

Wounded Warrior Project
4899 Belfort Road, Suite 300
Jacksonville, Florida 32256
☎ 904.296.7350
☎ 904.296.7347



WOUNDED WARRIOR PROJECT
STATEMENT FOR THE RECORD
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

LEGISLATIVE HEARING
ON

H.R. 592; H.R. 628; H.R. 1030; H.R. 1424; H.R. 1911; H.R. 4165; H.R. 4183; H.R. 4360; a draft bill to extend increased dependency and indemnity compensation paid to surviving spouses of veterans who die from ALS; and a draft bill to permit appellants to appear before the Board of Veterans' Appeals via picture and voice transmission from locations outside the Department of Veterans Affairs

OCTOBER 22, 2019

Chair Luria, Ranking Member Bost, and distinguished members of the House Committee on Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs – thank you for the opportunity to present Wounded Warrior Project's positions and perspectives on key issues and legislation before the Subcommittee.

Wounded Warrior Project (WWP) is transforming the way America's injured veterans are empowered, employed, and engaged in our communities. Since our inception in 2003, we have grown from a small group of friends and volunteers to an organization of nearly 700 employees spread across the country and overseas delivering over a dozen direct-service programs to warriors and families in need. As part of our mission to connect, serve, and empower wounded warriors and those who support them, we are continually engaging with those we serve and commit ourselves to capturing an informed perspective on the challenges this community faces. We are pleased to share that perspective for this hearing on pending legislation.

H.R. 592, the *Protect Veterans from Financial Fraud Act*

Many in our nation maintain a deep respect for those who have served and sacrificed; however, there are others who seek to leverage positions of trust for their personal gain and benefit. The Department of Veterans Affairs' (VA) Fiduciary Program connects veterans who are unable to manage their financial affairs with fiduciaries who can supervise VA income and ensure that their veteran-beneficiary's debts are paid. Although VA enforces strict standards for fiduciaries and conducts thorough investigations to determine their fitness to serve, fraud and abuse still occur. A significant consequence of that fraud on many occasions is that veterans do not receive benefits they are entitled to and become exposed to risks associated with not paying bills.

DUTY ★ HONOR ★ COURAGE ★ COMMITMENT ★ INTEGRITY ★ COUNTRY ★ SERVICE





Under current law, VA can re-issue benefits to a veteran when their benefits are misused by a fiduciary who manages benefits for 10 or more veterans. There is no similar authority for VA to re-issue benefits to a veteran whose funds were misused by a fiduciary that manages benefits for fewer than 10 veterans. The *Protect Veterans from Financial Fraud Act* would remove this inequity and create parity for all veterans who have been the victim of fraud or abuse by a VA-recognized fiduciary.

Wounded Warrior Project supports the *Protect Veterans from Financial Fraud Act*. Many warriors who participate in our Independence Program – a long-term, community-based support program available to warriors living with a moderate to severe traumatic brain injury, spinal cord injury, or other neurological condition that impacts independence – use fiduciaries to manage their VA benefit payments and would benefit from a system that better protects their assets should an unfortunate circumstance arise. This legislation would help minimize financial hardship on defrauded veterans and provide relief when looking to find a replacement fiduciary.

**H.R. 628, the *Working to Integrate Networks Guaranteeing Member Access Now Act*,
or the *WINGMAN Act***

Members of Congress have a long history of advocating for constituents who face delays when seeking VA benefits. As every veteran claim is unique, many member offices feel compelled to carefully review a constituent's VA case file in order to provide the best possible assistance.

There is no authority under current law for VA to provide expedited access to a veteran's claim file to a Member of Congress. To provide such access, the *WINGMAN Act* would authorize VA to give a veteran the option of allowing VA to provide read-only access to his or her file to their Member of Congress. A designated "covered congressional employee," whose responsibilities would have to include assisting constituents with federal agency case work, would be required to meet VA criteria for recognition as an agent or attorney in order to access the read-only claims file.

Under the changes proposed by the *WINGMAN Act*, veterans would conceivably have an easier time working with their Member of Congress to resolve issues related to their VA benefit claims. WWP agrees with this aspirational goal but cautions against its practical implementation. New Members of Congress may assume office with staff unfamiliar with a complex VA benefit process, just as more seasoned members may be affected by staff turnover. Having easy access to claims files and the ability to work with VA congressional liaisons will afford more opportunities for covered congressional staff to learn, understand, and navigate the claims process; however, there are risks associated with creating more opportunities for these employees to provide misguided claims advice, misinterpret nuanced details in the claims file, inadvertently misplace personally identifiable information, or hamper interactions with highly trained service officers at veteran service organizations or state-level veterans' agencies who may have stricter standards to adhere to in order to remain certified as agents. For these reasons, WWP does not urge passage of the *WINGMAN Act* at this time.



H.R. 1030, the *Veteran Spouses Equal Treatment Act*

In June 2013, the U.S. Supreme Court held in *United States v. Windsor* that Section 3 of the *Defense of Marriage Act* (1 U.S.C. § 7), which defined the term “marriage” for purposes under federal law as “only a legal union between one man and one woman as husband and wife,” was unconstitutional. Given *Windsor*’s scope, which was limited to the *Defense of Marriage Act*, other state and federal laws – including those that govern veterans’ benefits – were not immediately affected. The *Veteran Spouses Equal Treatment Act* was first introduced shortly thereafter in order to bring alignment between the *Windsor* holding and veterans’ benefits laws.

Under current law, VA defines a “surviving spouse” as “a person of the opposite sex” along with other criteria. Similarly, a “spouse” is defined as a person “of the opposite sex who is a wife or husband.” The *Veteran Spouses Equal Treatment Act* would strike “of the opposite sex” in the definition of a surviving spouse and, for living spouses, refers to 38 U.S.C. § 103 for marriage references while striking “who is a husband or wife.” The bill would further amend 38 U.S.C. § 103 to require VA to recognize a marriage based on the law of the State where the marriage occurred or, if it occurred outside a State, a lawful marriage that could have entered into under the laws of any State.

Wounded Warrior Project supports the *Veteran Spouses Equal Treatment Act*. Although VA provides clear guidance at <https://www.benefits.va.gov/persona/lgbt.asp> to explain to veterans that the agency will recognize all same-sex marriages without regard to a veteran’s state of residence, this legislation would remove any doubt that veterans’ spouses will receive equal treatment under the laws governing VA benefits.

H.R. 1424, the *Fallen Warrior Battlefield Cross Memorial Act*

Wounded Warrior Project’s mission to honor and empower wounded warriors brings our focus to providing free programs and services for warriors and advocating for their current and long-term health and wellness. Within this context, we also recognize the need to memorialize those veterans who are no longer with us. For some who share this view, the “Battlefield Cross” has become a fitting memorial in VA’s national cemeteries.

Under current law, VA has regulatory discretion to develop and maintain memorial areas for veterans in national cemeteries. In the relatively recent past, VA exercised its discretion to prohibit realistic looking depictions of firearms in “Fallen Soldier Displays” (the Battlefield Cross). More recently, VA updated its policy to allow an exception for the Fallen Soldier Display. The *Fallen Warrior Battlefield Cross Memorial Act* would create a statutory obligation to continue a special exception for the Fallen Soldier Display subject to standards established by VA.



Wounded Warrior Project supports the *Fallen Warrior Battlefield Cross Memorial Act*. This legislation offers a healthy balance between VA's interest in properly maintaining national cemeteries while preserving the ability of local communities around the country to continue using the Battlefield Cross to memorialize the veterans and soldiers who gave the ultimate sacrifice for our nation.

H.R. 1911, the *SFC Brian Woods Gold Star and Military Survivors Act*

The *SFC Brian Woods Gold Star and Military Survivors Act* proposes several amendments to Title 10 U.S. Code that WWP was unable to adequately review with the Department of Defense or the House Committee on Armed Services staff prior to this Subcommittee hearing. For these reasons, WWP is not able to provide a position on the bill at this time.

H.R. 4165, the *Improving Benefits for Underserved Veterans Act*

The *Improving Benefits for Underserved Veterans Act* would create new reporting requirements for VA to help identify minority veteran groups who are or who may be underserved by VA services and benefits. The bill lists women veterans as well as Asian, Black, Hispanic, Native American, and Pacific-Islander American veterans as groups that would be subjects of the new reporting requirements.

Wounded Warrior Project appreciates the need to monitor and assess the needs of the veteran population which is why we invest in developing the nation's largest and most comprehensive survey of Post-9/11 veterans and service members. According to survey data gathered for our 2018 survey, WWP has several salient points to share that inform our position on the *Improving Benefits for Underserved Veterans Act*.

- Women veterans not using VA as their primary health care provider report higher rates of difficulty accessing VA (51% compared to 44% of male veterans not using VA as primary)
- Across race/ethnicity, veterans who do not use VA as their primary care health provider reported the same top reasons why: bad prior experience, VA care is difficult to access, too much trouble or red tape, don't think VA health care would be as good as that available elsewhere, and don't trust VA
- Black or African American (73%) and Hispanic (72%) veterans reported utilizing VA as their primary health care provider at a higher rate than White (67%) veterans
- Across gender and race/ethnicity, similar rates of veterans have VA health care coverage (75%-79%)

As these results begin to illustrate¹, there are veterans who are underserved by VA's programs and services – but that there is also demographic parity in many instances. While we appreciate the desire to have

¹ WWP prepared this specific data after being engaged by the U.S. Government Accountability Office in January 2019. GAO indicated that it was undertaking a review of whether VA provides quality and culturally appropriate care for minority veterans, to



more data to explore these issues further, we would rather see the staff hours and resources required to gather the information for these proposed reporting requirements be utilized to serve these identified populations. Additionally, any reports generated by this proposal would only reflect information about who has reached out to VA for care or benefits, and would not necessarily reflect who is being underserved when one considers all who have chosen not to engage with VA. Outreach to these underserved population groups may be a better use of resources as it would actively engage a population which is known to be underserved. While we appreciate the intent and support the *Improving Benefits for Underserved Veterans Act*, WWP would rather see VA resources used for outreach to connect with underserved populations.

H.R. 4183, the *Identifying Barriers and Best Practices Study Act*

One of the largest barriers that WWP national service officers face when supporting current and former special operators and other United States Special Operations Command personnel who suffered injury or illness in combat is locating official documentation of their injuries in service. Similarly, the process for documenting injuries for Guard and Reservists could be improved to help veterans establish service connection for their injuries later in life.

While many issues surrounding this population should be left to the Department of Defense, the *Identifying Barriers and Best Practices Study Act* proposes to have the U.S. Comptroller General develop a three-year study of disability and pension benefits that were provided to veteran members who served in special missions, such as pilots and divers, and who served on reserve components of the Armed Forces while on active duty. This report would also seek to identify common barriers that Guard and Reservists face when applying for VA disability benefits, including documentation of injuries incurred while serving.

Wounded Warrior Project supports the *Identifying Barriers and Best Practices Study Act*. Lack of medical evidence from service and the difficulties of working with the military to retrieve any available documents inform our perspective from an anecdotal point of view. We are confident that a Government Accountability Office report addressing how these populations are interacting with VA's benefit system will validate our beliefs and experiences, and we urge stakeholders to consider additional policies to help assist them as the report is being developed.

include making recommendations on how VA can structure its next generation electronic health record system to collect data on quality and patient experience data by race and ethnicity. [Source of mandate: P.L 115-141 *Consolidated Appropriations Act, 2018*. H. Rpt. 115-188 to Accompany H.R. 2998, *Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2018*.]



H.R. 4360, the *VA Overpayment Accountability Act*

In support of our mission to honor and empower our nation's wounded, ill, and injured veterans and service members, WWP recognizes that physical health and mental wellness are often built from a foundation that includes financial security. VA disability compensation offers significant relief to many veterans, but the peace of mind that compensation offers can be interrupted when payments are unexpectedly withheld and credit is harmed. For veterans managing bills and other obligations, disruptions to expected income can quickly become a significant stressor.

According to WWP's 2019 Annual Warrior Alumni Survey, nearly all (97.1%) warriors who have registered for WWP programs and services carry some amount of debt. Among warriors with debt, excluding mortgages on primary residences, about a third (31.2%) pay less than \$1,000 per month on total household debt they owe, and another 36.7 percent make monthly payments ranging from \$1,000 to less than \$2,500 (36.5% in 2018). However, more than half (54.4%) of warriors with debt owe \$20,000 or more, excluding mortgages. In this context, we believe many of our warriors are at a heightened risk of being placed in the precarious position of being unable to pay bills and having their credit score damaged if VA benefits are withheld because of a previous erroneous overpayment by VA.

The *VA Overpayment Accountability Act* would address this problem through three distinct components. First, if VA determines that it has delivered erroneous information to a credit agency, it would be required to work with the credit agency to remove the erroneous information from a veteran's credit report. A similar process would ensue if VA has delivered erroneous information to a debt collector that subsequently reports to a credit agency. Second, the bill proposes IT improvements relating to debt notification and metrics tracking focused on debt, debt averages, and requests for debt relief. Third, the bill would require an audit of erroneous payments to determine the frequency of errors and whether, or to what degree, vacant positions at the Veterans Benefits Administration affect the frequency.

Wounded Warrior Project supports the *VA Overpayment Accountability Act*. This bill would provide adequate retrospective and prospective protection of veterans' credit scores in the event of an overpayment and mitigate the risk of potential hardship on veterans. While we maintain an interest in seeing policies that would ease the burden of debt repayment in instances when VA must recoup overpayment, this is a sound proposal in its current form.

H.R. _____, a draft bill to extend increased dependency and indemnity compensation paid to surviving spouses of veterans who die from ALS

According to the Amyotrophic Lateral Sclerosis (ALS) Association, approximately 5,000 Americans are diagnosed with ALS each year. The incidence of ALS is two per 100,000 people, and it is estimated that at



least 16,000 Americans may be living with ALS at any given time – and research sadly shows that military veterans, regardless of branch or era of service, are nearly twice as likely as non-veterans to develop ALS².

Once ALS starts it almost always progresses, eventually taking away the ability to walk, dress, write, speak, swallow, and breathe, and shortening the life span. How fast and in what order this occurs is very different from person to person. While the average survival time is three years, about 20 percent of people with ALS live five years, 10 percent will survive 10 years and 5 percent will live 20 years or longer.³

Under current law, VA can pay an additional monthly allowance of Dependency and Indemnity Compensation (DIC) to surviving spouses of veterans who die from a service-connected disability if that disability was rated as totally disabling for continuous period of at least eight years immediately preceding death. This draft bill proposes to remove the eight-year criteria for spouses of veterans who died of service-connected ALS.

Wounded Warrior Project supports this draft legislation because it recognizes that the tragically accelerated disease process of ALS keeps many deserving spouses from receiving important DIC benefits that they should otherwise be entitled to.

H.R. _____, a draft bill to permit appellants to appear before the Board of Veterans' Appeals via picture and voice transmission from locations outside the Department of Veterans Affairs

Under current law, veterans are limited to two types of hearings during their appeal before the Board of Veterans' Appeals: (1) in-person hearings at the Board's principal location, or (2) by picture/voice transmission at a facility where VA has provided suitable equipment and facilities. Under this draft legislation, VA would continue to initially offer these types of hearings, but a veteran would gain the ability to request a hearing at a place of their own choice provided there is a secure internet platform established and maintained by VA that protects sensitive personal information from a data breach. Reporting requirements are included to track success rates and cancellations.

Wounded Warrior Project supports this draft legislation. The Board of Veterans' Appeals has been diligently working through a backlog of appeals for years, and efforts like this that reduce the likelihood of hearing cancellations should help more veterans receive timely consideration of their appeals.

² ALS Association at <http://www.alsa.org/als-care/veterans/military-white-paper.html>.

³ ALS Association at <http://www.alsa.org/about-als/facts-you-should-know.html>.



CLOSING

Wounded Warrior Project thanks the Subcommittee on Disability Assistance and Memorial Affairs, its distinguished members, and all who have contributed to the discussions surrounding today's hearing. We share a sacred obligation to serve our nation's veterans, and WWP appreciates the Committee's effort to identify and address the issues that challenge our ability to carry out that obligation as effectively as possible. We are grateful for the invitation to testify and stand ready to assist when needed on these issues and any others that may arise.