



NVLSP

NATIONAL VETERANS LEGAL SERVICES PROGRAM

STATEMENT FOR THE RECORD

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HOUSE COMMITTEE ON VETERANS' AFFAIRS

SUBCOMMITTEE ON HEALTH

Hearing On

"Pending Legislation"

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The National Veterans Legal Services Program (NVLSP) would like to thank Chairwoman Brownley, Ranking Member Bergman and the distinguished members of House Committee on Veterans' Affairs, Subcommittee on Health for the opportunity to provide our statement for the record regarding pending legislation before the committee.

Since 1981, NVLSP, an independent, nonprofit veterans service organization, has been dedicated to ensuring that our government lives up to its obligations to provide our 22 million veterans and active service members the VA and military department benefits they have earned due to disabilities resulting from their military service to our country. At NVLSP, we have a uniform code: to serve those who have served us.

H.R. 4993, The Veterans Emergency Care Reimbursement Act of 2021

NVLSP strongly supports H.R. 4993, the Veterans Emergency Care Reimbursement Act of 2021. We are grateful to Representative Dingell for introducing this vital bill. This bill would mandate the U.S. Department of Veterans Affairs (VA) to reimburse the emergency health care expenses that veterans incur at non-VA facilities that are not covered by the veteran's Medicare, Medicaid, or private insurance. Senator Blumenthal has introduced an identical bill in the Senate.

Background: H.R. 4993 would right a longstanding wrong. Congress enacted 10 U.S.C. § 1725 long ago to address a common health care problem faced by our nation's veterans. It is common for veterans who regularly receive their health care services from the VA to have a medical emergency that forces them to obtain emergency medical treatment at a non-VA facility because it is not feasible to travel to a more distant VA medical center where emergency treatment is available. Although Section 1725 requires VA to reimburse these veterans for these emergency medical expenses, the VA took the position that if veterans had Medicare, Medicaid, or private insurance that paid for *part, but not all* of the expenses incurred, the VA would not reimburse the veteran for any of the expenses that were not covered by the veteran's health insurance.

In 2010, Congress stepped in to overturn VA's erroneous interpretation of Section 1725. The Emergency Care Fairness Act of 2010 amended 38 U.S.C. § 1725 to make clear that the VA is the secondary payor when a veteran's private insurance covers part but not all of the veteran's emergency medical expenses. Nonetheless, VA refused to change its position and continued to deny reimbursement to veterans whose Medicare, Medicaid, or private insurance paid for part, but not all of the emergency medical expenses incurred.

Twice NVLSP brought lawsuits in the U.S. Court of Appeals for Veterans Claims (CAVC) to remedy VA's erroneous interpretation of the Emergency Care Fairness Act: once in the 2016 *Staab v. McDonald* decision and once in the 2019 *Wolfe v. Wilkie* decision. On both occasions, the CAVC clearly ruled that Congress required that VA is the secondary payor when a veteran's health insurance covers part but not all of the veteran's emergency medical expenses, with one

limited exception: the VA does not have to reimburse veterans for any copayment they were required to pay.

Despite the Emergency Care Fairness Act of 2010 and these two court rulings, the VA still refuses to reimburse these veterans for their emergency medical expenses. VA has used three techniques to avoid its obligation to reimburse these veterans. First, it has appealed the 2019 Wolfe decision to the U.S. Court of Appeals for the Federal Circuit, which has yet to issue a decision. Second, VA asked the CAVC to relieve VA of its obligation to reimburse the 74,000 Wolfe class members for the medical expenses they were required to pay until after the Federal Circuit decides VA's appeal. The CAVC denied this request. Third, ever since the CAVC rejected this request for a reimbursement moratorium, VA has been slow-walking its reimbursement payments. In the two and a half years since the CAVC ordered the VA to redecide the reimbursement claims of the 74,000 Wolfe class members, VA has redecided the reimbursement claims of *less than 10%* of the 74,000 veterans. As a result, tens of thousands of veterans continue to suffer mental and financial hardships. These hardships have been exacerbated during the COVID-19 pandemic making the need for H.R. 4993 all the more urgent.

H.R. 4993 is a thoughtful piece of legislation that clarifies a number of factors that will facilitate proper implementation of the law going forward. The key term of "copayment" is well-defined in the bill. The proposed legislation clearly states copayment means a fixed amount paid by an individual for a covered health service received by an individual and does not include amount paid for a deductible or coinsurance. Additionally, "reimbursement claim" is also clearly defined as any claim by a veteran for reimbursement of a copayment, deductible, coinsurance, or any other type of cost share for emergency treatment furnished to the veteran in a non-Department of Veterans Affairs facility and made by a veteran who had coverage under a health plan contract, including any claim for the reasonable value of emergency treatment that was rejected or denied by the Department of Veterans Affairs.

The mission of the VA is to care for those who have borne the battle and their orphans. Yet it has fallen far short of this goal when it comes to fulfilling the Court's orders to readjudicate the claims of the 74,000 Wolfe class members in a timely fashion. The VA's disregard of the CAVC's order to readjudicate the Wolfe class members in a timely manner is an affront to all those who served our country and have been wrongfully denied the reimbursement of their emergency medical expenses at non-VA facilities.

As you consider H.R. 4993, it also bears mentioning the VA's conduct regarding non-VA emergency care reimbursement has been a matter of bipartisan bicameral concern for several years. In 2019, this issue received widespread bipartisan attention in a [letter](#) in response to the Department of Veterans Affairs, Office of Inspector General (OIG) [report](#) which estimated that the VA inappropriately processed about 31 percent of emergency care reimbursement claims totaling at least \$716 million and affecting about 60,800 veterans. Further, the OIG found that the VA failed to inform many veterans that their claims had been rejected or denied. The VA also failed to inform these veterans of their rights to appeal these decisions. As a result, several

veterans were blindsided by these bills because they fully expected the VA to pay these bills. In addition, some were unable to appeal due to an expired appeal deadline. The OIG estimated that if the VA fails to correct these errors, an undue financial burden of about \$533 million for non-VA emergency care could be placed on veterans over a five-year period.

NVLSP believes H.R. 4993 is the statutory solution required to address the VA's prolonged refusal to properly adjudicate the non-VA emergency medical reimbursement claims of veterans who are Wolfe class members in a timely fashion. The VA's disregard of the Emergency Care Fairness Act of 2010 and the Court's interpretations of that statute comes at the expense of the well-being of our veterans who have endured undue hardships due to the VA's flawed readjudication process. We urge Congress to take the necessary steps to pass H.R. 4993 now to compel VA to finally reimburse veterans and their families for their emergency costs at non-VA facilities.

H.R. 5738 Lactation Spaces for Veteran Moms Act

We support the effort to make VA facilities more inclusive for veterans who are also lactating parents.

H.R.5819, Autonomy for Disabled Veterans Act

We support the increase in funding for disabled veterans improvements and structural alterations as part of home health services.

H.R. 6823, The Elizabeth Dole Home and Community Based Services for Veterans and Caregivers Act of 2022

We support this legislation -- specifically Section 5 which requires coordination between the family caregiver program and home and community -based services for veterans and caregivers who are denied or discharged from the family caregiver program. However, this bill does not address the fundamental problem that the VA is denying and discharging an overwhelming number of applicants to the PCAFC program.

Closing

NVLSP appreciates the work being done by the House Committee on Veterans' Affairs, the Subcommittee and its distinguished members for holding this hearing. We are grateful for the opportunity to provide our statement for the record on the vital legislation being considered today.

NVLSP is committed to working with the members Congress and all relevant federal agencies to ensure that servicemembers, veterans and their survivors receive the benefits to which they are entitled due to disabilities they incurred as a result of their military service to our nation. We stand ready to assist on these or other matters as they may arise in the future.