



Washington Headquarters
1300 I Street, NW, Suite 400 West
Washington, DC 20005
tel 202-554-3501
dav.org

**STATEMENT OF
MARQUIS D. BAREFIELD
DAV ASSISTANT NATIONAL LEGISLATIVE DIRECTOR
FOR THE RECORD OF THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
JULY 10, 2024**

Chairman Luttrell, Ranking Member Pappas and Members of the Subcommittee:

DAV (Disabled American Veterans) appreciates the opportunity to provide testimony for the record for this legislative hearing concerning 18 pieces of legislation. DAV is a congressionally chartered and Department of Veterans Affairs (VA) accredited veterans service organization (VSO). We provide meaningful claims support free of charge to more than 1 million veterans, family members, caregivers and survivors.

To fulfill our service mission, DAV directly employs a corps of benefits advisors, national service officers (NSOs), all of whom are themselves wartime service-connected disabled veterans, at VA regional offices (VARO) as well as other VA facilities throughout the nation, including the Board of Veterans' Appeals (Board).

We are pleased to provide our views on the bills impacting service-disabled veterans, their families and the programs administered by the VA that are under consideration by the Subcommittee.

H.R. 2971, Veterans Claims Education Act of 2023

When separating from military service, veterans may file a claim for disability compensation with the VA on their own or by using VA-supported services, such as an accredited attorney, a claims agent, or a veterans service officer.

The Veterans Claims Education Act would require the VA notify claimants not currently represented by a representative about the availability of accredited representation, including free services from recognized veterans service organizations.

Unfortunately, groups of non-accredited for-profit entities have emerged that prey upon veterans' frustrations with VA's claims process. These companies provide "consulting" services to help veterans prepare and present relevant paperwork needed

to file a claim with VA in exchange for lump sum payments, a percentage of the total dollar amount awarded for a successful claim, or some other payment mechanism.

This legislation would also require the VA to maintain and update an online tool for claimants to search for accredited representatives and to include warnings about potential fees on VA web portals where claims can be filed. Lastly, the bill would instruct the VA to submit a report on its procedures for recognizing representatives and to recommend improvements.

DAV strongly supports H.R. 2971, in accordance with DAV Resolution No. 220 which calls for legislation to ensure ill and injured veterans receive information about VA-accredited representation while deterring predatory claims practices that seek to bilk our nation's heroes of their earned benefits.

H.R. 6362, Protecting Benefits for Disabled Veterans Act of 2023

The Protecting Benefits for Disabled Veterans Act would codify in statute the ability for the VA to assign a total disability rating to veterans who are unable to secure or maintain substantially gainful employment due to service-connected disabilities.

This legislation specifies that a veteran can be considered for a total disability rating if they have a single disability rated at least 60% or multiple disabilities with at least one rated at 40% and a combined rating of 70% or more. It also outlines considerations for disabilities related to extremities, common etiology, single accidents, single body systems, or conditions incurred as a prisoner of war.

Additionally, the bill allows for total disability ratings under certain conditions of marginal or substantially gainful employment, while explicitly prohibiting the consideration of a veteran's age or eligibility for retirement benefits in these determinations. This legislation would require the VA to establish necessary regulations within 180 days of its enactment.

In recent years, reducing or limiting TDIU has been the focus of many Congressional Budget Office (CBO) reports and proposed as a deficit reduction measure. In December 2018, it was suggested to terminate and cutoff TDIU benefits at the age of 65, and in reports in December 2020 and December 2022, CBO recommended to restrict TDIU once a veteran reaches the age of 67.

H.R. 6362, the Protecting Benefits for Disabled Veterans Act, would provide additional protections for TDIU and prohibit the VA from considering the age of the veteran or their eligibility to any retirement benefit, including Social Security, in making such determinations.

DAV strongly supports H.R. 6362, as it would ensure the availability of TDIU for all veterans regardless of age or receipt of any other earned federal benefits. Consistent

with DAV Resolution No. 445, DAV supports the protection of TDIU as it is not a retirement or pension program.

H.R. 6507, Mark Our Place Act

H.R. 6507, the Mark Our Place Act, would allow the VA to furnish or replace a headstone, marker, or medallion for the grave of an eligible Medal of Honor recipient regardless of the recipient's dates of service in the Armed Forces.

This legislation would allow family members, veterans service organizations, or cemetery administrators to request the VA provide a headstone for Medal of Honor recipients, regardless of their date of death. This authorization is currently limited to Medal of Honor recipients who served after 1917.

DAV does not have a specific resolution that allows us to support H.R. 6507, the Mark Our Place Act however, we have no objection to its passage given the esteemed status of these most valiant and brave veterans—our Medal of Honor recipients. The Mark Our Place Act will give VA the authority to provide headstones with Medal of Honor markers to veterans buried in private cemeteries to honor their sacrifice during military service.

H.R. 7729, Dennis and Lois Krisfalusy Act

H.R. 7729, the Dennis and Lois Krisfalusy Act, would expand eligibility for headstones, markers, and burial receptacles under the laws administered by the VA to certain individuals who died before November 11, 1998.

Despite the date of death, this legislation would ensure that an eligible spouse or dependent child of a veteran will receive a memorial headstone or marker through the VA in a national cemetery or state or tribal veterans' cemetery. As per current law, it is not possible to add eligible spouses and dependent children who passed before November 11, 1998, or after October 1, 2024, to a memorial headstone or marker. This legislation would update federal law to extend this important veteran benefit beyond 2024 for an additional 10 years.

Although DAV does not have a specific resolution on expanding eligibility for headstones, markers, and burial receptacles, DAV has no concerns with the passage of this act to honor the memory of those interred or memorialized with memorial headstone or marker, in recognition of their dedication of support and comfort they provided to their veteran.

H.R. 8792, Flowers for Fallen Heroes Act of 2024

H.R. 8792, the Flowers for Fallen Heroes Act of 2024, would establish a flower ordering program for gravesites under the purview of the American Battle Monuments Commission.

This legislation would allow those wishing to lay flowers on the graves of fallen heroes who are interred at American military cemeteries overseas to do so through the American Battle Monuments Commission (ABMC) jurisdiction. The bill mandates the creation of a user-friendly website and payment system that accepts credit cards for payment, finds reasonably priced vendors in proximity to the gravesites, urges the ABMC to market the program, and requires the ABMC to submit a yearly report to Congress on the programs progress.

The ABMC was established by an Act of Congress in 1928. Its mission is to be a guardian of America's overseas commemorative cemeteries and memorials and honor the service, achievements, and sacrifices of U.S. Armed Forces who fought on foreign soil; however, a recent decision was made by the ABMC, a federal commission, to end that service. This bill would formally create the gravesite flower program and ensure the long-term availability of the service to loved ones and those who honor our veterans.

Even though DAV does not have a specific resolution to address the management of overseas commemorative cemetery and memorial programs, DAV has no objection to the passage of the Flowers for Fallen Heroes Act of 2024 to honor the service, achievements, and sacrifices of U.S. Armed Forces who fought on foreign soil.

H.R. 8854, Ensuring Veterans' Final Resting Place Act of 2024

H.R. 8854, the Ensuring Veterans' Final Resting Place Act of 2024, would allow the provision of certain additional burial benefits for individuals for whom an urn or plaque is furnished. This bill would ensure that the families of deceased veterans are not constrained when deciding the manner in which their loved one is laid to rest.

This legislation, specifically, allows a veteran's survivor to have their loved one interred at a VA National Cemetery at a later date if they cover the costs of the urn or plaque, as initially received from the VA.

DAV does not have a specific resolution to provide additional burial benefit options however, we appreciate the intent of the Ensuring Veterans' Final Resting Place Act of 2024, which would allow a veteran's family to inter their loved one in a VA National Cemetery, even if they previously opted for an urn or plaque. This bill gives veteran families the flexibility to make the best burial decision for their loved one's final resting place. DAV would not object to its passage.

H.R. 8879, Improving VA Training for Military Sexual Trauma Claims Act

This legislation would require VA to provide employees who process claims related to military sexual trauma additional sensitivity training. It would also require added training for contracted health care professionals who conduct compensation and pension exams for claimed conditions due to military sexual trauma. Currently, there is

no requirement for such training which increases the likelihood the veteran may be retraumatized as a result of the process.

This legislation would also expand the duty to assist in obtaining the service personnel record and service medical record of the claimant. Currently, VA is only obligated to make such efforts for private medical records.

In accordance with DAV Resolution No.228, DAV supports this legislation to improve the claims process and require all VA and community care network providers offering MST-related treatment offering such care, to receive specialized training in addressing the needs of individuals who have experienced sexual assault.

H.R. 8880, Simplifying Forms for Veterans Claims Act

Far too often, veterans, dependents and survivors struggle with navigating the confusing mountain of forms that need to be completed in order to file and receive benefits from the VA. DAV's national benefits advocates have heard from clients on how difficult it is to complete some of the required forms for earned benefits.

H.R. 8880 would require the VA to enter into an agreement with a federally funded research and development center (FFRDC) for an assessment of the forms that VA sends to claimants. The FFRDC that enters into an agreement with the VA would be required to provide a written assessment of their findings concerning the forms released to claimants. The VA would be required to report to Congress concerning the findings from the FFRDC assessment and would have two years to implement the recommendations.

The number of claims and appeals filed each year is growing and the complexity of these claims and appeals is increasing. The Veterans Benefits Administration (VBA) has reached out to veterans service organizations accredited to represent veterans in the claims process for assistance in reforming its claims processing system and the letters it send to claimants.

In accordance with DAV Resolution No. 220, DAV fully supports H.R. 8880, as it will strengthen testing and quality control to ensure that veterans, dependents and survivors get the assistance they require when completing VA forms for earned benefits.

H.R. 8881, Rural Veterans' Improved Access to Benefits Act of 2024

H.R. 8881, the Rural Veterans' Improved Access to Benefits Act of 2024, would allow VA disability examinations to be conducted by non-Department physicians under contracts and expand the categories of providers who can perform cross-state disability exams. The bill would also require the VA to establish a mechanism for providers to submit evidence that a veteran brings with them to the examination to the VA.

VA often relies on disability medical examinations to determine whether veterans are eligible for disability compensation. Two groups of disability medical examiners conduct these exams: examiners employed by the Veterans Health Administration (VHA) and examiners working for vendors contracted by the Veterans Benefits Administration (VBA). These examiners, collectively, conduct more than 1 million disability exams annually.

Under license portability, a VBA-contracted examiner licensed in one state may legally conduct an exam in another state in which they are not licensed. The Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (Public Law 116-315) granted temporary license portability for VBA-contracted nurse practitioners, physician assistants, audiologists, and psychologists conducting veteran's disability exams. VBA contracted examiners who are physicians have had permanent license portability since 2016. All VHA examiners were granted permanent license portability specifically for telehealth exams in 2018, according to VHA officials.

Leveraging the temporary expansion of license portability increased VA's capacity to provide exams across state lines through telehealth and in-person exams with the use of mobile clinics to conduct disability exams. The Government Accountability Office, GAO-23-105787, VA noted vendors could temporarily station individual examiners in states other than where they were licensed. VBA and vendors reported that the temporary expansion of license portability helped expand their exam reach and increased veterans' access to specialists and experienced examiners.

Vendors used expanded license portability to send examiners to rural and high-need areas that did not have enough examiners to meet local demand for disability exams, according to Government Accountability Office interviews, conducted in GAO - 23-105787 report. License portability allowed them to continue serving veterans when natural disasters disrupted the availability of examiners in the affected states. Expanded license portability also allowed vendors to help serve incarcerated veterans. Reaching these veterans historically posed a challenge because not all examiners are willing to physically enter a prison, and license portability allowed them to use examiners willing to do so.

The temporary expansion of license portability increased access to specialists needed to perform certain types of disability exams, which allowed contracted psychologists to conduct exams for veterans living in other states, expanding access to mental health exams. Contract psychologists took on more mental health exams because of the temporary expansion so that contracted psychiatrists could focus on exams related to traumatic brain injuries, for which there is typically less specialty capacity nationwide.

Expansion of license portability has proven to be useful in not only providing health care but has also be beneficial in assisting veterans in obtaining timely disability examinations for their pending disability claims. License portability must continue to be leveraged and utilized when needed for both examination and treatment purposes.

The VA is required to exercise its “duty to assist” in the development of a claimant’s claim for VA benefits. VA must make reasonable effort to assist to obtain VA medical records, military service records, other types of federal records and private medical records, like reports from a non-VA hospital or from private health care providers, which should also include additional records, documents and/or lay statements the claimant may provide the VA contractor. VA must ensure that VA contractors can forward those records, documents and/or lay statements to the veterans claims folder. DAV recommends that VA provide contractors the guidance to accept and upload additional records claimants may present in support of their claims using Veterans Benefits Management System (VBMS) or through the Quick Submit Benefits Upload Service.

DAV supports H.R. 8881, the Rural Veterans’ Improved Access to Benefits Act of 2024 as it would address the need to provide timely disability examinations for veterans claims and the ability to submit records through the compensation and pension examination process to include documents and/or lay statements from the veteran to the VA contractor to be forwarded to VA in support of their claim.

H.R. 8910, Dayton National Cemetery Expansion Act of 2024

H.R. 8910, the Dayton National Cemetery Expansion Act of 2024, would require the VA to enter into an agreement with the Montgomery County Land Bank to carry out the transfer of land near Dayton National Cemetery to the VA.

Despite not having a resolution that calls for specific locations for land acquisition to expand National Cemeteries, DAV has no objection for NCA to expand and acquire needed land to offer reasonable access to burial options for our nation’s veterans, whether it be in a national cemetery or a VA-grant funded state or tribal veterans’ cemetery.

Draft bill, Modernizing All Veterans and Survivors Claims Processing Act

This draft legislation would allow VBA the ability to use an automation tool to assist with claims development, to include retrieval of service or health records, evidence relevant to the claim, automated decision support, information sharing between federal agencies and assist in generating correspondence for claims.

This legislation would also require the VA to furnish a report concerning the use of the automation tools to other subdivisions of the VA, to include the Pension and Fiduciary Service of VBA, Education Service, Program Offices, Debt Management and the Board of Veterans’ Appeals.

DAV fully supports this draft legislation in accordance with DAV Resolution No. 220, which calls for Congress and VBA ensure that all proposals to streamline and automate the claims development and rating process fully protect veterans’ rights and

that automated rating processes, such as automated decision letters, provide sufficient and specific information to inform veterans and their advocates about the reasons and bases for rating decisions.

Draft bill, Board of Veterans Appeals' Attorney Restoration and Backlog Reduction Act

This draft legislation, the Board of Veterans Appeals' Attorney Restoration and Backlog Reduction Act, would reform and enhance the pay of Board of Veterans' Appeals (BVA) attorneys for recruitment and retention and to increase the decision quality and claims processing speed of the Board. The Chairman, Vice Chairman, and members of the Board would be permitted, specifically, to hire non-supervisory staff attorneys as necessary to assist with the work of the BVA. The full performance level for such non-supervisory board staff attorneys would be paid at Grade 15 of the General Schedule.

DAV has long called on Congress and the VA to support significant and meaningful reforms aimed at addressing the growing backlog of VA claims and appeal processing. A key measure in modernizing these processes is providing the BVA with adequate resources to better support its judges. By establishing an internship program and allowing the hiring of entry-level attorneys, the Board of Veterans Appeals' Attorney Restoration and Backlog Reduction Act, could potentially improve the Board's ability to hire and retain qualified attorneys to help address the backlog of appeals, which DAV continues to support.

DAV has no specific resolution to address pay and benefits for newly hired BVA attorneys and therefore takes no position on this bill; however, we note that qualifications along with performance and quality measures should drive what pay, benefits or incentives would be afforded to an individual for recruitment and retention purposes.

Draft bill, VA Insurance Improvement Act

This legislation would expand the current Service-Disabled Veterans Insurance (S-DVLI) program furnished by VA. Currently, the program issues whole-life policies in increments of \$10,000, not to exceed \$40,000 to service-disabled veterans who applied prior to turning 81 years old. To be eligible for the insurance policy, the veteran must have been granted a service-connected disability within the preceding two years. Totally disabled veterans receive a premium waiver for the first \$10,000 of coverage.

The VA Insurance Improvement Act would remove the service-disabled requirement and expand the life insurance program to include all veterans. It would also change the name of the program to "Veterans Affairs life insurance." This bill would also make some changes to the reimbursement of administrative costs for the Veterans' Mortgage Life Insurance program. It would also include Space Force members to be eligible for the Traumatic Service Group Life Insurance.

First, we have concern that striking the service-disabled requirement for life insurance is that the amount of resources needed to include all veterans could potentially cripple this program. Service-disabled veterans have an increased risk of mortality and are more likely to need this beneficial program. While we are not opposed to all veterans having access to life insurance, we want to ensure the already existing benefit continues to be accessible for our membership of wartime service-disabled veterans. Second, DAV has a resolution that supports legislation to reform and improve S-DVLI by providing a waiver for all premiums to totally disabled veterans and increase the maximum amount of coverage allowed.

Lastly, DAV supports the inclusion of Space Force Guardians to be eligible for Traumatic Servicemembers Group Life Insurance (TSGLI).

Draft bill, Veterans' Burial Improvement Act

This draft legislation, the Veterans' Burial Improvement Act would make certain improvements in the laws administered by the VA relating to memorial affairs. Specifically, this bill would allow for certain burial benefits for spouses and children who predecease members of the armed forces serving on active duty; pay for transportation for deceased veterans, eliminate time limitation on certain burial benefits for medal of honor recipients, provide group burial markers, and burial or interment of the spouses and dependent children of such veterans.

DAV has no resolution that addresses these specific issues; however, we would not object to the passage of the Veterans' Burial Improvement Act.

Draft bill, Veterans 2nd Amendment Restoration Act

This draft legislation, the Veterans 2nd Amendment Restoration Act would restrict the VA from transmitting to any entity in the DOJ, for use by the NICS, solely because of a determination by VA to pay benefits to a fiduciary, without the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such beneficiary is a danger to themselves or others.

In 1998, the Bureau of Alcohol, Tobacco and Firearms adopted a new regulation that defined "mental defective" to include someone who "lacks the mental capacity to contract or manage their own affairs due to injury or disease."

For disabled veterans, this means that if the VA decides a veteran is mentally incompetent for financial reasons and appoints a fiduciary, a prohibiting record is created and sent to the Federal Bureau of Investigation, who enters the veteran's record in NICS, which contains names of people flagged and their access to firearms restricted.

VA had assumed that a decision by the VBA to find a veteran incompetent to manage their funds is equivalent to adjudication, as noted in the statute. According to the definition provided by the Legal Information Institute at Cornell Law School, “adjudication” is described as a “judicial ruling or decision” and “judicial proceeding.” The legal dictionary defines it as “the formal giving or pronouncing of a judgment or decree in a court proceeding.”

VA stopped its weekly reporting to the NICS in March 2024. The purpose of this interruption was to ensure that all reporting aligned fully with new legislative requirements outlined in the Consolidated Appropriations Act of 2024, which became Public Law (Public Law No: 118-42) on March 8th, 2024. This Act restricts VA from using appropriated funds to report a beneficiary unless there is an order or finding from a judicial authority that the beneficiary is a danger to themselves or others.

As of May 6, 2024, VA resumed this reporting in compliance with the new provisions contained in the Consolidated Appropriations Act of 2024. Under the law, reporting will be now limited to cases where the beneficiary is determined to be incompetent and where there is a court order or finding by a judicial authority that the individual is a threat to themselves or others. VA will also resume reporting for removal from the NICS database of individuals who have been determined to be competent and those who are deceased.

When a veteran is determined to be mentally incompetent, VA is required by law (the Brady Act) to notify the NICS. In passing the Consolidated Appropriations Act of 2024, Congress did not amend federal law prohibiting these veterans from possessing firearms or ammunition; however, it limited the VA’s ability to continue reporting to NICS in certain cases.

DAV does not have a resolution specific to support or oppose this draft legislation and takes no formal position on the bill. However, we remain steadfast in our belief in the protection of all veterans’ due process rights guaranteed by statute.

Draft bill, Safeguarding Veterans 2nd Amendment Rights Act

This draft legislation, the Safeguarding Veterans 2nd Amendment Rights Act, would prevent the use of unconstitutional gun confiscation laws against veterans by an officer or employee of the VA, in the course of their duties. Specifically, the employee could not initiate, participate in, or advocate for the removal of a firearm in any proceedings relating to a state gun confiscation law.

DAV has no resolution that addresses VA and gun confiscation laws and takes no position on this draft bill.

Draft bill, Preserving Veterans' Legacy Act of 2024

This draft legislation, the Preserving Veterans' Legacy Act of 2024, would make certain improvements in the laws administered by the VA Secretary relating to burials.

This bill would extend authority for burial of spouses and dependent children who predecease veterans and active-duty members of the armed forces, provide permanent authority to the National Cemetery Administration (NCA) to inter eligible spouses and dependent children into VA National Cemeteries and allow NCA to provide a group burial marker for veterans buried in a group interment in lieu of individual headstones for each eligible individual.

DAV understands that the ability of veterans and military spouses to be interred together represents the ultimate honor of both the service of the individual, and the sacrifice and support of their spouse and children in life. DAV has no specific resolution on this issue however, we have no objection to honoring our veterans, their spouses and/or eligible dependent children to be laid to rest together.

Draft Bill, Survivor Benefits Update Act

This draft legislation would extend the delimiting date for benefits for surviving spouses of Persian Gulf War veterans by ten years and one day after the termination date of the war. Currently, the surviving spouse must have been married to the veteran before January 1, 2001 for one year or more, or for any for any period of time if a child was born of the marriage, or was born to them before the marriage.

In accordance with DAV Resolution No. 241, DAV supports this provision to improve and reform dependent indemnity compensation (DIC) benefits.

This draft bill would also modify the processing of Survivor Benefits Claims by removing the requirement (from shall to may) for VBA to consider a claim for death pension, accrued benefits and DIC. Currently, all three benefits must be considered when a surviving family member submits a claim for DIC.

DAV opposes this provision in the bill and urges the Subcommittee to reconsider the proposed change.

Mr. Chairman, this concludes my testimony.