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**STATEMENT OF
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BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
JULY 16, 2020**

Chairwoman Luria, Ranking Member Bost and Members of the Subcommittee:

Thank you for inviting DAV (Disabled American Veterans) to testify at this legislative hearing of the Subcommittee on Disability Assistance and Memorial Affairs. As you know, DAV is a non-profit veterans service organization comprised of over one million wartime service-disabled veterans that is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

This year DAV is celebrating its centennial anniversary, marking 100 years of service and support for America's wounded, injured and ill veterans and their families. In 1920, Judge Robert Marx, a disabled infantry officer of World War I, Army veteran and Cincinnati Superior Court judge, together with several hundred fellow veterans, formed the Disabled American Veterans of the World War (DAVWW) in order to rally their collective voice in the halls of Congress and help their fellow disabled veterans. Since then, DAV has played a crucial role working with Congress to create and strengthen our nation's system of veterans benefits and services.

DAV is a resolution-based organization and can only support or oppose legislation or policies based on resolutions introduced and adopted by our national membership at each year's national convention. We are pleased to offer our views on the bills impacting service-disabled veterans, their families and the programs administered by the Department of Veterans Affairs (VA) that are under consideration by the Subcommittee.

H.R. 697

H.R. 697 would allow the VA Secretary to transport unclaimed veterans' remains to specific state or tribal cemeteries in addition to national cemeteries. It changes the definition of "covered veterans' cemeteries" to ones that have received a VA grant, and ensures that remains are transported to cemeteries that follow VA standards and requirements. DAV does not have a resolution specific to this legislation but would not oppose its passage.

HR 5019, the Veterans Legal Support Act of 2019

H.R. 5019 would authorize the VA to provide support to university law school programs that are designed to provide legal assistance to veterans including filing claims and appeals and other such civil, criminal, and family matters.

The support would consist of financial grant amounts not to exceed \$1 million in a fiscal year (FY). The funding could be appropriated, otherwise, it would be made available from the VA Medical Services account.

DAV does not have a resolution specific to this issue; therefore, we cannot formerly support H.R. 5019. However, we do have concern over the funding potentially coming from the VA Medical Services account. The *Independent Budget's* FY 2021 Budget Recommendations Report of January 2020 recommends \$64.4 billion for VA Medical Services for FY 2021, which is \$8 billion over the Administration's budget request. As VA Medical Services cover so many vital programs for veterans' health care, we disagree with using it for funding non-health care programs. We recommend that H.R. 5019 be funded by another mechanism.

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

H.R. 5048 would allow the VA to provide aid to counties for the establishment and improvement of veteran cemeteries. Currently, four states (New York, Florida, Alaska, and Oregon) have veteran cemeteries that are run by individual counties or county-equivalents. However, existing law makes these counties ineligible for grants to cover the maintenance and operations costs of their veteran cemeteries. DAV does not have a resolution specific to this legislation and takes no position.

H.R. 5487, the Veterans Cemetery Grants Improvement Act

H.R. 5487 would increase the grant amount available to state and tribal cemeteries from \$5 million to \$10 million. Under current law, no more than \$5 million in VA Operations and Maintenance (OM) grant applications can be awarded per fiscal year. OM grant funding helps cover certain upkeep costs, including headstone and marker alignment, turf maintenance and appearance conditions for state-run veteran cemeteries. H.R. 5487 would increase the \$5 million cap to \$10 million, providing the VA additional flexibility when awarding grants. This bill also allows cemeteries to have quicker access to federal funds. DAV does not have a resolution specific to this legislation but would not oppose its passage.

H.R. 5639, the Chuck Osier Burial Benefits Act

This legislation would allow the Secretary to provide an urn or a plaque in lieu of a headstone to veterans who have chosen an alternate form of internment. Currently, the VA provides memorial headstones and markers to eligible deceased active-duty

service members and qualified veterans when their remains are missing, not identified, donated to science, buried at sea, or scattered. DAV does not have a resolution specific to this issue and takes no position.

H.R. 6013, the Veteran Families Financial Support Act

H.R. 6013 would create a new veteran's life insurance program, which would be self-funded with premiums based on the administrative and claims cost of the program and would go into effect on January 1, 2023. This new program would replace the existing Service Disabled Veterans Life Insurance (S-DVI), as it would not allow any new applications or new policies effective December 31, 2022. This will not impact existing policy holders.

The new program would require VA to issue Guaranteed Acceptance Whole Life insurance (GA), which generally does not require medical underwriting, thus ensuring individuals cannot be denied coverage for a pre-existing health condition. It would provide coverage up to \$40,000 and update the premium scale by basing it on a current mortality chart. It includes a policy that requires a two-year waiting period before coverage starts. The program would allow veterans who are currently receiving S-DVI to opt-in within two years of the new program's implementation.

We note that currently S-DVI does have significant limitations, such as it only allows veterans to apply within two years of a VA decision that establishes a new grant of service connection. It is also based on outdated actuaries, is not self-funding and requires VA funding to overcome gaps. S-DVI does not guaranty coverage as nonservice-connected conditions can be a disqualifier.

However, S-DVI does provide a waiver of premiums on the basic coverage of \$10,000 for eligible totally disabled veterans. If the waiver is granted, a veteran may be eligible to apply for additional coverage up to \$30,000 under the Supplemental S-DVI program. These premiums for Supplemental S-DVI cannot be waived.

DAV opposes H.R. 6013, as it will eliminate the ability for future eligible totally disabled veterans to have a waiver of premiums on basic life insurance coverage. The proposed program will not provide a waiver of premiums at any amount for totally disabled veterans. This measure is proposing to eliminate an existing benefit for future eligible veterans and will not replace it with a similar benefit. Thus, DAV opposes this legislation.

We see the value of the proposed insurance program, its advantages to all veterans, and its ability to overcome the limitations in the existing S-DVI program. Our opposition is focused on the elimination of a waiver of premiums for totally disabled veterans on basic coverage. One group of veterans should not have to sacrifice their entitlement to benefits for other veterans. Therefore, we have the following recommendations:

- **Allow both programs to coexist.** To avoid the elimination of the waiver of premiums for totally disabled veterans, we recommend allowing both programs to coexist. As VA is subsidizing the funding for the existing program and the new program would be self-funding and not require VA dollars, there is no need to eliminate the existing the program, as the costs to fund the existing program are already considered in the annual budget.
- **Provide a waiver of premiums on \$10,000.00 for totally disabled veterans under the proposed program.** As the S-DVI program is not self-funding and requires subsidization from the VA budget to maintain the program, the amount of subsidized funding from the S-DVI could be applied to the new program to allow for the waiver of premiums. Alternatively, the proposed program could have slightly higher premiums to offset the waiver of the initial \$10,000.00 for totally disabled veterans.

H.R. 6060, the Veterans Burial Benefit Correction Act

This bill would provide an outer burial receptacle (OBR) or a “grave liner” to veterans who are buried in state or tribal cemeteries. Currently, only veterans buried in cemeteries under the control of the VA or National Park Service are provided with an OBR, a grave liner to reduce the likelihood of a sunken grave and maintain the integrity of the soil around the grave, at no cost.

The Veterans Burial Benefit Correction Act would ensure an OBR is provided to veterans buried in VA grant-funded state or tribal cemeteries. DAV does not have a resolution specific to this legislation, but would not oppose its passage.

H.R. 7443, the Veterans Claim Transparency Act of 2020

For over seven decades, VA maintained a policy, as previously included in M21-1 Adjudication Procedures Manual, which allowed accredited Veterans Service Organizations (VSOs) a review period of all VA decisions on those veterans and claimants they represented.

Madame Chairwoman, as a DAV service officer and advocate for over 22 years, I have personally reviewed thousands of VA decisions during the VSO review period. After reviewing these decisions, we were able to notify VA of mistakes before the decisions were formally promulgated. The types of mistakes we identified included: incorrect effective dates of grants, incorrect combined evaluations, incorrect evaluations and incorrect denials of benefits. If VA took actions on our recommendations, they would issue a new decision. This process impacted many veterans and claimants and in many instances avoided the time-consuming and often costly appeals process.

The review period also assisted in identifying potentially negative patterns within VA decisions and resulted in systemic changes with VA rating practices. For example, during my time as the Supervisor of a DAV National Service Office, based on the VSO

review period, we were able to see an adverse pattern in VA decisions regarding entitlement to individual unemployability and regarding proposed reduction of benefits. We assembled all of our collected data from the VSO review period and presented it to the VA Regional Office Service Center Manager and his staff. This resulted in corrective actions on almost all of the cases we identified as well as led to their decision to provide additional training and guidance on the issues we raised. The Service Center Manager thanked us for bringing these claims to his attention and for our careful and dedicated review of the decisions prior to promulgation.

In my experience at four different VA Regional Offices, along with the experience of our service officers nationwide, VA leaders and rating specialists often noted that review by VSOs helped identify issues that required corrective action prior to the claim being finalized. This process served also as an independent quality control check separate from VA's internal review procedure, known as Systematic Technical Accuracy Review (STAR).

However, during a meeting on March 25, 2020, the Under Secretary for Benefits, Dr. Lawrence announced that the Veterans Benefits Administration (VBA) would be eliminating the 48-hour VSO review. On April 3, 2020, DAV, Vietnam Veterans of America (VVA), Veterans of Foreign Wars (VFW), AMVETS, Paralyzed Veterans of America (PVA), and the Military Officers Association of America (MOAA) sent a letter to Secretary Wilkie requesting VA to suspend the decision to eliminate the VSO 48-hour review and allow for a robust discussion with stakeholders. On April 7, DAV received notice of VA's intent to rescind the policy.

DAV received a letter from Secretary Wilkie dated May 11, 2020, which in part noted, "VA has determined that the 48-hour review period is no longer necessary based on its modernized processes and the improved efficiency in serving Veterans." The letter indicates that VSOs can track cases in the Veteran Benefits Management System (VBMS); however, this does not provide notice of any decisions or access to any decisions prior to promulgation. VA asserted that the new Appeals Modernization process could resolve these issues. However, because our access to the decision will be after promulgation, this will inevitably lead to an increase in appeals.

On April 15, 2020, DAV, VFW, The American Legion, PVA, VVA, MOAA, AMVETS and the National Association of County Veteran Service Officers, called on President Trump to direct Secretary Wilkie to maintain the 48-hour review policy. On April 24, VBA officially eliminated the VSO review period. DAV is disappointed with VA's decision to eliminate this policy.

In June, a coalition of 42 State Attorneys General, led by Illinois Attorney General Kwame Raoul and South Dakota Attorney General Jason Ravnsborg, sent a letter to Dr. Lawrence, urging VA to rescind the newly-implemented policy that will result in further delays and confusion in the claims process. Additionally, the coalition stated that the VA has provided no justification for the substantial policy change and has not allowed input from VSOs or veterans.

We are concerned the elimination of the review period will add substantial stress to the already overburdened appeals infrastructure and require veterans to continue waiting to receive the benefits they have earned. VA has acknowledged that the decision review period was successful in resolving issues prior to a decision, thus eliminating potential appeals. For example, the appeals backlog has reached over 300,000 pending appeals with more than 70,000 pending hearings. It is important to note the Board of Veterans' Appeals is remanding or overturning approximately 70 percent of all appeals, even with VA's quality review. Again, eliminating the review period will likely add time and cost to address issues that could be resolved during the decision review period.

Furthermore, due to the COVID-19 pandemic, VA has ceased delivering paper copies of written notices to VSOs that are co-located at VA facilities. Since the elimination of the review period, VA is no longer advising VSOs electronically of decisions being rendered. VA has presented a way to potentially track all claims in VBMS; however, this still does not provide actual notification.

Recently, VA has advised it will resume providing paper notices to VSOs, but to only one address or location, per VSO. This includes the ability to opt-in instead, to what VA terms as electronic notification in VBMS. However, as noted, this is not actual notification. VA clarified that VSOs will not receive actual electronic notification on each case. By not providing electronic notification and paper notices, we believe VA is not in compliance with title 38, United States Code, § 5104, which requires VA to provide the claimant and their representative, a notice of decisions.

DAV supports H.R. 7443, as it would re-establish the review period, not just for VSOs, but also for all accredited claims agents and attorneys. It would provide representatives the ability to work with VA to identify and correct errors in VA decisions prior to final promulgation, acting as another layer of quality review. We believe H.R. 7443 can assist in alleviating potentially thousands of new appeals and provide immediate access to earned benefits for veterans and their families.

Madame Chairwoman, although VA has determined that the review period is no longer necessary, eight VSOs representing millions of veterans and 42 State Attorneys General representing millions of citizens within their respective states, disagree with VA's decision. We need the Subcommittee to take swift legislative action on H.R. 7443 and protect those men and women wounded, injured, or made ill during their military service.

In closing, Madame Chairwoman, I thank you for the opportunity to testify on behalf of DAV and would be happy to answer any questions you or other members of the Subcommittee may have.