared with State Veterans agencies is only shared by such agencies with county government Veterans service offices for such purposes as VA would determine for the administration and delivery of assistance and benefits.

VA believes strong relationships with State Veterans agencies, as well as outreach to Veterans, are critical. However, we do have concerns with this section. The information required, we believe, would have Privacy Act implications. Also, managing opt-out requests would require additional resources, although the amount cannot be projected with specificity. We would be glad to discuss with the Committee VA's collaborative efforts with State Veterans agencies on outreach and how the goals of section 6 could be fulfilled while avoiding the concerns expressed above.

Finally, section 7 would direct VA to carry out an examination of whether VAMCs are able to meet the health care needs of women Veterans and to submit this report within 270 days of enactment. Again, we would respectfully submit that VA has this authority, and is using it in this way. VA fully agrees with the importance of assessing access for women Veterans and implementing comprehensive primary care at all sites. We are already tracking wait times, access, the number of designated women's health providers at each site, recruitment efforts, and staff training. VA believes that the additional examination required by this section is unnecessary as it would include examining sites that we know are performing well. VA has begun efforts to use evaluation data to work with those sites that have challenges to assist them in improving services for women Veterans. Since 2010, VA has assessed the imple-

mentation of comprehensive women's health through national site visits. Women's Health Services contracted with a private company to develop the methodology, metrics, and tools needed to evaluate Women's Health Programs (WHP) across VA. By end of FY 2016, 100 percent (140) of the VA health care system WHPs comprehensive evaluations were completed. Additionally, VA monitors access, including wait time data, for women Veteran appointments. VA also has evaluated disparities in health outcomes since 2008, and we lead the Nation in reducing health disparities for women Veterans.

VA estimates a contract to conduct the examination and prepare the report required would cost approximately $10.3 million.

S. 899, VA TRANSITION IMPROVEMENT ACT

VA supports S. 899, which would require VA to establish a leave transfer program for the benefit of health care professionals appointed under 38 U.S.C. § 7401(1) and authorize the establishment of a leave bank program for the benefit of such health care providers. Inclusion of this provision would ensure that disabled Veteran employees performing health care services in Title 38 occupations have the same opportunity to schedule medical appointments and receive medical care related to their disability without being charged leave as employees in Title 5 and Hybrid Title 38 occupations. The bill would also provide disabled Veteran employees an opportunity to undergo medical treatments for their disabilities without having to consider their leave balances or work-life issues to obtain such services outside of scheduled work hours.

It is projected that VA will continue to hire Veterans with service-connected disabilities of 30 percent or greater into Title 38 occupations at a rate that mirrors the current percentage (3.5 percent) of employees occupying such positions within VHA. VA estimates that this legislation would be cost neutral as it does not increase full-time employee equivalent levels or salaries of the employees hired into the positions.

S. 1024, VETERANS APPEALS IMPROVEMENT AND MODERNIZATION ACT OF 2017

Modernizing the appeals process is a top priority for VA. It is more critical than ever that we continue to work together to transform an appeals process that is failing Veterans. There are currently over 470,000 appeals pending in VA, some 40 percent more than were pending only 5 years ago. Those Veterans are waiting much too long for answers on their appeals. Although Veterans wait an average of only 116 days for a decision on VA disability compensation claims, they are waiting an average of 3 years for their appeal to be resolved. Appeals that go all the way to the Board of Veterans' Appeals (Board) take even longer—an average of 6 years to resolve. A system that can deliver an answer on an initial claim in 116 days, but takes many years to resolve an appeal is a system that is not working for Veterans. If appeals reform is not passed, these already unacceptable wait times will only get worse.

S. 1024 would provide much-needed comprehensive reform for the VA appeals process to ensure that Veterans receive a timely, VA decision on their appeal. It would replace the current, lengthy, complex, confusing VA appeals process with a new appeals process that makes sense for Veterans, their advocates, VA, and stakeholders. VA supports the intent of S. 1024; however, we have some concerns with certain provisions in S. 1024 as drafted, such as the provisions that would remove finality from the process upon judicial review and require the Secretary to certify that he has the resources necessary to timely process appeals in the future. We look forward to working with the Committee to address those concerns. The Department stands committed to getting appeals reform accomplished for Veterans this year.

The current VA appeal process, which is set in law, is broken and provides Veterans a frustrating experience. In the current process, appeals have no defined endpoint. Veterans and VA adjudicators are instead engaged in continuous evidence gathering and repeated re-adjudication of the same appeal. This cycle of evidence gathering and re-adjudication means that appeals often churn for years between the Board and the agency of original jurisdiction (AOJ) to meet complex legal requirements, with little to no benefit flowing to the Veteran. The multiple layers of adjudication built into the current appeals process exacerbate delays even more. Jurisdiction is also split between the Board and the AOJ, meaning that Veterans often don't fully understand where in VA their appeal is located any given time. All of this has resulted in a system that is complicated, inefficient, ineffective, and confusing. Due to this complex and inefficient process, Veterans wait much too long for final resolution of their appeal.

Without significant legislative reform, wait times and the cost to taxpayers will only increase. It was this stark reality that led to VA's unprecedented level of col-

laboration with stakeholders to design a modernized appeals process. The new appeals process contained in S. 1024 would provide Veterans an appeals decision that is timely, transparent, and fair. The new process is not just a VA idea. It is the product of over a year of collaboration between the Board, Veteran Benefits Administration, Veteran Service Organizations, the private bar, and other stakeholders. The new appeals process we designed is simpler and easier for Veterans to understand. It provides a streamlined process focused on early resolution of appeals, and generating long-term saving for taxpayers. VA is grateful to all of the stakeholders for their contributions of time, energy, and expertise in this effort.

S. 1024 would empower Veterans by providing them with the ability to tailor the process to meet their individual needs—choice that is not available in the current appeals process. Veterans in the new process can pursue one of three different lanes. One lane would be for review of the same evidence by a higher-level claims adjudicator at the AOJ. One lane would be for submitting new and relevant evidence with a supplemental claim at the AOJ, and one lane would allow Veterans to take their appeal directly to a Veterans Law Judge at the Board. In this last lane, the intermediate and duplicative steps currently required by statute to receive Board review, such as the Statement of the Case and the Substantive Appeal, would be eliminated. Furthermore, hearing and non-hearing options at the Board would be handled on separate dockets so these distinctly different types of work can be managed more efficiently.

As a result of this new design, the AOJ would be the claims adjudication agency within VA and the Board would be the appeals agency. This design would remove the confusion caused by the current process, in which a Veteran initiates an appeal in the AOJ, but the appeal is really a years-long continuation of the claim development process. It would ensure that all claim development occurs in the context of a supplemental claim filed with the AOJ, which the AOJ can quickly adjudicate, rather than in an appeal.

Currently, VA has a statutory duty to assist the Veteran in the development of a claim for benefits. This duty includes obtaining relevant Federal records, obtaining other records identified by the claimant, and providing a medical examination in certain circumstances. The new design contains a mechanism to correct any duty to assist errors by the AOJ. If the higher-level claims adjudicator or Board discovers an error in the duty to assist that occurred before the AOJ decision being reviewed, the claim/appeal would be returned to the AOJ for correction unless the claim/appeal could be granted in full. However, the Secretary's duty to assist would not apply to the lane in which a Veteran requests higher-level review by the AOJ or review on appeal to the Board. The duty to assist would, however, continue to apply whenever the Veteran initiated a new claim or supplemental claim. Moreover, S. 1024 would require VA to modify its claims decision notices to ensure they are clearer and more detailed. This notice would help Veterans and their advocates make informed choices as to which a review option makes the most sense.

The disentanglement of processes achieved by S. 1024 would be enabled by one crucial innovation. In order to make sure that the Veteran fully understands the process and can adapt to changed circumstances, a Veteran who is not fully satisfied with the result of any lane would have 1 year to seek further review while preserving an effective date for benefits based upon the original filing date of the claim. For example, a Veteran could go straight from an initial AOJ decision to an appeal to the Board. If the Board decision was not favorable, but helped the Veteran understand what evidence was needed to support the claim, then the Veteran would have 1 year to submit new and relevant evidence to the AOJ in a supplemental claim without fearing an effective-date penalty for choosing to go to the Board first. The robust effective date protections built into the draft bill enhance Veterans' rights and ensure that Veterans and their advocates cannot make a wrong turn in navigating the new appeals process.

Beyond stopping the flow of appeals into the existing broken system, S. 1024 provides opt-ins to allow as many Veterans as possible to benefit from the streamlined features of the new process. A claimant who receives a decision after enactment and prior to the applicability date of the law could elect to participate in the new process, which would give VA discretion regarding whether to apply the new process to the claimant. However, while subsection (x)(3) envisions the possibility of processing individual claimants who opt-in under the new system prior to the applicability date, as a practical matter, VA cannot realistically offer the new system on a piecemeal basis before the entire new system is ready, which in turn depends on the certification date. Therefore, in practice, only Veterans who receive notice of decision within the 1 year period prior to the effective date of the law would be able to opt-in. Veterans who received an earlier notice of decision would not be able to submit a timely appeal into the new process within 1 year of their decision. Also, a claimant

who receives a statement of the case or supplemental statement of the case in a legacy appeal could elect to participate in the new appeals system.

While VA strongly supports the fundamental features of the new process outlined in S. 1024, we have concerns with some aspects of the proposed legislation as presently drafted, as discussed below.

VA opposes a substantive change that would make the effective date protection afforded by the filing of a supplemental claim within 1 year of a decision applicable to supplemental claims filed within 1 year of a decision by the United States Court of Appeals for Veterans Claims (CAVC). This provision goes against an essential construct of the new process, which encourages Veterans to stay within VA to achieve the earliest resolution possible. It would be unfortunate to eliminate sources of unnecessary churn in VA, only to create new incentives for endless appeal at the CAVC. To the greatest extent possible, judicial review should be for substantive legal disagreements between a claimant and VA, not for record development questions that can easily be obviated simply by pursuing additional development and assistance in the supplemental claim lane.

With regard to applicability and the proposed certification of the readiness to carry out the new system by the Secretary, the requirement that the Secretary submit a statement to Congress that he has the resources necessary to timely operate the system is problematic, given the annual budget cycle. While VA will be prepared to implement the new system at the end of the 18-month period prescribed in S. 1024 and shut off the flow of appeals to the broken process, the Secretary cannot predict the outcome of future budget cycles. Therefore, the Secretary will only be able to make a certification regarding resources available at the time of the certification and not into the future.

Moreover, if S. 1024 was enacted with this provision, it would create significant uncertainty in implementing the opt-in component of the law. We note that S. 1024 provides VA discretion to apply the new process to claimants who elect to participate in the modernized appeals system at any time after enactment and before the applicability date. The applicability date in S. 1024 is necessarily indeterminate because it depends upon when the Secretary will be able to certify under subsection (x)(1) that VA has the resources it needs to operate the modernized system; it is not possible to know when the one year period allowing claimants the functional ability to elect begins. As previously noted, although S. 1024 does not set the 1 year period for opt-ins, current law provides that claimants must submit a notice of disagreement within 1 year of a decision, and it will not be administratively feasible to provide claimants with the new system on a piecemeal basis before the administrative and regulatory work necessary to stand up the new system is complete. In order to provide Veterans with meaningful choice in how their appeal is handled, we must be able to inform them as to whether they will have the option of appealing into the new system. We would be happy to continue working with the Committee to discuss alternative approaches to the applicability date of the law.

S. 1024 also adds notice requirements to higher-level review and Board decisions, for the purpose of explaining whether the claimant submitted evidence that was not considered, and if so, what the claimant or appellant can do to have that evidence considered. VA views this addition as unnecessary, as a claimant who had elected either a higher-level review or an appeal to the Board would have already received notice addressing all lane options in the new process, including restrictions on the submission of new evidence. They would also be aware of the option to file a supplemental claim, where they would have the opportunity to submit new evidence for consideration by the AOJ. Additionally, the issue of how to handle improperly submitted evidence is an administrative matter that would best be determined by VA.

S. 1024 also includes reporting requirements that we believe could be adjusted to be less onerous but still provide valuable information to the Congress. We look forward to working with the Committee to better shape these provisions in a manner that achieves adequate protection for Veterans and robust information for Congressional oversight, while at the same time using administrative resources wisely.

VA stands ready to provide additional technical assistance on several other aspects of the proposed legislation. We appreciate any opportunity to work with Congress to further refine this legislation.

S. 1094, DEPARTMENT OF VETERANS AFFAIRS ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION ACT

S. 1094, the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017, would amend and create a number of new authorities regarding the Department of Veterans Affairs (VA) employment practices.

VA strongly supports the aims of this bill, which would improve our oversight and investigation of whistleblower disclosures and retaliation complaints, and allow for more timely disciplinary action against employees whose misconduct or poor performance undermines Veterans' and the public's trust in VA care and services. We deeply appreciate the Committee's efforts to understand and meet VA's needs for greater flexibility in dealing with under-performing and misbehaving employees. We look forward to continuing to work with the Committee, through the technical assistance process, to resolve a few concerns we have with the bill, including constitutional ones. The Department of Justice (DOJ) has informed us that it also looks forward to working with the Committee in the technical assistance process, to address these constitutional concerns. DOJ believes that this can be done without impeding the aims of the bill.

By our reading, the bill addresses five different policy areas, sometimes in different sections. For ease of discussion, we will summarize our understanding of each of these sections individually, then relay VA's position on these policy areas in general.

Section 101 would establish a new Office of Accountability and Whistleblower Protection, under the leadership of a new Assistant Secretary reporting directly to the Secretary. Among other things, the new office would be responsible for receiving and investigating whistleblower disclosures, and for investigating allegations of misconduct, retaliation and poor performance involving Senior Executives, other specified management officials, and supervisors who are alleged to have retaliated against employees for making whistleblower disclosures. The new Assistant Secretary would also be responsible for recommending disciplinary action against individuals who are found to have committed misconduct, including whistleblower retaliation.

This section would also require the new office to track recommendations made by VA's Inspector General and by external oversight bodies such as the Office of Special Counsel and the Comptroller General, and to provide annual reports to this Committee and to the House Committee on Veterans' Affairs on matters within its responsibility.

Section 102 would strengthen protections for whistleblowers by holding supervisors accountable for promoting such protections and by requiring VA to provide training to all employees on whistleblower processes and protections.

Section 103 would require VA to report to this Committee and the House Committee on Veterans' Affairs on methods used to investigate employees, with an eye toward ensuring that investigations are not used to retaliate against whistleblowers.

Section 201 would provide a new framework for removal, demotion, suspension, reassignment, or reprimand of Senior Executives for misconduct or poor performance. This section would set timelines for pre-decisional due process and provide for post-discipline appeals through an internal grievance process and/or appeal to a U.S. District Court.

Section 202 would provide a new framework for removal, demotion, or suspension of employees who are not in the Senior Executive Service. Like section 201, section 202 would set timelines for pre-decisional process and authorizes post-discipline appeals. This section would provide for appeals to the Merit Systems Protection Board, or for bargaining unit employees through the negotiated grievance process, and would specify that such appeals would be subject to a more deferential burden of proof and penalty review than are applicable under current law.

Section 203 would provide for reduction of retirement benefits for an employee who has been removed from service (or retired with a proposed removal pending) and is convicted of a felony that influenced the employee's performance while employed at VA. This section seeks to provide for pre-decisional due process and for post-decisional appeal to the Office of Personnel Management (OPM).

Section 204 would authorize recoupment of a bonus or award paid to an employee who engaged in misconduct or poor performance prior to receiving the award, where the Secretary determines the award or bonus would not have been paid had the misconduct or poor performance been known prior to payment. Like section 203, this section seeks to provide for pre-decisional due process and for post-decisional appeal to OPM.

Section 205 would provide for recoupment of relocation expenses that were authorized following an act of fraud or malfeasance that influenced the authorization. Like the prior sections, this section seeks to provide for internal pre-decisional due process and an external post-decision appeal to OPM. We have a small technical edit to offer on this section and will provide that separately.

Section 206 would reduce the pre-decisional notice period from 14 days to 10 days for actions against supervisors who are found to have engaged in whistleblower retaliation.

Section 207 would add Medical Center Directors and Network Directors to our title 38 direct hire authority.

Section 208 would align pre-decisional timelines for title 38 adverse actions to match the timelines in sections 201 and 202. This section would also revamp the appeal process for title 38 disciplinary actions that do not involve issues of professional conduct or competence.

Section 209 would require periodic training for supervisors on whistleblower rights, motivating/managing/rewarding employees, and managing poor performers.

Section 210 would require the Secretary to report to this Committee, and to the House Committee on Veterans' Affairs, on the impact of sections 201–208 on Senior Executive morale, engagement, hiring, promotion, retention, productivity, and discipline.

Section 211 would require the Secretary to measure, collect, and report information on the outcomes of disciplinary actions taken under these new authorities.

As noted, the bill addresses five different policy areas: whistleblower protections, accountability, recoupment authorities, hiring authorities, and reporting requirements. Each of these will be discussed below in turn. By way of technical assistance, we note that the current wording of section 308(a)(1) of title 38 limits VA to seven Assistant Secretaries. That would need to be amended to authorize eight Assistant Secretaries to include the new position established by this bill.

In general, VA is supportive of the sections regarding whistleblower protections and of the Committee's assistance in strengthening whistleblower protections and in enhancing VA's oversight of whistleblower disclosures.

Regarding the accountability provisions, VA is strongly supportive of these sections, which afford the Secretary much-needed flexibilities to hold employees accountable and to take necessary actions more quickly and to sustain well-founded actions on appeal. We believe these authorities would fix some of the legal problems we had exercising the authority contained in the Veterans Access, Choice, and Accountability Act of 2014, and would provide the Secretary with the authority needed to take timely, decisive action.

Several sections of the bill would also address recoupment of pay or benefits. We appreciate the care with which the Congress has drafted these to be narrowly tailored, and to apply only in cases of egregious misconduct.

We strongly support the provisions concerning direct hiring authority, which would provide the Secretary with sorely needed flexibility in hiring top talent into these critical leadership positions. We look forward to working with the Committee to fill in some of the blanks around this new authority, such as what pay authority would apply to these positions and whether and how Senior Executives hired under other authorities could move into or out of these roles.

Finally, several sections of the draft bill would require VA to provide detailed reports to this Committee, and to the House Committee on Veterans' Affairs, on matters relating to whistleblower protections, employee accountability, and Senior Executive recruitment and management. While we have some concerns about the administrative burden imposed by these requirements, we understand the Committee's interest in such information.

DRAFT, VETERAN PARTNERS' EFFORTS TO ENHANCE REINTEGRATION (PEER) ACT

The draft bill would require the Secretary to phase in and conduct a program whereby peer specialists would be included in patient aligned care teams at VAMCs to promote the use and integration of mental health services in a primary care setting. Not later than 180 days after the date of enactment, this program would have to be established at not fewer than 10 VAMCs. By not later than 2 years from the date of enactment, it would have to be in place at not fewer than 25 VAMCs. Under the bill, the Secretary would be directed to consider specified factors when selecting sites for this program, but, not fewer than five would have to be established at VA designated Polytrauma Centers, and not fewer than ten would have to be established at other VAMCs. The draft bill would also require that all peer specialist programs established under this mandate: (1) ensure that the needs of female Veterans are considered and addressed; and (2) include female peer specialists. Finally, this measure would establish initial, periodic, and final Congressional reporting requirements, as detailed in the bill.

VA has no objection to the bill, but notes that it is not necessary because VA already has the authority to execute this program. However, we would require additional funding to implement it. We also note that a few technical changes are needed for clarity. This legislation, if enacted, would complement VA's ongoing pilot program (commenced in 2014) whereby peer support through peer specialists has been extended beyond traditional mental health sites of care to include Veterans receiv-

ing mental health care in primary care settings. Under the pilot program, trained peer specialists work with VA primary care teams to, in general terms, help improve the health and well-being of other Veterans being treated in VA primary care settings. All 25 sites now have assigned one peer specialist to work in Primary Care at least 10 hours per week. The first cohort of eight sites began seeing Veterans in primary care in January 2016, the second cohort of eight began in August 2016, and the final nine sites began April 1, 2017. To date, the peers in this program have provided services to more than 3,000 Veterans. The response from Veterans, peers, and primary care clinicians has been overwhelmingly positive. Sites made a 1- year commitment to participate in the project, and VA will have a formal program evaluation based on clinical and other outcomes in 2018. It is likely that some of the existing sites will not be able to continue the pilot program after FY 2017 without additional funding.

The bill specifies program participation of female peer specialists. I am pleased to report that women peer specialists are already well represented, with 16.2 percent of the national peer specialist workforce being women. While at first glance 16.2 percent may seem a low rate, please bear in mind that this figure is higher than the percentage of Veterans seeking services through VA who are women. We do recognize, however, that the current number of women Veteran peer specialists in the pilot is unevenly distributed across the country, with some VAMCs having greater difficulty than others in attracting qualified applicants.

Also, it is unclear if the peers will address substance use disorders under the umbrella of their mental health duties. Given the comorbidity of these issues, the need for integration of substance use disorder identification and care, the need for overdose prevention and links as needed to Medication Assisted Treatment for opioid use disorders, and the need to increase the numbers of Veterans achieving long-term recovery, we recommend that this be clarified and, if possible, included.

We estimate this bill would cost $4.94 million in FY 2018, $25.99 million over 5 years, and $55.48 million over 10 years.

DRAFT, SERVING OUR RURAL VETERANS ACT OF 2017

The draft bill would amend 38 U.S.C. § 7406(c) to authorize training and supervision of residents at facilities operated by an Indian tribe, a tribal organization, or the Indian Health Service, federally-qualified health centers, and community health centers. It would also direct VA, in consultation with the Director of the Indian Health Service, to carry out a pilot program to establish graduate medical education residency training programs at such facilities and to affiliate with established programs. VA would be required to carry out the pilot program at not more than four covered facilities and would carry out the pilot program for a period of 8 years beginning on the date that is 180 days after the date of enactment. VA would be required to reimburse certain costs associated with the program and to enter into agreements with individuals participating in the pilot program under which they would agree to serve a period of 1 year at a covered facility (including a VA facility) service for each year in which the individual participates in the pilot program. The bill would provide terms related to breach of the agreement, loan repayment, and concurrent service. VA would be required to submit a report to the Committees on Veterans' Affairs of the House of Representatives and the Senate not later than 3 years before the termination of the pilot program on the feasibility and advisability of expanding the pilot program to additional locations and making the pilot program or any part of it permanent. The draft bill would authorize to be appropriated to VA $20 million per year to carry out the pilot program and would also authorize appropriations for the Secretary of HHS, acting through the Director of the Indian Health Service, and to VA such sums as may be necessary to cover loan repayments under each agency's respective loan repayment programs.

VA supports the draft bill in principle. VA strongly supports the imperative to build Graduate Medical Education capacity in rural and underserved areas with the strategic intent to address a geographically inequitable distribution of the Nation's physician and clinical workforce.

While we appreciate the purpose of this bill, it is likely that a relatively small proportion of the patients seen by residents in such programs would be Veterans, yet VA would incur much of the burden for program initiation and maintenance including resident salaries, faculty time and development, curriculum development, and recruitment efforts.

Under the draft bill, a medical resident who participates in the pilot program would be eligible for participation in the Indian Health Service Loan Repayment Program under section 108 of the Indian Health Care Improvement Act (section 1616a of title 25, U.S.C.) and the VA Education Debt Reduction Program. The draft

bill also would include a period of obligated service (1 year of service at VA for each year of participation in the program). VA supports such a loan repayment and obligated service scheme, but recommends requiring 2 years of service for each year of program participation. Moreover, because residents typically receive a salary and are not obligated, post-residency, to perform services as a result of participating in a residency program, VA requests the authority to concurrently provide educational loan repayment to residents in the program(s) as a tool to recruit highly qualified residents.

VA fundamentally believes that supporting the practice of rural health care in the United States is crucial to fulfilling its mission to provide the highest quality care for Veterans and that we must include within our broad health professions education portfolio a focus on rural health in order to meet our statutory mission to provide medical education for VA and for the Nation. VA endorses educating all physicians regarding the unique health needs of Veterans and providing clinical training opportunities in rural health care delivery systems.

VA estimates the cost of implementation at four sites would be $20.3 million in FY 2018, $90.6 million over 5 years, and $201.8 million over 10 years.

Mr. Chairman and Members of the Committee, this concludes my statement. I would be happy to answer any questions you may have.

Chairman ISAKSON. Well, Dr. Lee, thank you very much for being here and thank you for your concise testimony on a lot of subject matter which, obviously—you know, I have got a check mark over here. I make marks to keep notes as we go by, yes meaning VA supports it, no meaning they do not support it. I have added a new one called "yes, but." [Laughter.]

On almost every response except one the answer was "yes, but," so I want to talk about some of those buts for a second to make sure we find out where we have got something we need to work on.

In particular, on the Veterans Affairs Accountability and Whistleblower Protection Act, which I have been a part of for some years now, working with the Secretary and others to develop—and Senator Tester has been invaluable in working with that, as has Senator Rubio, Senator Moran, and Senator Heller—in fact, almost everybody on the Committee, at one time or another, has had their mark on that piece of legislation.

You were universally, if I am not mistaken, completely satisfied with S. 1094 as it was introduced, as it now exists, the Whistleblower Protection Act. Is that correct?

Dr. LEE. I would like to ask Meghan Flanz, our Acting General Counsel, to answer the question.

Ms. FLANZ. Mr. Chairman, we are very happy with the aims of it. We did, over the weekend, receive some concerns from our colleagues in Department of Justice about a couple of minor edits that they would like to see to avoid some of the constitutional issues that we saw with the Choice Act, SES expedited removal authority, they are minor.

Chairman ISAKSON. Would you elaborate on that?

Ms. FLANZ. Sure. I do not want to bore anybody in the room, but we had an issue under the Choice Act with the appointments clause of the Constitution, in that it specifically directed that a decision by the VA Secretary to remove a senior executive was reviewable only at the level of an administrative judge, before the Merit Systems Protection Board. Administrative judges are not Presidentially-appointed and Senate-confirmed.

There is a bit of an issue in the part of this bill that deals with a grievance process after a senior executive action and directs that the Secretary will ensure that the grievance process is handled by

a VA employee. As worded, that would put an inferior officer, not a Presidentially-appointed, Senate-confirmed individual, in a position of reviewing decisions by the VA Secretary. Very minor fix. Just trying to avoid the same litigation outcome with this bill that we had with the Choice Act.

Chairman ISAKSON. Did any of their concerns arise out of the decision made in the Phoenix case——

Ms. FLANZ. Only the——

Chairman ISAKSON [continuing]. To your knowledge?

Ms. FLANZ. No. Only to the extent that now that we have a decision from the Federal Circuit, pointing out an appointments clause issue in a VA bill, our friends at Department of Justice are looking at this one very carefully just to make sure that there is no similar problem here.

Chairman ISAKSON. And what specifically would they have us do to make sure that problem does not exist?

Ms. FLANZ. I think it is probably as simple as not having the bill specifically state that the grievances will be heard by a VA employee, and then in our implementing regulations we can ensure that we do not have an issue with an inferior officer potentially overruling a VA Secretary.

Chairman ISAKSON. OK. Thank you very much.

On the appeals process, when you were talking, Ms. Lee, I think you were generally supportive of what we are trying to do on the appeals process modernization. Is that correct?

Dr. LEE. Yes.

Chairman ISAKSON. It is my understanding there have been some comments about treating—making sure the case remains open for the filing of any corroborating testimony necessary or any facts and figures before a final decision is made, but for it to be able to be reopened again and again. The intent we are trying to do in terms of the appeals process is get to a position where once filed, and once everybody has had a chance to put their information in, we do not reopen a case and start all over again. Do you think we are doing that in S. 1024, or are we not?

Mr. MCLENACHEN. Mr. Chairman, I will take that question.

Chairman ISAKSON. I knew somebody was on that one.

Mr. MCLENACHEN. Yes.

Chairman ISAKSON. You are welcome. You are not as pretty she is but it is your department. [Laughter.]

Mr. MCLENACHEN. I will do the best I can.

Senator, that is one of the major concerns we have left with the bill. We strongly support it, of course, and we have worked hard on it, but we do still believe that there needs to be some finality in the process. There was a provision that was added, in the bill that was introduced, to remove that finality, so that even after a claim goes to a Federal court, a veteran could still submit a supplemental claim and keep their effective date for benefits. That is not available in current law, and we think it is critical to have that finality in the process. So, that is one of the concerns that we do have.

Chairman ISAKSON. Is it not true that there is one claim yet to be resolved that is 25 years old, because it has been reopened so many times?

Mr. MCLENACHEN. Yes. We have a lot of examples like that in the current process, where we have extremely old appeals that are churning in the process. There have been several examples like that, where there were 30, 40, 50 decisions made by both the Board of Veterans' Appeals and BVA, in that appeal.

So, that is what we are trying to avoid in this current process that we have designed. Right now, in this new process, you would have a beginning and end point for each of those lanes that we have set up for review. In the current process, there is no beginning and end point.

Chairman ISAKSON. I think it is important that all of us stop and think for a second about what that really means. Twenty-five years of submission on a claim made for a benefit to the Veterans Administration, still open. We have been trying for some time to get fully-developed claims, or meaningful processes in the Veterans Administration, so the veteran has every opportunity to develop a claim, and once it is developed, let the decision be made on the information that is submitted, not reopened time and time again. So, that is the issue, I think, on this particular issue.

Mr. MCLENACHEN. Yes, and in our view, there is no reason for a veteran to go to a court to continue to develop the claim. The whole design was earliest possible resolution in VA. So if veteran can file a supplemental claim with VA, and still maintain their effective date for benefits, and we could decide that within 125 days, there would be no reason to go to a court first to get a review, which is why we think that finality is important.

Chairman ISAKSON. The delay not only hurts the veteran, it hurts the Veterans Administration as well.

Mr. MCLENACHEN. Yes. The veteran is not getting the benefits when they could get them at the earliest point, if we can adjudicate a supplemental claim earlier.

Chairman ISAKSON. Thank you very much.

Senator Heller.

STATEMENT OF HON. DEAN HELLER,
U.S. SENATOR FROM NEVADA

Senator HELLER. Mr. Chairman, thank you, and to the panel, thank you also for being here. If you do not mind, Mr. Chairman, I would like to read an opening statement.

Chairman ISAKSON. Without objection.

Senator HELLER. First of all, I want to commend you for the commitment of getting to view all these bills and, frankly, for doing it on a bipartisan basis. Mr. Chairman, you promised to work together on the Committee and I do respect that you have fulfilled that promise, so thank you for that.

Chairman ISAKSON. You are going to be recognized for a longer statement if you keep that up. [Laughter.]

Senator HELLER. All right. Today I have two bills on the agenda, the Women Veterans Access to Quality Care Act and the Care for Veterans' Dependents Act. I am proud to have worked on both of these bipartisan bills with Senator Murray, and appreciate the input that the VA and the veteran service organizations have provided. While the VA has come a long way in improving its care to

women veterans, there are still some gaps that need to be filled, which I think our bill will do.

The VA needs to improve access to doctors that can meet their gender-specific health needs and ensure their policies on safety and privacy for women veterans are properly carried out in all VA facilities. I appreciate the VA's willingness to work with us on this issue and look forward to finding a path forward for this particular bill.

Another bill Senator Murray and I have worked on for years is the Care for Veterans' Dependents Act. The concept is quite simple: if you are a homeless facility that receives VA funding, you want to ensure that you can get reimbursed for providing care to dependents who accompany a veteran. We do not want to see veterans getting turned away from any facility just because they have dependents with them. With over 700 homeless veterans still living on the streets in shelters in Las Vegas and other parts of Nevada, we must continue working to address the needs of veterans who have fallen on hard times.

I am also proud to support a bill in today's agenda from Senator Hatch that ensures that veterans have access to adult day care—day health care benefits.

Last, I want to thank Chairman Isakson and Ranking Member Tester for their work in coming to an agreement on an accountability bill that has support from both sides of the aisle. It is so important that we get the VA the tools that they need to get rid of bad employees, and anyone who has wronged a veteran should not get to stay on administrative leave for months on end. That has to stop and the VA needs to have the authority to get rid of these individuals.

With that, Mr. Chairman, I have a couple of questions and comments for Dr. Lee.

I guess the first question—this is a question I wanted to raise with Secretary Shulkin, and I will the next time he is here, but have you heard of Ely, NV?

Dr. LEE. I know there was a gathering there recently——

Senator HELLER. There was.

Dr. LEE [continuing]. But I have not personally been there.

Senator HELLER. I do not expect you to have been there. I just want to make sure you have heard of Ely, NV. We have veterans there that were able to get their care from a local hospital instead of having to drive to Salt Lake City, which is several hundred miles away. The choice out in Ely, and other rural small towns in Nevada, is you either have to drive to Reno, which is 300 miles one way, or you have to drive to Salt Lake, which is 300 miles the other way.

That contract that they had with the local hospital expired, and, frankly, they do not want to use the Choice program, and I understand why. One veteran called to schedule an appointment with the contractor for Choice and he was told that Ely, NV, did not exist. Another veteran called to schedule an appointment with the contractor for Choice and was told—actually, he was a week out from an appointment and still had not been told whether the appointment had been authorized.

Service through the Choice program is not good and Ely veterans do not want to be part of it. Last week we learned that veterans would be able to access local hospitals through September without having to use the Choice program, which was good news, but obviously these veterans want a permanent solution. I will be asking the same questions to the Secretary about what permanent solutions they may have for these Ely veterans, yet I do have a couple of questions for you.

The first question is, what are you doing to hold the contractors accountable for their performances?

Dr. LEE. Senator, we definitely need a better solution for those veterans in your home State and Ely. We know there are a lot of issues with the program and we are working on them. I can get back to you with specifics on that—in that particular area, what we are doing, but it also speaks to the larger need to look at the entire program and evolve it to better meet the needs of veterans.

Senator HELLER. What would be a timeframe that you could get back to me on this?

Dr. LEE. As soon as we possibly can, sir.

Senator HELLER. A couple of weeks? A month? I just want to get some kind of timeline. Like I said, they are extended through September, which was good news. I just want to make sure we are not talking in October.

Dr. LEE. I think we can get you some response back within a few weeks on what we are——

Senator HELLER. Prior to——

Dr. LEE [continuing]. Yes.

Senator HELLER. OK. OK.

Dr. LEE. We will put a priority on that.

Senator HELLER. I understand you have a pilot program that allows VAs to schedule appointments for veterans in Choice programs. Tell me a little bit about this pilot program, and has it been successful?

Dr. LEE. Are you referring to the self-scheduling?

Senator HELLER. It is a pilot program, from what I understand, that allowed the VA to schedule appointments for veterans in the Choice program. Does that make sense?

Dr. LEE. Yes. Sir, I have to take that for the record and just get some specifics back to you.

[Ongoing communication between VA and Senator Heller's office sufficiently fulfilled these queries.]

Senator HELLER. OK. We can broaden those questions.

Can you tell me why you think veterans currently dislike the Choice program? Why do you think they dislike it?

Dr. LEE. We want to—I think we strive to make access to care very convenient and centered around the veterans' needs, and I think some of the issues with the Choice program currently are well known, and have to do with cumbersome process to get to that care in the community.

Senator HELLER. Can I share a couple of stories with you? We have a veteran from Battle Mountain who is fighting cancer and needs surgery, but the day before the surgery it was still not authorized. Have you heard stories like this before?

Dr. LEE. Unfortunately, they are——

Senator HELLER. We have another veteran in Reno who had an authorized—who had an authorization for surgery that was later revoked by the VA, leaving him with a $17,000 bill. Have you heard stories like this before?

Dr. LEE. Senator, that is unacceptable.

Senator HELLER. Is this unique, or is it something you have heard before?

Dr. LEE. Again, I think the problems with the program are well documented. I do not know about the exact—the volume or the numbers of those particular kinds of cases, but it is absolutely not the kind of service that we strive for.

Senator HELLER. So, tell me, what it is going to take? Tell me, what it is going to take to change problems like this in the system?

Dr. LEE. We have made a lot of progress already. My colleague, Dr. Yehia, in particular, spent a lot of time and energy reforming the Choice program through a number of contract modifications and other changes. I think that we would just ask if we could work together to continue that process as we think about how that program should evolve to better meet veterans' needs.

Senator HELLER. Mr. Chairman, my time has run out.

Chairman ISAKSON. I want to thank you and commend you on your questions. For the record, for you and everybody's benefit here—Senator Tester is aware of this—Secretary Shulkin and the VA have been working for some time to recognize they have problems like the ones you have outlined, in terms of Ely, NV, in terms of surgery being revoked and things of that nature. As we speak, we have been working with Secretary Shulkin to come forward with new parameters to try and deal with these glitches so it does not happen again. And, this Committee will be dealing with it in the not too distant future.

So, as we modernize the Choice program it is truly a choice. It is timely in its responsiveness. It is not as cumbersome and difficult as it has been for the veterans. Dr. Shulkin has been invaluable as has—what is his name, the doctor—Dr. Baligh?

[Cell phone rings.]

Chairman ISAKSON. The Chairman is violating his own rule here.

Senator HELLER. Who is calling you now?

Chairman ISAKSON. Dr. Baligh has done invaluable work with us in making this happen, so we are going to continue to work for it and bring it to the Committee to make sure it is corrected, because many of those things are basically inexcusable. We need to make it work good for our veterans and for the Veterans Administration. So, thank you for bringing it up.

Senator HELLER. Mr. Chairman, thanks for your attention also.

Chairman ISAKSON. Senator Tester.

Senator TESTER. Thank you, Mr. Chairman. I have some questions on the accountability bill so I am going to probably direct most of these to you, Ms. Flanz. Would it be fair to say that you are the VA's top lawyer?

Ms. FLANZ. That is what my business card says, yes.

Senator TESTER. That is good. That is not a bad business card, top lawyer of VA. That is good.

Ms. FLANZ. Job security.

Senator TESTER. That is it.

Ms. FLANZ. There is always something.

Senator TESTER. And you deal with personnel law quite a bit; I would assume, just about exclusively, right?

Ms. FLANZ. Yes.

Senator TESTER. So, when it comes to employee accountability, it is something you are up on. It is also true that you are a career civil servant within the VA, not a political appointee. Correct?

Ms. FLANZ. Yes, that is correct.

Senator TESTER. There is a lot of misinformation about what the VA accountability bill would actually do. I have got a few clarifying questions and I would appreciate your perspective on this. Would this bill allow VA managers to get away with firing anybody who challenges them?

Ms. FLANZ. No, sir.

Senator TESTER. Does this bill trample on workers' rights?

Ms. FLANZ. No, sir.

Senator TESTER. Does it provide senior executives within the VA with more favorable treatment than rank-and-file employees?

Ms. FLANZ. No, it does not.

Senator TESTER. Would you say that senior executives and rank and file are treated on parity—equal?

Ms. FLANZ. As I read the bill, each would receive pre-decisional due process and enough process after a decision to pass constitutional muster. The processes would be different.

Senator TESTER. OK. So could you just kind of discuss why the VA needs a substantial evidence portion, and the MSPB difference provision?

Ms. FLANZ. Sure. Under current law, the Merit Systems Protection Board, which is the board that hears all or almost all Federal employee appeals. It recognizes two different burdens of proof, two different evidentiary standards that apply in different circumstances. One is the preponderant evidence standard, which is, in essence, a mathematical standard. It requires the judge to take a look at all the available relevant evidence and decide whether more of it, 51 percent, supports the agency's view of the case than supports the employee's view of the case.

The other standard, which MSPB currently applies, in some cases, in performance-based actions taken under Chapter 43 of Title 5, is the substantial evidence standard. That is more of a common sense standard. It is more of a "reasonable person" standard. Under that standard, the judge takes a look to see whether the evidence is sufficient that a reasonable person could make the decision that the deciding official (the individual who imposed an action against an employee) makes, even if another reasonable person could make a different decision.

So, under current law, most conduct-based cases have the preponderant evidence standard and then the performance-based cases, under one of our Title 5 authorities, have the substantial evidence standard.

The difficulty for us—and let me give you kind of a real-life example——

Senator TESTER. I was just going to ask for that, so you beat me to it.

Ms. FLANZ. We had a case recently with a mental health provider who was photographed by a veteran patient having a pornographic movie playing on an iPad in the exam room while the veteran patient was there. We have got photographic evidence of misconduct. In this particular case, the individual, the psychologist or psychiatrist, also admitted, confessed to the issue.

We had evidence that I think a reasonable supervisor in almost any organization would believe is sufficient to take action against an employee. But, under the preponderant evidence standard, we do not know the total universe of evidence. We know what we have but we do not know whether all of the evidence together, 51 percent or more, favors the action that the supervisor wants to take.

In a case like that, the concern and the process, generally, has been to undertake a thorough investigation so that we have the total universe of evidence before an action is proposed, so that we, as lawyers, in supporting the Department, can sit in the shoes of a judge and say, yes, mathematically, more of that total universe of evidence supports the action than supports the defense.

From our perspective, the substantial evidence standard, which is by no means a rubber stamp by a judge—the judge still has to look at was there a common-sense business reason for the action taken—would a reasonable person have looked at the evidence and said, yes, that evidence supports the action taken? It is not a rubber stamp. It just allows us to get to the proposal and decision state faster.

Senator TESTER. And it sounds like that psychologist needed a psychiatrist. But would this bill apply to that psychologist?

Ms. FLANZ. Yes, sir.

Senator TESTER. OK. I am out of time. If we have a second round I have got some more.

Chairman ISAKSON. Senator Blumenthal.

HON. RICHARD BLUMENTHAL,
U.S. SENATOR FROM CONNECTICUT

Senator BLUMENTHAL. Thank you, Mr. Chairman. Thank you all for being here today. I am the supporter and sponsor of the Veterans' Partners Efforts to Enhance Reintegration, or Veteran PEER Act, as it is called, and I have advocated for improvements in behavioral health services. I think mental health services are critical in so many ways. I do not need to elaborate for this panel. Often PEER specialists are borrowed from behavioral health centers to assist the primary care treatment teams that improve patient outcomes.

Unfortunately, there is a shortage—the result of this practice has been a shortage of PEER specialists in both behavioral health and primary care. We have essentially robbed Peter to pay Paul. Ensuring there are female PEER specialists available to work with women veterans and reporting on the outcomes of the program as a whole is also included in this measure.

I would like to ask Dr. Lee whether you are a supporter of the Veteran PEER Act. Do you believe that PEER support specialists are a necessary and integral part of mental health services and primary care for our veterans?

Dr. LEE. Senator, thank you for your support of PEER specialists. VA has no objection to the draft bill, but we currently have the authority to implement the increase in PEER support specialists, including them in the PACT team, in primary care. Currently VA has over 1,000 PEER support specialists. About 16 percent of them are women, and we are very supportive of growing that because it benefits veterans. Veterans who interact with peers are more likely to seek care when they need it and to have a better experience with the care team.

Senator BLUMENTHAL. Thank you. Thank you, Mr. Chairman.

Chairman ISAKSON. Senator Murray, did you have a question that you would like to ask?

Senator MURRAY. [Inaudible.]

Chairman ISAKSON. You are on. Senator Tester. OK, I will recognize Senator Tester, who had another question, and then we will go to you.

Senator MURRAY. [Inaudible.]

Senator TESTER. OK. You give me a kick when you are ready, Patty.

This is for Mr. Parker. One of the biggest problems I have got with Choice is that it had little or no visibility in what is going on with our third-party administrator, HealthNet, from Montana. We cannot do oversight or help you when you need it, when there are contract modifications that are happening literally every other month, and we have no reliable information as to whether the company is meeting those standards. That is why I introduced a bill to require the VA to provide the Committee with contract modifications and information about contracting performance.

This kind of goes on to what Senator Heller said. Do you see problems with Congress having this type of data on performance?

Mr. PARKER. No, sir, and, in fact, I will restate what Dr. Lee said, which was, you know, we do support the intent of that bill. We want to make sure that we work it appropriately. I think sharing that information with the Congress is absolutely proper.

Senator TESTER. Good.

Mr. PARKER. What I would suggest is that it comes from the Secretary to this body.

Senator TESTER. Yes. OK. So, the bill also requires the contracts include authority for the Secretary to level financial penalties if the contractor's performance does not meet those contractual standards. Your testimony indicates you believe you have all the tools you need. If that is the case, why has not more been done to hold HealthNet accountable for poor performance? And I do not think it is just Montana.

Mr. PARKER. No. I would agree with that. I do argue that the tools are available. I think that we need to make sure that we, as an organization, use the tools that are available to us. The liquidated damages clause gives us remedies. The quality performance tool such as a QASP, a surveillance plan, gives us the ability to look in and see what performance is.

We need to do a better job, frankly, on the program management side to make sure that we are doing our jobs and holding contractors accountable.

Senator TESTER. I appreciate you taking responsibility. Let me give you an example of two of the things that have been particularly reckless with what is going on. Number 1, people who call up and get put on hold and then they get put back on hold; and 2, they call up and are told to call back days later. This is before they even get the appointment set up. Then, when they get the appointment set up it is a hell of a lot longer than if they just went to the VA to begin with.

Then, those providers, initially—this has since changed because we entered into that picture and told some folks they had to change it—were not paying their providers. We are paying these third-party contractors. I do not know how much we paid HealthNet and I do not know how many States they are in, but I have got a notion it is a fair chunk of change. They should not have to hold that money in their bank account to collect interest on top; they ought to just pay the damn providers.

So, you pretty much told me it is on you.

Mr. PARKER. Well, what I am trying to impart is that I think we, as a Department, need to do a better job of managing some of our contracts, and our program, really. I look at it more as a program basis than in just a contract-by-contract. We are doing things such as putting in the acquisition program management framework to have a better program management culture, mindset, and practices, which aligns with the new PAMIA legislation that still has not been fully implemented yet. We are waiting on guidelines coming out of OMB.

So, we have a couple of big initiatives there that are early on, and I am optimistic that once we get those going, I am hopeful that we are going to see some very good results there. Because you are right—the things that you are citing are absolutely unacceptable.

Senator TESTER. OK. Thank you, Mr. Chairman.

Chairman ISAKSON. For the benefit of the Members who just came in, Senator Murray is next, to be followed by Senator Manchin and then Senator Sullivan, unless Senator Sullivan can go after Senator Murray and then we do it in Republican-Democrat order. Will you be ready in 5 minutes?

Senator SULLIVAN. Sure, if my friend from West Virginia does not mind.

Senator MANCHIN. The Senator from Alaska was born ready. [Laughter.]

Chairman ISAKSON. Given that compliment, you are going to be next, after Senator Murray. How about that?

Thank you, Senator Manchin.

Senator Murray?

Senator MURRAY. Thank you very much, Mr. Chairman. Ms. Kabat, I was very concerned when I got reports about veterans and their families who were cut off from the Caregiver Program really abruptly, so I am glad your department announced it had stopped that practice until it can get a better handle on things and figure out the program's eligibility rules.

But, I am very concerned by the Department's plan to issue guidance on enrollment criteria and seek to reprioritize who is helped by this program. As I talked with Dr. Shulkin last month, I am open to hearing your ideas on changes to the eligibility criteria, but

I expect you will consult with me before the Department attempts to make any changes to who can be helped by this critical program.

Ms. KABAT. Absolutely. While I certain cannot speak directly for Dr. Shulkin, I believe what he and I have discussed is that he really wants to look at the overall way that VA is approaching supporting family caregivers, and certainly the program of comprehensive assistance is one way that we do that. We need to make sure we are doing that well, and be able to then look at all of the other areas in which we are supporting caregivers, including veterans who are caregivers themselves—that is an important piece—as well as our caregivers of veterans who were injured or ill prior to September 11th.

So, there are a lot of different options and lots of different discussion. There is no definitive plan right now to change eligibility. We are working diligently on issuing a directive which is the official policy on the current program, and I am hopeful that that will be published within the next month, which will really provide a framework that is consistent with the eligibility that we have now. It will make decisions more transparent for veterans and their families.

Senator MURRAY. Well, will you keep the suspension in place until you have completed all the actions needed to improve the program, including the pending GAO and IG recommendations?

Ms. KABAT. The GAO recommendations surrounding the development of an IT solution? I do not believe that our plan is to keep the suspension in place until we have that new IT solution. I can get you a more specific update on what is going on with the IT solution. I can take that for the record and get that back to you.

[The information requested during the hearing follows:]

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. PATTY MURRAY TO MARGARET KABAT, NATIONAL DIRECTOR, CAREGIVER SUPPORT PROGRAM, VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Response. VA's Program of Comprehensive Assistance for Family Caregivers (PCAFC) is expected to resume in the coming months following a strategic review of the program which, indicated a need for better communication with Veterans and caregivers, improved internal processes and procedures, and additional staff training. Since that review, VA has made significant advancements in communication about eligibility determinations, clinical discharges and the appeals process, internal processes and procedures, and staff training. Specifically, those advancements include:

- Increased communication and engagement with Veterans Service Organizations, Military Service Organizations, Members of Congress, VA Veterans Integrated Service Network directors, and other stakeholders.
- Ongoing work to revise the PCAFC website to include a section about connecting caregivers and Veterans to home and community based services.
- Work is in progress on a Veterans Health Administration (VHA) national policy directive on caregivers, with an expected 80,000 subscribers to the PCAFC list-serve to promote transparency.
- Work is in progress to promulgate a new, standardized letter for use by all VA medical centers when communicating program discharges with Veterans and Family Caregivers.
- Implementation a new "Roles, Responsibilities and Requirements" document that reaffirms that all family caregivers are collaborative partners with VHA.

Throughout this time, the PCAFC has continued to collaborate with VA's Office of Information Technology on development efforts for an information technology (IT) solution intended to replace the current Caregiver Application Tracker. When fully developed and available for field use, the new Caregiver Tool (CareT) will enable improved tracking and monitoring of Veteran and caregiver participation in PCAFC.

Senator MURRAY. OK. I would like to see that. And I want to know if you can assure me that the veterans and VA staff across the country are going to get very clear national guidance on enrollment criteria?

Ms. KABAT. Yes, I can assure you of that. I can also assure you that we are going to increase our oversight from the central office perspective. We have a variety of different things that are being discussed and will be implemented prior to returning to discharging veterans and caregivers from the program.

Senator MURRAY. OK. Well, in an earlier study by the VA, the Department found that for veterans in the caregiver program their inpatient hospital admissions decreased by 30 percent, and the VA also found that when a veteran was hospitalized, their length of stay decreased by 2½ days. So, tell me, how important is it to veteran's health and quality-of-life to spend less time in the hospital and more time at home?

Ms. KABAT. It is essential, and I think everyone in VA believes that, so we are moving forward with working to providing comprehensive support to all caregivers of veterans.

I do think it is important to note that that initial study that you are referencing was done without a comparison group. More recently we have been able to compare veterans whose family caregivers participate in the program of comprehensive assistance to veterans whose caregivers have not participated in the program of comprehensive assistance, and those veterans whose caregivers do participate access more outpatient care, more specialty care, more mental health care. They are more engaged in treatment, which is really an important part of helping veterans get to their highest level of independence.

That research—I am happy to meet with you and discuss this in more detail and actually have the VA researcher with me to talk more about it—did not demonstrate that there was a significant difference in terms of inpatient stay or ER visits. Part of it is that the post-9/11 veteran population are fairly low users of inpatient stays and ER visits, so there is not—it is difficult to get a substantial difference, because they use those services less than other cohorts of veterans.

Senator MURRAY. Are you working at all to expand research to find out what the improvements are?

Ms. KABAT. Absolutely. We have ongoing work with VA researchers at the Durham, NC, VA. Again, I am happy to meet with you and your staff and talk more about all that we are looking at.

Senator MURRAY. OK. I also just want to say that there was a September 2014 GAO report that had some really important concerns about the Caregivers Program, including very high workloads of our veterans per caregiver support coordinator. You can get it back to me in the record, but I want to find out where you are on hiring new caregiver support coordinators and getting those personnel in the field so that this program can work.

Ms. KABAT. Absolutely. We have made significant strides. We are up to about 350 caregiver support coordinators across the country, but I am happy to get you the specific around ratios.

[The information requested during the hearing follows:]

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. PATTY MURRAY TO MARGARET KABAT, NATIONAL DIRECTOR, CAREGIVER SUPPORT PROGRAM, VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Response. The PCAFC monitors Caregiver Support Coordinator (CSC) positions to approved Veteran/Caregiver dyads ratios and works with sites to discuss facility staffing needs to support local administration of the PCAFC. Please see the attached document, titled Ratio of CSCs to Caregivers. The most recent and accurate data currently available is as of August 18, 2017, at which time the PCAFC Office was funding 446 positions. Seventy of these positions are vacant and in various stages of recruitment. An update to the CSC staffing data set will be available November 2018.

VISN	Station #	Station name	Approved CGs as of 8/18/2017	Total FTE	#CGs to 1 FTE
		VAMCS with CSC to approved caregiver ratio of 25 or less			
16	564	FAYETTEVILLE VA MEDICAL CENTER, FAYETTEVILLE, AR	10	7	2
19	575	GRAND JUNCTION VA MEDICAL CENTER, GRAND JUNTION, CO	3	1	3
4	595	LEBANON VA MEDICAL CENTER, LEBANON, PA	10	2	5
2	528A6	BATH VA MEDICAL CENTER, BATH, NY	15	2	8
4	542	COATESVILLE VA MEDICAL CENTER, COATESVILLE, PA	17	2	9
7	S34	RALPH H. JOHNSON VA MEDICAL CENTER, CHARLESTON, SC	20	2	10
7	509	CHARLIE NORWOOD VA MEDICAL CENTER, AUGUSTA, GA	20	2	10
20	463	ALASKA VA HEALTHCARE SYSTEM, ANCHORAGE, AK	20	2	10
23	437	FARGO VA MEDICAL CENTER, FARGO, ND	31	3	11
2	528A8	ALBANY VA MEDICAL CENTER, ALBANY, NY	12	1	12
17	671	SOUTH TEXAS VA MEDICAL CENTER, SAN ANTONIO, TX	82	7	12
5	512	BALTIMORE VA MEDICAL CENTER, BALTIMORE, MD	56	4	14
7	679	TUSCALOOSA VA MEDICAL CENTER, TUSCALOOSA, AL	28	2	14
15	657	JOHN COCHRAN DIVISION VA MEDICAL CENTER, ST. LOUIS, MO	28	2	14
16	502	ALEXANDRIA VA MEDICAL CENTER, ALEXANDRIA, LA	48	3.5	14
12	550	ILLIANA VA MEDICAL CENTER, DANVILLE, IL	44	3	15
5	540	LOUIS A. JOHNSON VA MEDICAL CENTER, CLARKSBURG, WV	32	2	16
12	695	CLEMENT J. ZABLOCKI VA MEDICAL CENTER, MILWAUKEE, WI	32	2	16
20	648	PORTLAND VA MEDICAL CENTER, PORTLAND, OR	63	4	16
19	442	CHEYENNE VA MEDICAL CENTER, CHEYENNE, WY	51	3	17
10	539	CINCINNATI VA MEDICAL CENTER, CINCINNATI, OH	36	2	18
1	650	PROVIDENCE VA MEDICAL CENTER, PROVIDENCE, RI	55	3	19
4	460	WILMINGTON VA MEDICAL CENTER, WILMINGTON, DE	55	3	19
12	607	WILLIAM S. MIDDLETON MEMORIAL VETERANS HOSPITAL, MADISON, WI	38	2	19
20	687	JONATHAN M. WAINWRIGHT MEMORIAL VA MEDICAL CENTER, WALLA WALLA, WA	38	2	19
23	636A6	CENTRAL IOWA VA MEDICAL CENTER, DES MOINES, IA	76	4	19
7	521	BIRMINGHAM VA MEDICAL CENTER, BIRMINGHAM, AL	60	3	20
15	657A4	JOHN J. PERSHING VA MEDICAL CENTER, POPLAR BLUFF, MO	59	3	20
22	649	NORTHERN ARIZONA VA MEDICAL CENTER, PRESCOTT, AZ	40	2	20
15	589A6	589A6 - EASTERN KANSAS HCS LEAVENWORTH	42	2	21
19	623	JACK C. MONTGOMERY VA MEDICAL CENTER, MUSKOGEE, OK	64	3	21
1	518	EDITH NOURSE ROGERS MEMORIAL VETERANS HOSPITAL, BEDFORD, MA	66	3	22
4	562	ERIE VA MEDICAL CENTER, ERIE, PA	71	3	24
6	S58	DURHAM VA MEDICAL CENTER, DURHAM, NC	115	4.85	24
15	657A5	MARION VA MEDICAL CENTER, MARION, IL	77	3.25	24
16	598	EUGENE J. TOWBIN VA MEDICAL CENTER, NORTH LITTLE ROCK, AR	48	2	24
		VAMC5 with CSC to approved caregiver ratio of 25-49			
15	589A4	HARRY S. TRUMAN MEMORIAL VA MEDICAL CENTER, COLUMBIA, MO	97	4	25
23	568	FORT MEADE VA MEDICAL CENTER, FORT MEADE, SD	25	1	25
2	528A5	CANANDAIGUA VA MEDICAL CENTER, CANANDAIGUA, NY	51	2	26
1	631	CENTRAL WESTERN MASSACHUSETTS VAMC (NORTHAMPTON)	81	3	27
4	529	BUTLER VA MEDICAL CENTER, BUTLER, PA	27	1	27
15	589A7	ROBERT J. DOLE VA MEDICAL CENTER, WICHITA, KS	54	2	27
20	692	SOUTHERN OREGON REHABILITATION CENTER & CLINICS, WHITE CITY, OR	110	4	28
23	S68A4	BLACK HILLS - HOT SPRINGS VAMC	28	1	28
7	557	CARL VINSON VA MEDICAL CENTER, DUBLIN, GA	57	2	29

10	538	CHILLICOTHE VA MEDICAL CENTER, CHILLICOTHE, OH	29	1	29
12	556	CAPTAIN JAMES A. LOVELL FEDERAL HEALTH CARE CENTER, NORTH CHICAGO, IL	57	2	29
17	674	CENTRAL TEXAS VA MEDICAL CENTER, TEMPLE, TX	246	8.6	29
20	653	ROSEBURG VA MEDICAL CENTER, ROSEBURG, OR	114	4	29
4	503	JAMES E. ZANDT VA MEDICAL CENTER, ALTOONA, PA	100	3	33
6	565	FAYETTEVILLE VA MEDICAL CENTER, FAYETTEVILLE, NC	232	7	33
7	544	WM. JENNINGS BRYAN DORN VA MEDICAL CENTER, COLUMBIA, SC	103	3	34
16	667	OVERTON BROOKS VA MEDICAL CENTER, SHREVEPORT, LA	103	3	34
20	531	BOISE VA MEDICAL CENTER, BOISE, ID	103	3	34
5	613	MARTINSBURG VA MEDICAL CENTER, MARTINSBURG, WV	70	2	35
7	619	CENTRAL ALABAMA VHCS, MONTGOMERY, AL	211	6	35
17	580	MICHAEL E. DEBAKEY VA MEDICAL CENTER, HOUSTON, TX	105	3	35
23	636A8	IOWA CITY VA MEDICAL CENTER, IOWA CITY, IA	70	2	35
19	660	SALT LAKE CITY VA MEDICAL CENTER, SALT LAKE CITY, UT	83	2.3	36
20	668	MANN-GRANDSTAFF VA MEDICAL CENTER, SPOKANE, WA	71	2	36
23	656	ST. CLOUD VA HEALTH CARE SYSTEM, ST. CLOUD, MN	72	2	36
12	676	TOMAH VA MEDICAL CENTER, TOMAH, WI	115	3	38
21	654	SIERRA NEVADA VA MEDICAL CENTER, RENO, NV	75	2	38
10	552	DAYTON VA MEDICAL CENTER, DAYTON, OH	77	2	39
10	655	ALEDA E. LUTZ VA MEDICAL CENTER, SAGINAW, MI	39	1	39
1	608	MANCHESTER VA MEDICAL CENTER, MANCHESTER, NH	119	3	40
2	630	MANHATTAN CAMPUS VA MEDICAL CENTER, NEW YORK, NY	178	4.5	40
12	578	EDWARD HINES JR VA HOSPITAL, HINES, IL	159	4	40
16	629	NEW ORLEANS VA MEDICAL CENTER, NEW ORLEANS, LA	80	2	40
8	548	WEST PALM BEACH VA MEDICAL CENTER, WEST PALM BEACH, FL	122	3	41
10	541	LOUIS STOKES VA MEDICAL CENTER, CLEVELAND, OH	164	4	41
20	663	PUGET SOUND VA MEDICAL CENTER, PUGET SOUND, WA	163	4	41
21	662	SAN FRANCISCO VA MEDICAL CENTER, SAN FRANCISCO, CA	123	3	41
1	405	WHITE RIVER JUNCTION VA MEDICAL CENTER, WHITE RIVER JUNCTION, VT	125	3	42
16	520	GULF COAST VETERANS VA MEDICAL CENTER, BILOXI, MS	170	4	43
19	635	OKLAHOMA CITY VA MEDICAL CENTER, OKLAHOMA CITY, OK	129	3	43
23	438	SIOUX FALLS VA MEDICAL CENTER, SIOUX FALLS, SD	43	1	43
2	528A7	SYRACUSE VA MEDICAL CENTER, SYRACUSE, NY	132	3	44
5	517	BECKLEY VA MEDICAL CENTER, BECKLEY, WV	87	2	44
21	459	VA PACIFIC ISLANDS VA MEDICAL CENTER, HONOLULU, HI	221	5	44
4	693	WILKES-BARRE VA MEDICAL CENTER, WILKES-BARRE, PA	92	2	46
4	646	PITTSBURGH VA MEDICAL CENTER, PITTSBURGH, PA	46	1	46
12	537	JESSE BROWN VA MEDICAL CENTER, CHICAGO, IL	92	2	46
22	519	WEST TEXAS VA MEDICAL CENTER, BIG SPRING, TX	46	1	46
2	620	FDR VA MEDICAL CENTER, CASLT POINT/MONTROSE, NY	145	3	48
6	652	HUNTER HOLMES MCGUIRE VA MEDICAL CENTER, RICHMOND, VA	143	3	48
9	603	ROBLEY REX VA MEDICAL CENTER, LOUISVILLE, KY	239	5	48
12	585	OSCAR G JOHNSON VA MEDICAL CENTER, IRON MOUNTAIN, MI	72	1.5	48
19	436	FORT HARRISON VA MEDICAL CENTER, FORT HARRISON, MT	145	3	48
1	402	TOGUS VA MEDICAL CENTER, TOGUS, ME	48	1	49
		VAMCS with CSC to approved caregiver ratio of 50-99			
2	528	VA WESTERN NEW YORK HEALTHCARE SYSTEM, BUFFALO, NY	100	2	50
7	508	ATLANTA VA MEDICAL CENTER, ATLANTA, GA	297	6	50
10	506	ANN ARBOR VA MEDICAL CENTER, ANN ARBOR, MI	148	3	50
22	756	EL PASO VA OUTPATIENT CLINIC, EL PASO, TX	152	3	51

2	632	NORTHPORT VA MEDICAL CENTER, NORTHPORT, NY	104	2	52
23	618	MINNEAPOLIS VA MEDICAL CENTER, MINNEAPOLIS, MN	155	3	52
1	523	VA BOSTON HEALTHCARE SYSTEM, JAMAICA PLAIN CAMPUS, MA	210	4	53
15	589	KANSAS CITY VA MEDICAL CENTER, KANSAS CITY, MO	106	2	53
19	666	SHERIDAN VA MEDICAL CENTER, SHERIDAN, WY	54	1	54
8	673	JAMES A. HALEY VETERAN'S HOSPITAL, TAMPA, FL	218	4	55
10	757	CHALMERS P. WYLIE AMBULATORY CARE CENTER, COLUMBUS, OH	110	2	55
10	515	BATTLE CREEK VA MEDICAL CENTER, BATTLE CREEK, MI	113	2	57
16	586	G. V. (SONNY) MONTGOMERY VA MEDICAL CENTER, JACKSON, MS	114	2	57
19	554	VA EASTERN COLORADO HEALTH CARE SYSTEMS	230	4	58
1	689	HAVEN CAMPUS VA MEDICAL CENTER, WEST HAVEN, CT	237	4	60
22	678	SOUTHERN ARIZONA VA MEDICAL CENTER, TUCSON, AZ	119	2	60
6	637	ASHEVILLE VA MEDICAL CENTER, ASHEVILLE, NC	124	2	62
21	593	SOUTHERN NEVADA VA MEDICAL CENTER, LAS VEGAS, NV	248	4	62
10	610	NORTHERN INDIANA HEALTH CARE SYSTEM (FT. WAYNE, IN)	234	3.75	63
17	549	VA NORTH TEXAS VA MEDICAL CENTER, DALLAS, TX	315	5	63
22	501	NEW MEXICO VA HEALTHCARE SYSTEM, ALBUQUERQUE, NM	313	5	63
5	581	HUNTINGTON VA MEDICAL CENTER, HUNTINGTON, WV	198	3	66
8	516	BAY PINES VA MEDICAL CENTER, BAY PINES, FL	331	5	66
2	526	JAMES J. PETERS VA MEDICAL CENTER, BRONX, NY	268	4	67
10	553	JOHN D. DINGELL VA MEDICAL CENTER, DETROIT, MI	67	1	67
9	626	TENNESSEE VALLEY VA MEDICAL CENTER, NASHVILLE, TN	489	7	70
5	688	WASHINGTON, D.C. VA MEDICAL CENTER	301	4	72
6	658	SALEM VA MEDICAL CENTER, SALEM, VA	143	2	72
8	573	NORTH FLORIDA/SOUTH GEORGIA VA MEDICAL CENTER, GAINESVILLE, FL	362	5	72
10	583	RICHARD L. ROUDEBUSH VA MEDICAL CENTER, INDIANAPOLIS, IN	143	2	72
22	605	LOMA LINDA VA MEDICAL CENTER, LOMA LINDA, CA	582	8	73
8	672	SAN JUAN VA MEDICAL CENTER, SAN JUAN, PR	587	7.9	74
22	504	AMARILLO VA HEALTHCARE SYSTEM, AMARILLO, TX	147	2	74
23	636	NEBRASKA/WESTERN IOWA HCS, OMAHA, NE	147	2	74
15	589A5	589A5 - EASTERN KANSAS HCS TOPEKA	168	2	84
2	561	EAST ORANGE CAMPUS VA MEDICAL CENTER, EAST ORANGE, NJ	345	4	86
6	659	W. G. (BILL) HEFNER VA MEDICAL CENTER, SALISBURY, NC	257	3	86
9	621	MOUNTAIN HOME VA MEDICAL CENTER, MOUNTAIN HOME, TN	342	4	86
9	614	MEMPHIS VA MEDICAL CENTER, MEMPHIS, TN	526	6	88
8	546	MIAMI VA MEDICAL CENTER, MIAMI, FL	268	3	89
9	596	LEXINGTON VA MEDICAL CENTER, LEXINGTON, KY	90	1	90
17	740	TEXAS VALLEY COASTAL BEND VA MEDICAL CENTER, TEXAS VALLEY, TX	179	2	90
21	570	CENTRAL CALIFORNIA VA MEDICAL CENTER, FRESNO, CA	189	2	95
22	600	LONG BEACH VA MEDICAL CENTER, LONG BEACH, CA	396	4	99
		VAMCS with CSC to approved caregiver ratio of 100-150			
21	640	PALO ALTO VA MEDICAL CENTER, PALO ALTO, CA	501	5	100
6	590	HAMPTON VA MEDICAL CENTER, HAMPTON, VA	629	6	105
22	664	SAN DIEGO VA MEDICAL CENTER, SAN DIEGO, CA	738	7	105
4	642	PHILADELPHIA VA MEDICAL CENTER, PHILADELPHIA, PA	212	2	106
21	612	N. CALIFORNIA HCS-SACRAMENTO, CA	683	6	114
22	644	PHOENIX VA MEDICAL CENTER, PHOENIX, AZ	835	7	119
22	691	GREATER LOS ANGELES VA MEDICAL CENTER, LOS ANGELES, CA	489	4	123
8	675	ORLANDO VA MEDICAL CENTER, ORLANDO, FL	650	5	130

Senator MURRAY. OK, because I did include additional dollars on the fiscal year 2017——

Ms. KABAT. Yes, you did.

Senator MURRAY [continuing]. For that, and I want it used.

Ms. KABAT. You did. Yes. Absolutely. And we appreciate that. Thank you.

Senator MURRAY. All right. Thank you.

Chairman ISAKSON. Senator Sullivan.

STATEMENT OF HON. DAN SULLIVAN, U.S. SENATOR FROM ALASKA

Senator SULLIVAN. Thank you, Mr. Chairman. I know we are talking health issues today so I want to take the opportunity to first welcome you back, sir. We all missed you and we are glad you are doing well. I know we have some health issues with a couple of other Senators, namely Senator Hirono, and I know we are all wishing her well. I am going to read a statement briefly here from

Senator Tillis right now, if that is OK, Mr. Chairman. He also had a bit of a health issue today and he wanted me to read his statement.

I think he is doing well, so, do not worry about that.

Senator TESTER. Senator Sullivan, since you are confused with Senator Tillis all the time, I think you can just say you are Senator Tillis. [Laughter.]

Senator SULLIVAN. Well, this will really freak out——

[Laughter.]

Senator SULLIVAN. That is only if I keep his 5 minutes and then I get my 5 minutes. No. I am just kidding, Joe. I will read it quickly.

This is a statement from Senator Tillis:

> "Please accept my apologies for not being here this afternoon. I was running in the Capital Challenge 5K this morning and unfortunately was not able to finish the race, even though I was well on my way to easily eclipsing my time from last year.
>
> "I want to just briefly comment on two bills on the agenda. On the Veterans Education Priority Enrollment Act I appreciate the VA's support and the valuable feedback we received from all the stakeholders. I understand some of the compliance concerns that were raised and I look forward to discussing with Senator Brown to identify the best path forward that will allow flexibility for schools that are already setting the gold standard while ensuring that all veterans have the opportunity to use their GI Bill to the fullest extent.
>
> "And with regard to the State Veterans Home Adult Day Care—Day Health Care Improvement Act, I thank Senator Hatch for his leadership and I look forward to engaging with the VA to address their recommendations that would improve the bill. Together we can empower veterans to receive daily care while living and spending more time at home with their families."

Thank you, Mr. Chair.

Dr. Lee, I want to talk briefly about the Serving Our Rural Veterans Act, and I appreciate Senator Tester's commitment to that issue as well. As you know, this goes to an issue that actually was raised—and the idea was not mine or even Senator Tester's, it was actually Dr. Shulkin's. When we were up in Alaska visiting he had this idea of, hey, how do we get more health providers in rural areas, extreme rural areas; and then, is that a way to help get them working at the VA?

So, we discussed this. This bill is getting ready. We want to finalize a couple of elements of that. I appreciate your testimony, talking about how you are supportive of the bill.

What we want to be able to do, though, is just kind of iron out some of the final elements. We have gotten some conflicting recommendations from the VA, particularly on the issue of a service commitment that relates to this, what you guys think about that. I think in previous testimony and consultations with my staff there

has been an interest in that from VA, though now I think in your public statement there is not an interest.

We want full VA support. I know Dr. Shulkin does. Like I said, he has been not only supportive but was in many ways the brainchild of this entire bill. So, we want to work with you on that. We want to get this in and we want to get this passed. It is an important bill that we think can benefit a lot of our veterans, and is very bipartisan.

So, can I get your commitment on that?

Dr. LEE. Senator, thank you for raising this issue. We are very supportive of wanting to build the capacity for care through graduate medical education investments in rural areas, and I think where we are—well, we look forward to working with you on the specifics of your bill.

Our concerns just come from wanting to get the most bang for our buck, if you will——

Senator SULLIVAN. Sure. Absolutely.

Dr. LEE [continuing]. And service to veterans from those residents.

Senator SULLIVAN. Yes.

Dr. LEE. And looking at what the service commitment is back for the chance to be a part of the program, and also looking at authorities for expanding debt reduction——

Senator SULLIVAN. Great. Oh, great.

Dr. LEE [continuing]. To resident physicians.

Senator SULLIVAN. Wonderful.

Dr. LEE. We look forward to working with you.

Senator SULLIVAN. If we can do that sooner rather than later, I think that we are all anxious to introduce this bill. I think it will have strong bipartisan support in the Committee, and we really want to move on it this year.

Dr. LEE. We would be happy to work with you.

Senator SULLIVAN. Great. I just have one final question. You know, I have been very interested in the appeals issue. I know that we have S. 1024, which is the Chairman, Senator Blumenthal, and the Ranking Member's bill.

My question that relates to that bill, as somebody who has been very focused on the appeals issue and concerns about the backlog, I believe that bill authorizes kind of the ability to test facets of the new appeals system. Is the VA planning on using that? And my only concern—I would encourage you once this bill becomes law, because we all know we have a challenge on the appeals process, but we also do not want to go to out with a full—in my view, a full comprehensive approach and then realize, uh-oh, there is another problem here, and kind of crash the system the way, say, for example, the Choice Act was in certain States like mine, where it was fully implemented and it just did not work.

Can you talk to that issue of kind of the ability to test case how we are doing appeals correctly under this bill so we do not—I am sure there are a lot of good ideas, but this is a comprehensive bill, and if we go full authority and then we realize something in the bill is actually not working, I do not want to have an appeals system that is further broken. Does anyone want to talk to that issue?

Mr. MCLENACHEN. Yes, Senator, I will start, and then maybe Mr. Hachey has something to add.

I think there may be a little bit of a misconception about this bill. We are not changing the way that we decide appeals or decide claims in BVA, where I work. It is really how we are routing the work to the point where you make those decisions.

So, I think some people believe that, you know, this is a very significant change. It is, in fact, somewhat of a historical change. On the one hand, what we are really doing is just streamlining the process that gets to the point where the decision is made, and we are kind of pulling the current process apart and realigning it so that it gets to a point where a veteran has a choice about how they want to handle the review process.

So, you know, there has been some concern expressed, in particular referring to the GAO report that was done on the appeals process. But, the critical point to understand is that the board is not changing how they are doing their decisions and we are not changing how we are doing ours. We are applying the law to the facts in the same way. It is just how we get the appeals and the claims to the end point where the person makes the decision more streamlined.

We have worked very closely with some of the other panelists you are going to hear from today on developing this process, the VSOs and other stakeholders. This is a situation where we believe that we have the right solution. If we were unsure of that, then certainly; it would be important to do a pilot or some other type of implementation. But we have such a severe problem right now that it would be the wrong thing to do, in VA's opinion, to make it only available to certain veterans. In fact, it would be unfair if we did that, when we know that we have the right solution.

It is better than what we have today. There is no doubt about that. So, it does not make much sense to do a pilot or something similar to that.

Donnie, do you have anything you want to add?

Mr. HACHEY. I would agree with everything that Dave just said. I think the substantive law here that is being used to decide appeals is the same. What we are really doing is simplifying the process and pulling it apart and making it easier for veterans by providing them with more choice. We know that the system we are working with now is broken, so a piecemeal solution, we do not think is the right approach right now. We have brought all of the major stakeholders together and come up with something we believe is the right answer for veterans, that is going to get them faster decisions and provide a simpler process. We think the time to do it is now, and we cannot delay it any further by engaging in a pilot or having a phased-in implementation.

Senator SULLIVAN. OK. Thank you. Thank you, Mr. Chairman.

Chairman ISAKSON. Thank you, Senator Sullivan.

Senator Manchin?

STATEMENT OF HON. JOE MANCHIN III,
U.S. SENATOR FROM WEST VIRGINIA

Senator MANCHIN. Thank you very much, Mr. Chairman, and thank you all for being here.

I think you all have seen this. It is a report last week of the VA—the DC VA, stopped surgical because of the equipment. So, you all know about that, right? OK.

A lot of my West Virginia veterans use this clinic because of our proximity to DC. What are you all doing, or how are you handling that—the Inspector General's recommendations on what—to correct the problems you have had there, so when they call our office we can give an update?

Dr. LEE. Senator, ensuring the safety of our veterans is our top priority——

Senator MANCHIN. Sure.

Dr. LEE [continuing]. Especially at DC VA, and we agree with the Inspector General that no patient harm was documented. But there is a lot of work left to do and we are actively working to support the DC VA in addressing all the issues raised, including——

Senator MANCHIN. Do you have any other—I mean, I understand it was a vascular operation that was going on. They put the man under and they found out that they did not have the equipment to do the operation with.

Dr. LEE. I do not have any other details to add to the investigation——

Senator MANCHIN. Yeah.

Dr. LEE [continuing]. But we have—we are lending support——

Senator MANCHIN. OK.

Dr. LEE [continuing]. From Central Office, from the very top.

Senator MANCHIN. You can keep me——

Dr. LEE. We will be happy to update you.

Senator MANCHIN [continuing]. Apprised and my staff, I would appreciate it, so we can keep our constituents apprised.

Dr. LEE. Absolutely.

Senator MANCHIN. I am happy to join Senator Tester's—he is right there—Performance, Accountability, and Contractor Transparency. I notice that we are doing more and more with contractors, and the problem we have with the contractor is this: when there is a problem with the VA and our VA employees, they can call our office and we can work with you all, and we get an answer. When there is a third party involved, we are out of the loop. We just—we cannot connect.

This is what, I think, we are all concerned about, especially in rural States. We here are basically the connector. We are the facilitator for that. It looks like you are moving more and more to contractors, which is going to take us out of the mainstream to where we can have connectivity.

Is that where you are going, and how do you correct what you have already got? Does anybody want to speak to that one? I think you are up, Dr. Lee. No one jumped in so I figured it was you.

Dr. LEE. Well, I will ask, on a specific bill I will ask Mr. Parker if he wants to——

Senator MANCHIN. Well, forget about the bill. Just tell me what you are doing with contractors.

Dr. LEE. All across the board? We—I think it makes sense for us to leverage our strengths wherever we are strong and to leverage contractors in the private sector wherever we need that to complement the services.

Senator MANCHIN. Well, let us talk about HealthNet. HealthNet is a problematic one we have. How do we have better connectivity with them? How can my staff call and help a veteran, and you have them as a third-party administrator?

Dr. LEE. I think the specific issues with HealthNet—addressing those actually goes back to the greater work that we need to do with this Committee and the whole Choice program. I know that Secretary Shulkin and my colleague, Baligh, will be engaged along with all of us on that work in the weeks and months ahead. But that is our priority, to look at the entire program and see how do we redesign it to better meet the needs of veterans, because we are not doing so well right now.

Senator MANCHIN. How much time is that going to take? I have been here for a while on this Committee, and I still have that same question.

Dr. LEE. We are just as pressed as you are, sir. We would like to move that quickly.

Senator MANCHIN. OK. Let us move on.

Again, I thank my good friend, Senator Murray, for her work on the caregiver issue. Some of my Vietnam veterans back home, forty percent of my veterans are Vietnam-era veterans—40 percent. They have concerns, they have needs that were not identified, were not recognized, and were not treated. So, they need full-time care for their injuries, and if they do not have a family caregiver then they are basically institutionalized. Are you all looking at that, thinking of this more from a moral, humane approach, and also cost-effectiveness, if we can have some type of care at home, as we do with caregivers in our senior citizens? Where are you on that issue? Does anybody want to jump in? How about you—I can tell——

Ms. KABAT. I am happy to——

Senator MANCHIN. You are eager to go. Let us go.

Ms. KABAT. I am happy to answer at least part of that question. I think the Caregiver Support Program, which is my area of expertise, is certainly really only one way that VA supports veterans who require a lot of assistance in a home setting, and we certainly want our veterans to remain at home, in their communities.

So, we offer a lot of different home- and community-based services.

Senator MANCHIN. Are you having a hard time finding people that will give these type of services in-home? Can you contract with the same people that do senior services? Do you all piggyback on senior services?

Ms. KABAT. We do work very closely with the aging and disability network. We have some partnerships with HHS around doing that. I think I am not an expert in that area, but we would be happy to have our——

Senator MANCHIN. One thing I am saying is I am sure that Alaska, and I am sure that Montana and Washington—we have senior services to try to keep people living in—with a little bit of assistance in their own home, and a lot of veterans, especially our Vietnam veterans, would love to do that, but we just do not have that service offered, so they end up—they cannot live by themselves any longer.

Ms. KABAT. We would be happy to come talk to you about our home- and community-based programs, our in-home nursing, and home health aides.

Senator MANCHIN. I know Senator Murray has been leading the charge on this and I appreciate it very much, but, boy, I am sure we all have the same problem. So, I would be happy if you would, you know, follow up with us on that.

Ms. KABAT. Absolutely.

Senator MANCHIN. We just—these people deserve answers. It really is a shame. Some of them come for the services they need and it is not that much. They do not ask for a lot.

I think that is my time. Thank you, Mr. Chairman.

Chairman ISAKSON. Thank you, Senator Manchin.

Senator Boozman.

STATEMENT OF HON. JOHN BOOZMAN, U.S. SENATOR FROM ARKANSAS

Senator BOOZMAN. Thank you, Senator Isakson and Senator Tester for having this very important hearing. There are so many good initiatives that we are talking about today. As we all know, supporting our Nation's veterans is one of the most important responsibilities that we do as Members of Congress. I know that you all are working hard to do that also, which we really appreciate.

I would like to talk a little bit about S. 681, the Deborah Sampson Act, which I am proud to cosponsor with Senator Tester and many other Members of the Committee. It is, as you know, a bipartisan bill that just tries to put much-needed parity to the benefits for our women veterans.

As you all point out in your testimony, women are the fastest-growing subgroup of veterans, 2.2 million women veterans in the United States, over 20,000 in my home State of Arkansas, which, again, we are very, very proud of.

The problem is, as we all know, the VA facilities or the VA programs, to some extent, have not changed to a large extent, yet we are now living in a different era. In fact, it was interesting. When we had our press conference, one of the female veterans, one of the lady veterans talked about being in the VA hospitals, and invariably they were asked if they were looking for their husband. So, that is really what we are dealing with. Those are honest mistakes, but it is something that we simply need to do away with.

So, I appreciate you, Dr. Lee, in the sense that you voice strong support of several of the bill's provisions to include the pilot program for peer-to-peer assistance for women veterans and expanding the supporting service for veterans' families program. These are really important issues and we are pleased with that.

I would like to talk to you a bit, though, about the opposition to ensuring that each VA medical facility has at least one full- or part-time—and I emphasize part-time, at least, women's health care provider. I appreciate the VA may already have the authority to make this happen. The fact is that, you know, we talk a lot about getting these things fixed, but we truly do hear a lot about the issue that are not fixed, and I think that is just a common sense way of stepping out in the right direction.

So, I really encourage the VA to think rethink your opposition to the provision. The bill is not requiring a full-time provider. The requirement is at least one full- or part-time provider. Can you all comment on that?

Dr. LEE. Senator, as you said, women veterans are the fastest-growing segment of the veteran population and VA is very committed to ensuring high-quality care and services for all of our women veterans.

We have made a lot of progress. We know now that we have a designated women's health provider at every medical center and almost every community-based outpatient clinic. Those designated women's health providers are trained to especially meet the needs of women veterans and address their post-deployment health issues, including military sexual trauma. We also have gynecologists at approximately 130 of our sites of care. We have almost 200 gynecologists employed in VA. So, we are expanding and interested in expanding that access to specialized GYN care as well.

And we think that some of the results really show the investment that we have made. We actually exceed the private sector in some of our quality outcomes when it comes to breast cancer and cervical cancer screening.

Senator BOOZMAN. We are going to hold you to that. The other thing—because I am running out of time, and I apologize for interrupting—but the other thing I would like for you to comment on is the—I was surprised at VA's opposition to tracking data related to women veterans. Can you tell me the metrics that are in place now, so that we know what is going on? How we identify health care needs for veterans currently? Again, I am a little bit surprised as to why we would not go forward with actually tracking data to give us a better idea. As we solve this problem—it is not a new problem. It has been going on for a little bit.

Dr. LEE. Sir, we are very committed to transparency of our data, and what we are striving to do is to use the private sector benchmarks, like HEDIS and CAHPS, which measure quality outcomes and also patient satisfaction, and measures like that. In particular, with this provision, our only concern was just the breadth of the applicability to all of our data. In some cases, for instance, in our cemeteries, in the NCA, we may not collect gender-based data, and it could impose some additional cost to be able to do that.

So, I would be happy to work with you on narrowing some of the scope of the data collection requirements.

Senator BOOZMAN. Thank you, Mr. Chairman.

Chairman ISAKSON. Thank you, Senator Boozman, and thanks to all the Members. Thank you for your testimony for the VA today, and we will excuse you at this time. You are welcome to stay for the second panel, but I ask the second panelists to come forward if you would, at this time.

Thank you very much, Dr. Lee.

Our second panel will consist of the following: Louis J. Celli, Jr., Director, National Veterans Affairs and Rehabilitation Division, The American Legion; Kayda Keleher, Associate Director, National Legislative Service, Veterans of Foreign Wars; Adrian Atizado, Deputy National Legislative Director, Disabled American Veterans; Allison Jaslow, Executive Director, Iraq and Afghanistan Veterans

of America; and J. David Cox, National President, American Federation of Government Employees.

If you would come forward to your designated seat, we will start the hearing. [Pause.]

Chairman ISAKSON. Let me begin by thanking all of you for your patience. You have been sitting through a long but very important hearing on the legislation pending before us today, and we appreciate our veteran service organizations coming forward to offer their testimony on the proposed legislation. We look forward to hearing from each and every one of you.

We will recognize you for up to 5 minutes. If you have an additional statement you want to submit for the record, we will submit that for the record, and then afterwards, if there are any questions, we will have questions.

We will start with Dr. Celli—Mr. Celli.

STATEMENT OF LOUIS J. CELLI, JR., DIRECTOR, NATIONAL VETERANS AFFAIRS AND REHABILITATION DIVISION, THE AMERICAN LEGION

Mr. CELLI. Access to veterans' health care, ensuring our veterans are able to receive the benefits they have earned, quality and services across the spectrum of veterans who faithfully served in defense of this Nation, regardless of conflict, accountability, and transparency are some of the very foundational pillars that The American Legion continues to build on.

Chairman Isakson, Ranking Member Tester, and distinguished, dedicated defenders of veterans who proudly serve on this Committee, on behalf of Charles Schmidt, the National Commander of the largest veteran service organization in the United States of America, representing more than 2.2 million dues-paying members, and combined with our American Legion family whose members exceed 3.5 million voters, living in every State and American territory, it is my duty and honor to present The American Legion's position on more than a dozen or so bills being considered by this Committee today.

In addition to the Deborah Sampson Act, The American Legion supports Senate Bill 804, the Women Veterans Access to Quality Care Act, the Military and Veteran Caregiver Service Improvement Act of 2017, the draft bill addressing accountability and whistleblower protections, the tracking of biological implants, and a variety of other bills detailed in our written testimony today, and, of course, the Appeals Modernization Act being reintroduced here today, with overwhelming bipartisan administration and stakeholder support.

The American Legion has been calling on Congress and the VA to bring women veterans' issues in line with the availability and quality of services provided to their male counterparts for years. Throughout the System Worth Saving program, The American Legion has been evaluating and reporting on VA medical centers for more than 15 years. Over the years, the gap in services between men and women who have served, side by side, has been so prevalent that in 2013, The American Legion dedicated an entire year of this program to detailing and highlighting some of the much-needed improvements we are still fighting for today.

Our 2013 report on women's health care addresses all of the vital components of the Deborah Sampson Act, as well as in Senate Bill 804, which is why we strongly urge this Congress and the VA to immediately address these issues. Transparency and accountability are the cornerstone of leadership and good governance. The American Legion fully supports holding bad actors accountable for their actions, and criminals should be prosecuted as soon as possible.

The American Legion supports giving the Secretary any and all tools necessary to lead his agency as needed, but wants to ensure that congressional language does not cause a type of unintended consequences that we have struggled with in the past.

As stated in our written testimony, The American Legion wants to ensure that Congress provides VA with the tools that are functional, enforceable, and allow the agency to act in a manner that promotes good order, discipline, and esprit de corps. Poorly crafted legislative language that fails legal and constitutional standards only serves to ruin morale and create a system of indecision and lack of surety.

Our first concern with the evidence threshold reduction to substantial evidence is that the bill will encourage an atmosphere that reduces the burden of managers to collect appropriate documentation. Managers need to be held accountable to perform expert leadership and oversight, and that includes being diligent about documenting poor performance or bad behavior. Egregious behavior would not be affected by this provision as it would surpass the already established evidentiary threshold of preponderance of evidence.

The second concern we raise is with the provision that strips judges of the ability to mitigate penalties. While on its face it seems logical to force the judge to accept the agency's decision, regardless of discipline or termination, The American Legion is reminded of the Linda Weiss decision, in which the presiding judge states, in part, "In conclusion, I find the appellant has rebutted the presumption that the penalty was reasonable. If the statute did not prohibit it, I would mitigate the penalty. However, because that is not allowed, the only option is to reverse the action outright." Please review this language.

Next, as important as our caregiver program is, it is imperative that Senate Bill 591 not only pass but that benefits be extended to all pre-9/11 veterans. The American Legion is committed and resolute on this issue, and will not waiver in our support to ensure all veterans are treated equally under the law.

Finally, it is with great pleasure that The American Legion testifies in support of the Appeals Modernization Act. This support will streamline and modernize a program that desperately needs it, while preserving and expanding veteran protections and, in the long run, the increased efficiency will save money with providing benefits faster and more efficiently. As one of the founding organizations who helped develop this new program, The American Legion is proud to support S. 1024, the Veterans Appeals Improvement and Modernization Act of 2017.

[The prepared statement of Mr. Celli follows:]

PREPARED STATEMENT OF LOUIS J. CELLI, JR., DIRECTOR OF NATIONAL VETERANS AFFAIRS & REHABILITATION DIVISION, THE AMERICAN LEGION

CHAIRMAN ISAKSON, RANKING MEMBER TESTER, AND DISTINGUISHED MEMBERS OF THE COMMITTEE; On behalf of our National Commander, Charles E. Schmidt, and the over 2.2 million members of The American Legion, we thank you for this opportunity to testify regarding The American Legion's positions on pending legislation before this Committee. Established in 1919, and being the largest veteran service organization in the United States with a myriad of programs supporting veterans, we appreciate the Committee focusing on these critical issues that will affect veterans and their families.

S. 23: BIOLOGICAL IMPLANT TRACKING AND VETERAN SAFETY ACT OF 2017

To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to adopt and implement a standard identification protocol for use in the tracking and procurement of biological implants by the Department of Veterans Affairs, and for other purposes.

The American Legion remains concerned about the Veterans Health Administration's (VHA) lack of a robust prosthetic supply tracking system. The American Legion has testified about the Department of Veterans Affairs' (VA) prosthetic tracking system at numerous hearings. On January 15, 2014, The American Legion testified before House Veterans' Affairs Subcommittee on Oversight and Investigations urging Congress to require VA to implement an automated tracking system that addresses vulnerabilities. The recommendations were: one, initially record the serial number of a surgical implant device when procured and placed into VA's inventory; two, record the expiration date; and three, that a record tracking flag be put into place to alert VA staff when the product is nearing its expiration date.

On March 19, 2015, The American Legion's written testimony for the record was presented to the House Veterans' Affairs Subcommittee on Oversight and Investigations in support of H.R. 1016: The Biological Implant Tracking and Veteran Safety Act of 2015.

VA's Office of Inspector General (VAOIG) has conducted numerous audits looking at VA's prosthetic inventory system with the last audit completed in 2012. VAOIG issued Report No. 11–02254–102 on March 8, 2012, titled "Audit of VA's Management and Acquisition of Prosthetic Limbs." The VAOIG identified the following challenges:

> VHA needed to strengthen the VA medical centers (VAMC) management of prosthetic supply inventories to avoid spending funds on excess supplies and disruptions to patient care due to supply shortages. VHA also needs to improve the comprehensiveness of its inventory information and standardize annual physical inventory requirements. It was estimated that during April through October 2011, VAMCs maintained inventories of nearly 93,000 prosthetic supply items with a total value of ~$70 million. Of the 93,000 items, it was estimated that VAMC inventories exceeded current needs for almost 43,500 items (47 percent) and were too low for nearly 10,000 items (11 percent), increasing the risk of supply shortages.
>
> VAMCs did not maintain optimal inventory levels because of the following reasons:
>
> • Lack of integration between the prosthetic inventory system and other VHA systems,
> • Inefficiencies from using two inventory systems,
> • Inadequate staff training on inventory management principles and techniques,
> • Insufficient VHA Central Office and Veterans Integrated Service Network (VISN) oversight of VAMC inventory management practices, and
> • Inadequacies in VHA's Inventory Management Handbook.

As a result, VAMCs spent ~$35.5 million to purchase unnecessary prosthetic supplies and increased the risk of supply expiration, theft, and supply shortages. In addition, VHA could not accurately account for these inventories.

VHA responded to the report stating the VA would work to develop a plan to replace the Prosthetic Inventory Package (PIP) and the Generic Inventory Package (GIP) with a more comprehensive system. The target completion date was March 30, 2015. As noted in the 2012 VAOIG report, VHAs hope is to "removing recalled products from inventory within 24 hours of a recall."

The American Legion is concerned that there is still no clear policy on how veterans who have received implants are tracked. Attention must be paid to veterans who are already downstream in the process. Without consistent tracking of im-

plants, including positive identification by serial number and other identifying factors, uncertainty remains as to how veterans are served in the case of recalls. The American Legion wants to see a more comprehensive procedure and policy clearly defined by Central Office to ensure consistency in all Veteran Integrated Service Networks (VISNs).

In 2014, VHA required VA Medical facilities to begin using the Catamaran Point of Use (POU) Inventory System that interfaces with the Veterans Health Information Systems and Technology Architecture (VistA). The system is not utilized at every VA medical center, case in point, the Washington DC VA Medical Center.

In response to allegations made by a confidential complainant, the VAOIG investigated equipment and supply issues at the Washington DC VA Medical Center. The VAOIG released an Interim Summary Report on April 12, 2017, which identified some serious and troubling deficiencies at the Medical Center that place patients at unnecessary risk. Although VAOIG has not identified at this time any adverse patient outcomes, they found that there was no effective system to ensure that supplies and equipment that were subject to patient safety recalls were not used on patients and over $150 million in equipment or supplies had not been inventoried in the past year and therefore had not been accounted for.

Five years have passed since VAOIG reported on this issue and VA promised Congress, veterans, and American taxpayers that they would develop a plan to replace the Prosthetic Inventory Package (PIP) and the Generic Inventory Package (GIP) with a more comprehensive system.

We are here today because the plan VA put in place is not working. Implementing a biological implant tracking system is essential to assuring the health, safety and the life of a veteran is safeguarded.

Resolution No. 377: *Support for Veteran Quality of Life*, supports any legislation and programs within the VA that will enhance, promote, restore or preserve benefits for veterans and their dependents, including, but not limited to, the following: timely access to quality VA health care; timely decisions on claims and receipt of earned benefits; and final resting places in national shrines and with lasting tributes that commemorate their service.[1]

The American Legion supports passage of S. 23.

S. 112: CREATING A RELIABLE ENVIRONMENT FOR VETERANS' DEPENDENTS ACT

To amend title 38, United States Code, to authorize per diem payments under comprehensive service programs for homeless veterans to furnish care to dependents of homeless veterans, and for other purposes.

S. 112 will help ensure that VA funded homeless shelters may be reimbursed for services provided to the dependent of a veteran, thereby reducing the risk of separating families during a difficult time. Based upon the Point-in-Time count on a single night in January 2016, almost all veterans were experiencing homelessness in households without children (97 percent or 38,340 veterans). About 3 percent (1,131) were veterans who were homeless as part of a family. If enacted, S. 112 would provide reimbursement for VA grantees who house homeless veterans with a dependent.

This would be quite beneficial for those homeless veterans with dependents, particularly women veterans who often carry the most responsibility of taking care of their children. Housing is a key component in stabilizing the veteran and putting him/her back on track to independent living. This bill would provide an avenue where the veteran would not separate from their child and/or spouse to obtain housing, and crucial services, for a successful reintegration back into mainstream society.

The American Legion strongly believes that homeless veteran programs should be granted sufficient funding to provide supportive services such as, but not limited to, outreach, health care, rehabilitation, case management, personal finance planning, transportation, vocational counseling, employment, and education. Furthermore, The American Legion continues to place special priority on the issue of veteran homelessness. With veterans making up approximately 11 percent of our Nation's total adult homeless population, there is plenty of reason to give this issue special attention. Along with various community partners, The American Legion remains committed to seeing VA's goal of ending veteran homelessness come to fruition. Our goal is to ensure that every community across America has programs and services in place to get homeless veterans into housing (along with necessary healthcare/treatment) while connecting those at-risk veterans with the local services and resources they need. We hope to see that with the expansion of assistance afforded

[1] American Legion Resolution No. 377 (2016): *Support for Veteran Quality of Life*

to homeless veterans and their dependents, there will also be an increase in funding to support. We estimate that an additional $10 million annually will be sufficient to accomplishing this goal.

Resolution No. 324: *Support Funding for Homeless Veterans*, supports any legislation and programs within and outside the VA that will enhance, promote, and assist homeless veterans in a timely fashion.[2]

The American Legion supports S. 112.

S. 324: STATE VETERANS HOME ADULT DAY HEALTH CARE IMPROVEMENT ACT OF 2017

To amend title 38, United States Code, to improve the provision of adult day health care services for veterans.

State Veterans Homes are facilities that provide nursing home and domiciliary care. They are owned, operated and managed by state governments and date back to the post-Civil War era when many states created them to provide shelter to homeless and disabled veterans.

Currently, there are only two Adult Day Health Care programs at State Veterans Homes in the United States. Both are located on Long Island, New York. However, these programs could easily be offered at the other 151 State Veterans Homes located throughout the country.

S. 324 would provide a no cost, medical model Adult Day Health Care to veterans at State Veterans Homes who are 70 percent or more service-connected disabled. This bill is an extension of Public Law (P.L.) 109–461: Section 211, Veterans Benefits Health Care, and Information Technology Act of 2006, which currently provides no cost nursing home care at any State Veterans Home to veterans who are 70 percent or more disabled for their service-connected disability and who require significant assistance from others to carry out daily tasks.

Adult Day Health Care is a daily program for disabled veterans who need extra assistance and special attention in their day to day lives. Adult Day Health Care programs provide disabled veterans and their families with a high-quality alternative to nursing home care and quality outpatient services for those suffering from debilitating illnesses or disabilities. These programs provide a range of services, from daily activities such as bathing, full medical services, and physical therapy. The focus of the program is on improving a disabled veterans' quality of life, which is why we support expanding this great option of care for our veterans.

American Legion Resolution No. 377: *Support for Veteran Quality of Life* supports any initiative that urges Congress and the Department of Veterans Affairs (VA) to enact legislation and programs within the VA that will enhance, promote, restore or preserve benefits for veterans and their dependents, including, but not limited to, the following: timely access to quality VA health care; timely decisions on claims and receipt of earned benefits, and final resting places in national shrines and with lasting tributes that commemorates their service.[3]

The American Legion supports passage of S. 324.

S. 543: PERFORMANCE ACCOUNTABILITY AND CONTRACTOR TRANSPARENCY ACT OF 2017

To amend title 38, United States Code, to require the Secretary of Veterans Affairs to include in each contract into which the Secretary enters for necessary services authorities and mechanism for appropriate oversight, and for other purposes.

The provisions of this bill falls outside the scope of established resolutions of The American Legion. As a large, grassroots organization, The American Legion takes positions on legislation based on resolutions passed by the membership in meetings of the National Executive Committee. With no resolutions addressing the provisions of the legislation, The American Legion is researching the material and working with our membership to determine the course of action which best serves veterans.

The American Legion has no current position on S. 543.

S. 591: MILITARY AND VETERAN CAREGIVER SERVICES IMPROVEMENT ACT OF 2017

To expand eligibility for the program of comprehensive assistance for family caregivers of the Department of Veterans Affairs, to expand benefits available to participants under such program, to enhance special compensation for members of the uniformed services who require assistance in everyday life, and for other purposes.

The struggle to care for veterans wounded in defense of this Nation takes a terrible toll on families. In recognition of this, Congress passed, and President Barack Obama signed into law, the Caregivers and Veterans Omnibus Health Services Act

[2] American Legion Resolution No. 324 (2016): *Support Funding for Homeless Veterans*

[3] American Legion Resolution No. 377 (2016): *Support for Veteran Quality of Life*

of 2010. The unprecedented package of caregiver benefits authorized by this landmark legislation includes training to help to ensure patient safety, cash stipends to partially compensate for caregiver time and effort, caregiver health coverage if they have none, and guaranteed periods of respite to protect against burnout.

The comprehensive package, however, is not available to most family members who are primary caregivers to severely ill and injured veterans. Congress opened the program only to caregivers of veterans severely "injured," either physically or mentally, in the line of duty on or after Sept. 11, 2001. It is not open to families of severely disabled veterans injured before 9/11, nor is it open to post-9/11 veterans who have severe service-connected illnesses, rather than injuries.

The American Legion has long advocated for expanding eligibility and ending the obvious inequity it created. Simply put, a veteran is a veteran, and all veterans should receive the same level of benefits for equal service. As affirmed in American Legion Resolution No. 259: *Extend Caregiver Benefits to Include Veterans Before September 11, 2001*, The American Legion supports legislation to remove the date September 11, 2001, from Public Law 111–163 and revise the law to include all veterans who otherwise meet the eligibility requirements.[4]

The American Legion is aware of the obstacles to an expansion of the program, though. Perhaps the biggest is protracted frustration over how the current caregiver program operates. Thus, we applaud the Department of Veterans Affairs (VA) recent decision to conduct an internal review of the program. That decision is an acknowledgment that the VA cares about the success of this program, and is committed to the difficult task of improvement.

The American Legion is also committed to the success of this program. We have long supported our veteran caregivers by providing accredited representation, advice and education. We created a new Caregiver Coordinator position in our Washington Office. We participated in the numerous roundtables conducted during the present review of the program. We are honored to be working with a broad coalition to identify and bolster support for caregivers, both now and long-term.

We have joined on to a coalition letter organized by the Elizabeth Dole Foundation to Secretary Shulkin dated May 15, 2017. This letter offers some perspective on the issues that have clouded this program since its inception, and its recommendations are informed by the experiences and stories of caregivers themselves. The letter is incorporated by reference, and we think action based on the letter will go a long way to righting the program and preparing it for expansion.[5]

The American Legion is also rolling out a comprehensive caregiver program to our Departments and recently passed Resolution No. 24: *Caregiver Program*. The program promises to "address the needs of military and veteran caregivers by assisting with, but not limited to employment/vocational referral, Federal and state education assistance, Post-9/11 caregiver benefit support, veteran directed care, partner support with the Elizabeth Dole Foundation and various caregiver support organizations, assistance with death gratuity, and terminal illness."[6]

The American Legion, together with The American Legion Auxiliary, is building a comprehensive program that is sustainable and replicable and will be included in the department and post activities and programs through our network of more than 15,000 posts and detachments across the United States and abroad. The American Legion's Caregiver Coordinator will work to ensure that veterans and their caregivers are well informed and educated about the benefits and resources available to them. The burden of ensuring support for these caregivers does not—and should not—fall to the VA alone.

The American Legion is optimistic that providing expanded support services and stipends to caregivers of veterans to all eras is not only possible but also feasible. We are, therefore, proud to offer our support for S. 591, the Military and Veteran Caregiver Services Improvement Act of 2017.

The American Legion supports passage of S. 591.

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[4] American Legion Resolution No. 259 (2016): *Extend Caregiver Benefits to Include Veterans Before September 11, 2001*

[5] VA Caregiver Program Coalition Letter

[6] American Legion Resolution No. 24: *Caregiver Program*

S. 609: CHIROPRACTIC CARE AVAILABLE TO ALL VETERANS ACT OF 2017

To amend the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001 and title 38, United States Code, to require the provision of chiropractic care and services to veterans at all Department of Veterans Affairs medical centers and to expand access to such care and services, and for other purposes.

It is not uncommon for veterans who suffer from musculoskeletal and connective system diseases to go untreated at VA medical centers because of a lack of available chiropractic care and services. At present, less than one-third of VA medical centers offer chiropractic care. S. 609 will require a program under which the Secretary of Veterans Affairs will provide chiropractic care and services through the VA at (1) no fewer than 75 medical centers by December 31, 2018, and (2) all medical centers by December 31, 2020.

According to VA, the most frequent medical diagnosis among Iraq and Afghanistan veterans are musculoskeletal and connective system diseases.[7] Since 2002, there have been over 195,000 Post-9/11 veterans that have pursued care for these conditions. The American Legion, thus, views easy access to chiropractic care as a priority necessity for veterans.

American Legion Resolution No. 377: *Support for Veteran Quality of Life*, supports any legislation and programs within the VA that will enhance, promote, restore or preserve benefits for veterans and their dependents, including, but not limited to, the following: timely access to quality VA health care, timely decisions on claims and receipt of earned benefits, and final resting places in national shrines and with lasting tributes that commemorate their service.[8]

The American Legion supports passage of S. 609.

S. 681: DEBORAH SAMPSON ACT

To amend title 38, United States Code, to improve the benefits and services provided by the Department of Veterans Affairs to women veterans, and for other purposes.

Women veterans have consistently been overlooked by the Department of Veterans Affairs for decades. The American Legion feels that it is time that we thank this growing military demographic with, at a minimum, the healthcare they deserve. Women veterans are the fastest growing demographic serving in the military, so we can expect the number of women veterans using Department of Veterans Affairs (VA) healthcare to increase dramatically. The United States has more than 2 million women veterans who live in every Congressional district in the Nation, and the number of women veterans seeking VA health care has doubled since 2000.

Although the VA has made improvements in women's healthcare, many challenges remain. The Deborah Sampson Act would help rectify many issues women veterans face by improving the ability of the VA to provide women's care, improve services, and change its culture to embrace this growing population. It does so by, inter alia:

- Enhancing services that empower women veterans to support each other,
- Establishing a partnership between the Department of Veterans Affairs and at least one community entity to provide legal services to women veterans,
- Make adjustments to care that the VA can provide newborns,
- Addressing significant barriers women veterans face when seeking care,
- Require the VA to collect and analyze data for every program that serves veterans, including the Transition Assistance Program, by gender and minority status, and require that they publish data as long as it does not undermine the anonymity of a veteran.

The American Legion recommends the following change to the bill. A separate track to address specific needs of women veterans attending the Transition Assistance Program. It has been noted that women veterans are more likely to seek assistance by talking with other women on gender-sensitive assistance. For example, the VA Trauma Service Program (TSP) allows women veterans to choose to partake in a TSP information session with a group or with an individual woman coordinator. More women veterans opt to conduct the information session with an individual woman coordinator.

Additionally, The American Legion requests the Department of Defense transfer contact information of all transitioning women veterans to the VA and the Depart-

[7] Sally G. Haskell, M.D., Post-Deployment Pain: Musculoskeletal Conditions in Male and Female OEF/OIF Veterans (August 2012)

[8] American Legion Resolution No. 377 (2016): *Support for Veteran Quality of Life*

ment of Labor (DOL). This would provide an opportunity for the VA, DOL, and Veterans Service Organizations to follow-up with women veterans after separation to offer additional support, programs, and services.

American Legion Resolution No. 147: *Women Veterans*, calls on The American Legion to work with Congress and the VA to ensure that the needs of current and future women veteran populations are met. It calls on the VA to provide full comprehensive health services for women veterans department-wide.[9]

American Legion Resolution No. 364: *Department of Veterans Affairs to Develop Outreach and Peer to Peer Program for Rehabilitation* supports the President of the United States and the U.S. Congress passing legislation to call on the Secretary of Veterans Affairs to develop a national program to provide peer to peer rehabilitation services based on the recovery model tailored to meet the specialized needs of current generation combat-affected veterans and their families.[10]

The American Legion supports passage of S. 681 with amendments as noted above.

S. 764: VETERANS EDUCATION PRIORITY ENROLLMENT ACT OF 2017

To amend title 38, United States Code, to improve the enrollment of veterans in certain courses of education, and for other purposes.

S. 764, the Veterans Education Priority Enrollment Act of 2017 would mandate that if an educational institution administers priority enrollment to certain students and receives educational benefits from the VA, then they shall also administer priority enrollment to student veterans and active military students.

Resolution No. 318: *Ensuring the Quality of Servicemembers and Veteran Student's Education at Institutions of Higher Education* urges Congress to find a solution that ensures colleges and universities that receive Federal tuition payments grant priority enrollment to those individuals who qualify for either the Department of Defense or Department of Veterans Affairs education benefits.

However, due to inherent complexities with priority enrollment, The American Legion requires consultation and endorsement from the military education collaborative Servicemembers Opportunity Colleges and the National Association of Veterans' Program Administrators before supporting. If the present language of the Veterans Education Priority Enrollment Act of 2017 results in reputable institutions of higher learning choosing to stop processing GI Bill benefits, than it will do more harm than good. Additionally, implementation concerns such as equity questions (should a freshman student veteran get priority over the last semester senior who needs the course to graduate) and existing priority systems on public institutions need to be resolved. While we applaud the attention that has been shown on this, the unknown second and third-order affect preclude our immediate support.

The American Legion has no current position on S. 764.

S. 784: VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2017

To increase, effective as of December 1, 2017, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans, to amend title 38, United States Code, to improve the United States Court of Appeals for Veterans Claims, to improve the processing of claims by the Secretary of Veterans Affairs, and for other purposes.

S. 784 would provide a Cost-of-Living Allowance (COLA) effective December 1, 2017. Disability compensation and pension benefits awarded by the Department of Veterans Affairs (VA) are designed to compensate veterans for medical conditions incurred through service, or who earn below an income threshold. When the cost of living increases due to inflation, it is only appropriate that veterans' benefits correspondingly increase.

For nearly 100 years, The American Legion has advocated on behalf of our Nation's veterans, to include the awarding of disability benefits associated with chronic medical conditions that manifest related to service of this Nation. Annually, veterans and their family members are subjects in the debate regarding the annual COLA for these disability benefits. For these veterans and their family members, COLA is not simply an acronym or a minor adjustment in benefits; instead, it is a tangible benefit that meets the needs of the increasing costs of living in a nation that they bravely defended.

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[9] American Legion Resolution No. 147 (2016): *Women Veterans*

[10] American Legion Resolution No. 364 (2016): *Department of Veterans Affairs to Develop Outreach and Peer to Peer Program for Rehabilitation*

As affirmed in The American Legion's Resolution No. 187: *Department of Veterans Affairs Disability Compensation*, passed at the 2016 National Convention, The American Legion supports legislation "to provide a periodic cost-of-living adjustment increase and to increase the monthly rates of disability compensation."[11]

The American Legion supports S. 784.

S. 804: WOMEN VETERANS ACCESS TO QUALITY CARE ACT

To improve the provision of health care for women veterans by the Department of Veterans Affairs, and for other purposes.

Women veterans are the fastest growing demographic currently serving in the military. They deserve a robust and comprehensive VA health care system to care for them when they transition from active duty to civilian life. Over the years, VA has made great strides in making healthcare services available for women veterans, such as ensuring more women veterans see providers who meet their gender-specific health care needs. However, there is still much work to be done to meet the overall healthcare needs of women veterans. Even though the military has seen a significant increase in the number of women joining the military, the number of women veterans enrolling in the VA health care system remains relatively low when compared to their male counterparts.

Despite improvements VA has taken to broaden their healthcare programs and services for women veterans, The American Legion has found there are still numerous challenges, and barriers women veterans face with enrolling in the VA including:

- Women veterans often do not self-identify as veterans,
- Women veterans are often not recognized by VA staff as veterans,
- Among women veterans, there can be a lack of awareness, knowledge, and understanding of their VA benefits,
- There is an incorrect, but prevalent stigma, that the VA healthcare system is an "all-male" healthcare system, and
- The VA does not provide all of the gender-specific health care needs of their enrolled women veterans.

As a result, The American Legion believes in ensuring women veterans receive the highest quality VA health care, and that the care is tailored to meet their gender-specific health care needs.

This legislation directs VA to establish standards ensuring all VA facilities meet gender-specific healthcare needs, integrate those standards into VA's prioritization methodology when determining funding needs, and issue reports on those standards, especially where facilities may be failing to meet standards. S. 804 would make VA's compliance with women's healthcare needs transparent through public dissemination of information on VA websites. Finally, S. 804 would ensure greater representation within the VA's women's healthcare provider positions including obstetricians and gynecologists. These measures will help address concerns of women veterans and improve the comprehensive nature of healthcare available to women throughout the VA.

American Legion Resolution No. 147: *Women Veterans*, supports, inter alia:

- That the VA provides full comprehensive health services for women veterans department-wide, including, but not limited to, increasing treatment areas and diagnostic capabilities for female veteran health issues, improved coordination of maternity care, and increase the availability of female therapists/female group therapy to better enable treatment of Post-Traumatic Stress Disorder from combat and MST in women veterans;
- That the VA furnish gender-specific prosthetic appliances, orthotics, and services while eliminating the male-only approach to the treatment of all injuries and illnesses.[12]

The American Legion supports S. 804.

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[11] American Legion Resolution No. 187 (2016): *Department of Veterans Affairs Disability Compensation*

[12] American Legion Resolution No. 147 (2016): *Women Veterans*

S. 899: DEPARTMENT OF VETERANS AFFAIRS VETERAN TRANSITION IMPROVEMENT ACT

To amend title 38, United States Code, to ensure that the requirements that new Federal employees who are veterans with service-connected disabilities are provided leave for purposes of undergoing medical treatment for such disabilities apply to certain employees of the Veterans Health Administration, and for other purposes.

Wounded Warrior Federal Leave Act (P.L. 114–75) was signed into law after unanimous passage by Congress. The Act allowed up to 104 hours of paid sick leave available to new Federal employees hired by "Title 5" Federal agencies with service-connected veteran disabilities rated at 30 percent or more to attend medical treatment related to these conditions.

Some employers are not required by law to allow veterans with service-connected disabilities to be absent from the workplace to receive the necessary medical treatment for their disabilities. In its current state, the Wounded Warrior Federal Leave Act does not protect veterans working for the Department of Veterans Affairs (VA). Senator Hirono's bill extends this protection to VA employees, who are "Title 38 employees" and don't have the same level of protection as "Title 5" Federal employees.

If enacted, this bill would amend Title 38, United States Code, to prohibit discrimination and acts of reprisal against persons who receive treatment for illnesses, injuries, and disabilities incurred in or aggravated by service in the Armed Forces. In addition, it would promote the well-being of the veteran and create an atmosphere for efficiency and productivity within the agency. The American Legion believes it is in the best interest of the veteran, and the VA, that this bill pass.

American Legion Resolution No. 307: *Prohibit Discrimination and Acts of Reprisal by Employers Against Veterans that Seek Treatment for their Service-Connected Disabilities*, supports any legislation that prohibits the discrimination and acts of reprisals by employers against veterans that seek treatment for their service-connected disabilities.[13]

The American Legion supports this S. 899.

S. 1024: VETERANS APPEALS IMPROVEMENT AND MODERNIZATION ACT OF 2017

To amend title 38, United States Code, to reform the rights and processes related to appeals of decisions regarding claims for benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

The American Legion currently holds power of attorney on more than three-quarters of a million claimants. We spend millions of dollars each year defending veterans through the claims and appeals process, and our success rate at the Board of Veterans Appeals (BVA) continues to hover around 80 percent.

When VA invited stakeholders to the table to discuss appeals modernization, The American Legion knew that appeals modernization could not start with looking at the appellate process; the conversation needed to begin at the point of the initial adjudication; so the first things the group looked at was the VBA decision notice. As a negotiated component of this framework, VBA has promised to improve their decision notice which will better inform veterans and their advocates. More importantly, a better decision letter will not only help veterans better prepare if they need to appeal, but it will help prevent appeals from being introduced because the veterans were not properly informed about the basis for denial. After VA's commitment to improving the initial decision letter, stakeholders helped sort through barriers that slowed appeals processing and highlighted another of The American Legion's primary concerns—centralized training.

VA further argued that if there were a process within the appeals system that allowed judges to review disputed decisions that were adjudicated at the regional offices, based only on the same information that the regional office had at the time the claim was originally decided, then BVA would be able to provide a "feedback loop" they could use to help train and educate VBA's regional offices. Additionally, this would help identify regional offices where the decisions uniformly fail to address specific legal issues and improve initial decisions.

It was with these two foundational underpinnings that the big six VSOs, in addition to state and county service officers, veteran advocate attorneys, and other interested groups worked with senior VA officials from VBA and BVA to design the framework of the legislation being discussed again here today.

The guiding principle leading all of our discussions was ensuring that we preserved all of the claimant's due process rights while ensuring that they did not lose

[13] American Legion Resolution No. 307 (2016): *Prohibit Discrimination and Acts of Reprisal by Employers Against Veterans that Seek Treatment for their Service-Connected Disabilities*

any claims effective date time, which we were not only able to do successfully, but we were able to increase protections for veterans through this new process.

As you are aware, the design of the proposed appeals process allows for multiple options for claimants, as well as options for additional claim development, the option to have the decision reviewed by another adjudicator (difference of opinion) and the chance to take your case straight to the court to have a law judge review the decision and make a ruling on your claim.

The proposed bill provides veterans additional options while maintaining the effective dates of original claims. Veterans can elect to have an original decision reviewed at the ROs through a Difference of Opinion Review (DOOR) which is similar to the current functions of the Decision Review Officers (DROs). A DOOR provides an opportunity for a claimant to discuss concerns regarding the original adjudication of a particular issue, or the entire claim, prior to appealing to the BVA. Additionally, the administrative actions remove the need for a Notice of Disagreement (NOD), a process that took 412.8 days, according to a report released to The American Legion following the end of last fiscal year. The April 24, 2017, VA Monday Morning Workload Report indicates the delay has increased over two weeks, to 429.4 days VA Monday Morning Workload Report, April 24, 2017.

Beyond improvements in administrative functions, the proposed bill enables claimants to select a process other than the standard multi-year long backlog, if they want to have an appeal addressed more expediently if they believe they have already provided all relevant and supporting evidence. Similar to the Fully Developed Claims program, veterans will be able to elect to have their appeals reviewed more expeditiously by attesting that all information is included within the claim, VA's records, or submitted with VA Form 9 indicating the intent to have their claims expeditiously forwarded to BVA for review.

Veterans indicating that they may need additional evidence or time could elect to have their claim reviewed in BVA's current format of allowing additional evidence entered. For veterans requiring additional evidence, such as lay statements from friends and families or a private medical examination rebutting VA's medical examinations, this is a viable alternative to allow the time and opportunity to prove a veteran's case and secure the benefits they have earned.

Recognizing that an increased burden is placed upon veterans, VA will ensure veterans maintain their effective dates, even if BVA denies the claim. If a veteran's appeal is denied by BVA, the veteran can submit new and minimally relevant evidence to reopen the claim at the RO while holding the original effective date that may have been established long before the second filing for benefits.

Similar to FDC, The American Legion will work tirelessly to ensure this program is successful and appreciates the Committee's support by including stakeholders in the certification process as this program is officially launched. We recognize the increased burden it can place on veterans; we also recognize that our approximately 3,000 accredited representatives have the tools to ensure success for the veterans and claimants we represent. Throughout the year we will continue to work with our representatives, our members, and most importantly our veterans to understand the changes in law, and how they will be able to succeed with these new changes.

The American Legion recognizes that this is a huge undertaking and that as with any contract, the agreement is only as good as the people who sign it. We agree that there is a lot that is not going to be included in the statutory language and that this initiative places a lot of trust and responsibility on VA to do the right thing. The American Legion believes that the Secretary needs this flexibility to set this program up effectively and that VA will continue to work with stakeholders and Congress as we move forward. Any deviation from that plan will upset overseers and stakeholders alike, and will surely result in veterans being cheated as we all will ending up right back here in this hearing room to fix it.

To come to an agreement, stakeholders needed to trust VA to do the things they promised to do, and do them in good faith. There are a lot of nuances that aren't able to be legislated, and the VSOs are going to be providing constant feedback as we move forward with appeals modernization. We believe that the architects of this proposal have acted in good faith, and we support their efforts to modernize the appeals process for the good of veterans, for the good of the process, and for the good of the American taxpayer.

As affirmed in The American Legion's Resolution No. 5: *Department of Veterans Affairs Appeals Process*, The American Legion urges the Department of Veterans Af-

fairs to address all claims, to include its growing inventory of appeals in an expeditious and accurate manner.[14]

The American Legion supports S. 1024: Veterans Appeals Improvement and Modernization Act of 2017.

DRAFT BILL: DEPARTMENT OF VETERANS AFFAIRS ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION ACT

To amend title 38, United States Code, to improve the accountability of employees of the Department of Veterans Affairs, and for other purposes.

Reacting to the firing of Phoenix VA Healthcare System Director in 2014, then National Commander of The American Legion Mike Helm noted:

> "This is one long-overdue step in a journey that is far from over. Unfortunately, as we all soon discovered after the story broke last April, this problem was not isolated to Phoenix. It was widespread, and we expect to see additional consequences, even criminal charges if they are warranted, for anyone who knowingly misled veterans and denied them access to medical services." [15]

The American Legion believes it is important to ensure there is accountability at all levels within VA and that the process is transparent. Where VA employees are found to have engaged in wrongdoing, The American Legion supports any legislation that increases the authority given to the Secretary of VA to remove unscrupulous employees.

The American Legion supports increased accountability, and those employees found guilty of having committed crimes at the expense of the veterans entrusted to their care should never profit from those crimes. To receive bonuses based on manipulation and lies, to abuse relocation reimbursement, or to remain employed found watching pornographic material at work is unacceptable. We also believe in providing the Department of Veterans Affairs (VA) whistleblowers with a means to solve problems at the lowest level possible, while offering them protection from reprisals and genuine protection for those who reprise against them. This bill would establish a new system that employees could use to report retaliation claims, and supervisors would be required to report all retaliation claims to facility directors, eliminating the possibility for facility leaders to claim plausible deniability of such assertions.

There are some apprehensions with this bill we would like to address. The provision that seeks to lower the threshold of evidence from "preponderance of the evidence" to "substantial evidence" is concerning. We do not want to encourage an atmosphere that reduces the burden of managers to collect appropriate documentation. Managers need to be held accountable to perform expert leadership and oversight, and that includes being diligent about documenting poor performance or bad behavior. Egregious behavior would not be affected by this provision as it would surpass the already established evidentiary threshold of a preponderance of evidence.

The second concern we raise is with the provision that strips the Merit Systems Protection Board (MSPB) of the ability to mitigate penalties. While on its face it seems logical to accept the agency's decision regarding discipline or termination, The American Legion is reminded of the Linda Weiss decision which the presiding judge stated, in part:

> "In conclusion, I find that appellant has rebutted the presumption that the penalty was reasonable. If 38 U.S.C. § 713 did not prohibit it'; I would mitigate the penalty. However, because that is not allowed, the only option is to reverse the action outright. 5 CFR §§ 1210.18(a), (d). Therefore, agency's decision to remove the appellant from the Federal service is *reversed*." [16]

The American Legion wants to ensure that Congress provides the VA with tools that are functional, enforceable, and allow the agency to act in a manner that promotes good order, discipline, and esprit de corps. Poorly crafted legislative language that fails legal and constitutional standards only serves to ruin morale and create a system of indecision and lack of surety.

The American Legion applauds this bipartisan effort to provide Secretary Shulkin additional tools to increase accountability and address poor performance within the Department of Veterans Affairs. Despite multiple verified cases of gross misconduct

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[14] American Legion Resolution No. 05 (2016): *Department of Veterans Affairs Appeals Process*
[15] "Legion: VA director's overdue firing applauded": Nov. 24, 2014
[16] *Weiss* v. *DVA*, 2016 MSPB (February 16, 2016)

for multiple employees, the Secretary of the VA had little authority to hold employees accountable, and many veterans subsequently lost faith in the system. This is why The American Legion vociferously urged Congress to provide the Secretary much-needed authorities so that he may take action to improve morale, incentivize desired behavior, deter misconduct, and eliminate corrupt or uncaring employees.

American Legion Resolution No. 3: *Department of Veterans Affairs Accountability*, supports any legislation that provides the Secretary of Veterans Affairs the authority to remove any individually from the VA that the Secretary determines warrants such authority or to transfer or demote an individual to a General Schedule position without any increased monetary benefit.[17]

The American Legion supports the Draft Bill titled: Department of Veterans Affairs Accountability and Whistleblower Protection Act.

DRAFT BILL: SERVING OUR RURAL VETERANS ACT

To authorize payment by the Department of Veterans Affairs for the costs associated with service by medical residents and interns at facilities operated by Indian tribes, tribal organizations, and the Indian Health Service, to require the Secretary of Veterans Affairs to carry out a pilot program to expand medical residencies and internships at such facilities, and for other purposes.

The provisions of this bill fall outside the scope of established resolutions of The American Legion. As a large, grassroots organization, The American Legion takes positions on legislation based on resolutions passed by the membership in meetings of the National Executive Committee. With no resolutions addressing the provisions of the legislation, The American Legion is researching the material and working with our membership to determine the course of action which best serves veterans.

The American Legion has no current position on this Draft Bill titled: Serving our Rural Veterans Act

DRAFT BILL: VETERAN PARTNERS' EFFORTS TO ENHANCE REINTEGRATION (PEER) ACT

A bill to require the Secretary of Veterans Affairs to carry out a program to establish peer specialists inpatient aligned care teams at medical centers of the Department of Veterans Affairs, and for other purposes.

A peer support specialist is a person with significant life experience who works to assist individuals with chemical dependency, mental disorder, or domestic abuse and other life effecting issues. Due to a PEER's life experiences, such persons have expertise that profession training cannot replicate. Tasks performed by peer support specialists may include:

- Assisting their peers in articulating their goals for recovery,
- Learning and practicing new life skills,
- Helping monitor their progress,
- Assisting them in their treatment,
- Modeling effective coping techniques and self-help strategies based on the specialist's own recovery experience, and
- Supporting in obtaining effective services in and outside the VA.

This draft bill would expand VA's current use of peer specialists being utilized in primary care settings including mental health clinics. The PEER Act would require the Department of Veterans Affairs (VA) to establish a pilot program of peer specialists to work as members of VA's patient-aligned care teams (PACT), for the purpose of promoting the integration of mental health services in a VA primary care setting. This bill would authorize the establishment of this pilot program in 25 VA sites, to include the VA's five Polytrauma centers across the country. The bill would also require a series of reports, including a final report to recommend whether the program should be expanded beyond the pilot program sites.

As affirmed in The American Legion's Resolution No. 364: *Department of Veterans Affairs to Develop Outreach and Peer to Peer Program for Rehabilitation*, The American Legion urges the President of the United States and the U.S. Congress to call on the Secretary of Veterans Affairs to develop a national program to provide peer to peer rehabilitation services based on the recovery model tailored to meet the specialized needs of current generation combat-affected veterans and their families.[18]

The American Legion supports the Draft Bill titled: Veteran Partners' Efforts to Enhance Reintegration (PEER) Act

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[17] American Legion Resolution No. 3 (2016): *Department of Veterans Affairs Accountability*

[18] American Legion Resolution No. 364 (2016): *Department of Veterans Affairs to Develop Outreach and Peer to Peer Programs for Rehabilitation*

CONCLUSION

The American Legion thanks this Committee for the opportunity to elucidate the position of the over 2.2 million veteran members of this organization. For additional information regarding this testimony, please contact the Deputy Director of Legislative Affairs, Mr. Derek Fronabarger, at The American Legion's Legislative Division at (202) 861–2700 or dfronabarger@legion.org.

Chairman ISAKSON. Thank you very much, Mr. Celli. Ms. Keleher?

STATEMENT OF KAYDA KELEHER, ASSOCIATE DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Ms. KELEHER. Chairman Isakson, Ranking Member Tester, and Members of the Committee, it is my honor to represent nearly 1.7 million members of the Veterans of Foreign Wars of the United States and our Auxiliary.

In 2016, the VFW launched our In Their Words campaign, which prioritized the needs of women veterans. To do this, we knew we needed to hear directly from women veterans to get their feedback on what it is that they need and want. We set up our women's committee and conducted a survey of 51 questions, with nearly 2,000 female servicemembers and veterans who responded.

Since the conclusion of this survey, the VFW has worked tirelessly to priority the need to improve gender-specific health care, recognition of women veterans, improved outreach to them, and to break down the unique barriers that they face for homelessness.

This is why the VFW supports and applauds the work put into both the Deborah Sampson and Women Veterans Access to Quality Care Acts. Both of these pieces of legislation would greatly improve the quality of and access to care and benefits for women who use VA.

Peer-to-peer support is something the VFW has long been supportive of and found immense value in. The Deborah Sampson Act would greatly expand these programs, providing women veterans with more peer and gender-based one-on-one assistance. Peer-to-peer support has been proven greatly effective in assisting veterans within VA time and time again, and it provides low-cost access to basic needs to veterans.

The VFW does suggest Congress amend the Deborah Sampson Act in Title IV, eliminating barriers to access, and recommends removing the option of having one part-time provider. One part-time provider has too much room to leave patients with limited access. It is also a common complaint we hear from our membership. The VFW believes all clinics must be properly employed, which includes maintaining at least one full-time primary care provider in every women's clinic.

The VFW also supports the Creating a Reliable Environment for Veterans' Dependents Act, which we believe would be invaluable in assisting women veterans who may be single mothers to overcome homelessness. No veteran deserves to be sleeping on the streets at night, and their children should not be forced to sleep alongside them under bridges, without a home. This is why the VFW suggests amending the language saying that the recipient "may" re-

ceive per diem payments to the recipient "shall" receive per diem payments.

The VFW also strongly supports the Military and Veteran Caregiver Services Improvement Act of 2017. This legislation would greatly enhance services provided to the caregivers of those severely disabled in the line of duty, regardless of which era they served in. These improvements are desperately needed and the VFW has long supported them. Severely wounded and ill veterans of all conflicts have made incredible sacrifices, and all their family members who care for them are equally deserving of our recognition and support. The caregivers from pre-9/11 conflicts, whether they be World War II, Vietnam, Korea, or Desert Storm, have suffered long enough. It is time Congress properly recognizes their sacrifice and supports them with everything that they have deserved.

The VFW supports the Veteran Appeals Improvement and Modernization Act of 2017. The VA claims and appeals process has long been in need of reform and reconstruction. The current process has become a bureaucratic system impossible for the average veteran to understand, and with the time for decisionmaking sometimes taking up to 6 years. This legislation would provide veterans with three options of how their appeals could be reviewed, drastically shortening wait times. That is why Congress must pass this legislation to simplify, expedite, and modify veterans' appeals.

The VFW supports the Department of Veteran Affairs Accountability and Whistleblower Protection Act of 2017. This legislation would ensure VA has the authority to remove their bad actors from payroll in a timely manner, while still allowing these employees their due process rights. Instances where VAs trying to fire an employee but it takes 2 years, while the employee is still maintaining their salary, is unsatisfactory. It is also unsatisfactory when employees are afraid to speak up about wrongdoings for fear of retaliation.

This legislation would provide a security net of protection allowing these employees to voice possible wrongdoings, without fearing any form of backlash from their superiors. Those employees who are afraid to speak up and uphold—those employees who are unafraid to speak up and uphold principles of VA should be cherished and not made afraid of what they need to do to do the right thing.

Chairman Isakson, Ranking Member Tester, and Members of the Committee, this concludes my testimony. Thank you again for the opportunity to represent the Nation's largest and oldest major combat veterans organization. I look forward to your questions.

[The prepared statement of Ms. Keleher follows:]

PREPARED STATEMENT OF KAYDA KELEHER, ASSOCIATE DIRECTOR OF NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

CHAIRMAN ISAKSON, RANKING MEMBER TESTER AND MEMBERS OF THE COMMITTEE, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide our remarks on pending legislation.

S. 23, BIOLOGICAL IMPLANT TRACKING AND VETERAN SAFETY ACT OF 2017

The VFW supports this legislation that would direct the Department of Veterans (VA) to implement a standard identification protocol for use in the tracking and procurement of biological implants. By implementing one standard for device identification and tracking medical devices, such as prosthetics, which is developed and approved by the Food and Drug Administration (FDA), VA will be better able to inventory, track expiration dates and flag devices nearing their expiration. This would also assist in ensuring women veterans are able to obtain gender-specific prosthetics in a timely manner.

In the past, the VA Office of Inspector General (VAOIG) has consistently reported on shortcomings within VA in regard to their management of prosthetics. The most recent audit—Report No. 11–02254–102, published March 8, 2012—highlighted challenges the VFW still believes must be addressed. VAOIG suggested that VA better manage their prosthetic inventories to avoid surplus spending and lack of patient access to prosthetics due to supply shortages. This excessive spending and prosthetic supply shortages are due to the lack of VA systems integrating with the prosthetic inventory system, which causes dilemmas between the two inventory systems.

S. 112, CREATING A RELIABLE ENVIRONMENT FOR VETERANS' DEPENDENTS ACT

The VFW supports adding per diem reimbursement for those homeless veterans with dependents to the list of services available for veterans in need. The struggle for homeless veterans is enough of a burden as is, and providing some financial support for veterans with dependents while they seek help is something that the VFW sees as an important change. While the VFW supports this bill, we ask that some improvements be made. The language of the bill states that the recipient of the grant "may" receive per diem payments under this subsection. We would like to see this language changed to "shall." This would ensure veterans in the greatest need will receive financial assistance.

S. 324, STATE VETERANS HOME ADULT DAY HEALTH CARE IMPROVEMENT ACT OF 2017

The VFW supports this legislation, which would expand adult day health care benefits for veterans who are eligible for long-term inpatient care. Currently, veterans who are at least 70 percent service-connected are eligible to receive cost-free nursing home or domiciliary care at any of the more than 120 state veterans' homes throughout the country. While nursing home care is a necessity for veterans who can no longer live in the comfort of their home, the VFW strongly believes veterans should remain in their homes as long as possible before turning to inpatient and long-term care options. This legislation would ensure veterans have the opportunity to receive adult day care so they can remain in their homes as long as possible.

S. 543, PERFORMANCE ACCOUNTABILITY AND CONTRACTOR TRANSPARENCY ACT OF 2017

The VFW supports the intent of this bill, but we do not believe this legislation is needed. There are a few sections of this bill that seem redundant with laws or practices already in place. We understand the effort to place VA officials, and not contractors, as the first in line for accountability for underperforming projects, but that seems to be an administrative issue. As for the penalties and website posting, we believe those already exist, and adding legislation to those would further obscure an already complicated system.

S. 591, MILITARY AND VETERAN CAREGIVER SERVICES IMPROVEMENT ACT OF 2017

The VFW strongly supports this legislation, which would greatly enhance the services provided to caregivers of servicemembers and veterans who were severely disabled in the line of duty. Family caregivers choose to put their lives and careers on hold, often accepting great emotional and financial burdens, and the VFW believes that our Nation owes them the support they need and deserve. This bill would accomplish this in a number of ways, including extending benefits to caregivers of veterans with service-connected illnesses, offsetting the costs of their child care, providing them with financial advice and legal counseling, expanding their respite care options, and requiring VA to report on the progress of the program.

This legislation would extend caregiver eligibility to severely injured and ill veterans of all eras. This is a desperately needed change that the VFW has long supported. Severely wounded and ill veterans of all conflicts have made incredible sacrifices, and all family members who care for them are equally deserving of our recognition and support. The fact that caregivers of previous era veterans are currently excluded from the full complement of program benefits implies that their service and sacrifices are not as significant, and we believe this is wrong. We support the

five year phase-in plan, which would incrementally grant program eligibility based on the severity of the veteran's conditions, as we believe this would give VA the opportunity to responsibly expand and improve the program without compromising services to current beneficiaries.

The VFW hears from our member often about eligibility for VA's Program of Comprehensive Assistance for Family Caregivers and their message is clear: they strongly support expanding full caregiver benefits to veterans of all eras. As an intergenerational Veterans Service Organization that traces its roots to the Spanish American War, this is not surprising. Our members are combat veterans from World War II, the wars in Korea and Vietnam, the Gulf War, and various other short conflicts, in addition to current era veterans. They rightly see no justifiable reason to exclude otherwise deserving veterans from program eligibility simply based on the era in which they served.

This legislation would require an annual evaluation report to determine how many caregivers are receiving benefits, assess training that VA provides caregiver coordinators, and review outreach activities. The VFW believes Congress should also track the number of times and reasons why VA revokes the benefit from veterans. The VFW has heard from too many veterans that they were kicked out of the program despite still needing the assistance of a caregiver for daily living activities.

The VFW commends VA for recently extending the temporary suspension of revocations until it is able to properly address the inconsistent implementation of the program throughout the VA health care system. VA must make several improvements to the existing program including the appeals process when veterans disagree with the eligibility determination of their care teams, ensuring eligibility determinations are consistent throughout the system, and enhancing the off-ramp process to ensure veterans and their caregivers are given enough time and support to properly adjust before graduating from the program.

The VFW strongly believes VA must review previous revocations for accuracy and improve the program, specifically instances of veterans whose eligibility was revoked despite being in the highest tier. However, the VFW does not believe that it is necessary to delay expansion of the program. The caregivers of pre-9/11 veterans have suffered long enough. It is time Congress properly recognizes their sacrifice and provides them the support they deserve.

S. 609, CHIROPRACTIC CARE AVAILABLE TO ALL VETERANS ACT OF 2017

The VFW supports this legislation which would provide chiropractic care and services to veterans receiving health care at VA. According to VA, musculoskeletal and connective tissue diseases are commonly diagnosed medical issues for Post-9/11 veterans, with nearly 200,000 of these veterans pursuing care at VA for these conditions since 2002. Our nation is also facing an opioid epidemic, with many Americans and veterans struggling with addiction to painkillers. This is why the VFW believes it is absolutely crucial that VA be able to provide access to chiropractic care to veterans in need. Studies have long proven chiropractic adjustments can reduce chronic pain, joint swelling and inflammation. Some studies even show chiropractic care can help reduce headaches and migraines. The VFW urges Congress to pass this legislation which would help improve the quality of care veterans receive at VA, as well as provide another avenue to combat opioid addiction for patients with chronic pain.

S. 681, DEBORAH SAMPSON ACT

The VFW supports this legislation to improve VA benefits and services for women veterans. As the population of women veterans continues to be the fastest growing within the veteran community, the VFW has adamantly worked alongside Congress and VA to improve access, care and benefits to women veterans. In 2016, the VFW launched our In Their Words campaign which focused on the needs of women veterans. To evaluate whether VA is meeting the needs and expectations of women veterans, we conducted an extensive survey of nearly 2,000 women veterans. From that data, the VFW broke down the areas in most need of attention into four categories: health care, recognition, outreach and homelessness. The Deborah Sampson Act addresses all four of these critical areas, which is why we urge Congress to pass this legislation.

Title I—Peer-to-Peer Assistance

Peer-to-peer support has proven time and again to be invaluable to veterans and VA. This is why the VFW advocates so strongly for the constant expansion of peer-to-peer support programs. This legislation would greatly expand these programs for women veterans, providing them more peer and gender-based one-on-one assistance

from others to whom they can relate and connect. This is extremely crucial in instances where a female may suffer from mental health conditions, but especially in instances where a female veteran is on the verge of homelessness. In our survey, 72 women reported being homeless or at risk of becoming homeless. Of those women, 38 percent reported having children. These women face unique barriers to overcoming homelessness, and frequently commented on the lack of people who actually understand those barriers. By providing peer-to-peer support for women with others who have gone through the same hardships, VA would provide a level of understanding and trust they desperately need.

Title II—Legal and Supportive Services

Since President Obama and then Secretary Shinseki launched the campaign to end veteran homelessness, the VFW has been pleased to see the homeless veteran population nearly cut in half, as well as more attention brought to this important issue. That is not to say there are not more challenges ahead on the road to eradicating veteran homelessness. The VFW has long advocated for improvements to voucher programs for women veterans, as well as access to gender-specific, safe housing for those with families. This legislation would improve access to legal and supportive services, which is crucial in instances such as preventing homelessness, keeping families together and settling issues that may complicate veterans' abilities to find meaningful employment.

Title III—Newborn Care

Typically, in private sector health care, a new mother has a month to enroll her newborn child into an insurance program. Currently, VA only covers newborn care for seven days. This week of coverage is not enough to provide coverage if anything goes wrong—even in the not uncommon instance of false positive testing—nor is it enough to ease the new mother of unnecessary stress. Congress must expand coverage for newborn children.

Title IV—Eliminating Barriers to Access

Barriers to health care have not been shunned from the spotlight in regard to access at VA. This is all the more reason why VA must continue being more proactive than reactive when it comes to access to gender-specific care for women veterans. As the women veteran population continues to grow, VA must ensure it provides care and services tailored to their unique health care needs. Women deserve access to the best treatment and care this Nation has to offer. That is why it is crucial VA outfit existing facilities with basic necessities, such as curtains for privacy, in women's clinics. These clinics also need to maintain at least one primary care provider with expertise in women's health who is able to train others. However, the VFW recommends removing the option of one part-time provider. A part-time provider would limit access to care for woman veterans and decrease the provider's ability to maintain gender-specific expertise.

Title V—Data Collection and Reporting

VA has an extensive history of not gathering data which would allow the statistical analysis necessary to better veterans' lives. This is why the VFW strongly urges Congress to pass this legislation which would collect and analyze data by sex and minority status.

S. 764, VETERANS EDUCATION PRIORITY ENROLLMENT ACT

The VFW supports adding legislation that allows veterans using GI Bill benefits to enroll in classes before the standard enrollment date. Veterans have finite time to use their education benefits, and being locked out of required classes due to capacity issues is a real problem for student veterans. Many veterans take longer than the 36 months of GI Bill eligibility to complete their education due to a combination of factors such as the inability to enroll in the necessary classes because of capacity issues; limited offering of classes throughout the academic year; and restrictions on registration due to academic progress or transferal from another school. Therefore, the creation and implementation of a priority enrollment system—similar to other special college populations such as college athletes—as well as revised class enrollment and transfer policies, are necessary to ensure that veterans are able to complete their educational goals within the 36 months of benefits allotted by the GI Bill.

Priority enrollment for student veterans was an issue championed by a recent VFW-Student Veterans of America fellow Robert Davis. In his proposal, Veterans Priority Enrollment, Davis highlighted how this no-cost solution will enable veterans to complete their degrees in a more expedient fashion, so as not to waste any unnecessary education benefits while doing so. Veterans using the GI Bill have

shown to be a great return on investment for this country, and we should do everything we can to enable their progress toward completion of their degrees.

S. 784, VETERANS COST-OF-LIVING ADJUSTMENT ACT OF 2017

The VFW supports this legislation which would increase VA compensation for veterans and survivors, and adjust other benefits by providing a cost-of-living adjustment (COLA). The VFW is pleased to support any bill increasing COLA for our veterans, however, we would prefer to make COLA increases permanent and automatic.

Disabled veterans, along with their surviving spouses and children, depend on their disability compensation, plus dependency and indemnity compensation, to bridge the gap of lost earnings caused by the veteran's disability. Each year veterans wait anxiously to find out if they will receive a COLA. There is no automatic trigger that increases these forms of compensation for veterans and their dependents. Annually, veterans wait for a separate act of Congress to provide the same adjustment that is automatically granted to Social Security beneficiaries.

S. 804, WOMEN VETERANS ACCESS TO QUALITY CARE ACT OF 2017

The VFW supports this legislation, which would improve health care for women veterans using VA. As the fastest growing demographic within the veteran population, women veterans have long deserved access to high quality, equitable gender-specific health care. This legislation would prioritize integrated standards to determine funding to ensure VA facilities meet standard requirements of gender-specific care in areas such as gynecology.

When the VFW conducted its survey of nearly 2,000 female veterans in 2016, one of the most overwhelming open ended responses on how to improve women's health care in VA was by increasing the number of gynecologists. While VA offers gynecology, women veterans prefer seeing a gynecologist rather than their primary care provider for this gender-specific necessity.

This legislation would also greatly improve the quality of care available to women veterans by increasing the number of providers who specialize in gynecology, as well as thoroughly examining other areas of gender-specific need, such as women veteran wait times, health outcomes based on gender, and availability of gender-specific equipment.

S. 899, DEPARTMENT OF VETERANS AFFAIRS VETERAN TRANSITION IMPROVEMENT ACT

The VFW supports the Veteran Transition Improvement Act, which would authorize service-connected disabled veterans to access care for their service-connected injury during their first year of employment with VA. Disabled veterans seeking Federal employment are rightly given special preference during the hiring process. However, newly hired VA employees begin with a paid sick leave balance of zero. This means that within their first year of employment, newly hired disabled veterans must choose between taking unpaid leave to seek medical care for their service-connected conditions, or forego receiving care altogether. At this time, disabled veterans who work for VA are the only Federal employees forced to make this choice, as recently enacted laws have permitted newly hired disabled veterans in other agencies the opportunity to receive care for injuries sustained during their military service. This legislation would increase the chances for a successful transition into the civilian workforce and eliminate a barrier to health care access.

S. 1024, VETERANS APPEALS IMPROVEMENT AND MODERNIZATION ACT OF 2017

The VFW supports this legislation to reform and modernize the VA claims and appeals process to better serve the needs of the veterans' community. Over the years, the VA claims and appeals process has morphed into a bureaucratic leviathan the average veteran cannot possibly understand. Moreover, for veterans who disagree with their assigned rating decision, they currently have no way to determine whether choosing to appeal is a reasonable course of action without seeking assistance from an accredited representative or legal counsel. Then, should veterans choose to appeal VA's decision, exercising their due process rights can take up to five years. To the VFW, this does not seem like a veteran-centric, non-adversarial process.

The goal of this legislation is to once again build a veteran-centric process that is easy to navigate and protects a veteran's rights every step of the way. Last year, the VFW was one of more than a dozen veteran community stakeholders that convened to discuss the way forward in modernizing the VA claims and appeals processes. At the time, the acknowledgement was that the system was cumbersome and

no longer satisfied the needs of veterans who rightfully expect timely and accurate rating decisions on the benefits they earned. The resultant product of these discussions is the framework included in this draft legislation, and the VFW is proud to support it.

Through this legislation, Congress will modify the options for veterans to pursue accurate rating decisions prior to filing a formal appeal, while simultaneously preserving their earliest possible effective date. This legislation also directs VA to improve its award notifications for veterans, outlining seven specific pieces of information each decision notice to a veteran shall include. Improved notification letters have been a top priority of the VFW and our partner organizations for years, and we are happy to see the Committee pursue this aggressively. To the VFW, inadequate notification letters have been a fundamental failure in the VA claims process for decades. In their current format, veterans have no reasonable way to understand how VA arrived at their benefit decision, meaning veterans have no way to reasonably conclude whether or not the decision is accurate and whether or not they need to pursue another avenue of recourse.

As accredited representatives, one of our top responsibilities is explaining rating decisions to veterans and deciphering which evidence was used to render a decision and how VA evaluated that evidence. Improved decision notices will put some of this power back into the veteran's hands, ensuring they are well informed of their rating and how VA arrived at its conclusion. This sets the veteran up for success in navigating the process and has the potential to cut down on appeals where the veteran simply may have misunderstood their rating decision.

Coupled with improved notifications, this legislation codifies three specific paths through which veterans can arrive at a fair and understandable rating decision, while preserving the earliest possible effective date. Two of these paths—higher level review and supplemental claims readjudication—offer recourse for the veteran without filing a formal appeal, offering the veteran and VA the opportunity to rectify discrepancies before the veteran formalizes an appeal.

Currently, when a veteran receives a rating decision, they must choose whether or not to formally file a notice of disagreement, kicking off a potential years-long process to arrive at a new decision, sometimes when only small matters of evidence or interpretation of the law need to be addressed. By redesigning appeal options, the process remains non-adversarial as long as possible, and also encourages VA to produce quality rating decisions at the local level, instead of punting more complicated cases for the Board of Veterans Appeals (BVA) to review.

Critics have called these two new paths at the regional office an "erosion" of veterans' due process rights. This is an inaccurate assessment that fails to acknowledge that the VA claims process is supposed to be veteran friendly and easily navigable by any veteran who seeks to access his or her earned benefits. Moreover, the new framework actually expands veterans' due process rights by offering additional recourse at the local level, preserving routes to the BVA and the courts, and preserving a veteran's right to seek legal counsel after an initial rating decision.

Though the VFW always encourages veterans to seek professional assistance from an accredited representative whenever possible, a perfect system would be one where veterans do not need professional assistance, and certainly do not need to retain a lawyer, simply to claim an earned benefit. The VFW believes this proposed framework, if properly implemented, moves veterans closer to such a system.

The most critical new protection for veterans is the lane in which veterans can continually submit new and relevant evidence to VA within one year of a rating decision and receive a new rating decision on the evidence of record, preserving their original effective date. Coupled with improved notification letters, this option could be a game changer for veterans, resulting in more favorable decisions at the local level.

First, lowering the evidentiary threshold to receive a new rating decision to only new and relevant is an improvement for veterans. The old standard was new and material. While the VFW would prefer that VA only be required to consider new evidence, we support this change which would ease the evidentiary burden for veteran claimants, potentially resulting in more favorable decisions.

Key to the success of this lane is communication among VA, the veteran, and the veteran's advocate where applicable. If a veteran receives a clear and understandable rating decision, but notices that certain evidence was not contained in the record, they now have an opportunity to formally submit this and receive a new, timely rating decision, instead of pursuing years of a formal, contentious appeal. Moreover, accredited veterans' advocates now have a new tool to help resolve claims at the earliest possible time, ensuring that their clients receive every benefit they have earned.

To the VFW, this is the best possible outcome. According to VA's own data, more veterans are seeking our assistance every year to access their earned benefits. Last year, the VFW took on four new claimants for every claimant we lost. While we like to tout that this is a testament to the professionalism of our staff, we also know that this kind of growth means that we need to help VA get it right the first time. Prolonging a veteran's claim is bad all around. It puts unnecessary stress on the veteran and it makes VA look like an irresponsible steward of benefits. At a time when more veterans need access to benefits, the VFW supports offering more non-adversarial recourse at the local level to arrive at quality rating decisions. This is what our veteran clients expect, and this is why we support this new framework.

The VFW also supports the maintenance of two separate dockets at BVA to adjudicate new appeals, though we have persistent concerns about the timeliness of decisions in each docket and the potential disincentive for veterans to pursue an appeal with a hearing. That being said, the VFW supports docket flexibility so that BVA can properly manage its workload and provide veterans with timely decisions. However, in testimony earlier this year, VFW Commander-in-Chief Brian Duffy called for the simultaneous maintenance of five separate dockets at BVA to best reflect the legacy workload as well as the new system workload, including one docket for appeals with no new evidence and no hearing; one for appeals with new evidence but no hearing; and one for appeals with both new evidence and a hearing.

When the Committee first started discussing the concept of appeals reform for the 115th Congress, the VFW and several of our partner Veterans Service Organizations saw this as an opportunity to once again discuss potential conflicts that arose in the initial discussions in 2016. One significant conflict was the ability of veterans with appeals languishing in the legacy system to be able to opt into the new framework. In this legislation, we are pleased to see that the Committee addressed these concerns by articulating formal "off ramps" for legacy appeals to opt into the new system at critical decision points.

To the VFW, this is a benefit to affected veterans and to VA. First, veterans whose appeals have been mired in the old appeals system will have several opportunities to take advantage of new processes, such as submitting new and relevant evidence when their claims are remanded back to the Regional Office. This will allow veterans an opportunity to avoid another lengthy appeal process and allow VA to address the issues at the Regional Office in a timely manner. For VA, the VFW believes this will be a critical tool in helping to adjudicate the backlog of legacy appeals, resulting in more timely, favorable decisions for veterans.

The VFW understands that VA had some concerns about these off ramps and the strain on resources at the local level. The VFW does not share these concerns as VA has the responsibility to adjudicate its workload regardless of where the claim happens to be in the process. Moreover, this reinforces the VFW's calls on Congress to properly resource the Veterans Benefits Administration (VBA) and BVA to manage their workload. Without proper resources, any claims and appeals framework will fall prey to dangerous backlogs, resulting in unacceptable benefit delays for veterans.

Since the first discussions on appeals reform with VA, the VFW has been very clear that any changes to the system must be coupled with aggressive initiatives to adjudicate legacy appeals in a timely manner through both legislative authority and proper resourcing. The VFW had asked for off ramps to allow veterans with legacy appeals to opt into the new process, and we thank the Committee for including these off ramps in this legislation.

The VFW must stress the importance of properly resourcing BVA and VBA to adjudicate the legacy appeals backlog and the potential influx of supplemental claims and higher level review requests at the VA Regional Office. The VFW's former National Veterans Service Director, Jerry Manar, used to say that VA liked to play Whack-a-Mole with its pending workload. When initial claims were backlogged, they concentrated resources on initial claims. This has since set off a chain reaction that has resulted in a backlog of appeals and other claim actions at the Regional Office level. Every time there is a crisis, VA has the habit of reallocating its resources to address the latest crisis. This only leads to other crises. VA must be properly resourced to manage its workload if we expect this new framework to succeed.

The VFW was also happy to see that the Committee is asking for extensive reporting from VA on legacy appeals. The VFW supports many of these data points, and has had similar questions about the appeals process over the years, particularly the disaggregated time that VA waits for a claimant to take action and the time a claimant waits for VA to take action. We believe that this report will help to better understand the pitfalls that led to the appeals backlog and help avoid them in the new framework.

A modernized appeals system must be responsive to future needs of veterans. Veterans benefits date from the beginning of the United States, and our citizens and government have stepped up to care for veterans as the nature of war and society has changed. Judicial review of veterans' benefits decisions has been in place for almost thirty years, and a decision this past week by the Federal Circuit in *Monk* v. *Shulkin* recognized veterans have a right to aggregate their appeals into class actions. While this decision does not directly affect the modernized appeals framework, it will also help to eliminate the "hamster wheel" appeals process, and will affect regulations handling new procedural directives from the courts. Congress must maintain close oversight over the timely handling of appeals for veterans who have been waiting the longest.

At the same time, the modernized appeals system also needs the oversight of Congress to continually improve the process. We believe the changes proposed in the legislation being considered today would go a long way in forming a more veteran-centric process. But appeals do not exist in a vacuum, and the feedback we receive must drive improvements to the processes used by VA and stakeholders to obtain fair, accurate decisions at the earliest point possible, and improve the quality of life for veterans and their families.

The VFW is encouraged by the legislation you are considering today and strongly supports efforts to reform the claims and appeals system to build a more veteran-centric appeals process. For years, we have been stuck in the same place, afraid to take action out of fear we will make the wrong decision. The problem is that if we stay put, the situation will never improve. That is unacceptable for the veterans who deserve timely access to their earned benefits. The VFW believes it is time to improve this process. We encourage the Committee to include the VFW's recommendations when marking up this legislation, and we look forward to continuing to work with the Committee to advance these critical reforms.

S. 1094, DEPARTMENT OF VETERANS AFFAIRS ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION ACT OF 2017

The VFW believes that VA and Congress must ensure the Secretary of Veterans Affairs has authority to quickly hold employees accountable for wrongdoing which may endanger the lives of veterans. That is why we support this important legislation. However, we also believe it is as important to ensure VA can quickly fill vacancies within its workforce left open by removing bad actors within VA.

This important bill includes strong accountability reform for VA employees who do not live up to the standards that veterans deserve. Three years after the patient wait time manipulation crisis at the Phoenix VA Health Care System put a national spotlight on employee accountability, the Secretary of Veterans Affairs still lacks the proper authority to swiftly terminate workers who do not deserve to work at VA. The Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 would improve the Secretary of Veteran Affairs' authority to discipline employees who commit malfeasances.

The VFW salutes Chairman Isakson, Ranking Member Tester, Senator Rubio and the House Committee on Veterans' Affairs leadership for reaching a bipartisan deal on this important bill which would better protect whistleblowers and hold employees accountable for their conduct or performance. The need for legislation follows a Federal appellate court decision this past week that rendered unconstitutional the process used to fire the former director of the Phoenix VA Health Care System.

The VFW believes whistleblower protection is an essential addition to the accountability legislation. A Federal survey shows that less than 50 percent of VA employees feel that arbitrary action, personal favoritism and coercion for partisan political purposes are not tolerated. More so, only 43 percent felt senior leaders maintain high standards of honesty and integrity; only 37 percent are satisfied with policies and practices of senior leaders; and only 36 percent feel senior leaders generate high levels of motivation and commitment in the workforce. These statistics are alarming and suggest that for a culture of accountability to be established, change must start from the top, not the bottom.

The VFW also believes VA needs improved authorities to hire high quality employees. In our report, Hurry Up and Wait, we highlight deficiencies in VA human resources practices, outlining several recommendations to improve the hiring process and customer service training. We feel that VA's hiring process moves too slowly. Northern Virginia Technology Council suggested that for VA to be successful, it should aggressively redesign its human resources processes by prioritizing efforts to recruit, train, and retain clerical and support staff. In today's economy, hiring the best people is extremely critical. In many cases, it is more effective to coach a cur-

rent employee, even a poor performing one, than it is to find, interview, engage and train new employees.

We fear that VA's workforce productivity could decline due to staffing shortages and low employee morale if VA does not reform its hiring processes. The VFW looks forward to working with Congress to expedite passage of this legislation and find workable solutions to VA human resources' issues to ensure VA can move quickly to fire employees who put veterans at risk, and at the same time move quickly to hire the best applicants to set VA on a path to restore trust in the system.

DRAFT BILL, SERVING OUR RURAL VETERANS ACT (SULLIVAN, TESTER)

This legislation would allow for VA to make payments for the training of interns and residents at approved locations other than VA facilities and to establish a pilot program for additional training. The VFW supports this legislation. The use of Indian Health Service facilities and other approved Federal locations is a common sense answer for VA to use in solving their need to train medical professionals. Those who participate in the program would spend time at an approved facility as defined in the legislation. This could be an opportunity to help solve a known problem and allow VA to recruit capable and dedicated medical professionals to care for those who have borne the battle.

DRAFT BILL, VETERAN PARTNERS' EFFORTS TO ENHANCE REINTEGRATION ACT (BLUMENTHAL)

The VFW supports this legislation, which would require VA to integrate peer support specialists into Primary Care Patient Align Care Teams (PACT). Peer support specialists provide a valuable service to veterans coping with mental health conditions. Such veterans often look for guidance from fellow veterans who have successfully completed treatment and have learned to cope with conditions they are experiencing. While current law requires each VA medical center to hire a minimum of two peer support specialists, it does not require VA medical facilities to incorporate them into the clinical settings. As a result, many peer support specialists are not used to their full potential. Many peer support specialists currently lead successful mental health care programs and services. The VFW supports efforts to expand such best practices.

The VFW is glad to see this legislation would require each medical center that participates in the pilot program to consider the gender-specific needs of women veterans when carrying out the pilot program. In our survey of women veterans, survey participants identified the lack of gender-specific services as the greatest need in VA health care facilities. Survey participants also indicated their desire to select a provider of the same gender, specifically for veterans who have mental health conditions that may be a result of military sexual trauma. The VFW supports efforts to hire women peer support specialists to ensure women veterans have the opportunity to seek guidance from other women veterans who have learned to cope with mental health conditions related to military sexual trauma.

Mr. Chairman, this concludes my testimony. I am prepared to answer any questions you or the Committee Members may have.

Chairman ISAKSON. Thank you, Ms. Keleher.

Mr. Atizado?

STATEMENT OF ADRIAN ATIZADO, DEPUTY NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

Mr. ATIZADO. Chairman Isakson, Ranking Member Tester, Senator Murray, distinguished Members of the Committee, first I want to thank you for inviting DAV to testify on the bills under consideration for today's hearing. As many of you know, DAV is a nonprofit organization, about 1.3 million strong, all wartime service-disabled veterans, and we have one purpose: to ensure veterans lead high-quality lives with respect and dignity.

Mr. Chairman, DAV operates the Nation's largest claims and appeals assistance program, providing free representation to more than 1 million veterans and their families. DAV fully supports S. 1024, the Veterans Appeals Improvement and Modernization Act

of 2017, and we remain committed to reform the appeals and claims process.

As my colleagues have mentioned, the new appeals framework proposed within this bill will protect the due process rights of veterans, while creating multiple options for them to receive their decisions in a more judicious manner.

The critical core of the new framework would allow veterans to have multiple options to reconcile unfavorable claims decisions. It would introduce new evidence at both the Board and at BVA, and protect earliest effective dates without having to be locked into a current long and arduous formal appeals process at the board. Now claimants with legacy appeals would be able to enter the new system at various junctures, and for assurance that BVA and the board are prepared to make this major transition, the Secretary is required to submit a detailed transition and implementation plan, and, with consultation with stakeholders, certify that the new system is ready.

We are also pleased to express our full support for the two bills before you today responding to the needs of women veterans, S. 681, the Deborah Sampson Act, and S. 804, the Women Veterans Access to Quality Care Act of 2017. Together, these bills would address longstanding concerns and barriers to care that have been discussed in our report, the 2014 report, "Women Veterans: A Long Journey Home," as well as our national resolution number 129, which calls for enhanced services for women veterans.

To name just a few of the important provisions in both of these bills, we believe the peer retreats and increased use of evidence-based peer specialists will help ease transition, isolation, and assist woman veterans with post-deployment readjustment issues. A more robust maternity care benefit for woman veterans would be offered by extending days of coverage for newborn care from 7 to 14 days. It would also cover transportation of newborns, if medically necessary.

There is a provision authorizing $20 million to address VA's facility and environmental deficiencies that would ensure women veterans' safety, confidentiality, and privacy, as well as dignity, as patients in the VA health care system. Requiring VA facilities to have either a full- or part-time women's health primary care provider and establish a woman veterans program ombudsman to help women navigate the very large system of the VA, and overcome any access to barriers to care.

Mr. Chairman, DAV strongly supports S. 591, the Military and Veterans Caregiver Services Improvement Act of 2017. This measure will allow severely ill and injured veterans from all eras, who meet the requisite clinical eligibility criteria, to be permitted to participate in VA's comprehensive program for caregiver assistance. To ensure the program's integrity, this measure would phase in this expansion based on who needs the support the most, thus allowing VA to manage the new work load. The bill would also improve the comprehensive caregiver program by including child care and provide caregivers financial advice and legal counsel.

DAV firmly believes it is simply unconscionable to deny comprehensive caregiver support services to caregivers of veterans severely injured in prior wars, and to deny same services to family

caregivers who clearly need help today—today, after decades of sacrifice. For each year caregivers programs keep a veteran at home, outside an institution, that can save the taxpayer anywhere from $8,300 to as much as $295,000. That is one veteran, 1 year.

Not only is this bill good for taxpayers, family caregivers, and veterans, it is also the right thing to do.

This concludes my statement, Mr. Chairman. I would be happy to answer any questions you or other Members of the Committee may have. Thank you.

[The prepared statement of Mr. Atizado follows:]

PREPARED STATEMENT OF ADRIAN M. ATIZADO, DEPUTY NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

CHAIRMAN ISAKSON, RANKING MEMBER TESTER, AND MEMBERS OF THE COMMITTEE: Thank you for inviting DAV (Disabled American Veterans) to present our views on the bills under consideration at today's hearing. As you know, DAV is a non-profit veterans service organization comprised of nearly 1.3 million wartime service-disabled veterans. DAV is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

S. 23, BIOLOGICAL IMPLANT TRACKING AND VETERAN SAFETY ACT OF 2017

This bill would require the Department of Veterans Affairs (VA) to establish a biological implant inventory identification and management system with the same features and requirements of an existing system in use by the Food and Drug Administration to regulate origin, movement, surgical implantation, and recall (if necessary) of any such biological material.

The term biological implant would be defined as any "animal or human cell, tissue, or cellular or tissue-based product," and would tie that definition to the existing regulatory definition under the Federal Food, Drug, and Cosmetic Act.

The bill would set a number of milestone and deadline dates for implementation, and would require VA to submit a series of reports to document its progress in implementation of this system. Procurement of biological implants would be restricted to vendors who meet certain conditions laid out in the bill, and would sanction any VA procurement employee involved in the procurement of biological implants who acted with intent to avoid, or with reckless disregard of the requirements of the bill.

A January 2015 report by the Government Accountability Office discussed weaknesses in procedures and compliance of those procedures on the purchase and tracking of surgical implants at VA facilities. Since the report was issued, we understand VA's ability to identify veterans who received an implant that is being recalled by the manufacturer or the Food and Drug Administration has been sufficiently strengthened, but that the compliance and requirements for purchasing surgical implants remains a concern.

VA medical centers (VAMC) or the Veterans Health Administration's (VHA) regional network contracting offices (NCO) can purchase, from the open market, a specific surgical implant requested by a clinician with appropriate clinical justification, rather than purchasing a similar item through a VA-negotiated competitive contract.

However, not recording the serial number or lot number for a surgical implant makes it difficult to systematically determine which veteran received an implant subject to a subsequent manufacturer or Food and Drug Administration recall. VHA policy stipulates that all open-market purchases of non-biological implants require a waiver approved by the VAMC Chief of Staff when a comparable item would have been available through a VA-negotiated national committed-use contract.

DAV has received no resolution from our membership that deals with the specific topic of surgical implants. However, DAV's Resolution No. 244 calls for VA to provide a comprehensive health care service for all enrolled veterans. Better control of the origins, movement, surgical implantation and recall, if necessary, of implantable biological material would be in keeping with the intent of our resolution. Therefore, DAV supports the intent of this bill.

As a technical matter, we recommend the bill language be amended to add a new section "§ 7330C," including subsequent references to this new section rather than the currently referenced "§ 7330B," which was has already been added by Public Law 114–315, title VI, § 612(a) on December 16, 2016.

S. 112, TO AMEND TITLE 38, UNITED STATES CODE TO AUTHORIZE PER DIEM PAYMENTS UNDER COMPREHENSIVE SERVICE PROGRAM FOR HOMELESS VETERANS TO FURNISH CARE TO DEPENDENTS OF HOMELESS VETERANS

Many community housing and supportive service programs available for homeless veterans do not have appropriate and safe accommodations to serve single-parent families. According to the National Coalition for Homeless Veterans, many organizations with Grant Per-Diem (GPD) programs do not have sufficient resources to provide housing for the children of veterans, or have major restrictions on the services they can provide, including age limits and the number of children per veteran they can accept. If enacted, this bill would authorize per diem payments under comprehensive service programs for homeless veterans to provide services and housing to dependents of homeless veterans funded by the VA GPD program.

According to the United States Housing and Urban Development Annual Homeless Assessment Report (AHAR) in 2016, about 9 percent (39,471) adults are homeless veterans and 3 percent (1,131) of these veterans are homeless and part of a family. Several factors related to military service can contribute to an increased risk of being homeless, such as having a mental health diagnosis and combat or wartime service. For women veterans these factors are increased. Over 300,000 women servicemembers served in Iraq or Afghanistan—some with multiple tours that exposed them to combat and other hazardous situations during deployment. Research finds that women veterans are more likely to have experienced sexual trauma than women in the general population, and are more likely than male veterans to be single parents.

According to the Department of Defense (DOD), more than 30,000, of the women who served in the wars of Iraq and Afghanistan, were single parents and sole providers of dependent children. In its 2014 Sourcebook, VA reported about 46 percent of its women patients who served in Operations Enduring and Iraqi Freedom and Operation New Dawn had a mental health or substance use disorder diagnosis. Overall, it is estimated that women veterans are between two and four times as likely to be homeless as their non-veteran counterparts (according to a Congressional Research Service report dated November 6, 2015).

DAV is pleased to support S. 112. This measure is consistent with DAV Resolution No. 139, which calls for support of sustained and sufficient funding to improve services for homeless veterans, including homeless veterans with children.

S. 324, STATE VETERANS HOME ADULT DAY HEALTH CARE IMPROVEMENT ACT OF 2017

If enacted, this bill would authorize the Secretary to enter into new agreements with state veterans homes who provide medical supervision model adult day health care (ADHC) for veterans who are eligible for, but do not receive, skilled nursing home care under section 1745(a) of title 38, United States Code. Eligible veterans are those who require such care due to a service-connected disability, or who have a VA disability rating of 70 percent or greater and are in need of such care. Under this new authority, the payment to a state home for medical supervision model ADHC would be at the rate of 65 percent of the amount payable to the state home if the veteran were an inpatient for skilled nursing care, and payment by VA would be considered payment in full to the state home.

Viewed as a more cost-effective option than institutional services, adult day services today provided in elderly and adult day centers include day care, day health, and respite for family caregivers, which allows patients requiring long-term services and support to remain in their homes near family and friends, and delays institutionalization in nursing homes.

Adult day services have been divided into three models of care: social, medical, or combined. Social models tend to focus on socialization and prevention services, while medical models include skilled assessment, treatment, and rehabilitation goals, and combined models cover all areas. The distinction among these models has become increasingly unclear as these models have evolved into a dynamic, comprehensive model of care. Additionally, access to these centers is a challenge and transportation costs of patients must be considered.

The state veterans home ADHC medical model program is designed not just to promote socialization, stimulation, and maximize independence while enhancing quality of life, but also to ensure veterans have access to comprehensive medical, nursing, and personal care services. In addition, veterans have access to a full array of clinical and rehabilitative services during their day visits, equivalent to what is offered to full time nursing home residents. Currently, VA's per diem rate for state home ADHC is financially inadequate for most states to operate a medical supervision model program, of which there are only three in the Nation at present. This legislation, which is based on the same concept as the existing "full cost of care"

skilled nursing care program for severely disabled veterans, would measurably support the creation of more such programs, and thereby provide more veterans, and their families, with options to avoid full-time institutionalization.

As this Committee is aware, there are many factors that impact the sustainability of adult day centers, including state regulatory requirements, staffing requirements and wages within a service area. DAV is pleased to support S. 324 based on DAV Resolution No. 142. In calling for enhancing VA's comprehensive program of long-term services and supports for service-connected disabled veterans irrespective of their disability ratings, this resolution also recognizes the need for VA to optimize its relationship with State Veterans Homes to ensure veterans in need of institutional and alternative forms of long-term services and supports may avail themselves of state home facilities to consider all options for their provision.

In addition, DAV understands that VA is close to finally releasing long overdue regulations that may create separate per diem rates for social and medical supervision model ADHC programs. Should such regulations be implemented, Congress should consider expanding this legislation to offer a "full cost of care" per diem rate for medical, social and combined models of Adult Day Services programs for severely disabled veterans.

S. 543, THE PERFORMANCE ACCOUNTABILITY AND CONTRACTOR TRANSPARENCY ACT OF 2017

This measure would require entities entering into service contracts with VA to include performance metrics on cost, schedule and fulfillment of contract requirements. It further requires that the Secretary to ensure that contracts set forth plans and milestones for delivering specified services. For the largest contracts it requires use of VA IT systems to ensure that contractors are fulfilling their obligations and maintaining at least a threshold level of quality in services rendered. DAV has no resolution on this legislation, but does not object to its intent.

S. 591, THE MILITARY AND VETERAN CAREGIVERS SERVICES IMPROVEMENT ACT OF 2017

DAV strongly supports S. 591, the Military and Veteran Caregivers Services Improvement Act of 2017. This measure would allow severely ill and injured veteran from all eras who meet the requisite clinical eligibility criteria to be permitted to participate in VA's Program of Comprehensive Assistance for Family Caregivers. To ensure the program's integrity, the measure would phasing in veterans based on need, allowing VA to manage the new workload, while keeping service quality high. It would add a greater emphasis on mental health injuries and Traumatic Brain Injury (TBI), and remove certain restrictions in current law on those eligible to become caregivers.

The bill would also make improvements to the VA caregiver program by including child care programs. Many family caregivers and veterans with young children are unable to receive VA supports and services they need without such a program. VA would also be authorized to provide caregivers financial advice and legal counseling. Improvements would be made in the DOD's Special Compensation for Assistance with Activities of Daily Living (SCAADL) including aligning the eligibility with that of the VA caregivers program, as well as making caregivers of servicemembers receiving SCAADL eligible for a range of critical supportive services provided by VA.

We support this bill based on DAV Resolution No. 131, which calls for legislation that to provide comprehensive caregiver support services, including but not limited to financial support, health and homemaker services, respite, education and training, and other necessary relief to caregivers of veterans from all eras of military service.

VA's comprehensive caregiver program had been operating for over three years when Congress held a hearing late last year on how best to expand eligibility for the services and benefits of this program to severely ill and injured veterans of all eras. During the hearing, concerns were expressed about the program, and assertions were made that improvements should be made to the existing program prior to its further expansion.

We believe it is unconscionable to deny comprehensive caregiver supports and services to family caregivers who clearly need help today after decades of having cared for our Nation's severely ill and injured veterans. Further, we believe that program improvements can be made while expanding eligibility to the Program of Comprehensive Assistance for Family Caregivers.

This is why DAV is bringing to bear our over 90 years of experience assisting veterans, their caregiver, families and survivors as we are working with the veteran community, VA, and Congress to address concerns about the program's operation, communication, transparency and fair treatment to ensure caregivers of severely

disabled veterans today and in the future will receive comprehensive supports and services they need.

DAV recognizes the greatest obstacle to expanding this program is the cost for enacting legislation that would provide comprehensive caregiver support to all severely disabled veterans; nevertheless, we must acknowledge the cost of deploying servicemembers to war. Caregivers of veterans severely ill and injured before September 11, 2001, have borne that cost for years, with little recognition or services for their sacrifices.

The years of sacrifices made by family caregivers has saved taxpayer money by reducing reliance on and delaying admission to nursing home facilities. The average cost per veteran per year in VA's comprehensive program is $36,770 as compared to $332,756 VA pays per veteran per year in a VA nursing home; $88,571 in a community nursing home; and $45,085 in per diem payments in a State Veterans Home.

Research has also shown well-supported caregivers of aging patients—such as World War II, Korea and Vietnam veterans—reduce overall health care costs by minimizing medical complications, lowering the number of hospital admissions and delaying admission into nursing homes. The business case to expand the comprehensive caregiver program has also been made in the report *Hidden Heroes: America's Military Caregivers*, by the RAND Corporation. The loving assistance provided by family caregivers saves taxpayers billions of dollars each year in health care costs, and enables severely disabled veterans to live at home rather than in institutions. DAV believes it is time for Congress to act to improve the Program of Comprehensive Assistance for Family Caregivers extend these supports and services to caregivers of severely ill and injured veterans of all eras.

S. 609, THE CHIROPRACTIC CARE AVAILABLE TO ALL VETERANS ACT OF 2017

DAV supports S. 609, the Chiropractic Care Available to All Veterans Act of 2017. This bill would require VA to offer chiropractic care at 75 VA medical centers by the end of 2018 and at every VA medical center by the end of 2020. DAV is pleased to support this measure, which is in line with DAV Resolution No. 244, calling for veterans' access to a "full continuum of care, from preventive through hospice services, including alternative and complementary care such as yoga, massage, acupuncture, chiropractic and other nontraditional therapies."

Veterans with chronic pain and other conditions that do not respond well to medical interventions are seeking alternative treatment options that do not involve use of opioids or other traditional pharmaceutical solutions. One study estimates that up to 40 percent of veterans from Iraq and Afghanistan may use complementary or alternative care practices. In the past decade, as access to chiropractic in VA has grown, veterans' use of chiropractic services has grown dramatically. VA currently offers chiropractic services as part of its medical benefits package and VA indicates that about 65 VA medical centers have chiropractors who are integrated into primary care, rehabilitation and other specialized care teams.

We caution that while some VISN and local VAMC policies restrict access to chiropractic services, VA must ensure such policies do not subvert congressional intent. This measure would ensure incremental expansion of chiropractic services at all VA facilities over the next four years, so veterans who want access to this type of care can easily access it in a VA health care setting.

S. 681, THE DEBORAH SAMPSON ACT

Women veterans are a rapidly increasing component of today's military, yet represent only a small part of the total force. The same is true within the veterans' population, which poses a significant challenge in delivering necessary health care, and providing supportive services to them. S. 681, the Deborah Sampson Act, would seek to address several issues women veterans face by resolving some of the barriers to care and services. Many women report feeling isolated as they transition from military service back into their roles within their family and the community. Combat exposure leading to Post Traumatic Stress Disorder (PTSD) and other mental health conditions may further complicate reintegration.

DAV's report, *Women Veterans: The Long Journey Home* recommended the establishment of peer support networks in VA, to ease transition, isolation, and assist with readjustment problems. The enactment of a three-year, peer-to-peer pilot program under Section 101 would help many women readjust back into their communities by providing them assistance from a peer who can relate to their military service and understand the unique issues women face during deployment and reintegration. In addition, a peer counselor would offer pragmatic assistance in identifying and coordinating the many benefits and services administered by VA and other government agencies available to best meet their individual needs.

This program would place emphasis on women who have been exposed to military sexual trauma, have PTSD or other mental health conditions or who are at risk of homelessness. Peer counseling is an evidence-based practice and VA is using peer specialists within many of its programs. In addition, Section 103 of S. 681 would expand the types of services and counseling available at peer retreats to include financial and occupational counseling, and information on conflict resolution and stress management to assist veterans with reintegration into family, employment and the community. DAV supports these provisions and the increased utilization of peer specialists.

DAV's report highlights the need for legal assistance and support for disability law, family law, employment law and criminal law. VA does not provide legal services and Section 201 would establish a partnership between VA and at least one nonprofit organization to address legal issues for which homeless women veterans have identified a high need. DAV supports this provision as a means of providing comprehensive support, not only to homeless women, but to all veterans at risk of homelessness due to legal issues affecting stable income, employment and housing.

DAV's report calls for enhanced housing support particularly for women with dependent children. Section 202 would earmark funding for grants to support homeless grant and per diem providers committed to providing assistance to women veterans and their families. Although DAV does not have a specific resolution addressing this issue we support the intent of this provision which would authorize VA to provide incentives to community grant and per diem providers to adapt and modify facilities and programs to support women veterans and their dependents. Women veterans frequently identify the need for child care and housing as a barrier to accessing needed care and services. Reports over the past few years indicate an increase in the number of homeless women veterans. Many of these women are single parents, and the sole providers for their dependent children. A recent DOD report noted that more than 30,000 single mothers deployed to Iraq and Afghanistan. Women of the most current deployments are more likely to become homeless than their male peers or women in the general population. Final Salute, an organization that provides women veterans with housing, indicated that over 70 percent of the women they have helped were single mothers. Homelessness creates a crisis, not just for the veteran, but for their dependent family members as well.

While we are mindful that certain issues disproportionately affect women veterans, the top 10 needs identified in the 2015 CHALENG survey for all homeless veterans include the need for legal assistance in areas such as housing, child support, restoration of driver's license and outstanding warrants and fines. For these reasons, we recommend these services be made available to both male and female veterans in need of them.

Section 301 of the Act would authorize VA to extend its coverage of newborn care from a maximum of 7 to 14 days. Section 302 would authorize VA to cover transportation of a newborn of a woman veteran, for the purpose of obtaining medically necessary care at another health care facility. DAV supports both of these provisions as a means of ensuring women veterans' access to medically necessary care. These additions would create a more robust VHA maternity care benefit for women veterans. A significant portion of the women returning from recent deployments are still in their childbearing years—VHA indicates 42 percent of its women patients are between 18–44 years of age. Improving the VA's maternity care benefit better assures their continued access to comprehensive and coordinated care developed to meet veterans' needs. Additionally, women of recent deployments—especially those using VA health care—are likely to be service-connected and many of their service-connected conditions, such as PTSD, are known to put them at risk of adverse pregnancy outcomes. VA must assure these women's care continues to be carefully managed during this vulnerable time and eliminate the likelihood of women choosing another source of care if this basic need is not met satisfactorily.

Title IV of the Deborah Sampson Act seeks to eliminate identified barriers to care for women veterans. DAV supports the provisions within this title. Between fiscal years 2003 and 2012, the number of women veterans using VA services grew from 200,000 to more than 362,000—an 80 percent increase within less than a decade. By 2020, women will comprise 11 percent of the veteran population and VA projects continued growth in the portion of the veteran population comprised of women over the next decades. Given this significant and rapid growth, VHA has been challenged to adapt its programs to successfully meet women's needs—particularly for gender-specific and sensitive care.

Section 401 would authorize $20 million to retrofit VA facilities to address deficiencies in environment of care standards critical to ensuring the safety, privacy and dignity of women veteran patients. VA must modify its medical facilities to serve not only a higher volume of women, but also manage their specific health care

needs. Safety, privacy, and additional needs for gender-specific capital equipment should all be taken into consideration in modifying facilities and in any new infrastructure designs or capital acquisitions.

In a December 2016 report, the Government Accountability Office found that about 27 percent of VA medical centers and health care systems lacked an onsite gynecologist and about 18 percent of VA facilities providing primary care lacked a women's health primary care provider. Section 402 would seek to ensure that women veterans have access to competent women's health providers by requiring that VA have a full or part-time women's health primary care provider at every VA medical facility and specifies that this individual would be involved in training others to meet women's needs. While not every VA medical center has the critical mass to necessitate having an onsite gynecologist, it is imperative that all facilities without a qualified gynecologist, establish a plan or have contracts in place to immediately address the needs of women presenting for this type of care. In addition, Section 404 would appropriate funds to continue VA's Mini Residency program for primary care, and emergency care physicians to learn more about treating women veterans' primary care needs.

Section 403 would establish the role of a Women Veteran Program Ombudsman at each VA medical center. Because women's health care needs cannot always be met at every VA facility, the role of the Women's Veteran Program Manager (WVPM) is essential to ensuring sources of gender-specific and veteran-specific health care is available to female veterans. WVPMs are responsible for establishing, coordinating, and integrating health care services for women veterans within VA medical facilities. Often, WVPMs are overburdened by their wide range of duties and responsibilities which makes it difficult for them to advocate on behalf of the women they serve. This bill provides an Ombudsman to aid the WVPM in addressing women's access to needed care and services. An ombudsman would also be able to assist with outreach and awareness which are often important in creating critical mass to initiate or maintain programs and services for women veterans. Because of the disparity in access for women veterans to VA benefits and services, DAV agrees that a Women Veteran Program Ombudsman would be beneficial. We urge the Committee to work with VA to ensure that this position is integrated within the Veterans Experience Office.

Title V of the bill describes data collection and various required reports. Section 501 would require VA to submit and publish a report that includes information on the sex and minority status of each participant of each program operated by the Department. DAV supports this provision, but believes that the focus of such a report should be narrowed to incorporate those programs and services of most relevance to the House and Senate Veterans' Affairs Committees. DAV believes narrowing the scope of the report would yield higher quality data that was more meaningful to the Committees. In addition, the Committees could add programs required to report this data over time as necessary. Data on women veterans would allow VA to readily identify programs that underserve these gender and minority populations in relation to the proportion of the veteran population they represent. This information would be helpful in planning outreach or determining the ongoing need and demand for the program.

Section 502 would require the Secretary to report upon the availability of prosthetics made for women, including at each VA medical center. DAV supports the intent of this measure and believes that VA should expand the survey of all veterans using prosthetics, oversampling women to ensure their adequate representation, to determine their satisfaction with the prosthetic device(s) they obtain from the VA and the process used to obtain them. Prosthetics are not made available through uniform channels in VA—some are manufactured in house and some are purchased from private manufacturers.

There are special considerations in adapting prosthetics to meet women's needs such as using appropriately sized hands and feet and having accommodations to address weight fluctuations to ensure fit and comfort throughout the month and during pregnancy. Rehabilitation facilities throughout VA are accredited by the Commission for Accreditation of Rehabilitation Facilities and are required to use measures of patient satisfaction to assure full accreditation. Yet it is unclear if veterans have been asked about their satisfaction with prosthetic limb devices purchased or manufactured by VA, or with any training they might be given to properly use and care for the device. This information might be valuable to VA in identifying whether veterans prefer prosthetics made in VA or by private manufacturers, and whether subgroups of veterans such as women or younger veterans are more or less satisfied with their prosthetics than other veterans. DAV urges the Committee to look beyond just availability and use patient satisfaction with timeliness, comfort, durability,

usability, and appearance as a finer gauge to determine the overall success of the VA prosthetics program.

Section 503 would require VA to create a centralized internet database for all VA women's resources, including staff contact information, available within the location in which the veteran is seeking services.

Section 504 would provide a sense of the Congress encouraging VA to adopt a more inclusive motto. DAV does not have a resolution on this provision and takes no position on this section.

DAV is pleased to support this comprehensive legislation, as it is consistent with many recommendations made in our report, *Women Veterans: The Long Journey Home*, and also with DAV Resolutions Nos. 129, calling for the support of enhanced medical services and benefits for women veterans, and 244, calling for support of the provision for comprehensive health care services to all enrolled veterans.

S. 764, THE VETERANS EDUCATION PRIORITY ENROLLMENT ACT OF 2017

This measure, introduced by Senator Sherrod Rep Brown (D-OH) and cosponsored by Sen Thom Tillis (R-NC), would extend priority enrollment for college courses to veterans, servicemembers, and eligible dependents who are utilizing GI education benefits. Expanding priority enrollment allows those individuals covered to plan purposefully so that they can finish their degrees before their benefits expire.

Many public colleges and universities currently extend priority registration to veterans when signing up for classes. This bill would expand this practice nationwide and would also include private schools with existing priority registration programs. The bill would not require colleges or universities to change their existing priority enrollment systems.

S. 764 would amend educational programs authorized under title 38, United States Code. If enacted into law, the Secretary or a State approving agency may not approve a program of education offered by such institution unless the institution allows a covered individual to enroll in courses at the earliest possible time pursuant to each priority enrollment system, if the educational institutions have a priority enrollment system for some students.

Covered individuals subject to S. 764 are those eligible for an educational assistance program provided for in chapter 30, 31, 32, 33, or 35 of title 38, United States Code, or chapter 1606 or 1607 of title 10, United States Code.

Our nation needs to support our veterans as they transition from military to civilian life. Congress, as well as VA and its partner agencies, have an obligation to ensure veterans not only enroll in college, but that they succeed when they get there. Education benefits provided to ill and injured veterans, their dependents, and survivors are essential for a veteran's successful transition. This legislation reveals a commitment to those who served by allowing covered individuals priority enrollment in courses. While DAV does not have a resolution from our membership on this particular issue, we would not oppose passage of this bill.

S. 784, VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2017

This bill would provide a cost-of-living adjustment (COLA) in the rates of disability compensation for veterans with service-connected disabilities and in the rates of additional compensation for dependents, clothing allowance, and in dependency and indemnity compensation for survivors of certain service-connected disabled veterans. DAV supports annual COLA adjustments to account for the effects of inflation and other rising costs that veterans must bear, and therefore supports S. 784. However, we remain concerned that the current COLA formula is not always sufficient to account for such increases.

Congress customarily determines COLAs in parity with Social Security recipients, but it is important to note there have been years in which there were no COLA increases, or such as in 2017 when the COLA increase was quite small, only 0.3 percent. In many instances, veterans and their families rely on disability compensation as their sole source of income. In years when recipients receive no COLA increase, or when the increase is minuscule, it simultaneously erodes the value of their disability compensation benefits, and jeopardizes the ability of injured and ill veterans to maintain an adequate standard of living.

DAV supports legislation that provides veterans with a COLA increase in accordance with DAV Resolution No. 013, and recommends discussion and consideration of other methodologies for determining annual COLA adjustments that might provide a more realistic cost-of-living allowance for our Nation's disabled veterans, their dependents and survivors. Compensation rates must bring the standard of living in line with that which they would have enjoyed had they not suffered their service-connected disabilities.

S. 804, WOMEN VETERANS ACCESS TO QUALITY CARE ACT OF 2017

This measure would seek to improve VA health care facilities to better accommodate the needs of women veterans. Section 2 of the measure would direct the VA Secretary to establish standards to ensure that all medical facilities have the structural features necessary to sufficiently meet the gender-specific health care needs of veterans, including those for privacy, safety, and dignity. The bill would also require the Secretary to revise VA's prioritization methodology for funding construction projects to include these projects. Finally, it would require the Secretary to report to the House and Senate Veterans' Affairs Committees with a list of facilities that fail to meet such standards and the cost for renovations or repairs necessary to meet them.

DAV's report *Women Veterans: The Long Journey Home* points out that because of VA's aging infrastructure, many facilities are lacking inpatient and residential care for women veterans with separate, secured sleeping accommodations. In addition, VA medical centers must to provide women veterans primary care with gender-specific equipment like mammography units and other diagnostic or treatment equipment that is exclusive in the care of women at its medical facilities.

VHA policy dictates that women veterans will have exclusive space—space that is a separate physical location for the delivery of comprehensive primary care to women and is not shared by other clinics providing care to male veterans (VHA Directive 1330.07). VHA has made progress in developing such sites, but needs to assure all clinics have basic features such as privacy curtains and examination tables faced away from doors to assure the environment is conducive to patient treatment for all veterans.

Section 3 would require the Secretary to establish policies for environment of care (EOC) inspections, including the frequency of inspections and the roles and responsibilities of staff in performing inspections and complying with standards.

VHA's EOC requirements are set in place to protect the privacy, safety, and dignity of women veterans when they receive care. In December 2016, The Government Accounting Office (GAO) released a report illustrating areas of concern in compliance with VHA's EOC requirements. A range of oversight deficits has occurred, including in the EOC rounds inspections process, weakness in policies and guidance, and variability in methods of data collection by facility staff and selection of information to report to VHA Central Office. In addition, when noncompliance is noted, guidelines to address the issues are not clearly delegated, nor is there follow up by VHA to verify the information received from its facilities.

VA must ensure its environment of care inspections process is aligned with its women's health handbook to ensure clarity, and uniformity throughout its facilities. VHA must also clarify roles and responsibility of medical staff responsible for identifying and addressing noncompliance of the environment of care rounds, and also follow up with its facilities to verify the accuracy of the information received, and to see that the deficient areas have been corrected.

Section 4 would require the Secretary to evaluate the performance of VA medical center directors by using health outcomes for women veterans who use VA medical services. The VA would be required to publish health outcomes for women veterans on a publicly available website including comparisons of the data to male veterans' health outcomes, and explanatory information for members of the public to easily understand the differences.

While it is imperative for VA leadership to ensure all personnel comply with laws, policy and directives, it is equally important to ensure the measuring criteria are clearly understood, the goal is obtainable, and that adequate resources are supplied. Administrators have control over ensuring that policies are disseminated and followed throughout their facilities, but they cannot necessarily control health outcomes which are a byproduct of patient genetics, patient behavior and physicians' care. To attach health outcomes as a performance measure of the directors, then, does not appear to be appropriate.

A more suitable measure would be to hold the directors responsible for compliance and non-compliance of VHA law, directives, and policies within their facilities. Policy compliance can be verified through inspections and audits and used to evaluate administrative performance. Adherence to policy seems a better measure to ensure that administrators are adequately performing within their span of control.

Section 5 would ensure that every VA medical center employs a full-time obstetrician/gynecologist, and mandates a pilot program to increase the number of residency program positions and graduate medical education positions for obstetricians/gynecologists at VA medical facilities, in at least three Veterans Integrated Service Networks.

Women veterans should be able to receive a basic level of treatment and (or) care at any facility of the Department from a knowledgeable women's health provider. It is noted that VHA primary care providers specially trained in women's health care services, such as breast exams—increased by 3 percent and 15 percent respectively, from fiscal year 2014 through fiscal year 2015. However, according to GAO, 27 percent of VA medical centers lack an onsite gynecologist, and 18 percent of VA's facilities providing primary care lacked a women's health primary care provider. All facilities may not have the patient volume to merit an onsite gynecologist, but any facility without the ability to provide this specialized care should have a seamless process to refer women for necessary gender-specific care without delay. DAV supports this section; however, we want to ensure that facilities have the sufficient volume of women veteran patients to support a full-time obstetrician/gynecologist and the residency pilot program.

Section 6 would require the development of procedures to electronically share veterans' military service and separation data; email address; telephone number; and mailing address with State veterans' agencies in order to facilitate the assistance of benefits veterans may need. Under the bill, veterans would retain the option of not participating in this information exchange. Sharing of this information would make it easier to verify veterans' status and enable State agencies to respond more quickly to the needs of eligible veterans.

Section 7 would instruct the Government Accountability Office to examine whether VA medical centers are able to meet the health care needs of women veterans across a number of specific dimensions of care, including access, specialization, outcome differences, outreach and other key elements. Such a report would be valuable in determining which facilities require assistance to ensure consistency in making high-quality care available to women veterans.

The intent of this bill is consistent with DAV's 2014 Report, *Women Veterans: The Long Journey Home*; thus, the bill carries DAV's full support. The bill is also consistent with DAV Resolution No. 129 to support enhanced medical services and benefits for women veterans, passed by the delegates to our most recent National Convention.

It is in line with DAV Resolution Nos. 129, calling for the support of enhanced medical services and benefits for women veterans, and 244, calling for support of the provision of comprehensive VA health care services to enrolled veterans.

S. 1024, VETERANS APPEALS IMPROVEMENT AND MODERNIZATION ACT OF 2017

As this Committee knows, over the past year a remarkable workgroup comprised of the Veterans Benefits Administration (VBA), the Board of Veterans Appeals (Board) and a group of stakeholders who represent veterans, including DAV, spent significant time developing a new framework to modernize and streamline the appeals system. Through further consultation and collaboration with this Committee and others in Congress, we now have bipartisan appeals reform legislation, S. 1024, that DAV strongly supports. A similar bipartisan House bill, H.R. 2288, was also recently introduced, and we look forward to swiftly moving a final version of the appeals reform legislation through Congress and onto the President's desk to sign into law.

It is important to begin with the understanding that the pending and growing appeals inventory was primarily an unfortunate, yet foreseeable consequence of a long-term lack of adequate resources for both VBA and the Board. Over the past five years, there was a clear shift of focus and resources inside VBA to bringing down the claims backlog, thereby neglecting the appeals processing at VA Regional Offices (VARO) and resulting in today's staggering appeals backlog. Moving forward, adequate resources will be critical to the success of appeals reforms, as well as continuing progress on the claims backlog.

The new appeals framework developed by the workgroup, and embodied within this legislation, would protect the due process rights of veterans while creating multiple options for them to receive their decisions in a more judicious manner. The critical core of the new framework would allow veterans to have multiple options to reconcile unfavorable claims' decisions, introduce new evidence new evidence at both the Board and VBA, and protect their earliest effective dates without having to be locked into the current long and arduous formal appeals process at the Board.

In general, the new framework offers three main options for veterans who are unsatisfied with their claims decision. First, there will be an option for a local, higher-level review of the original claim decision based on the evidence of record at the time of the claim decision. Second, there will be an option for readjudication and supplemental claims when new and relevant evidence is presented or a hearing re-

quested. Third, there will be an option to pursue an appeal to the Board—with or without new evidence or a hearing.

The central dynamic of this new system is that a veteran who receives an unfavorable decision from one of these three main options may then pursue one of the other two appeals options. As long as the veteran continuously pursues a new appeals option within one year of the last decision, they would be able to preserve their earliest effective date, if the facts so warrant. Each of these options, or "lanes" as some call them, have different advantages that allow veterans to elect what they and their representatives believe will provide the quickest and most accurate decision.

For the higher-level review option, the veteran could choose to have the review done at the same local VARO that made the claim decision, or at another VARO, which would be facilitated by VBA's electronic claims files and the National Work Queue's ability to instantly distribute work to any VARO. The veteran would not have the option to introduce any new evidence, nor have a hearing with the higher-level reviewer, although VBA has indicated it may allow veterans' representatives to have informal conferences with the reviewer in order for them to point out errors of fact or law. The review and decision would be "de novo" and a simple "difference of opinion" by the higher-level reviewer would be enough to overturn the decision in question. If the veteran was not satisfied with the new decision, they could then elect one of two options.

In addition, for this higher-level review, VA's duty to assist (DTA) would not apply since it is limited to the evidence of record used to make the original claims decision. If a DTA error is discovered that occurred prior to the original decision, unless the claim can be granted in full, the claim would be sent back to the VARO to correct any errors and readjudicate the claim. If the veteran was not satisfied with that new decision, they would still elect the other appeal options. It is critical that relevant information be captured relative to decisions that have been overturned by a higher-level reviewer, the number of decisions upheld, and the number of decisions sent back to the VAROs to correct DTA violations. This information is needed to correct any claims processing errors that may be taking place within VAROs.

For the readjudication/supplemental claims option, veterans would be able to request a hearing and present new evidence that would be considered in the first instance at the VARO. VA's full DTA would apply during readjudication, to include development of both public and private evidence. The readjudication would be a de novo review of all the evidence presented both prior to and subsequent to the claims decisions until the readjudication decision was issued. As with a higher-level review, if the veteran was not satisfied with the new decision, they could then elect one of two options to continue redress of any contested issues. These first two options take place inside VAROs and cover much of the work that is currently done in the current Decision Review Officer (DRO) process, although it would be divided between two different lanes: one with and one without new evidence or hearings.

For the third option, a notice of disagreement (NOD) would be filed to initiate Board review, triggering the formal appeal process. The Board would operate two separate dockets, one that does not allow hearings and new evidence to be introduced; and a second that allows both new evidence and hearings. The Board would have no DTA obligation to develop any new evidence presented. For both of these dockets, appeals would be routed directly to the Board and there would no longer be Statements of the Case (SOCs), Supplemental Statements of the Case (SSOCs) or any VA Form 8s or 9s to be completed by VBA or the veteran. The workgroup had established a goal of having "no hearing/no evidence" appeals resolved within one year, but there was no similar goal discussed for the more traditional appeals docket. While eliminating introduction of evidence and hearings would naturally make the Board's review quicker, it is important that sufficient resources be allocated to the traditional appeal lane at the Board to ensure a sense of equity between both dockets.

For appeals that request hearings before the Board, veterans could choose either a video conference hearing or an in-person hearing at the Board's Washington, DC offices; there would no longer be travel hearing options offered to veterans. New evidence would be allowed, but limited to specific timeframes: if a hearing is elected, new evidence could be presented at the hearing or for 90 days following the hearing; if no hearing is elected, new evidence could be presented with the filing of the NOD or for 90 days thereafter. If the veteran was not satisfied with the Board's decision, they could elect one of the other two VBA options, and if filed within one year of the Board's decision, they would continue to preserve their earliest effective date. The new framework would impose no limits on the number of times a veteran could choose one of these three options, and as long as they properly elected a new one

within a year of the prior decision, they would continue to protect their earliest effective date.

If the Board discovers that a DTA error was made prior to the original claims decision, unless the claim can be granted in full, the Board would remand the case back to VBA for them to correct the errors and readjudicate the claim. Again, if the veteran was not satisfied with the new claim decision, they could choose from one of the three appeals options available to them, and as long as they properly made that NOD election within one year of the decision, they would continue to preserve their earliest effective date.

Improving Claims Decision Notification

While the workgroup was initially focused on ways to improve the Board's ability and capacity to process appeals, from the outset we realized that appeals reforms could not be fully successful unless we simultaneously looked at improving the front end of the process, beginning with strengthening claims' decisions. A clear and complete explanation of why a claim was denied is the key to veterans making sound choices about if and how to appeal an adverse decision. Therefore, a fundamental feature of the new appeals process must include ensuring that claims' decision notification letters are adequate to properly inform the veteran.

Under the new framework, the contents of the notification letter must be clear, easy to understand and easy to navigate. The notice must convey not only VA's rationale for reaching its determination, but also the options available to claimants after receipt of the decision. The bill includes this provision to require that in addition to an explanation for how the veteran can have a claim decision reviewed or appealed, all decision notification letters must contain the following information to help them in determining whether, when, where and how to appeal an adverse decision:

(1) Identification of the issues adjudicated;
(2) A summary of the evidence considered by the Secretary;
(3) A summary of applicable laws and regulations;
(4) Identification of findings favorable to the claimant;
(5) In the case of a denial, identification of elements not satisfied leading to the denial;
(6) An explanation of how to obtain or access evidence used in making the decision; and
(7) If applicable, identification of the criteria that must be satisfied to grant service connection or the next higher level of compensation.

Overall, the new framework which is embodied in the legislation would provide veterans with multiple options and paths to resolve their disagreements more quickly, while preserving their earliest effective dates to receive their full entitlement to benefits. The structure would allow veterans quicker "closed record" reviews at both VBA and the Board, but if they believe that additional evidence is needed to satisfy their claim, they retain the right to introduce new evidence, or request a hearing at either VBA or the Board. If implemented and administered as envisioned by the workgroup, this new appeals system could be more flexible and responsive to the unique circumstances of each veteran's claim and appeal, leading to better outcomes for many veterans.

Significant Improvements to the Appeals Framework in this Legislation

Although this bill embodies the appeals modernization framework agreed to by the workgroup last year, it also includes some significant improvements.

First, the legislation would enhance effective date protections for claimants that choose to file appeals with the Court of Appeals for Veterans Claims (Court). Claimants could preserve their effective dates for continuously pursued claims, if they choose to file a supplemental claim within one year following a decision from these courts. This is a fair and equitable approach to provide claimants with the option to exercise their full appellate rights, without having to potentially jeopardize their effective date.

Second, under this proposal, claimants with legacy appeals would be permitted to enter into the new system at certain junctures. In instances when a SOC or SSOC is issued, claimants would have the opportunity to opt into the new processing system. In addition, the legislation would allow veterans who file a NOD within one year of the new system becoming effective to have the option to enter into the new system rather than being forced to undergo processing in the legacy system. These changes were proposed by VBA and the Board, and DAV supports them. Allowing claimants to make well informed decisions on the type of processing that is in their best interest would not only help to reduce the number of legacy claims, but provide these claimants with options best suited for their individual circumstances.

Third, in order to provide greater assurance that VBA and the Board are prepared to make this major transition to a new appeals system, the legislation would require the Secretary to submit a detailed transition and implementation plan, and then require the Secretary to certify that all elements are in place to efficiently process legacy claims and run the new modernized system. Furthermore, VSO collaboration is required along with this certification, a provision that serves everyone's best interests. DAV looks forward to continuing to work with VBA, the Board and Congress to ensure the transition and implementation is as smooth as possible.

Last, the legislation contains detailed reporting requirements, along with oversight to be performed by the Government Accountability Office (GAO). It is essential to have continuous real-time data concerning elements of both the legacy system and modernized system. In order to measure VA's progress, these metrics will assess where modifications would be needed in order to improve processing within either system. The oversight performed by GAO is another effective way of ensuring these changes produce a positive outcome for claimants within the legacy and modernized systems.

RECOMMENDATIONS

Options Following decision by the Agency of Original Jurisdiction

Section 2(h)(1) of this bill sets forth the options available to a claimant once a decision has been made, which include, but are not limited to, filing a supplemental claim, requesting a higher level review, or filing a notice of disagreement.

Within this provision, there is some uncertainty how the word "claim" would be interpreted. Today a single claim can contain one issue, or multiple issues. The intention is to allow a claimant to choose any of the three options noted above separately for each "issue" contained within a claim in order to avoid any unintended consequences that would disadvantage a claimant. For example, a veteran seeking an increased rating for hearing loss should be able to choose to file a supplemental claim for that issue, while also filing their notice of disagreement to the Board for the denial of service connection for a left knee disability. Allowing each issue to flow through the most appropriate "lane" will not only result in more timely decisions for the veteran, it will also make more efficient use of both VBA and Board resources.

DAV recommends:

- The legislation clarifies that claimants can elect different appeals options for individual issues decided within a claim.

Appeals to the Board

The manner in which evidence would be handled by the Board, particularly, as it pertains to their DTA requirements would fundamentally change under this proposal. The legislation would require the Board to establish at least two separate dockets, while providing them with the ability to create additional dockets.

For cases before the Board wherein no hearing is elected on the NOD, and where there is no request to submit additional evidence, the evidence considered by the Board would be limited to the evidence of record at the time of the agency of original jurisdiction decision.

For cases with no hearing request, but a claimant elects to have new evidence considered by the Board in the first instance, that evidence must be submitted by the appellant, or his or her representative, if any, with the NOD and within 90 days following receipt of the NOD.

For cases wherein a hearing is requested, new evidence would be limited to evidence submitted by the appellant, and his or her representative, if any, at the Board hearing and within 90 days following the Board hearing. In this instance, the legislation does not make clear whether evidence presented with the NOD or 90 days thereafter would be accepted, returned or ignored. Would the Board really ignore evidence that arrived one day prior to a hearing?

DAV is pleased to see the inclusion of robust reporting requirements in the bill, particularly as it pertains to appeals processing metrics for each separate docket. Furthermore, we are pleased to see the inclusion of a provision requiring the Board to send written notice to claimants when new evidence they submit is not considered in making the decision because the evidence was not received within the established timeframes. The notice would also contain information on a claimant's option to have the evidence considered by VA following the decision through another one of the lanes.

DAV recommends:

- That claimants electing a Board hearing, with the option to supply evidence, should be permitted to introduce this evidence from the filing of the NOD until 90

days after the hearing. Evidence presented prior to a hearing should simply be made part of the record and considered in conjunction with the appellate issues before the Board. Since the Board no longer would have any DTA obligations, all new evidence would be considered at the same time after the hearing.

• The legislation would also provide the Board with the authority to screen cases in order determine if further development is required earlier in the process, rather than waiting longer to accomplish the same thing. To assure this authority is properly utilized, DAV recommends:

• The Board be required to report on all screened cases, delineated by:

– The number of issues found to require additional development;
– The types of issues that required additional development, i.e., issues involving service connection, or issues involving increased ratings;
– The number of claimants that chose to opt into the new system following remand;
– The number of claimants that chose to remain in the legacy system following remand;
– The number and types issues that were granted based on screening;
– The number of cases containing multiple decisions, including how many of the issues were remanded, denied, or allowed.

The legislation mandates the creation of at least two dockets discussed above, and also provides authority for the Board to create additional dockets, subject to notifying the Senate and House Veterans' Affairs Committees with justification. The Board might consider creating a third docket in order to separate appeals that will include new evidence, but do not request a hearing. As it stands now, veterans who submit new evidence, but do not request a hearing, could be forced to wait months or even years behind veterans who request a hearing. A third docket could avoid such unnecessary delays for veterans, allow greater oversight and make more efficient use of Board resources.

"New and Relevant" Evidence

The legislation would replace the standard for reopening claims, changing "new and material" to "new and relevant." In the current system, the "new and material" standard has not effectively functioned as intended to focus VBA and Board resources on adjudicating the substance of claims and appeals.

In order to monitor whether the "new and relevant" standard will be more effective in this regard, while continuing to protect veterans' rights, DAV recommends:

• VBA and the Board should regularly report on the number and outcome of "new and relevant" decisions, including—

– The number of supplemental claims denied because no "new and relevant" evidence had been received;
– The number of higher level reviews filed with respect the issue of no "new and relevant" evidence, and the disposition of these higher level reviews;
– The number of appeals filed with respect to the issue of no "new and relevant" evidence, which Board docket or options were used, and the outcome of the Board's determination, i.e., decisions upheld, decisions overturned, cases remanded for DTA violations.

Stakeholder Transition and Implementation Advisory Committee

Since March 2016, DAV, Congress, VA, the Board and other stakeholders have worked very closely to develop and refine the appeals modernization proposal. This partnership has been integral to making sure a modernized system will benefit our Nation's injured and ill veterans, without compromising their due process rights and keeping VA's non-adversarial roll intact.

We are appreciative of the provision contained within this bill requiring the Secretary to collaborate and consult with veterans' service organizations and other stakeholders considered appropriate by the Secretary, as part of the certification required to begin operating the new appeals system, and expect that our continued partnership with VA will benefit both veterans and the VA. However, the hard work of implementing and operating this new system will continue for many years, and VSOs and other stakeholders can and must continue to play an integral role supporting this effort.

To ensure this partnership continues on throughout all phases of the implementation process, DAV recommends:

• The legislation include a provision to create a "Stakeholder Transition and Implementation Advisory Committee" to engage with VBA and the Board during implementation, transition and operation of the new system. This advisory committee should be composed of at least the three largest VSOs in terms of the num-

ber of claimants they represent before VBA and the Board, as well as other major stakeholders who represent veterans at VBA or the Board, as determined by the Secretary.

Planning, Oversight and Public Reporting

The bill includes a number of new planning, reporting and certification requirements that are appropriate for legislation embodying such a significant reform. This level of reporting is critical to allow Congress and other stakeholders to help identify and offer solutions to unintended consequences and problems that may arise.

To strengthen this oversight, DAV recommends:

• The legislation requires that all VA plans, metrics and reports provided to Congress also be made immediately available to the public.

Temporary Staffing Increases

Finally, as mentioned above, the most critical factor in the rise of the current backlog of pending appeals was the lack of sufficient resources to adequately manage the workload. Similarly, unless VBA and the Board request and are provided adequate resources to meet staffing, infrastructure and IT requirements, no new appeals reform will be successful in the long run. As VBA's productivity continues to increase, the volume of processed claims will also continue to rise, which has historically been steady at a rate of 10 to 11 percent of claims decisions. In addition, the new claims and appeals framework will likely increase the number of supplemental claims filed significantly.

We are encouraged that VA has indicated a need for greater resources for both VBA and the Board in order to make this new appeals system successful; however, too often in the past funding for new initiatives has waned over time. We would urge the Committee to ensure that proper funding levels are determined and appropriated as this legislation moves forward.

Over the past few years, DAV and our Independent Budget partners have recommended that Congress consider providing VBA with the temporary authority and resources to hire two-year temporary employees. In the past, VBA used such an authority to hire several thousand employees for a temporary two-year term. At the end of those two years, many of the best that were hired on a temporary basis transitioned into permanent positions that became open due to attrition. VBA not only had additional surge resources to work on the claims backlog during the first two-years, but VBA also benefited by creating a pool of trained, qualified candidates to choose from as replacements for full-time employees leaving VBA.

The bill recognizes the need to address personnel requirements within the VBA and the Board as they implement and administer the modernized appeals system, as well as address the legacy appeals. In order to provide a surge capacity to address both appeals and claims, DAV recommends:

• VBA and the Board are provided additional authority and resources to hire two-year temporary employees, with the goal of eventually converting the best of the temporary employees into permanent employees based on the future and continuing personnel requirements of VBA and the Board.

This legislation represents a true collaboration between VA, VSOs, other key stakeholders and Congress in order to reform and modernize the appeals process. We are confident this bill, with the additional improvements recommended by DAV and others, could provide veterans with quicker favorable outcomes, while fully protecting their due process rights.

S. 1094, DEPARTMENT OF VETERANS AFFAIRS ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION ACT OF 2017

This legislation seeks to enhance accountability for VA managers and employees, strengthen protections for whistleblowers and enhance VA's ability to hire certain senior health care director positions. The bill would codify and strengthen the Office of Accountability and Whistleblower Protection recently created by Executive Order, in order to manage and investigate whistleblower disclosures, train staff about protecting whistleblowers and to report upon methods that might be used to retaliate against them. The bill would also lower the administrative burden for firing, demoting or taking other adverse personnel actions against VA senior executives and employees who are poor performers or who have engaged in misconduct, including criminal activity.

As detailed in DAV Resolution 068, we support meaningful accountability measures as long as they include appropriate due process protections for VA employees. Legislation that changes existing employment protections in VA must strike a balance between holding all civil servants fully accountable for their professional con-

duct and job performance, while enabling VA to become an employer of choice in order to engage the best and brightest employees to care for our ill and injured veterans.

The bill would provide the Secretary with new authorities to hold senior managers and employees accountable by streamlining, standardizing and shortening certain timelines and processes used to implement personnel actions, including reprimands, suspensions, demotions or firings. We agree that it is critical that the Secretary be given adequate tools to quickly discipline or remove employees who endanger veterans' health or welfare, commit a felony, engage in misconduct, abuse their positions of trust or otherwise fail to adequately perform their jobs. However we must also remain cognizant that applying different accountability standards with fewer job protections to just one Federal agency could have unintended consequences on recruitment and retention, particularly in highly competitive fields, such as health care and information technology, which already have critical professional staff shortages. For some potential VA employees, job stability and due process in employment matters are attractive features of Federal employment that help mitigate against others including lower pay, benefits or career advancement possibilities.

The legislation also makes a significant change to the evidentiary burden imposed on VA when exercising the new authority to reprimand, suspend, reassign, demote, or remove employees. Currently, personnel actions taken for any reason other than performance, such as for misconduct, require that a "preponderance of the evidence" standard be satisfied, which is generally interpreted to mean greater than 50 percent of the evidence. This legislation, however, would lower the burden to "substantial evidence," which the Supreme Court has interpreted to mean "more than a mere scintilla" of evidence. This significant reduction in evidentiary burden would certainly have the effect of making personnel actions against employees, up to and including firing, substantially easier for VA to implement, however it is unclear how such a change would affect the important balance between accountability and due process. For example, it could theoretically be possible under this new standard that a "preponderance of evidence" supports an employee's defense, yet they could still be removed from their job as long as there is "more than a mere scintilla" of evidence produced by VA—that is, there may be some relevant evidence as reasonable minds might accept as adequate to support VA's action to remove an employee even if it is possible to draw a contrary conclusion from the evidence. We have concerns about whether this new standard might have unintended consequences in terms of making VA a less desirable choice for potential employees, especially in comparison to other Federal agencies that are bound by the higher evidentiary standard.

In light of these concerns, we support Sections 210 and 211, which would assess the effect of the enactment of the provisions on accountability of senior executives, supervisors, and other employees. We are hopeful these reports will provide valid and meaningful outcome data to help determine whether Title II of this bill is achieving its intended purpose.

Much more important in our view than the evidentiary standard is the practical reality that no accountability measure can or will be successful unless leaders properly train and hold managers accountable for documenting the performance and conduct of employees, and ensure administrative procedures required are fully and properly carried out to initiate personnel actions. We note Section 209 requires VA to provide periodic training to supervisors on, among other things, how to effectively manage employees who are performing at unacceptable levels. We believe this section is critically important and support its inclusion. In our opinion, true accountability relies more on the actions of VA leaders and managers than on any underlying laws or evidentiary standards.

DAV supports enactment of the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017. We applaud the bipartisan effort to ensure greater accountability and strengthened whistleblower protections within VA and thank Senators Rubio, Tester and Isakson for working with DAV to ensure VA is able to enforce accountability standards to attract, hire and retain the brightest and best employees our Nation has to offer to care for ill and injured veterans.

DRAFT BILL—SERVING OUR RURAL VETERANS ACT OF 2017

This bill directs the VA to establish an eight-year medical residency training program in conjunction with the Indian Health Service to train medical residents and interns at "covered facilities," which are defined as facilities operated by an Indian tribe or the Indian Health Service (IHS).

Additionally, it amends section 7406 of title 38, United States Code, by replacing the term "department facility" with "covered facility." In this instance, covered facility is defined as any department facility or one of the four types of newly added

covered facilities; IHS facilities, Indian tribe facilities, federally qualified health centers, and community health centers. VA would reimburse covered facilities for their participation in the program and require any participating medical resident to enter into an agreement for a period of obligated service of one year for each year served in the medical residency training program.

DAV Resolution No. 055 supports fulfilling the rights and benefits earned by service-connected Native American and Alaska Native veterans and urges Congress to ensure that the five mutual goals recognized by the current memorandum of understanding between the VA and the IHS is fully implemented so that these veterans can receive the benefits and services they have earned and deserve. In light of our resolution, DAV supports the intent of this bill and urges the Committee strengthen certain provisions.

The reimbursement requirements laid out in the bill goes well beyond salary and benefit reimbursement for the participating residents. Given the defined and already limited resources of the VA, Congress must appropriate additional funding for the VA Office of Academic Affiliations to ensure existing residency programs are not adversely impacted due to the substantial cost of developing, standing up, and administering, as well as recruiting for the pilot program. We recommend authority for this program be subject to specific appropriated funds.

Furthermore, because it is uncommon for the service obligation to exist in other medical programs generally available to most medical students seeking a residency, we urge the Committee work with VA and other appropriate entities to address the period of obligated service required by the bill, which could act as a disincentive to recruiting top candidates in the medical field.

DAV thanks Senator Sullivan and the Committee for its support of Native American and Alaska Native veterans, and ask that you confer with the VA Office of Academic Affiliations and the Association of American Medical Colleges to ensure that the intentions of the bill most fully meet the needs of this veteran community.

DRAFT BILL—VETERAN PARTNERS' EFFORTS TO ENHANCE REINTEGRATION OR "VETERAN PEER ACT"

Enactment of the Veteran PEER Act would require VA to establish a program that includes peer specialists within patient aligned care teams (PACT) in medical centers of the VA to promote better integration of mental health services into the primary care setting. VA would have to carry out this program in at least 10 VA medical centers within the first 180 days of the Act passing and in no less than 25 locations after two years of the enactment of the bill, including within VA's five polytrauma center locations.

The bill also would require VA to consider the feasibility of locating peer specialists in rural areas and other locations that are underserved by the Department. VA would be required to ensure that the unique needs of women veterans are considered and that female peer specialists are included in the program. The measure includes requirements for routine reporting to include findings and conclusions with respect to the program and recommendations related to the feasibility of expanding the program.

Veterans must have the ability to easily access to mental health services especially during a crisis. However, even when in crisis, many veterans are reluctant to reach out for help and seek the care they need. Since 2012, VA has hired over 1,000 Peer Specialists, and some mental health providers indicate that peer-to-peer interactions have been extremely helpful to both patients and clinicians. The Center for Medicare and Medicaid recognized Peer Support as an evidence-based practice a decade ago. Studies have found use of peer specialists is associated with better treatment satisfaction, more treatment engagement, less inpatient care utilization and more engagement in patients' communities. However, a recent study published in the *Journal of Behavioral Health Services and Research* found that VA is still struggling with identifying appropriate supervision and training for these individuals and has been hesitant to fully include them as part of the patient care team. The Veteran PEER Act would assist with ensuring better utilization and inclusion of these professionals and could help to improve efficiency of VA peer specialists and ultimately health outcomes for veterans.

We are pleased the bill also includes provisions that would require VA to address the needs of women veterans. Findings show that when women return from deployment, the camaraderie and support from their male peers is often short-lived, resulting in isolation for many. Studies have shown that peer support is important to a successful transition, but women often report they cannot find a network of women who can relate to their military or wartime service. Including the requirement of hiring female peer specialists in this measure helps ensure that women vet-

erans will have a peer they can relate to and someone that understands their unique needs. Their ability to relate to other veterans because of their shared military experiences and mental health recovery is a key element of the program.

DAV is pleased to support the Veteran PEER Act, which is consistent with the following DAV Resolutions: No. 250, which calls for program improvements for VA mental health services to include increased staffing levels, improved outreach to veterans with a focus on reducing stigma when seeking post-deployment readjustment and other mental health services; and No. 129, which calls for enhanced medical services for women veterans as well as additional methods to address barriers to care. Finally, the bill is consistent with recommendations in DAV's 2014 report, *Women Veterans: The Long Journey Home* that notes the use of peer specialists can help reduce stigma and increase the acceptability of mental health care for veterans who need it and improve recovery.

DRAFT BILL—DEPARTMENT OF VETERANS AFFAIRS VETERAN TRANSITION IMPROVEMENT ACT

The Wounded Warriors Federal Leave Act of 2015 (Public Law 114–75), enacted in 2015, provides a separate new leave category, to be known as "disabled veteran leave," of 104 hours to any new [1] Federal employee who is a veteran with a service-connected disability rated at 30 percent or more for purposes of undergoing medical treatment for such disability for which sick leave could regularly be used.

Subsequently, because disabled veterans who work for the Federal Aviation Administration (FAA) and Transportation Security Administration (TSA) did not have access to additional leave to treat service-related injuries, legislative relief in the form of Senator Hirono's bipartisan Federal Aviation Administration Veteran Transition Improvement Act was enacted into law in October 2016. It ensures that disabled veteran new hired employees at the FAA and TSA have access to the sick leave benefit during their first year on the job just as their counterparts in other agencies receive.

Notably, there are other categories of Federal employees not covered by the both the Wounded Warrior Federal Leave Act and the FAA Veterans Transition Improvement Act including: employees of the United States Postal Service or the Postal Regulatory Commission, since they are covered by regulations issued by the Postmaster General; employees not covered under title 5, United States Code, section 2105 (such as employees of DOD non-appropriated fund instrumentalities); and employees not covered by a leave system (such as those with intermittent work schedules or leave-exempt Presidential appointees).

It appears disabled veterans employed under title 38 have a separate and distinct leave system than that under title 5 and therefore are unable to access the benefits provided under the Wounded Warriors Federal Leave Act of 2015.

We support the intent of this measure as contemplated under DAV Resolution 260, urging Congress to extend protection under the Family and Medical Leave Act (FMLA) to encompass the medical care needs of veterans with service-connected disabilities. We recognize in addition to FMLA, there are a variety of leave options and workplace flexibilities available to take time off from work to receive medical treatment for a veteran's disability, such as annual leave, sick leave, advanced annual leave or advanced sick leave, donated leave under the voluntary leave transfer program, alternative work schedules, credit hours under flexible work schedules, compensatory time off and telework and voluntary leave bank program.

This concludes my testimony, Mr. Chairman. DAV would be pleased to respond for the record to any questions from you or the Committee Members concerning our views on these bills.

Chairman ISAKSON. Thank you very much for your testimony.

Ms. Jaslow?

STATEMENT OF ALLISON JASLOW, EXECUTIVE DIRECTOR, IRAQ AND AFGHANISTAN VETERANS OF AMERICA

Ms. JASLOW. Thank you, Mr. Chairman, Ranking Member Tester, and Members of the Committee. On behalf of Iraq and Afghanistan Veterans of America, and our more than 425,000 members,

[1] Federal employee newly hired on or after November 5, 2016, with no previous Federal service, reappointed with at least a 90-day break in service, or military reservists or members of the National Guard who return to duty in their civilian positions after a period of military service.

thank for the opportunity to share our views on the bills under consideration today.

Less than 60 days ago, I sat before the Members of this Committee and your counterparts in the House of Representatives, to outline IAVA's policy priorities for 2017, chief among them being greater recognition and support for woman veterans. I am here again today to update you on our She Who Borne the Battle campaign and articulate the need for the Deborah Sampson Act, S. 681, which would fill many gaps in care and offer recognition faced by woman veterans today.

Nearly 350,000 women have deployed since our Nation was attacked on September 11, 2001. I am one of those women, and so are over 20 percent of our veteran women members. We are the fastest growing population in the veteran community, in fact, estimated at about 6 percent of the veteran population in 2001. By 2020, that number is expected to grow to 11 percent.

Women's service has rapidly increased. We are officially allowed in the combat roles. The mightiest among us are graduating from elite courses like Ranger School. But in IAVA's most recent member survey, only 43 percent of IAVA women veterans feel that male servicemembers respect their service. Even more shocking is just 27 percent feel the public does.

When it comes to the VA, only 30 percent of IAVA women vets rated the agency's support for women as good or very good, and less than half felt that VA's staff treated women veterans with respect or had a culture welcoming to women.

I can relate. Not only have I had to prove my war service to more than my fair share of older gentlemen and young feminists alike, but I have also had the fortune of being mistaken as a VA nurse rather than a patient. That is why I stand shoulder to shoulder with our members who have made it clear that there is a severe gap in respect for a critical component of our military force, the recognition of women as they transition to veteran status, and in the services provided by the VA.

Thanks to the leadership of Senators Tester and Boozman on the Deborah Sampson Act, we have an opportunity to take this head-on, and the concerns of the post-9/11 women veterans.

Deborah Sampson disguised herself as a man to serve in the Continental Army during the Revolutionary War, served honorably, but sadly was not recognized for her service until after her death. This bill is named for her because over 240 years later, women are squarely in the line of fire, nearly 200 have been killed in action in Iraq and Afghanistan, yet adequate recognition for our sacrifices is still lacking.

Since the bill's introduction, IAVA members have worked to highlight the need for the bill on Capitol Hill and gain cosponsors. Eighteen of you and your colleagues now back the Deborah Sampson Act, but several of you are dragging your feet, or worse, have refused to get behind this initiative that all of the 18 major veteran service organizations this Committee works with and many support.

Just last night, the Republican Congresswoman Martha McSally, and Democrat Tulsi Gabbard, the only women veterans in the House, officially backed the Deborah Sampson Act. The effort in

this chamber is off to a strong—in that chamber is off to a strong start, and as we approach Memorial Day, it is our hope that Members of this Committee will remember the women fallen by following their lead.

So, what does the Deborah Sampson Act do? Over the last 15 years, the VA has worked to improve services for women veterans, but it is not enough. The Deborah Sampson Act aims to fill critical gaps in VA care for women vets, in addition to asking the VA to demonstrate its commitment to culture change by updating its motto—to care for him who shall have borne the battle, and for his widow, and his orphan.

I urge you to consider carefully the message that Congress supporting a more inclusive motto sends to the women veterans back in your home States, or, conversely, what your opposition to this provision may indicate to every woman who feels alienated by the very agency that is supposed to support them. Every veteran walking through the doors of a VA medical center should see the words on that door and know that he, or she, is welcome.

Setting the right tone at the VA is critical to driving better support and lasting change for women, like peer-to-peer assistance—in recent IAVA research, women veterans showed overwhelming interest in peer support to help them navigate the VA—removing access barriers for women seeking care. IAVA women veterans not only have suffered lack of privacy at VA facilities but fear about the care they might receive also creates a barrier.

We need to stop hearing stories like the one from a woman with a pregnancy who had complications and sought care from the VA at the emergency room, but was forced to seek care at an alternate ER when the team did not diagnose or treat her condition, accompanied by pain and bleeding, correctly. This should not happen in any ER, and disappoints me, as an American, that it happened at the VA.

The Deborah Sampson Act also seeks to improve legal services and support, data tracking and reporting, and newborn medical care.

Mr. Chairman and Members of the Committee, many of these provisions are easy fixes, but some of you have raised your arms complaining about costs. Caring for our veterans should be considered a cost of war. Period. When my soldiers and I were sent to combat in Iraq, the Army and U.S. taxpayers spared no expense, and I find it quite bold as we are simply talking about equity for women veterans that this is even brought up in conversation.

Chairman Isakson, Ranking Member Tester, and Members of the Committee, on behalf of our members, thank you again for inviting me here today. I look forward to your support moving the Deborah Sampson Act forward, and thank you for putting these veterans—excuse me, us veterans—and servicemembers first, as our comrades continue to deploy in defense of our Nation.

[The prepared statement of Ms. Jaslow follows:]

PREPARED STATEMENT OF ALLISON JASLOW, EXECUTIVE DIRECTOR, IRAQ AND AFGHANISTAN VETERANS OF AMERICA

CHAIRMAN ISAKSON, RANKING MEMBER TESTER, AND MEMBERS OF THE COMMITTEE: On behalf of Iraq and Afghanistan Veterans of America (IAVA) and our

more than 425,000 members thank you for the opportunity to share our views on the legislation under consideration today.

For thirteen years, IAVA has been the preferred empowerment organization for post-9/11 veterans. Since its beginning, IAVA has successfully fought and advocated for policy action to meet the needs of the over 2.8 million veterans who have served in our most recent wars.

Less than sixty days ago, I sat before the Members of this Committee and your counterparts in the House of Representatives to outline IAVA's policy priorities for 2017—chief among them being greater recognition and support for women veterans. I am here again today to update you on our "She Who Borne The Battle" campaign and articulate the need for the Deborah Sampson Act (S. 681) which would fill many gaps in care and recognition faced by women veterans today.

Nearly 350,000 women have deployed since our Nation was attacked on Sept. 11, 2001. I am one of those women and so are over 20 percent of our veteran members. We are the fastest growing population in the veteran community. In fact, estimated at about six percent of the veteran population in 2001, by 2020, it's estimated women veterans will represent 11 percent.

Women's service has rapidly increased. We are officially allowed into combat roles, the mightiest among us are graduating from elite courses like Ranger School. But in IAVA's most recent member survey only 43 percent of IAVA women veterans feel that male servicemembers respect their service. Even more shocking is that just 27 percent feel the public does.

When it comes to the VA, only 30 percent of IAVA women vets rated the agency's support for women as good or very good, and less than half felt that VA staff treated women veterans with respect or had a culture welcoming to women.

I can relate. Not only have I had to prove my war service to more than my fair share of older gentlemen in Legion halls and liberal women alike, but I've also had the pleasure of being mistaken as a VA nurse rather than patient. That's why I stand shoulder to shoulder with our members who've made it clear that there is a severe gap in respect for a critical component of our military force, and in the services provided by the VA.

Thanks to the leadership of Senators Tester and Boozman on the Deborah Sampson Act, we have an opportunity to take head on the concerns of post-9/11 women veterans.

Deborah Sampson disguised herself as a man to serve in the Continental Army during the Revolutionary War, served honorably, but sadly was not recognized for her service until after her death. This bill is named for her, because over 240 years later women are now squarely in the line of fire, and nearly 200 have been killed in Iraq and Afghanistan, but adequate recognition for our sacrifices is still lacking.

Since the bill's introduction, IAVA has worked to highlight the need for the bill on Capitol Hill and gain cosponsors. Eighteen of you and your colleagues now back the Deborah Sampson Act, and we thank you, but we need more support from both sides of the aisle.

We have also worked tirelessly with the military and veterans community and I am proud to say that 18 of the groups this Committee works with the most are standing with us support of this legislation. They include: Veterans of Foreign Wars (VFW), American Legion, Disabled American Veterans (DAV), Paralyzed Veterans of America (PVA), Vietnam Veterans of America (VVA), American Veterans (AMVETS), Jewish War Veterans (JWV), Tragedy Assistance Program for Survivors (TAPS), Service Women's Action Network (SWAN), National Military Families Association (NMFA), Commissioned Officers Association of the U.S. Public Health Service (COA), U.S. Army Warrant Officers Association (USAWOA), Marine Corps Reserve Association (MCRA), Fleet Reserve Association (FRA), Air Force Sergeants Association (AFSA), The Retired Enlisted Association (TREA), Military Officers Association of America (MOAA), and Wounded Warrior Project (WWP).

We also cannot do this without our members, who have been meeting with their Congressional offices across the United States and here in Washington during our recent "Storm The Hill," and raising their voices via social media.

Our media outreach has been aggressive. More than 5 million people have viewed earned media coverage of our campaign, and nearly 4 million have engaged with the campaign on Facebook and Twitter.

Over the last 15 years, the VA has worked to improve services for women veterans, but it's not enough. The Deborah Sampson Act aims to fills some critical gaps in VA care for women vets in addition to asking the VA to demonstrate its commitment to culture changes by updating its motto: "To care for him who shall have borne the battle and for his widow, and his orphan." I urge you to consider carefully the message that Congress supporting a more inclusive motto sends to the women veterans in your home states. Or conversely, what your opposition to this provision

may indicate to women who feel alienated by the very agency that's supposed to support them. Every veteran walking through the doors of a VA medical center should see the words on that door and know that he or she is welcome.

Setting the right tone at the VA is critical to driving better support for women, like Peer-to-Peer Assistance.

In recent IAVA surveys and focus groups, women veterans showed overwhelming interest in peer support to help them navigate the VA. A pilot program focused on women vets transitioning from the military is included in the Deborah Sampson Act and makes permanent the availability of reintegration counseling with family members in group retreat settings that has proven successful already in pilot form.

The bill also expands the capabilities of the women veteran call centers to include text messaging, and will be analyzed for performance metrics, which will help us understand its impact.

Legal and Support Services are another key component of the bill. The FY 2015 Community, Homelessness Assessment, Local Education and Networking Groups (CHALENG) Program Report found that one of the top needs for women veterans is access to legal services. The Deborah Sampson Act establishes a VA partnership with at least one community entity to provide legal services to women veterans as a direct result of that finding.

The bill also ensures that at least $20 million in Supportive Services for Veteran Families (SSVF) will be allocated for organizations to support women vets. In FY 2015, 14 percent of veterans served by this program were women. That number has steadily increased since the program's inception. These dedicated funds will help support the growing number of women and their families in need of this support.

In 2012, the VA solidified its policy to provide seven days of Newborn Medical Care for children delivered by women veterans who are receiving VA maternity care benefits. The Deborah Sampson Act would expand that to 14 days to ensure newborn the VA has the flexibility to provide that care during this fragile first stage of their life. This bipartisan idea is a no-brainer that has stalled in Congress for too long and needs to change now.

There continue to be a number of Access Barriers for women veterans seeking care at the VA. IAVA women veterans have shared stories of lack of privacy at VA facilities and IAVA members continue to share those concerns. The Deborah Sampson Act looks to address this issue by authorizing $20 million for enhanced privacy measures for women at VA medical centers across the country like door locks and privacy curtains, and requires VA to develop a plan to address Department-wide deficiencies.

We also want to stop hearing stories like the one from a woman who sought care at the VA's Emergency Room because of an ectopic pregnancy accompanied by pain and bleeding. The veteran had to leave and go to another VA ER because the ER team did not diagnose or treat her condition appropriately. This shouldn't happen in any ER, and disappoints me as an American to hear from a women veteran.

To improve how the VA health system supports women, the Deborah Sampson Act: requires every VA facility to employ at least one women's health primary care provider; requires each VA medical center be staffed with at least one Women Veteran Program Manager to help women navigate coordinated care; authorizes $1 million annually to expand the Women Veterans Healthcare Mini-Residency Program, which trains VA primary care and mental health physicians on gender-specific care with demonstrated success, to include ER physicians; and an ombudsman to focus on culture change at the VA and support women veterans seeking care.

One in five women veterans responding to IAVA's women veterans survey did not feel the VA provided them with access to adequate gender-specific health care, so the solutions offered are engineered not just to get women the health care support they need, but to do so effectively. Fear of poor care should never be a barrier to any VA patient.

The Deborah Sampson Act finally includes valuable Data Tracking and Reporting provisions to assess needs and improve services down the line.

Currently, the VA does not collect data on its programs by gender and minority status, and as a result, it is impossible to truly identify what programs are most effective in supporting women and minority populations and which need improvement. The recently enacted Female Veterans Suicide Prevention Act was a great first step to do this for mental health and suicide prevention programs, but the requirement needs to span all programs and this bill requires that.

Women also shouldn't be telling us stories of the VA being unable to provide prosthetics appropriately fitted for women veterans. To define this problem and help craft solutions to ensure women veteran amputees have access to properly fitted prosthetics, the Deborah Sampson Act requires VA to report on the availability of prosthetics made for women.

The bill also importantly requires VA to centralize information and resources on women's healthcare at VA on their website to streamline the ability of women veterans to find and learn about the services offered to them. Less than 60% of women responding to IAVA's women vets survey said VA provided sufficient information and resources on women's healthcare at VA. As demand continues to rise from women veterans as it declines from men, this should be a commonsense fix that is not just pro-women, but pro-veteran.

Among the remainder of the bills under consideration today, IAVA strongly supports the Women Veterans Access to Quality Care Act (S. 804), as we did in the 114th Congress. Provisions in the bill to ensure standards to meet healthcare needs of women are prioritized in construction of VA health facilities, establishment of performance measures to analyze women's health outcomes, and requirements to improve privacy for women are consistent with the goals of our "She Who Borne The Battle" campaign and we would like to again invite all Members of this Committee to cosponsor and work to pass S. 804 and the Deborah Sampson Act.

IAVA thanks Chairman Isakson and the Committee for engaging and seeking input from stakeholders in the effort toward VA appeals modernization that establishes a new system that is easy to navigate and veteran-centric. We are supportive of the general framework outlined in Veterans Appeals Improvement and Modernization Act (S. 1024) that establishes three separate paths for veterans to choose from when appealing a decision on their claims, and strongly believe that these new steps are critical to breaking the logjam in the current process. Following passage, IAVA encourages the VA to ensure continual monitoring and evaluation of the new processes to ensure improvement of the system. Congress should also exercise strong oversight over the law's implementation to ensure that it truly works for veterans.

IAVA applauds the leadership and diligence of Senators Rubio, Chairman Isakson and Ranking Member Tester toward crafting the Department of Veterans Affairs Accountability and Whistleblower Protection Act (S. 1094) to enable the removal of bad-acting employees at the VA. Nearly three years ago, the scandal in Phoenix alerted the country to the outrageous state of the VA health care system. IAVA and our members have fought since that time to give the VA Secretary the tools needed to address workforce accountability and save veterans' lives. We encourage Senate and House leaders to quickly work together to pass the strongest VA accountability measure that can be signed into law.

IAVA supports the Performance Accountability and Contractor Transparency Act (S. 543), which holds VA contractors accountable for services they provide and increases transparency into those contracts. These provisions are in line with our members' top priority of bringing strong accountability to the VA.

IAVA also strongly supports the Military and Veterans Caregivers Services Improvement Act (S. 591), which makes veterans of all eras eligible for the full range of caregiver support services, and would allow those veterans to transfer Post-9/11 GI Bill benefits to their dependents. All veterans must be afforded the same level of benefits, regardless of the era in which they served. It is simply the right thing to do.

We also support the Chiropractic Care Available to All Veterans Act (S. 609), to require a program under which the VA will provide chiropractic care and services to veterans, as it is consistent with IAVA's Policy Agenda which calls for treatment options that include the full range of traditional and experimental options that have proven to be effective.

The Veterans Compensation Cost-of-Living Adjustment Act (S. 784) would ensure that disabled veterans and surviving spouses receive benefits that keep pace with the rising cost of living in our country. IAVA supports this bill and we appreciate that all Members of the Committee joined Chairman Isakson as original cosponsors.

The draft Serving our Rural Veterans Act would authorize the VA to pay training and supervision of medical residents and interns at certain non-VA facilities, to require the VA to carry out a pilot project to establish or affiliate with residency programs at facilities operated by tribes and the Indian Health Service. It has long been a priority in IAVA's Policy Agenda to improve outreach to rural veterans, hence we support this legislation.

IAVA supports the draft Veterans Partners' Efforts to Enhance Reintegration Act which requires VA to carry out a program to establish peer specialists in patient healthcare teams at VA medical centers. IAVA strongly supports peer support programs, including as a way to reach rural veterans who do not live in close proximity to military medical facilities, and encourages them to represent the diversity of the veteran population, to include women peer mentors.

Finally, the Department of Veterans Affairs Veteran Transition Improvement Act (S. 899) would ensure that Title 38 Veterans Health Administration employees such

as doctors, nurses and other VA medical personnel can access paid sick leave in their first year, that they would otherwise have to accrue, to undergo medical treatment for their service-connected disabilities, as their counterparts in other Federal agencies are permitted. IAVA supports this legislation.

Mr. Chairman, many of these provisions are easy fixes, and some will require hard work and additional funds. When my soldiers and I were sent twice to face combat in Iraq, the Army and U.S. taxpayers spared no expense, with the goal of providing us with an overwhelming advantage in war. Veterans are proud to have served our country and we need Congress to know that the care we receive as a result of our service is a cost of war, and just as important as properly equipping those deploying downrange as we speak. We have got to spare no expense in caring for them after they return. Veterans are not a special interest—they answered the call when more than ninety-nine percent of American did not.

Chairman Isakson, Ranking Member Tester, and Members of the Committee, thank you again for inviting me to be here today, and on behalf of IAVA, I thank and remember our veterans who have served before us and those who are deploying now, again, to fight around the globe.

Chairman ISAKSON. Thank you, Ms. Jaslow.

Mr. Cox?

STATEMENT OF J. DAVID COX, SR., NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Mr. COX. Thank you for the opportunity to testify today. It is astounding that while the Secretary says there is over 45,000 unfilled health care vacancies in the Department, we are here today talking about firing rather than hiring. Does anyone here believe that the firing that has been in the news during the last week is an unusual occurrence? Does anyone here believe that an executive firing a subordinate to cover up his or her own misdeeds never happens in the Department of Veterans Affairs? I tell you what—when it happens where workers have due process rights, the innocent are protected.

At workplaces with a process for weighing evidence and making decisions based solely on facts, no one gets fired without just cause. If this bill passes, you can strike VA from that list. The innocent will be fired without good cause, the appeals will be a humiliating joke, and the executives will continue to ruin the lives of workers and hurting veterans.

So, let us be honest. None of the personnel provisions of this bill are really about veterans or accountability. It is about politics. It is about "you are fired" as an easy way to shift blame of wrongdoing from executives and political appointees onto the rank and file.

We have a bill that reeks of the—wrecks the apolitical civil service and is justified only by pretending that the most extreme examples of misconduct are occurring all over the place. In fact, instances of outrageous misconduct are rare.

AFGE has no use for people who abuse the public trust, who engage in unlawful conduct, or are poor performers, or violate government rules or our collective bargaining agreements, or the EEO laws. We want them out of the agency. They make everything more difficult for the vast majority who perform very well. In addition, this bill would supersede existing collective bargaining agreements and impose unworkable timeframes on the firing processes.

We have asked the Committee to at least show some respect for the integrity of the collective bargaining process by agreeing that

the provisions that affect the current contract go into effect only after a new contract is negotiated, and I, again, ask for that change to be made.

We understand that bashing Federal employees and taking away their rights makes for good politics, and it does make for bad government. And I promise you that under this bill, more employees will be fired for bad reasons than for good reasons.

You want to make it easy for VA managers to fire people. You have bought into complaints that firing is too hard for them, when every single study shows that current laws provide them all the authority they need to remove anybody who is actually a poor performer or engages in misconduct.

Our objections to the specifics of the bill are as follows. The first is lowering evidentiary standards for adverse actions for misconduct allegations. Replacing the preponderance standard with substantial evidence eviscerates due process. With misconduct charges, there needs to be a finding of fact. With proposed change, there will no longer be a finding of fact with misconduct. As with Mr. Comey, it will be enough for the boss to simply want someone gone.

The second and equally irresponsible provision of the bill is to prohibit administrative judges at the MSPB from mitigation of penalties. The VA will be able to fire with scant evidence of wrongdoing and reviewing authority will have no ability to correct the injustices by making the penalty match the offense. The prohibition on mitigation throws four decades of jurisprudence out the window. No more progressive discipline or consideration of whether the penalty is appropriate. No consideration of the nature of the seriousness of the offense, the level of the job, the employee's record, or whether others have committed the same offense and received a similar penalty. No rehabilitation and no consideration of the circumstances.

This bill is a serious mistake. We will all miss the apolitical professional civil service when it is gone, and this bill will have made a major role in its demise.

[The prepared statement of Mr. Cox follows:]

PREPARED STATEMENT OF J. DAVID COX, SR., NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO

INTRODUCTION

MR. CHAIRMAN, RANKING MEMBER TESTER, AND MEMBERS OF THIS COMMITTEE, My name is J. David Cox, and I am the National President of the American Federation of Government Employees, AFL–CIO (AFGE). On behalf of the 700,000 Federal and District of Columbia employees represented by our union, including over 250,000 at the Department of Veterans Affairs (VA), I thank the Committee for the opportunity to present AFGE's views on the subject of this hearing: the "Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017." In AFGE's view, this bill not only decreases accountability at the VA, it eviscerates the agency it is supposed to improve, and ensures that no employee ever gets a fair shake on any proposed adverse action. Its name should be changed to the "2017 Scapegoating VA Rank and File Employees for Political Expediency Act."

In my nearly five years as president of AFGE, I have never testified at a more important hearing than this one. It is important, not only for the VA and the veterans that the we serve, it is also important for the men and women I am proud to represent. Finally, it is important because passage of this horrible bill would undermine the apolitical American civil service, perhaps the least appreciated and most threatened pillar of our democracy.

At issue is whether the United States, the most advanced country in the world and the leading democracy, will continue to have a merit-based career civil service, selected, promoted and retained on the basis of ability and competence, or whether we will descend back into 19th century corruption and all the maladministration of government that brought us.

Before I was elected to national office in AFGE, I worked for 22 years at the Salisbury, North Carolina VA Medical Center as a Registered Nurse. I love the VA and the veterans we serve, and the future of the agency means the world to me. I also care deeply about our democracy, and I am appalled at the political cynicism and short-sightedness that this bill represents.

While today we are focusing on the VA, much more than just the VA is at stake. The Veterans Health Administration is somewhat of a microcosm of the many ideas and institutions whose future is being hotly debated in politics today. I will discuss three: The first is health care. The second is the role of the Federal Government in providing essential services and on what terms these commitments will be met. The final issue is the status of the career civil service, and whether we will continue to administer government programs with apolitical professionals hired by the government, or whether most of what the VA does should be contracted out to favored private-sector firms, or even abandoned altogether.

First, let's deal with the backdrop—the American health care system. The VA operates the country's largest integrated healthcare system. The military veterans it serves are the most deserving group one can imagine. The commitment we have made to veterans is to care for those who have borne the battle. The VA cares for aging Vietnam-era veterans, veterans from the Korean War era and even some surviving WW II veterans. In the past 15 years we have added many more veterans who have served this country in Iraq and Afghanistan and other more recent conflicts. Almost all of these veterans often have ongoing service-connected illnesses and wounds, emotional and physical.

The VA has always been there to serve them. The economic cost of caring for these veterans is high and budget politics have been an ever-present threat to quality and accessibility. It is astounding that while there are reportedly up to 45,000 unfilled positions in VA healthcare, Congress has chosen to focus on attacking the rank and file employees who are have made the choice to spend their careers caring for this cherished group. Rather than addressing the critical need to fill thousands of urgently needed positions at VA in order to better serve veterans, this cynical, ideologically driven bill seeks to fire more VA personnel. Talk about misplaced priorities.

Why punish the VA's rank and file? Why punish the employees of VHA? There is no question that VA healthcare is of the highest quality. And that high quality healthcare is provided by the same VA employees this bill attacks. Every independent study has confirmed that the outcomes of VA provided healthcare are at least as high, and frequently higher than care provided by any other hospital system. Veterans know this and numerous surveys show that they very much like their VA-provided health care. They want more of it, not less.

Ever since the Phoenix waitlist scandal, the future of the VA became fodder for 24 hour cable news, largely fed by the right-wing. The focus of discussion for many politicians has been how to dismantle the VA piece-by-piece and outsource it to the private sector. Well-funded and therefore politically powerful groups have seized the opportunity to cement a narrative that the VA is "broken." Their purpose is to discredit the VA by blaming its problems on its rank and file employees and the fact that it is a government agency. Their real objection is that few are able to make profits on VA care.

I challenge anyone on this Committee to find a major healthcare provider, private or public, that doesn't face significant challenges. Most don't make the news because they are not answerable to the public the way the VA is, and most are able to fire or otherwise silence whistleblowers with ease. But anyone who has gone to a private hospital or even an emergency room can tell you about long waits, enormous bureaucracy, and waste, fraud and abuse. They can tell you about how getting an appointment with a specialist takes at least three months. That is sadly part and parcel of our healthcare system, including private sector providers. Just look at any hospital bill, or talk to any physician or nurse, and they will tell you of the complexities and contradictions of America's healthcare system.

Fortunately veterans have the VA, a system that does not charge them and that covers them extremely well. It is so much more than just a healthcare system. It is also a community that understands the unique needs of those who have served this country. Whatever ails VA healthcare delivery reflects America's overall healthcare system—and in most cases, the faults are more severe among private hospitals and healthcare facilities. The critics of the VA will never admit this, so

I will tell you. There is big money in VA healthcare and the privatizers salivate at the opportunity to gain access to those dollars. They try to hide their avarice with platitudes about "serving veterans," the "broken" VA and the miracles of the market, but the reality is that they hate the idea that a large government agency so successfully provides care to veterans, and they want a "piece of the action."

The VA may not be perfect, but it is better than any other healthcare system at serving veterans with special needs associated with service-connected illness, injury, or disability. The VA makes no money off veterans. Its facilities may not be glamorous. Yet every important indicator of quality of care strongly confirms that the VA is a success. The Committee should recall that the Phoenix scandal began with a wait times issue. I will not defend the manipulation of wait time data, but that was not an issue of quality of care. It was an issue of resources, combined with a performance bonus system for executives that incentivized lying and cheating. It is absolutely unconscionable that from those facts has come the deplorable legislation before you today that undermines the foundation of the civil service.

So let's be honest. None of this is really about veterans or the VA or accountability. It's about politics. I do believe that everyone wants the best care for veterans. I wish we were having a debate on how to provide that care and to ensure accountability for all those who are charged within doing so. But that is definitely not what is happening here.

We are here today because politicians understand that "You're FIRED!" is popular as a way to address complex issues. "You're FIRED!" is popular as a way to deflect responsibility from management decisionmakers and place it on the rank and file. We have before us a bill that wrecks the civil service and is justified only by reference to the false claim that the most extreme examples of misconduct are occurring all over the place. In fact, outrageous instances of misconduct are exceedingly rare. It must also be noted that some authors of this bill have a long track record of denigrating virtually every known government program except those that personally benefit them. No one who values the VA or respects veterans should support this legislation.

I have been specifically asked by this Committee to address the changes to the civil service due process provisions contained in the scapegoat/firing bill, the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017.

Before I address the specifics of these proposals, let me state that AFGE and its members have no use for people who abuse the public trust, who engage in unlawful conduct, who violate government rules, and who are demonstrably poor performers. We want those people out of the VA every bit as much as anyone—maybe more so. Employees who engage in misconduct or who are genuinely poor performers ruin the reputation of the agency and add more work for those who perform well and play by the rules. So you will not hear me or anyone in this union defend a person who steals drugs or watches pornography while on duty. In fact, AFGE counsels such employees to resign. We certainly will not defend their matters in arbitration.

The bill before you is a regressive piece of legislation. It takes us backward, not forward. Although marketed as a bill to make it easier to fire bad employees, the proposals are designed to kill off and bury the apolitical civil service. It makes it just as easy to fire a good employee, an innocent employee, as it will be to fire a bad employee. No one should pretend otherwise. The VA can and should terminate people whose conduct or performance justifies termination. But it is absolutely not necessary to destroy the foundation of the civil service in order to allow them to do so.

The legislation takes time-tested procedures for civil service removals and turns them on their head in order to accomplish a clearly political agenda. Every single study or report of civil service removal procedures has stated that the principle reasons poor performers are not removed expeditiously are management ignorance and aversion to conflict, i.e. incompetence. It has nothing to do with the underlying laws.

Federal managers, including those at the VA, do not lack adequate authority or tools to discipline those who engage in misconduct or who are poor performers. The Government Accountability Office (GAO), the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) have all issued reports and analyses that have come to the same conclusion: When poor performers are not dealt with it is not because the civil service laws or procedures are too difficult to utilize. It is because managers do not want to put forward the effort to properly document poor performance so that they can remove or demote these people.

A recent GAO report, "Improved Supervision and Better Use of Probationary Periods Are Needed to Address Substandard Employee Performance," (GAO–151–191), February 6, 2015, found four main reasons why agencies do not use the already substantial tools they have available to them to remove poor performers. All four reasons related to management failures and/or unwillingness to properly identify and

document poor performance. Had this Committee taken GAO's well thought-out recommendations into consideration, the bill before us would never have been written.

Instead we have a cynical effort to ride the wave of public outrage over some legitimate problems that union whistleblowers and the VA Inspector General have brought forward and use it to destroy yet another union and the civil service. We continue to hear whining from management that civil service due process procedures are just too difficult to follow. They sound just like the President whining that his new job is too hard. S. 1094 accommodates these pitiful managers completely. Firing is too hard for you? Don't worry, we'll make it easy. We'll rig the system so no matter what you do, you'll be called a huge success. We'll let you fire the employee right away, and deal with due process in the future, if ever.

To call this a dangerous precedent is an understatement. To anyone who cares about the apolitical and objectively qualified civil service this bill is a disgrace.

The premise that the procedural hurdles for removing poorly performing employees are too high is simply untrue. When an employee invokes his/her rights to a formal adjudicatory hearing before the Merit Systems Protection Board (MSPB), the agency almost always prevails. For example, in 2013 only 3% of employees appealing their dismissal to the MSPB prevailed on the merits. In contrast, agencies were favored at a rate five times that of employees when formal appeals were pursued. The notion that the MSPB makes it impossible to fire a Federal employee is simply a myth.

GAO reviews and reports (e.g., GAO–15–191) have consistently found that the underlying reasons for permitting poor performers to remain in Federal service are managers' failure or unwillingness to document poor performance in accordance with due process procedures available to them under the Civil Service Reform Act. The bottom line of the GAO report is that lack of performance management by supervisors is the underlying reason why poor performers are not dealt with. Indeed, the preponderance of the evidence points in only one direction: the complaint that "it's too hard to fire a Federal employee" is not supported.

Let me address some of the most egregious and shameful aspects of the bill:

EVIDENTIARY STANDARD FOR MISCONDUCT

S. 1094 replaces the current evidentiary standard for misconduct removals (and other adverse actions) from a "preponderance of the evidence" standard (meaning more than 50% of the evidence must support the agency's recommendation) to a "substantial evidence" standard (meaning the agency only needs, among other things, more than "a mere scintilla of the evidence" to meet its burden of proof). The substantial evidence standard, with strong advance notice safeguards, is currently only used for performance-based firings, suspensions, and demotions. Applying this standard to misconduct cases would mean that even when the majority of the evidence supports the employee, he/she will lose.

With the current preponderance of the evidence standard, agencies win about 80% of all contested cases before the Merit Systems Protection Board (MSPB). Lowering the standard of review would mean that actual misconduct would barely need to be established before an employee could be fired. This upends nearly 140 years of civil service law, and makes VA employees very close to "at will" (which seems to be the real objective of the drafters of this provision).

There is a good reason why Congress has required different evidentiary standards for performance and conduct. When an employee receives a notice of a proposed adverse action related to performance, he or she has the opportunity to repair any performance failures through a Performance Improvement Plan (PIP). In contrast, allegations of misconduct must be validated with a higher standard of evidence because the question is only whether the alleged misconduct occurred.

This lower evidentiary standard is virtually pro forma, not a standard associated with the genuine administration of justice. It is yet another example of the cynicism that underlies this legislation, providing a false notion that due process is being upheld, when in fact, it is being eviscerated.

MITIGATION OF PROPOSED PENALTY

S. 1094 would prohibit MSPB administrative judges (AJs) from mitigating management's proposed penalty for misconduct. Under current law, MSPB AJs can reduce a proposed penalty for misconduct if the facts of the case warrant a lesser penalty. Removing the ability of MSPB AJs to mitigate a proposed penalty is not only unjust, but will also result in "penalty overcharging," meaning that a proposed penalty need not actually reflect the underlying charge. Combining a lower evidentiary standard of review to sustain a misconduct charge along with no ability to mitigate a proposed penalty means that employee appeal rights will be effectively neutered.

The VA will be able to fire employees with scant evidence and no ability for the reviewing entity to correct these injustices. This provision is the antithesis of justice and undermines not only the rights of the employee, but also the independence of the MSPB.

This provision also jettisons almost four decades of jurisprudence that followed the MSPB's 1981 decision in Douglas vs. Veterans Administration which gave rise to the use of progressive discipline in Federal personnel management. The basic principle of justice, that the punishment must fit the offense which was enshrined in the Douglas decision, has served the government well, and if S. 1094 becomes law, the Department of Veterans Affairs will have abandoned this management "best practice" altogether for an "Apprentice" TV-show type of system (You're FIRED!).

I ask you to consider these "Douglas Factors" for a moment and decide whether your intention is actually to throw away this eminently reasonable set of considerations. The Douglas Factors allow mitigation of proposed penalty after the following are considered:

1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's work ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. Consistency of the penalty with any applicable agency table of penalties;
8. The notoriety of the offense or its impact upon the reputation of the agency;
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10. The potential for the employee's rehabilitation;
11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

These factors are designed to ensure that the penalty selected by the agency fits the employee's alleged offense. Why are these controversial? Perhaps it is because those who genuinely wish to see this legislation enacted really don't care about the civil service or due process, and are particularly enraged that a government program such as VA healthcare actually works. Or perhaps, they just see political expediency in not challenging well-funded ideology-based advocacy courtesy of the Koch brothers and their allies.

PENSION FORFEITURE

The proposed legislation authorizes pension forfeitures for certain felony convictions for every VA employee. This would include Wage Grade 2 housekeepers and cemetery workers, virtually all of whom are veterans with service-connected disabilities. Private employer pension plans under the Employee Retirement Security Act of 1974 (ERISA) do not authorize pension forfeitures except for fraud against the pension plan. AFGE recognizes that there is precedent for Federal employee pension forfeiture, but these forfeitures have always involved involve espionage and treason, not drunk driving convictions.

It is curious that people who usually promote following private sector practices for Federal Government personnel have suddenly abandoned this principle when it comes to taking away earned pensions.

SUPERSEDES COLLECTIVE BARGAINING AGREEMENTS AND IMPOSES UNWORKABLE TIME FRAMES ON THE REMOVAL PROCESS

The proposed legislation supersedes the timeframes specified in current active collective bargaining agreements (CBAs). It also imposes unworkably short timeframes on grievance procedures and non-grievance based adverse actions. That Congress would summarily upend collective bargaining agreements in the middle of the term

of the agreement is an unprecedented attack on the integrity of the collective bargaining process and union contracts.

The proposed legislation provides that from date of first notice to the employee until actual removal that not more than 15 business days elapse. Employees are given only 7 business days to respond to the notice. Following removal, employee have only 10 business days to appeal the VA's decision to the MSPB.

Contrast these timeframes with the rights given to VA contractors. They have a minimum of 90 days to appeal a contracting officer's adverse decision to the Board of Contract Appeals (BCA), and one year to appeal to the U.S. Court of Federal Claims, if they decide to forego a BCA appeal. It is absolutely stunning, and a very sad commentary on the state of Federal agency priorities that employees are given such short response and appeal times, while favored Federal contractors are given months, and even up to a year to appeal VA decisions to the BCAs and a Federal court.

A merit-based civil service system is a cornerstone of a democratic society. It ensures that technical expertise is brought to bear on performing government agency work, without the threat of overt partisan agendas driving day-to-day operations. Agency career employees remain accountable to politically-appointed officials, but those appointees, and supervisors who serve under them, may not take actions against career employees for misconduct or poor performance without at least providing some level of due process to the employee, including third-party review by neutral decisionmakers. Career employees are only supposed to be fired for good cause, and "good cause" means reasons supported by evidence.

The Civil Service Reform Act (CSRA) of 1978 provides the modern-day basis for both selection of most career civil servants, and their protection from unwarranted personnel actions, including firings motivated by politics, bias, or other non-merit-based reasons. This CSRA protects the public from having their tax dollars used for hiring political partisans for non-political jobs, and helps ensure the efficient and effective governance of Federal agencies.

The CSRA provides that employees may be removed for either misconduct or poor performance. The employee merely needs to be informed of his or her alleged deficiency and the reason that management proposes to take an action against him or her, whether it be firing, demotion, or suspension.

Forty years of case law shows unambiguously that the CSRA does not give unfair advantages to Federal employees. Agencies prevail in 80%–90% of all cases at the MSPB administrative judge (AJ) level, and only about 18% of all AJ decisions are appealed to the full Board. AJs are upheld by the full MSPB in about 90% of all appealed cases.

It is very important to note that following an agency's adverse decision against an employee, the agency's decision is automatically effected. For example, the employee is removed from the agency's rolls the day of issuance of the decision or within several days following the decision. An employee removed by an agency receives no pay during the appeal process.

During the debate on VA firing I have heard several lawmakers and others argue that it takes forever to get rid of a bad VA employee. This is simply untrue. In almost all cases, an employee may be fired within 30 days of the first notice. Even when an arbitration procedure under a collective bargaining agreement is invoked the agency can fire the employee after 30 days, and the employee receives no pay during the entire appeal or arbitration process. They are off the agency's payroll. Attempts to portray removed employees appealing their removals as somehow lounging on the dole while their appeal is processed are simply untrue, and frankly dishonest. It doesn't matter whether the appeal route chosen is the MSPB or arbitration. The employee receives no pay. Anyone who says otherwise is lying or ignorant or both.

The importance of maintaining a nonpartisan, apolitical civil service in an increasingly partisan environment cannot be overstated. First, most Federal jobs require technical skills that cannot simply be obtained through non-merit based appointment. Second, career employees must be free to perform their work in accordance with objective professional standards. Those standards must remain the only basis for evaluating employee performance or misconduct.

Bills like S. 1094 that decrease due process rights are "dog whistles" for politicizing the civil service, subjecting the Federal workforce to partisan or personal whims of supervisors and political appointees. Whatever lack of public confidence in government exists today will be magnified a hundredfold if all civil servants become de facto political appointees, serving at the whim of supervisors. And that is exactly what this horrible piece of legislation will do.

Federal managers are already empowered under existing civil service laws to take appropriate action when employees are underperforming or engaged in misconduct.

There is no group who objects more to the continuing presence in the workplace of those who are not performing well or who engage in misconduct than fellow Federal employees. When someone doesn't perform up to speed, it simply means more work for the rest of the people who do perform well.

THE REAL ISSUE—AGENCY RELUCTANCE TO DOCUMENT EMPLOYEE PERFORMANCE IN ACCORDANCE WITH DUE PROCESS PROCEDURES

In 1978, Congress enacted the CSRA, which is the modern-day statute governing civil service protections. In considering the law, Congress was specifically concerned about balancing employee rights and maintaining a non-partisan civil service with the need for management to deal with poor performers, or unacceptable conduct.

To help agency managers deal with poor performers, the CSRA included a new section, Chapter 43, specifically addressing performance issues. As previously mentioned, this chapter set a lower standard of review of agency decisions with respect to performance issues among employees, and restricts the MSPB from modifying agency determinations regarding removal of poorly performing personnel.

The GAO report previously mentioned (GAO–15–191) suggests many reasons why managers are sometimes reluctant to address performance issues. It also explores the many myths surrounding removal of poor performers. GAO's report echoed findings of the MSPB in its reported entitled, "Addressing Poor Performers and the Law" (September 2009). The fact is that the laws governing the firing of poor performers, primarily Chapters 43 and 75 of title 5, are straightforward and not unduly burdensome to agencies. However, the due process procedures inherent in these laws require documentation between the supervisor and the employee that addresses the performance or conduct issues. This can be very difficult for some supervisors. Nevertheless, the law is clear, agency supervisors have many tools available to them to address performance issues, and to fire poor performers.

CONTINUED DENIGRATION OF VA EMPLOYEES

As Members of this Committee are undoubtedly aware, continuing partisan attacks on the work of VA employees only fuels a self-reinforcing feedback loop. Employees know they are punching bags. Morale plummets as a continuous stream of anti-Federal worker proclamations, almost all false or highly exaggerated, emanate from elected or appointed leaders. Not long ago, the majority leader in the House of Representatives wrote an op-ed in the Wall Street Journal describing the "Federal bureaucracy" as the entity that "poses the greatest threat to America's people, economy and Constitution." Such criticism is not only false, but misleads people into thinking that career civil servants create statutes and regulations wholly apart from supervision by elected leaders and political appointees. Anyone who has worked in Federal service will tell you that employees follow direction, whether that direction comes from Congress, the President or other politically-appointed officials. In other words, career Federal workers respond to and implement duly enacted laws and policies. They do not create these policies.

In all my years as an elected official of AFGE, I have never seen fit to denigrate my own staff. No leader should do that. There have been situations where employees have been disciplined or dismissed. But taking a battle axe to all employees and describing them in broad terms as "threats" to the American people heralds a new low in misinformation and outright dishonesty. As I told several news outlets at the time, "To call civil servants—one-third of whom are veterans—a 'threat to America's people, economy and Constitution' is an insult to the men and women who dedicate their lives to the programs and services that benefit all Americans."

HOLDING THE VA ACCOUNTABLE

AFGE agrees that VA employees should be held accountable, and we also believe that includes VA managers, supervisors and political appointees. Statements implying that employees cannot be fired for months or years, or that fired employees remain on the government payroll for long periods while pursuing appeals following removal demand accountability every bit as much as an employee who is chronically late to work.

These are dishonest statements and VA leadership should be held to account for this dishonesty. If they can't fire, demote or properly discipline employees under current civil services rules, AFGE questions their competence to manage and lead such a large and complex organization. If they cannot hire for 45,000 health care vacancies, the same is true. They lack the competence to manage and lead the agency. Seeking the easy way out is not leadership. It is a politically-motivated response to fecklessness and incompetence.

Regardless of the outcome of the debate on this legislation, AFGE calls on this Committee to demand from the VA Secretary the following data on the number of employees fired, suspended or demoted ("adverse actions") by the VA under applicable statutory or regulatory authority; more specifically the following:

1. The number of employees proposed for and actually subject to adverse actions;
2. The veterans status of employees subject to adverse actions;
3. Locations, demographics and grades, and reasons for adverse actions; and
4. Periods of time to effect adverse actions from date of first employee notice until final agency decision.

We have yet to see this data, and we believe it will better inform the debate, not only as to whom the VA is disciplining, but also as to the level of competence within the agency in managing its personnel functions. We also believe that the Committee should focus more of its attention on the failure of the agency's leadership to fill the reported 45,000 healthcare vacancies. Firing should not be your only concern. Hiring deserves at least as much attention.

A BETTER WAY FORWARD

History is replete with examples of public service corrupted by unfettered, politically-based employment decisions. That's why we continue to support a merit-based civil service system with appropriate due process, and checks and balances to ensure that both hiring and firing decisions be merit-based, and subject to meaningful review.

AFGE strongly supports improvements in agency performance management systems, and we look forward to working with lawmakers and other interested stakeholders to see this carried-out. AFGE also supports better training of both VA supervisors and employees so that clear expectations are established, performance is measurable, and appropriate steps are taken to either remedy performance problems, or to remove poor performers from the workplace.

AFGE vehemently opposes S. 1094, one of the worst pieces of legislation of the modern era. This legislation is an affront to hard working VA employees, more than a third of whom are veterans, directly lowers objective standards of review of proposed adverse actions, impinges on the union's ability to defend meritorious cases, and unfairly penalizes employees for what could be trivial offenses. S. 1094 will corrupt and ultimately destroy the professional civil service and return the country to the days of the "spoils system" of government employment.

CONCLUSION

Attacks on government employees and the civil service in general may make for good politics, but they make for bad government. AFGE is aware that dealing with problem employees is essential to sound public administration. But the vast majority of employees at the VA perform well. Agency systems and the laws and regulations governing employee performance are well-thought-out. The issue is not whether the laws or regulations governing the civil service are adequate, but whether agencies, including VA managers and supervisors have the tools, training and will to effectively implement current rules. The current mindset of the VA and supporters of this legislation in Congress seems to be that fast and easy firing of employees will magically solve the VA's problems. Think again. This will cause far more problems than it will solve.

I urge the Committee to reconsider the very dangerous and ultimately destructive personnel provisions of this firing bill.

Thank you for your time and consideration and I will be happy to answer any questions you may have.

Chairman ISAKSON. Thank you, Mr. Cox. I will start and take 5 minutes, and then go to the Ranking Member for 5 minutes.

Let me first of all, Mr. Atizado, in your introduction of yourself, or the introduction of your statement, you made the reference to your organization being the largest claims organization in the world. Is that correct?

Mr. ATIZADO. In the Nation. I do not know about the world.

Chairman ISAKSON. In the Nation.

Mr. ATIZADO. Yes, sir.

Chairman ISAKSON. The nation is big enough so we will take that.

Mr. ATIZADO. Yes, sir.

Chairman ISAKSON. I think in your testimony, that caught my ear because that is what this appeals process is all about, making sure that people are treated right that are injured and have an appeal for a benefit and have a right to a benefit. I appreciated the time that you took to explain the effort you all went through to examine the appeals bill, and I appreciated the comments that you made. Would you thank your organization for that?

Mr. ATIZADO. I am sorry. What was the question?

Chairman ISAKSON. Be sure to thank your organization for that.

Mr. ATIZADO. Definitely, sir. I will be honest. We have a lot more intelligent people than in our organization, that have worked hand-in-hand with the VA for this bill, so the thanks goes to the VA as well.

Chairman ISAKSON. DAV is a great organization and our disabled veterans bear a scar for the rest of their lives, and we owe them a tremendous obligation. One of those obligations is to see to it that appeals of any claim that they have made are handled expeditiously and quickly. Now with this bill passing, hopefully in the next few weeks, they will be doing exactly that, and that will be a great day forward.

Ms. Jaslow, thank you for mentioning Memorial Day. Unless I missed it, of all of us on the Committee that asked questions and made opening statements, and of all of you who made statements, yours was the one that made reference to not forgetting that next week is Memorial Day, or within a week or so is Memorial Day, which is a very important day for our country.

I would just encourage all the Members—I cannot ask anybody or tell anybody to do anything, but I hope all the Committee Members will take time during the Memorial Day break to spend at least a little bit of time each day making sure our young people and our supporters and our voters understand the value that we have in the sacrifice that was made by the veterans of America who died so that we could have the liberty and the freedom that we are enjoying today.

I always tell the story, when I make Memorial Day speeches, about Roy C. Irwin, a veteran from World War II, in 1944. When I went to the Margraten Cemetery in the Netherlands and walked down the rows of crosses, on row 24 I came to the last cross in the row, and I go to each one and look at the dates and the place and the name of the individual who is buried there. The last grave in row 24, Roy C. Irwin of New Jersey, died December 28, 1944, was interred. I stopped in my tracks for a second, took a deep breath, and realized that the day I was born was December 28, 1944, I was standing on the grave of an American soldier from New Jersey who died on the same day I was born, so that I could enjoy the life that I have enjoyed over the last 72 years.

So, I think when all of us take a moment to talk about Memorial Day, we can talk about that sacrifice those soldiers made so that all of us who are here today, living and enjoying the freedoms of the United States of America, realize that, in large part and measure, that was paid for by singular American efforts who volunteered on our behalf, sacrificed their lives, and died for our freedom and our ability.

So, I just wanted to throw that in. I hope everybody will take a second to tell their own stories during that time.

I want to thank the input that everybody has given to the appeals process. We are excited about trying to get something fixed that has been broken for a long time and I appreciate the VA's attitude toward helping us to do that. I understand there is some concern and input on the accountability portion, but I think we have done a good job of hearing from everybody and putting together a piece of legislation that works for the Veterans Administration, the employees of the Veterans Administration, and the taxpayers of the United States of America, who pay for the Veterans Administration. I also appreciate the Ranking Member's cooperation in working with all of us on all these pieces of legislation, to make them happen.

Last, I will make a comment. Of all the legislation we have talked about today, everybody left out the one piece of legislation that a lot of people would have thought we would have mentioned first, but I think it shows the integrity of these organizations and the integrity of our vets and the integrity of the VA. But nobody mentioned the cost-of-living (COLA) increase that Senator Tester and I have put in, because they are taking it—that maybe we were going to make sure that happens. That shows we have got a good self-interest in part of all our people testifying here today.

Ranking Member, would you like to ask a question?

Senator TESTER. Yeah. Thank you, Johnny. I think we all have our Veterans Day memories of what has transpired and what that day is all about, and, quite frankly, what every day should be about. Every day should be Memorial Day for the people of this country.

I will just pass along a little story. When I was a seventh-grader I got tabbed to be the VFW bugler, which was kind of a big deal because everybody in the whole damn town would show up for Memorial Day. They would do the roll call, and at that moment in time—this is the late '60s so there were still a few World War I guys around. It was always an amazing experience.

I will never forget what one of them said to a 13-year-old kid, which was that we never want to forget that war is a god-awful thing, and you do not put people in harm's way without knowing what you are doing. You know, those are old World War II guys that knew what it was like. They knew getting your arm blown off was not something that was a pretty sight. Watching a guy die was not a pretty sight either. So, kind of interesting.

So, I thank you guys for your service and the folks you represent. I do want to thank—a couple of thank yous—number 1, to all five of you for the people you represent. Thank you for being here and representing them. For the VA staff sticking around and hearing this panel, I want to thank you for that. Oftentimes we have two panels and the first panel gets up and leaves, and I know you have got work to do, but you stuck around and I want to acknowledge that.

I know that Ms. Flanz is here. If there are any questions on MSPB, which Mr. Celli, you brought up, and their ability to make decisions, certainly utilize her.

I have got a couple of questions. Actually, I have got more than a couple. I want to start with Allison, with the IAVA. There was a GAO study that came out in December 2016, that found that across the VA system there was a significant lack of providers available for women veterans—I think you referenced it in your statement—as well as significant privacy issues.

I am interested to know how seriously you think, or IAVA thinks, that the Veterans Administration is taking these findings seriously, and if you have seen any changes since that report was issued.

Ms. JASLOW. Well, I certainly believe any person at the VA who I have talked to, and I believe many that you all have talked to, have very good intent. I think one of the reasons why we appreciate not only your leadership, sir, but why we are getting behind the Deborah Sampson Act is because, like many of the things at the VA, it is not happening fast enough.

I believe there was somebody on the panel ahead of me who said that she was able to quote how many VA facilities have gynecologists, but that clearly means that not all of them do, which means that you have VA health care centers that adequately support men and ones that inadequately support women.

We talk a lot about how the culture needs to be more welcoming, but one of the other barriers is women just do not think that they are going to get treated in the way that they need to be treated when they go into the VA.

To answer your question, sir, we are still talking to members. You know, I already told my story of running into snags when I walk into the VA. More work needs to be done, and what we really need to do is jump-start it. I think that, you know, our approach is not only raising awareness of this issue. I really do not think that you get the fuel in the tank that you really need to get this done until people really feel like it is an issue, so that is the first step. But the other step we have outlined in the bill.

Senator TESTER. OK. Very good.

Adrian, with DAV, you issued a fine report a few years ago titled "Women Veterans: A Long Journey Home." It had some compelling facts and findings about the challenges unique to women veterans. Have you or anybody within your organization spoke to the VA about this report, and what kind of reception have you received?

Mr. ATIZADO. Senator Tester, thank you for that question. VA has been more than welcoming of that report. If there is one thing I do find quite impressive about VA is that they are not shy about asking themselves what they are doing wrong and correcting those deficiencies. They are very much involved with trying to address those issues in our report, within their jurisdiction, because that report spans the entire Federal Government. We are trying to update that report now to reflect the abundant good work that VA has done.

I just want to tag on to what Allison had mentioned. You know, this bill—these two bills are good for a start, I think. It is important that we have these policies in place, these artifacts that show that VA's culture is, in fact, inclusive and respectful of women veterans and their service.

Senator TESTER. In their testimony, VA said they did not support compiling a report—and this is for any of the VSOs—a report on

how they are doing on providing prosthetics to women veterans. We hear, quite frequently, the VA's ability to provide gender-specific prosthetics is inconsistent, at best.

It does not have to be all of you, but it can. Can you share some insights from your membership on women veterans where it comes to prosthetics?

Mr. ATIZADO. So, if I can, for my colleagues, if you do not mind, we have a very active member of our organization and she had sought a prosthetic appliance from VA; at that time the only thing available was a male prosthetic. We thought that was falling a little short of what we expected of VA. They tried to make it work but clearly it did not.

We think these reporting measures are critically important. Our testimony says, though, that these reports should include a little bit more personalized reporting: how women veterans perceive these services and these programs, whether it speaks to them and their needs, whether it is respectful of them, and whether they are satisfied. I think adding those would make this bill just a little bit stronger, sir.

Senator TESTER. OK. Thank you. In closing, really quick, I just want to say that I met with about a dozen veterans, Vietnam veterans and veterans that have come back from the Middle East, up in Kalispell, MT, this last week, and we talked about many of these bills. I cannot tell you how committed they are to making the VA the best it can be and not privatizing the VA, which I think is important to be said here, because there are people around—I do not know around this dais, but maybe around this dais, certainly in the House, that want to privatize the VA. If we are not continually working to make the VA the best it can be, it will be privatized, and I do not want to see that happen, personally.

So, we thank you for your advocacy, and we look forward to working with everybody to try to make the VA the best it can be. It is an important backstop for our veterans.

Thank you, Mr. Chairman.

Chairman ISAKSON. Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Mr. Chairman. Thank you all for being here and for all your tireless work for our veterans. If you were here earlier you may have heard my questions about the Veterans PEER Act, and I would like to reiterate them to you, without going through all the provisions which I am sure you know. I would like to know from you whether you think that these kinds of support specialists are necessary, whether they perform a function, and whether they ought to be an integral part of our mental health care service and primary care team for our veterans.

Mr. CELLI. Well, I can tell you that The American Legion has long been a supporter of peer support. We find that it is the best way especially for veterans who are new to the VA system to become comfortable with the system and to integrate well. Incorporating them into the PACT model is really the right thing to do. I just do not think that there is any—we believe in it so much we actually passed a resolution specifically supporting it.

Senator BLUMENTHAL. Thank you. I would welcome other comments.

Ms. KELEHER. The VFW has long been very supportive of expansion of peer support specialists, and as we said, we very, very adamantly support it, not just for gender-specific care but for mental health care and many other areas. It is something that we look forward to continuing to work on.

Senator BLUMENTHAL. Great.

Ms. JASLOW. I would be happy to chime in, sir. Specifically related to women, you know, I think something that I would encourage you to think about, as you are working within this chamber, if people do not feel like they can navigate the VA system, whether they are welcome at the VA, whether it is even a place that does not overwhelm them, they are not going to take advantage of no matter how great of care that you try to provide for them.

So, simply having somebody, especially somebody who can help somebody through foreign territory, which, if you are a woman walking in there, not only is there for most of our generation a generational divide, but a gender divide. So, we are strongly supportive of it as well.

Senator BLUMENTHAL. Great. Mr. Cox?

Mr. COX. Senator Blumenthal, I think that peer support is really important, and also I think the greatest peer support is that at the VA, over one-third of the employees are veterans themselves. They are the shining star. They work there. They get their care there. They believe in it. They are committed to it. I see that committed staff every day as they find veterans that are struggling to maneuver the system, that, hey, they reach out, they share, even if they are in VHA, about VBA, and other benefits, and the coaching and mentoring. I think there is no bond greater than what you find amongst veterans, and I believe every one of the veteran service organizations would join with me in saying, you know, peer support, let us support it, but let us also fill those 45,000 vacancies at the VA so that every veteran gets all the care they fully deserve.

Senator BLUMENTHAL. Well said, and points well taken. We tend to overlook the fact, all too often, that a vast number of the VA employees are veterans themselves, and they care more than anyone about keeping faith with our veterans. I think that peer support is extremely important and we should recognize, as all of you have said that veterans are often the best source of care for other veterans, because they tend to understand their brothers and sisters, and it is the reason why veterans want the VA health care system to continue to exist. I think of all the reasons that veterans support the VA health care system, that may include the best equipment, medicine, care, but it is also the fact that it is provided, often, by veterans, with other veterans at their side.

I want to just say, finally, in the few seconds that I have left, I have been working very, very hard on this Appeals Improvement and Modernization Act of 2017. This backlog and delay in addressing claims by veterans—many, many of them justified and deserving—is a scandal for our Nation. The present backlog and delay is unacceptable, and I hope that you will join me in pursuing the bill, which is based on a framework that the VSOs have helped to devise. I want to give you credit for it because you have participated, along with experts and the VA itself, in the appeal process. It would consolidate the current appeals process into distinct lanes

that can be pursued more efficiently and effectively and fairly for our veterans. So, thank you for your help on it and I hope we can get it across the finish line.

Thanks so much. Thank you, Mr. Chairman.

Chairman ISAKSON. Thank you, Senator Blumenthal. I want to thank all our witnesses from the VSOs for your testimony today. Thank all your membership for their support in continuing with the Veterans Administration and this Committee's work. I thank the VA employees who were here earlier. I think their comments made about the value of those employees cannot be overstated. They are a tremendous asset for our country. And as Mr. Cox said, in the VA I think about one-third of employees are veterans themselves, and it means a lot to them to make sure they are providing that service as veterans, to the veterans who have served this country.

I appreciate all your testimony and input. We will leave the record open for 10 days, if there are additional submissions any of you may have. If there are no further questions, the Committee will stand adjourned. Thank you all for your attendance.

[Whereupon, at 4:38 p.m., the Committee was adjourned.]

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. BILL CASSIDY TO JENNIFER S. LEE, M.D., DEPUTY UNDER SECRETARY FOR HEALTH FOR POLICY AND SERVICES, VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

In your prepared remarks, you note that the Veterans Administration would like to require the use of ISBT–128 for all biological implants. However, I have several concerns with this position, as noted below. Could you address these in turn?

Question 1. The VA defines biological implants to include xenografts (animal-derived grafts) and not just those products of human origin. ISBT–128 (International Standard for Blood and Transplantation) is only suitable for products of human origin. How do you intend to track xenografts that are biological implants? What system will you use for those?

Response. The VA does not intend to use ISBT–128 for all biological implants. Only those implants of human origin would be required to have a distinct identifier such as provided by ISBT–128. Currently, ISBT–128 is the only available identifier for this purpose. VA would accept a distinct identifier for HCT/P (Human Cell and Tissue Products) from any Food and Drug Administration (FDA) approved source. VA's system will be robust enough to track any biologic implant including both allografts and xenografts. ISBT–128 will only be used for products of human origin.

Non-human products will be able to use GS1 (Global Standard One), HIBCC (Health Industry Business Communications Council) or other FDA UDI (Universal Device Identifiers) as appropriate.

Question 2. My understanding is that there are only 20 tissue processors within the U.S. that produce Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/P's) regulated as devices. According to a recent survey, of those 20, only 2 currently use ISBT–128. Have you checked with your vendors to ensure that you could have access to HCT/Ps if you move forward with your proposal to limit your issuing agency only to ISBT–128?

Response. VA has checked with its human tissue contractors and has been assured that they can provide ISBT–128 labeled tissue. Those who currently do not use ISBT–128, have indicated that they will be able to do so within a year if requested, at a minimal cost. As a result, VA intends to allow for up to a year for a vendor to come into compliance when it negotiates its contracts if they are not already using ISBT–128. It should be emphasized that a distinct identifier like ISBT–128 is essential to prevent the entry of prohibited tissue sources into the VA supply chain. It allows for the readily auditable trail necessary to ensure that only properly sourced tissue is in use by VA; the underlying intent expressed in the legislation.

While mechanical implants are regulated differently than human or animal derived implants, they could use the same tracking system for blood and biologics. A

common system would also be useful with the emergence of composite devices which combine both mechanical and biologic components.

Question 3. Obviously, track and trace efforts should be improved for all implants—not just biological ones. What efforts are you doing to maintain traceability in those areas? My understanding is that the vast majority of medical device companies within the U.S. are opting to use GS1 (barcodes) for labeling their devices. Does the VA have a process for utilizing GS1?

Response. VA does not have a process for utilizing GS1 at this time. Prosthetic & Sensory Aid Services is currently serving as a member of a VA cross-functional workgroup led by the Office of Strategic Integration (OSI) Veterans Engineering Resource Center (VERC) for implant tracking. This workgroup will identify and develop processes and process requirements that will meet all requirements established by FDA, The Joint Commission, and Congress for the tracking of implantable devices by September 30, 2017.

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. MAZIE K. HIRONO TO JENNIFER S. LEE, M.D., DEPUTY UNDER SECRETARY FOR HEALTH FOR POLICY AND SERVICES, VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

S. 899 VA VETERAN TRANSITION IMPROVEMENT ACT

Question 4. Deputy Under Secretary Lee, could you comment on the VA's current policies related to paid medical leave for your disabled veteran employees and how S. 899 would improve on that?

Response. Current disabled Veteran employees employed in the Veterans Health Administration (VHA) may request and use leave for medical purposes in accordance with established agency leave procedures. The proposal would require VA to establish a leave transfer program for the benefit of health care professionals appointed under 38 U.S.C. § 7401(1) and authorize the establishment of a leave bank program for the benefit of such health care providers. Inclusion of this provision would ensure that disabled Veteran employees performing health care services in Title 38 occupations have the same opportunity to schedule medical appointments and receive medical care related to their disability without being charged leave as employees in Title 5 and Hybrid Title 38 occupations.

According to January 2017 data from the VA, there are over 13,000 Title 38 critical medical vacancies in the positions not currently subject to the Wounded Warrior Federal Leave Act (these are physicians, physician assistants, registered nurses, chiropractors, podiatrists, optometrists, dentists, and expanded—function dental auxiliaries).

Question 5. Does VA have a goal to hire veterans for these positions and if so, could you comment on the impact of the additional paid medical leave provided in S. 899 on efforts hire disabled veterans?

Response. VHA continues to encourage the hiring of Veterans for healthcare occupations, as well as other administrative, technical, professional, and clerical occupations. When filling Title 38 positions, VHA also needs to ensure the best qualified individuals are hired to meet the health care needs of our Veteran patients, as well as support our health care mission. The proposed legislation may assist in the hiring of Veterans for Title 38 occupations. Extending the current provisions of 5 United States Code (U.S.C.) section 6329, Disabled Veteran Leave, to Title 38 employees appointed under 38 U.S.C. § 7401(1) would provide an opportunity for our disabled Veteran employees performing health care services in Title 38 occupations to have the same opportunity to schedule medical appointments and receive medical care related to their disability without being charged leave as employees in Title 5 and Hybrid Title 38 occupations. This will provide disabled Veteran employees an opportunity to undergo medical treatments for their disabilities without having to consider their leave balances or work-life issues to obtain such services outside of scheduled work hours. Although the disabled Veteran employees would be eligible for paid medical leave, the proposal is considered cost neutral as it will not increase VHA full-time employee equivalent levels or salaries of the employees.

S. 1094, DEPARTMENT OF VETERANS AFFAIRS ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION ACT OF 2017

We all agree that more can be done to increase accountability for those at the VA who have betrayed the trust they have been given to serve our Nation's veterans.

While there are some good provisions in S. 1094, I am deeply concerned on the implications of the bill's provision lowering the evidentiary standard for misconduct

removals from a "preponderance of the evidence" standard (meaning more than 50% of the evidence) to a "substantial evidence" standard (meaning the agency only needs, among other things, more than a "mere scintilla of the evidence") as the Supreme Court defined in its 1971 decision in *Richardson* v. *Perales*. This new standard would mean that even when the majority of the evidence supports the employee, he/she will lose.

Question 6. Deputy Under Secretary Lee, can you explain how the VA can ensure due process for its employees under this bill when it says if the majority of the evidence supports the employee, he/she will lose?

Response. Employees at VA are entitled to constitutional due process and will continue to be entitled to constitutional due process even if S. 1094 is enacted into law. A change to the burden of proof from preponderant evidence to substantial evidence does not change an employee's right to constitutional due process.

At its simplest, constitutional due process requires that an individual receive notice of an action affecting the individual's interests and a reasonable opportunity to contest that action. Sometimes the notice and opportunity to contest must precede the action (pre-deprivation); sometimes it may come after (post-deprivation), in the form of a post-decisional appeal, whether to a third-party forum like the Merit Systems Protection Board (MSPB) or to the courts. Under S. 1094, this constitutional due process will not be adversely impacted. Under S. 1094, employees will continue to receive notice of a proposed disciplinary action, the ability to respond befsore a decision is made, and the ability to go to the MSPB or a court.

With regard to the burden of proof, a substantial evidence standard does not mean that an employee will lose, even if the majority of the evidence supports them. The MSPB defines "substantial evidence," the standard proposed under S. 1094, as the "degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree." 5 CFR § 1201.4(p). Substantial evidence is "a lower standard of proof than preponderance of the evidence." *Id.*

The MSPB's definition of "substantial evidence" is echoed in *Richardson* v. *Perales*, a case that pertains to a social security disability claim rather than the Federal civil service. *Richardson* v. *Perales*, 402 U.S. 389, 401 (1971) citing *Consol. Edison Co.* v. *Nat'l Labor Relations Bd.*, 305 U.S. 197, 229 (1938) (substantial evidence is "more than a mere scintilla [of evidence and it] means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion"). But, the MSPB further explains that, in the Federal civil service context, substantial evidence "obliges the presiding official to determine only whether, in light of the relevant and credible evidence[,] a reasonable person could agree with the agency's decision (even though other reasonable persons including the presiding official might disagree with that decision). *Parker* v. *Def. Logistics Agency*, 1 M.S.P.R. 505, 531 (M.S.P.B. 1980).

The MSPB currently uses the substantial evidence standard to adjudicate agency actions taken based on performance. See 5 U.S.C. § 7701(c)(1); 5 CFR § 1201.56(b)(1)(i). Even with this lower burden of proof, there are numerous cases where the MSPB and its reviewing court have determined that the agency failed to meet this lower burden of proof. See, e.g., *Parkinson* v. *Dep't of Justice*, 815 F.3d 757, 766 (Fed. Cir. 2016); *Thompson* v. *Dep't of the Army*, 122 M.S.P.R. 372, 381–82 (M.S.P.B. 2015); *Smith* v. *Dep't of Veterans Affairs*, 59 M.S.P.R. 340, 342–43 (M.S.P.B. 1993); *Cranwill* v. *Dep't of Veterans Affairs*, 52 M.S.P.R. 610, 616 (M.S.P.B. 1992). Consequently, it is doubtful that, even with a lower evidentiary burden, the MSPB would always agree with an action taken by VA or that, even if the majority of the evidence supports an employee, he or she will not succeed in a disciplinary appeal before the MSPB.

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. MAZIE K. HIRONO TO J. DAVID COX, SR., NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO

S. 1094, DEPARTMENT OF VETERANS AFFAIRS ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION ACT OF 2017

Introduction: President Cox, in your testimony you reference the unworkable timeframes for appeals using the Grievance and Arbitration Procedures in the Collective Bargaining Agreement.

Question 1. Can you explain how the short timeframes would threaten the reliability of the collective bargaining process?

Question 2. Can you share with the Committee any real-life examples of how this would impact your rank and file employees and possibly even reverse some removal decisions that were in favor of the employee due to the lowering of the evidentiary standard?

[Responses were not received within the Committee's timeframe for publication.]

A P P E N D I X

PREPARED STATEMENT OF HON. THOM TILLIS, U.S. SENATOR FROM NORTH CAROLINA

Please accept my apologies for not being here this afternoon—I was running in the Capitol Challenge 5K this morning and unfortunately was not able to finish the race, even though I was well on my way to easily eclipsing my time from last year.

I just want to briefly comment on two bills on the agenda:

• On the Veterans Education Priority Enrollment Act—I appreciate VA's support and the valuable feedback we received from all the stakeholders. I understand some of the compliance concerns that were raised and I look forward to discussing with Senator Brown to identify the best path forward that will allow flexibility for schools that are already setting the gold standard while ensuring that all veterans have the opportunity to use their GI bill to the fullest extent.

• On the State Veterans Home Adult Day Health Care Improvement Act—I thank Senator Hatch for his leadership and I look forward to engaging with VA to address their recommendations that would improve the bill. Together, we can empower veterans to receive daily care while living and spending more time at home with their families.

LETTER FROM MICHAEL V. REILLY, EXECUTIVE DIRECTOR, AMERICAN ASSOCIATION OF COLLEGIATE REGISTRARS AND ADMISSIONS OFFICERS

AACRAO

American Association of Collegiate Registrars and Admissions Officers
One Dupont Circle, NW, Suite 520 | Washington, DC 20036-1135
(202) 293-9161 MAIN | (202) 872-8857 FAX | www.aacrao.org

May 17, 2017

The Honorable Johnny Isakson, Chairman
U.S. Senate Committee on Veterans' Affairs
SR-412 Russell Senate Office Building
Washington, DC 20510-6375

The Honorable Jon Tester, Ranking Member
U.S. Senate Committee on Veterans' Affairs
SR-412 Russell Senate Office Building
Washington, DC 20510-6375

Dear Chairman Isakson and Ranking Member Tester:

On behalf of the American Association of Collegiate Registrars and Admissions Officers (AACRAO), thank you for the invitation to provide comments regarding S. 764, Veterans Education Priority Enrollment Act of 2017 (Brown, Tillis). We truly appreciate the opportunity to comment on S. 764 as this bill would directly impact our constituency, which manages the enrollment process for colleges and universities.

AACRAO is a nonprofit association of more than 11,000 higher education admissions and registration professionals who represent approximately 2,600 institutions and agencies in the United States and more than 40 other countries. The vast majority of our individual members are campus officials with direct responsibility for admissions, recruiting, academic records, and registration functions.

AACRAO recognizes and honors the sacrifices veteran men and women have made and its members are proud to help them meet their educational goals. Because AACRAO members recognize the unique needs of student veterans on campus, they work diligently to streamline the full integration of veteran students into the student body as well as the subsequent transition into the workforce. As key stakeholders in helping veterans succeed, AACRAO members are particularly valuable partners in the Senate Committee on Veterans' Affairs' efforts to create and sustain reliable veteran programs.

AACRAO expresses its support for the Committee's work to ensure veterans receive the support and services they need to be successful and stands ready to work with the federal government and other key stakeholders to advance veterans services at all collegiate institutions. We are, however, concerned about the following aspects of S. 764.

Federal Mandate

We are particularly concerned about a federal mandate around an issue that we feel is better handled at the state or institution level. As you are aware, several states across the nation already provide priority registration to veterans and, in speaking with our membership, they are unaware of widespread issues with veterans registering for classes that would merit such a federal mandate. Moreover, we need to be conscious of the differences that will exist between the various state versions versus the federal one and how individual institutions will need to reconcile these two mandates.

We are also concerned about the precedent that such a mandate would set. Such a measure could easily be applied to other categories of students and, more importantly, have adverse effects on students that truly need priority registration most. For example, one member institution with state prioritization mandate already in place reported that their institution watched their priority registration group balloon to include approximately 15 percent of their total student population, rapidly losing the intended benefit of priority registration.

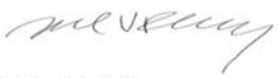
Undue Burden on Institutions

Secondly, we are concerned with the possible undue burdens placed on institutions that do not have priority registration systems and/or policies in place. While realizing it is not the intent of this bill to require institutions to create such a system, we worry that those without one will inadvertently lose their military friendly status.

AACRAO is committed to and will continue to pursue the best services for veteran students. Our members, however, fail to see any evidence that veterans are more frequently closed out of the courses they require to graduate due to lack of priority registration. However well-intended, S.764, seeks to solve a problem that does not seem to exist.

I hope that these concerns with S.764 are well received and highlight some of the possible unintended consequences of the proposed legislation. Thank you for the opportunity to work with the Senate Committee on Veterans' Affairs in crafting legislation to help our veteran population enrolled in institutions of higher education. We look forward to continue to work collaboratively with you in the future.

Sincerely,



Michael V. Reilly
Executive Director
American Association of Collegiate Registrars and Admissions Officers (AACRAO)

LETTER FROM MOLLY CORBETT BROAD, PRESIDENT, AMERICAN COUNCIL ON EDUCATION

One Dupont Circle NW
Washington, DC 20036
202 939 9300
acenet.edu

May 16, 2017

The Honorable Johnny Isakson
Chairman
U.S. Senate Committee on Veterans' Affairs
SR-412 Russell Senate Office Building
Washington, DC 20510-6375

The Honorable Jon Tester
Ranking Member
U.S. Senate Committee on Veterans' Affairs
SR-412 Russell Senate Office Building
Washington, DC 20510-6375

Dear Chairman Isakson and Ranking Member Tester:

Thank you for the invitation to submit comments on legislation being considered during your May 17 hearing, specifically the Veterans Education Priority Enrollment Act of 2017 (S.764). On behalf of the higher education associations listed below, representing two- and four-year, public and private, nonprofit colleges and universities, I am pleased to provide the following comments.

S. 764 requires that if an institution has a priority course enrollment system, the institution must allow veterans to enroll in classes at "the earliest possible time" permitted under that system. Failure to provide priority enrollment for veterans and others using VA education benefits would result in the institution losing its eligibility to participate in the Post-9/11 GI Bill.

We support the intent of the legislation, which is to help veterans complete their degrees in a timely manner while using their Post-9/11 benefits. However, although some institutions and states have adopted veteran-priority registration policies, we are unaware of any evidence documenting a widespread problem that would warrant this type of federal mandate.

Colleges and universities serve a range of diverse student populations, many of whom are priorities for the nation and the federal government, including veterans. Others include students with disabilities, first-generation students, underserved populations, students who are near completion or who need a particular course sequencing to complete or stay on track to on-time completion. Many campuses provide priority registration to juniors or seniors, or students needing a particular course for their major. However, under the bill, an institution would be required to provide the same priority status to a freshman student veteran as a senior who needs one class to graduate. Colleges need to maintain flexibility in enrollment and registration policies to balance these priority student populations.

In addition, it is unclear how the bill's requirements would interact with existing campus registration policies, which vary significantly. The bill assumes that all colleges and universities have tiered systems, where students register at different times according to different criteria. But this is not always the case. For example, if an institution allows all students to register at the same time but gives a preference to those needing courses for their major, would the bill's requirements be fulfilled since veterans were able to register "at the earliest possible time" even though they received no special priority?

Division of Government and Public Affairs ♦ Telephone: 202 939 9355 ♦ FAX: 202 833 4762

Colleges and universities are committed to helping veterans succeed in meeting their higher education goals. Institutions have implemented a number of strategies to support veterans tailored to meet the needs of their specific campuses and student populations. While some campuses have implemented veteran-priority registration policies, this may not be the best strategy for every campus.

We strongly support efforts to help veterans succeed. We recommend reframing the bill to encourage institutions to consider implementing priority policies rather than mandating them and allow institutions the flexibility to find solutions that work best for their campuses. We believe this change would go a long way toward addressing our concerns. It also has the added benefit of ensuring that the bill would not conflict with existing state laws on the subject.

Thank you for your work to support student veterans. We welcome the opportunity to work with you as the legislation moves forward.

Sincerely,

Molly Corbett Broad
President

On behalf of:

American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Association of Public and Land-grant Universities
Hispanic Association of Colleges and Universities
National Association of College and University Business Officers
National Association of Independent Colleges and Universities

MCB/ldw

PREPARED STATEMENT OF AMY WEBB, LEGISLATIVE POLICY ADVISOR, AMVETS

STATEMENT FOR THE RECORD
AMY WEBB
AMVETS LEGISLATIVE POLICY ADVISOR
BEFORE THE
UNITED STATES SENATE
COMMITTEE ON VETERANS' AFFAIRS

MAY 17, 2017

Chairman Isakson, Ranking Member Tester, and distinguished Members of the Committee,

Since 1944, AMVETS (American Veterans) has been one of the largest congressionally-chartered veterans' service organizations in the United States and includes members from each branch of the military, including the National Guard, Reserves, and Merchant Marine. We provide support for the active military and all veterans in procuring their earned entitlements, and appreciate the opportunity to present our views on the pending legislation being considered today.

S. 23, Biological Implant Tracking and Veteran Safety Act of 2017

AMVETS supports this bill, which directs the Department of Veterans Affairs (VA) to either adopt the unique device identification system developed for medical devices by the Food and Drug Administration (FDA), or implement a comparable system for identifying biological implants intended for use in VA medical facilities. It permits a vendor to use any issuing agency that is accredited by the FDA and to implement inventory controls compatible with a tracking system so patients who have received a biological implant in a VA medical facility subject to an FDA recall can be appropriately notified. If the biological implant tracking system is not operational within 180 days after date of enactment, the VA is required to report monthly to Congress with an explanation as to the delay, until the system is operational.

The VA swill procure implants under General Services Administration Federal Supply Schedules unless they are not available under the schedules; accommodate reasonable vendor requests to perform outreach efforts to educate VA medical professionals about the use and effectiveness of implants; and procure biological implants that are unavailable under such schedules using competitive procedures in accordance with the Federal Acquisition Regulation. Any VA employee responsible for making biological implant procurements that shows an intent to avoid or disregard the requirements of this bill will be ineligible to hold a certificate of appointment as a contracting officer, or to serve as the representative of an ordering officer, contracting officer,

or purchase card holder. Certain biological implants may be temporarily procured by the VA without relabeling under the standard identification system.

S. 112, Creating a Reliable Environment for Veterans' Dependents Act

This bill authorizes per diem payments, under the comprehensive service programs for homeless veterans, to furnish care to dependents of homeless veterans. AMVETS supports this measure, with the stipulation that resources be made available for funding the payments.

S. 324, State Veterans Home Adult Day Health Care Improvement Act of 2017

AMVETS supports this bill, which directs the Department of Veterans Affairs (VA) to enter into an agreement or a contract with each state home to pay for adult day health care for veterans who need the care either specifically for a service-connected disability, or, if not specifically for one, the veteran must have a service-connected disability rated 70% or more.

Payment under each agreement or contract between the VA and a state home must equal 65 percent of the payment that the VA would otherwise pay to the state home if the veteran were receiving nursing home care.

The adult day health care services provided include the coordination of physician services, dental services, and the administration of drugs.

S. 543, Performance Accountability and Contractor Transparency Act of 2017

AMVETS supports this bill which improves oversight of Department of Veterans Affairs (VA) contracts for services by ensuring that each contract includes:

- Measurable metrics to determine the performance of the provider of the service, relating to cost, schedule, and fulfillment of contract requirements.
- A plan of action and milestones for the provision of the service, with estimates of the dates on which significant portions of the contract will be completed and a description of the resources the service provider will assign to provide the service.
- Safeguards to ensure that the service provided meets a minimum threshold of quality determined by the Secretary, including authority for the Secretary to levy a financial penalty upon the service provider if the service provided fails to meet such threshold.
- Measurable metrics relating to the use of award or incentive fees.

In each contract for a service of more than $100,000,000, the Secretary will ensure the contract includes specific metric-based requirements.

S. 591, Military and Veteran Caregivers Services Improvement Act of 2017

This bill expands eligibility for the Department of Veterans Affairs (VA) Program of Comprehensive Assistance for Family Caregivers to members of the Armed Forces or veterans that have a serious injury or illness as a result of service prior to September 11, 2001. Services to caregivers of veterans under the program are expanded to include child care services or a monthly stipend to cover child care if VA cannot provide it, and financial planning and legal services related to the needs of the covered veteran and their caregivers. Peer-oriented group activities are also included in the expansion of respite care.

The expanded support services will terminate on October 1, 2022, except that any caregiver activities carried out on September 30, 2022, may continue on or after October 1, 2022.

The bill authorizes the transfer of a maximum of 36 months of post-9/11 education assistance to a spouse or children of seriously injured veterans in need of family caregiver services, without regard to length-of-service requirements.

Additionally, the bill requires the Office of Personnel Management to allow flexible work schedules or telework to covered federal employees who are caregivers of veterans.

The Public Health Service Act is amended to designate a veteran participating in the program of comprehensive assistance for family caregivers as an adult with a special need for purposes of the lifespan respite care program. An interagency working group is established in the executive branch to review and report on policies relating to the caregivers of veterans and members of the Armed Forces. Finally, this bill requires a longitudinal study on seriously injured or ill post-9/11 veterans, including mental health injuries, and those who are their caregivers. The study parameters include quantifying the veterans' health and employment status and the potential impact that having a caregiver has in those areas; as well as the financial status and needs of the veteran and the use of VA benefits by the veteran. The initial report would be due to Congress by October 1, 2021, and then every four years after submission of the first report.

While AMVETS has concerns about the transferability of the post-9/11 education benefits, we support this measure. Since VA is currently fine tuning the Program of Comprehensive Assistance for Family Caregivers, we are encouraged that the result will enable the program to be expanded with greater ease.

S. 609, Chiropractic Care Available to All Veterans Act of 2017

AMVETS supports this bill, which amends the Department of Veterans Affairs (VA) Health Care Programs Enhancement Act of 2001 to require chiropractic care and services to veterans at all VA medical centers and clinics. This must be implemented in at least 75 VA medical centers by December 31, 2018; with full implementation required by December 31, 2020. Chiropractic services will also be included under VA medical, rehabilitative, and preventive health care services.

S. 681, Deborah Sampson Act

This bill aims to improve the benefits and services provided by the Department of Veterans Affairs (VA) to women veterans. Title I, Sections 101, 102 and 103 require a pilot program on peer-to-peer assistance for women veterans; expand the capabilities of the VA Women Veterans Calls Center to include texting; and provide reintegration and readjustment services to veterans and family members in a group retreat settings. AMVETS supports Title I.

Title II, Sections 201 and 201 requires VA to partner with at least one nongovernmental organization to provide legal services to women veterans focusing on their top ten unmet needs outlined in the most recent Community Homelessness Assessment, Local Education and Networking Groups (CHALENG) for veterans' survey; and funds are appropriated through the end of fiscal year 2018 for the supportive services for veteran families grant program to support organizations that focus on aiding women veterans and their families. AMVETS supports Title II.

Title III, Sections 301 and 302 extend the eligibility of newborn care from seven to 14 days; and clarifies that medically necessary travel in connection with health care provided to newborns will come from VA Medical Services appropriations. AMVETS supports Title III.

Title IV is related to eliminating barriers that women veterans face when accessing VA health care. Section 401 retrofits and modifies VA medical facilities to support the actual provision of care to women; Section 402 requires that all VA medical facilities are staffed with at least one women's health primary care provider, who would be asked to train other health care providers on the needs of women veterans, "to the extent possible." This position would not be required to be full time. Section 403 would require that each VA medical center be staffed with not only a Women Veteran Program Manager but also a Women Veteran Program Ombudsman. Section 404 provides $1,000,000 annually for the VA Women Veterans Health Care Mini-Residency Program to provide participation for primary and emergency care clinicians. AMVETS supports Title IV.

Title V requires enhanced data collection and reporting on veterans. Section 501 provides for collection and analyzation of data for each VA program that offers a service or benefit to veterans, to be extrapolated by sex and minority status, and for the data to be published, unless the Secretary determines that would undermine the anonymity of a veteran. Section 502 requires a report on the availability of prosthetics for women veterans. Section 503 requires that VA survey its current websites and information resources on the day prior to enactment, and then publish a website to serve as a centralized source for women veterans to obtain information about VA services available to them. Section 504 is a Sense of Congress on changing the VA motto, "*To care for him who shall have borne the battle*," to be more inclusive. AMVETS supports Sections 501, 502, and 503. AMVETS does not support the Sense of Congress on changing the motto of the Department of Veterans Affairs. VA has expanded its mission to: *"To fulfill President Lincoln's promise 'To care for him who shall have borne the battle, and for his widow, and his orphan' by serving and honoring the men and women who are America's Veterans."* While we wholeheartedly support inclusion and respecting given pronouns, in this situation the historical relevance and non-sexist intention takes precedence.

S. 764, Veterans Education Priority Enrollment Act of 2017

AMVETS supports this bill which requires that educational institutions that offer a priority enrollment system allowing certain students to enroll in courses earlier than other students, must include veterans, members of the Armed Forces serving on active duty or a member of a reserve component (including the National Guard); dependents who have had educational benefits transferred; or any other individual using such assistance if they are part of an educational assistance program provided in title 38 under chapters 30, 31, 32, 33, or 35; or chapters 1606 or 1607 of title 10.

S. 784, Veterans' Compensation Cost-of-Living Adjustment Act of 2017

The COLA Act would provide for an increase in the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans effective December 1, 2017.

The dollar amounts to be increased would be wartime disability compensation, additional compensation for dependents, clothing allowance, dependency and indemnity compensation to surviving spouse, and to children.

Each dollar amount would be increased by the same percentage as the Social Security Act, effective December 1, 2017.

The Secretary of Veterans Affairs would publish the amounts specified as increased in the Federal Register no later than the date on which those pertaining to the Social Security Act are required to be published.

AMVETS supports this COLA Act, and encourages its swift passage.

S. 804, Women Veterans Access to Quality Care Act

AMVETS supports this bill which directs the Department of Veterans Affairs (VA) to establish standards to ensure that all VA medical facilities have the structural characteristics necessary to adequately meet the gender-specific health care needs of veterans, including privacy, safety, and dignity. The established standards must be integrated into its prioritization methodology with respect to requests for funding major medical facility projects and major medical facility leases, and there will be a report on implementation of these standards and which facilities meet or fail to meet them.

The VA will also be required to establish policies for environment of care inspections at VA medical centers (VAMC), to include alignment of inspection requirements with the Veterans Health Administration women's health handbook, and certify that policies have been finalized and distributed to all VAMCs.

The VA will use health outcomes for women veterans receiving VA health care in evaluating the performance of VA medical center directors; publicly publish this information on its website and ensure that every VA medical center has a full-time obstetrician-gynecologist. VA will also implement a pilot program in at least three Veterans Integrated Service Networks in order to increase the number of residency program positions and graduate medical education positions for obstetrician gynecologists at VA medical facilities.

The VA must develop procedures to share electronic information that includes military service and separation data, personal email addresses and telephone numbers, and mailing addresses of veterans with state veterans agencies in order to enhance assistance and benefits to women veterans. A veteran may elect to opt-out of this.

The bill requires the VA to carry out an examination of whether VA medical centers can meet the health care needs of women veterans by studying:

- The wait times for women veterans for appointments for the receipt of hospital care, medical services, or other health care.
- Whether the medical center has a clinic that specializes in the treatment of women.
- The number of full-time obstetrician-gynecologists.
- The number of health professionals trained in women's health.
- The extent to which the medical center conducts regular training on issues specific to women's health; and sensitivity training.
- The differences in health outcomes between men and women.
- The security and privacy measures used in registration, clinical, and diagnostic areas.
- The availability of gender-specific equipment or procedures.
- The extent to which the Center for Women Veterans of the Department advises and engages with the medical center with respect to providing health care to women veterans.
- The extent to which the medical center implements directives from the Center for Women Veterans.
- The outreach conducted by the Department to women veterans in the community served by the medical center.
- The collaboration between the medical center and non-Department entities, including veterans service organizations, to meet the health care needs of women veterans.
- The effectiveness of Patient Aligned Care Teams in meeting the health care needs of women veterans.

S. 899, Department of Veterans Affairs Veteran Transition Improvement Act

AMVETS supports this measure which ensures that veterans with a disability rating of 30 percent or higher who are hired by the VA in critical medical positions can access additional paid sick leave during their first year on the job for the purposes of receiving medical care related to their service-connected condition.

S. 1024, Veterans Appeals Improvement and Modernization Act of 2017

If passed, this measure will improve the lives of hundreds of thousands of veterans stalled and stuck in the broken appeals process. AMVETS is pleased that this bill addresses the input of a variety of stakeholders; that it protects the effective date of a benefits award; and that it further refines and improves the process to accomplish in an average of 125 days what is currently taking up to 1,825 days (5 years). AMVETS fully supports this important piece of legislation.

Draft Bill, Serving our Rural Veterans Act (Sullivan, Tester)

This measure notes the Sense of Congress that the Department of Veterans Affairs (VA) relies on agreements with the Indian Health Services and tribal health organizations to serve native and non-native veteran populations, especially in rural areas of the United States due to limited VA infrastructure or personnel.

This bill authorizes payments by VA for costs associated with training and supervision of medical residents and interns at non-VA facilities that are operated by an Indian tribe, tribal organization, or the Indian Health Service. It also includes federally-qualified health centers.

It requires the Secretary of VA to carry out a pilot program to establish or affiliate with residency programs at facilities operated by Indian tribes, tribal organizations, and the Indian Health Service. AMVETS has a National Resolution related to rural veterans' health care, and supports passage of this bill.

Draft Bill, Veteran Partners' Efforts to Enhance Reintegration Act (Blumenthal)

The PEER Act would establish a peer specialist program in patient aligned care teams (PACTs) at medical centers of the Department of Veterans Affairs (VA) to promote the use and integration of mental health services in a primary care setting. This would occur in at least ten VA medical centers within 180 days after date of enactment. Within two years of enactment peer specialists in PACTs would be present in at least twenty-five VA medical centers.

The selection of medical centers would represent a balance of geographic locations; at least five medical centers that specialize in polytrauma and at least ten that do not; those in rural and underserved areas; and those not near an active duty military installation.

Each location selected would ensure that the needs of women veterans were specifically considered and addressed, and female peer specialists would be included in the program.

Within 180 days of enactment, and at least once every following 180 days until the program was fully implemented, the Secretary would submit a report to Congress detailing findings, conclusions, and an assessment of the benefits to veterans and their family members. Within 180 days of the last location being selected, the Secretary would submit an additional report to Congress containing recommendations on the feasibility and advisability of expanding the program to additional locations.

Peer specialists are noted for being engaged in their own recovery, and who provide peer support services to others engaged in mental health treatment. AMVETS supports the integration of mental health services into primary care, and the patient-centric approach of the PACT model of care. Peer Specialist delivered interventions have been shown to improve patient activation in multiple studies. It is also important that women veterans receive access to care that specifically addresses their needs.

AMVETS has a National Resolution on Mental Health Care Services and supports the PEER Act, but notes that in August 2014, the White House issued an Executive Action mandating that twenty-five VA medical centers place Peer Specialists on Primary Care Teams. An update from VA's Office of Research and Development, in collaboration with the National Center for Health Promotion and Disease Prevention, shows that the, "Evaluation of Peer Specialists on VA PACTs (Peers on PACT)" officially began in January 2016, final data is projected to be collected in January 2018, and in September 2019 the study and findings are expected to be complete.

PREPARED STATEMENT OF LAUREN AUGUSTINE, DIRECTOR, GOVERNMENT RELATIONS, GOT YOUR 6

Bill Num.	Bill Name or Subject	Sponsor	IAVA Position
S. 290	Increasing the Department of Veterans Affairs Accountability to Veterans Act of 2015	Sen. Moran	Supports
S. 23	Biological Implant Tracking and Veteran Safety Act	Sen. Cassidy (R-LA)	No Position
S. 112	Creating a Reliable Environment for Veterans' Dependents Act	Sen. Heller (R-NV)	Support
S. 324	State Veterans Home Adult Health Care Improvement Act	Sen. Hatch (R-UT)	No Position
S. 543	Performance Accountability and Contractor Transparency Act	Sen. Tester (D-MT)	No Position
S. 591	Military and Veteran Caregivers Services Improvements Act	Sen. Murray(D-WA)	Support
S. 609	Chiropractic Care Available to All Veterans Act	Sen. Moran (R-KS)	No Position
S. 681	Deborah Sampson Act	Sen. Tester (D-MT)	Support
S. 764	Veterans Education Priority Enrollment Act	Sen. Brown (D-OH)	No Position
S. 784	Veterans' COLA Act	Sen. Isakson (R-GA)	No Position
S. 804	Women Veterans Access to Quality Care Act	Sen. Heller (R-NV)	Support
S. 899	Veteran Transition Improvement Act	Sen. Hirono (D-HI)	No Position
S. 1024	Veterans Appeals Improvement and Modernization Act	Sen. Isakson (R-GA)	Support
S. 1094	Accountability and Whistleblower Protection Act	Sen. Rubio (R-FL)	Support
Draft	Serving our Rural Veterans Act	Sen. Sullivan (R-AK)	Support
Draft	Veteran Partners' Efforts to Enhance Reintegration Act	Sen. Blumenthal (D-CT)	Support

CHAIRMAN ISAKSON, RANKING MEMBER TESTER AND DISTINGUISHED MEMBERS OF THE COMMITTEE, On behalf of Got Your 6, I would like to extend our gratitude for the opportunity to share our views regarding several of these pieces of legislation.

The mission of Got Your 6 is to empower veterans to lead a resurgence of community across the country. Got Your 6 believes, and our research confirms, veterans are leaders, team builders, and problem solvers who have the unique potential to strengthen communities across the country. As a coalition, Got Your 6 works to integrate these perspectives into popular culture, engage veterans and civilians together to foster understanding, drive veteran empowerment policy, and empower veterans to lead in their communities.

This month, we celebrated the five-year anniversary of Got Your 6. Formed out of Hollywood as a movement to more accurately portray veterans in film and television, Got Your 6 has since gone on to lead the veteran empowerment movement by spearheading and publishing research, which proves veterans are civic assets, granting out more than $6 million dollars to our best-in-class nonprofit partners, and leading an effort to change the national narrative around veterans as "broken heroes." Building on that success, Got Your 6 was proud to launch a policy department early in 2017 aimed at bringing the existing successes of the veteran empowerment movement and messaging to the halls of Congress.

The Got Your 6 policy framework includes advocating for legislation that:

1. Supports efforts to change the current narrative of veterans as only "broken heroes;"
2. identifies common sense reform that does not detract from existing services but does increase efficiency or cost savings;
3. recognizes the entire veteran population, including the 13 million who do not use the Department of Veterans Affairs (VA) for their health care needs; and,
4. supports a strong VA that adequately meets the needs of those veterans who choose to use it.

S. 112, THE CREATING A RELIABLE ENVIRONMENT FOR VETERANS' DEPENDENTS ACT

The Creating a Reliable Environment for Veterans' Dependents Act would allow VA-funded homeless shelters to be reimbursed for services provided to dependents of veterans.

Got Your 6 supports this bill, appropriately resourced by Congress, as a means to empower veterans with dependents out of homelessness and back into their communities. At Got Your 6, we view families and dependents as part of the whole of a veteran. Excluding coverage for veterans' dependents from the care and services at homeless shelters has the potential to exacerbate the complications of homelessness for a vulnerable population of veterans and could perpetuate homelessness.

Allowing the VA to reimburse homeless shelters for veterans' dependents goes beyond providing families a place to sleep. The ancillary services, such as employment training, available to veterans utilizing VA's homeless services, provide the critical tools necessary to ensure long-term successful integration into the civilian world. Veterans with dependents could especially benefit from these services and use them to empower themselves and their families into sustainable housing and stronger community reintegration.

S. 591, THE MILITARY AND VETERAN CAREGIVERS SERVICES IMPROVEMENT ACT

The Military and Veteran Caregivers Services Improvement Act would expand the current VA caregivers program to veterans of all eras, expand eligibility parameters for the program, create a national interagency working group, and add additional services to the program, among other provisions.

Veteran and military caregivers provide daily care for our Nation's most grievously wounded veterans, often leading to their own employment, financial, and health challenges. The VA's current caregiver program is intended to provide comprehensive support for these individuals, connecting them with VA professionals who can aid and empower them to best support their veteran while leading fulfilling lives of their own. However, the current program is limited to caregivers of post-9/11 veterans leaving the vast majority of caregivers with limited support and resources.

Got Your 6 supports this legislation—services and support intended to empower caregivers should not be tied to a specific generation of service. Got Your 6 appreciates the VA's concerns with expanding its current caregiver program and recognizes such an expansion would require significant staff resources and appropriations but believes the need for expansion is necessary.

S. 681, THE DEBORAH SAMPSON ACT

The Deborah Sampson Act would support the VA's mission to adequately meet the needs of women veterans by: increasing peer-to-peer assistance, encouraging greater collaboration with community partners, expanding maternity and newborn care, eliminating existing barriers to care, and collecting and disseminating data specific to women veterans.

Since our Nation's founding, and especially over the last 16 years, women have served in a variety of roles in our Armed Forces, but their service is often overlooked and their needs misunderstood by the VA and the American public. This March, Got Your 6 challenged the national narrative around women veterans by launching the PSA #ShesBadass to better illustrate the truly remarkable service of women.

According to VA data, women now total almost 11 percent of all veterans, including 20 percent of veterans under the age of 50, yet many people under appreciate their contributions and accomplishments. For example, after exiting the military, women veterans are more likely to attend and complete higher education degrees compared to their male veteran or civilian counterparts; have higher average incomes than non-veterans ($54,000 vs. $44,000); and are more likely to work in management roles and professions compared to their non-veteran counterparts. Women veterans are a force of impactful change for our Nation as a whole and empowering them to continue to do so only strengthens us all.

While our #ShesBadass campaign serves as a powerful tool in helping to reshape the way America views women veterans, there are still real challenges many women face when seeking care and benefits at the VA. Got Your 6 supports S. 681 as it reduces barriers to care and benefits and better equips the VA to address some of the challenges women continue to face. The veteran community's support of this legislation cannot be held in a vacuum; such transformational change will also require adequate appropriations and a continued commitment from VA leadership to make equity a priority.

However, better delivery of benefits and care by the VA should not be viewed as the only means to empower women veterans, and it risks excluding and further marginalizing those women who choose not to utilize the VA. We encourage this Committee to challenge their own views on women veterans, to seek out and highlight resources that empower women in their communities outside the VA, and leverage the amazing contributions women veterans are making to society across the country.

S. 804, THE WOMEN VETERANS ACCESS TO QUALITY CARE ACT

The Women Veterans Access to Quality Care Act would require improvements to VA infrastructure, include women's health outcomes as a performance measure for VA medical center executives, mandate improved policies for environment of care inspections, and ensure greater access to Obstetricians-Gynecologists, among other provisions.

As stated above, Got Your 6 has been a leader in highlighting the strength of women veterans through our #ShesBadass campaign, but we also recognize the VA continues to have challenges in adequately meeting the needs of women veterans seeking care at VA facilities. We support S. 804 and the improvements to VA policies and infrastructure included in the bill that will address some of these deficiencies. Again, we reiterate that these changes cannot be accomplished without adequate resources and continued leadership on the issue across the VA enterprise.

S. 1024, VETERANS APPEALS IMPROVEMENT AND MODERNIZATION ACT

The Veterans Appeals Improvement and Modernization Act would address many of the challenges experienced under the current disability claims appeals process by creating three routes for veterans to choose from if they want to appeal the initial decision made on a claim for VA benefits, allowing those veterans currently going through the appeals system to opt in to the new system, requiring the VA to test the new system before full implementation, and requiring the VA to submit a plan on full implementation of the new system and how it will process existing appeals.

Comprehensive appeals modernization is a long-standing priority of the veteran community. The current, antiquated system is under the burden of a significant backlog, which can often leave veterans waiting years for a decision. Eligibility for many of the empowering services and benefits offered by the VA are tied to these appeals decisions, leaving some veterans in limbo. Additionally, the VA workforce can be more efficient in its operations under this new system, opening up resources and opportunities for greater efficiency in benefit delivery. Because of this, Got Your 6 supports this legislation and encourages Congress to finally address the VA's need for a modernized appeals process.

S. 1094, DEPARTMENT OF VETERANS AFFAIRS ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION ACT

This bill comprehensively addresses workforce management needs at the VA by shortening the removal process, ensuring removed employees are not kept on VA payroll while in the appeal process, and ensuring due process protections for whistleblowers, among other provisions.

The need to provide the VA Secretary greater workforce management flexibility has been frequently debated and discussed by many in the veteran community over the last three years. But, progress on enacting legislation to address this need has continuously stalled due to partisan gridlock and legitimate legal concerns over Constitutional workforce protections.

Got Your 6 is encouraged by the bipartisan nature of this bill and we support this legislation as a means to provide VA's leadership more efficient workforce management options. Our support being stated, we also call on leaders within this Committee to work with their counterparts in the House of Representatives to address any potential differences in intent and specific language, which has stalled movement on this issue for three years.

DRAFT, SERVING OUR RURAL VETERANS ACT

This bill would create a pilot program to cover the costs associated with medical residencies and internships in partnership with tribal health care facilities.

A shortage of health care providers, and mental health care providers in particular, is not a unique VA problem, it's an American problem. This shortage is felt even more acutely in our rural communities where recruitment and retention are especially difficult. The pilot program established in this legislation would help address some of these barriers by leveraging and expanding the existing partnership

with tribal health care facilities and allows the VA to cover expenses of medical residencies at such facilities.

Got Your 6 supports this legislation as it encourages the VA to continue seeking ways to increase its operational efficiencies and its ability to successfully meet the needs of veterans regardless of their location. Additionally, this bill could serve the national population at-large by creating a lesson in best practices for ways the Federal Government can help address the overall provider shortage. We also encourage Congress to work with the VA to address any concerns related to the implementation and intent of the bill to ensure maximum impact and success of such a pilot program.

DRAFT, THE VETERAN PARTNERS' EFFORTS TO ENHANCE REINTEGRATION ACT

This bill would expand the VA's peer support model, currently used in mental health care, into the primary care setting.

Recognizing the importance of addressing common mental health care concerns in the primary care setting, the VA has begun to co-locate mental health care providers in the primary care setting. This supports the VA's unique ability to integrate services and reduce the burden of seeking multiple facets of care for veterans. However, peer support specialists, who we believe are integral, have yet to be integrated in a similar manner.

The VA's peer support program is directly aligned with the mission of Got Your 6: it aims to empower veterans with the tools necessary to successfully reintegrate fully into the community. Peer Specialists do this partly through storytelling and sharing their own paths to success. Got Your 6 believes storytelling is a powerful way to empower veterans, reduce the civilian-military divide, and destigmatize seeking help when needed and strongly supports this bill as a means to grow the peer support program at the VA to meet those objectives.

In conclusion, Got Your 6—through our 34 direct-impact, non-profit partners who collectively represent three million veterans and their families, as well as through our efforts to empower and challenge veterans when they return home—are a new voice which represents all veterans, of all generations, of all backgrounds. We put veterans first and challenge them not to think of themselves as broken, but as the leaders our country is desperately searching for. The veteran empowerment movement is young, but it is already the voice of millions of veterans looking to challenge the status quo.

The veteran empowerment movement also addresses the majority of veterans who do not use the VA. Got Your 6 encourages this Committee to consider holding a topical hearing on community programs and veteran organizations currently meeting the needs of and empowering veterans outside the walls of VA facilities.

We would like to thank this Committee for its leadership on veterans' issues and look forward to working together to empower all veterans.

PREPARED STATMENT OF MILITARY OFFICERS ASSOCIATION OF AMERICA

CHAIRMAN ISAKSON, RANKING MEMBER TESTER, AND MEMBERS OF THE COMMITTEE, The Military Officers Association of America (MOAA) is pleased to present its views on pending legislation under consideration by the Committee.

MOAA does not receive any grants or contracts from the Federal Government.

EXECUTIVE SUMMARY

On behalf of the Military Officers Association of America, the largest military service organization representing the seven uniformed services, including active duty and Guard and Reserve members, retirees, veterans, and survivors and their families, MOAA thanks the Committee for holding this very important hearing and for your continued support of our Nation's servicemembers and veterans and their families.

This is a critical time for the Department of Veterans Affairs (VA) as the agency continues its aggressive transformation efforts. MOAA believes many of the bills being considered today will buildupon the work of the Committee and the secretary of VA to further enhance the agency's health and benefits systems. Our association looks forward to working with the members and staff to strengthen and improve the legislation enacted this year.

MOAA offers our position on the following select bills. MOAA takes no position on the remaining bills before the Committee, as some are outside our scope of expertise.

Health Care:

- S. 112, Creating a Reliable Environment for Veterans' Dependents Act
- S. 591, Military and Veteran Caregiver Services Improvement Act of 2017
- S. 681, Deborah Sampson Act
- S. 784, Veterans' Compensation Cost-of-Living Adjustment Act of 2017
- Draft Bill, Serving Rural Veterans Act of 2017

Benefits/Accountability:

- S. 1024, Veterans Appeals Improvement and Modernization Act of 2017
- S. 1094, Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017

HEALTH CARE

S. 112, CREATING A RELIABLE ENVIRONMENT FOR VETERANS' DEPENDENTS ACT—The bill would authorize per diem payments for homeless veterans receiving comprehensive support services in order to furnish care to their dependents.

MOAA supports the bill. Veteran homelessness continues to be a high priority for the VA and our Nation. Since the VA launched a massive campaign to end veteran homelessness in 2009, rates have steadily declined, down by nearly 50 percent. While rates are declining, veterans with families have been increasing in recent years. As the VA continues to serve more veterans than ever by providing health care, education, job training, and many other wellness and welfare services, there is still more to be done—and the needs are so much greater for veterans with children. Per diem payments for homeless veterans will go a long way toward giving veterans a hand up as they move down a path to achieving family stability and long-term security.

S. 591, MILITARY AND VETERAN CAREGIVER SERVICES IMPROVEMENT ACT OF 2017—This measure expands eligibility and comprehensive assistance and benefits for family caregivers participating in the VA's Caregiver Support Program.

Specifically, the bill expands eligibility for participation and services to family caregivers of veterans of all eras, rather than the current population of post-9/11 veterans, and includes 'illness,' rather than just 'serious injury,' as a criterion for eligibility.

Additionally, the measure provides for a number of other program expansions, including:

- Child care services or monthly stipend for such services;
- Financial planning and legal services;
- Adjustment to calculating caregiver stipend for performing personal care services;
- Authority to transfer entitlement of unused post-9/11 education benefits to family members;
- Flexible work arrangements for certain Federal employees;
- Lifespan respite care; and
- Establishment of an interagency working group on caregiver policy.

MOAA generally supports the measure. Since passage of Public Law 111–163, the Caregivers and Veterans Omnibus Health Services Act of 2010, MOAA and our partners in The Military Coalition have supported the expansion of eligibility for the Caregiver Support Program to veterans with illnesses and to those who served before Sept. 11, 2001.

Given the current challenges and assessment of the program, MOAA would not support the additional program expansions in the bill at this time until the VA has completed a thorough review of the program and offered recommendations to Congress on how to improve the program. The association, however, does support the establishment of an interagency working group as a valuable asset to the VA as it reforms and refines the Caregiver Support Program going forward.

MOAA urges the Committee to adopt the provisions to expand eligibility to veterans who served before Sept. 11, 2001, and veterans with illnesses and to establish an interagency working group on caregiver policy.

S. 681, DEBORAH SAMPSON ACT—The bill would improve the benefits and services provided by the VA to women veterans. Women are joining the military at rates unlike any other time in history, and they are accessing VA health care at higher rates than male veterans. While the VA has worked hard to address the growing demand, the department requires additional resources to implement system improvements and services to meet current and future needs of women veterans.

MOAA supports S. 681. Offering peer-to-peer assistance and legal and supportive services, extending newborn care, eliminating barriers to access, and establishing

data collection and reporting requirements will help the VA better target the needs of women and minority veterans. MOAA, however, takes no position on Sec. 504, Sense of Congress on changing the motto of the VA to be more inclusive.

S. 784, VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2017—Each year legislation is introduced to provide a cost-of-living increase in compensation rates for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of veterans. This bill provides for such increase effective Dec. 1, 2017.

MOAA supports S. 784.

DRAFT BILL, SERVING RURAL VETERANS ACT OF 2017—The bill would authorize the VA to pay for the costs of training and supervision of medical residents and interns at certain non-department facilities. Additionally, the bill would require the secretary to conduct a pilot program to establish or affiliate with residency programs at facilities operated by the Indian tribes, tribal organizations, and the Indian Health Service.

American Indians and Alaska Natives have historically had the highest rates of representation in the Armed Forces. The VA has dedicated significant attention and resources to addressing the unique needs of Native American veterans as well as veterans who live in very rural areas where access to quality health care can be a challenge. The department has worked hard in recent years to develop partnerships to expand access to services and benefits for Native American veterans and their families so they are able to access the benefits they have earned.

MOAA supports the draft legislation. This legislation builds on the existing work the VA has undertaken to improve access for Native Americans and rural veterans. The bill would provide the VA with additional tools to strengthen existing relationships and agreements with the Indian Health Service and tribal health organizations, as well as $20 million over an eight-year period to pilot critical educational and training initiatives for residency, intern, and graduate medical education pilot programs.

BENEFITS/ACCOUNTABILITY

S. 1024, VETERANS APPEALS IMPROVEMENT AND MODERNIZATION ACT OF 2017—This bill makes fundamental changes to the VA claims adjudication process. It would break up claims processing into three separate lanes, each representing a different phase of the claims process.

MOAA supports the bill. It is indisputable that the VA claims adjudication process is an unworkable solution, and for years the veterans' community has urged Congress and the VA to update these procedures. MOAA appreciates that the bill defines "supplemental claim," makes clear the duty to assist applies to supplemental claims, and provides additional effective date protections. Improvements, however, can be made in the legislation.

Board of Veterans' Appeals Dockets

This bill sets forth that the Board of Veterans' Appeals shall maintain two dockets, one for claimants requesting a hearing before the board and the other for claimants not requesting a hearing before the board.

MOAA supports allowing claimants the opportunity to submit evidence to the board directly. This allows claimants with legally complex claims to have a veterans law judge consider that evidence in conjunction with the questions of law instead of cycling through the agency of original jurisdiction (AOJ), where the AOJ may lack the legal acumen to adequately resolve the claim.

MOAA recommends the legislation be modified to provide that claimants submitting evidence directly to the board be placed on the "non-hearing docket." This is the closest docket fit to their circumstances because the claimant is not requesting a hearing. Further, regardless of whether a claimant's appeal includes additional evidence or not, the veterans law judge will be required to review evidence within the record. In other words, if a claimant merely appeals without submitting additional evidence, the board must still review all existing evidence in the record. Thus, the choice not to submit additional evidence does not prevent the board from having to review evidence.

We do not recommend the other option of placing these appeals on the "hearing docket," as this would disproportionately disadvantage the claimant. During roundtable discussions leading up to appeals reform legislative proposals, VA officials stated the hearing docket would be much slower than the non-hearing docket. It is unjust to force claimants not requesting hearings to wait behind those requesting hearings for the board to address their appeals, where it does not require any additional work of the veterans law judge to consider the additional evidence.

The VA has expressed concerns that including claimants with additional evidence amongst those without additional evidence on the same docket would confuse the "feedback loop," but we believe this is manageable. The feedback loop permits the board to provide input to the AOJ regarding errors the AOJ committed in the original adjudication of the claim. There appears to be no reason, however, the Board could not simply exclude the claims with additional evidence from the feedback loop and still provide very useful feedback to the AOJ from the remaining claims.

Collaboration with Veterans Service Organizations

MOAA greatly appreciates that the legislation mandates the VA collaborate with and give weight to the inputs of veterans service organizations. MOAA recommends, however, that references to "the three veterans service organizations with the most members" be modified to "the three veterans service organizations that file the most claims on behalf of claimants." Veterans service organizations serve many functions in the veteran community, not exclusively confined to filing VA benefits claims. Merely because a veterans service organization has a large number of members does not necessarily mean the organization is the best advisor related to the VA claims process. A more reliable gauge of a veterans service organization's value to the process is the number of VA claims filed by the organization. The Veterans Benefits Administration already tracks the number of claims filed by each veterans service organization, making this information readily available to VA.

Fully-Developed Appeals

MOAA supports granting the secretary the authority to carry out a fully-developed appeals program because it would allow a claimant to expedite a claim to the board with all evidence needed for the appeal. This goal is consistent with the overall intent of VA appeals modernization.

This process would also be almost identical to the process for a claimant participating in the modernized appeals process who chooses to submit additional evidence for the board's consideration. For that reason, MOAA recommends appeals processed using this option be docketed in the non-hearing option. This would prevent the need for the board to maintain a third docket, as the legislation currently contemplates. A third docket with varying processing rules would be very confusing to claimants in understanding whether their claim is being handled properly.

Although this legislation includes extensive changes to the VA claims process, MOAA believes further efforts will be necessary by Congress to improve the process, including, but not limited to, addressing the precedential value of agency determinations and giving equal consideration to both private and VA medical evidence.

S. 1094, DEPARTMENT OF VETERANS AFFAIRS ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION ACT OF 2017—This bill will provide the secretary of VA with additional authorities to expedite the removal of VA employees when warranted. MOAA's understanding is the bill would allow VA employees to still utilize employee union representation, merely within the timeline provided in the legislation.

MOAA supports this bill. The secretary should have all authorities and resources necessary to effectively manage the VA workforce. Although VA employees are predominantly very good at caring for veterans and take this responsibility very seriously, it is clear from recent events there are VA employees who do not and who have spent years embroiling the agency in protracted litigation at taxpayer expense, despite their clear disregard for the best interests of veterans. MOAA believes the agency should be allowed to focus on veterans' needs, and these expedited authorities will allow the secretary to do so.

MOAA thanks the Committee for considering this important legislation and for your continued support of our veterans and their families.

PREPARED STATEMENT OF CDR JOHN B. WELLS, USN (RET.), EXECUTIVE DIRECTOR, MILITARY-VETERANS ADVOCACY INC.

Introduction

Distinguished Committee Chairman Senator Johnny Isakson, Ranking Member Senator Jon Tester and other members of the Committee; thank you for the opportunity to present Military-Veterans Advocacy's views on the pending legislation before the Committee, S 1024, the "Veterans Appeals Improvement and Modernization Act of 2017."

About Military-Veterans Advocacy

Military-Veterans Advocacy Inc. (MVA) is a tax exempt IRC 501[c][3] organization based in Slidell, Louisiana that works for the benefit of the armed forces and military veterans. Through litigation, legislation and education, MVA works to advance benefits for those who are serving or have served in the military. In support of this, MVA provides support for various legislation on the State and Federal levels as well as engaging in targeted litigation to assist those who have served.

As well as legislative advocacy, Military-Veterans Advocacy represents veterans in all facets of the veterans law system. MVA is admitted to practice before the Department of Veterans Affairs, the Court of Appeals for Veterans Claims, the Court of Appeals for the Federal Circuit and the Supreme Court of the United States.

Military-Veterans Advocacy's Executive Director Commander John B. Wells USN (Ret.)

MVA's Executive Director, Commander John B. Wells, USN (Retired) is a 22 year veteran of the Navy. Commander Wells served as a Surface Warfare Officer on six different ships, with over ten years at sea.

Since retirement, Commander Wells has become a practicing attorney with an emphasis on military and veterans law. He is counsel on several pending cases at various levels in the veterans legal system. He is very familiar with the veterans law rules and presents Continuing Legal Education on this subject to other attorneys. Commander Wells, on behalf of MVA routinely brings cases before the Board of Veterans Appeals and is familiar with the deficiencies in the appellate system.

General Comments

S-1024 is a marginal improvement over previous VA sponsored attempts to revise the appellate reform system. This bill still concentrates too much on form rather than substance. The Secretary seems to be asking Congress to trust them to work for the benefit of the veteran. Repeated scandals including document destruction and falsification as well as criminal conduct on the part of the VA should put the Congress on notice that the Department, in its present form, is not worthy of trust. We hope that this review and our recommendations will be helpful in

crafting legislation that is results oriented.

The proposed legislation does nothing to fix the systemic problems within the VA Appellate system. Instead it seems to make the process easier for the VA, at the expense of the veteran. The proposed legislation flies in the face of the non-adversarial, pro-veteran system envisioned by Congress. Currently the VA takes an adversarial anti-veteran approach designed to provide the illusion of efficiency while denying veterans their earned benefits.

Areas of Concern With the Proposed Legislation

Other than allowing veterans stuck on the "hamster wheel" of the VA appellate system to opt in to the new system, the bill does nothing to address the pending inventory of over 450,000 appeals. The actions of the VA in clearing the backlog through increased claim denials has expanded the appellate backlog. For some unfathomable reason, the Secretary and Acting Executive of the Board of Veterans Appeals, have failed to take action to resolve this backlog. Currently, the Chairman has the power to appoint temporary Board members from VA employees. This needs to be changed legislatively to remove the qualification that the temporary board member be a VA employee. MVA recommends, allowing the appointment of retired Military Judges to adjudicate the backlog near their local residence. While that would require some training in VA law, the retired Military Judges are conversant with the hazard of military service. Additionally, they are trained to make decisions in an equitable and efficient manner.

MVA does appreciate the requirement that the Secretary submit a plan for dealing with legacy appeals however has little confidence that they will devise an acceptable methodology. MVA recommends codifying the solution proposed above.

Like other versions of this proposal, S 1024 continues to strip the duty to assist from the veteran after the initial decision. As attorneys are not able to provide paid representation until after the initial decision, this measure effectively eliminates any ability to supplement the record.

Given the woeful inadequacy of many Veterans Service Officers, most attorneys have to do a baseline review of the claims file and often use the duty to assist to obtain critical records to support the appeal. While inadequate at best, the duty to assist allows the attorney some latitude to obtain records to prepare the case. Without the duty to assist, the attorney will be required to rely upon the Freedom of Information Act. This will not only result in costs being attributed to the veteran but result in undue delay.

Removal of the restriction on attorney representation and the agency of original jurisdiction would help to relieve this matter. More importantly, basic discovery should be allowed. Once a case is docketed at the Board, the use of a scheduling order with milestones would ensure that the case proceeds efficiently. Assigning a board attorney to shepherd the process would help resolve matters. Providing the veteran and his representative with contact information would help expedite the process.

The duty to assist is a matter of due process and is consistent with *Cushman v. Shinseki,* 576 F.3d 1290 (Fed. Cir. 2009). In *Cushman,* the Federal Circuit joined seven of its sister Circuits in finding that there was a property interest, for due process purposes, in disability benefits. *Cushman,* 476 at 1297. Specifically *Cushman* recognizes a Constitutional right to due process in veterans benefits. In the event that the duty to assist provisions are enacted, Military-Veterans Advocacy will initiate litigation to stop its implementation.

The bill could be modified to allow a resumption of the duty to assist upon the filing of a Form 21-22a by an attorney indicating that he or she is representing the veteran. This reopening of the duty to assist can be limited to reasonable period, such as 90 days to allow the attorney time to obtain the documents necessary to prepare the appeal.

S-1024 retains the requirement that the veteran indicate in the Notice of Disagreement whether he or she desires a hearing or whether they wish to submit additional evidence. This effectively sets up separate dockets. As discussed below, this is not necessary should a scheduling conference/order be required as routinely occurs in other federal adjudication systems. More importantly, there is no ability to amend or supplement the request. In order to change the Notice of Disagreement, the veteran would have to withdraw and resubmit it, assuming that it was not outside the one year statute of limitations.

MVA feels that this provision is unconscionable. Attorneys are not required to provide that level of specificity when filing a notice of appeal in a federal appellate court. To expect a disabled veteran to meet this high standard is ludicrous.

While the bill does authorize the Secretary to issue regulations allowing for a change from one docket to another, this invitation is precatory. Military-Veterans Advocacy believes that unless required by Congress the Secretary will not issue those recommendations. Accordingly, Military-Veterans Advocacy strongly urges that the wording of proposed section 7107(e) be changed from "may develop and implement a policy allowing a claimant to move the claimant's case from one docket to another docket" to "shall develop and implement a policy allowing a claimant to move the claimant's case from one docket to another docket."

It is my understanding that the Federal Bar Association, the Vietnam Veterans of America and National Organization of Veterans Advocates also have voiced concerns with the process outlined in S-1024. While there is support from some of the Veterans Service Organizations, VSO's, practicing attorneys are less enthusiastic.

The proposed legislation does nothing to fix the systemic problems within the VA Appellate system. Instead it seems to make the process easier for the VA, at the expense of the veteran. The proposed legislation flies in the face of the non-adversarial, pro-veteran system envisioned by Congress. Currently the VA takes an adversarial anti-veteran approach designed to provide the illusion of efficiency while denying veterans their earned benefits.

The dual docket, while an improvement over the initial triple docket recommendation, is just silly. There is no need for multiple dockets. The Board should adopt the procedures used by other federal adjudication systems, hold a pre-hearing conference and issue a scheduling order. This order should include the hearing date and cutoff dates for requesting or waiving a hearing, submitting evidence and termination of the duty to assist. This would replace the vague and misleading letters issued by the board. Coordination of dates, and a process to modify the scheduling order for good cause, will streamline the process. Pre-hearing conferences can be scheduled by e-mail and conducted by telephone. It is a simple and effective system used everywhere except the Board of Veterans Appeals.

Areas of Concern Not Addressed in the Proposed Legislation

The proposed legislation does address the Board of Veterans Appeals but it does not speak to the crux of the problem. The key to solving the appellate backlog is addressing the systemic problems of the Board. Initially, and as a matter of priority, the President must appoint a qualified chairman of the Board. Secondly, MVA recommends that all members of the Board, acting or permanent, be certified as Administrative Law Judges. The lack of training and learned reasoning in the opinions of the Board members is frankly striking.

Perhaps the single step that could expedite the process would be the institution of electronic filing. Currently evidence and written arguments must be printed into hard copy and sent both to the Board and to the Evidence Intake Center in Janesville. Sometimes the information is scanned into the correct record - sometimes it is not. Electronic filing would eliminate the time required for processing and ensure that the information and evidence is appended to the correct record. All federal courts and most state courts use some form of electronic filing. Off the shelf software is available commercially at little expense. Additionally, the software would allow VSOs and attorneys access to the records of those they represent.

The controllable remand rate from the Board is definitely unsatisfactory. The veteran is often relegated to a "hamster wheel" in which his case is sent back and forth between the Board, the Regional office and the Court of Appeals for Veterans Claims. Too many cases are remanded back because the board member simply does not do his or her job. MVA proposes that if more than 30% of any Board member's decisions are remanded within a given year the Chairman should review the performance and recommend action to the Secretary including additional training, probation, suspension or termination. Remands based upon a change in law or regulation would be exempt from computing the remand percentage. Given the high level of remands, MVA recommends that this information be included in the annual report to Congress.

Although the Board members call themselves "Veterans Law Judges," no statute designate them as Judges and in reality the are not. Notably these Board members are VA career employees. They are not certified as Administrative Law Judges and seldom have any real judicial training or experience. This is one of the main reasons for the high remand rate.

Conclusion

The VA continues to try to re-invent the wheel and wonders why they get a square product. The key to appeals reform is to adopting provisions that work, not to over bureaucratize an already paper heavy system. Should our concerns regarding the duty to assist and the ability to change dockets be addressed we will withdraw our opposition to this bill, although we cannot support it. Military-Veterans Advocacy stands ready to work with the Committee and the Secretary to devise a process that will be both efficient and effective. S-1024 does neither.

John B. Wells
Commander, USN (retired)
Executive Director

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PREPARED STATEMENT OF JOHN KRIESEL, LEGISLATIVE CHAIRMAN, NATIONAL ASSOCIATION OF COUNTY VETERANS SERVICE OFFICERS

GOOD AFTERNOON CHAIRMAN ISAKSON, RANKING MEMBER TESTER, AND MEMBERS OF THE COMMITTEE, It is truly my honor to present this written testimony for this hearing. As Legislative Chairman of the National Association of County Veterans Service Officers, I am submitting this testimony, to give our organization's support for S. 1024, The Veterans Appeals Improvement and Modernization Act of 2017.

The National Association of County Veterans Service Officers is an organization made up of over 1,600 local government employees that advocate for veterans daily across all facets of veterans' benefits. We believe we can help the Department of Veterans Affairs reduce the number of cases in the Board of Veterans Appeals (BVA) inventory, currently standing at 469,000 appeals. As an organization, we feel this legislation is a needed step in the right direction. It is imperative that the VA and all Veteran Service Organizations work together to relieve claimants of the extreme wait times for decisions from the BVA.

There are many reasons appeals are generated out of County offices every day, it starts with VA Regional Offices failing to explain their decision in a way that makes sense to the veteran, and VA's unwillingness to work with veterans' advocates on addressing inaccuracies in a rating decision. The reason for this is, simply, because there is no incentive for the rating authority to work with veterans or their advocates. Instead, they must meet quotas to prove efficiency and very commonly County Veteran Service Officers are instructed DRO's (Decision Review Officers) to appeal to the BVA in lieu of them correcting the decision. This practice is one of the main contributing factors for the 469,000 appeals backlog at BVA. The sweeping changes in the appeals process included in S. 1024 are why NACVSO supports this legislation. Claimants in the new process will experience less waiting times, and VA Regional Office staff will receive meaningful feedback from the BVA on cases that have been remanded or overturned. For VA to work efficiently, guidance from the BVA on legal discrepancies in initial claims, must be done and within a timely fashion that offers solutions to misinterpreted regulations at the VARO level.

While we support S. 1024, we feel that it is important that we address our concern with a portion of the legislation. NACVSO believes every step in the claims process is an opportunity to adjudicate the claim in the claimants' behalf. As the claim continues to mature in the process the arguments are solely based on law and legal precedence. To allow a claim back into the Regional Office within one year of a Court of Appeals for Veterans Claims (CAVC) decision would require the local staff to rule against a board of judges. In practicality, the case would not receive a fair hearing again until it returns to the BVA. Allowing the claims cycle to continue on this journey promotes for-profit attorneys to keep the case alive based on little to no merit. Allowing this will keep the appeals backlog at an unnecessarily high number. The process today, and in this proposal, needs to have finality. If the

CAVC decision maintains a denial on legal grounds the attorneys representing that case need to have the wherewithal to advance the case to next higher court or simply inform the veteran that until evidence can be discovered that would weigh heavily in the reversing the decision, the claim and effective date will expire.

As an organization, the National Association of County Veteran Service Officers support the majority of changes included in S. 1024. We are proud to stand next to the Department of Veterans Affairs, fellow Veteran Service Organizations and Congress as we work toward a solution that will deliver quality and timely benefits to our veterans and their dependents.

PREPARED STATEMENT OF DR. JOSEPH WESCOTT, LEGISLATIVE DIRECTOR, NATIONAL ASSOCIATION OF STATE APPROVING AGENCIES

CHAIRMAN ISAKSON, RANKING MEMBER TESTER, AND MEMBERS OF THE COMMITTEE, The National Association of State Approving Agencies (NASAA) is pleased to provide its views on certain education benefits legislation under consideration by the Committee today, May 17, 2017, particularly S. 764.

NASAA does not receive any grants or contracts directly from the Federal Government, though its member organizations are state agencies operating in whole or in part under Federal contracts funded by Congress and administered by the Department of Veterans Affairs (VA).

On behalf of fifty-two State approving agencies (SAAs), including the territory of Puerto Rico and the District of Columbia, NASAA thanks the Senate Committee on Veterans Affairs for its strong commitment to a better future for all servicemembers, veterans and their families through its continued support of the GI Bill® educational program.

S. 764, A BILL TO AMEND TITLE 38, UNITED STATES CODE, TO IMPROVE THE ENROLLMENT OF VETERANS IN CERTAIN COURSES OF EDUCATION, AND FOR OTHER PURPOSES.

State approving agencies take seriously our role as "the gatekeepers of quality" and the "boots on the ground" defending the integrity of the GI Bill and making sure that only quality programs are approved by applying Federal and state law and regulation. An additional and equally important role is the continued oversight of these programs after their initial approval. We do so in conjunction with other stakeholders in veteran organizations and higher education, including state licensing agencies, state higher education departments, the Department of Veterans Affairs, the Department of Education and national and regional accrediting agencies.

We also seek to encourage our approved institutions to provide resources and policies which will help guarantee the success of our veteran students once they enroll in an SAA approved program. Congress, in establishing the laws and regulations governing the manner and method by which education could be approved for veterans, has wisely provided that the States, through their State approving agencies are best situated and staffed to evaluate and oversee educational programming being considered for approval and being continued for GI Bill payment. Certainly, it is not inappropriate for Congress to consider establishing, as a part of requirements for approval that educational institutions will extend to veterans the same priority registration rights that they provided to other groups or classes of students within their institutions. However, we think that given the consequences of failing to do so (i.e. none of the institutions programs can be approved for reimbursement under the GI Bill), it is important that Congress allow the institutions maximum control over how the priority enrollment policy is implemented. For instance, the following wording "the Secretary or a State approving agency may not approve a program of education offered by such institution unless such institution allows a covered individual to enroll in courses at the earliest possible time pursuant to such priority enrollment system," should be amended to allow institutions to implement this requirement in such a way that veterans would not compete for classes with students from other earlier class years. Likewise, since some schools will need time to implement this on their campuses, we would suggest that schools, which are already approved and have priority registration systems in place, be given adequate time to respond to the new approval requirements.

Finally, we would point out the recent legislation enacted by Congress recognizes the primary role played by State approving agencies in the area of program approval. As such we would request that Congress change the wording of 3680B(a) to read, "a State approving agency, or the Secretary when acting in the absence of a State approving agency, may not approve . . ."

Given the fact that many leading institutions of education, particularly accredited public institutions of higher learning (IHLs), are already offering student veterans

priority enrollment, we don't think that it is unreasonable to require that educational institutions offering this privilege to other student groups on their campus provide it to veterans as well.

For the reasons cited above, NASAA respectfully requests that the language of this bill be changed so that the manner and method of offering priority enrollment to veterans will not impede the graduation/progress of those students in classes senior to them. Likewise, we suggest the insertion of an effective date to allow already approved institutions time to develop and implement this requirement. Finally, the primary role of the States in the approval of programs should be protected and reflected in the language of the bill. With those amendments, NASAA supports this bill.

Today, SAAs throughout our Nation, composed of approximately 175 professional and support personnel, are supervising over 10,000 active facilities with 100,000 programs. We pledge to you that we will not fail in our critical mission and in our commitment to safeguard the public trust, to protect the GI Bill and to defend the future of those who have so nobly defended us. Mr. Chairman, NASAA thanks the Committee for the opportunity to share our concerns and suggestions and we commit to working together with you and your staff to enhance the pending legislation.

PREPARED STATEMENT OF RANDY REEVES, PRESIDENT, NATIONAL ASSOCIATION OF STATE DIRECTORS OF VETERANS AFFAIRS

The National Association of State Directors of Veterans Affairs, Inc.

May 17, 2017

The Honorable Johnny Isakson
Chairman
U.S. Senate Committee on Veterans Affairs
Russell Senate Office Building
Washington, D.C. 20510

The Honorable Jon Tester
Ranking Member
U.S. Senate Committee on Veterans Affairs
Russell Senate Office Building
Washington, D.C. 20510

RE: National Association of State Directors of Veterans Affairs (NASDVA) comments to The U.S. Senate Committee on Veterans Affairs

Dear Senator Isakson and Senator Tester:

On behalf of the National Association of State Directors of Veterans Affairs (NASDVA), thank you for the work and support of the Senate Committee on Veterans Affairs on behalf of our Nation's Veterans and for your commitment to making the systems and process that serve them better. We sincerely appreciate the opportunity to comment on the following legislation:

1. **S. 1024 - Veterans Appeals Improvement and Modernization Act of 2017**

NASDVA is honored to have been a part of the working group, including VA and a very wide group of our Nation's Veterans Service Organizations, whose work resulted in a workable framework, language and legislation that was introduced last year. The work and cooperation last year that yielded workable and sustainable Appeals Reform is unprecedented and should be the model for getting things done in the future. The process included stakeholders who are actually "on the ground" serving Veterans every day. We are hopeful that any final Appeals Modernization legislation will accurately reflect the work and majority agreement reached last year.

After reviewing S. 1024 "Veterans Appeals Improvement and Modernization Act of 2017" we submit the following comments:

NASDVA has been and continues to be concerned about (and cautions against) language that may be intended to allow/encourage expansion of fees charged by attorneys who represent Veterans in the appeals process. While there may be some claim that the aggrieved language enhances Veterans' rights, the real rights of our Veterans are best preserved when claims/decisions are made at the lowest possible level with the greatest efficiency; the core intent and foundation of the framework that was developed.

We are specifically concerned about language, as to effective date after the courts (Page 14, line 3-6 *"(E) A supplemental claim under section 5108 of this title on or before the date that is one*

year after the date on which the Court of Appeals for Veterans Claims issues a decision"), contained in S. 1024. The following items are germane:

a. An intentional feature of the design developed collaboratively with the Appeals Working Group was that Veterans would not be encouraged to initiate judicial review when there is an efficient administrative remedy available.
b. Allowing effective date protection after the Courts will likely provide incentive for filing an appeal to the Court for the sole purpose of generating attorney fees, notwithstanding the fact that a more immediate remedy is available in the administrative process.
    (1) As we understand, attorney fees would be available for representing claimants in the higher-level review, supplemental claim, and appeal lanes.
    (2) A reason behind effective date protection after the Courts (for paid attorneys) could be that it would delay resolution and generate more past due benefits; advantageous for attorneys but not good for Veterans.
    (3) As NASDVA has maintained previously, judicial review should be reserved for Veterans who believe they have exhausted their administrative remedies and have a meritorious legal issue.
    (4) <u>There is currently no effective date protection if the Court of Appeals for Veterans Claims (CAVC) affirms a Board of Veterans Appeals decision. The improved process, reflected in the collaborative/cooperative VA/stakeholder proposal, is not a change from the current system (on that point). Just as currently exists, in the new process, if CAVC vacates and remands the Board decision, the effective date is protected. Veterans lose no rights, as they exist in current law, in the Appeals Working Group proposal.</u>

There has been much work that has gone into developing meaningful Appeals Modernization/Reform over the past year and a half. The work has focused, putting the Veteran first, on a system that seeks the best possible and timely outcome at the lowest level that is both advantageous to the Veteran and the American taxpayer.

Contrary to what seems to be a fairly common misperception, by some, <u>nearly 80% of the Veterans' Appeals process takes place in the Veterans Benefit Administration (VBA)</u>; not in the Board of Veterans Appeals nor the Court. The framework developed by stake-holders places emphasis, responsibility and accountability on VBA (where it should be). **<u>The aggrieved language (effective date after the court) serves to encourage leaving the VBA process early, thereby (functionally) denying Veterans opportunity for early resolution at the lowest possible level and relieving VBA of responsibility "to get it right"</u>**. We sincerely hope attention will be refocused on making sure the largest number of Veterans are served in the most efficient manner possible; at the lowest possible level.

Regardless of whatever final language may come from S. 1024 or any related bill, there should be specific language included in the bill that imposes severe penalties, financial or otherwise, on any (paid) attorney who is found to intentionally induce a Veteran client to initiate judicial review when there is an efficient administrative remedy available that would better serve the Veteran.

NASDVA – May 17, 2017

2. S. 764 – Veterans Education Priority Enrollment Act of 2017

NASDVA is concerned about unintended consequences that may result from S. 764, if passed in its current form. Depending on U.S. Department of Veterans' Affairs promulgation of resultant rules, it could cause requirement of a system of formal priority advising for GI Bill recipients to be conducted a reasonable length of time before the first day of priority registration. It is our understanding that there is an informal priority advising that takes place now; however, this is

up to the advisor. This legislation will cause universities/states to have to devote additional staff time to formally track that all GI Bill recipients have been advised before the first day of priority registration. Also, this legislation will add another audit point for the State Approving Agency's (SAA) audits; again adding administrative time.

Although it is understood that not all institutions have priority registration for GI Bill recipients and we want to insure that Veterans have every opportunity to get the classes they need in order for them to maximize their limited GI Bill education benefits; universities/states have a process that works now and it seems the legislation is intended to "help" but, most accurately, adds additional requirements.

For State Directors of Veterans Affairs, the increased burden to SAA's would be negative and will generate justifiable opposition from some States. SAA's ongoing issues of decreased contract funding (from VA) and increased requirements/workloads are a problem already for many States. This (seemingly) unfunded mandate for States' SAAs could prove problematic.

3. S. ____ - Serving our Rural Veterans Act

The "Serving our Rural Veterans Act" has considerable merit and its apparent intent to seek ways to increase the number of providers for our Veterans in rural, underserved areas is highly commendable. We realize roughly 75% of America's physicians trained, in some way, at VA facilities and any additional efforts to train rural providers for Veterans will ultimately benefit our Nation's citizens (and, hopefully, rural citizens) at large.

NASDVA sincerely appreciates this opportunity to submit our views on important legislation for our Nation's Veterans.

Sincerely,

Randy Reeves
President
NASDVA

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PREPARED STATEMENT OF FRED S. SGANGA, LEGISLATIVE OFFICER, NATIONAL ASSOCIATION OF STATE VETERANS HOMES

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, On behalf of the National Association of State Veterans Homes (NASVH), I am pleased to submit this testimony in strong support of S. 324, the State Veterans Home Adult Day Health Care Improvement Act of 2017, legislation introduced by Senators Orrin Hatch (R-UT) and Mazie Hirono (D-HI) to provide severely disabled veterans with an enhanced option

to receive adult day health care services from State Veterans Homes. Similar legislation was introduced late in the Senate during the 114th Congress (S. 3198), however no further action was taken prior to adjournment last year. A companion House bill (H.R. 2460) did pass the full House last year without opposition and has been reintroduced (H.R. 1005) in the 115th Congress. Both the Senate and House bills were reviewed by the Congressional Budget Office (CBO) last year and neither received a score that needed to be offset; similar CBO scoring is anticipated for the reintroduced bills.

The State Veterans Home program was established by a Congressional Act on August 27, 1888, and for more than 125 years State Homes have been in a partnership with the Federal Government to provide long term care services to honorably discharged veterans; in some states, widows and spouses as well as Gold Star Parents are also eligible for admission. There are currently 153 State Veterans Homes located in all 50 states and the Commonwealth of Puerto Rico. The National Association of State Veterans Homes (NASVH) was conceived at a New England organizational meeting in 1952 because of the mutual need of State Homes to promote strong Federal policies and to share experience and knowledge among State Home administrators to address common problems. NASVH is committed to caring for our Nation's heroes with the dignity and respect they deserve.

With over 30,000 beds, the State Veterans Home program is the largest provider of long term care for our Nation's veterans. Current services provided by State Homes include skilled nursing care, domiciliary care and adult day health care. The Department of Veterans Affairs (VA) provides State Homes with construction grants to build, renovate and maintain the Homes, with States required to provide at least 35 percent of the cost for such projects in matching funds. State Veterans Homes also receive per diem payments for basic skilled nursing home care, domiciliary care and ADHC from the Federal Government which covers about one third of the daily cost of care.

Mr. Chairman, a decade ago NASVH led the effort on Capitol Hill to assist our most disabled veterans by allowing them to receive skilled nursing care in State Veterans Homes under a new program that would provide the "full cost of care" to the State Home and thereby expand the options available to these deserving veterans at no cost to them. In 2006, Congress passed and the President signed Public Law 109–461 which guaranteed "no cost" skilled nursing care to any honorably discharged veteran who has a 70% or higher service-connected disabled rating, or requires nursing care due to a service-connected disability. Unfortunately, the bill did not extend the same "no cost" program to alternatives to traditional institutional care, such as the medical supervision model Adult Day Health Care currently provided at three State Veterans Homes in Stony Brook, New York, Minneapolis, Minnesota and Hilo, Hawaii. S. 324 would fix that.

Adult Day Health Care is designed to promote wellness, health maintenance, socialization, stimulation and maximize the participant's independence while enhancing quality of life. A medical supervision model Adult Day Health Care program provides comprehensive medical, nursing and personal care services combined with engaging social activities for physically or cognitively impaired adults. These programs are staffed by a caring and compassionate team of multi-disciplinary healthcare professionals who evaluate each participant and customize an individualized plan of care specific to their health and social needs.

As a licensed nursing home administrator, I would like to thank Senators Hatch, Hirono and the many bipartisan Senate cosponsors for recognizing the need to offer non-institutional alternatives to our veterans. Giving our veterans and families choices in how they can receive care is just the right thing to do. Making sure that there are no financial barriers to care is important to our most medically compromised veterans.

It would be especially important to veterans like Jim Saladino and to his wife Noreen. Fifty years ago, Jim answered the call of his country and served honorably in the United States Army during the Vietnam War. Today, he suffers from the ravages of Agent Orange exposure. Specifically, he suffers from chronic illnesses including diabetes and Parkinson's disease and he also recently suffered a stroke. Although the Saladino family could have decided to put Jim into our State Veterans Home because he is a 100% service-connected veteran and so it would have been fully paid for by VA, but that is not their choice. They would like their loved one to continue enjoying the comforts of his own home—for as long as he can. By providing him the benefits of our medical supervision model Adult Day Health Care program, Jim is able to keep living at home.

Jim's wife, Noreen, serves as his primary caregiver. She has publicly stated that the medical model Adult Day Health Care Program has been a true blessing for her. Jim comes to the ADHC program three days a week and we work closely with his

personal physician to provide services that will maintain his wellness and keep him out of the emergency room. During his six hour day with us, Jim receives a nutritious breakfast and lunch. He receives comprehensive nursing care. He also receives physical therapy, occupational therapy and speech therapy. He can get his eyes checked by an optometrist, his teeth cleaned and examined by our dentist, and his hearing checked by an audiologist. If required, he can get a blood test or an x-ray, have his vital signs monitored and receive bathing and grooming services while on site.

For Jim's wife, having him come to our program allows her the peace of mind knowing that he is in a safe and comfortable environment. She can then get a break as caregiver and tend to those issues that allow her to run her household. However, because of the way the law is currently structured, despite Jim's eligibility for "no cost" skilled nursing care, they are required to pay out-of-pocket for a portion of his Adult Day Health Care, a cost they cannot afford.

S. 324 will correct this disparity that prevents some of the most deserving and severely disabled veterans from taking advantage of this valuable program to keep living in their own homes. This legislation would authorize VA to enter into agreements with State Veterans Homes to provide medical supervision model Adult Day Health Care for veterans who are eligible for, but do not receive, skilled nursing home care under section 1745(a) of Title 38, the "full cost of care" program. Veterans who have a VA disability rating of 70 percent or greater or who require ADHC services due to a service-connected disability would be eligible for this program. The payment to a State Home under this program would be at the rate of 65 percent of the amount that would be payable for skilled nursing home care under the same "full cost of care" program. This legislation would not only offer a lower cost alternative (ADHC) for severely disabled veterans who might otherwise require full time skilled nursing care, but it would also allow them to continue living in their own homes.

Mr. Chairman, NASVH is aware of VA's argument that a veteran participating in the ADHC program is physically inside a State Home facility for only about one-third of each day they are in the program, therefore the per diem should be only about one-third of the skilled nursing care per diem. However, this significantly misrepresents the level of care and services provided to veterans in medical model ADHC programs. First, it completely ignores the cost of transportation, which alone accounts for a significant cost for transporting elderly, frail, disabled veterans to and from their homes to State Homes. Second, the overwhelming majority of services—particularly medical, therapeutic and rehabilitation—are provided during the day shift, not overnight when veterans residing in State Homes are sleeping. In fact, the 65% ratio is identical to the ratio that Medicaid pays for adult day health care in New York as compared to what Medicaid pays for skilled nursing care. Finally, it is critical to note that allowing veterans to use ADHC services two to three times a week is enormously less expensive then placing them full-time into a skilled nursing facility.

Moreover, VA has been stressing the need to provide essential long-term care services in non-institutional settings for our most frail, elderly disabled veterans. Medical supervision model Adult Day Health Care is a tremendous solution to this challenge faced by VA, one that can keep veterans living in their homes while allowing them to receive skilled nursing services and supports. There are a number of State Homes across the country interested in providing medical model ADHC services, however the current ADHC per diem is not nearly sufficient for most State Homes to cover the costs of this program. Enactment of S. 324 would provide a higher ADHC per diem rate for severely disabled veterans in medical supervision model ADHC programs and thereby allow additional State Homes across the country to offer this service to more needy and deserving veterans.

For the Saladino family, receiving "no cost" Adult Day Health Care for their loved one would relieve a huge financial burden that they currently incur. Even though Jim's service ended 50 years ago, he is still paying a price for his valor related to his service in Vietnam. Passing S. 324 would send a strong message to all those who have worn the uniform to protect our freedoms that they will never be forgotten.

With 30 Senate cosponsors so far, S. 324 has strong bipartisan support, as does the House companion bill, and both are supported by major veterans service organizations, including The American Legion, the Veterans of Foreign Wars and Disabled American Veterans.

On behalf of the National Association of State Veterans Homes, I urge you to favorably consider and pass S. 324 for Jim and Noreen Saladino, and for thousands of others across the country just like them. Thank you for the opportunity to submit this testimony to the Committee.

PREPARED STATEMENT OF SAMUEL V. SPAGNOLO, M.D., PRESIDENT, NATIONAL ASSOCIATION OF VA PHYSICIANS AND DENTISTS

National Association of VA Physicians and Dentists
P.O. Box 15418 Arlington, Virginia 22215
Phone (866) 836-3520 Fax (540) 972-1728

Statement of Support for
S. 899 Department of Veterans Affairs Veteran Transition Improvement Act

The National Association of Veterans Affairs Physicians and Dentists (NAVAPD) is pleased to issue this statement in support of S. 899, the Department of Veterans Affairs Veteran Transition Improvement Act. This important legislation would extend the existing disabled veteran leave category to eligible employees within the Department of Veterans Affairs (VA) with a disability rating of 30% or higher for the purposes of receiving medical care related to their service-connected condition.

This Bill continues the efforts begun with the Wounded Warrior Federal Leave Act of 2015, which covered approximately 85% of the federal workforce, but did not cover some non-Title V employees. S. 899 would bring this to the VA and correct the oversight of not including the VA in the original Act.

Disabled veterans who now serve the nation in the VA deserve the security of knowing they can obtain the care they need for their disability without sacrificing their paycheck during their first year on the job. Passage of this legislation is needed as a matter of fairness and as a recruiting tool for the VA as it seeks to recruit physicians and dentists and other caregivers to enhance and improve the care provided to our Veterans. NAVAPD appreciates the efforts of Senator Mazie Hirono and all the sponsors and co-sponsors of this Bill, and urges prompt passage of this important legislation, S. 899.

Samuel V. Spagnolo, M.D.
President

SERVING THOSE WHO CARE FOR OUR NATION'S VETERANS SINCE 1975

PREPARED STATEMENT OF DIANE BOYD RAUBER, ESQ., EXECUTIVE DIRECTOR, NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, INC.

Chairman Isakson, Ranking Member Tester, and members of the Committee, the National Organization of Veterans' Advocates (NOVA) would like to thank you for the opportunity to offer our views on pending legislation, to include S. 1024, Veterans Appeals Improvement and Modernization Act of 2017. Our statement will focus on this bill.

NOVA is a not-for-profit 501(c)(6) educational membership organization incorporated in the District of Columbia in 1993. NOVA represents more than 500 attorneys and agents assisting tens of thousands of our nation's military veterans, their widows, and their families seeking to obtain their earned benefits from VA. NOVA works to develop and encourage high standards of service and representation for persons seeking VA benefits. NOVA members represent veterans before all levels of VA's disability claims process, and handle appeals before the U.S. Court of Appeals for Veterans Claims (CAVC) and U.S. Court of Appeals for the Federal Circuit (Federal Circuit). In 2000, the CAVC recognized NOVA's work on behalf of veterans with the Hart T. Mankin Distinguished Service Award. NOVA operates a full-time office in Washington, DC.

Attorneys and agents handle a considerable volume of appeals at BVA. In FY 2015, for example, attorneys and agents handled 14.9% of appeals before BVA. This number was fourth only behind Disabled American Veterans (28.1%), State Service Officers (16.5%), and American Legion (15%). U.S. Department of Veterans Affairs, *Board of Veterans' Appeals Annual Report Fiscal Year 2015* at 27. So far in FY 2017, attorneys and agents have represented appellants in 16.8% of appeals decided, third only to Disabled American Veterans (31.2%) and American Legion (19.8%). *Board of Veterans' Appeals – VACOLS – Representation in Appeals Cases* (October 1, 2016 through April 30, 2017).

NOVA members have been responsible for significant precedential decisions at the CAVC and Federal Circuit. In addition, as an organization, NOVA has advanced important cases and filed amicus briefs in others. *See, e.g., Henderson v. Shinseki*, 562 U.S. 428 (2011)(amicus); *NOVA v. Secretary of Veterans Affairs*, 710 F.3d 1328 (Fed. Cir. 2013)(addressing VA's failure to honor its commitment to stop applying an invalid rule); *Robinson v. McDonald*, No. 15-0715 (July 14, 2016)(CAVC amicus).

NOVA does not oppose the bill if the effective date protection extended to court proceedings remains in the legislation. In addition, as detailed below, because of VA's inconsistent inclusion of NOVA as a stakeholder in this process, we ask the Committee to include NOVA (as well as the original participants in VA's 2016 summit) as stakeholders considered "appropriate" under the statute for purposes of the collaboration necessary to certify the program is ready to implement.

BACKGROUND

In March 2016, NOVA was invited to participate with a group of stakeholders in a three-day summit, and at occasional meetings thereafter at VA's convenience, to discuss VA's appeals reform proposal. The framework provided by VA, and modified during the course of these meetings, became the basis of legislation considered in 2016. NOVA testified before this Committee in May 2016 on such appeals reform legislation. National Organization of Veterans' Advocates, Inc., *Statement of Diane Boyd Rauber, Esq., Executive Director, Before the Senate Committee on Veterans' Affairs Concerning Pending Legislation* (May 24, 2016). Because NOVA expressed disagreement with some of the proposal's features, VA repeatedly excluded NOVA from continuing discussions and important dialogue amongst the summit participants.

NOVA thanks the Committee for its time and effort to address the concerns expressed by NOVA and other stakeholders, as well as the General Accountability Office (GAO), in S. 1024. These improvements include, among others, the extension of effective date protection to decisions of the U.S. Court of Appeals for Veterans Claims, reversion to the current standard for filing a notice of disagreement, and robust reporting requirements for VA. We detail additional considerations below that should be addressed to ensure preservation of the veteran-friendly benefits process developed and preserved by Congress for many decades.

APPEALS REFORM STATUTORY FRAMEWORK

EFFECTIVE DATE PROTECTION

As NOVA noted in the 114th Congress, this new framework removes many procedural and due process protections for veterans. To offset the removal of some of these protections and eliminate "effective date traps," VA proposed the primary benefit conferred to veterans under its original proposal: the ability to preserve the effective date of a claim denied in a BVA decision by filing a "supplemental claim" within a year of that denial (with no limit to the number of times the veteran can avail himself of this option).

NOVA testified last year that it was inconsistent to limit effective date protection solely to decisions of the agency of original jurisdiction and BVA, and fail to provide that same one-year period after a final CAVC decision. Such a limitation could result in far fewer veterans exercising their hard-fought right of judicial review because of concerns over losing effective date protection. For example, if BVA declines to find VA failed to fulfill its duty to assist by obtaining an adequate examination for a veteran, that veteran may feel required to obtain a costly private opinion to preserve an effective date rather than seeking judicial review to enforce what VA was required to do all along.

Judicial oversight is critical in the implementation of a new process, especially given the shrinking reach of the duty to assist. NOVA applauds the inclusion of effective date protection for veterans after a court decision and urges the Committee to retain this language in spite of VA's opposition to it.

Recommendations: This legislation codifies an existing effective date protection under 38 C.F.R. § 3.156(b), which treats new and material evidence submitted "prior to the expiration of the appeal period or prior to the appellate decision if a timely appeal has been filed" as if it had been filed at the beginning of the appeal period. NOVA recommends the provisions of 38 C.F.R. § 3.156(c) also be codified in the statute as an important protection for the effective dates of claims for veterans who find additional service records after an original claim.

NEW AND RELEVANT EVIDENCE STANDARD

During the course of the appeals summit meetings, the stakeholders generally agreed the "new and material" standard should be eliminated. There was significant discussion on this topic, with the stakeholders generally agreeing the standard should be "new" evidence only. Instead of following this consensus, VA inserted the term "relevant" to replace "material."

First, NOVA maintains merely trading "relevant" for "material" will not significantly reduce the adjudication burden on VA. VA's proposed standard maintains the current two-step analysis to reopen a claim – first, whether the evidence is new and, second, whether that new evidence is relevant. Removing "relevant" would allow VA to simply adjudicate the merits every time and eliminate the need to make a threshold determination, which in the current system results in remands and additional delay.

Second, the definition of relevant evidence – "evidence that tends to prove or disprove a matter in issue" – on its face is more stringent than the current definition of "material" evidence – "existing evidence that, by itself or when considered with previous evidence of record, relates to an unestablished fact necessary to substantiate the claim." Furthermore, what effect the "relevant" evidence standard would have on veterans is completely unknown, whereas extensive case law exists concerning the "material" evidence standard. If VA truly intends to create an evidentiary burden easier to meet than "material" evidence (which NOVA supports), the best way to ensure that is to simply require "new" evidence.

Recommendations: The words "and relevant" should be deleted from 38 U.S.C. § 5108 and the definition of "relevant" found at 38 U.S.C. § 101(35), both as proposed in this bill, should be stricken. In the alternative, the standard should remain as it is currently – "new and material." If the "relevant" standard is retained, we request Congress make an

unambiguous statement of its intent that this standard be interpreted as a lower burden than current law.

SUBMISSION OF EVIDENCE ON APPEAL

Regarding evidence in the non-hearing docket, section 7113(b)(2)(B) puts a burden on veterans at the time an NOD is filed by requiring the veteran to submit evidence with the NOD or within 90 days, and make an election for a hearing. Given that veterans often are unrepresented until after the filing of an NOD, there is no reason to require that irreversible legal decisions be made at that exact moment. This provision is too restrictive; if the case is waiting to be reviewed by BVA, it is more veteran friendly (and does not unduly burden BVA) for that period to be open until the decision is made.

Recommendations: The veteran should be permitted to submit evidence or request a BVA hearing up until the date of BVA's decision, or until another reasonable period prior to a decision being made.

DOCKET MANAGEMENT

NOVA maintains that a veteran who only wants to submit additional evidence to BVA should not be required to go into the hearing docket. BVA currently has an enormous backlog of hearing requests – approximately five to six years – and discussion of implementation generally has not included VA's plans for reducing that backlog. It is not veteran friendly to force an appellant to wait for significant periods of time if he is not interested in a hearing but would like to submit evidence.

NOVA appreciates the inclusion of a requirement in section 7107 that the Secretary provide a report describing the docket "for cases in which no hearing before the Board of Veterans' Appeals is requested in the notice of disagreement but the appellant requests, in the notice of disagreement, an opportunity to submit additional evidence." NOVA urges the Committee to require such a docket.

Recommendations: It should be made clear that a veteran can move into the non-hearing docket without penalty – with the same or more favorable docket number – if he determines he no longer wants a hearing after the initial request.

DUTY TO ASSIST

As noted above, veterans gain effective date protection in a new system. In exchange, BVA is relieved of an aspect of its duty to assist the veteran, as amended in 5103A(e): "The Secretary's duty to assist under this section shall apply only to a claim, or supplemental claim, for a benefit under a law administered by the Secretary until the time

that a claimant is provided notice of the agency of original jurisdiction's decision with respect to such a claim, or supplemental claim, under section 5104 of this title." The understood purpose behind this provision is to relieve BVA of the obligation to remand for additional development due to a duty to assist triggered by evidence submitted after the agency's decision.

Recommendations: This provision should be clarified to ensure the restriction on the duty to assist at BVA is limited to a duty triggered by evidence submitted after the agency's decision and does not apply to affirmative duties required to be performed by BVA in the conduct of its adjudication process.

ABILITY TO CHANGE "LANES"

NOVA appreciates the added language of section 5104C(2)(A), (B), (C), and (D) that provides guidance regarding a veteran's right to take various actions permitted by the statute at different times and to take different actions on different claims.

Recommendations: Section 5104C(2) should make clear the time period is tolled while the veteran is in a particular lane, so that if he chooses to withdraw from a lane after the expiration of the original one-year period and seek relief in a different lane, his original effective date is preserved.

NOTICE OF DISAGREEMENT

NOVA appreciates inclusion of a more reasonable standard for veterans when filing the notice of disagreement (NOD) by reverting back to the requirement that a veteran "shall identify the specific determination with which the claimant disagrees."

Recommendations: A provision should be added requiring VA to provide the claimant with notice of and an opportunity to cure the defect before BVA dismisses an appeal due to the veteran's failure to specify the determination with which she disagrees.

IMPLEMENTATION ISSUES

Successful implementation of this legislation will be key if it is truly to be the positive change veterans deserve and VA promises. Successful execution of VA's proposed process hinges on its ability to **consistently meet its goals** of adjudicating and issuing decisions in the 125-day window identified in its "middle lane" and deciding appeals within the one-year period before BVA. As demonstrated with the prior backlog of original claims and scheduling of medical appointments, VA often struggles to meet its own internal goals to the detriment of veterans.

GAO recently described its concerns with VA's ability to implement a new process while resolving legacy appeals. U.S. Government Accountability Office, *VA Disability Benefits: Additional Planning Would Enhance Efforts to Improve the Timeliness of Appeals Decisions* (GAO-17-234)(March 2017)(hereinafter GAO Report). GAO's concerns have been shared by some stakeholders.

Therefore, the extensive reporting requirements and requirement that the Secretary certify VA's readiness to implement the new system are critical. These requirements must remain in the legislation. Because VA stated it cannot pilot this system as recommended by GAO, congressional oversight is necessary. The legislation has far-reaching implications; many of them likely unforeseen until the system is implemented.

Recommendations: As noted above, NOVA has been included as a stakeholder when it has been convenient for VA. Bringing the major organizations together initially allowed VA to state there was full consensus on the framework. However, when NOVA disagreed with some features of last session's bills, VA declined to include NOVA in much of the ongoing discussion and negotiations with the organizations that participated in the original summit. As noted above, given the high percentage of involvement by attorneys and agents at BVA and the CAVC, we ask the Committee to include NOVA as a stakeholder (along with the other original summit participants) considered "appropriate" under the statute for purposes of the collaboration necessary to certify the program is ready to implement.

Furthermore, because this system is predicated on veterans making significant choices in relatively short periods of time, VA must commit to providing attorneys and agents, and their professional staff members, with consistent electronic access to claimants' files. To its credit, VA agreed to provide attorneys and agents with remote access last fall. However, to allow veterans to fully access their right to representation and make an informed choice as to how to proceed when faced with a denial, access must be expanded and improved.

NOVA urges Congress to fully fund VA's information technology budget requests, especially innovations needed for VBMS and modernization of BVA systems. Modern IT systems, to include electronic case filing systems common in other venues, are necessary tools that benefit veterans, their advocates, and VA employees.

ADDITIONAL CONCERNS

While focusing solely on process, the proposal is devoid of reform to the foundational underpinning of the claims adjudication and appeals process, i.e., the need for an adequate medical examination and opinion. At the January 2013 hearing addressing the appeals process, BVA acknowledged the problem: "The adequacy of medical examinations and opinions, such as those with incomplete findings or supporting rationale for an opinion, has remained one of the most frequent reasons for remand." *Why Are Veterans Waiting Years on Appeal?: A Review of the Post-Decision Process for Appealed Veterans' Disability Benefits Claims: Hearing Before the Subcommittee on Disability Assistance and Memorial Affairs of the House Committee on Veterans' Affairs*, 113th Congress, 1st Sess. 23 (2013)(prepared statement of Laura H. Eskenaki, Executive in Charge, Board of Veterans' Appeals). Two years later, the Subcommittee on Disability Assistance and Memorial Affairs requested appeals data from VA, to include the top five remand reasons for the six fiscal years between 2009-2014. While not particularly detailed, in five of the six years, "nexus opinion" was listed as a top five reason. *Department of Veterans Affairs (VA) Appeals Data Requested by House Committee on Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs* (January 2015). Other consistently reported reasons included "incomplete/inadequate findings," "current findings (medical examination/opinion)," and "no VA examination conducted." *Id.*

VA often cites the veteran's submission of evidence as triggering the need for additional development. *But see* GAO Report at 25 ("VA lacks data to inform and confirm its understanding of the root causes of lengthy time frames. For example, VA lacks complete historical data on the extent to which submission of new evidence and multiple decisions and appeals occur, and thus cannot determine the impact of its current, open-ended process on appeals decision timeliness."). The reality is VA has consistently demonstrated difficulty fulfilling its fundamental obligation to provide veterans with adequate medical examinations and opinions in the first instance. Without substantive reform to this process, to include consideration of a greater role for private and treating physician evidence, it is unlikely procedural reform alone can solve systemic problems.

CONCLUSION

NOVA shares the concerns of VA and the Committee that veterans wait too long for a final and fair decision on appeal. NOVA welcomes the opportunity to work with VA and this Committee to ensure a fair and comprehensive reform of the system. NOVA further recommends adoption of the revisions outlined in our testimony. Thank you for allowing us to present our views on this legislation.

PREPARED STATEMENT OF BARTON F. STICHMAN AND RONALD B. ABRAMS, JOINT EXECUTIVE DIRECTORS, NATIONAL VETERANS LEGAL SERVICES PROGRAM

Mr. Chairman and Members of the Committee:

Thank you for inviting our organization to submit a statement for the record concerning S. 1024, the "Veterans Appeals Improvement and Modernization Act of 2017," an important legislative effort to reform the veterans claims and appeals process in the United States Department of Veterans Affairs (VA).

The National Veterans Legal Services Program (NVLSP) is a nonprofit veterans service organization founded in 1980 that has been providing free legal representation to veterans and assisting advocates for veterans for the last 37 years. NVLSP has represented veterans and their survivors at no cost on claims for veterans benefits before the VA, the U.S. Court of Appeals for Veterans Claims (CAVC), and other federal courts. As a result of NVLSP's representation, the VA has paid more than $4.6 billion in retroactive disability compensation to hundreds of thousands of veterans and their survivors.

NVLSP publishes numerous advocacy materials, recruits and trains volunteer attorneys, trains service officers from such veterans service organizations as The American Legion, and Military Order of the Purple Heart in veterans benefits law, and conducts local outreach and quality reviews of the VA regional offices on behalf of The American Legion. NVLSP is one of the four veterans service organizations that comprise the Veterans Consortium Pro Bono Program, which has, since 1992, recruited and trained volunteer lawyers to represent veterans who have appealed a Board of Veterans' Appeals decision to the CAVC without a representative. In addition to its activities with the Pro Bono Program, NVLSP has trained thousands of veterans service officers and lawyers in veterans benefits law, and has written educational publications that thousands of veterans advocates regularly use as practice tools to assist them in their representation of VA claimants.

S. 1024

Since the beginning of last year, NVLSP has participated with a workgroup of veterans service organizations convened by the VA to find common ground on a set of reforms to address the serious dysfunctions that exist in the current VA appeals process. The text of S. 1024 takes the text of the draft bill that VA developed last year and adds much additional language that NVLSP welcomes and believes should be kept intact.

We believe S. 1024 is a welcome attempt to address the serious problems veterans and their dependents face in processing appeals in the VA. Before we address its merits in more detail, we begin with a general point that is important to remember. The proposed structuring of the administrative appeals process envisioned under S. 1024 is far-reaching. As with any change to a complex system, there will clearly be effects that we cannot now predict. We have considered this reality quite seriously. If the system were functioning generally well, a concern with unintended consequences might be sufficient to oppose such a comprehensive change in the system, at least without first conducting a pilot program. But we are not dealing with a well-functioning system. Given that state of affairs, we have ultimately concluded that the draft bill – even without being able to predict all of its effects – is a necessary step. We support it, as long as Congress rejects the attempts that we understand VA is spearheading to make substantive changes to the additional language that appears in the draft bill that was not contained in the bill that VA drafted and supported last year.

I. POSITIVE FEATURES OF S. 1024

We briefly highlight the significant positive features of the changes envisioned under S. 1024. Taken together, we believe these features will decrease appeal times while providing claimants with various options for pursing their appeals. The most significant positive features in S. 1024 are:

- It provides for enhanced "notice letters" to veterans and other claimants concerning the denial of their claims. Enhanced notice is critically important to veterans as they make determinations about how to proceed when they are dissatisfied with a VA decision.

- It eliminates the requirements under current law concerning the preparation of a Statement of the Case (SOC), the veteran's corresponding need to complete an additional step to perfect an appeal to the Board (i.e., VA Form 9) and VA's subsequent need to certify the appeal by completing VA Form 8. While there may have been a time at which the SOC served a useful function in this system, the enhanced "notice letters" required by the proposal eliminate the need for an SOC. Thus, the SOC process serves only to delay the processing of claims.

- It lowers the standard necessary for re-opening a claim under Section 5108. The current standard of "new and material evidence" is replaced with "new and relevant evidence." The lowering of the standard is critically important. In addition, and as we discuss in more detail below, the revised Sections 5108 and 5110 will allow veterans to obtain earlier effective dates in many circumstances than they would be able to do under the current version of this provision.

- It allows veterans a meaningful choice when they appeal to the Board of Veterans' Appeals (Board). A veteran may elect to forgo the submission of new evidence and a hearing in cases in which he or she determines such an approach is best. This would provide for more expeditious treatment of such appeals. On the other hand, a veteran can elect to proceed on a track in which the submission of new evidence and a hearing is allowed. This dual-track approach recognizes the reality that not all appeals are alike.

- It allows a claimant to seek the assistance of a lawyer for pay after an initial denial but before the filing of a Notice of Disagreement (NOD). This is a change from current law in which a lawyer may not charge a fee before the filing of an NOD. While seemingly a small change, we believe this is significant because the structure of the proposed new system provides claimants with myriad ways in which to proceed. Advice to such claimants will be critical and the proposed change allows more options for that advice.

- We believe S. 1024 also reduces the means by which the VA can "develop to deny." NVLSP has reviewed many regional office and BVA cases in which the existing record before the VA supports the award of benefits, but instead of deciding the claim based on the existing record, VA has delayed making a decision on the claim by taking steps to develop additional evidence for the apparent purpose of denying the claim. Certain aspects of the current proposal – for example, the restriction on the application of the duty to assist at the Board – will likely reduce such actions.

There are also several parts of S. 1024 that NVLSP strongly supports and that differ from its House bill counterpart. These welcome additions include provisions that:

- make clear that, if a higher-level reviewer or the Board erroneously fails to identify a duty-to-assist error while reviewing a case, VA is not absolved of its obligation to correct that error.

- preserve judicial review by protecting the effective date of an award if a claimant files a supplemental claim after a decision by the Court of Appeals for Veterans Claims.

- clarify that, if an appellant chooses the option of having a hearing before the Board, that will automatically include an opportunity to submit additional evidence.

- require higher-level reviewers and the Board to note in their decisions if evidence was received at a time not envisioned under the new system and describe how to have the evidence considered by VA.

- require VA to provide expedited treatment for claims that are returned or remanded to the Veterans Benefits Administration for correction of an error, regardless of which lane or docket the claimant chooses.

- allow VA to develop a policy to permit claimants to later modify the information specified in their notices of disagreement.

- allow VA to develop a policy to permit claimants to change lanes at the regional offices and to change dockets at the Board.

II. THE NEED TO RESIST VA'S EFFORTS TO AMEND S. 1024

A. The Change VA Wants to Discourage Veterans From Appealing to the CAVC

We understand that one amendment to S. 1024 supported by VA is to eliminate subsection (a)(2)(E) from the draft bill's amendments to 38 U.S.C. § 5110. This subsection is critically important and NVLSP's support of S. 1024 is contingent on this provision remaining intact.

Proposed subsection (a)(2)(D) would allow a veteran to file a Section 5108 supplemental claim which preserves the earliest possible effective date if the veteran receives a Board of Veterans' Appeals (BVA) denial and files the supplemental claim within one year of the BVA decision. Proposed subsection (a)(2)(E) mirrors proposed subsection (a)(2)(D) by allowing a veteran to file a Section 5108 supplemental claim which preserves the earliest possible effective date if the veteran loses his appeal to the Court of Appeals for Veterans Claims (CAVC) and files the supplemental claim within one year of the CAVC decision. We understand that VA supports proposed subsection (a)(2)(D), but wants to eliminate proposed subsection (a)(2)(E).

If the BVA denies a claim under the draft bill – *regardless* whether proposed subsection (a)(2)(E) remains or is eliminated -- the veteran would be required, in order to preserve the earliest effective date, to choose within 120 days of the BVA decision between appealing to the CAVC and filing a supplemental claim with the RO. Eliminating subsection (a)(2)(E) would be unjust because it would put a heavy thumb on the scale when veterans make this choice. The veteran would have nothing to lose by filing a supplemental claim within one year of the BVA

denial because if the supplemental claim is denied, the veteran can keep the right to retroactive benefits alive by appealing. But if subsection (a)(2)(E) is eliminated, the veteran has a lot to lose by appealing to the CAVC. If the judicial appeal results in the court affirming the BVA's denial (as occurs in approximately 30% of all appeals), the veteran's right to retroactive benefits is lost forever. For a disabled veteran, this can mean losing the opportunity for tens of thousands of dollars.

The explanation we received from VA for VA's objection to subsection (a)(2)(E) is that "it is contrary to VA policy interest in encouraging dissatisfied claimants to stay within VA unless it is truly necessary to go to a higher court." The flip side of this statement is the desire to discourage veterans from appealing to the CAVC, and discouraging appeals to the CAVC is exactly what eliminating subsection (a)(2)(E) would do. Veterans are not omniscient. In the short time they would have to choose between appealing to the CAVC and filing a supplemental claim, they would not know whether an appeal to the CAVC would be successful. In the 120 days they have to decide whether to appeal a BVA decision to the CAVC, they also would be unlikely to know if "it is truly necessary to go to a higher court," as VA puts it.

If subsection (a)(2)(E) is eliminated, the safest course of action would be to file a supplemental claim. The unfortunate result of VA's attempt to place a heavy thumb on the scale would be that veterans who should appeal to the CAVC will not. Instead, they will file a supplemental claim that will unnecessarily prolong the time the veteran's claim is on the hamster wheel. NVLSP strongly supported the Veterans' Judicial Review Act of 1988. We oppose this unwise effort to discourage veterans from appealing to the court that this important Act created.

We note that the text of subsection (a)(2)(E) in S. 1024 differs from the text of subsection (a)(2)(E) in its House bill counterpart. NVLSP recommends that subsection (a)(2)(E) of S. 1024 be amended to conform to the text of subsection (a)(2)(E) in its House bill counterpart. The version in S. 1024 raises, but does not answer two questions What happens if (1) the veteran were to appeal a CAVC affirmance of the BVA's decision to the Federal Circuit or (2) the VA were to appeal a CAVC decision favorable to the veteran to the Federal Circuit. In these situations would the veteran have to file a supplemental claim at the VA regional office while the appeal to the Federal Circuit is still pending in order to preserve the earliest effective date? If so, would the VA be required to process such a supplemental claim at the same time the VA is litigating the claim for the same benefit in the Federal Circuit? NVLSP recommends adherence to the version of subsection (a)(2)(E) in the House bill counterpart in order to eliminate these unanswered questions.

B. VA's Efforts to Escape Oversight of Its Processing of Legacy Claims

S. 1024 wisely requires VA to report and the General Accounting Office to assess VA's plans for processing appeals on legacy claims. This is a critical issue. NVLSP would have much preferred that the S. 1024 structure the VA's decision-making on how to allocate its resources between new appeals and legacy appeals in a much more rigorous manner. But at least S. 1024 would expose the VA's plans on this issue to public view and GAO analysis.

VA admits that it "has established a timeliness goal average of 365 days in the Board non-hearing lane option" for new appeals. VA also candidly states that it "does not have an

established timeliness goal for legacy appeals." The VA obviously needs to make choices in allocating resources between processing legacy appeals and processing new appeals.

For literally decades, Congress has required the BVA to process appeals in docket order. In other words, our nation's policy has long been that earlier filed appeals have precedence over later filed appeals. But contrary to this policy, the VA has made it quite plain that it plans to allocate its BVA resources so that appeals under the new system are decided *before* the large majority of the legacy appeals. NVLSP appreciates the steps that S. 1024 requires to ensure transparency in and analysis of the BVA allocation process between new and legacy appeals. But we believe Congress should provide an additional safeguard: a statutory minimum number of legacy appeals that the BVA must adjudicate for every new appeal that it decides. In that way, VA would be prevented from unduly devoting resources to new appeals, rather than to legacy appeals.

Conclusion

Thank you for this opportunity to present our views, and we would be pleased to respond to any questions that Members of the Committee may have.

Contact Information:
National Veterans Legal Services Program
1600 K Street, N.W.
Suite 500
Washington, DC 20016
(202) 265-8305
bart_stichman@nvlsp.org
ron_abrams@nvlsp.org

PREPARED STATEMENT OF CAROLYN N. LERNER, SPECIAL COUNSEL, UNITED STATES OFFICE OF SPECIAL COUNSEL

Chairman Isakson, Ranking Member Tester, and Members of the Committee:

Thank you for the opportunity to submit written testimony on behalf of the Office of Special Counsel (OSC). OSC protects the merit system for over two million civilian employees in the federal government, with a particular focus on investigating and prosecuting allegations of whistleblower retaliation. We offer the following views on the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 (the Act), sponsored by Senators Rubio, Tester, Isakson, and Moran.

Since 2014, OSC has received thousands of whistleblower retaliation complaints and disclosures of wrongdoing from Department of Veterans Affairs (VA) employees, far more than from any other agency. Our VA whistleblower cases sparked an overhaul of the VA's internal medical oversight office, highlighted systemic disparate treatment in disciplinary actions taken against whistleblowers, and prompted improvements in the quality of care and access to care at VA hospitals around the country.

Based on this experience, we strongly support the Act's provisions to establish the VA Office of Accountability and Whistleblower Protection (OAWP). We believe the OAWP will reinforce steps the VA has taken already to elevate and address whistleblower protection within the Department. Indeed, the Trump administration recognized the importance of such an office with its April 27, 2017 Executive Order on Improving Accountability and Whistleblower Protection at the VA. The Act takes additional, necessary steps to promote accountability, protect whistleblowers, and improve care at the VA by strengthening and codifying the OAWP.

OSC's work with VA whistleblowers will benefit from having a high-level point of contact with the statutory authority to identify, correct, and prevent threats to patient care and to discipline those responsible for creating them. Our experience with VA whistleblowers demonstrates that an Assistant Secretary with these specific responsibilities will help to avert patient care crises at the early warning stage, before they become systemic threats to patient health and safety. The establishment of similar offices at other agencies, including the Federal Aviation Administration, has significantly improved the whistleblower experience at those agencies. OAWP, with a Senate-confirmed leader, will have the authority and a mandate to make a significant difference.

Additionally, we support the Committee's decision to include whistleblower protection criteria in the performance plans of all VA supervisors and managers. This step, which we implemented at OSC, will create additional incentives for supervisors to respond constructively to employees' concerns, helping to improve the culture at the VA. We thank the Committee for the opportunity to provide these views, and for recognizing OSC's work and the contributions of VA whistleblowers.

PREPARED STATEMENT OF LIZ HEMPOWICZ, POLICY COUNSEL, PROJECT ON GOVERNMENT OVERSIGHT

Written Testimony of
Liz Hempowicz, Policy Counsel
Project On Government Oversight
before the Senate Committee on Veterans' Affairs
on
"Pending Health and Benefits Legislation"
May 17, 2017

Thank you Chairman Isakson and Ranking Member Tester for your continued leadership on whistleblower protections at the Department of Veterans Affairs and for introducing the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017. As the Policy Counsel, I am submitting this written testimony on behalf of the Project On Government Oversight (POGO). Founded in 1981, POGO is a nonpartisan independent watchdog that champions good government reforms. POGO's investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable, open, and ethical federal government.

Fear and Retaliation at the Department of Veterans Affairs

None of us would be aware of the extent of the problems at the Department of Veterans Affairs if not for whistleblowers. Over three years ago, whistleblowers came forward to expose that managers at the Phoenix, Arizona, VA facility were falsifying records of extensive wait times in order to get bonuses.[1] Quickly, reports of similar wrongdoing at VA facilities began to pop up in other parts of the country. Although POGO had never investigated the operations of the VA before, we were deeply concerned about what we were seeing in these reports. In 2014, POGO held a joint press conference with Iraq and Afghanistan Veterans of America asking whistleblowers within the VA to share with us their inside perspective in order to help us better understand the issues the Department was facing.

In POGO's 35-year history, we have never received as many submissions from a single agency. In little over a month, nearly 800 current and former VA employees and veterans contacted us. We received credible submissions from 35 states and the District of Columbia.[2] A recurring and

[1] Scott Bronstein, Drew Griffin, and Nelli Black, "Phoenix VA officials put on leave after denial of secret wait list," CNN, May 1, 2014. http://www.cnn.com/2014/05/01/health/veterans-dying-health-care-delays/ (Downloaded July 27, 2015)

[2] Statement for the Record, Project On Government Oversight (POGO), for the House Committee on Veterans' Affairs' Subcommittee on Oversight and Investigations Hearing on "Addressing Continued Whistleblower Retaliation Within VA," April 13, 2015. http://www.pogo.org/our-work/testimony/2015/pogo-provides-statement-for-house-hearing-on-va-whistleblowers.html

fundamental theme became clear: VA employees across the country feared they would face repercussions if they dared to raise a dissenting voice.

Based on what POGO learned from these whistleblowers, we wrote a letter to Acting VA Secretary Sloan Gibson in July 2014, highlighting three specific cases of current or former employees who agreed to share details about their personal experiences of retaliation after they had raised concerns about wrongdoing.[3]

In California, a VA inpatient pharmacy supervisor was placed on administrative leave and ordered not to speak out after raising concerns with his supervisors about "inordinate delays" in delivering medication to patients and "refusal to comply with VHA [Veterans Health Administration] regulations."[4] In one case, he said, a veteran's epidural drip of pain control medication ran dry, and in another case, a veteran developed a high fever after he was administered a chemotherapy drug after its expiration point.

In Pennsylvania, a VA doctor was removed from clinical work and forced to spend his days in an office with nothing to do, he told POGO. This action occurred after he reported to his supervisors that, in medical emergencies, physicians who were supposed to be on call were failing or refusing to report to the hospital. The Office of Special Counsel (OSC) shared his concerns, writing "[w]e have concluded that there is a substantial likelihood that the information that you provided to OSC discloses a substantial and specific danger to public health and safety."[5]

In Appalachia, a VA nurse was intimidated by management and forced out of her job after she raised concerns that patients with serious injuries were being neglected, she told POGO. In one case she was reprimanded for referring a patient to the VA's patient advocate after weeks of being unable to arrange transportation for a medical test to determine if he was in danger of sudden death. In an email exchange with a POGO investigator she said, "Such an upsetting thing for a nurse just to see this blatant neglect occur almost on a daily basis. It was not only overlooked but appeared to be embraced." She also pointed out that there is "a culture of bullying employees….It's just a culture of harassment that goes on if you report wrongdoing."

That culture clearly isn't limited to just one or two VA clinics. Some people, including former employees who are now beyond the reach of VA management, were willing to be interviewed by POGO and to be quoted by name, but others said they contacted us anonymously because they were still employed at the VA and were worried about retaliation. One put it this way: "Management is extremely good at keeping things quiet and employees are very afraid to come forward."

This kind of fear and suppression of whistleblowers who report wrongdoing often culminates in larger problems, as the VA experienced.

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[3] Letter from Project On Government Oversight to Sloan D. Gibson, then-Acting Secretary of the Department of Veterans Affairs, about Fear and Retaliation in the VA, July 21, 2014. http://www.pogo.org/our-work/letters/2014/pogo-letter-to-va-secretary-about-va-employees-claims.html

[4] Letter from Kelly Robertson, Pharmacy Service Chief at Palo Alto VA Health Care System, to Earl Stuart Kallio, Pharmacy Service, about Direct Order—Restricted Communication, June 20, 2014.

[5] Letter from Karen Gorman, Deputy Chief, Disclosure Unit Office of Special Counsel, to Dr. Thomas Tomasco, about Dr. Tomasco's allegations OSC File No. DI-13-0416, March 21, 2013.

Previous Legislation to Address Problems

Previous laws failed to adequately protect whistleblowers at the VA. Shifting the VA's culture to identify and correct risks to veterans' health and well-being cannot be accomplished without legislation that codifies accountability for those who retaliate against whistleblowers.

Last year, Congress passed legislation aimed at improving whistleblower protections and increasing the ability to hold those who retaliate against whistleblowers accountable. The Military Construction and Veterans Affairs Appropriations bill attempted to remedy the anti-whistleblower culture of the VA and strengthen whistleblower protections, but it wasn't perfect legislation.

POGO and other advocacy organizations raised concerns at the time about the creation of a Central Whistleblower Office (CWO) within the VA.[6] While it is clear that more resources are necessary to address the influx of whistleblower complaints, we believe this office would not be sufficiently independent to investigate whistleblower complaints. The legislation spelled out only that the CWO is not an element of the VA Office of General Counsel, does not report to the General Counsel, does not provide the General Counsel with information regarding whistleblower complains, and does not advice the General Counsel's office.[7] However, POGO's experience with whistleblowers from the VA showed us that more independence was necessary. The reluctance of employees at the VA to come forward to their own Office of the Inspector General (IG) demonstrated a culture of retaliation that would likely not be alleviated by the creation of another office with similar "independence" at the VA. Furthermore, without proper independence, we worried this office could become an internal clearinghouse that would help agency officials identify and retaliate against whistleblowers.

Additionally, the office is tasked with investigating "all whistleblower complaints of the Department" made by VA employees.[8] This created ambiguity regarding whether the drafters intended to maintain the previous standard that VA employees have the option to go to an Inspector General, Member of Congress, or the Office of Special Counsel. By requiring that all investigations be conducted by one office, the language appeared to restrict access to other, more independent offices that had previously been allowed.

Overall, in the instance of the CWO, the benefits of streamlining do not outweigh the risks of priming a whistleblower for retaliation if their disclosure ends up in the wrong ear.

Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017

Last week, Senators Rubio, Tester, Isakson, Nelson, McCain, Shaheen, Moran, and Baldwin introduced a bipartisan bill aimed at reforming the VA's whistleblower procedures and accountability frameworks. The Office of Accountability and Whistleblower Protection (OAWP)

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[6] Elizabeth Hempowicz, Project On Government Oversight, "Testimony of Liz Hempowicz, Public Policy Associate Project On Government Oversight before the Senate Committee on Veterans' Affairs Legislative Hearing (Health and Benefits)." http://www.pogo.org/our-work/testimony/2015/pogos-liz-hempowicz-whistleblower-protections-va.html; Concerned Groups to Senate: Remove Measure in CR that Poses Risks to VA Whistleblowers, Project On Government Oversight, September 27, 2016. http://www.pogo.org/about/press-room/releases/2016/Senate-Remove-Measure-Posing-Risks-VA-Whistleblowers.html

[7] 38 U.S.C. § 732 (h)(1)

[8] 38 U.S.C. § 732 (h)(2)

created by this legislation to replace the CWO would alleviate many of the concerns that POGO had with the previous office.

The office would be run by a presidentially appointed and Senate-confirmed official who reports directly to the Secretary of the VA, a process that insulates the office from the VA as a whole. This insulation provides the space necessary to conduct unbiased investigations.

Moreover, the legislation defines the mission of the OAWP in a way that addresses the ambiguity problem in the CWO mission: the OAWP accepts whistleblower disclosures, but does not exercise sole jurisdiction over VA whistleblower complaints or investigations. Instead it is empowered to refer complaints to a relevant investigative body, such as the Office of the Medical Inspector or the IG, while maintaining some investigative jurisdiction as appropriate.

In addition to fixing a number of the problems inherent to the CWO, the legislation creates a whistleblower office with built-in accountability functions. The office is tasked with tracking and recording the implementation of findings and recommendations of the IG, the Medical Inspector, OSC, and the Comptroller General. It is also tasked with tracking and aggregating whistleblower disclosures made by VA employees across multiple platforms in order to identify trends and issue reports to the Secretary. This is similar to what POGO did on a smaller scale in 2014.[9] This project helped us identify key areas ripe for reform at the VA, and the VA would benefit from conducting similar analysis regularly.

Finally, the OAWP is required to file an annual report to the relevant Congressional committees about the office's activities. The annual report must include the issues and trends the office identified, analysis of the office's resources, and recommendations for legislative or administrative changes to improve whistleblower protections at the VA.

The statutory authorities provided by Title I of this legislation to act in the best interest of whistleblowers at the VA and to formulate and advance policies that will benefit whistleblowers and veterans alike are a significant improvement over previous attempts to address the issues at the VA.

Recommendations

It is POGO's hope that the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 will ensure that whistleblowers can expose wrongdoing, confident that their disclosures will be independently investigated and that they will not be made targets for retaliation.

Title I of this bill is full of necessary reforms. That said, there are a few changes to the overall bill that should be made before it becomes law, in order to ensure the bill doesn't inadvertently weaken civil service protections for employees at the VA.

Significantly, both sections 201 and 202 of this bill detail the procedures for disciplining Senior Executives and employees at the VA. Both sections allow a window of 7 business days for an employee to respond to a notice of removal. This is unreasonably and unnecessarily short and

[9] Lydia Dennett, "Fear and Retaliation at the VA," Project On Government Oversight, July 21, 2014. http://www.pogo.org/our-work/articles/2014/fear-and-retaliation-at-the-va.html

cannot be considered an adequate time frame to provide fair due process rights to respond to such a notice. Considering how important due process is in the civil service, and that we have seen instances where whistleblowers are targeted when there are weak civil-service protections, this is a substantial point of concern. This time frame must be extended to a minimum of 14 business days. Additionally, the bill reduces the time period in which an employee has to appeal to the Merit Systems Protection Board (MSPB) to 10 business days, which is similarly unreasonable and unnecessarily limits due process rights currently enjoyed by civil service employees.[10] The US Court of Appeals for the Federal Circuit recently struck down similar changes to MSPB access in removal actions.[11] We recommend that section be removed from the bill.

Furthermore, understanding that the intent behind this legislation is to improve whistleblower protections at the VA, POGO encourages you to update the definition of "whistleblower disclosure" in section 101. Your colleagues in the House have recognized that limiting a protected whistleblower disclosure to one that evidences a violation of a provision of law creates an unnecessary loophole and complicates enforcement of whistleblower protections.[12] By expanding the language to include information that evidences violations of rules or regulations as part of a protected whistleblower disclosure, you can help better protect whistleblowers and close this loophole.

Finally, we urge Congress to extend whistleblower protections to contractors and veterans who raise concerns about medical care provided by the VA. POGO's investigation found that both of these groups also fear retaliation, which prevents them from coming forward. In addition, a veteran who is receiving poor care should be able to speak to his or her patient advocate without fear of retaliation, including a reduction in the quality of health care. Veterans should not fear that they will lose access to their medications for blowing the whistle on problems they've experienced at VA hospitals or clinics. Without this reassurance, there is a disincentive to report poor care, allowing it to continue uncorrected.

Conclusion

The VA and Congress must work together to end the culture of fear and retaliation. Whistleblowers who report concerns that affect veteran health must be lauded, not shunned. And the law must protect them. It is POGO's hope that the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 will ensure that whistleblowers can step forward to expose wrongdoing, confident that it will not result in retaliation.

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[10] 5 U.S.C. § 7701(e)(1)(A)

[11] *Helman v. DVA*, 2015-3086, 2017 U.S. App. LEXIS 8177 (Fed. Cir. May 9, 2017)

[12] House of Representatives, "Follow the Rules Act" (H.R. 657), introduced January 24, 2017, by Representative Sean Duffy. https://www.congress.gov/bill/115th-congress/house-bill/657/text (Downloaded May 15, 2017) (Amending a protected action taken by civil service employees to "refusing to obey an order that would require the individual to violate a law, rule, or regulation.")

PREPARED STATEMENT OF PARALYZED VETERANS OF AMERICA

CHAIRMAN ISAKSON, RANKING MEMBER TESTER, AND MEMBERS OF THE COMMITTEE, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to submit our views on legislation pending before the Committee.

S. 23, THE "BIOLOGICAL IMPLANT TRACKING AND VETERAN SAFETY ACT OF 2017"

S. 23 intends to have the VA adopt and implement a standard identification protocol for use in the tracking and procurement of biological implants by the Department of Veterans Affairs, and for other purposes. While we understand and generally support some of the provisions of this legislation, PVA objects to the provisions of the draft legislation that would exclude the purchase of biological implants from the authority of title 38 U.S.C., Section 8123.

Section 8123 states, "the Secretary may procure prosthetic appliances (which includes surgical biological implants) and necessary services required in the fitting, supplying, and training and use of prosthetic appliances by purchase, manufacture, contract, or in such other manner as the Secretary may determine to be proper, without regard to any other provision of law."

The Federal Acquisition Regulations (FAR) were issued pursuant to the Office of Federal Procurement Policy Act of 1974. Statutory authority to issue and maintain the FAR resides with the Secretary of Defense, the Administrator of General Services, and the Administrator, National Aeronautics and Space Administration—agencies that do not bear the responsibility of providing lifelong care for disabled veterans. However, the VA does bear the heavy weight of that responsibility.

With this in mind, it is important to note the distinction between VA's responsibility to meet specialized needs versus a Federal agency's responsibility to respond to emergency needs. The FAR provides for procuring prosthetics in cases where, for example, a natural disaster damaged a veteran's equipment. However, the writers who formulated the FAR in 1974 recognized there was a need for special provisions under which VA could purchase prosthetics for disabled veterans with specialized needs in a timelier manner than the FAR allowed, irrespective of whether a bona fide emergency existed. The authors of the FAR recognized this fact and the need for Section 8123 as evidenced by the fact that it is referenced in the FAR. This was reconfirmed in subsequent updates and amendments to the FAR.

Unfortunately, this S. 23 seems to imply that the Federal Supply Schedule and the FAR is all that is needed to procure Prosthetic appliances (biological implants) and services based on a misunderstanding of the difference between "specialized needs" and "emergency needs." Rather than erode a clinician's ability to acquire these prosthetics in a timely manner or manipulate how these prosthetics are defined in order to exclude them from the authority of Section 8123, we believe that the legislation should focus on accountability and oversight. It should not be making efforts to overturn a system that has served veterans well for over half a century. We encourage the removal of the provision of the legislation that eliminates the authority of Section 8123.

S. 112, THE "CREATING A RELIABLE ENVIRONMENT FOR VETERANS' DEPENDENTS ACT"

PVA supports S. 112, the "Creating a Reliable Environment for Veterans' Dependents Act."

Currently, the VA Grant and Per Diem program does not reimburse VA-funded facilities for services provided to a homeless veteran's dependent. This bill would allow VA to reimburse facilities who care for the child of a veteran receiving care at a shelter funded through VA.

Veteran homelessness remains a serious problem. Children of homeless veteran parents can be turned away from receiving care at the very facilities where their parents are expected to seek services to get themselves and their families back on their feet. The supportive housing and service centers also provide case management, education, crisis intervention, and specialized services to homeless women veterans.

Congress must ensure VA is able to provide consistent, reliable services to veterans whose lives are in upheaval. Denying access for dependents does nothing but add more uncertainty for veterans in need stable circumstances for their families. While PVA supports this legislation we urge Congress to see that VA is adequately resourced to provide these reimbursements.

S. 324, THE "STATE VETERANS HOME ADULT DAY CARE IMPROVEMENT ACT OF 2017"

PVA supports S. 324, a bill that would provide "no cost" medical model adult day health care (ADHC) services to veterans who are 70 percent or more service-con-

nected disabled. By authorizing the Secretary to enter into agreements with state veterans homes the bill would provide ADHC to those veterans who are eligible for, but do not receive, skilled nursing home care under section 1745(a) of title 38, U.S.C.. Currently, VA pays State Homes a per diem for ADHC. The per diem rate covers around one-third the cost of the program. S. 324 is an extension to the Veterans Benefits, Health Care, and Information Technology Act of 2006 (Pub. L. 109–461), which provides "no cost" nursing home care at any State Veterans Home to veterans who are 70 percent or more service-connected disabled. This means that currently there are some veterans making a choice between 100% free nursing home care or expensive, out of pocket ADHC. The payment to a state home under this legislation would be 65 percent the amount payable to the state home if the veteran were an inpatient for skilled nursing care.

Adult day health care is a crucial service that allows veterans to remain in their homes and communities by delaying entry into traditional nursing care. While a veteran may need long-term services and supports, it is not necessarily the case those must be received in an institutional setting. Rather, a veteran can receive comprehensive medical care and socializing without the disruption of leaving their home. The program is staffed by a team of multi-disciplinary healthcare professionals who evaluate each participant and customize an individualized plan of care specific to their health and social needs. ADHC is designed to promote social stimulation and maximize independence while also receiving quality of life nursing and personal care services.

Additionally, we know that the wellbeing of a caregiver directly impacts the quality of care they provide to the veteran. ADHC allows caregivers the means the ability to meet other professional and family responsibilities. Especially for those caregivers whose veteran was injured before 9/11 and is not eligible for the VA Comprehensive Caregiver Program, ADHC offers critically needed support.

Delaying institutional settings for veterans with long term care needs is the rare jewel in health care, it is the least costly care and the best care for certain populations. ADHC saves the taxpayer, is the most appropriate care for some sick and disabled veterans, and allows spouses, children, parents, and communities more time together.

S. 543, THE "PACT ACT"

PVA has no formal position on the "Performance Accountability and Contractor Transparency Act" at this time.

S. 591, THE "MILITARY AND VETERAN CAREGIVER SERVICES IMPROVEMENT ACT OF 2017"

PVA strongly supports S. 591, the "Military and Veteran Caregiver Services Improvement Act of 2017." No group of veterans understands the importance of caregivers more than PVA members and their families.

This legislation would expand VA's Comprehensive Family Caregiver Program to veterans of all eras. Currently, a veteran is eligible if they require the services of a caregiver due to an injury incurred in service on or after September 11, 2001. This date of eligibility, and the exclusion of service-connected illnesses, is unjust and indefensible. As many as 70,000 veterans (with estimates as high as 88,000) would be eligible for the Comprehensive Family Caregiver Program if the September 11, 2001 date was eliminated as a barrier. Expansion would make available the resources that caregivers need to provide quality care to veterans. These resources include a monthly stipend based on the hours of care provided, healthcare through CHAMPVA, respite care, additional training, and paid travel expenses to and from veterans' medical appointments.

Caregivers play the most critical role in maintaining the wellbeing of a catastrophically disabled veteran. From activities of daily living, to psycho-social interaction, to maintaining health to prevent institutional care- these caregivers have been sacrificing their own financial and physical wellbeing to care for veterans, with little to no support from VA. Congress has no justification for denying access to veterans because of the date of injury or denying those of any era who were made ill as a result of service. This legislation would rectify this inequity.

Additionally, the Military and Veteran Caregiver Services Improvement Act would make the program more inclusive of mental health injuries; reauthorize the Lifespan Respite Care Act and expand essential respite options for caregivers; give veterans the opportunity to transfer GI Bill benefits to a dependent, to help unemployed or underemployed spouses of injured veterans prepare to become the primary income for the family; make caregivers who work in the Federal Government eligible for flexible work schedules; provide assistance with childcare, financial advice and legal counseling, which are all top, and currently unmet, needs.

The majority of catastrophically injured, service-connected veterans who rely on a caregiver for their daily living are ineligible for the Comprehensive Caregiver Program. Moreover, the need for a caregiver is not lessened simply because a veteran's service left him or her with a catastrophic illness, rather than an injury. PVA is pleased to see that S. 591 includes catastrophic illness as a program qualifier. For PVA's members, a spinal cord disease is no less devastating than a spinal cord injury. Veterans that have been diagnosed with Amyotrophic Lateral Sclerosis (ALS) and Multiple Sclerosis (MS) will eventually experience significant decline in their ability to perform activities of daily living and unquestionably become dependent on a caregiver.

Pre–9/11 caregivers have provided decades of uncompensated work to our disabled veterans, often with no support services of any kind and at the expense of their own health and livelihood. A study by the Rand Corp. in 2014 estimated that veterans' caregivers save taxpayers $3 billion a year.

When Congress says the cost of expansion of the program is prohibitive they suggest financial burden for caregivers is not prohibitive, that the insecurity of their lives is a just consequence of their family's sacrifice. They are paying for what Congress should, and what Congress does when injured after 9/11. Ensuring that a veteran is able to reside in their home, in their community, has been shown time and again to reduce medical complications, hospital stays, and costs. At the same time, the veteran and their family maintain a psychosocial wellness that is impossible to achieve in an institution.

PVA understands the costs concerns with expanding the program but believes doing right by veterans is more important, and hopes Congress will believe so too. At the same time, we challenge the very premise of the concerns about cost. While Congress generally ignores the principles of "dynamic scoring" except when it is politically expedient, consider the cost of providing caregiver services versus the cost of institutional services. For catastrophically disabled veterans, if their caregiver can no longer afford to continue, or has suffered their own injury, their veteran has no option but to be placed in an institutional setting. Consider the long term cost savings for the taxpayer by providing caregivers the ability to delay their veteran's admittance to a nursing home. In a VA nursing home the VA spends, on average, $366,000 per veteran, per year. In a community nursing home the cost averages $86,000 per veteran, per year. At a state veteran's home, costs average $45,000 per veteran, per year. Meanwhile, the average costs under the Comprehensive Family Caregiver Program is $36,000 per veteran, per year. Expansion could save the Federal Government between approximately $2.5 billion and $7.0 billion in a given year. Moreover, the health outcomes and quality of life experienced by veterans served at home by caregivers outperforms any institutional measure.

The exclusion of "serious illnesses and diseases," and the use of the "date of injury" as eligibility requirements for such an important program are indefensible. As a result, the veterans and their families suffer. Congress continues to find excuses to deny access. It has never been more urgent for those excuses to stop. As the largest cohort of veterans (Vietnam-era) ages, the demand for long-term care resources will continue to grow significantly. Catastrophically injured veterans will require the most intensive and expensive institutional care. By providing their caregivers the means to care for the veterans at home with family, they will delay the costs of institutional care. But most importantly, these veterans will have more time at home, in their communities, and among those they love.

S. 609, THE "CHIROPRACTIC CARE AVAILABLE TO ALL VETERANS ACT OF 2017"

PVA supports S. 609, the "Chiropractic Care Available to All Veterans Act of 2017." Chiropractic care is a widely accepted and invaluable medical treatment. This bill would establish a program for the provision of chiropractic care and services at all medical centers by 2020. Likewise, it would see that "chiropractic services" be included in title 38, United States Code, as a medical service, a rehabilitative service, and a preventative health service.

The process of integrating chiropractic care into VA health care has been slow. At least 65 VA medical centers have chiropractors on site, integrated into the care teams. Approximately 52 percent of veterans returning from Iraq and Afghanistan are seeking care because of musculoskeletal ailments, specifically back and joint pain. The common causes for these chronic pains are heavy gear, vehicle accidents, and blast injuries. The overwhelming majority of affected veterans still do not have readily available access to chiropractic care.

With an ever present awareness of VA overreliance on pharmacological solutions for chronic pain and the resulting trends of opioid dependence and accidental overdose, PVA strongly encourages the utilization of alternative treatments. At the same

time we would encourage a less prescriptive approach. It is possible that not every VA medical center will have need of chiropractic services.

S. 681, THE "DEBORAH SAMPSON ACT OF 2017"

PVA supports S. 681, the "Deborah Sampson Act of 2017." This bill would help to address some of the quality of care barriers that are unique to women veterans. From transition services, to health care access, to the availability of prosthetics, this bill is a critical and timely step to enhancing the health and well-being of women veterans and their families. As women veterans are the fastest growing population of veterans, we urge Congress to enable VA to fully meet the needs for specialized services for women.

This bill would initiate a pilot program for peer-to-peer counseling for women veterans transitioning out of the military and make permanent the availability of readjustment counseling services in group retreat settings. Of the existing readjustment counseling retreats provided through VA, participants consistently showed better understanding of how to develop support systems and to access resources at VA and in their communities. The OEF/OIF women veterans at the existing retreats are most often coping with effects of severe Post-Traumatic Stress and Military Sexual Trauma. They work with counselors and peers, building on existing support. If needed there is financial and occupational counseling. These programs are marked successes and the feedback is overwhelmingly positive for women veterans, who show consistent reductions in stress symptoms as a result of their participation. Other long lasting improvements included increased coping skills. It is essential for women veterans that Congress make this program permanent. We believe the value and efficacy is undeniable.

The legislation would also direct VA to partner with community organizations to provide support services for women veterans needing assistance, particularly prevention of eviction, child support issues, and the restoration of driver's licenses.

The bill would authorize hospital stays of up to 14 days for newborns under VA care. The current provision allows a maximum stay of seven days. As the average stay for a healthy newborn is two days, any newborn needing additional coverage is likely to be facing complications immediate after birth or a severe infant illness. The current seven day coverage is in a non-department facility for eligible women veterans who are receiving VA maternity care. Beyond the seven days, the cost of care is the responsibility of the veteran and not VA, even if complications require continued care beyond the coverage period. Post-natal health is critical to newborn health which directly impacts the lives and wellbeing of veterans and their families. PVA is particularly concerned about those veterans with catastrophic injuries or mental illnesses that can cause high-risk pregnancies or pre-term deliveries. A seven day limit arguably impacts veterans with disabilities at a greater rate than other veterans. Extending newborn coverage to 14 days is the right thing to do.

The legislation aims to eliminate barriers to care by ensuring every facility has at least one full-time or part-time women's health provider. An additional $20 million would be authorized to carry out the retrofitting of existing facilities to improve privacy, safety and environmental needs for women veterans. Finally, the bill would require data collection and reporting by gender and minority status on VA programs serving veterans. PVA is pleased to see the reporting requirement of prosthetic availability for women veterans.

S. 764, THE "VETERANS EDUCATION PRIORITY ENROLLMENT ACT OF 2017"

PVA supports this measure. Education benefits as administered are calculated to fund a veteran through the completion of a standard four-year course of study resulting in a degree. In some cases, a student is unable to register for a prerequisite, which in turn leaves them unable to advance on schedule in that degree program. When this happens, the student veteran now must continue his or her course of study beyond the enrollment period covered by GI Bill benefits. Such a result dilutes the overall value of the benefit when the veteran does not earn the degree the assistance was intended to cover, and it simultaneously wastes government money while the veteran, unable to secure a spot in a relevant course, takes unnecessary classes to pass the time.

Not getting a seat in a class might be due to pure luck of the draw, but often veterans have substantially different circumstances than traditional students that complicate the course selection process. If a servicemember in the National Guard or a Reserve Component gets called away for duty, he or she should have priority enrollment to ensure they have the ability to quickly get back on track. Many veterans might also be coming to school at a later point in their lives and have fami-

lies. Veterans should not be penalized for trying to fit courses in around other significant obligations such as caring for children.

The evidence already exists that offering veterans priority enrollment is feasible and important. Many private universities already offer priority enrollment, and some states such as Pennsylvania, California and Ohio require it to be offered in all publicly-funded institutions.

S. 784, THE "VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2017"

PVA supports S. 784, the "Veterans' Compensation Cost-of-Living Act of 2017," which would increase, effective as of December 1, 2017, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation (DIC) for the survivors of certain disabled veterans. This would include increases in wartime disability compensation, additional compensation for dependents, clothing allowance, and dependency and indemnity compensation for children.

S. 804, THE "WOMEN VETERANS ACCESS TO QUALITY CARE ACT OF 2017"

PVA supports S. 804, the "Women Veterans Access to Quality Care Act of 2017." This bill would establish structural standards in VA health care facilities that are necessary to meet the health care needs of women veterans. Implementation of this bill would generate a report to the House and Senate Veterans' Affairs Committees listing the facilities that fail to meet these standards and the projected cost to do so. VA would be required to publish the health outcomes of women in each facility, juxtaposed with the men that facility serves. VA would be required to hire a full-time obstetrician or gynecologist at every VA Medical Center, and pilot an OB-GYN graduate medical education program to increase the quality of and access to care for women veterans.

The women veteran population who use VA health care doubled between 2003 and 2012, from 200,631 to 362,014. By 2040, it will have doubled again. Given this projection, VA must increase their capacity to meet the needs of women veterans. This legislation is a crucial step in assessing the quality of care women veterans receive and the steps needed to improve it.

S. 899, THE "DEPARTMENT OF VETERANS AFFAIRS VETERAN TRANSITION IMPROVEMENT ACT"

PVA supports S. 899, the "Department of Veterans Affairs Veteran Transition Improvement Act." Currently, new Title 5 employees with a thirty percent or higher service-connected disability rating are entitled during their first twelve-month period of employment to leave for purposes of undergoing medical treatment related to such disability. PVA supports this bill which would apply the same entitlement to health care professionals under 38 U.S.C. § 7401(1).

S. 1024, THE "VETERANS APPEALS IMPROVEMENT AND MODERNIZATION ACT OF 2017"

PVA employs a highly-trained force of over 70 service officers who develop veterans' claims for both member and non-member clients. These frontline employees spend a minimum of two years in specialized training. We maintain a national appeals office staffed by attorneys and legal interns who represent clients at the Board of Veterans' Appeals (Board). We also have attorneys who practice before the Board, the Court of Appeals for Veterans Claims (CAVC), and the United States Court of Appeals for the Federal Circuit. Of all the major Veteran Service Organizations (VSO), only PVA offers such continuity of representation throughout subsequent appellate review.

Our most important attribute, though, is that our service officers and attorneys consistently advocate for catastrophically disabled veterans. Complex claims are the norm, not the exception. As we attempt to bring greater efficiency to the claims and appeals system, our perspective is geared toward ensuring that the due process rights of the most vulnerable among us—those most deserving of benefits—are not watered down for the sake of expediency. To reinforce this position, we would advise the Committee to include a sense of Congress or other preamble with this legislation indicating that no part of the new framework should be read to abrogate or displace the non-adversarial nature of VA claims adjudication. An overhaul of this size and scope invites subsequent litigation and new legal interpretations. Clarifying this point with direct legislative history on the subject would be an easy but important effort.

Background

The number of pending appeals is approaching 500,000. VA projects that if we fail to address the process, within a decade the average wait time for resolving an appeal will reach 8.5 years. We believe reform is necessary, and we support this legislation moving forward.

There is no shortage of news articles and academic pieces that attempt to illustrate for readers the level of complexity and redundancy in the current appeals process. It is a unique system that has added layer after layer of substantive and procedural rights for veterans over the years. The most notable aspect differentiating it from other U.S. court systems is the ability for a claimant to inject new evidence at almost any phase. While this non-adversarial process offers veterans the unique ability to continuously supplement their claim with new evidence and seek a new decision, it prevents VA from accurately identifying faulty links in the process, whether it be individual raters or certain aspects of the process itself.

It is important that as we approach this major issue that we do not lose sight of the fact that veterans have earned these benefits through the highest service to their country and have every right to pursue these earned benefits to the fullest. As we promote and seek public support for change, it is easy to use statements such as, "there are veterans who are currently rated at 100% who are still pursuing appeals," to illustrate the problems that pervade the system. PVA will be the first to point out, though, that a veteran rated at 100% under 38 U.S.C. § 1114(j) might also be incapacitated to the point that he or she requires 24 hour caregiver assistance. A 100% service-connected disability rating does not contemplate the cost of this care, and veterans may seek special monthly compensation (SMC) to the tune of thousands of dollars needed to address their individual needs. Few people would disagree that pursuing these added disability benefits are vital to a veteran's ability to survive and maintain some level of quality of life. Without clarification, such statements lead people to believe that veterans are the problem.

This is why PVA believes it is so important to ensure that VSO's remain as involved in the follow-on development process and implementation as they are now if this plan is to succeed. This is a procedural overhaul, and VSO's are the bulwark that prevents procedural change from diluting the substantive rights of veterans.

The Framework

As the working group came together and began considering ways to address the appeals inventory, it became clear that a long-term fix would require looking beyond appeals and taking a holistic view of the entire claims process. The work product in front of us today proposes a system with three distinct lanes that a claimant may enter following an initial claims decision—the local higher-level review lane, the new evidence lane, and the Board review lane. The work horse in this system is the new evidence lane. The other two serve distinct purposes focused on correcting errors. A decision to enter any of the lanes must be made within one year of receiving the previous decision. Doing so preserves the effective date relating back to the date of the original claim—a key feature of this new framework.

When a claimant receives a decision and determines that an obvious error or oversight has occurred, the local higher-level review lane, also known as the difference of opinion lane, offers a fast-track ability to have a more experienced rater review the alleged mistake. Review within this lane is limited to the evidence in the record at the time of the original decision. It is designed for speed and to allow veterans with simple resolutions to avoid languishing on appeal.

If a claimant learns that a specific piece of evidence is obtainable and would help him or her succeed on their claim, the new evidence lane offers the option to resubmit the claim with new evidence for consideration. VA indicates that its goal is a 125-day turn around on decisions within this lane. Another important aspect is that the statutory duty to assist applies only to activity within this lane. This is where VA will concentrate its resources for developing evidence.

The third lane offers an appeal to the Board. Within this lane there are two tracks with separate dockets. One track permits the addition of new evidence and option for a Board hearing. The other track permits a faster resolution by the Board for those not seeking to supplement the record. A claimant within this track will not be permitted to submit new evidence, but they will have an opportunity to provide a written argument to accompany the appeal.

If the claimant receives an unfavorable opinion at the Board, he or she may either revert to the new evidence lane within one year or file a notice of appeal with the CAVC within 120 days. Notably different from earlier versions of this legislation, this draft bill would preserve the claim's effective date even after an adverse decision at the Court.

Concerns Specific to the Framework

Throughout the development of this new framework, PVA's biggest concern has been the proposed dissolution of the Board's authority to procure an independent medical examination or opinion (IME) under 38 U.S.C. § 7109. An IME is a tool used by the Board on a case-by-case basis when it "is warranted by the medical complexity or controversy involved in an appeal case." § 7109(a). The veteran may petition the Board to request an IME, but the decision to do so remains in the discretion of the Board. The Board may also request an IME sua sponte. Experienced Board personnel thoroughly consider the issues which provoke the need for an outside opinion. Complicating the process further, the CAVC has carefully set parameters for the proposed questions to be answered by experts. A question presented to a medical expert may be neither too vague, nor too specific and leading. A question too vague renders the opinion faulty for failing to address the specific issue, while a question too specific tends to lead the fact finder to a predisposed result.

The standard for granting such a request is quite stringent. 38 CFR 3.328(c) states, "approval shall be granted only upon a determination . . . that the issue under consideration poses a medical problem of such obscurity or complexity, or has generated such controversy in the medical community at large, as to justify solicitation of an independent medical opinion." The number granted each year usually amounts to no more than one hundred, with approximately fifty percent of those IME's being requested by the Board itself. The regional offices have long held a companion authority under 38 U.S.C. § 5109. Incredibly, in a room full of practitioners convened in March 2016 as part of this current reform process, not one among them could recall an instance of a rating officer requesting an IME. And yet the original proposal was to eliminate the Board's authority to procure an IME and rely solely on a rating officer exercising his or her authority under § 5109.

VA's rationale for dissolving this authority is primarily based on having all development of evidence take place at the Agency of Original Jurisdiction (AOJ) level in the New or Supplemental Evidence Lane. This unwavering desire to rid the Board of any development stems in part from an attempt to exploit its experienced Veteran Law Judges (VLJ) to the greatest possible extent. VLJ's who adjudicate appeals are a human capital commodity and form a critical component of the system. Because employees and outside attorneys cannot reach the experience and qualifications of a VLJ overnight, VA is limited in its ability to scale this particular resource simply by hiring new employees.

These concerns are valid to a degree, and we have worked with officials to find a solution that allows the Board to realize the benefit of making the best use of VLJ's while attempting to preserve the beneficial aspects of IME's procured by the Board. Part of the mitigating measures are reflected in this draft bill's proposed amendments to 38 U.S.C. § 5109, permitting the Board to remand specifically for procurement of an IME and requiring the VLJ to articulate the specific questions to be presented to the expert.

We applaud the Committee's change to the remand language. In earlier versions of this legislation, the Board would only be permitted to remand for an IME if it determined an error existed on the part of the AOJ to satisfy its duty to assist under 38 U.S.C. § 5103A. Since the duty to assist is necessarily inconsistent with the discretionary nature of an IME, this circumstance would never arise, and IME's would come to a halt. Using an abuse of discretion standard instead fixes this issue.

Dissolving § 7109 would have the additional effect of abolishing the centralized office of outside medical opinions. This small staff has played a vital role in facilitating IME's and maintaining their effectiveness by developing relationships with doctors who are experts on particular subjects and willing to do this tedious task for almost no money. This office not only expedites the receipt of opinions, but it also ensures a high level of quality. VA has committed verbally to PVA that it will preserve this resource by moving it from the Board and placing it under VBA's management, in essence making it available to the AOJ going forward.

The decreased efficiency with having the process conducted at the AOJ level is also concerning. Instead of the VLJ requesting an IME and receiving the opinion, now a second person must review the claim—the rating officer who received the file on remand. If a veteran wishes to appeal this re-adjudication, we have asked for and received VA's commitment to reroute the appeal by default, with exceptions, back to the same VLJ who remanded the case to avoid yet another person from having to review a claim with enough medical complexity to warrant the IME. Unless this Committee is willing to outright preserve § 7109, we would strongly recommend that the Committee conduct oversight on these specific commitments by VA, perhaps as part of the increased reporting requirements.

We also recommend an additional jurisdictional safeguard for the Board. In 38 U.S.C. § 7104, it would be helpful to include language that addresses situations

where the Board finds that an appeal presents extraordinary circumstances. The Board, in its sole discretion, should be able to retain jurisdiction over a remand of that appeal.

Some stakeholders have expressed concern over the replacement of the "new and material" evidence standard with "new and relevant." It is true that there are a number of appeals in the system currently disputing a decision that evidence submitted was not deemed "material." The stated concern is that changing "material" to "relevant" will simply exchange one appealable issue for another. While it is a fair point, "relevant" is a significantly lower legal threshold and as higher numbers of veterans meet this threshold, it should correlate to fewer appeals. Those expressing concern propose having VA simply accept all "new" evidence and make a decision. Under this proposal, if the evidence is so weak that it is not even relevant, then VA can easily deny the claim. For every denial, VA will be required to do the work of providing the improved notice explaining its decision. Conversely, a legal determination that new evidence is not relevant would not be subject to this requirement, thus a reduced workload for VA. PVA believes "new and relevant" is an acceptable standard for veterans to meet. But at this point, it is unclear whether dealing with continued appeals on relevance determinations or processing improved notice for denials will lead to a greater aggregate negative impact on the system.

Earlier objections were raised concerning the specificity with which a veteran was required to identify issues of fact or law being contested on appeal in a notice of disagreement. At first glance, the prior language appeared to be quite "legalese," requiring a sophisticated level of pleadings. Placing such burden on veterans would be at odds with the non-adversarial nature of the system. We are pleased to see that the current draft bill has addressed this issue.

Judicial Review

We noted above that this draft bill would preserve a claim's effective date following an adverse decision from CAVC. It would also provide the same relief after an adverse decision from the Federal Circuit and the Supreme Court of the United States. The concept of imposing finality after a Court decision has provoked a significant debate among the stakeholders. Unfortunately, the strongest objections to imposing finality at the Court have not been met with much discussion regarding why VA, or some of the other stakeholders, are comfortable with finality at that stage. We would encourage the Committee to draw out this discussion and fully examine the issue. There are arguments and perspectives on both sides that warrant attention.

Our initial impression is that while VA is trying to create new efficiencies in its claims and appeals processing, we must remember that the CAVC is not part of that system, and it does not exist for VA's benefit or efficiency. Nor does it exist to create precedent. Precedent is a byproduct of an individual availing him or herself of the Court. The Court exists to hear veterans' individual claims and gives veterans an independent avenue to challenge whether VA considered a claim correctly. We in the veterans community fought long and hard for judicial review, and it is precious. PVA is uniquely positioned in this regard. Our organization has boxes full of claims that, but for the Court, the veteran would never have had a full and fair review. When we approach analyzing the impact on the Court, we should not focus on the systematic efficiencies or precedent, because these are not the Court's purpose. We should focus on what an individual veteran's right to judicial review is and what it takes to avail him or herself of that right.

There are reasonable assertions that failing to provide effective date relief following a Court decision will have a chilling effect on the Court. They should be addressed unless willing to be conceded. One scenario presented is where a veteran, who having received a denial under what she believes is an erroneous application of law to the case, also has new evidence to attach to the claim. She is faced with deciding whether to pursue Court review on the legal issue or circulate back through the system with new evidence. If she chooses the Court and loses, she can still continue to pursue the claim with new evidence, but she will have lost her effective date. If she chooses to handle the new evidence first, her claim will again be adjudicated under what she considers to be an erroneous interpretation of law. This predicament, so the argument goes, will likely force veterans to choose to avoid the Court at the risk of missing an opportunity to strengthen the record. Hence the chilling effect. It also inconveniences the veteran by having them cycle through the system while being again scrutinized under a misinterpretation of the law.

One might argue, though, that there is no chilling effect in this scenario. The veteran is in fact inconvenienced. But ultimately, if the veteran cycles through again with the new evidence, strengthening the record, she arrives in the exact same position if denied, this time without the predicament. The choice is obvious, and she

heads to the Court. The only person in this scenario who ultimately would not reach the Court is one who received an earlier and favorable adjudication at a lower level of review. This is precisely what we want for veterans. Any reduction in claims reaching the Court would be attributed to more efficient outcomes for the veterans. Making a decision about the framework that accommodates veterans facing this scenario also requires a belief that the veteran's legal interpretation is always correct and, necessarily, that VA's is always wrong. This is not how sound policy is formed. Further, it is hard to weigh at this point a single veteran's inconvenience in this scenario against the potential gains for numerous veterans who are benefiting from a more efficient system due to the finality imposed after a Court decision.

There is, perhaps, also an undue assumption that a chilling effect on the Court would in fact reduce precedent and oversight on VA. Conceptually, one may concede that a reduction in volume of claims at the Court raises the possibility that a "perfect case" for setting precedent will not arrive. But it is possible that a reduction in the Court's workload would offer greater opportunity to give more time and attention to a precedent-setting claim, which otherwise might have slipped through the cracks or not garnered a more thorough opinion.

There are other scenarios that argue in favor of granting effective date relief following review by the CAVC. If the Board rules against a veteran and finds that a medical exam being challenged was adequate for purposes of his rating decision, he is faced with two choices. He could appeal to the CAVC, or he could develop independent evidence that would strengthen his argument that the exam provided by VA was inadequate. The latter option costs money. If effective date relief followed a decision at the CAVC, the veteran could wait and see if the Court agreed with his position before he was forced to shell out money he likely does not have to invest in proving his claim. Veterans with means may not see this as an issue. For those without means, it would be an unwarranted obstacle in a system that is designed to be non-adversarial.

One aspect of this framework that has not been discussed at all is the fact that you can technically take one issue from a multi-issue claim up to the Court, and cycle back through the other lanes in the framework on the remaining issues. Currently, the Court takes jurisdiction over issues that are expressly identified by the veteran, and issues not appealed after a Board decision are final. Nothing in this draft bill changes the way an issue reaches the CAVC. But because this new framework has provided liberal effective date relief, new incentives for action have been introduced. There should be further discussion among stakeholders and VA about how claims are dealt with that end up being split up between the Court and the agency. There is no precedent for this in the current system.

PVA was a supporter early on of judicial review, and we believe the availability of that review has improved the appeals process for veterans. Determining the best way to preserve that protection deserves more conversation at this point in time.

Implementation

We applaud the heavy reporting requirements found within this bill. One of the biggest reservations that the collective stakeholders have voiced is the absence of information related to implementation. GAO's recent report reinforced our claim that the success of this new framework hinges on how VA makes the transition, and VA has yet to fully demonstrate what it needs to accomplish this task. We also agree that it is important that VA provide a full accounting of the bases for certain assumptions that have been used to support the feasibility of this new framework. For example, what is the basis for the assumption that within the "hearing lane" at the Board, thirty-five percent of veterans will choose to have a hearing? What is the impact on the system if that estimate is drastically wrong?

Within the reporting requirements, we recommend including a mandate to track legacy appeals that have transitioned into the new system. The goal would be to ensure that Congress can easily identify how many legacy appeals have been truly resolved as opposed to being reclassified in the new system.

We support VA's proposed first step toward combatting the backlog of legacy appeals. One of the hurdles to permitting veterans with legacy appeals to join the new system was that veterans in the legacy system may not have been provided sufficient notice to make an educated decision. Allowing veterans to join after they have received a statement of the case or supplemental statement of the case addresses this concern and will help stem the flow of new claims into the old, broken system. The quicker we can shut off that valve, the quicker the backlog of legacy appeals will be handled.

We note in closing that this is not simply a VA problem. As stated earlier, PVA has many service representatives and spends a great deal of time, funds, and effort on ensuring they accomplish their duties at a high level of effectiveness. However,

it is important that veterans and their representatives also share responsibility when appeals arrive at the Board without merit. A disability claim that is denied by VBA should not automatically become an appeal simply based on the claimant's disagreement with the decision. When a claimant either files an appeal on his own behalf, or compels an accredited representative to do so with no legal basis for appealing, that appeal clogs the system and draws resources away from legitimate appeals. Since 2012, PVA has taken steps to reduce frivolous appeals by having claimants sign a "Notice Concerning Limits on PVA Representation Before the Board of Veterans' Appeals" at the time they execute the Form 21–22 Power of Attorney (POA) form. PVA clients are notified at the time we accept POA that we do not guarantee we will appeal every adverse decision and reserve the right to refuse to advance any frivolous appeal, in keeping with VA regulations.

PVA believes that substantial reform can be achieved, and the time is ripe to accomplish this task. Our organization represents clients with some of the most complex issues, and we cannot stress enough that moving forward should not be done at the expense of the most vulnerable veterans. We must remain vigilant and appreciate the benefits of bringing together the variety of stakeholders who are participating and bringing different perspectives and viewpoints—it is a healthy development process that ensures veterans remain the focus.

S. 2210, THE "VETERAN PEER ACT"

The "Veteran Partners' Efforts to Enhance Reintegration Act" would require VA to develop and institute a program to integrate Peer Specialists within patient aligned care teams. PVA recognizes the importance of promoting the use of mental health care services in the context of the primary care setting. The veteran-centric, holistic view of the patient epitomizes one of the key distinctions we have long made about care in a VA setting and care delivered in the community. We have a concern, though, with this bill's strict requirements, as opposed to the discretionary nature. To serve as a Peer Specialist, the person must be a veteran with a mental health condition, be in recovery for at least one year without hospitalization or legal issues related to that condition, and willing to openly acknowledge and discuss their condition. If there is an insufficient population willing to openly discuss their own private mental health history and want to do this job professionally, VA may not be able meet this requirement through no fault of its own. While PVA supports the intent of this legislation, we believe more thought should be put into how best to implement this requirement before mandating VA take these steps.

DRAFT LEGISLATION, THE "DEPARTMENT OF VETERANS AFFAIRS ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION ACT OF 2017"

PVA supports the draft legislation, the "Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017." This legislation would bring greater accountability and protect those employees who have the courage to call out fraud, waste, and abuse in VA. We firmly believe that the culture of a company, organization, or Federal agency is shaped by the worst behaviors its leader is willing to tolerate. The "VA Accountability and Whistleblower Protection Act" is the first major step toward reshaping behavior in VA by tolerating bad behavior and poor performance no more. Our veterans deserve it; and so do the hardworking public servants of VA who are tired of being overshadowed by the performance of substandard managers and employees.

PVA has supported efforts to ensure proper accountability at all levels of the VA in the past. In recent years there have been numerous accounts of bad actors in VA senior and lower level management who have failed to fulfill the responsibility of their positions and in some cases arguably violated the law. The focus on accountability in this proposal strikes a reasonable balance to ensure VA leadership has the ability to manage personnel while affording due process protections to employees. We recognize that the question of due process is an important one, and those rights should not be eliminated. However, they cannot be used as a roadblock to accountability either.

PVA appreciates the strong focus on accountability that the Committee has emphasized and we are pleased to see that Secretary Shulkin has made this a priority. There is no doubt that accountability at all levels is an essential part of improving the VA.

DRAFT BILL, "SERVING OUR RURAL VETERANS ACT"

PVA supports the draft bill to authorize payment by the Department of Veterans Affairs for the costs associated with care by medical residents and interns at Indian Health Service (IHS) and Tribal Health Program (THP) facilities operated by feder-

ally recognized tribes and carry out a pilot program to expand such residencies and internships at tribal facilities. While recruiting and retaining capable providers continues to be a struggle for VA, rural communities feel these vacancies two fold. In Indian Country particularly, the minimal availability of consistent, high quality health care has resulted in some of the worst health outcomes in the United States.

The Federal Government has legal and moral obligations to provide health care to two groups—federally recognized tribal nations and eligible veterans. The overlapping, and at times inter-reliability of these groups' respective health care systems is necessary, as American Indians and Native Alaskans have always served in the Armed Forces at the highest rate of any demographic. In Alaska, where this health care system interoperability is most prevalent, the need for primary care providers is critical.

Physician shortages in the United States, and rural communities particularly, are expected to increase drastically in the coming decade, leaving health care systems with a high volume need and little capacity. This bill would provide some relief, by incentivizing medical residents and interns to work at tribal facilities that have existing reimbursement agreements with VA. The eight-year pilot program would have VA reimburse the tribal facilities for the recruitment and training of residents. These participants would then be eligible for loan forgiveness through Indian Health Service or Department of Veterans Affairs Loan Repayment Program.

In 2010, the Indian Health Care Improvement Act was made permanent. As a result, IHS and VA signed a Memorandum of Understanding (MOU) aiming to improve the health status of American Indian and Alaska Native veterans. In 2012, VA began to establish agreements with tribal governments to reimburse them for the direct care of native veterans enrolled in VA.

Since then around 108 tribes have established agreements with VA. At least 7,000 native veterans have been able receive care. Additionally, VA and IHS have strengthened collaborative relationships and resource sharing. For much of Indian Country, unreliability or unavailability of transportation impacts a veteran's ability to receive care from a VA facility. These agreements allow veterans to receive their care close to home, in a culturally conscious environment they may not find at VA.

The national authority for VA to make reimbursement agreements between agencies is set to expire June 30, 2019. If, for some reason, this authority is not renewed, it is unclear what would happen to the proposed eight year pilot program that is dependent on the existence of an agreement. PVA encourages Congress to ensure this authority is renewed in 2019 in order to continue building on the successes already achieved.

This bill offers a sound step forward to ensuring we meet the needs of those who have served, no matter their zip code.

LETTER FROM BILL VALDEZ, PRESIDENT, SENIOR EXECUTIVES ASSOCIATION

the voice of career federal executives since 1980

77 K Street N.E., Suite 2600 • Washington, D.C. 20002 • (202) 971-3300 • Fax (202) 971-3317 • www.seniorexecs.org

May 17, 2017

The Honorable Johnny Isakson
Chairman
Committee on Veterans Affairs
Washington, DC 20510

The Honorable Jon Tester
Ranking Member
Committee on Veterans Affairs
Washington, DC 20510

Dear Chairman Isakson, Ranking Member Tester and Members of the Committee:

On behalf of the Senior Executives Association (SEA) and its members, who are career federal executives in the Senior Executive Service (SES), and those in Senior Level (SL), Scientific and Professional (ST), and equivalent positions, including those serving at the Department of Veterans Affairs (VA), I write in regret to convey our **opposition to S. 1094**, which strikes at the heart of the career-run merit based civil service system by empowering the VA Secretary and political appointees to conduct wholesale political firings of VA senior executives. Enacting such a provision is not in veterans' best interest.

The specific provision of concern is at Title II, Section 201, 713(c) which, if enacted, would not apply the provisions of Section 3592(b)(1) of title 5 to actions taken under the provisions of the section. This language would eliminate essential protections provided by Congress to career federal executives and enable undue or politically influenced terminations of dedicated VA senior executives. Coupled with provisions to provide direct hire authority for medical center directors and VISN directors, this legislation could trigger a return to the spoils system of patronage that was a hallmark of the federal civilian workforce prior to the passage of the Pendleton Act of 1883, and it's modernizing legislation the Civil Service Reform Act of 1978 (CSRA).

While it might seem logical to assert that the elimination of appeal rights to the quasi-judicial independent Merit Systems Protection Board (MSPB) for VA senior executives will improve accountability and agency culture, it makes less sense when one considers MSPB's history and record. Historically, in both Republican and Democratic administrations, the MSPB has had an average 85% affirmation rate of agency decisions, meaning agency personnel actions were upheld. We have no reason to believe that this outstanding record would not be maintained in 2017.

Congress specifically created the MSPB in the CSRA as a specialized independent agency of subject matter experts who could adjudicate federal personnel cases so the federal courts did not need to, except upon appeals, as demonstrated by an MSPB flowchart. Is it really the most efficient use of our under-resourced federal judiciary to charge it with taking on individual federal employee personnel cases? The SEA believes it does not and could prove ultimately harmful to everyone's overall goal of creating a 21st Century workforce at VA and throughout the federal government.

Provisions in this legislation focused on improvements in workforce management, accountability and incentive structures are welcome, but do not address the core issues affecting management and accountability of the VA workforce, such as non-statutory negotiated employee review processes. Veterans deserve a substantive and comprehensive workforce management, accountability, and incentive structure that not only focuses on how to hold VA employees accountable, but that also contains provisions to ensure the success of VA employees. This legislation does little to improve or invest in the VA workforce's ability to execute its mission.

We believe this legislation, and Congress' actions to reform the civil service in general, should reflect fact-based studies, not alarmist anecdotes. According to a recent MSPB study, Federal supervisory employees report that agency culture (80%), the degree of support given by managers and leaders above (77%), and the quality of service provided by my human resources office (76%) are their top three barriers to addressing employee misconduct. On a list of 19 of the most difficult tasks they faced as managers, addressing serious misconduct ranked 14th. Getting a pool of quality candidates to hire from came in first. The same study revealed misunderstanding by management employees about procedures and burdens of proof required to hold employees accountable, a finding that is not addressed by the inclusion of comprehensive supervisory training provisions in the legislation. Nor does this legislation address the manner in which supervisory employees are selected or developed as leaders, which could help address issues with whistleblower protection and retaliation.

Passage of this legislation can only serve to exacerbate VA's hiring woes, further straining its ability to attract talent to over 45,000 vacant positions at the agency. The VA has struggled to fill critical positions due to systemic issues that have plagued the agency and created a toxic and unmanageable environment. It is unclear how the creation of a new political appointee, the Assistant Secretary for Accountability and Whistleblower Protection, even if Senate-confirmed, will provide the leadership capability and management stability to drive sustained effort to improve VA's workforce culture. A term appointment of five years or longer would provide better stability and independence to the position.

A 2016 survey of VA senior executives, conducted by SEA, unveiled the most significant threats to retention among career senior executive leaders, with nearly three in four respondents saying that unfair media and congressional scrutiny, lack of agency leadership support, and diminished or complete inability to be considered for performance-based awards were causing them to consider leaving the VA. Those same factors continue to obstruct the VA's ability to attract and retain the best career senior leaders, with 97% of respondents saying they were concerned about the ability of the agency to fill crucial roles.

SEA would welcome an opportunity to work with the Committee to develop a forward-thinking accountability framework that accomplishes both goals: holding all civil servants accountable for misconduct or poor performance, while investing in the development and capability of civil servants to achieve an agency's mission and incentivizing them to complete work in the most effective and efficient manner possible. We believe developing such a framework is possible and would have many positive effects. SEA is committed to the continued improvement of the federal government and the services we provide to the American people.

We fully understand that there are serious challenges facing the VA, and that the need to address those problems is immediate. Unfortunately, this legislation is not the solution.

Thank you for considering SEA's views. If you have any questions or comments, please contact SEA's Executive Director Jason Briefel at 202-971-3300; briefel@seniorexecs.org.

Sincerely,

BILL VALDEZ
President

CC: Members of the Senate Committee on Veterans Affairs;
The Honorable Marco Rubio

PREPARED STATEMENT OF HON. ROBERT N. DAVIS, CHIEF JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE: Thank you for the invitation to submit a statement of the Court's views on legislation pending before the Committee, in particular S. 1024, the Veterans Appeals Improvement and Modernization Act of 2017. The Court's comments will be brief.

Although changes to VA's appeals processing will eventually impact the Court, the pending legislation does not amend the statutory provisions governing the Court's function. For this reason, the Court will not speculate as to potential consequences of changes that pertain only to the agency, or comment on specific provisions that may ultimately come before the Court in litigation. We do, however, offer the following thoughts on the need to ensure that claimants are aware of their right to appeal to a court of law, and the potential impact this legislation will have on the Court's workload.

Continued Advisement of Appellate Rights: The proposed legislation on appeals modernization provides veterans unlimited opportunities to repeatedly pursue a claim within the agency and secure the earliest effective date possible following any grant of benefits on a timely supplemental claim. That revised appeals structure could potentially result in a veteran never securing a Board of Veterans' Appeals (Board) decision and accompanying notice of appellate rights, and thus never being informed of the Court's existence. The Court states no opinion on whether or not the proposed changes are "good for" individual veterans or VA's overall system of claims processing. We do, however, want to ensure that veterans remain aware of the full array of options available to them in pursuing a claim, including appealing to the Court, and that no option be painted as more or less favorable or likely for success than another.

Unlike earlier draft bills on appeals modernization, S. 1024 includes language that extends the effective date protection, and in essence permits continuous pursuit of a claim via the submission of a timely supplemental claim following a decision of the Court. The Secretary opposed a similar provision in recent testimony before the U.S. House Committee on Veterans' Affairs, where Acting Chairman of the Board David Spickler stated that affording that effective date protection following a court decision "is contrary to VA's policy interest in encouraging dissatisfied claimants to stay within VA unless it is truly necessary to go to a higher court." We oppose any effort to discourage veterans from exercising their right to appeal to the Court. In light of Mr. Spickler's strong statement, the Court feels it worth highlighting that whether or not S. 1024 passes as drafted, the notices VA includes with its decisions must present to veterans all of their post-decision options fully and fairly, and leave the decision as to when an appeal to the Court is necessary in the hands of the veteran. At a minimum, any revisions to the post-Board-decision standard notice of appellate rights must leave intact the notification regarding appealing to the Court. Many people fought long and hard to secure impartial review of adverse VA decisions by a Federal court that by definition is independent of VA. Veterans and their survivors must continue to know about and understand that right.

Implementation: Generally speaking, appeals filed at the Court come from veterans who are dissatisfied with a decision of the Board. Although not with mathematical precision, history has shown that as the number of Board decisions increases, so too do the number of appeals filed at the Court. It is impossible to predict to what extent, if any, the changes proposed by this broad appeals reform legislation will result in some veterans choosing to pursue their claims at the agency following an adverse Board decision rather than appealing to the Court. It is likewise impossible to predict the extent of the legal and procedural questions that will be raised by sweeping legislative change and that will ultimately come before the Court for decision. What does seem clear is that the manner in which this pending legislation is implemented and how that implementation effects the flow of decisions made by the Board will have a profound and fairly immediate effect on the Court.

The applicability section of S. 1024, Section (x), addresses how VA would implement this legislative change, to include an early applicability option and phased rollout. This provision leaves several questions as to when the new system would ultimately be implemented, when cases under that system would reach the Court, and how legacy appeals would be treated. The certification requirement on VA to confirm its preparedness to implement amplifies the uncertainty. Any implementation plan for sweeping legislative change to the VA claims processing system will certainly have its challenges, and we offer no comment on what those may be. We are, however, attempting to anticipate the impact on the Court and best estimate and prepare for the workload that may result from these changes should they become law.

VA recently testified that more than 460,000 appeals are pending before the agency today. The Board decided in the neighborhood of 52,000 decisions in fiscal year 2016, has pledged to further increase its number of annual decisions, and has and continues to grow its staffing at an extraordinary pace in order to meet those projections. Faced with this data, the Court projects a steady, and likely significant increase in the number of appeals over the next several years. As we anticipate a growth in appeals, let me take this opportunity to thank the Committee for the 2016 authorization to temporarily maintain an expanded Court of nine active judges. Once judicial nominees are announced, we ask for your prompt attention to the confirmation process so that we may return to full strength and ensure that we are prepared and able to conduct effective, efficient, and expeditious judicial review of all matters that come before the Court.

In closing, we appreciate the Committee's consideration of our input, and for the past and continued support of the Court's endeavors, including the establishment of a permanent Courthouse building. Thank you.

LETTER FROM CAROL WILD SCOTT, ESQ., LEGISLATIVE CHAIR, THE VETERANS & MILITARY LAW SECTION, FEDERAL BAR ASSOCIATION

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May 17, 2017

Hon. John Hardy Isaakson
Chair
Senate Committee on Veterans Affairs

Hon. Jon Tester
Ranking Member
Senate Committee on Veterans Affairs

Dear Senators Isaakson and Blumenthal:

The Veterans and Military Law Section (V&MLS) of the Federal Bar Association is pleased to submit comments on the proposed legislation on today's Agenda. The opinions herein asserted are those of the Veterans and Military Law Section and not necessarily those of the entire Federal Bar Association. We have not commented on each piece of legislation, restricting our comments to S. 1024, S. 324 and S. 591

As a general matter, review of this proposed legislation clearly demonstrates that the Secretary desires a more traditional adjudicatory process. However, if this is the legislative intent, then there must be a concomitant acceptance of the traditional role of paid counsel within that system. The claims system within the Department of Veterans Affairs is the only system within the Executive branch of government in which the right to paid representation is precluded until the initial record is complete. If the claims system iis to become more adversarial, it should also provide to the veterans/claimant a right to qualified representation from the beginning of the process.

The Committee should also, in the opinion of V&MLS be aware of other general issues that significantly affect the quality and the efficiency of the claim and appeal process, i.e. the environment within which this legislation will operate.

1. Jurisdiction of the Court of Appeals for Veterans Claims (CAVC) and the Federal Circuit: The CAVC is the only Article I court without the judicial authority to provide the litigants before it with a final resolution in any case that comes before it. It is a Court which may decide but never make disposition. The only relief it may grant an appellant is to either reverse/remand or affirm, and even with grounds in the record for reversal, remand is the only possible ultimate resolution at the Court. While historically this may have been politically justifiable at the inception of the Court, that justification no longer exists. Granting the CAVC the judicial authority to issue dispositive rulings should terminate the potential for repeated remands of appeals on the same issues would have an ameliorative effect on backlogs. Similarly, the restriction of the Federal Circuit's jurisdiction to regulatory and legislative interpretation is an artificial limitation on the

traditional jurisdiction of a U.S. Circuit Court of Appeals and limits the recourse of the veteran population to a full and fair hearing of the issues raised.

2. Qualifications of Board hearing examiners: In 2016, the Veterans Law Judges at the Board of Veterans Appeals were reversed or remanded at the highest rate in twelve years. This troubling trend demands, at a minimum, the identification and evaluation of those VLJs whose decisions are consistently overturned by the Court. Another approach that would address the existing culture at the Board is to require that all hearing examiners at the Board meet Title V Administrative Law Judge standards of qualification. Attached to this statement is a graph of the remand rate for cases appealed from the Board to the Court for the sixteen years from 2000 to 2016. Of those sixteen years, ten of them show a rate of 80% or higher. While transition to Title V ALJs may require considerable initial expense, the reduction in necessary remands and improvement in quality and consistency of decisions will reduce the number of remands and improve the quality and consistency of decisions, making the system feel less like a "hamster wheel" for veterans and their survivors or dependents.

3. Training Issues: There is no transparency regarding the sources or resources utilized by the Agency to train its rating personnel. Nor is there any discussion of the minimal qualifications for employment as a rater or as a trainee. It is the position of V&MLS that at a minimum applicants for these positions should be required to have an Associate Arts degree from a community college with required courses in biology, physiology and preferred health care related subjects. Most preferred would be a four-year college degree with courses identifiably relevant to the nature of subject matter of claims and health care within the VA environment. Congress has not recently required VA to reveal the curricula or the personnel constituting its training programs for either VARO raters (whose bad decisions are kicked up to the Board rather than resolved at the AOJ level) or Board personnel responsible for the reversal/remand rate at the CAVC. It is time to include these issues in any hearings on appeals reform.

   The increasing reversal / remand rate at the CAVC calls into question the training of Board personnel. The 2016 Annual Report issued by the CAVC shows that of the 3717 dispositions of appeals made by the CAVC in 2016, (excluding 495 dismissals) only 457 were affirmances of Board decisions. 88% of the dispositions of appeals were reversed or remanded on at least one ground. There were 2835 EAJA petitions granted (3 other denied and 15 dismissed) by the Court during this time; a rate of 76% of the remands & reversals, indicating that the Agency was substantially in error at least 67% of the time. Education of Board personnel could be a significant contributing factor to the increasing reversal/remand rates. Anecdotal evidence finds that there are two full time staff personnel (neither of them trainers) for the training office at the Board. Peer mentoring is

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the preferred mechanism for training. It is time to consider hearings on this issue; particularly in view of the abysmal performance of the last year.

4. Leadership Issues: Disposition statistics like these raise two important questions: First, is the Board resistant to the developing CAVC case law by which its decision-making processes are governed? Second, does the Board have adequate administrative leadership? Answering the first question may obviate the first, as a qualified Board Chairman with author8ity to decertify underperforming hearing examiners would help improve the quality of decision-making processes at the Board. Too many appeals are at the Court for the second, third and fourth time; the result of the failure of the hearing examiners to follow clear instructions given by the Court. It is time to insist that a qualified Board Chairman be appointed and confirmed and give the authority to decline to recertify those hearing examiners whose decisions result in excessive remands and reversals at the CAVC.

Discussion of S. 1024

Definitions: The initial proposals to redefine the process by modernizing the definitions under Sect. 101 of Title 38 seek to remove any barriers perceived to exist to the adjudication of claims through reassignment from the Regional Office with geographical jurisdiction over the veteran's claim to "specialty offices" often far removed from the veteran. While there may be some value in doing that in the instances regarding subject matter, codification provides too much incentive to remove the matter from any reach by a veteran or representatives of the veteran requesting a review within the Agency of Original Jurisdiction (AOJ).

The Agency seeks to remove the term "Material evidence" throughout this bill, replacing it with "Relevant evidence." Black's Law Dictionary defines "**Material evidence**" as "that evidence which tends to influence the trier of fact because of its logical connection with the issue. Evidence which has an effective influence or bearing on the question on issue." "**Relevant evidence**" is defined as "Evidence tending to prove or disprove an alleged fact. Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." This raises the evidentiary bar for "supplemental claims." During the several round-table discussions held on this effort in 2016, the consensus was to restrict the terminology for "supplemental" claims to "new evidence;" the introduction of the term "relevant" came afterward, ignoring the consensus. If one modifier to "new" must be retained, there is at least a body of law in place defining "Material evidence;" changing it to "Relevant," notwithstanding the higher evidentiary bar, invites years of litigation.

What is clear is that the bar for re-opening a previously denied or insufficiently adjudicated claim with these changes in definition, would be much higher, and if filed within a year of the

original decision, no notification would be required. These provisions contribute to the Agency's increasing view of the claims system as an adversarial environment.

As matters stand, the claimant veteran, widow or dependent may only retain counsel prior to the promulgation of a rating decision on a pro bono basis. The basis for this limitation was the premise that the benefits claims system is non-adversarial. The national VSOs were deemed more than capable of assisting the veteran in pursuit of compensation. Since the passage of the VJRA there has been a gradual shift in the nature of the claims system from non-adversarial to a system increasingly governed by an escalating body of decisional law which is entirely inconsistent with the concept of non-adversarial. The proposals in this Bill advance the adversarial elements further than ever before. It is, in the opinion of the V&MLS time to revisit the denial of paid representation at the initiation of the claim, as this is likely to result, in those claims filed by counsel, in better, cleaner claims more susceptible to efficient adjudication. This legislation does allow representation at the point of Notice of the AOJ decision. V&MLS advises that the bar to paid representation needs to be eliminated.

Duty to Assist: "(c) Section 5103A(f)" underscores the raising of the evidentiary bar to re-adjudication of disallowed claims to a standard that requires that new evidence "prove" the claim rather than be simply "material."

Any doubt as to the shift to an adversarial environment is removed with the proposed addition of Sect. 5103B removing the obligation of the duty to assist from any stage above the initial rating decision. S. 1024 does impose some duty on the Board to be cognizant of violations of the duty to assist, but there is far too much opportunity for the total disregard of obvious errors in the initial rating process. It would, under the provisions of (a), (b) and (c) of this amendment exist only within the original rating process and after the issuance of a "notice" of the rating decision apply neither to any "higher review within the AOJ" nor to any obligation on the part of the Board. Further, the correction of a duty to assist error during a "higher level review" within the AOJ [(1)] is dependent upon the "identification" of said error by the reviewer. There is, regardless of the language requiring review by the Board insufficient duty imposed upon the reviewer to search for or identify a violation of the duty to assist. Remand for correction is required if the claim cannot be granted in full.

Identification of a duty to assist error at the Board [(2)], if the failure occurred prior to the "notice" of the original rating decision, triggers remand for correction if the claim cannot be granted in full. This provision also includes a provision that allows the Board to order an advisory medical opinion as part of the correction. Flaws in the original rating decision are in most instances the result of reliance on an inadequate medical exam, followed by failure to obtain critical records and failure to appropriately consider lay evidence. Current litigation and Agency investigations indicate that this aspect of the claims system is far more troubled than was previously considered with the revelation that an estimated 25,000 veterans may have had improperly conducted exams for TBIs by unqualified examiners. V&MLS believes it essential to provide opportunity for paid representation and to provide for submission of additional

evidence simultaneously or immediately subsequent to the Notice of Disagreement (NOD). These steps would enhance the cost effectiveness of the system, as well as the perception of fairness. Further, eliminating the major part of Sect. 5109 regarding IMEs is contrary to full and fair evaluation of a wide variety of medical issues.

Ancillary to this concern is that of the lack of any discovery in either the initial AOJ rating process or in the review process. Credentials of examining personnel and often the identities of examiners and rating personnel are barred from discovery procedures available in similar proceedings in other agencies that are in those jurisdictions considered elementary administrative due process. Transparency in this aspect of the system would conserve agency resources in the long run and diminish the lengthy appeals and litigation surrounding the issue of adequacy of examinations.

The Duty to Assist is a cornerstone concept of Veterans Law. It is the creature of a paternalistic, veterans-first adjudicatory philosophy inherent in the claims system. It is the concept upon which the entire structure of that system rests. It is also the rationale by which paid representation has been limited to the appellate stages of the claims process. The imposition of the Duty to Assist at every stage of the claims process from the initial processing of the claim through the hearing and the consideration before the Board is also the cornerstone of nearly every decision by the CAVC. The limitation of the Duty to Assist as proposed by this legislation poses a significant impediment to administrative due process on the part of the impaired or pro se veteran, survivors or dependents before the Agency at any stage of the proceedings. V&MLS strongly opposes any limitation of the duty to assist requirement anywhere in either initial claim or the review of denial of the claim.

Sect. 5104A: V&MLS has no issue with this provision. Any favorable finding should be, as a matter of the law of the case binding on further adjudicatory action.

Sect. 5104B: The provision, under (b) of this Section requires that a request for review by the AOJ be specific as to which office of the AOJ is requested. This requires more precise language. It appears to allow for review by a different set of eyes in another office, i.e. more independent review. ***If*** this is the case, V&MLS is not opposed, and continues to urge that the duty to assist be continued, especially for the impaired or pro se claimant.

(a) V&MLS does not disagree with the concept of permitting a request for higher level review within the AOJ. This appears to retain the process of the Decision Review Officer. When this process functions as it was designed to function, it was/is beneficial to efficiency of time and resources and eliminates the need for appeals to the Board by resolving the issues at the AOJ. V&MLS urges the retention of the DRO review process within the review available in the same office promulgating the original rating decision.

(b) V&MLS approves of retaining the one year time allocation for filing a Notice of Disagreement (NOD). However, V&MLS has significant reservations about prescribing overly

restrictive provisions governing the form such disagreement must take. The forms "prescribed by the Secretary" are, in their current versions, very narrowly worded and spaced. They are clearly designed to limit the scope of the disagreement and are antithetical to allowing the veteran/claimant any freedom of expression. They are also contrary to existing case law regarding the definition of a NOD. V&MLS urges the Committee to provide guidelines for content of the NOD but to phrase it in the permissive "should" rather than exclusionary mandatory language and to require that the "form prescribed by the Secretary" include sufficient space for addressing the claimant's concerns.

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(c) V&MLS urges language added to this provision that requires that copies of Notices under this provision be supplied to both the claimant and any representative, either Veterans Service Organization (VSO) or counsel. V&MLS recommends that all communication relating notices of decisions or decisions be sent by certified mail. V&MLS further urges the Committee to provide for pre-decisional consultation with any representative of record for the purpose of resolving evidentiary and legal issues that may have arisen in the course of investigating and developing the claim. The purpose for this is to avoid unnecessary higher level review and permitting early resolution of issues presented. V&MLS notes that "previewing" decisional action is common procedure between rating personnel and VSOs who are often co-located in ROs. This should be standard procedure for all representatives, as it is conducive to filling in evidentiary gaps, clarification and administrative best practices.

(d) Evidentiary Record: The added Section 5104B also seeks to close the evidentiary record at the issuance of the initial rating decision. While there are provisions in later elements of this Bill for the submission of further evidence at the Board level, to the average pro se veteran, this shuts the door to submission of further evidence. Under this modification of existing law, either a VSO or an attorney retained subsequent to the NOD would be ethically bound to seek by motion to modify the notice of disagreement to provide for utilizing the "hearing option" track at the Board in order to fill in the evidentiary gaps left by either inadequate representation or by the omissions of the pro se veteran.

The unrepresented veteran who fails to ask for the "hearing option" docket in the NOD and fails to comprehend the consequences of failing to do so loses any opportunity to submit additional evidence in this forum short of filing a supplemental claim, in which the evidentiary bar is much higher. Entry into the appellate stage with either paid or lay representation, under this provision, would require a motion to amend the notice of disagreement. There is no provision for requesting a "hearing option" docket or higher AOJ review, which allows an opportunity to fill in the evidentiary gaps or argue evidence that is relevant but otherwise not of record.

V&MLS categorically disagrees with this provision as it constitutes as a denial of procedural due process and is utterly contrary to the concept of a "veteran-centric VA," unless provision is made for notice of this limitation prominently articulated within the body of the rating decision. Such notice should also advise the claimant that selection of the "hearing option" docket in an appeal to the Board will permit the submission of further evidence.

The fact remains that the combined effect of limitation of submission of further evidence, limitation of the duty to assist and raising the evidentiary bar for supplemental claims / readjudication leaves very little that is non-adversarial within the system. While amending Sect. 5904 to allow the veteran paid representation subsequent to the notice of decision by the AOJ is somewhat ameliorative it fails to permit the veteran access to paid representation in order to better ensure that the AOJ adequately develops the record from the beginning. It should be noted that doing so accords the veteran the Sixth Amendment right to representation by counsel enjoyed by every claimant before every other Administrative agency.

(e) V&MLS agrees that any review by any entity within the Agency at any level should be DE NOVO

Sect. 5104(b): The enumeration of required contents of any notice of denial of benefits is certainly useful, but the language of this amendment appears to codify that which has previously appeared as "Statement of the Case." Limitations should be included which preclude the utilization of endless "explanations" which yield no aids to comprehension and serve only to obfuscate the obvious. The inclusion of the requirement that the content state simply and precisely the basis for the decision in terms readily understood by an unrepresented claimant. V&MLS would then be supportive of this provision.

Proposed Sect. 5104(b) requires, within the enumeration of elements of a denial, (if applicable), identification of criteria that must be satisfied in order to grant (the benefit sought). Yet, any higher review must be done on the basis of evidence considered in the initial development. This is utterly inconsistent and will engender substantial numbers of "supplemental" claims. It makes no sense to require the Agency to advise the claimant of what evidence is missing and at the same time preclude the introduction during the Higher Review of evidence that will satisfy the missing elements. This is not an issue of legal sufficiency or insufficiency; it is a matter of common sense.

Sect. 5108 Supplemental Claims—This amendment of Sect. 5108 replaces "reopened claims" with "supplemental claims:" Under this provision "new and relevant" evidence is required for the adjudication of a supplemental claim. This once again raises the adjudicatory bar much further than does the language of the existing provision. Whereas "material" requires only that the evidence tend to influence the trier of fact because of its logical connection to the issue, "relevant" would raise the bar to evidence that relates to or bears directly on point or fact in issue; proves or has tendency to prove a pertinent theory in the case. This is a technical, legal requirement imposed on a process that is required to be veteran-centric. This language is a trap for the pro se claimant, inviting a quick denial. V&MLS urges the Committee to recognize that this is once again a further shift to an adversarial process in which paid representation should be a recognized right accruing to the claimant.

Sect. 5109 is given a new subsection under which the Board may remand a claim to the AOJ for procurement of an advisory medical opinion to correct an error by the AOJ to satisfy its duties under 5103A ***when*** the error occurred prior the AOJ decision on appeal. This adds an unnecessary step to the review process – requiring the matter to be remanded yet again. Nor does it specify whether this applies to errors on the part of a "higher-level reviewing authority" within the AOJ. As a significant number of duty to assist errors are incident to inadequacies of medical exams, this should be clarified.

Sect. 5904 Amendment: The proposed amendment of (c)1 and (c)2 appears to move the point at which paid representation becomes available to the veteran to the point of the issuance of the decision on the initial claim by the AOJ; "notice of the Agency of Original Jurisdiction's initial decision under Section 5104 of this Title." Under the existing statutory provisions paid representation is not available to a veteran / claimant until the point at which the Notice of Disagreement is filed.

Given the existing political climate, the ban on the availability to the veteran of paid representation at the initial submission of a claim may be unlikely to be lifted. However, it should be noted that Congress has, within the last decade, recognized the advisability of allowing paid representation before the Agency. Merely providing an opportunity for paid representation prior to submission of the notice of disagreement is a benefit without practical application; there is no mechanism for repairing a deficient record prior to filing the Notice of Disagreement before the door to submission of additional evidence is closed. The pro se veteran, especially an impaired pro se veteran is out in the cold. In view of the proposed significant restriction of the opportunities for introduction of additional evidence, it is critical that these provisions be as broad as possible. V&MLS supports this provision with significant reservations as stated above.

Sect. 7105 Amendments:

V&MLS is supportive of the proposed amendment (b)(1), establishing the time for the filing of the notice of disagreement within one year of the mailing of the notice of the AOJ's decision. We do note that nowhere in this legislation is there any provision for time limits on any Agency action.

The proposed amendment of (b)(2) establishes legal, technical requirements of allegation of specific errors of law or fact to be inscribed on the Secretary's specific form. Once again, the process shifts further toward an adversarial process in which the unrepresented claimant is presumed to have an unrealistic level of knowledge or expertise. While the opportunities for representation are broadened, the fact is that significant numbers of claimants / appellants before the Board and the Court are unrepresented (28% of appellants at the Court were pro se at filing the NOA in 2016). It is critical to the veteran-centric intent of the claims process that there are provisions for liberal interpretation of what constitutes conformity with the requirement of this provision as proposed. V&MLS urges careful attention to language in this provision as proposed and implementing regulations to avoid adverse impact on the pro se claimant.

V&MLS is not entirely in agreement with the proposed amendment that establishes a three-track option for appealing the decisions of the AOJ to the Board. We suggest that the language more clearly identify the tracks by enumeration, and that the non-evidentiary track and the no hearing track be combined. We also suggest that the fully developed appeal be incorporated with this track.

V&MLS is supportive of the proposed language of Sect. 7105(c), maintaining the jurisdictional finality of Agency of Original Jurisdiction decisions that remain unappealed after one year.

The provisions of 7105 (d) as amended eliminate the Statement of the Case and the laborious process it entailed. V&MLS agrees with this provision with the proviso that in order to maintain the veteran-centric character of the claims process that the language also provide that submissions by pro se claimants be read liberally for allegations of error of law and fact. The unschooled or impaired pro se claimant must not be penalized by technical legalistic requirements he/she is incapable of meeting.

Sect. 7106; V&MLS supports the deletion of Sect. 7106.

Sect. 7107; V&MLS supports the amendment of Sect. 7107(a), (b) and (c) as proposed. V&MLS does, however, urge that sub-section (f) be amended to require that the Board screen those cases in which the claimant is pro se for adequacy of the record and undertake such further development as may be necessary to satisfy the duty to assist. In this regard V&MLS re-iterates our strong disagreement with the elimination of the duty to assist after the initial rating decision.

Sect. 7113; V&MLS supports the provisions of this Section with the caveat that the due process requirements of the duty to assist be afforded the pro se appellant, particularly if review of the record demonstrates that the appellant is impaired. This additional provision is consistent with V&MLS position regarding the proposed restrictions on duty to assist, submission of evidence and the impact of these measures on the pro se and impaired claimant.

Accountability and reporting provisions; V&MLS supports those provisions requiring detailed reporting and preparatory measures for the inception of these reform provisions. The General Accounting Office report made it abundantly clear that the Agency was in too much of a hurry to adequately test and vet the changes it is proposing. Let there be no mistake that this legislation inures almost solely to the benefit of the Agency – not the veteran. We do strongly recommend that training be addressed far more in the final version of this bill than it is currently. The woeful and inexcusable performance of the Board in cases that have been appealed to the CAVC is a glaring example of the lack of training and skill rampant at the Board. One wonders about the thousands of denials that are not appealed to the CAVC.

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Medical Examinations and Opinions.

While V&MLS are cognizant of the perceived increase in efficiency in eviscerating Sect. 5109, we also are concerned that there are many issues involved with medical exams that need address. As a part of the appeals system, we would urge this Committee to ensure that any issue remanded for an IME carry an array of procedural protections for the veteran. Copies of any such request should be supplied to the claimant and his/her representative, as well as the resulting report. Such examinations, or IMEs should be conducted, in the event of an actual examination, by an appropriate specialist practicing in the field giving rise to the issue; not a PA or NP.

It should also be noted that implementation of a treating physician rule, wherein the VA treating physician (as well as the private physician when appropriate) are required consultants on the issues of nexus, would improve the quality of medical evaluations and go a long way in relieving the stress of physician availability in VHA. The rationale that treating physicians will have too much sympathy for the patient to provide an unbiased opinion is specious at best as well as demeaning to the professional integrity of the treating physician. At a time when VHA is suffering from an acute shortage of medical personnel and veterans are waiting inordinately long for medical care, the continued duplication of effort in this regard is a waste of taxpayer dollars.

S. 23 V&MLS supports this legislation.

S. 112 V&MLS has no comment on this bill.

S. 324 V&MLS encourages this Committee to consider, within the purview of this legislation, the establishment by the Department, in cooperation with Indian Health Service and Bureau Indian Affairs, on Indian lands, of facilities to accommodate aging and wounded Indian veterans in need of nursing home care, particularly on reservations in the Northern Plains and Southwest, with high unemployment and limited resources.

The rationale for such facilities is the general unavailability of state homes within reasonable distances and the nearly total lack of cultural competence in treatment and care modalities in those that may be within reach of families. Please note that the older Indian veterans frequently lose the ability to speak English and can no longer communicate with institutional caregivers.

S. 591

V&MLS supports this bill, noting that it should have covered all veterans from its inception. Each generation of veterans includes those in need of family caregiver opportunities by virtue of illness and the residuals of injuries incurred in the line of duty.

When this legislation was under initial consideration, V&MLS strongly urged that training of family care-givers was better accomplished within the community through LPN and nursing training where available. The rationale we provided was that nearly every community has such programs and they not only provide licensure-level training, but ongoing support structures after the training with concomitant availability of emergency care with which they became familiar during training.

S. 609 V&MLS takes no position on this legislation.

S. 681 V&MLS Strongly supports this legislation with one recommendation. We recommend that a provision be added in which VA is required to coordinate with Indian Health Service to develop culturally competent mental health and suicide prevention programs for Indian women veterans. There are now no culturally competent mental health programs for Indian veterans. Indian women veterans, particularly those with MST/PTSD are at a very high risk because of the cultural consequences of their experiences. This legislation must address this issue.

S. 764 V&MLS takes no position on this legislation.

S. 804 V&MLS strongly supports this legislation. We recommend that the same or similar measures as suggested for S. 681 be included in this legislation. Women veterans, regardless of ethnicity have for too long been second citizens in the male environment of VA facilities. "She" has borne the burden as well, often with more severe mental and emotional trauma than her male comrades in arms, frequently being far more reluctant to self-identify as a veteran. The very nature of modern warfare distributes the risks and the trauma evenly among the genders. This legislation is overdue.

S. 899 V&MLS has no comment on this legislation.

Accountability and Whistleblower Protection V&MLS supports this legislation

S.2210 V&MLS strongly supports this legislation as it will provide a degree of integration of health care which is not always present even in larger medical centers. This provides an extra protective layer to veterans' health care which will be most effective in those times in which there is a crisis and extraordinary measures are necessary.

Serving our Rural Veterans Act of 2017

This legislation would support and extend coordination between the Department of Veterans Affairs (VA) and Indian Health Services (IHS) and other tribal health organizations serving rural veterans across the country. It also has the potential to create a pipeline for health care providers to serve rural communities, where veterans struggle to access quality health care. Finally, it would build the force of health care providers educated in the unique needs of rural veterans, including health needs and access in rural

health care delivery systems. For these reasons, this legislation has the potential for great positive impact on rural veterans.
Rural residents face barriers to many services that urban residents do not, and this includes access to basic health care. For example, according to a recent report from Grantmakers in Aging, rural residents experience higher rates of chronic disease, greater impacts from the national opioid epidemic, and higher rates of preventable deaths. These issues impact rural veterans as well, as noted by the Office of Rural Health, even though rural veterans are often eligible for more health care services than their civilian counterparts. For rural veterans who are eligible for health care at IHS facilities, barriers created by rural isolation can be exacerbated by lack of coordination between the VA and IHS, which creates confusion about eligibility and discourages rural veterans from seeking appropriate care. Improved coordination between the VA and IHS would result in improved access and quality of care for rural veterans eligible for services from both organizations.

To ensure this legislation has the greatest positive impact on the most vulnerable and underserved rural veterans, some issues related to program location and curriculum should be considered and addressed. In addition to the points below, the drafters and the Committee should reach out to and engage with tribes directly, particularly those that have contracted to provide health services directly to their members and veterans on their reservations. The tribes may have additional issues or thoughts that would not be obvious to others, and outreach for direct input would be most consistent with the federal Government's trust obligations.

Defining "Rural or Remote Area"
The draft legislation leaves to the Secretary's discretion the definition of "rural or remote area" for purposes of both loan repayment and locating the pilot program to establish medical residency programs serving rural veterans in Indian country. Defining "rural" and "remote rural" is no simple task. If the pilot program is to address communities in which rurality most significantly impacts access to quality health care, it should be located in states with larger relative land area, where rural veterans are truly isolated from urban resources. One measure of rurality that accounts for not only population, but also distance to the nearest metropolitan area, is the Index of Relative Rurality. To focus resources for greatest impact, Secretary could identify potential program locations by cross-referencing the location's IRR score with data on healthcare workforce shortages, numbers of rural veterans enrolled in the VHA, and numbers of rural veterans who are enrolled tribal members. The draft legislation could offer the Secretary more specific guidance on this process by more clearly defining "rural or remote area."

Cultural Awareness
The draft legislation acknowledges the need for education on unique health needs of veterans, and rural veterans in particular. One critically-important topic to include in the

curriculum is cultural awareness in diagnosis and treatment. When a rural veteran's culture influences the way that veteran communicates health symptoms and mental health distress, the health care provider must be aware of those cultural differences in order to accurately evaluate and diagnose the veteran and provide culturally-appropriate basic and alternative care. The draft legislation leaves to each facility the task of developing curriculum and training the medical residents and faculty. However, to ensure consistent training that comprehensively prepares health care providers to address cultural issues, the legislation should offer more specific guidance regarding the training curriculum or provide for a uniform curriculum that includes cultural competence instruction. This is another point on which to consult with tribes directly, as well as with experts in culturally-informed diagnosis and treatment of chronic illness and mental health conditions.

These comments were prepared in consultation with the Veterans Advocacy Clinic and Margery Hunter Brown Indian Law Clinic, both located in the Alexander Blewett III School of Law at the University of Montana, of which the Director, Prof. Hillary Wandler, is a contributing member of The Federal Bar Association and of V&MLS. We deeply appreciate her contribution to this discussion of one aspect of the considerable needs of Indian veterans, who serve this country in far greater proportion than any other ethnic group.

Also contributing to these comments and preparation is Thomas Bandzul, Esq. Legislative Counsel for Veterans and Military Families for Progress; a member of The Federal Bar Association and V&MLS

Respectfully submitted,

Carol Wild Scott, Esq.
Legislative Chair
The Veterans & Military Law Section
Federal Bar Association

Year	Dispositior	Affirmance	Percent of Dispositions Reversed/Remanded
2016	3717	457	87.71%
2015	3522	445	87.37%
2014	3218	589	81.70%
2013	3076	714	76.79%
2012	3610	1061	70.61%
2011	3892	1051	73.00%
2010	3803	741	80.52%
2009	3270	571	82.54%
2008	3542	693	80.43%
2007	3211	1098	65.81%
2006	2135	448	79.02%
2005	1281	271	78.84%
2004	1337	155	88.41%
2003	2152	129	94.01%
2002	972	109	88.79%
2001	2853	27	99.05%
2000	1619	526	67.51%

LETTER FROM LT. GEN. MICHAEL S. LINNINGTON (RET.), CHIEF EXECUTIVE OFFICER, WOUNDED WARRIOR PROJECT

Wounded Warrior Project
4899 Belfort Road, Suite 300
Jacksonville, Florida 32256
O 904.296.7350
F 904.296.7347

WOUNDED WARRIOR PROJECT

STATEMENT FOR THE RECORD

COMMITTEE ON VETERANS AFFAIRS
UNITED STATES SENATE

MAY 17, 2017

Chairman Isakson, Ranking Member Tester, and Members of the Committee:

Thank you for inviting Wounded Warrior Project ("WWP") to offer our views today on the legislation under consideration by the Committee. WWP brings perspectives based on our first-hand experiences offering comprehensive programs and services to warriors who have sustained wounds, injuries, and illnesses in service since 9/11 and their families. Two bills on your agenda address issues of particular importance to WWP, and what follows is our perspective on those bills.

S. 591 – Military and Veteran Caregiver Services Improvement Act of 2017

Having led the charge for Public Law 111-163, the Caregivers and Veterans Omnibus Health Services Act of 2010, WWP remains committed to serving injured veterans and their family caregivers through advocacy and programmatic support. At WWP, our organizational focus is on the family caregivers of veterans and service members who have been wounded, ill, or injured since September 11, 2001. Nonetheless, we agree with our fellow veterans' organizations that caregivers of all generations of veterans deserve comprehensive assistance and support.

These caregivers, like caregivers of the post-9/11 generation, help conserve state and federal agency resources by keeping seriously injured veterans at home, avoiding costly forms of care including institutionalization. In many cases, these caregivers sacrifice their own life experiences and successes, including careers, education, and retirement savings, in order to properly care for the veterans they support at home. These sacrifices often go unnoticed by society at large. As noted in a recent article:

> Military caregivers are heroes in their own right, but their efforts are often unrecognized. They serve in the shadow of war, as their caregiving responsibilities persist for months and years after conflicts end. The men and women who have made sacrifices for their country often receive

Wounded Warrior Project
4899 Belfort Road, Suite 300
Jacksonville, Florida 32256
O 904.296.7350
F 904.296.7347

WOUNDED WARRIOR PROJECT

> honors, awards, and benefits in recognition of their service—accolades and opportunities that they rightly deserve. Their caregivers help the disabled walk and eat, tend to wound care, or take them to their medical appointments, and rarely receive honors and awards. These caregivers are an incidental population, one that has received policy attention only as a consequence of the focus on the ones for whom they provide care. Yet their value is enormous. Military caregivers provide benefit to not only their loved one, but also to society. The care they render helps reduce health care costs to the government and society.[1]

Though WWP's mission is to assist caregivers of the post-9/11 generation, we recognize that the circumstances described above are no less true for the caregivers of previous generations and, for this reason, we would wholeheartedly support legislation that would improve the lives of pre-9/11 caregivers without hurting caregivers of the post-9/11 generation.

We do have concerns, however, that the portions of S. 591 that would expand the current Family Caregiver Program to prior generations – as drafted and at the current moment – would not accomplish this goal. We take this position in the context of (1) the challenges the Department of Veterans Affairs ("VA") has faced while implementing the Family Caregiver Program and (2) the lack of an appropriation in this bill that would ensure VA has the means to care for an influx of new caregivers.

As the Committee is aware, even with its current scope serving only post-9/11 caregivers, VA has had significant challenges implementing the Family Caregiver Program. Several weeks ago, these challenges came to a head, and VA paused all revocations from the current program pending a complete review. WWP and other veterans groups have been in regular conversations with VA and congressional and other stakeholders about what improvements to the program are necessary. Rather than detail those conversations here, I am attaching as Exhibit A a letter that WWP's Chief Executive Officer transmitted to Secretary Shulkin last week. I am additionally attaching as Exhibit B another letter from the Elizabeth Dole Foundation that WWP and many other veterans' organizations joined in signing.

Like all Members of the Committee, and like all of the organizations testifying here today, we are deeply invested in the success of the Family Caregiver Program. We are concerned that, at a time when VA is struggling to implement the program – and when anger and frustration regarding the program are pervasive

[1] Terri Tenielian, et. al., RAND Corporation, *Hidden Heroes: America's Military Caregivers* 1 – 2 (2014), *available at* http://www.rand.org/content/dam/rand/pubs/research_reports/RR400/RR499/RAND_RR499.pdf.

Wounded Warrior Project
4899 Belfort Road, Suite 300
Jacksonville, Florida 32256
O 904.296.7350
F 904.296.7347

among enrollees – expansion to prior generations might stretch current resources and processes too thin, jeopardizing the integrity of the program and the services that it provides. We are concerned that such an action might set the program up for failure, which would be detrimental to caregivers of post-9/11 and pre-9/11 generations alike.

This is especially so given the lack an appropriation in S. 591 that is sufficient to cover the needs of the entire military caregiver community. We understand from our conversations with VA that costs of the current program have ballooned far past what was originally contemplated, and we suspect that cost concerns have created challenges with implementation. Were the program to be expanded to prior generations without a corresponding appropriation, this situation would be greatly exacerbated, particularly as the pre-9/11 generations enter old age. We are concerned that such an action would force VA to further constrict eligibility and services.

We want to stress that our position is not that the Family Caregiver Program should not be expanded; in fact, as noted above, we believe strongly that caregivers of prior generations are no less deserving of services than those of post-9/11 generations. Rather, our position is that we should accomplish this goal in a way that is both sustainable and does not jeopardize the existing Family Caregiver Program, on which so many rely. We look forward to working with any and all stakeholders to make this a reality.

S. 681 – Deborah Sampson Act of 2017

WWP supports the Deborah Sampson Act and its goal of improving VA's programs and services for female veterans.[2] We agree that, especially given the growing number of women veterans, there is a pressing need to make VA's programs and services more accessible. Of the many beneficial provisions included in the Deborah Sampson Act, we are particularly supportive of those relating to peer-to-peer assistance and reintegration and readjustment counseling.

In our experience, peer-to-peer support is critical to recovery for many warriors. According to WWP's 2016 Annual Warrior Survey Results, more than half of those surveyed, or 51.7% percent, used talking with

[2] Although WWP supports the Deborah Sampson Act as a whole, we do not take a position on the Sense of Congress proposed in Section 504.

Wounded Warrior Project
4899 Belfort Road, Suite 300
Jacksonville, Florida 32256
O 904.296.7350
F 904.296.7347

another Operation Enduring Freedom, Operation Iraqi Freedom, or Operation New Dawn veteran as a resource to address mental health issues. The only more frequently utilized resource was VA Medical Centers.[3]

Within the context of female veterans, peer-to-peer support is a particularly important tool to break through seclusion and isolation. As the Committee is aware, shifts in perception of military demographics are slow-moving, and many on either side of the civilian-military divide still think of members of the Armed Forces as male. Particularly when combined with injuries to mental health sustained in service, these preconceived notions can be harmful to reintegration and recovery. By connecting female veterans with one another, peer-to-peer assistance can empower female veterans to connect with each other and their communities.

In this same vein, WWP is highly supportive of permanently authorizing reintegration and readjustment counseling services for women in group retreat settings. Not only has VA's pilot program has been highly successful, WWP has seen similarly encouraging results in its own similar programming. At WWP, we have held 69 female-only single and multi-day rehabilitative retreats for over 700 female veterans with mental health challenges. 95% of participants reported that the retreats were a catalyst for receiving or continuing mental health support, and 96% were satisfied with their overall experience. We are hopeful that, through this legislation, these results can be replicated on a larger scale.

Thank you for the opportunity to offer our views on pending legislation today, and we look forward to working with you to move some of these important ideas through the legislative process.

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[3] Christine Borger et. al., Westat, Inc., *Wounded Warrior Project Survey Report of Findings* 61 (2016), *available at* https://www.woundedwarriorproject.org/media/2641/2016-wwp-annual-warrior-survey.pdf.

EXHIBIT A

Wounded Warrior Project
4899 Belfort Road, Suite 300
Jacksonville, Florida 32256
O 904.296.7350
F 904.296.7347

May 9, 2017

The Honorable David Shulkin
Secretary of Veterans Affairs
United States Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420

Re: VA Review of the Family Caregiver Program

Dear Secretary Shulkin:

I want to thank you for the work you and your team have done over the last three weeks reviewing the Family Caregiver Program (the "Program"). As you know, Wounded Warrior Project ("WWP") led the charge for the creation of the Program in 2010 and has worked with VA and Congress to address challenges with implementation. We remain deeply committed to making the Program as effective as possible as we address the needs of those who care for the most seriously injured veterans of the post-9/11 generation.

As you continue to review the program, we ask you to take into account the following considerations. Please note that this is not an exhaustive list and that we will continue to work with you, your staff, and the greater community to identify challenges and create improvements.

1. **Consistency and Transparency in Eligibility Determinations**. We have seen significant variations from location to location in eligibility and tier level determinations and also in the type of notification provided to caregivers and veterans. We hope to work with VA to create mechanisms for consistency and transparency. At a minimum, veterans who are revoked or who have their tier level adjusted should receive a detailed explanation of rationale in the context of 38 C.F.R. § 71. Such explanation must be sufficiently detailed to allow the veteran to use it to challenge the determination.

2. **Enhance the Appeals Process**. One essential mechanism for consistency and fairness is a meaningful appeals process in which veterans can challenge erroneous eligibility and tier level determinations. Despite the widespread allegations of wrongful revocations that gave rise to this review, in our experience, successful appeals through the VHA system have been extremely rare. Given the nature of the Program, adjustments should be made to the clinical appeals process for review of eligibility and tier level determinations.

These adjustments include: (1) providing the same due process and appellate rights that exist in the VBA context; (2) continuing benefits until appeals are resolved; (3) allowing the veteran to present private medical opinions; (4) allowing the veteran to appear for a personal hearing to bring forth additional evidence; and (5) allowing the veteran to provide sworn testimony under the guidance of an accredited representative.

3. **Ensure Meaningful Consultation with the Medical Care Team**. The law and regulations are clear that decisions about eligibility and tier level should be made by the veteran's medical care team. Nonetheless, caregivers and veterans have reported that caregiver support coordinators ("CSCs") wield strong influence over medical care teams, and that, in some cases, CSCs make decisions on their own. Safeguards must be established to ensure that the medical care team is more than a rubber stamp in the decision making process, and that medical care team involvement is transparent to the veteran and caregiver.

4. **Require Communication with Caregivers**. Caregivers must be present and involved in assessments that give rise to change in tier level or revocation. Especially where mental health challenges are involved, caregivers can provide the insight necessary to reach correct and comprehensive conclusions. Nonetheless, we have heard many accounts of caregivers who were not allowed to participate. One account from a survey WWP conducted in 2014 is below:

> *My husband was interviewed by his VA physician, but I was not allowed to go in and assist him and help him remember things and help give an accurate picture of his functioning and health. His physician had only seen him a couple of times, we were told this was the reason he was going in for an interview/assessment. The assessment was supposed to provide the understanding of my warrior's needs. Since I was not there, and my warrior does not recall the entire interview, I do not know if the doctor really got a good understanding of the situation.*

Although this account is dated, we continue to hear similar stories of this nature, especially in certain localities.

5. **Review Revocations and Tier Reductions**. We know you are aware of the many veterans and caregivers who have reported erroneous determinations, and that is why you are conducting this review. Given these reports, in the interest of fairness, we ask for review of all revocations and tier reductions that have taken place since program inception. We understand that this would place a significant workload on program staff and therefore propose a triaged approach in which cases where tier 3 veterans were completely revoked

are addressed first. An adjustment this dramatic should be extremely rare and suggests irregularities.

6. **Improve Transition Services**. As Program stipends were not intended to be a permanent benefit in all situations, there will certainly be cases where veterans are no longer eligible for the Program due to changed circumstances. Where this occurs, VA should provide transition services and education regarding health care options, employment possibilities, and vocational training. CSCs should be provided with a comprehensive list of transition services available in their community through VA, state veterans agencies, and the private and nonprofit sectors.

7. **Extend the Moratorium on Revocations until the Review is Complete**. We understand the moratorium expired yesterday but that your review will continue for several months. As problems with the program have already been acknowledged, we should not allow caregivers to be removed from the program until those problems are fixed.

Caregivers provide a vital service, often giving up careers and opportunities in order to care for our nation's heroes, and we owe it to them to provide the support they need. We look forward to continuing to work with you, your staff, and the greater community to address these issues and others that arise through the course of our conversations.

Sincerely,

Lt. Gen. Michael S. Linnington (ret.)
Chief Executive Officer
Wounded Warrior Project

EXHIBIT B

May 15, 2017

The Honorable David J. Shulkin
U.S. Department of Veterans Affairs
810 Vermont Ave. NW
Washington, D.C. 20571

Dear Secretary Shulkin,

We applaud your recent decision to halt the revocation process and conduct an internal review of the Program of Comprehensive Assistance for Family Caregivers. Your decision is an acknowledgement that the VA cares about the success of this program and is committed to the difficult task of improvement. Now that you have the spotlight on this program, we urge you to capitalize on this momentum to implement changes that will improve its structure and support.

As you conduct the review, we, as organizations with a direct line to caregivers, would like to offer some perspective on the issues that have challenged this program since its inception. These thoughts are informed by the experiences and stories of caregivers themselves, and can be broken down into four main themes.

Transparency

Perhaps the greatest concern we hear is the lack of clarity and transparency in communicating aspects of the program to veterans, their caregivers, and outside partners. We encourage you to:

1. Mandate that upon revocation or tier lowering for failing to meet eligibility requirements, caregivers receive their veteran's eligibility assessment "scoresheet," within one week of the decision, so that they can prepare a proper appeal should they choose to do so.
2. Ensure that caregivers have a chance to provide feedback to medical care teams and Caregiver Support Coordinators (CSC) as they make eligibility and tier level determinations. Currently, many caregivers are not included in that process.
3. Establish an internal communications plan that originates in the VA Central Office and conveys clear and consistent policies across all Veteran Integrated Service Networks (VISNs).
4. Create a newsletter or listserv that disseminates up-to-date information about the program to military service organizations (MSOs), veteran service organizations (VSOs), and other not for profit organizations active in the caregiver space.

Standardization

Hand in hand with transparency comes standardization of Caregiver Program processes. Because each VA Medical Center operates as its own entity, the execution of the program can vary from VISN to VISN. While we respect each Center's ability to self-determine its own needs, when operational authority supersedes policy implementation, it creates an inconsistent, and at times unfair, program environment for caregivers. To remedy this, we recommend the following:

1. Grant the National Director (Meg Kabat) more operational authority to ensure that national policy is executed properly on a regional level. Limit the VISN's authority to change or adapt Caregiver Program policy in the course of their day-to-day operations.
2. Finalize and disseminate a policy directive that establishes a standard appeals process and clarifies eligibility requirements.

3. Update and improve the notices that caregivers receive upon being removed or lowered a tier within the program. Ensure that caregivers who are not removed for cause continue to receive their stipend for 90 days after removal to allow for adjustment and minimize financial burden.
4. Create an organizational document or flow chart (similar to the Integrated Disability Evaluation System (IDES) timeline) detailing the structure of the VA Caregiver Program, the appeals process, and points where the veteran and caregiver must make decisions.
5. Update the VA Caregiver Program website regularly to reflect the most accurate information, including the final "Roles and Responsibilities" document.
6. Keep the moratorium on program removal in place until the identified issues have been addressed.

Education

Many of the obstacles to the success of the VA Caregiver Program can be overcome through education of caregivers, service providers, and the public. Right now, many caregivers do not understand the scope and nature of the program, and we, as organizations, do not always feel empowered to give them accurate information. There are several ways to address this:

1. Begin communicating with caregivers and veterans before they enter the VA system (i.e. through TAP, the IDES process, within Warrior Transition Units, etc.).
2. Create a guide for caregivers and family members that communicates all of their options for support within the VA system (not just the Caregiver Program).
3. Implement grand rounds training with key service providers and medical facility staff to educate them on the importance of the caregiver in the recovery of the veteran.
4. Communicate updates and changes within the Caregiver Program to caregivers, not for profit organizations, and other partners to ensure that we are communicating the most accurate information to our constituents.

Validation

Caregivers are invaluable in the recovery and support of our nation's veterans. And yet many times they are still not regarded as integral members of the veterans' care team. As part of its commitment to becoming the best customer service organization in government, the VA must fully embrace the caregiver and family members as partners in the path towards rehabilitation and recovery.

1. Currently, the revocation and tier lowering processes feel like a penalty for the caregiver, who may not be financially or emotionally prepared to leave the program. Upon improvement of the veteran, the VA should begin to regularly check in with the caregiver to prepare him or her for the possibility of revocation or tier lowering. Such an initiative could include referrals to employment programs, messages of encouragement, and information regarding other programs offered by the VA.
2. Caregivers largely neglect self-care in favor of their caregiving responsibilities. Instituting "wellness checks" for caregivers in tandem with their veteran's medical appointments would ensure that the caregiver is taking proper care of his/her mental and physical health, thus preventing caregiver burnout and illness.

We hope these recommendations will be useful to you as you conduct your review in the weeks and months ahead. Please call upon us to assist you as you undertake this tremendous task; the burden of ensuring support for these caregivers does not – and should not – fall to the VA alone. As military community organizations dedicated to championing caregivers, we are committed to working with you to support, educate, and inform caregivers nationwide.

Sincerely,

The Elizabeth Dole Foundation

AARP

America's Warrior Partnership

American Legion

American Legion Auxiliary

ARCH National Respite Network and Resource Center

Blue Star Families

Caregiver Action Network

Code of Support Foundation

Dog Tag Inc.

Easterseals

Give an Hour

Hope For The Warriors

Iraq and Afghanistan Veterans of America (IAVA)

Military Child Education Coalition

Military Officers Association Of America (MOAA)

National Military Family Association

Paralyzed Veterans of America

PsychArmor Institute

Quality of Life Foundation

Rosalynn Carter Institute for Caregiving

Square Deal for Vets

Wounded Warrior Project

Yellow Ribbon Fund

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