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# United States Senate

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TONY McCLAIN, STAFF DIRECTOR

April 15, 2020

The Honorable Robert Wilkie  
Secretary of Veterans Affairs  
810 Vermont Ave, NW  
Washington, DC 20420

Dear Secretary Wilkie,

We write to you today about our concern that the Department of Veterans Affairs (VA) is making it more difficult for veterans to have meaningful representation and advocacy during the claims process. On February 18, 2020 VA published a proposed rule to limit representative access to veterans' electronic files in the Veterans Benefits Management System (VBMS). Then, Undersecretary for Benefits, Dr. Paul Lawrence, announced VA will end the practice of allowing veteran representatives to have a 48-hour review period before a decision is promulgated. Coupled these actions show VA is trying to limit the veterans' ability to review and course correct benefits determinations, prior to VA's final decision.

The proposed rule limits access to VBMS to only accredited attorneys, agents, or representatives. This proposal prevents paralegals, law students, or VSO support staff from accessing case files. Under existing regulations, law students, legal interns, paralegals, and VSO support staff are allowed "read-only" access to VBMS after the veteran consents. This allows non-accredited individuals to assist accredited attorneys or representatives with case work, lifting some of the burden from the attorney to sift through what could be thousands of pages of evidence. Access for paralegals and law students, under the supervision of the accredited attorney, allows the attorney to build a stronger case and provide a better outcome for the veteran. Additionally, this provides the opportunity for law students to assist veterans with their claims and gain valuable experience with the VA appeals process, while at the same time providing real time legal assistance pro bono to veterans who may not otherwise have access to legal services. Limiting access in the name of efficiency or privacy is unnecessary in a veteran-friendly system, especially when it is the veteran who grants access to their case file to these specific individuals for assistance.

Ending the 48-hour review period prevents accredited representatives, attorneys, and agents from correcting technical errors before the decision is officially promulgated, which then requires an official appeal. The practice of allowing a technical review by the accredited representative dates back to the 1950's, and it allows for a second set of eyes, friendly to the veteran and VA adjudicators alike, on their decision to ensure there are no technical errors before a final promulgation. On April 7, 2020 VA publically announced this decision was made because the Court of Appeals for Veterans Claims ruled VA had to extend this practice to all accredited representatives, attorneys, and agents. Instead of extending this clerical check to all veterans representatives, VA decided to remove this process all together. Given that Veterans on average wait 79.9 days for a benefits decision, it's unclear how removing the 48 hour review would

improve outcomes for Veterans. That announcement was unclear as to whether this would take effect immediately or at a later date. Confusion during the current COVID-19 crisis only leads to further frustration. VA states this removal will help expedite the claims process, but at what cost to the veteran? Why would VA choose efficiency over accuracy for the veteran? And why make this decision now, when VA has a key role in supporting this national emergency? This decision could lead to more costly appeals and delays for veterans and it puts the burden on the veteran to now file a formal appeal, for a slight technical correction that could have been caught by their attorney, representative or agent.

We worry VA is taking steps that could harm the equity, accuracy, and timeliness of benefits decisions. In a system that is supposed to be veteran-friendly, we ask VA to reconsider taking these steps to limit access and the ability to identify errors and make corrections to a veterans' case file in order to promote efficiency. Our veterans deserve a voice during their VA claims determination process to fix a mistake before it is final.

Sincerely,



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Jon Tester  
United States Senator



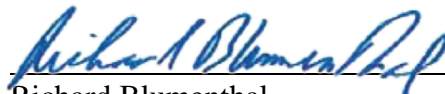
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United States Senator



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