

**STATEMENT OF
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BEFORE THE**

**SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

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Good morning, Chairman Bost, Ranking Member Etsy, and Members of the Committee. Thank you for inviting us here today to present our views on several bills that would affect VA programs and services. Joining me today are Dr. Ralph L. Erickson, Chief Consultant for Post Deployment Health Services and Ms. Patricia Watts, Director, Legislative and Regulatory Service, National Cemetery Administration.

H.R. 105 - "Protect Veterans from Financial Fraud Act of 2017"

Section 2 of H.R. 105 would amend 38 U.S.C. § 6107(b) by removing restrictions on VA's authority to reissue benefits in cases of fiduciary misuse. Currently, VA is authorized to reissue benefits under this subsection only in cases of negligent supervision by VA, or where the fiduciary is not an individual, or the fiduciary is an individual who serves 10 or more beneficiaries for any month during a period when misuse occurs.

Section 3 of H.R. 105 would amend 38 U.S.C. § 5501A to add a new subsection stating that mental competence determinations may be appealed to the Board of Veterans' Appeals (BVA) and the U.S. Court of Appeals for Veterans Claims (CAVC).

VA supports this bill. Section 2 of the bill would ensure the equal treatment of all fiduciary misuse victims. VA would no longer be required to make distinctions in these cases based on the nature and scope of the fiduciary's business, or on the fiduciary's status. This bill would allow VA to promptly reissue benefits that have been misused, thereby minimizing financial hardship to beneficiaries caused by the misuse, delays in obtaining restitution, or VA determinations regarding negligence.

We note that by broadening the cases in which the Secretary shall pay an amount equal to misused benefits to "any case not covered by subsection (a)" and eliminating the requirements currently found in section 6107(b)(2) that currently attach to non-negligence cases, this bill effectively allows the Secretary to reissue benefits in all cases of misuse. While VA supports the bill as written, it is questionable whether there is any

utility in maintaining the distinction between negligence cases covered by subsection (a) and all other cases if this bill were to become law. Further, current subsection (b)(3), which this bill would move to subsection (b)(2), directs VA to pay to a beneficiary or a successor fiduciary any recouped benefits “[i]n any other case in which the Secretary obtains recoupment from a fiduciary who has misused benefits.” Insofar as subsections (a) and (b)(1) of section 6107 would apply to all cases in which a fiduciary misused benefits, there would not appear to be any “other” instances of misuse to which renumbered subsection (b)(2) would apply.

The cost of this bill is associated with section 2. VA estimates these costs would be \$2 million in FY 2018, \$10 million over 5 years, and \$20 million over 10 years. There would be no costs associated with section 3 of the bill because determinations of mental competence are already appealable to BVA and the CAVC under existing law.

H.R. 299 - “Blue Water Navy Vietnam Veterans Act of 2017”

H.R. 299 would extend the presumption of Agent Orange exposure to all Veterans who served on ships in the “territorial seas” of the Republic of Vietnam. It would do so by amending subsections (a)(1) and (f) of 38 U.S.C. § 1116, and subsection (e)(4) of 38 U.S.C. § 1710, by inserting the phrase “including the territorial seas of such Republic” after “served in the Republic of Vietnam” each place it appears.

VA has a number of concerns with H.R. 299 and cannot support the bill at this time. The bill does not clearly define what constitutes “the territorial seas” of the Republic of Vietnam. While international treaties prescribe general standards governing nations’ territorial seas, it is unclear whether this bill is intended to follow those treaty definitions and, if so, whether it is intended to follow the treaty definitions extant during the Vietnam War or those extant today. Without a clear definition, VA could not determine which Veterans are eligible to receive benefits under the expanded presumption based on their military service. VA is also concerned with the September 25, 1985, effective date of the bill, which would potentially result in retroactive awards of more than 30 years in many cases. In enacting provisions extending benefits to other groups of Veterans, Congress generally has not extended those benefits retroactively, much less for such a significant time period. VA is concerned about the apparent inequity of this disparate treatment of different groups of Veterans. Further, re-adjudicating old claims and establishing awards covering large retroactive periods would be complex and labor-intensive tasks that would divert resources from other claim adjudications. As will be discussed in greater detail, VA estimates that the retroactive benefits payments in FY 2018, alone, would total no less than \$967 million.

Additionally, there is continued scientific uncertainty surrounding the issue of Blue Water Navy Veterans’ exposure to Agent Orange. At VA’s request, the Institute of Medicine (now National Academy of Medicine) reviewed all available scientific evidence concluding that they were “unable to state with certainty that Blue Water Navy personnel were or were not exposed to Agent Orange and its associated TCDD” (ref:

Blue Water Navy Vietnam Veterans and Agent Orange Exposure, 2011). For this reason VA continues to review and monitor the peer-reviewed scientific / medical literature and is collaborating with Veterans Service Organizations (including VFW and the Blue Water Navy Vietnam Veterans Association) to gather more information. A new study of Vietnam Veterans which includes the collection of data on Blue Water Navy Veterans is currently ongoing with early results expected to be available by December 2017. Secretary Shulkin is committed to examining all available evidence on this issue and gathering input from stakeholders in order to make well-informed, scientific evidence-based decisions for our Nation's Veterans.

VA's cost estimate for the bill is broken down into four categories: benefits, general operating expenses, information technology (IT), and health care expenditures. VA estimates the total benefits cost of this bill would be \$1.4 billion during FY 2018, \$3.0 billion over 5 years, and \$5.5 billion over 10 years.

In addition to benefits costs, VA estimates the General Operating Expenses (GOE) costs for the first year would be \$90.7 million and include salary, benefits, rent, training, supplies, other service, and equipment. Five-year costs are estimated to be \$213.5 million and 10-year costs are estimated to be \$339.0 million. VA further estimates that the IT cost for the first year would be \$2.9 million, \$4.5 million over 5 years, and \$5.9 million over 10 years. This cost would include the IT equipment for full-time equivalent employees, installation, maintenance, and IT support.

Regarding health care expenditures, VA estimates the costs of the bill would be \$36.5 million in FY 2018, \$268.0 million over 5 years, and \$618.2 million over 10 years.

H.R. 1328 - American Heroes COLA Act of 2017

H.R. 1328 would permanently authorize the Secretary to implement cost-of-living increases to the rates of disability compensation for service-disabled Veterans and the rates of Dependency and Indemnity Compensation (DIC) for Survivors of Veterans. This bill would direct the Secretary to increase the rates of those benefits whenever a cost-of-living increase is made to benefits administered under title II of the Social Security Act. These rates would be increased by a percentage identical to increases to Social Security benefits.

The Department of Veterans Affairs (VA) supports this bill because it would be consistent with Congress' long-standing practice of enacting regular cost-of-living increases for compensation and DIC benefits in order to maintain the value of these important benefits. Additionally, the bill would eliminate the need for additional legislation to implement such increases in the future. It would also be consistent with current law that requires any cost-of-living increases to disability compensation and DIC to be made at a uniform percentage that does not exceed the percentage increase to Social Security benefits.

VA estimates the cost of this bill would be \$1.3 billion in fiscal year (FY) 2018, \$24.8 billion over 5 years, and \$103.6 billion over 10 years. However, the cost of these increases is included in VA's baseline budget because VA assumes that Congress will enact a cost-of-living adjustment each year. Therefore, enactment of H.R. 1329 would not result in additional costs, beyond what is included in VA's baseline budget.

H.R. 1329 - Veterans' Compensation Cost-of-Living Adjustment Act of 2017

H.R. 1329 would require the Secretary to increase the rates of disability compensation and DIC by the same percentage as any increase to Social Security benefits effective on December 1, 2017. The bill would also require VA to publish these increased rates in the Federal Register.

VA strongly supports this bill because it would express, in a tangible way, this Nation's gratitude for the sacrifices made by our service-disabled Veterans and their surviving spouses and children. The bill would also ensure that the value of these benefits keeps pace with increases in consumer prices.

VA estimates the cost of this bill to be \$1.3 billion in FY 2018, \$8.1 billion over 5 years, and \$17.5 billion over 10 years. However, the cost of these increases is included in VA's baseline budget because VA assumes that Congress will enact a cost-of-living adjustment each year. Therefore, enactment of H.R. 1329 would not result in additional costs, beyond what is included in VA's baseline budget.

H.R. 1390 - Transportation of Deceased Veterans to Veterans' Cemeteries

H.R. 1390 would amend 38 U.S.C. § 2308 to allow payment of the monetary allowance currently payable for transportation of eligible Veterans' remains for burial in a national cemetery to be paid for transportation to a "covered veterans' cemetery." The bill would define a "covered veterans' cemetery" as a Veterans' cemetery owned by a State or Tribal organization in which a deceased Veteran is eligible to be buried. The bill would increase the options of burial locations for eligible Veterans.

VA supports the intent of H.R. 1390; however, VA is concerned with the administrative burden associated with this bill. VA currently reimburses actual transportation costs based on receipts submitted by claimants. This bill would require VA to pay no more than the cost of transportation to the national cemetery nearest the Veteran's last place of residence in which burial space is available. Calculating these payments would require VA to check availability at national cemeteries, determine the equivalent transportation cost to a national cemetery, and then compare that cost to the claimant's receipts for transportation to the State or Tribal cemetery. VA would welcome the opportunity to work with the Subcommittee to address this issue.

VA estimates the benefits cost of the bill would be \$1.2 million in the first year, \$6.7 million over 5 years, and \$15.2 million over 10 years. Discretionary costs for this bill would be insignificant.

H.R. 1564 “VA Beneficiary Travel Act of 2017”

H.R. 1564 would amend subsection (d) of section 504 of the Veterans' Benefits Improvement Act of 1996 (Public Law 104-275, as amended by Public Law 114-315; 38 United States Code (U.S.C.) § 5101 note), to direct the use of funding from the mandatory compensation and pension (C&P) appropriation to pay for travel and incidental expenses associated with contract disability examinations already funded by the same appropriation in FY 2017 and subsequent years. The bill would codify subsection (d) as 38 U.S.C. § 5109C (“Pilot program for use of contract physicians for disability examinations”).

The Veterans Benefits Administration (VBA) pays for certain contract C&P examinations with funding from the mandatory C&P appropriation. Congress granted VBA this authority under section 504, which enabled VBA to conduct a “pilot program” to have contractors complete C&P examinations for Veterans applying for benefits administered by VBA. The pilot was initially limited to no more than 10 VA regional offices, and the source of funding for such contracts was the C&P appropriation. In FY 2017, VBA's authority for the pilot was expanded to all 56 regional offices.

VA strongly supports legislation to codify VA's current practice and clearly authorize VA to fund Veteran participation in the pilot program from a single source, rather than in part from the C&P appropriation and in part from funds available for the pre-existing beneficiary travel program under 38 U.S.C. § 111.

This proposal would not require any additional funding or administrative changes within VA. VBA planned to use the C&P account to fund beneficiary travel to and from pilot program examinations, as well as other incidental expenses of the pilot program, in FY 2017 and subsequent years. In addition, this proposal would not change the funding source for any other VA beneficiary travel.

H.R. 1725 - “Quicker Veterans Benefits Delivery Act of 2017”

This bill would revise statutes pertaining to adjudication of disability benefit claims.

Section 2 of this bill would prohibit VA from requesting a medical examination when the claimant submits medical evidence or an opinion from a non-VA provider that is competent, credible, probative, and adequate for rating purposes. Sections 3 and 4 would require VA to report to Congress on the progress of VA's Acceptable Clinical Evidence (ACE) initiative and, for each VA regional office, data on the use by claimants of private medical evidence in support of compensation and pension claims.

VA does not support this bill. VA appreciates the intent of the bill, which seeks to provide benefits to Veterans more expeditiously. However, as written, the bill is, in some respects, unnecessary and unclear and would be problematic to implement.

Section 2 of the bill is unnecessary given current legal standards. This section would prohibit VA from requesting a medical examination when evidence that is submitted is adequate for rating purposes. Section 5103A(d)(2) of title 38, U.S.C., notes that an examination or opinion is only required when the record does not contain sufficient medical evidence to make a decision. Furthermore, section 5125 of title 38, U.S.C., explicitly notes that private medical examinations may be sufficient, without conducting additional VA examinations, for adjudicating claims. VA regulations are consistent with these statutory requirements. Therefore, this section is unnecessary and duplicative. At present, VA may adjudicate a claim without an examination if the claimant provides evidence that is adequate for rating purposes. There would be no costs associated with section 2.

VA does not support section 3 or 4. VA maintains data concerning the number of examinations in which ACE is used, but VA does not track when the evidence is supplemented with a telephone interview, data that VA would be required to report under the bill. In addition, VA does not track when private medical evidence is sufficient or insufficient for rating purposes, as this is not a formal determination. This determination depends on the receipt and evaluation of each piece of evidence and may change at any time in the process. When a VA examination is requested after the submission and review of private medical evidence, VA has made a determination that the evidence is insufficient for rating purposes, as it is VA policy to evaluate a condition without an examination when the evidence of record is adequate to decide the claim. GOE costs associated with sections 3 and 4 would be insignificant.

This concludes my remarks. I would be happy to answer any questions that you may have. Thank you.