

**Rcvd STATEMENT OF CHERYL RAWLS, EXECUTIVE DIRECTOR
OUTREACH, TRANSITION, AND ECONOMIC DEVELOPMENT
DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

March 29, 2023

Chairman Luttrell, Ranking Member Pappas and other Members of the Subcommittee, thank you for inviting us here today to present our views on several bills that would affect VA programs and services. Joining me today is Kevin Friel, Deputy Director, Pension & Fiduciary Service and Christa Shriber, Deputy Chief Counsel for the Benefits Law Group.

H.R. 234 Gerald's Law Act

Section 2(a) of this bill would amend 38 U.S.C. § 2303(a)(2)(A), as amended by section 2202 of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (Public Law 116-315), to provide burial allowance to certain Veterans who die at home or other setting while in receipt of hospice care furnished by VA pursuant to 38 U.S.C. § 1717(a), as long as such care was directly preceded by the Veteran receiving hospital care or nursing home care furnished by the Secretary as referenced in 38 U.S.C. § 2303(a)(2)(A)(ii). Section 2(b) of the bill would assign an effective date for the amendments made by subsection (a) as if included in the enactment of Public Law 116-315.

VA would support this bill with an identified funding offset, if amended. VA supports section 2(a) of the bill extending eligibility for VA burial allowance to a new demographic of Veterans. VA also supports the intent for the effective date as outlined in section 2(b). VA understands the effective date to subsection (a) would be January 5, 2023. However, VA recommends that the effective date for the amendments made by the bill be 6 months following the passage of the bill. This would allow VA to update the necessary forms and to ensure systems are able to appropriately capture this newly eligible demographic.

Significant mandatory and discretionary costs are anticipated to be associated with this bill. VA requires additional time to prepare a detailed cost estimate.

H.R. 854 Gold Star Spouse Equity Act

This bill would amend titles 10 and 38, United States Code, to expand certain benefits for surviving spouses of members of the Armed Forces who die in line of duty, and for other purposes.

Section 2 of this bill would amend 10 U.S.C. § 1450(b)(2) to continue eligibility for the survivor benefit annuity plan of a surviving spouse who is described in subparagraph (A) or (B) of 10 U.S.C. § 1448(d)(1), even if he or she remarries before reaching age 55 and before the date of the enactment of this bill. VA defers to the Department of Defense (DoD) regarding section 2 of the bill.

Section 3 of this bill would result in removing remarriage as a bar to furnishing benefits under 38 U.S.C. § 1311 for surviving spouses. It would further provide for the resumption of dependency and indemnity compensation (DIC) under section 1311 for those who remarried before reaching age 57 and before the date of the enactment of the bill.

VA supports, if amended, and seeks clarification regarding section 3 of the bill. VA notes that the amendments as written would be more expansive than the stated purpose of the bill suggests.

VA supports the intended purpose of the bill to expand benefits for surviving spouses of members of the Armed Forces who die in line of duty, subject to the availability of appropriations. However, the language of section 3 does not limit the expansion of DIC benefits under 38 U.S.C. § 1311 for surviving spouses who remarry to situations where the Veteran died in the line of duty. As a result, the language as currently written would be more expansive than the intent of the bill as stated by Congress. VA respectfully requests clarification on the intent of this bill.

Furthermore, VA cites concerns that the proposed amendments as written under section 3 would result in the complete removal of remarriage considerations for DIC benefits under 38 U.S.C. § 1311. If the bill is not amended to limit its application specifically to a surviving spouse of a Veteran who died in the line of duty, then this bill would result in disparate treatment for survivor benefits granted under different sections of title 38, United States Code. The bill would only address DIC benefits granted under 38 U.S.C. § 1311; this would result in DIC benefits granted under 38 U.S.C. § 1318 remaining subject to the age 55 remarriage limitation. VA further notes that beneficiaries of survivors pension, who tend to be in a more vulnerable demographic than DIC beneficiaries, would remain ineligible due to remarriage at any age.

Finally, VA believes that section 3(b) is unclear regarding whether a surviving spouse would be required to file an application for resumption of DIC or if VA would be required to identify and conduct outreach for individuals who were in receipt of DIC under 38 U.S.C. § 1311 but were terminated due to their age at the time of a remarriage. Relatedly, while we believe the requirement to “resume” payments is intended to apply

only to individuals who were in receipt of DIC prior to their remarriage, that limitation is not among the criteria stated in section 3(b)(1) and (2) and its absence could lead to confusion or unnecessary litigation.

VA welcomes the opportunity to provide technical assistance to clarify the expansion of DIC benefits that would be granted under 38 U.S.C. § 1311.

Significant mandatory and discretionary costs are anticipated to be associated with this bill. Additional time would be needed to prepare a detailed cost estimate . Also, VA is seeking clarification on the bill's intent which could greatly affect those estimates.

H.R. 984 Commitment to Veteran Support and Outreach Act

This bill would amend 38 U.S.C. chapter 63 to authorize VA to award grants to States and Indian Tribes to carry out programs that improve outreach and assistance to Veterans and their families, inform them about any benefits and programs for which they may be eligible, and facilitate opportunities for such Veterans to receive services in connection with their VA benefits claims.

VA supports this bill, subject to the availability of appropriations. The Veterans Benefits Administration (VBA) already maintains a robust outreach program, reaching millions of Veterans and working with partners, such as County Veterans Service Officers (CVSOs) and Tribal Veterans Service Officers (TVSOs), each year through various forms of customer-focused outreach programs, communications, and activities. In addition, VBA hosts bi-annual National Association of County Veterans Service Officers Partnership meetings as part of VBA's effort to further expand collaborative outreach efforts with internal and external partners. State Departments of Veterans Affairs are also currently integrated within the VA regional office outreach framework. VBA values the partnerships it has with Veterans service organizations, to include the CVSOs and TVSOs who are affiliated with them and continues to look for opportunities to further engage with the organizations.

There would be no mandatory costs associated with this bill, but additional time would be needed to estimate discretionary costs.

H.R. 1139 Governing Unaccredited Representatives Defrauding VA Benefits Act (or the GUARD VA Benefits Act)

This bill would amend 38 U.S.C. § 5905 to reinstate a penalty for soliciting, contracting for, charging, or receiving, or attempting to solicit, contract for, charge, or receive, any fee or compensation with respect to the preparation, presentation, or prosecution of claims for VA benefits except as provided in 38 U.S.C. §§ 5904 and 1984.

VA supports this bill. H.R. 1139 would essentially reinstate language imposing criminal penalties that was removed from section 5905 in 2006. This bill would address the absence of criminal penalties in the current statutes governing the conduct of individuals

who provide assistance with claims for VA benefits. Under current law, VA's enforcement mechanisms are constrained to suspending or canceling the accreditation of an accredited individual or, for an unaccredited individual or organization, sending a warning letter requesting that they cease their illegal activities and then referring those matters to Federal or State enforcement entities for possible prosecution under other laws, such as consumer protection, elder protection, or deceptive advertising laws. This bill would create a single, national standard to serve as a general deterrent against bad actors and would allow for more meaningful enforcement against unaccredited individuals who are currently not subject to any Federal punishment for violations of VA law with respect to the preparation, presentation, or prosecution of claims before VA.

VA notes that the bill is structured so that imprisonment, which may be a penalty or part of the penalty for wrongfully withholding benefits in current section 5905, would not be a possibility for charging unauthorized fees. Omitting the possibility of imprisonment as a penalty for charging unauthorized fees may reduce the deterrent effect of the amended statute.

There are no costs associated with H.R. 1139.

H.R. 1529 Veterans' Compensation Cost-of-Living Act of 2023

This bill would provide rates for VA disability compensation, additional compensation for dependents, clothing allowance for certain disabled Veterans, and DIC for surviving spouses and children will be increased effective December 1, 2023, by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. § 401 et seq.) are increased effective December 1, 2023. In short, VA would adjust its compensation and payment rates in conformity with any necessary cost-of-living adjustment to Social Security benefits determined by the Social Security Administration. The bill would also allow VA to administratively adjust payments in the same manner to any person in receipt of or entitled to receive benefits on December 31, 1958, if the conditions warranting such payment under those laws continue. Finally, VA would be required to publish in the Federal Register the cost-of-living adjustment amounts no later than the date the Social Security Administration does. The earliest date the bill can have effect on payments to Veterans and VA beneficiaries would be January 1, 2024.

VA strongly supports this bill. Annual cost-of-living adjustments to compensation rates tangibly express the Nation's gratitude and respect for the sacrifices made by service-disabled Veterans, their surviving spouses and children. This bill would authorize VA to make cost-of-living adjustments in accordance with past legislatively authorized practice and in accordance with the established expectations of Veterans and beneficiaries.

VA estimates the cost of this bill to be \$4.4 billion in FY 2024, \$27.3 billion over 5 years, and \$59.7 billion over 10 years. However, the cost of these increases is already included in VA's baseline budget because VA assumes Congress will enact a cost-of-

living adjustment each year. Therefore, enactment of this bill would not result in additional costs, beyond what is included in VA's baseline budget.

There are no additional FTE or administrative cost requirements associated with this legislation.

H.R. 1530 Veterans Benefits Improvement Act

This bill is aimed at improving Veterans benefits in the following ways:

Section 2 of the bill would address improvements to the publication of Disability Benefits Questionnaires.

Section 3 of the bill would require VA to submit a report, within one year after the date of enactment, on the efforts of the Secretary to provide reimbursement for a Veteran's travel to a VA facility or a facility of a VA-contracted provider, regardless of whether the facility is inside or outside the United States, when such travel is incident to a scheduled compensation and pension examination.

Section 4 of the bill would establish a requirement that communications by contractors to claimants regarding the scheduling of a covered medical disability examination be contemporaneously transmitted to the person or organization appointed by a power of attorney for purposes of preparing, presenting, and prosecuting claims.

Section 5 of the bill would require VA to establish an outreach program to provide information on contact information for contractors providing covered medical disability examinations and to communicate the requirement for Veterans to provide personally identifiable information when contacted by such contractors in order to verify their identity.

Section 6 of the bill would require VA to submit a report, within one year after the date of enactment, on improving support by VA of governmental Veterans service officers, to include an assessment of the feasibility, advisability, and current technical limitations of providing them enhanced access to certain VA systems to better serve Veterans they may not have authorization to represent and an assessment as to whether VA would benefit from the establishment of an office to serve as an intergovernmental liaison between VA governmental Veterans service officers.

VA has no objection to this bill. We note, however, a potential ambiguity in section 5 as it refers to outreach concerning "[c]ontact information for contractors." It is unclear whether the bill is concerned with informing Veterans of the contractor's contact information (such as the contractors' telephone numbers) or, alternatively, with informing Veterans that VA may provide Veterans' contact information to the contractors. Clarification of the intent would be helpful.

With regard to the aspect of the report in section 6 for improving support by VA of governmental Veterans service officers addressing “the feasibility, advisability, and current technical limitations of providing [them] enhanced access to certain Department systems to better serve veterans [they] may not have authorization to represent,” note that VA is prohibited by law from providing governmental Veterans service officers with access to the files of Veterans that they do not represent. For the other report elements set for in subsection (b)(2) and (b)(3), VA maintains close coordination with all Veterans service organizations whose organizations include “governmental veterans service officers,” and has positions and programs in place to foster continued collaboration with these stakeholders. To reduce the possibility of duplication of efforts, additional clarifying information as to any perceived or identified deficiencies, or the expected outcome of any additional office or working group, may be helpful to ensure the desired analysis and results are achieved.

There are no mandatory or discretionary costs associated with this proposed legislation. Any additional requirements could be funded under existing budget authority.

H.R. 1378 Veterans’ Appeals Backlog Improvement Act

Sections 2 and 3 of this bill would require VA to: (1) establish an internship program for high-achieving students who attend accredited law schools to gain experience at the Board of Veterans’ Appeals (Board); (2) establish a nine-year competitive honors pilot program to recruit eligible law school students, recent law school graduates, and entry-level attorneys for employment with VA; (3) enable student loan repayment benefits under 5 U.S.C. § 5379 for eligible honors program students who agree to specific employment terms; (4) assign mentors and provide a rotational assignment within VA’s Office of General Counsel for honors program participants; and (5) require the Board to submit specific reports. Additionally, the bill would establish priority consideration for honors program applicants who have successfully completed the new internship program.

The Board remains focused on issuing timely appeal decisions to Veterans. To meet the increasing number of appeals being filed at the Board, VA is using various hiring authorities to hire a diverse and inclusive workforce composed of the best and brightest talent from a qualified applicant pool. Whether through direct hire, Schedule A, or other hiring authorities, the Board has been able to recruit and retain a highly competent workforce made up of Veterans Law Judges, attorneys, and professional staff. The Board currently is working toward recruiting eligible law student applicants from accredited law schools to serve as law clerks at the Board while they await bar admission results as this program proved very successful in years prior to the pandemic. Recent attorney hiring efforts have yielded more than 1,700 eligible applicants for vacant positions. These applicants include a combination of entry-level and seasoned attorneys with various legal backgrounds and experience levels. Given the high caliber of many applicants already screened and interviewed during this very successful recruitment, the Board estimates it could increase the current number of Board attorneys by as much as 25 percent this year.

VA does not support this bill. While VA supports efforts to recruit highly skilled attorneys, the programs as described in the bill would be duplicative of existing and well-established entry-level attorney hiring and temporary law clerk appointments processes. If required, the competitive honors program may negatively impact participation in and outcomes of the Board's existing law clerk program. It may also have the unintended effect of decreasing decisional output, as seasoned Board attorneys who would otherwise be drafting decisions would need to train and mentor interns and thus increase Veteran wait times for appeal decisions. Thus, VA does not recommend enactment of section 2 or section 3 in the bill. If section 3 is nonetheless included, VA recommends additional clarification for several provisions for the competitive honors program in order to achieve Congressional intent of the program. VA welcomes the opportunity to provide technical assistance regarding clarification of bill language.

Section 4 of the bill would require VA to submit a report to the Senate Committee on Veterans' Affairs and the House Committee on Veterans' Affairs on improving access to Board hearings held by picture and voice transmission. This report would require VA to provide recommendations on the feasibility and advisability of reimbursing Veterans for expenses incurred for travel to the location where the Board hearing is held and also would request other recommendations, including those from stakeholder feedback, for using alternative methods that could improve Veteran access to Board hearings. The requirements in this section would be duplicative of existing tools and requirements already included in Congressionally Mandated Reports. The Board successfully implemented the VA Tele-Hearing Modernization Act of 2020, which currently functions as a successful tool to improve access to hearings. At this time, the overwhelming majority of hearings (approximately 79 percent) have transitioned to virtual tele-hearings (held by picture and voice transmission), where Veterans are no longer required to travel to a specific hearing location. VA recommends against enactment of section 4 of the bill because it would be duplicative of existing Congressional reports, and a highly successful tool for improving hearing access already exists.

H.R. 1329 CAVC Bill

This bill would increase the maximum number of judges that may be appointed to the U.S. Court of Appeals for Veterans Claims from seven judges to nine judges.

VA has no comment on this legislation.

H.R. 1226 Wounded Warrior Access Act

This bill would require VA to establish and maintain a website or online tool, within one year of the date of enactment, through which a claimant or claimant's agent or representative could electronically request any VA records in the custody of VA. The bill also would require VA to confirm receipt of such requests within 10 days and provide the requested records within 120 days. The bill would further require that anytime a claimant logs into a VA website or online tool, such website or online tool would issue to the claimant: (1) a warning of potential predatory practices that violate 38 U.S.C. chapter 59; (2) a link to an online VA tool through which the claimant may report an individual who violates 38 U.S.C. chapter 59; (3) a link to an online VA tool through which the claimant may search for an agent, attorney, or entity that is recognized by VA for the preparation, presentation, or prosecution of VA claims; and (4) a link to a VA website or online tool that provides final disciplinary decisions for VA-recognized agents, attorneys, and entities. No additional funds would be appropriated to carry out the requirements of this bill.

VA cites serious concerns. VA appreciates the Wounded Warrior Access Act's efforts to provide electronic access to certain records. This would reduce Freedom of Information Act (FOIA) requests, Privacy Act requests, and potentially appeals. However, VA has concerns regarding the protection of sensitive information on certain documents found in the Veteran's file and how those documents would be redacted. Certain records in a Veteran's file may contain sensitive or protected information for other Veterans. Additionally, certain statements or information provided on behalf of Veterans must remain protected.

VA also has concerns about the scope of work that would be required to implement such a digital service. For example, VA anticipates that anyone performing a digital records request would need to have an identity-proofed login credential, and agents or representatives of claimants would need a mechanism to upload or otherwise provide proof of their authorization. Moreover, Privacy, Records Management and FOIA offices would need a system to collect, track, review, and respond to such requests, and usability research would be needed to ensure a proper workflow for claimants, agents, and agency staff.

VA supports the warning and link provisions, which are consistent with VA's own efforts to warn Veterans and claimants about predatory practices and connect them with accredited individuals. VA agrees that it is important to warn Veterans and claimants that there are unaccredited individuals and entities engaging in predatory practices by targeting Veterans and claimants through advertising that they are qualified to assist in the preparation of Veterans benefits claims and that are illegally charging for such services. VA also agrees it is important to increase the public's awareness of VA's national "Accredited Representatives Search Index," which provides names and contact information for VA-recognized Veterans service organizations and their representatives, as well as attorneys and agents.

VA recommends revising the language of the bill to refer to acting in violation of “subsection (a) [of section 5901] or sections 5902 through 5905 of this title” instead of referring to “this chapter.” Section 5906 of 38 U.S.C. (Availability of legal assistance at Department facilities) should be excluded because it pertains to a VA program and VA conduct.

Additional time would be needed to provide a detailed estimate of mandatory and discretionary costs associated with this bill. However, VA’s Office of Information and Technology (OIT) roughly estimates a project of this magnitude to cost at least \$1,000,000. If this legislation is passed and this project is not funded, then VA OIT would need to de-prioritize other Veteran-facing initiatives.

Conclusion

This concludes my statement. We would be happy to answer any questions you or other members of the Subcommittee may have.