

**STATEMENT OF
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DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS**

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Good Morning Chairman Miller, Ranking Member Brown, and Members of the Committee. Thank you for inviting me here today to present our views on several bills that would affect the Department's benefit programs and services. Joining me today are Dr. Rajiv Jain Assistant Deputy Under Secretary for Health for Patient Services, Veterans Health Administration, Ms. Susan Sullivan, Deputy Assistant Secretary for Policy in the Office of Policy and Planning, and Ms. Kim McLeod, Counsel, Office of General Counsel.

VA is still in the process of formulating views on H.R. 280, a bill to recoup bonuses and awards paid to VA employees, for which VA received a draft on January 9, 2015.

H.R. 189 Servicemember Foreclosure Protections Extension Act of 2015

H.R. 189 would extend certain provisions of the Servicemembers Civil Relief Act, as amended by Pub.L.113-286. VA defers to the Department of Defense (DoD) and the Department of Justice as to the merits of this bill.

H.R. 294 Long-Term Care Veterans Choice Act

The Long-Term Care Veterans Choice Act would amend section 1720 of title 38 U.S.C. to add the authority for the Secretary to pay for long-term care for certain Veterans in medical foster homes (MFHs). Specifically, the draft bill would allow Veterans, for whom VA is required to provide nursing home care by law, to be transferred to homes designed to provide non-institutional long-term supportive care for Veterans who are unable to live independently and prefer to live in a family setting. VA would pay MFH expenses by a contract or agreement with the home. One condition of providing support for care in a MFH would be the Veteran's agreement to accept home health care services furnished by VA.

VA endorses the concept of using MFHs for Veterans who meet the appropriateness criteria to receive such care in a more personal home setting. VA endorsed this idea in its Fiscal Year (FY) 2014 and 2015 budget submissions and appreciates the Committee's consideration of this concept. Our experience has shown that VA-approved MFHs can offer safe, highly Veteran-centric care that is preferred by many Veterans at a lower cost than traditional nursing home care. VHA currently manages the MFH program at over two-thirds of our VA medical centers; partnering with homes in the community to provide care to nearly 900 Veterans every day, an increase of 27 percent over the prior year. Our experience also shows that MFHs can be used to increase access and promote Veteran choice-of-care options.

While VA fully supports the MFH concept, we would look forward to working with you to resolve a few technical issues in this bill. VA would like to work with the Committee to

ensure VA can effectively incorporate MFHs into the continuum of authorized long-term services and support available to Veterans. We are happy to provide the Committee with technical assistance on this matter and are available for further discussion.

VA estimates enactment of this legislation would result in cost savings totaling \$6.8 million in the first year, \$49 million over five years, and \$160 million over ten years.

H.R. 216 Department of Veterans Affairs Budget Planning Reform Act of 2015

In general, VA believes H.R. 216 has a great deal in common with VA's ongoing and future strategic planning, programming, and evaluation initiatives. We are excited about this work to make sure VA's planning and Department-level resource allocation processes are systematic and look beyond the horizon so that our Nation's Veterans can be accorded the best benefits, services, and support VA can offer. We therefore greatly appreciate the concepts put forward in the bill. We are eager to discuss those efforts with the Committee, but we are hesitant to lock down these concepts in statute.

Over the last few years, VA has been in the process of implementing a Planning, Programming, Budget and Execution (PPBE) initiative modeled after similar efforts used in other Federal agencies such as DoD, National Aeronautics and Space Administration, National Oceanic and Atmospheric Administration, the Department of Homeland Security, and others. VA believes PPBE has potential to more systematically improve VA's ability to anticipate and strategically prepare for the future needs of

Veterans and their families. We also believe this effort can better meet the needs of the VA workforce and buttress their dedication to serve Veterans, as well as improve resource allocation and enable VA to get the best value for scarce resources. The PPBE cycle implements a multi-year analytical framework beginning with FY 2015 to ensure the requirements of VA's healthcare delivery, benefits, and memorial services are fully vetted.

There are many elements of the draft legislation that reflect these PPBE principles, and the direction VA is going in its strategic planning and programming efforts.

Section two of the bill would require VA to submit annually at or about the time of its regular budget submission a "Future Years Veterans Program" that would include for the next five years (including the budget year submitted) estimated expenditures and proposed appropriations, as well as a VA five-year strategy regarding the Department's commitment to Veterans and the resources to meet those commitments.

Section two would also mandate a Quadrennial Veterans Review (QVR), with the first such review conducted in FY 2019. The bill sets forth detailed requirements and elements for the conduct of this review, and ties it to a 'strategy for meeting the Nation's commitment to Veterans' with a component regarding VA's cooperation with other Federal agencies, and State, local, and tribal governments.

Consistent with these concepts, the Department has embarked on its own Quadrennial Strategic Planning Process (QSPP), which we believe is consistent with the aims of the draft bill to institute a more formalized strategic planning process to inform and drive the five-year programming process and the near-term budgeting process. The final results of our initial QSPP, the current VA strategic plan for FY 2014-2020, was published in February 2014. VA is kicking off its next quadrennial strategic planning process cycle this year toward development of VA's 2018-2024 strategic plan. We look forward to engaging congress in the process.

VA's QSPP includes an environmental scanning and analysis phase, and has some of the same general goals as DoD's Quadrennial Defense Review (QDR). VA is concerned about expectations that the bill's QVR should be as extensive and detailed as DoD's QDR. VA believes an attempt to replicate the QDR is not appropriate for the Department and would have serious staffing and resource implications.

VA has been working towards building a multi-year programming capability and established the Office of Corporate Analysis and Evaluation (CAE) within the Office of Policy and Planning to lead that effort. The Secretary signed the first Future Years Veterans Plan, covering FY 2015-2019, on April 30, 2013 to document the results of our first true programming effort. We continue to mature the process and currently developing the plan for FY 2017-2021. This effort has in common the same concepts as the legislation in providing an additional tool for VA to provide a more strategic

longer-term view to ensure that capabilities are well-defined and balanced with VA's resource requests.

While we believe the general intent of section two will be met with the emerging PPBE process within VA, we do have significant reservations about any mandate to publish specific dollar and FTE projections beyond the budget year. The strategic planning and programming processes are tools used to align vision and resources to capabilities, programs, and activities, to be distinguished from VA's budget formulation process. A requirement to publish the programming-generated expenditure and appropriation figures along with VA's budget, as required by the bill, could create confusion between those two functions. That in turn could limit flexibility in developing and executing the Department's budget to meet emergent requirements and opportunities.

As noted above, the QVR would require a broader role for VA in developing a National Veterans Strategy that identifies and prioritizes the full range of programs, services, benefits and outcomes regarding Veterans provided by the Federal government. VA believes that its ongoing development and work in "futures" analysis and planning have common aims with this aspect of the QVR proposal, and will be glad to discuss this with the Committee, although a National Veterans Strategy would require broad analysis and policy development that would go well beyond just the VA.

Section two of the bill would also require the Secretary to provide annual "written policy guidance for the preparation and review of the planning and program recommendations

and budget proposals of the elements of the Department.” It is current practice for the Secretary or Deputy Secretary to issue such guidance as necessary elements of implementing the Department’s planning, programming, and budgeting processes. VA, thus, believes this provision is unnecessary.

Section three of the draft bill would designate the Assistant Secretary whose functions include planning, studies and evaluations as the Chief Strategy Officer of VA. The draft bill goes on to provide in significant detail the responsibilities of the Chief Strategy Officer. VA strongly supports the direction set out in this section, as those areas delineated in the bill are being performed by the Assistant Secretary for Policy and Planning. However, VA is reluctant to codify those responsibilities in legislation, so that those responsibilities can be adjusted as required in the future. VA would like to brief the Committees on the work of the Office of Policy and Planning as it relates to the concepts set out in section three.

Section four of the draft bill would require VA to conduct a study of the functions and organizational structure of the Office of the Secretary as well as the entire Department. It also would require VA to engage a contractor to perform a separate parallel review of those same topics. VA recognizes there is always more to do, but believes our existing planning processes are adequate to consider beneficial organizational changes. One of the strategies in our strategic plan is to rethink our operations as a Department, to identify and address any internal organizational, policy, procedural, perceptual, and cultural boundaries that constrain our ability to coordinate,

integrate, and deliver benefits and services. And we are actively working on changes. The MyVA reorganization plan will establish a new VA-wide customer service organization. We are establishing a single regional framework that will simplify internal coordination, facilitate partnering and enhance Veteran experience. We are working with our partners to establish a national network of Community Veteran Advisory Councils to coordinate better service delivery with local, State and community partners. And, we are Identifying opportunities for VA to realign its internal business processes into a shared services model in which organizations across VA leverage the same support services, to improve efficiency, reduce costs and increase productivity across VA. Rather than conducting a study, we are making changes and will be continuously studying the results of those changes and continuously improving our structure and processes. The MyVA Team has had and will continue to have consultations with the associated Committees and staff throughout Congress.

We appreciate the Committee's attention on the critical topic of VA strategic planning. It is an integral to our drive to continue improving the health care, compensation benefits, memorial honors, and other support and services we provide to the Nation's Veterans.

H.R. 245 Bill Concerning Claims and Effective Dates

This draft bill would codify several current VA regulations that are effective until March 24, 2015, and add other provisions to title 38 relating to effective dates for claims received by VA. Section 1(a) of the bill would amend 38 U.S.C. § 5100, which currently

defines the term “claimant,” to add definitions for “claim,” “formal claim,” “informal claim,” and “reasonably raised claim.” Section 1(b) would amend 38 U.S.C. § 5101(a) to codify VA’s current “informal claim” regulation, which VA removed effective March 24, 2015, in favor of a standard “intent to file” process. If added, 5101(a)(3)(A) would invalidate VA’s recent rulemaking which requires claims to be filed on standard forms, by requiring VA to accept informal claims submitted “in a format other than on an application form prescribed by the Secretary.” Section 1(c) of the bill would amend 38 U.S.C. § 5110(a), regarding effective dates for VA’s award of benefits, by essentially codifying VA’s current regulation on effective dates for informal claims. The new provision at 5110(a)(2) would invalidate VA’s recent rulemaking by requiring VA to establish an effective date for benefits based upon a claimant’s non-standard, informal communication, as long as the claimant files an application by not later than 180 days after the date VA furnishes the person the required application form. Finally, section 1(d) of the bill would amend title 38 to create new section 5103B and require VA to identify, address, and adjudicate “reasonably raised” claims in the course of addressing and adjudicating any claim as part of a formal claim. The amendments made by this bill would take effect on the date of the enactment and apply with respect to a claim submitted on or after such date.

VA strongly opposes this bill because it would invalidate a key component of VA’s plan to eliminate the disability compensation claims backlog, and will result in continued delay and frustration for hundreds of thousands of Veterans seeking disability compensation. The primary intent of this bill appears to be to overrule VA’s recent

rulemaking and maintain the current concept of the “informal claim” for purposes of establishing an effective date for an award of benefits when VA adjudicates a claim. The new rule is crucial to VA’s long term efforts to modernize the claim system for the benefit of all Veterans, while maintaining a pro-Veteran process that is accessible to individual Veterans and their families.

In order to process Veterans’ claims for benefits as accurately and efficiently as possible, VA is moving toward a paperless electronic claims processing system. A crucial component of that transition is that claims must originate on standardized inputs that can be easily identified and contain the core data needed to process the claim. As an indispensable part of this process, on October 31, 2013, VA published a notice of proposed rulemaking to improve the quality and timeliness of its processing of Veterans’ claims for benefits (RIN 2900-AO81, Standard Claims and Appeals Forms). VA intended that these changes would modernize the claim process so that all Veterans receive more timely and accurate adjudication of their claims. As VA noted in issuing its proposed rule, it receives an enormous volume of non-standard submissions under its current rules. Current rules make it difficult to identify claims and unintentionally incentivize submission of claims in non-standard formats that frustrate timely, accurate, and orderly claims processing. To improve claim processing for all Veterans, VA proposed to eliminate the concept of an “informal claim” and replace it with a process that would incentivize the submission of claims in a format more amenable to efficient processing, while still allowing Veterans to receive favorable effective date treatment

similar to that available under current “informal claim” rules. This rulemaking is a key component of VA’s plan to improve delivery of benefits to Veterans.

The Final Rule, published on September 25, 2014, carefully and comprehensively balances the interests of modernizing the VA claims system to facilitate accurate and timely adjudications for all Veterans with allowing claimants to easily initiate claims and preserve the most favorable effective date. VA, among other things, addressed the comments it received by replacing the non-standard informal claim process with a standardized process that retains many liberalizing features of VA’s current regulations. The Final Rule allows claimants and their representatives to preserve a favorable effective date by submitting minimal information and establishing an “intent to file” a claim. This process enables claimants to submit an “intent to file” via a one-page standard paper form, through initiating and saving an electronic application for benefits, or by an oral intent communicated to designated VA personnel who record such intent in the claimant’s record. The Final Rule prescribes an effective date based upon submission of the “intent to file” if VA receives a complete claim on the prescribed form within one year of the date it received the intent to file. The submission of an intent to file serves as an effective date placeholder for claimants who ultimately submit a complete application in the same manner as the informal claim regulations that are effective until March 24, 2015. However, unlike the provision in H.R. 245, which would allow a claimant 180 days to submit a formal claim, VA’s Final Rule affords claimants up to one year to file a complete application.

VA opposes the bill because it would run counter to VA's efforts to assist Veterans by improving the efficiency of the claims process and would impair VA's ability to achieve and maintain progress on our backlog reduction. It would obviate the careful balancing of interests reflected in VA's Final Rule, and instead would codify in statute rules that have proven to be antiquated, inefficient, and general barriers to modernization efforts on behalf of all Veterans. In crafting its Final Rule, VA addressed the public commenters' primary concerns by preserving a liberal effective date policy for claimants, regardless of whether they file electronically or on a paper application. While the Final Rule does require a standardized input in order to establish an effective date, VA took great care to make these standardized inputs as permissive and accessible to Veterans as possible, extending the "intent to file" process even to oral contacts with designated personnel. The Final Rule preserves the effective date treatment afforded to Veterans under current rules, while also preserving the overall intent of VA's rulemaking, which was to enhance efficiency and accuracy of claims processing for all Veterans by requiring submission of standard forms. Further, because VA's rule carefully preserves core pro-Veteran features of the current regulations, this bill would have little if any offsetting benefit in terms of maintaining the openness and accessibility of the claims process.

Additionally, VA opposes this bill because the provisions pertaining to informal claims and reasonably raised claims would require VA to continuously review mail and records for putative claims that a claimant may have raised in non-standard communications and submissions, which would entail not only inefficiency and delay, but also a

likelihood of inconsistency and dispute over whether a particular communication constitutes a claim. That requirement would undermine VA's carefully considered efforts to improve the timeliness of claims processing for all claimants while ensuring that the application process is as simple as possible and preserving the beneficial effective-date features that have long been a feature of the VA claims process.

VA's Final Rule also strikes an appropriate balance between the goal of ensuring timely, accurate, and fair decisions for all Veterans and the interest in addressing claims reasonably raised by a claimant's submissions. VA's Final Rule clarifies that it will continue to adjudicate as part of the claim entitlement to any ancillary benefits that arise as a result of its decision on a claim. It prescribes that a claimant may, but need not, assert entitlement to ancillary benefits at the time that he or she submits a complete claim. It also clarifies that VA will consider all lay and medical evidence of record in order to adjudicate entitlement to benefits for the claimed condition, as well as entitlement to any additional benefits for complications of the claimed condition, including those identified by the rating criteria for that condition in VA's Schedule for Rating Disabilities. Under the Final Rule, VA is required to identify and adjudicate all issues reasonably within the scope of the issues raised in the complete claim, based upon a broad and sympathetic reading of the record and the claimant's submissions. Similarly, VA's decision on an issue within a claim implies that VA has determined that evidence of record does not support entitlement for any other issues that are reasonably within the scope of the issues addressed in that decision.

For the reasons stated above, the Department has determined that this legislation could harm Veterans by adding inefficiency, uncertainty, and cause excessive delays to the claims process.

Costs related to this bill are not available at this time.

We appreciate the opportunity to present our views on these bills and look forward to working with the Committee.