

**STATEMENT OF  
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DEPUTY SECRETARY  
DEPARTMENT OF VETERANS AFFAIRS (VA)  
BEFORE THE  
COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES**

**JUNE 23, 2016**

Good morning, Chairman Miller, Ranking Member Brown, and Members of the Committee. Thank you for inviting us here today to present our views on several bills that would affect VA programs and services. Joining me today are Laura Eskenazi, Executive in Charge and Vice Chairman of the Board of Veterans Appeals (the Board); David McLenachen, Deputy Under Secretary for Disability Assistance for the Veterans Benefits Administration, and Dr. Maureen McCarthy, Assistant Deputy Under Secretary for Health for Patient Care Services, Veterans Health Administration (VHA).

Thank you for the opportunity to come before you today to discuss a slate of bills that includes two of the Department's legislative priorities, along with additional pieces of legislation. Our pressing needs are items that we have outlined in letters to the committee, in previous testimony, and in countless meetings with the committee and members staffs, which support the MyVA Transformation. Some of these critical needs are addressed in bills you are considering in today's hearing, but we'd like to work with you on the particular language to ensure that, as enacted, the language will have the desired effect of helping the Department best serve Veterans. VA will provide views shortly on H.R. 5162, the Vet Connect Act of 2016.

I believe it is critical for Veterans that we all work together and gain consensus on a way forward for these pieces of legislation that will provide VA with the tools necessary to deliver care and benefits at the level expected by Congress, the American public, and deserved by Veterans.

**Modernizing the VA Appeals System**

Addressing the claims appeals process is a top priority of VA. **H.R. 5083, the VA Appeals Modernization Act of 2016** would provide much-needed comprehensive reform for the VA appeals process. It would replace the current, lengthy, complex, confusing VA appeals process with a new appeals framework that makes sense for Veterans, their advocates, VA, and stakeholders. VA fully supports this bill.

The current VA appeals process, which is set in law, is broken and is providing Veterans a frustrating experience. Appeals have no defined endpoint and require continuous evidence gathering and re-adjudication. The system is complex, inefficient, ineffective, confusing, and splits jurisdiction of appeals processing between the Board of

Veterans' Appeals (Board) and the Veterans Benefits Administration (VBA). Veterans wait much too long for final resolution of an appeal. We face an important decision about the future of appeals for Veterans, taxpayers, and other stakeholders.

Within the current legal framework, the average processing time for all appeals resolved in Fiscal Year (FY) 2015 was 3 years. For those appeals that reach the Board, on average, Veterans are waiting at least 5 years for an appeals decision, with thousands of Veterans waiting much longer. As Secretary McDonald noted in his February 23, 2016 testimony, in 2015, the Board was still processing an appeal that originated 25 years ago, even though the appeal had previously been decided by VA over 27 times. VA continues to face an overwhelming increase in its appeals workload. Looking back over FY 2010 through FY 2015, VBA completed more than 1 million claims annually, with nearly 1.4 million claims completed in FY 2015 alone. This reflects a record level of production. As VA has increased claims decision output over the past 5 years, appeals volume has grown proportionately. Since 1996, the appeal rate has averaged 11 to 12 percent of all claims decisions. The dramatic increase in the volume of appeals is directly proportional to the dramatic increase in claims decisions being produced, as the rate of appeal has held steady over decades. Between FY 2012 and FY 2015, the number of pending appeals climbed by 35 percent to more than 450,000 today. VA projects that, by the end of 2027, under the current process, without significant legislative reform, Veterans will be waiting on average 10 years for a final decision on their appeal.

Comprehensive legislative reform is required to modernize the VA appeals process and provide Veterans a decision on their appeal that is timely, transparent, and fair. This bill would provide that necessary reform. The status quo is not acceptable for Veterans or for taxpayers. Without legislative change, providing Veterans with timely answers on their appeals could require billions of dollars in net new funding over the next decade. By contrast, with legislation and a short-term increase in funding to address the current pending workload, VA could resolve the pending inventory, provide most Veterans with an appeals decision within 1 year of filing, and greatly improve the efficiency of the Appeals process for years to come. We believe this can be done for net additional costs over 10 years in the millions of dollars, not the billions required by the status quo, saving money in the long-term compared to where we are headed without reform. If we fail to act now, the magnitude of the problem will continue to compound.

A wide spectrum of stakeholder groups have been meeting with VA to reconfigure the VA appeals process into something that provides a timely, transparent, and fair resolution of appeals for Veterans and makes sense for Veterans, their advocates, stakeholders, VA, and taxpayers. We believe the engagement of those organizations that participated ultimately led to a stronger proposal, as we were able to incorporate their feedback and experience having helped Veterans through this complex process. The result of these meetings was a new appeals framework, virtually identical to H.R. 5083, which would provide Veterans with timely, fair, and quality decisions. VA is grateful to the stakeholders for their contributions of time, energy, and expertise in this effort.

The essential feature of this newly shaped design would be to step away from an appeals process that tries to do many unrelated things inside a single process and replace that with differentiated lanes, which give Veterans clear options after receiving an initial decision on a claim. For a claim decision originating in VBA, for example, one lane would be for review of the same evidence by a higher-level claims adjudicator in VBA; one lane would be for submitting new and relevant evidence with a supplemental claim to VBA; and one lane would be the appeals lane for seeking review by a Veterans Law Judge at the Board. In this last lane, 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 better managed. As a result of this new design, the agency of original jurisdiction (AOJ), such as VBA, would be the claims adjudication agency within VA, and the Board would be the appeals agency.

This new design would contain 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 would be returned to the AOJ for correction unless the claim 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.

This disentanglement of process would be enabled by one crucial innovation. In order to make sure that no lane becomes a trap for any Veteran who misunderstands the process or experiences 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 on a claim to an appeal to the Board. If the Board decision was not favorable, but it 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.

To fully enable this process and provide the appeals experience that Veterans deserve, VBA, which receives the vast majority of appeals, would modify its claims decisions notices to ensure they are clearer and more detailed. This information would allow Veterans and their representatives to make informed choices about whether to file a supplemental claim with the AOJ, seek a higher-level review of the initial decision within the AOJ, or appeal to the Board.

H.R. 5083 would not only improve the experience of Veterans and deliver more timely results, but it would also improve quality. By having a higher-level review lane within the VBA claims process and a non-hearing option lane at the Board, both reviewing only

the record considered by the initial claims adjudicator, the output of those reviews would provide a feedback mechanism for targeted training and improved quality in VBA.

Though some may view this reform effort as too accelerated, we would like to reiterate that the topic of “fixing the appeals problem” has been debated and studied by experts in the field for many, many years. H.R. 5083 would be a solution to the problem. The time to act is now. The legislation itself is cost neutral. We are excited to be part of this work and to have the potential to lay down a path for future Veterans’ appeals that is simple, timely, transparent, and fair. We owe it to our country to put in place a modernized framework for Veterans’ appeals which we believe will serve Veterans, taxpayers, and the nation well for years to come.

### **Improving Recruitment and Retention and Improving Health Care Management**

VA has proposed a number of measures to improve its ability to recruit and retain medical professionals. We appreciate your consideration today of **H.R. 4150, the Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act**, which is based on one of those proposals. The bill allows VA to arrange flexible physician and physician assistant work schedules to allow for the staffing and full implementation of a hospitalist physician system and to accommodate the unusual work schedule requirements for Emergency Medicine (EM) Physicians.

VA supports this measure but would like to discuss two technical aspects of this bill with the Committee. There are differences in personnel authorities and overtime compensation between physicians and physicians' assistants which would present complications in implementation of the bill. We therefore propose the bill be limited to physicians. We also suggest amending language that limits total hours of employment for covered employees to 2,080 hours in a calendar year. We suggest a technical amendment to ensure the bill will cover full-time employees.

If the bill were revised as recommended above, we believe it would result in no additional cost to the Department.

### **Other Veteran Health Care Measures**

It is important to ensure that Veterans are given the fullest possible access to emergency care, and especially that there are not barriers to ensuring that patients who seek emergency treatment at VA are stabilized and treated. The Emergency Medical Treatment and Labor Act (EMTALA) is a federal law that requires anyone coming to an emergency department to be stabilized and treated, regardless of their insurance status or ability to pay. **H.R. 3216, the Veterans Emergency Treatment Act** would apply provisions similar to what is in (EMTALA) at 42 U.S.C. § 1395dd to enrolled Veterans requesting examination or treatment at a hospital emergency department of a VA medical facility (including when a request is made on the Veteran’s behalf).

VA generally supports the intent of the legislation, but does not believe it is necessary. VA currently practices under the spirit of EMTALA. Additionally, VA Emergency Departments are currently practicing under EMTALA guidance.

We do note, as a technical matter, that H.R. 3216 would only cover enrolled Veterans, and not persons who are ineligible for VA health care but who require emergency treatment (such as humanitarian cases). There are also technical complications under the bill as currently written with respect to payment for care by non-VA facilities. We would be glad to discuss these issues with the Committee.

We do not believe this bill would result in any additional costs to the Department.

**H.R. 4764, the Puppies Assisting Wounded Servicemembers (PAWS) Act of 2016**, would require VA to carry out a 5 year pilot program under which VA would provide service dogs to eligible Veterans. This would be done in addition to other types of treatment provided for posttraumatic stress disorder (PTSD) and would be prohibited from replacing an established treatment modality.

While VA certainly understands the intent of this legislation, we do not support the bill. VA's Office of Research and Development (ORD) is currently conducting a legislatively mandated study to learn if service dogs are an efficacious intervention in the treatment of Veterans with PTSD. We anticipate that our ongoing legislatively mandated study will be completed before any new legislative authority could be enacted and implemented. We strongly recommend that Congress await the results of this study, which will address the overarching question of whether service dogs are an efficacious intervention for Veterans with PTSD.

There are a number of complications and possible unintended consequences that could result from enactment of H.R. 4764. This bill raises questions of equity or even discrimination if one population of Veterans receives a benefit that others do not. There are distinctions between emotional support or companion animals and service dogs. This is an important consideration, as we have been in recent contact with Assistance Dogs International and learned that they do not certify programs that provide emotional support animals.

VA has not developed a cost estimate for this bill, but we note that the \$10 million offset from the VA Human Resources and Administration account would impede significantly our ability to hire and retain personnel necessary to fulfill VA's mission of service to Veterans. We would be glad to facilitate meetings with clinical and research specialists to explain VA's concerns in more detail.

There is no more critical mission for VA than to respond to Veterans who are in crisis. **H.R. 5392 No Veterans Crisis Line Call Should Go Unanswered Act** would direct the Secretary to develop a quality assurance document to use in carrying out the Veterans Crisis Line (VCL). VA would also be required to develop a plan to ensure that each

telephone call, text message, or other communication to the VCL is answered in a timely manner by a person and consistent with guidance from the American Association of Suicidology. ([www.suicidology.org](http://www.suicidology.org)).

VA appreciates the interest of the Congress to ensure our ability to respond to Veterans most in need is second to none. VA supports the intent of this bill, but we do not believe it is necessary because our current efforts fully meet the goals of this bill. The VCL has developed a formal quality assurance program and implementation plan that includes call monitoring, complaint and compliment tracking, end-of-call satisfaction measurement, and a formal coaching plan. The quality management plan includes a comprehensive database for tracking, trending, and reporting on quality improvement data from issue identification to actions and resolution for both VCL's primary call center and back-up call centers. Data will be used to inform training initiatives through a continuous quality improvement cycle that includes data collection, analysis and feedback, standard work review/updates, training, and implementation. The quality assurance program will track staff adherence to standard workflow processes and provide feedback for every monitored call. These data will be trended and incorporated into both New Employee and Remedial Training for responders.

VCL has also created a multidisciplinary Clinical Advisory Board consisting of key stakeholders from the VCL, VHA Member Services, VA's National Suicide Prevention Program, the Defense Suicide Prevention Office, the Center of Excellence for Suicide Prevention, the Substance Abuse and Mental Health Service Administration, VHA's Office of Public Health, and VA's Mental Illness Research, Education & Clinical Centers to share best clinical practices.

This bill would not result in any additional costs.

### **VA Benefits Measures**

It is critical that Veterans and Servicemembers considering or using VA education benefits have reliable information about schools. **H.R. 5047, the Protecting Veterans' Educational Choice Act of 2016**, would require VA counselors who provide educational or vocational counseling services to also provide information about articulation agreements of each institution of higher learning (IHL) in which the Veteran is interested. An articulation agreement is an agreement used in transfers between schools that specify the acceptability of courses towards meeting degree, certificate, or program requirements. H.R. 5047 would require VA to provide detailed information on educational assistance, including information on requesting education counseling services and articulation agreements to each Veteran who receives a certification of eligibility.

VA supports the intent of H.R. 5047, as it outlines robust existing practices and services currently provided by counselors during the educational and vocational counseling process, as well as important information provided by VA when a certificate of eligibility is issued.

There are no mandatory costs for this proposed legislation as it does not change direct benefits to beneficiaries. There are no discretionary costs as its requirements are already met by existing practices.

**H.R. 5166, the Working to Integrate Networks Guaranteeing Member Access Now Act (WINGMAN) Act** would require VA to provide “accredited,” permanent congressional staffers designated by a Member of Congress with remote, read-only access to VBA’s electronic records of Veterans they represent, regardless of whether the Veteran whose record is accessed has consented to the disclosure of information. The bill also clearly states that the provision of access to the congressional staffer is not for purposes of representing Veterans in the preparation, presentation, and prosecution of claims for Veterans’ benefits.

VA understands the interest of Members in Congress in having current casework information for their Veteran constituents. VA, however, opposes this bill because it raise significant privacy concerns, and because it creates confusion with the function of VA’s accreditation program in ensuring that Veterans have access to competent and qualified claims representation.

The bill would actually provide congressional staff who assist constituents of a Member of Congress with greater access to VA records than is provided to a VA employee. Under the Privacy Act, Federal employees generally may access private records only when necessary to perform their duties. This bill would impose no similar restriction on access by congressional staff. Congressional staff would have unrestricted access to the medical records of Veterans and other VA claimants.

Regarding how the bill conflates the concepts of access to claims records and representation of claimants, accreditation by VA as attorneys, claims agents, and Veterans Service Organization representatives is not done for purposes of providing electronic access to VBA’s electronic records system. Rather, the purpose of VA’s accreditation and oversight of representatives, agents, and attorneys, and other individuals is to ensure that claimants for VA benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for Veterans’ benefits. The laws governing accreditation do not address the issue of access to claimants’ records, which are governed separately by other laws. Making congressional employees’ access to claimant records a function of VA’s accreditation program would unnecessarily complicate the operation of that program. Further, referring to congressional staff as “accredited” can only create confusion about whether staffers are accredited by VA for purposes of claims representation and what their role is in the claims process.

Additionally, there are serious technological obstacles to implementing this bill. The bill would impose on VA a substantial burden to accommodate the contemplated access, necessitating changes to VA through its current systems. We are unable to provide an accurate cost-estimate at this time, although costs associated with changes to VA information systems would be substantial.

VA is always ready to discuss with the Committee other ways VA can improve a Member of Congress' ability to effectively work with VA to resolve casework issues on behalf of their constituents.

**H.R. 5416, the Expanded Burial Benefits for Veterans Participating in the Veterans Choice Program** would expand VA's monetary burial benefits to cover Veterans who die while hospitalized by VA or a non-VA health care provider by expanding the categories of non-VA facilities in current law. The bill would expand the facilities covered to include a non-VA facility where the Veteran was receiving care under Veterans Choice (specifically under Section 101 of the Veterans Access, Choice, and Accountability Act of 2014 (Public Law 113-146)).

VA already pays the burial allowance for Veterans who die while receiving care at a non-VA facility when under VA contract. The Veterans Choice program is a similar program whereby Veterans can receive care from community providers. VA believes this is a logical extension of current law to account the supports this proposed expansion of burial benefits.

VA also recommends changing the bill to simply pay the maximum benefit instead of the actual cost of the burial and funeral. Under current practice, VA generally pays the maximum benefit because the current average cost of a Veteran's burial and funeral exceeds by far the \$700 maximum burial benefit. This change would greatly help VA automate and speed the payment of the benefit to the Veteran's family. VA would be glad to work with the Committee to refine the bill's language.

We must note that VA support for this bill is contingent on Congress providing the necessary resources for carrying it out. Because of the relatively short notice for this hearing, VA has not yet developed an estimate of the benefit costs associated with this bill.

### **Other bills**

**H.R. 5407, the Homeless Veterans Reintegration Programs for Homeless Veterans with Dependent Children** would require the Secretary of Labor to prioritize the provision of services to homeless Veterans with dependent children, as well as submit reports and evaluations to the Congress.

Because this bill concerns responsibilities and programs under the Department of Labor, VA defers to the views of that agency on H.R. 5407.

**H.R. 5420 a bill to authorize the American Battle Monuments Commission to Acquire, Operate, and Maintain the Lafayette Escadrille Memorial** would authorize the American Battle Monuments Commission to acquire, operate, and maintain the Lafayette Escadrille Memorial in Marne-la-Coquette, France.

Because this bill concerns responsibilities under the purview of the American Battle Monuments Commission, VA defers to the views of that agency on H.R. 5420.

**H.R. 5428, the Military Residency Choice Act**, would amend the Servicemembers Civil Relief Act regarding various tax and residency matters. Because this bill concerns responsibilities under the purview of the Department of Defense, the Internal Revenue Service, the Department of Justice, and others, VA defers to the views of those agencies on H.R. 5428.

### **Closing**

Mr. Chairman, this concludes my statement. Thank you for the opportunity to appear before you today. We would be pleased to respond to questions you or other members may have.