

STATEMENT OF
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BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE
AND MEMORIAL AFFAIRS

WITH RESPECT TO

H.R. 5639, H.R. 5487, H.R. 5048, H.R. 5019, H.R. 697, H.R. 6013, H.R. 6060, and H.R. 7443

Washington, D.C.

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Chairwoman Luria, Ranking Member Bost, and members of the subcommittee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide our remarks on legislation pending before this subcommittee.

H.R. 5639, Chuck Osier Burial Benefits Act

This legislation would authorize the Secretary of Veterans Affairs (VA) to furnish urns or commemorative plaques in lieu of headstones or markers for deceased veterans. The VFW supports this legislation and has a recommendation to improve it.

This bill would increase a veteran's choice regarding the final disposition of remains after death. However, a veteran's memorial needs may change after a surviving spouse, descendants, or other close relatives become deceased. Distant descendants may not wish to retain inurned remains long after a veteran's death. Accordingly, the VFW recommends that this subcommittee consider adding a provision to this legislation that would authorize a personal representative to elect to have a veteran's inurned remains interred at an eligible federally funded veterans cemetery at VA's expense.

H.R. 5487, Veterans Cemetery Grants Improvement Act

The VFW supports this legislation, which would increase the maximum amount of grants provided by VA to states and tribal organizations for operating and maintaining veterans cemeteries from \$5,000,000 to \$10,000,000. This is a commonsense bill to ensure that states and

tribal organizations have adequate financial resources to operate and maintain veterans cemeteries. The VFW supports legislative efforts to provide adequate funding for all veterans cemeteries.

H.R. 5048, Fairness for Local Veteran Cemeteries Act

This legislation would authorize VA to provide grants to counties to establish, expand, and improve veterans cemeteries. The VFW does not have a position on this legislation.

H.R. 5019, Veterans Legal Support Act of 2019

This legislation would permit VA to provide financial support to university law school programs that provide legal assistance to veterans. The VFW agrees with the intent of this bill, but cannot offer its support at this time.

The VFW recognizes the significance of veteran-specific clinics and other assistance programs at university law schools. However, funds that are appropriated for VA medical services should be used for the specific purpose authorized by Congress. Accordingly, we suggest that additional programmatic resources be appropriated to effectuate this legislation.

Furthermore, this initiative would be duplicative of other federally funded programs. The Equal Justice Works AmeriCorps Veterans Legal Corps (VLC) program, funded by the Corporation for National and Community Service, provides legal services to low-income and homeless veterans across the United States. Equal Justice Works has partnered with numerous nonprofit organizations and educational institutions that provide these legal services. The VFW urges Congress to increase funding for AmeriCorps legal services programs that specifically benefit veterans, and to require coordination between VA and AmeriCorps to improve outreach to homeless veterans.

H.R. 697, to authorize the Secretary of Veterans Affairs to pay costs relating to the transportation of certain deceased veterans to veterans' cemeteries owned by a State or tribal organization

The VFW supports this legislation, which would expand burial benefits to veterans interred in a state or tribal cemetery.

For more than 150 years, our nation has purchased and maintained cemeteries to offer our veterans a final resting place that honors their brave military service. Currently, VA maintains 142 national cemeteries, only 81 of which are able to accept new interments. To ensure veterans have burial options within 75 miles of home, VA uses agreements and grants with states, United States territories, and federally recognized tribal organizations to establish, expand, or improve veterans cemeteries in areas where the National Cemetery Administration (NCA) has no plans to build or maintain a national cemetery.

While VA covers all the transportation expenses for veterans who are interred in the nearest national cemetery, VA is not authorized to reimburse the next of kin of a veteran who is interred

in a state or tribal cemetery because the nearest VA national cemetery is not accepting new interments or the veteran does not have a national cemetery near their home. This bill rightfully expands VA's authority to cover the cost of transporting a veteran's remains to their final resting place in a state or tribal cemetery.

H.R. 6013, Veteran Families Financial Support Act

The VFW supports this legislation, which would increase the maximum payment under the Service-Disabled Veterans Insurance (S-DVI) program from \$10,000 to \$40,000 and extend eligibility beyond the current two-year period after a veteran receives notification of a new service-connected disability.

The maximum statutory coverage of S-DVI has remained unchanged since 1958. Currently, S-DVI insures eligible veterans for up to \$10,000 of coverage. This sum is insufficient to cover the rising cost of end-of-life expenses.

Furthermore, service-disabled veterans are frequently unable to obtain private life insurance due to their disabilities. Since a veteran may apply for S-DVI only within two years of receiving notification of a new service-connected disability, many service-disabled veterans who elect not to obtain S-DVI find themselves uninsurable once their eligibility period has expired. This bill would rightfully increase the maximum coverage amount of S-DVI to \$40,000 and expand eligibility beyond the current two-year window.

H.R. 6060, Veterans Burial Benefit Correction Act

The VFW supports this legislation, which would require VA to provide outer burial receptacles to those who wish to be interred in state and tribal cemeteries.

Currently, the Department of Defense (DOD), the Department of the Interior, and VA are required to provide outer burial receptacles for remains that will be interred in a DOD cemetery, a National Parks Service (NPS) cemetery, or a VA national cemetery. The next of kin may choose to purchase and use a private outer burial receptacle, rather than use the government-furnished grave liner, and receive a monetary allowance equal to the average cost to the government of a grave liner, less administrative costs. However, for state and tribal cemeteries that are the subject of a grant from VA, there is no offset or reimbursement provided to the family of the veteran, even in cases where the state or tribal cemetery is the most viable location.

Since the establishment of the Veterans Cemetery Grants Program in 1978, VA has awarded grants to establish, expand, improve, operate, and maintain 116 veterans cemeteries in 49 states and territories including tribal trust lands, Guam, Saipan, and Puerto Rico. In fiscal year 2019, VA grants supported the interment of nearly 40,000 veterans in state and tribal cemeteries. This number accounts for roughly 23 percent of all interments in state, tribal, or NCA veterans cemeteries. The VFW agrees that veterans who choose to be buried in state and tribal cemeteries deserve the same honor as those who are buried in VA, DOD, and NPS cemeteries.

H.R. 7443, Veterans Claim Transparency Act

The VFW supports this legislation, which would require VA to provide the representative of record of a claimant for disability compensation benefits an opportunity to review a proposed rating decision prior to formal promulgation.

On April 24, 2020, VA rescinded its decades-long policy of permitting accredited service officers to review ratings decisions during the 48-hours prior to their promulgation. This policy, known as 48-hour review, was outlined in VA's M21-1 Adjudication Procedures Manual, and was not codified in statute. This review process was an efficacious method of ensuring quality control prior to awarding disability ratings in both a paper-based and digital claims filing system.

The 48-hour review policy was an essential feature of the VA claims process. During this review process, service officers had the opportunity to review VA decisions to ensure that all claimed conditions had been addressed and properly adjudicated. It also served as an independent quality control check prior to VA's internal review procedure, known as Systematic Technical Accuracy Review (STAR).

After reviewing a rating decision, service officers were permitted to notify VA of any irregularities, missed conditions, typographical errors, or other mistakes before a disability rating was formally promulgated. This process allowed for errors to be corrected without requiring veterans to seek redress in the time-consuming and oftentimes costly claims appeals process. In other words, 48-hour review guaranteed a timelier delivery of benefits to veterans and reduced the workload of VA's appeals infrastructure.

VA provided untenable reasons for this change. First, VA was responding to a decision from the Court of Appeals for Veterans Claims (CAVC), Rosinski v. Wilkie, 31 Vet. App. 1 (2019). In that case, the petitioner—an attorney who represents veteran clients seeking disability benefits from VA—sought a writ of mandamus to compel VA Secretary Robert Wilkie to provide him with access to the same 48-hour review period. In 2014, 2015, and 2017, the petitioner wrote to VA requesting access to claims decisions prior to formal promulgation. In 2017, VA responded via email that it would not provide the petitioner with access to unpromulgated claims decisions. Unlike accredited service officers, attorneys who represent veteran clients are not afforded access to 48-hour review prior to ratings promulgation.

The CAVC held that it was unable to grant the petitioner a writ of mandamus because VA had not yet issued a final decision regarding his request. Instead, the CAVC ordered Secretary Wilkie to issue a decision on the petitioner's request within 30 days of January 24, 2019. Accordingly, it appears that VA's decision to rescind the 48-hour review policy was an effort to make moot Mr. Rosinski's claim for access rather than revise internal IT systems infrastructure to grant access to attorneys. Here, it seems VA has chosen the path of least resistance instead of expanding the 48-hour review process to accommodate attorneys. This decision will invariably harm veterans.

VA's reliance on the Rosinski decision belies its own argument. In Rosinski, Secretary Wilkie claimed that the 48-hour review policy was proper because a "historical special relationship" exists between VA and service officers from Veterans Service Organizations (VSOs). The

Secretary further argued that VSOs had a history of providing an additional layer of quality review during the claims process. In light of this special relationship and history of quality review, it is incomprehensible that VA would seek to rescind a policy from which VSOs, VA, and veterans have greatly benefited.

Second, VA believes that the *Veterans Appeals Improvement and Modernization Act of 2017* (AMA) has created a “feedback loop” between service officers and VA to identify and correct errors through supplemental claims, higher level review, and appeals to the Board of Veterans Appeals (BVA). The AMA has indeed yielded a more streamlined appeals process that leads to a timelier adjudication of veterans’ claims. However, VA’s argument is entirely without merit. Countless veterans have benefited from the 48-hour review policy since the implementation of the AMA on February 14, 2019.

VA’s justification has been that veterans expect to receive their benefits in a timely manner, and that the 48-hour review creates unnecessary delay. What this response indicates is that VA fails to understand that veterans would prefer that their competent representatives take these critical 48 hours to ensure accuracy and quality control rather than litigate their claims in the lengthy appeals process.

VA’s decision to repeal the 48-hour review policy has unjustly prejudiced veterans by causing avoidable delay in the claims adjudication process. It has also unnecessarily burdened the appeals infrastructure by preventing correctable errors from being resolved prior to promulgation. This bill would rightfully reinstate the 48-hour review policy, which would ensure that veterans receive a more timely and accurate delivery of benefits.

Madam Chair, this concludes my testimony. I am prepared to answer any questions you or the subcommittee members may have.

Information Required by Rule XI2(g)(4) of the House of Representatives

Pursuant to Rule XI2(g)(4) of the House of Representatives, the VFW has not received any federal grants in Fiscal Year 2020, nor has it received any federal grants in the two previous Fiscal Years.

The VFW has not received payments or contracts from any foreign governments in the current year or preceding two calendar years.