Swords to Plowshares

VETS HELPING VETS SINCE 1974

Getting It Right:
"Bad Paper" Legislation That Works

Prepared for House Veteran Affairs Committee, Subcommittee on Health
Legislative Hearing on H.R 918 and others
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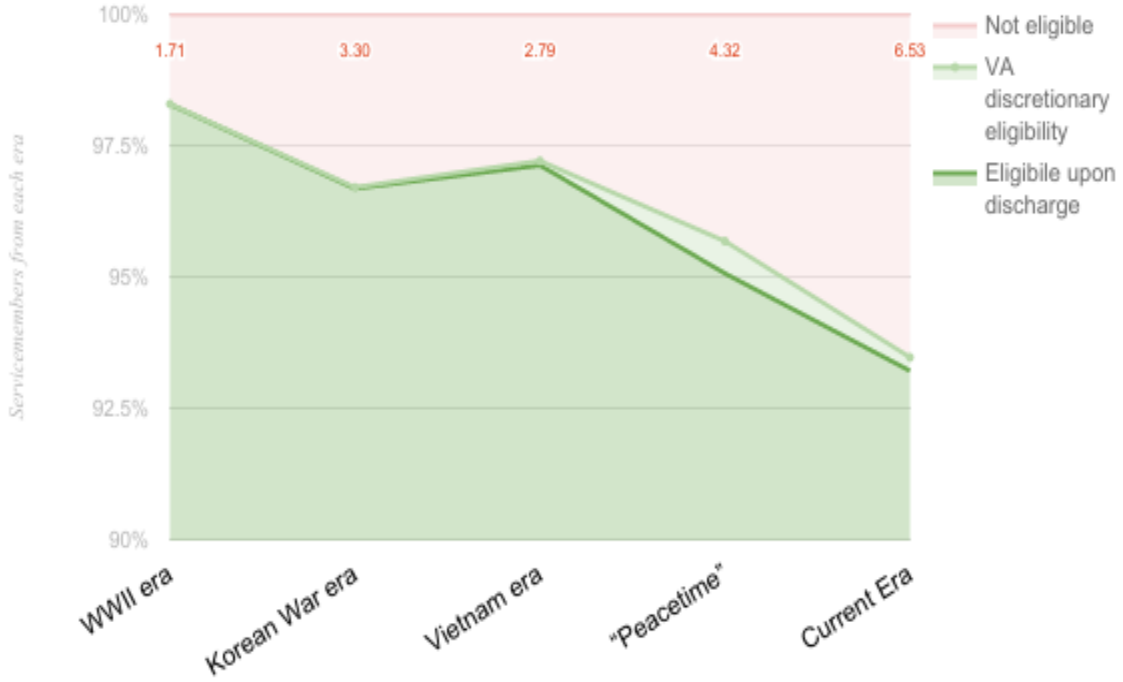
Submitted by
Swords to Plowshares, a Veteran Rights Organization

With the Assistance of
Veterans Legal Clinic at Harvard Law School

I. The urgency of health services for "bad paper" veterans

Post-9/11 veterans are denied basic veteran services at a higher rate than those of any previous era. Tens of thousands of servicemembers who would have received Honorable or Honorable Conditions discharges in prior eras today receive Other Than Honorable (OTH) discharges. Our "zero-tolerance," high op-tempo military has little patience for even routine discipline and behavior issues. This is true even when the behavior change is symptomatic of mental health issues that arose in service. The statistics are alarming. Combat-veteran Marines with PTSD diagnoses are 11 times more likely to get an OTH discharge than others[1]; between 2009 and 2012, the Army gave misconduct discharges to 20,000 servicemembers even after diagnosing them with PTSD[2]; survivors of military sexual trauma are 50% more likely to get misconduct discharges.[3] Denying veterans basic services for minor misconduct issues is unfair; denying them basic services because they are disabled or traumatized is unconscionable. It is happening now more than ever.

Figure 1: Eligibility for basic veteran services since WWII



Source: Adapted from Veterans Legal Clinic, Underserved *(2016), available at https://www.swords-to-plowshares.org/sites/default/files/Underserved.pdf.*

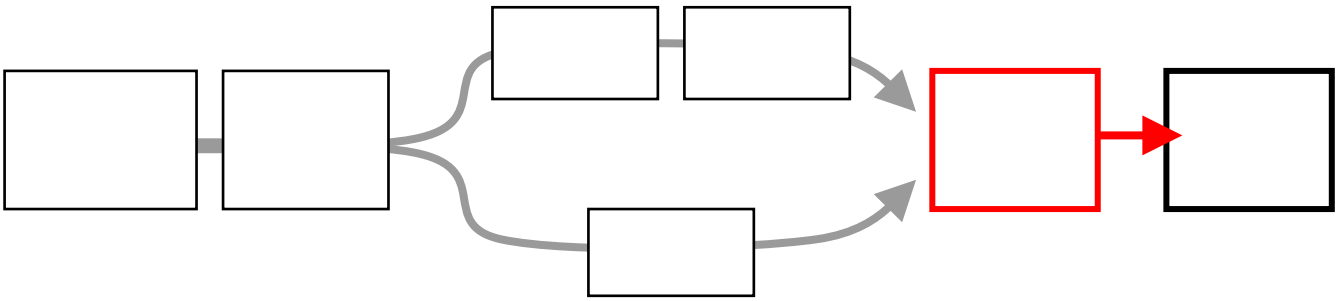
Exclusion from basic veteran services is not only unfair, it is also deadly. Denying basic services means no health care for former servicemembers who are disabled, and no income support if disabilities

[1] https://www.ncbi.nlm.nih.gov/pubmed/20974004
[2] NPR, "Missed Treatment: Soldiers With Mental Health Issues Dismissed For 'Misconduct'" (Oct. 28, 2015).
[3] Gary Noling, "What the Military Owes Rape Survivors Like My Daughter," New York Times (Aug. 29, 2016) *citing* DOD Inspector General, "Evaluation of the Separation of Service Members Who Made a Report of Sexual Assault" (May 9, 2016).

prevent the servicemember from working. For veterans struggling with mental health problems, this abandonment is life-threatening. The suicide rate for veterans excluded from VA health care is twice the suicide rate for VA-recognized veterans.[4] For all of the issues surrounding VA access, the fact is that VHA health care works. The suicide rate for veterans under VHA care is decreasing, while the suicide rate for those outside of VHA care is increasing.[5]

We have created a suicide pipeline. Traumatic mental health disabilities are one of the major contributors to misconduct discharges. These veterans are some of those most at risk of suicide. We have the tools at VHA to prevent people at a mental health risk from committing suicide. However, we deny them many of them access to mental health care because the behavior symptomatic of their condition in the first place.

Figure 2: The Suicide Pipeline



Effectively managing this problem requires more than short-term mental health services. Most importantly, it requires access to primary and preventative care. One of the reasons that VHA mental health care is so effective is that it is integrated with somatic care. Many people, including veterans, do not like to seek mental health care, so we know that a great way to reach at-risk veterans is through referral by primary care providers. We also know that pain management cannot safely be separated from psychiatric care. In cases of TBI, which is a significant precursor of behavioral health problems, somatic and psychological conditions are inseparable. Effective mental health care cannot be provided in isolation from overall health care.

Second, preventing mental health crises requires requires management of life stressors beyond the hospital. Congress has recently ended the shameful practice of turning away homeless veterans from veteran shelters when they had bad paper discharges. However, that is not enough. When a person's military disability prevents them from earning a living, leaving them unemployable without income support is short-sighted and unjust. Congress has designated certain services to be rewards for exemplary service, notably the G.I. Bill; other benefits are protective services to care for actual injuries that a person has experienced, and withholding these basic veteran services on the basis of minor behavior issues does not serve our nation's interests.

[4] https://www.ncbi.nlm.nih.gov/pubmed/25533155
[5] http://www.mentalhealth.va.gov/docs/suicide_data_report_update_january_2014.pdf

II. How not to do it: the lessons of P.L. 95-126

Congress faced this problem before. Like now, it faced a generation of veterans returning home with mental and physical injuries, an unprecedented percentage of whom were discharged less-than-honorably and faced challenges accessing basic care and treatment. Tremendous effort from Congress and advocates resulted in new legislation that was similar to what is under consideration today. But it did not work.

In 1977, Congress saw that more than 260,000 Vietnam-era servicemembers had received less-than-honorable discharges from the armed forces, and that many struggled with unemployment, homelessness, substance abuse, and mental illness. Congress held numerous hearings investigating the issue and contemplating potential solutions. Its solution was Public Law 95-126.

Section 2 of that bill granted to OTH veterans lifetime VA health care for any disabilities that arose in military service, unless they were otherwise barred by statute. This bill was broader than bills currently under consideration, because it was not limited to mental health care, it was not limited to temporary care, and it was not limited to combat vets or MST survivors.

Although that provision is still on the books[6], it does not do the job it was intended to. If it had been successful, none of the bills currently under consideration would be necessary: the servicemembers, conditions, and services that the currently-proposed bills describe are all encompassed by the already-existing provision under P.L. 95-126. Yet, almost none of them are accessing the services that Congress knows they need. In the 40 years since it was enacted, the OTH health care provision created by P.L. 95-126 has reached only 9,450 servicemembers.[7] This is only 1.3% of the OTH veterans discharged during this period, and only 7% of the OTH veterans who sought the help of VA for in-service disabilities.

P.L. 95-126 has not been effective because it was too targeted. First, and most importantly, VBA has to adjudicate multiple complicated questions before the veteran can get any care. The requirement of adjudication slows everything down and renders a system unable to serve veterans in moments of crisis. Second, VHA and VBA have difficulty transferring information between them. The more times that a form or notification has to be sent from one to the other, the more likely it is that something will go astray.[8] Third, the law has narrow criteria that many find hard to remember and a complicated procedural structure that is difficult to explain. The lack of simplicity makes it difficult for VHA eligibility

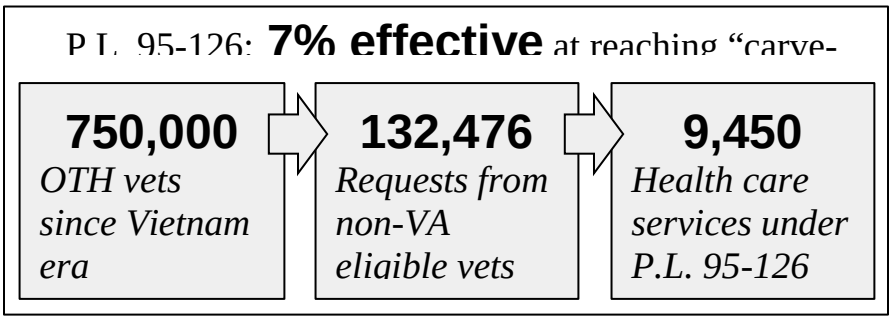
[6] 38 C.F.R. § 3.360.

[7] Data provided VA Central Office analyst, details available on request.

[8] The following is a description of how the process technically works. A veteran with an OTH discharge presents at a VA health facility seeking care. VHA eligibility staff should ask the veteran to fill out a health care application, and should then fill out an internal VA form referring the veteran's application to the VBA Regional Office for adjudication as to character of discharge. If the adjudication finds the veteran's service was "other than dishonorable," then the veteran can receive full VA health care; if the adjudication finds the veteran's service not "other than dishonorable" under VA regulatory bars, then the veteran is advised that he or she may be eligible under Public Law 95-126 for "Chapter 17" health care. Adjudication then stops. There is no form or application to request "Chapter 17" health care. However, the veteran--often assisted by an advocate--can send a letter and health care application asking for "Chapter 17" health care and requesting that VBA adjudicate service-connection for listed conditions. VBA, now looking at the issue a second time, should then make the determination and inform VHA as to its outcome. There are many ways in which the procedures can and do fail.

employees to consistently and reliably implement the law, thus contributing to its ineffectiveness. Furthermore, the referral process is invisible to the servicemembers: there is no public VA form to request this, so there is no way for a potentially-eligible person to start the process without the assistance of an informed and willing VHA eligibility workers.[9] In practice, this simply does not happen.

Figure 3: Legacy of P.L. 95-126



Source: Veterans Legal Clinic, Underserved *(2016); VA Central Office data available on request.*

The impact of these bureaucratic obstacles cannot be overstated. In our experience, even the insistence of an attorney, carrying the relevant regulations in hand, may not be sufficient to force the internal adjudication referral process to happen. We are working with one veteran where we succeeded in starting the process at the VA hospital, but have now been waiting three years for a result. Another client just received notice of health care eligibility five years after beginning the process. Needless to say, it is unrealistic for a veteran experiencing a mental health crises to navigate this system more effectively.

As a practical matter, health care eligibility criteria must be immediately discernible by the VHA eligibility clerk, or it will not have its intended impact. VHA service databases (BIRLS) and DD214s do not show whether disabilities arose in service, whether mental health disabilities contributed to discharge, whether a person served in a combat theater or in combat, or whether a person experienced Military Sexaul Assault (MST). This can only be decided by having a VBA adjudicator request and read a person's military service record. A health care eligibility law that relies on any of these eligibility factors will require an eligibility inquiry from the VHA to the VBA, and experience shows that this cannot be operationalized. The 1.3% reach of P.L. 95-126 after 40 years should be conclusive evidence that this is not a local problem, and that it is not the fault of a certain bureaucracy. The law, though well-intentioned, was not written to operate within our veteran health care eligibility system.

[9] Instructions to VHA eligibility staff were removed from the latest edition of the VHA eligibility procedures manual. VHA Handbook 1601A.02 (2015). Incomplete and confusing instructions are provided in a public Information Bulletin. VHA IB 10-448 "Other than Honorable Discharges - Impact on Eligibility for VA Health Care Benefits" (2014). The VBA recently amended its Adjudication Procedures manual so that an OTH veteran who applies for Compensation will automatically be considered for the health care eligibility exception, if they receive a negative Character of Discharge decision. M21-1 Part III.v.1.B.1.f. Although promising, it creates a situation where the only pathway to health care passes through a Compensation application, filed not at a hospital but at a Regional Office, without any instruction to this effect to service members. Implementation of this new procedure has been uneven.

Our lesson from P.L. 95-126 should be this: we cannot ensure health care access to vulnerable populations by "carving out" services to specific people or conditions. Each carve-out is a condition that a different branch of the VA has to adjudicate, and veterans cannot be expect to know how to navigate that. The eligibility criteria must be simple and available on a DD214 or in BIRLS; this may require extending to more than intended, however that is the cost of ensuring no deserving veteran is abandoned.

III. H.R. 918 as currently drafted will not reach its target group

H.R. 918 proposes an approach similar to what P.L. 95-126 attempted. It identifies a specific target group and authorizes services only to them: servicemembers with OTH discharges, but not those barred by 38 U.S.C. 5303(a), who served a combat theater or in combat, or who experienced MST. Like P.L. 95-126, VHA eligibility staff will have to refer any claims to the VBA for adjudication of these criteria, based on a review of military service records. As with P.L. 95-126, these conditions will almost certainly be too cumbersome for service members to navigate effectively, particularly those facing mental health crisis. And it will almost certainly be too difficult for the VA to adjudicate rapidly.

H.R. 918 faces an additional obstacle that P.L. 95-126 did not face. H.R. 918 only proposes to provide tentative health care: health care while the VA decides permanent eligibility based on character of discharge review. However, because H.R. 918 has its own eligibility criteria that have to be adjudicated, servicemembers will never be able to access immediate health care. Because the H.R. 918 eligibility determination process will look very similar to the permanent eligibility determination process, it is likely that H.R. 918 will not create anything: the servicemember will learn their H.R. 918 eligibility at the same time as they learn their permanent eligibility, so the H.R. 918 eligibility will be irrelevant.

IV. H.R. 918 may limit more effective regulatory and policy changes already underway

The Department of Veterans Affairs is currently reviewing its regulations that govern access to basic services for veterans with less-than-honorable discharges, including tentative eligibility for health care while a veteran's eligibility review is underway. It has made this announcement publicly, in response to the Commission on Care's recommendations to do so. It has told Congressional offices that it plans to issue regulations on this during 2017.

Through this rulemaking, VA could propose regulations that would fully accomplish the goals of H.R. 918. Using existing legal authority, VA could amend its current tentative healthcare eligibility regulation[10] to extend care to veterans who served in or supported combat operations or who experienced military sexual trauma.

Furthermore, it is likely that the VA would propose a tentative eligibility rule that exceeds what H.R. 918 proposes. The VA will consider its internal systems and procedures, including the capabilities of front-line eligibility staff and the availability of information in existing databases. It will likely avoid

[10] 38 C.F.R. § 17.36.

criteria that, like the criteria proposed with H.R. 918, require cumbersome intra-agency adjudication referrals. Therefore a rule VA proposes may be easier to implement and more likely to achieve the goal of ensuring access to these at-risk veterans.

A more narrow rule enacted through legislation would be unnecessary, and may potentially complicate the ongoing regulatory action. It is unclear whether VA would still have regulatory discretion to craft a workable standard, when Congress had just specified a particular standard; this may be true even when the Congressionally-mandated standard is less feasible.

Because adequate agency action is underway, it is imprudent to issue legislation that may interfere with those outcomes. Where the agency has the will and authority to take appropriate action, Congress should provide guidance and oversight rather than micromanagement.

V. Better options: legislation with impact

Alternative options are available. Based on our direct experience navigating the system from the veterans' perspective, we have developed the following possible avenues to expanding access to mental health care for vulnerable servicemembers, without exceeding the Committee's intent to focus on combat-exposed veterans and MST survivors.

To the extent possible, the proposed solutions build on the significant amount of authority that VA already has to provide mental health care, as well as other treatment and services, to veterans with bad-paper discharges. Eligibility for basic VA services--including health care, disability compensation, and vocational rehabilitation--require only that the veteran have been discharged under "other than dishonorable" conditions and not be excluded under enumerated statutory bars.[11] Veterans with bad-paper discharges who served in a combat theater or experienced military sexual trauma also can seek counseling at a Vet Center.[12] Therefore, under current law, veterans with other-than-honorable or bad-conduct (by special court-martial) discharges may be entitled to full or limited health care from VA. VA only provides such care after it has conducted a lengthy eligibility review process, known as a character of discharge determination. While those reviews are pending, current VA regulations do not allow such veterans to receive "tentative" eligibility for health care,[13] but VA could adopt new regulations that would allow as much. Despite the VA's existing authority to offer care to veterans with bad-paper discharges, both statistical and anecdotal evidence demonstrate that many such veterans face challenges in accessing that care and that the vast majority are presently excluded from VA.[14] Encouraging and supporting VA's utilization of existing statutory authority to provide care to veterans with bad-paper discharges could allow for a quicker roll-out of services, with greater certainty that the agency could successfully operationalize Congress's goals.

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[11] 38 U.S.C. §§ 101(2), 5303(a); 38 C.F.R. § 3.12.
[12] 38 U.S.C. § 1712A.
[13] 38 C.F.R. § 17.34.
[14] *See generally* Veterans Legal Clinic, *Underserved: How the VA Wrongfully Excludes Veterans with Bad-Paper Discharges* (March 2016), *available at* https://www.swords-to-plowshares.org/sites/default/files/Underserved.pdf.

Option 1. Amend H.R. 918 from U.S. Code provision to rulemaking requirement

As described above, VA has considerable authority under existing law to provide mental health care services to certain veterans with bad-paper discharges, including veteran with other-than-honorable discharges who served in combat or experienced military sexual trauma. By enacting a law that directs VA to implement a policy that it already had authority to implement, Congress could potentially narrow VA's authority. For example, it is possible that VA would interpret the law to prohibit it from providing tentative health care to veterans who are having mental health crises but did not serve in combat or experience MST, or to veterans who served in combat but are experiencing severe physical injuries. To ensure that the Bill clearly communicates its goal of expanding--rather than narrowing--access, one option is to require that VA revise its tentative health care regulations to include, at a minimum, access to mental health care services for combat veterans and veterans who experienced MST.

REVISION OF REGULATIONS RELATING TO TENTATIVE HEALTH CARE.-- No later than one year after the date of enactment of this Act, the Secretary shall issue a Final Rule amending its Regulations relating to tentative eligibility for health care. Section 17.34, Title 38, Code of Federal Regulations. The Final Rule shall address the ability of former service members to receive tentative eligibility for health care when their eligibility under Sections 101(2) and 5303, Title 38, United States Code, must be determined. The Final Rule shall, at minimum, require that VA provide mental health care services to any former service members who served during a period of war (as defined in section 1521 of this title) or, while serving in the Armed Forces,was the victim of a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment (as defined in section 1720D(f) of this title) and who has filed an application for hospital care or other benefits administered by the Secretary that requires an adjudication as to any eligibility prerequisite which cannot immediately be established. This minimum requirement does not limit the Secretary from establishing other provisions as allowed under existing authority.

Option 2. Authorize Vet Centers to provide psychiatric and neurobehavioral services

The Vet Centers are community-based outpatient clinics that provide counseling and readjustment services to veterans who served in a combat theater, served in an unmanned aerial vehicle crew that support combat operations, or experienced military sexual trauma. These services are available to veterans with bad paper, and so target a similar veteran cohort as H.R. 918. However, Vet Centers do not provide psychiatric care or inpatient treatment programs, nor do they provide neurobehavioral treatment for Traumatic Brain Injury. Some veterans therefore will find that the Vet Centers cannot fully treat their mental or neurological injuries. Rather than create an adjudication process to carve out limited access to VA hospitals, Congress could expand the authority and resources of Vet Centers, which are already reaching the target population, so that they could provide or arrange for improved mental health services directly or through community care.

IN GENERAL.--The Secretary shall use the existing assessment, referral, and contracting authorities assigned to Vet Centers under Sections 1712A(b)(1) and (e)(1), Title 38, United States Code, to ensure that the mental health care services available to Vet Center patients include psychiatric care for mental health disorders and neurobehavioral care for patients who experienced Traumatic Brain Injury. The Vet Centers are encouraged to use their contracting authorities to refer patients to community care providers in cases where Department facilities are unavailable. The Vet Centers shall continue their existing practice of providing services on a tentative, emergency, or reintegrative basis pending eligibility review in cases where that is required.

SCOPE OF MENTAL HEALTH SERVICES.--Include the following paragraph as Section 1712A(b)(3):

> *"(3) Mental health services furnished under paragraph (1) of this subsection may, if determined to be essential to the effective treatment and readjustment of the patient, include psychiatric care and neurobehavioral care."*

UTILISATION OF COMMUNITY CARE. Amend Section 1712A(b)(1), Title 38, United States Code, as follows:

> *"(1) If, on the basis of the assessment furnished under subsection (a) of this section, a licensed or certified mental health care provider employed by the Department (or, in areas where no such licensed or certified mental health care provider is available, a licensed or certified mental health care provider carrying out such function under a contract or fee arrangement with the Secretary) determines that the provision of mental health care services to such veteran is necessary to facilitate the successful readjustment of the veteran to civilian life, such veteran shall, within the limits of Department facilities, be furnished such services on an outpatient basis. For the purposes of furnishing such mental health care services, the counseling furnished under subsection (a) of this section shall be considered to have been furnished by the Department as a part of hospital care. Any hospital care and other medical services considered necessary on the basis of the assessment furnished under subsection (a) of this section shall be furnished only in accordance with the eligibility criteria otherwise set forth in this chapter (including the eligibility criteria set forth in section 1784 of this Title)."*

Option 3. Create a "Veteran" eligibility determination process

Ninety percent of veterans with bad-paper discharges are ineligible for basic VA services not because they applied and were denied but because VA has never adjudicated their eligibility at all.[15] These veterans may never have applied, perhaps because they wrongly believed that they were categorically ineligible, or they may have attempted to apply but encountered barriers to doing so. Currently, there is no method for a veteran with a bad-paper discharge simply to request that VA

[15] Veterans Legal Clinic, *Underserved*, *supra* note 15, at 10.

determine whether he or she is eligible. That is, a veteran cannot "appl[y] for a character of service determination," as H.R. 918 requires to be covered by its provisions. Instead, the veteran must apply for a specific benefit, e.g., disability compensation, and VA then initiates an eligibility review as its first step. VA's current procedures for these reviews may not gather information critical to its determination, such as from the veteran about the circumstances surrounding his or her discharge or from medical professionals about any in-service mental health conditions. These inadequate procedures and low rate of applications could be remedied in part by requiring VA to create a separate application by which a veteran with a bad-paper discharge can ask for an eligibility review. Furthermore, veterans might then know whether they are eligible for full VA services or not before they are in crisis and seeking urgent mental care, rather than having to grant temporary access to services while VA adjudicates their eligibility.

> *CHARACTER OF DISCHARGE ADJUDICATION.--*
> *(1) FORM.--The Secretary shall create a form by which a former service member may request that the Department determine whether the member qualifies as a veteran under sections 101(2) and 5303, title 38, United States Code. The form shall elicit information relevant to a character of discharge determination, including any honorable or meritorious service, any combat or hardship service, any physical or mental health injuries or conditions that existed during the member's service, any mitigating or extenuating circumstances that affected the member's ability to serve, and any personal assaults or military sexual trauma that the member experienced.*
> *(2) PROCEDURES.--*
> *(a) Upon receipt of a form referenced in subsection (1) from a former member, the Secretary shall determine whether the former member is a veteran under Sections 101(2) and 5303, Title 38, United States Code.*
> *(b) If the member is found to be a veteran under sections 101(2) and 5303, Title 38, United States Code, and if the member submits an application prior to or within one year after that determination that the Secretary grants, then the effective date for that benefit shall be the date that the Secretary received the subsection (1) form or the application, whichever is earlier.*
> *(c) If a former service member whose eligibility must be determined under sections 101(2) and 5303, title 38, United States Code, submits any other form that expresses a desire to apply for benefits administered by the Secretary that is not the form referenced in subsection (1), the Secretary shall send a subsection (1) form to the veteran with instructions on how to complete and submit it. If the member submits an application for a benefit but does not submit a completed subsection (1) form, the Secretary shall make a character of discharge determination and shall determine whether the member qualifies for such benefit, notwithstanding the member's failure to submit a completed subsection (1) form.*
> *(d) In determining whether a former service member is a Veteran under sections 101(2) and 5303, Title 38, United States Code, the Secretary shall furnish all due assistance to the former member. If the former member indicates that he or she may have experienced a mental health disorder during his or her service, such assistance shall include any physical or mental health evaluation necessary to*

determine whether the former member meets the standards set forth in sections 101(2) and 5303(b), Title 38, United States Code.

Option 4. Express "Sense of Congress" concerning eligibility regulations

The current eligibility standard for basic VA services dates back to World War II, when Congress and the nation were preparing to welcome home sixteen million service members. At that time, based on their experiences after the First World War and prior conflicts, Congress chose to help nearly all who served access VA's rehabilitation and reintegration programs, barring only those who received or should have received a "dishonorable" discharge. Congress recognized that many service members returning from combat might be experiencing mental distress, struggle with substance abuse, or have difficulty readjusting and then engage in minor misconduct, but Congress determined that they should nevertheless be eligible for VA services. At the time, that meant that only 1.7% of WWII veterans were barred from VA, and that generation of veterans, with support from the G.I. Bill, ushered in a period of unprecedented growth and productivity. However, because of imperfect regulations as well as shifting military practices, the number of veterans excluded from VA has now more than tripled, to 6.5% of Post-9/11 veterans. Congress would do well to reaffirm its commitment to the 1944 eligibility standard, and thereby allow this newest cohort of veterans to become our next Greatest Generation.

CONGRESSIONAL INTENT RELATING TO CHARACTER OF DISCHARGE.-- Congress hereby reaffirms its commitment to the existing statutory limitations on access to veteran services based on in-service conduct, namely the statutory provisions at Sections 101(2) and 5303, Title 38, United States Code. These provisions were originally adopted as part of the the Servicemen's Readjustment Act of 1944, better known as the G.I. Bill of Rights. They were informed by this country's most broad-based participation in military service. Congress did at that time, as now, hold the two goals of rewarding faithful service and taking care of its service members despite the hardships and inconsistent experiences associated with military service, particularly in wartime. The standards adopted in 1944 reflected Congress's best judgement on how to reconcile those two goals. The transition to an All-Volunteer Force has changed military retention practices significantly, but it has not changed Congress's commitment to both of those goals. Congress has adjusted its response since 1944 by limiting Education benefits to those with fully Honorable discharges, with enactment of the 1981 Montgomery GI Bill. Congress tightened eligibility for that benefit in order that it may best serve as an incentive to enlistment and reward for faithful service. For veteran services that do not serve this inducement function, Congress's judgement from 1944 remains prudent and its statutory formulation is intact. In particular, Congress affirms that the itemized bars in Section 5303(a), Title 38, United States Code, are intended to indicate the types of disqualifying conduct foreseen by the general provision in Section 101(2), Title 38, United States Code. Furthermore, Congress affirms that the intent of the statute is as much to promptly identify eligible service members as it is to correctly identify those who are ineligible. The intent of the statute is not achieved by undue delays or bureaucratic obstacles that interfere with timely access to basic services. This is particularly true with respect

to mental health care services. Congress encourages the Secretary to adopt regulations, policies, and procedures that effectively implement our intent with respect to these limitations on access to services.

Option 5. Ensure treatment eligibility for veterans who experienced MST notwithstanding conditions of discharge

For a period of time, VHA facilities provided counseling and health care services to treat conditions related to military sexual trauma, including to veterans with bad-paper discharges, even if VA had not yet adjudicated their character of discharge or questions of service connection.[16] Under that policy, victims and survivors of MST were able to access critical mental health supports without undue delay or excessive paperwork. However, currently, veterans with bad-paper discharges cannot access such services until they have undergone a lengthy character of discharge review process.[17] Congress could restore this salutary policy by amending the statute. It further could expand the provision to include veterans who deployed or served in support of combat operations.

ACCESS TO CARE RELATED TO MILITARY SEXUAL TRAUMA (MST).--In order to ensure timely access to essential care related to MST, the VA shall not require prior adjudication of line-of-duty, minimum time in service, or character of discharge prior to provision of counseling or health care services due to MST.
Amend Section 1720D(a) as follows:

"(1) The Secretary shall operate a program under which the Secretary provides counseling and appropriate care and services to eligible persons whom the Secretary determines require such counseling and care and services to overcome psychological trauma, which in the judgment of a mental health professional employed by the Department, resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the veteran was serving on active duty, active duty for training, or inactive duty training.
"(2) Eligible persons.
"(A) In operating the program required by paragraph (1), the Secretary may, in consultation with the Secretary of Defense, provide counseling and care and services to members of the Armed Forces (including members of the National Guard and Reserves) on active duty to overcome psychological trauma described in that paragraph.
"(B) A member described in subparagraph (A) shall not be required to obtain a referral before receiving counseling and care and services under this paragraph.
"(C) The services described in paragraph (1) may be provided to prior and current service members without limitation on the basis of 38 U.S.C. 5303A (Minimum Active-Duty Service Requirement), 38 U.S.C. 5303

[16] Department of Veterans Affairs, Directive 2010-033 (July 10, 2010); *see* 38 U.S.C. § 1720D.
[17] Department of Veterans Affairs, Memorandum, Eligibility for Military Sexual Trauma-Related Counseling and Care and Services at the Department of Veterans Affairs (VA) (July 26, 2016).

(Certain bars to benefits) or 38 U.S.C. 101(2) (Requirement for federal active service under conditions other than dishonorable).”

Option 6. Implement mandatory training on eligibility for all front-line VA staff

There is often confusion and misunderstanding about the eligibility criteria for accessing VA services, particularly as relates to character of discharge. To ensure that no veterans are wrongfully turned away from access to care and support they deserve, Congress can require that those who regularly interact with veterans who may not yet be accessing VA services understand the eligibility criteria, eligibility determination procedures, and their role in facilitating eligibility processes.

TRAINING OF EMPLOYEES OF THE DEPARTMENT.--
(1) IN GENERAL.--Not later than one year after the date of the enactment of this Act, the Secretary shall develop and implement a comprehensive training curriculum for all employees whose duties include regular interaction with former service members who are or may be not enrolled in or receiving benefits administered by the Secretary under Title 38, United States Code, and all employees who adjudicate claims involving eligibility determinations for benefits administered by the Secretary under Title 38, United States Code. The curriculum shall address the basic eligibility criteria for benefits administered by the Secretary, including eligibility for former service members who were discharged or released under conditions that were not honorable.
(2) TRAINING.--
(A) IN GENERAL.--Each person for whom such training is required shall undergo retraining at least once every five years during that person’s tenure at the Department.
(B) CURRENT EMPLOYEES.--Each person for whom training is required under subsection (1) shall undergo training not later than 90 days after the curriculum implementation date.
(C) NEW EMPLOYEES.--Each person who becomes a person for whom training is required under subsection (1) shall undergo training not later than 90 days after the date on which that person fills the qualifying position.

Option 7. Study VA practices and procedures relating to health care access

Many veterans with bad-paper discharges may be eligible for some health care from VA, but for various reasons are not currently utilizing that care. While policymakers, department staff, and advocates can speculate as to the causes for that phenomenon, further study is warranted to fully understand the causes and propose recommendations for how it could remedied. Congress can direct the Government Accountability Office to study and report back about this question, which can then inform what policies Congress and VA adopt going forward.

STUDY OF IMPLEMENTATION OF SECTIONS 101(2) AND 5303, TITLE 38, UNITED STATES CODE.--The Comptroller General shall, no later than one year

after adoption of this provision, present a review of Department of Veterans Affairs policies, activities, and performance that relate to implementation of Sections 101(2) and 5303, Title 38, United States Code. The purpose of the study shall be to determine whether potentially eligible former service members receive timely access to health care services and whether former service members barred under statute are screened appropriately and efficiently. The study shall include examinations of Veterans Benefits Administration adjudication and performance of benefit applications where these provisions are implicated; Veterans Health Administration staff performance in receiving the applications and requests for care from former service members where these provisions may be implicated; and coordination and communication between the Veterans Benefits Administration and Veterans Health Administration where these provisions may be implicated. The study shall assess, to the extent possible, health care access exclusion rates under existing policies and procedures and the reasons therefor. The study shall assess whether information exchange or coordination between the Department of Veterans Affairs and the Department of Defense can affect the timely and effective access to care for potentially eligible former service members.

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For more information about access to VA for veterans with bad-paper discharges, consult *Underserved*, a report by the Veterans Legal Clinic at Harvard Law School published on behalf of Swords to Plowshares and the National Veterans Legal Services Program, available online at https://www.swords-to-plowshares.org/2016/03/30/Underserved.