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Peter O'Rourke's Written Testimony

A Brief Background on the Claims Consulting Industry

The first claims consulting companies began doing business in 2014 and for seven years, these companies helped tens of thousands of Veterans and no one was concerned or raised alarms. As these companies grew and gained popularity within the veteran community, the Veteran Service Organizations and other detractors finally took notice. The first bill to prohibit private companies from charging fees for assisting veterans with initial claims was introduced in 2021 and since then, similar bills such as the Guards Act have continually been rejected by both Congress and many state legislatures.

Over the past few years, the VA has seen an unprecedented rise in claims due to Congress's passage of the PACTACT. The cost to taxpayers to process claims has grown massively during this time and despite a well-intentioned rapid hiring increase by the past administration, claims processing is still at unacceptable wait times. As of February 27th of this year, the average claims processing time was 146 days on February 27th, meaning the average claim takes longer than the Department's 125-day backlog threshold. ¹

The processing times are problematic, but the accuracy of these claims is unacceptable. Time and time again, the GAO and the OIGs write reports that inform the American people that the VA is failing our veterans when it comes to claims accuracy. In 2023, the GAO discovered that the VA was underrating black veterans with PTSD, which likely impacted tens of thousands of black veterans.² In 2018, the OIG reported that the VA was improperly adjudicating PTSD claims alleged by women veterans who were the victims of military sexual trauma.³ The report indicated that 1 in 4 women veterans who claimed they were sexually assaulted while in service were not even offered a medical exam. And in 2022, the Department's OIG Report revealed that the government contractors who perform the exams for the VA were not expected to correct errors that the claims adjudicators at the VA discovered, resulting in the incorrect ratings levied for thousands of veterans.⁴

So why then are we still here, fighting this same fight – knowing that these problems exist within the VA claims process?

While the two sides of this debate have fought to a stalemate, the National Association for Veterans Rights has stepped in to police and professionalize the industry to preserve veterans' choice while providing veterans with the information and tools to make informed decisions about the choices veterans

¹ [Detailed Claims Data - Veterans Benefits Administration Reports](#)

² [VA Disability Benefits: Actions Needed to Further Examine Racial and Ethnic Disparities in Compensation | U.S. GAO](#)

³ [Denied Posttraumatic Stress Disorder Claims Related to Military Sexual Trauma | Department of Veterans Affairs OIG](#)

⁴ [Contract Medical Exam Program Limitations Put Veterans at Risk for Inaccurate Claims Decisions | Department of Veterans Affairs OIG](#)

make when it comes to their VA benefits. And make no mistake, a veteran's right to choose is absolutely a right worth defending and that is why NAVR fights relentlessly to empower veterans to make decisions for themselves.

To accomplish this, NAVR created certification tiers that help define ethical business practices and identify honorable businesses that separate the good actors from the bad, ensuring that veterans can trust the people they choose to work with. NAVR's representatives have travelled the country advocating for policy at the state and federal level such as the Safeguarding American Veteran Empowerment Act ("SAVE Act") and the Preserving Lawful Utilization of Services for Veterans Act of 2023 ("PLUS Act") and NAVR welcomes the opportunity to describe those efforts here.

Safeguarding American Veteran Empowerment (SAVE Act) is Gaining Traction in Statehouses

A NAVR supported bill known as the SAVE Act is getting bipartisan support throughout the states. The SAVE Act is similar in purpose and intent as Congressman Bergman's Plus Act which has currently been introduced in the House and Senate. The Act preserves choices for veterans and like the PLUS Act, provides common sense regulations that safeguard veterans by protecting them from bad actors. Those consumer protections include the following:

1. Prohibition on up-front fees for initial claims
2. Mandates that all fees are contingent on a successful outcome
3. Caps the fees at a reasonable rate that is proportional to the value the veteran receives
4. Forbids any guaranteed outcomes
5. Requires up-front disclosure of the free services
6. Creates a one (1) year moratorium as to when the company can contract with the veteran
7. Creates civil and criminal penalties for those who violate these protections
8. Prevents the use of overseas call centers
9. Prohibits referral fees for directing Veterans to claims assistance services, ensuring decisions are based on the Veteran's best interest rather than financial incentives
10. Addresses use of veteran's data and privacy requirements

The state of Louisiana already passed the SAVE Act in 2024 and at least one chamber has already passed the veteran friendly legislation in New Hampshire, Oklahoma, South Dakota, Michigan, and Indiana. Tennessee, Illinois, West Virginia, Missouri, Kansas, Idaho, Minnesota, Texas, Arkansas, Oregon, Arizona, and Ohio are considering the SAVE Act in 2025.

While the Save Act has experienced significant momentum in 2024 and now this year as well, the state versions of the GUARD Act, that completely ban companies' ability to assist veterans with their benefit claims, have been introduced in more than twenty states. Other than Maine, and bills passed in 2019 and 2023 in New York and New Jersey, these bills have been defeated, tabled or stuck in committee. As for the bill that passed in Maine, a group of veterans are suing the state on constitutional grounds.

The PLUS Act is the only Legislation that Preserves Veteran Choice, Improves Accountability and holds Bad Actors Accountable.

The PLUS Act is a federal bill that represents a commonsense approach to preserving choices for veterans while also adopting many of the best practices that NAVR identifies in its certification standards. Passing the PLUS Act would increase protections for veterans far beyond what currently exists within the current regulatory framework as applied to accredited agents and attorneys. Some of those protections include:

1. Mandatory background checks for all employees
2. Annual training requirements
3. Reasonable Fee Caps
4. Disclosure of free services
5. Prohibition on conflicts of interest between the companies and the medical providers

The PLUS Act is the legislation that strikes the best balance of the three between preserving choice and maintaining an industry where the process as currently devised, places the incentives properly to ensure that veterans are getting the best possible support while maximizing their benefits. For these reasons, NAVR supports the PLUS Act and would welcome the opportunity to discuss adding some of the protections from the SAVE Act so that the final bill provides the correct level of protection for veterans.

The Most Recently Drafted, Unnamed Bill Fundamentally Misunderstands how the Industry Currently Operates

The House of Representatives is considering a new, unnamed bill that would expand accreditation opportunities and allow for accredited agents and attorneys to charge fees on initial claims. NAVR can support that change. The problem with this third bill more particularly however, is that it completely misunderstands how these private companies operate.

For example, the bill's language essentially places the private companies into the definition of "agent" or "attorney" for accreditation purposes, but these companies are neither. When most private companies provide assistance, they expressly disclaim any notion of an agent/principal relationship. The veteran is filing their own claim, utilizing the guidance and counsel from these companies and private medical providers who perform the exams outside of the broken VA system. Agency has a clear and critical legal definition, "Someone who is authorized to act for or in place of another." Black's Law Dictionary (11th ed. 2019). Similarly, the Third Restatement defines "agency" as "[t]he fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act." Restatement (Third) of Agency, § 1.10. *See also Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 755–56 (1998) (using Restatement to interpret Title VII provision applying to "agent[s]").

This distinction is not merely surface level but is actually the very reason that these private companies are currently operating legally. The claims companies are merely helping gather evidence, providing advice and access to privately trained medical providers. This new bill would force *every* private company to dramatically change their model to accommodate their new found status as an agent of the veteran.

Likewise, this new bill also forbids companies from assisting veterans if the condition is “presumed to be service connected,” but such a prohibition does far more harm than good. One of the critical problems with the benefits system as currently configured is that veterans are often underrated *after* establishing service-connection. The new bill prevents companies from helping veterans with disabilities that are presumed to be service connected – even if the rating is incorrect. The sum of this provision would reduce the number of options that can help veterans who face this scenario. Another example, the legislation prevents companies from forbidding contract termination after the evidence is submitted to the VA. Such a provision creates an untenable scenario where the private companies provide all of the benefit and evidence to the veteran while fulfilling every promise, only to have a veteran terminate the agreement right before receiving a favorable decision.

The latest effort by the committee to resolve this long-standing debate over veterans’ benefits is well-intentioned and does provide some smart and useful tools. For example, the bill does expand accreditation to include new groups and entities and requires the Department to do more to monitor accredited agents and attorneys. There are certainly aspects of this bill that NAVR can and does support. But there is much work to be done before this particular bill strikes the best balance between protecting veterans and ensuring there are sound choices. NAVR would very much welcome the opportunity to work with the committee to improve upon its start.

The Guards Act Eliminates Choices for Veterans and does Nothing to Strengthen Protections

NAVR does not support the GUARDS Act because the legislation merely doubles down on a broken system that has failed veterans for far too long. The bill also eliminates choices, trapping veterans in the VA system that has continually failed to meet its own accuracy goals and has admitted to discriminating against certain subgroups of veterans.

The bill is so unimaginative and slavish that the legislation completely wipes out thousands of jobs overnight, criminalizes an entire industry dedicated to helping veterans obtain the correct rating and entirely eliminates any and all private choices for veteran assistance on initial claims. Supporters of this bill made no effort to improve the benefits process for veterans. There was no consideration given to holding large companies that perform exams accountable for the past refusal to correct errors in the exam reports. Likewise, supporters refused to include any language that improves upon the Veteran Court of Appeals or holds the department accountable when the backlog balloons to unacceptable numbers. Again, the bill merely eliminates choice for veterans and nothing more. For these reasons, the National Association for Veterans Rights does not support this bill.

In summary, NAVR welcomes the opportunity to participate in this dialogue about the future of VA benefits. We appreciate that the committee is open to hearing diverse viewpoints and has resisted the fevered pitch to “do something,” instead choosing a more deliberative approach. Thank you for your time and consideration.

Sincerely,

Peter O’Rourke

President

National Association for Veterans Rights (NAVR)