

**STATEMENT OF
ROSCOE G. BUTLER, DEPUTY DIRECTOR OF HEALTH CARE
NATIONAL VETERANS AFFAIRS AND REHABILITATION DIVISION,
THE AMERICAN LEGION
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
ON
PENDING LEGISLATION**

SEPTEMBER 16, 2015

Chairman Isakson, Ranking Member Blumenthal, and distinguished members of the committee, On behalf of our National Commander, Dale Barnett, and the over 2 million members of The American Legion, we thank you for this opportunity to testify regarding The American Legion's positions on pending legislation before this committee. We appreciate the committee focusing on these critical issues that will affect veterans and their families.

S. 290: Increasing the Department of Veterans Affairs Accountability to Veterans Act of 2015

To amend title 38, United States Code, to improve the accountability of employees of the Department of Veterans Affairs, and for other purposes.

Reacting to the firing of Phoenix VA Healthcare System Director in November of last year, then National Commander of The American Legion Mike Helm noted:

*"This is one long-overdue step in a journey that is far from over. Unfortunately, as we all soon discovered after the story broke last April, this problem was not isolated to Phoenix. It was widespread, and we expect to see additional consequences, even criminal charges if they are warranted, for anyone who knowingly misled veterans and denied them access to medical services."*¹

The American Legion believes it is important to ensure there is accountability at all levels within VA and that the process is completely transparent. Where VA employees are found to have engaged in wrongdoing, The American Legion supports the appointment of a special prosecutor to be assigned to investigate and vigorously prosecute any VA employees engaged in fraudulent practices designed to improperly award bonuses or other financial or meritorious awards to the perpetrator.² While those in the Senior Executive Service (SES) can and should receive performance bonuses when their performance is exemplary, The American Legion believes any bonuses need to be tied clearly to quantitative and qualitative measures.³ There must be an open

¹ ["Legion: VA director's overdue firing applauded": Nov. 24, 2014](#)

² [Resolution No. 107-Aug 2014](#)

³ [Resolution No. 128-Aug 2014](#)

process for determining these awards that all stakeholders can examine to determine the propriety of the awarded bonuses.

This legislation addresses some of the concerns of The American Legion. Our organization supports increased accountability, and those employees found guilty of having committed crimes at the expense of the veterans entrusted to their care should never profit from those crimes. To receive bonuses based on manipulation and lies undercuts any trust with the veterans' community. Requiring additional transparency about SES performance outcomes is also laudable and supported by The American Legion.

While The American Legion understands the intent of over hauling the VA's performance appraisal system, The American Legion has concerns with the proposed changes. We believe there must be a system that is clear, transparent and tied to observable quantitative and qualitative goals. However, the level of specificity and the quota rationing may be too constrictive to VA's ability to manage. This should be worked out in collaboration between Congress and VA to ensure the system remains an effective management tool.

The American Legion recognizes the importance of reforming the bonus system and indeed the management culture within VA, and applauds the initial efforts by VA Secretary Robert "Bob" McDonald to begin that process, as well as the diligence of this committee to direct oversight efforts towards that task. This legislation has great intentions, and the portions related to adding transparency to the system and preventing employees from profiting at the cost of veterans is important. With further work, perhaps more of the legislation could be supported, and The American Legion looks forward to working with this committee to ensure impactful legislation is passed towards this end.

The American Legion generally supports this legislation, but believes additional work as noted above may be necessary to support the entire legislation.

S. 563: Physician Ambassadors Helping Veterans Act

To amend title 38, United States Code, to establish the Physician Ambassadors Helping Veterans program to seek to employ physicians at the Department of Veterans Affairs on a without compensation basis in practice areas and specialties with staffing shortages and long appointment waiting times

S. 563 would increase the timeliness and quality of care for veterans enrolled in the VA healthcare system. The Physicians Ambassadors Helping Veterans Act would direct the VA to use its existing authority to promptly offer privileges to physicians who volunteer to serve at least 40 hours per year at VA medical centers. This bill would eliminate the barriers for licensed physicians who are not employed by the Department of Veterans Affairs to volunteer their time and expertise for the purpose of getting veterans the medical care they need in a timely and efficient manner.

The American Legion supports this legislation.

S. 564: Veterans Hearing Aid Access and Assistance Act

To amend title 38, United States Code, to include licensed hearing aid specialists as eligible for appointment in the Veterans Health Administration of the Department of Veterans Affairs, and for other purposes

Many veterans throughout the country are experiencing long wait times and having to travel long distances for audiology appointments. The increased use of hearing aid specialists used by VA would lead to decreased wait times, provide more convenient care, and increase follow-up audiology services for several thousand enrolled veterans.

Recently, The American Legion reached out to the VA regarding wait times for audiology appointments. According to VA figures, as of July 2015, there were 12,910 new enrolled patients and 4,351 established patients who were waiting longer than 30 days for an audiology appointment. Currently, under the Veterans Choice Program any veteran waiting over 30 days is given the option to seek care in the private sector. Nevertheless, the Denver Acquisition and Logistics Center (DALC) reported that there were no backlogs in processing hearing aids for veterans. The American Legion believes VA already has the authority to address this problem through the outsourcing of care, however outsourcing care ultimately distances VA from its mission of caring for the veteran. Ultimately, VA's own resources should be built up to address these problems in-house.

The American Legion supports the hiring and utilization of hearing aid specialists to perform hearing aid testing, fitting, and dispensing services.⁴ Such additions would augment VA's capacity in-house without necessity for creating an overabundance of full audiologists. VA would be able to better manage their workload and maximize their ability to deal with the easier problems, freeing up audiologists to deal with more serious medical issues.

The American Legion supports S. 564.

S. 1450: Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act

To amend title 38, United States Code, to allow the Secretary of Veterans Affairs to modify the hours of employment of physicians and physician assistants employed on a full-time basis by the Department of Veterans Affairs

The Veterans Affairs Medical Staffing Recruitment and Retention Act would give the Veterans Health Administration (VHA) the ability to address the unbalanced work schedules that are often associated with providing emergency room health care. Since 2003, The American Legion through the "System Worth Saving Program" has been actively tracking staffing shortages at VA medical centers across the country. The American Legion's 2014 System Worth Saving report

⁴ [Resolution No. 64-Sept. 2015](#)

entitled “ Past, Present, and Future of VA Health Care” found that several VA medical centers continue to struggle to fill critical positions across many disciplines within the healthcare system.

The American Legion believes the Veterans Health Administration must continue to develop and implement staffing models for critically needed occupations.⁵

The American Legion supports S.1450.

S. 1451: Veterans’ Survivors Claims Processing Automation Act of 2015

To amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to adjudicate and pay survivor’s benefits without requiring the filing of a formal claim, and for other purposes.

Eligibility for survivors’ benefits can often be easily obtained either by evidence held by VA or through items such as a death certificate. For example, if a veteran received 100 percent service connection for 10 years prior to their death, the surviving spouse is entitled to Dependency and Indemnity Compensation (DIC). DIC benefits could also be awarded based upon a service connected condition either causing or contributing to the veteran’s death. This information could easily be extracted from a death certificate.

S. 1451 strives to reduce the burden for many grief-stricken surviving spouses. If evidence obtained by VA clearly indicates the veteran’s death was caused or contributed to by military service or a previously service connected condition, then the award should be granted. The American Legion supports VA discovering more effective and efficient methods to administer its disability benefits, provided those methods do not strip away due process from veterans.⁶ The American Legion strongly believes S. 1451 would assist in reducing the burden on surviving spouses and allow VA to adjudicate claims in a more efficient manner.

The American Legion supports S. 1451.

S. 1460: Fry Scholarship Enhancement Act of 2015

To amend title 38, United States Code, to extend the Yellow Ribbon G.I. Education Enhancement Program to cover recipients of the Marine Gunnery Sergeant John David Fry scholarship, and for other purposes.

S. 1460 would expand the Yellow Ribbon G.I. Education Enhancement Program (public-private contributions for educational assistance in addition to post-9/11 educational assistance) to the child of an individual who, on, or after September 11, 2001, dies in the line of duty while serving on active duty.

⁵ [Resolution No. 101-Sept. 2015](#)

⁶ [Resolution 28-May 2015](#)

The American Legion currently has no position on S. 1460.

S. 1693: Veterans Emergency Health Safety Net Expansion Act of 2015

A bill to expand eligibility for reimbursement for emergency medical treatment to certain veterans that were unable to receive care from the Department of Veterans Affairs in the 24-month period preceding the furnishing of such emergency treatment, and for other purposes.

Under current law, Title 38, United States Code (U.S.C.) 1725 and 1728 VA is permitted to make payment and reimbursement to a claimant for emergency treatment provided to service-connected and nonservice-connected veterans with a timely filing limit for unauthorized inpatient or outpatient care claims (two years from the date of care for service-connected veterans and 90 days for nonservice connected veterans). Several veterans have reported to The American Legion that delayed payments for emergency care treatments by the VA to non-VA providers have resulted in numerous credit issues for those veterans who received emergency care treatments.

Veterans who have not been seen at the VA medical center in 24 months have to pay out of pocket if they receive emergency medical treatment outside the VA healthcare system, and will not be reimbursed by the VA. Under this bill the burden of that cost would shift from the veteran to the VA. This legislation includes a provision that would prevent insurance companies from denying and/or limiting reimbursements to the VA for medical care rendered to veterans who have insurance on the basis that VA is not an in-network provider. According to VA, this provision is estimated to enable the VA to have the ability to collect an estimated \$98 million in 2015, or \$1.1 billion over 10 years, from insurers who would no longer be able to list VA hospitals as out-of-network⁷.

The American Legion believes VA should promptly pay non-VA providers for emergency care furnished; furthermore, VA should conduct outreach to veterans regarding the effect of delayed payments of claims for emergency medical care furnished by non-VA medical providers.⁸

The American Legion supports S. 1693.

S. 1856: Department of Veterans Affairs Equitable Employee Accountability Act of 2015

A bill to provide for suspension and removal of employees of the Department of Veterans Affairs for performance or misconduct that is a threat to public health or safety and to improve accountability of employees of the Department, and for other purposes.

⁷ KSNT.com- June 12, 2014

⁸ [Resolution No. 100: Sept. 2015](#)

This legislation attempts to address the issues of accountability within the Department of Veterans Affairs. The lack of accountability has been a consistent problem dating back long before the health care access crisis came to the forefront in Phoenix last year. Even so, when manipulation of the scheduling system was brought to light, and it was apparent that the secret wait lists were in use in at least 70 percent of VA facilities examined⁹, only one employee connected to the scandal has been fired, and for offenses unrelated to the wait time scandal.¹⁰

Secretary Bob McDonald has publically commented on the Byzantine and arduous process, noting on 60 Minutes last year that *"[I] can't punish or fire a thousand people right now, [I'm] discovering how different the Capitol is from capitalism. To fire a government manager he has to put together a case and prove it to an administrative judge....So we propose the action, the judge rules and the individual has a time to appeal. That's why we have a lot of people on administrative leave."*¹¹

This legislation proposes to make it easier to remove VA employees in certain circumstances, however in doing so may actually create *more* bureaucracy, rather than less needed to efficiently clean up the VA. It's staggering to think that VA currently does not have the authority to rapidly remove employees if:

- Their supervisor has reasonable cause to believe the employee committed a crime that could lead to imprisonment
- The employee is believed to be a threat to themselves or others
- The employee is engaging in behavior that may result in loss or damage of government property

Yet these are the provisions the legislation puts forward as criteria for expedited firing. These are provisions that should already be baseline, yet there are other actions outside immediate threat to physical health or crimes that should still lead to dismissal. Shunting a veteran to a secret wait list may not *directly* lead to physical harm, a lawyer for the employee certainly can tie up a firing with that argument, but that kind of culture that puts gaming the system above the veterans' best interests is exactly what all of the stakeholders are trying to fix.

The American Legion does not support this legislation at this time, although we recognize the intent to attempt to improve accountability. The American Legion believes we will get more accountability with a more streamlined system to remove bad actors from the system, not by adding more layers of bureaucracy and conditions.

The American Legion does not support this legislation.

⁹ [Washington Times – June 9, 2014](#)

¹⁰ [Arizona Central – December 23, 2014](#)

¹¹ [60 Minutes – November 9, 2014](#)

S. 1938: Career Ready Student Veterans Act

To amend title 38, United States Code, to improve the approval of certain programs of education for purposes of educational assistance provided by the Department of Veterans Affairs, and for other purposes.

It is important to keep in mind that there are different types of accreditation, including institutional accreditation and program accreditation. Institutional accreditation is typically done by regional and national accreditation bodies. Programmatic accreditation is for specific programs offered within an educational institution. Programs are typically accredited by specialty organizations. An example would be the American Psychological Association (APA) and the American Bar Association (ABA) which are programmatic accreditation bodies, respectively.

It is common for licensing and certification agencies to require institutional accreditation and/or program accreditation. In Virginia, for example, to be licensed as a clinical psychologist:

*The applicant shall hold a doctorate from a professional psychology program in a regionally accredited university, which was accredited by the APA within four years after the applicant graduated from the program, or shall meet the requirements of subsection B of this section.*¹²

This does not make effective use of GI Bill benefits if an individual uses the benefit to prepare for a licensed or certification occupation, but the program does not meet licensure requirements. This would include the requirement that a program be accredited by a programmatic accrediting agency.

The American Legion urges the requirement apply equally to institutions of higher education, as well as non-accredited schools. This always means the Congress should not exclude deemed approved degree programs, and ensure that State Approving Agencies (SAAs) can have adequate oversight of all institutions of higher learning.

The American Legion also believes if this task should fall as a responsibility of the SAA, the proposed legislation should incorporate how the Department of Defense (DOD) determines program approval for usage of Tuition Assistance (TA). Questions remain as to if the legislation would only cover meeting the licensure or certification standards in the respective state where the institution is located. If that is the case, it is troubling for those veterans who do not plan to practice in the state where the school is located or individuals taking distance learning courses. The legislation should make clearer who will determine the requirements for these programs in all states.

If the intent of the Congress is to add to the existing workload of the SAAs, which are already spread thin, then Congress should give great consideration and reevaluation of the existing budget of the SAAs, to include increasing such budgets to ensure the SAA's are able to take on their current workload, as well as the possibility of this new add-on. The American Legion believes

¹² [LIS Virginia Law](#)

there is validity in the underlying reason for the proposed legislation and supports S. 1938. However, we also believe there are a few items that need to be fleshed out.¹³

The American Legion supports this legislation, with some revisions, and we look forward working with the committee.

Discussion Draft: a bill to make improvements in the laws administered by the Secretary of Veterans Affairs relating to educational assistance, and for other purposes

Section by section analysis:

Sec 1. Recodification and improvement of election process for Post-9/11 Educational Assistance Program

Section 1 represents another administrative improvement to the processing of the Post 9/11 GI Bill. The American Legion is pleased to participate in and recognize ongoing efforts like this to improve the Department of Veterans Affairs' products, services and processes. The American Legion supports the Senate's efforts to streamline how VA approves initial claims for Post-9/11 GI Bill beneficiaries. Currently, claims processors must go through a time-intensive back-and-forth with potential student-veterans who accidentally revoke the wrong GI Bill benefit before they can properly enroll them in Chapter 33. This bill would allow VA to make a reasonable effort to contact the veteran to enroll them in the best education benefit that suits their needs. This section goes further in also adjusting how VA reimburses veterans eligible for the Montgomery GI Bill (Chapter 30) and who have paid into the benefit, but elect to use Chapter 33 instead. Currently, Chapter 30-eligible veterans who elect to use Chapter 33 must wait until they have finished using their benefits before the VA can repay them for their Chapter 30 contribution. Under this law, the Chapter 30 contribution would be prorated and added into living stipend payments while the veteran is enrolled in Chapter 33. The American Legion supports this section of the discussion draft proposed legislation

Sec 2. Centralized reporting of veteran enrollment by certain groups, districts, and consortiums of educational institutions

This section amends veterans' educational assistance program reporting requirements under which enrolled veterans (or eligible persons) and educational institutions must report enrollment information to the Secretary of Veterans Affairs (VA). It requires individuals and educational institutions participating in the post-Vietnam era and post-9/11 veterans' educational assistance programs to report to the Secretary such enrollment and any updates on interruption or termination of the education (thereby making the enrollment reporting requirements for the post-Vietnam and post-9/11 programs consistent with other veterans' educational programs).

Finally, it defines "educational institution" to permit the inclusion of groups, districts, or consortiums of separately accredited educational institutions located in the same state that are organized in a manner facilitating the centralized reporting of enrollments. Increasing program consistency and streamlining reporting requirements are often desirable administrative

¹³ [Resolution No. 312-Aug 2014](#)

improvements. In this case, for example, community college districts in a state that have multiple schools would be allowed to centralize their veterans' educational assistance program reporting information and submit only one report for the district as a whole rather than having to submit multiple reports for each school. The American Legion is pleased to participate in and recognize ongoing efforts like this to improve the Department of Veterans Affairs' products, services and processes. The American Legion supports this section of the discussion draft proposed legislation

Sec 3. Clarification of Assistance provided for certain programs of education

The American Legion supports measures to improve cost control in the case of a program of education at any institution of higher education (IHL) that enters into a contract or agreement with an entity to provide such a program of education to service member or veteran students using GI Bill. Some institutions of higher learning (IHL) have instituted extreme costs for certain programs as there are presently no caps in place for certain contracts between IHL's and third party providers. The American Legion agrees with the senate discussion draft legislation that cost control is needed and strongly supports this section of the discussion draft proposed legislation.

Sec 4. Provision of information regarding veteran entitlement to educational assistance

Allowing higher education institutions to access their respective student-veteran body education benefits in real time will allow for school certifying officials and institution to better provide academic and financial advising to those beneficiaries about other financial aid opportunities and programs available to them prior to the semester beginning. This section also falls in line with President Obama's 2012 Executive Order, Establishing Principles of Excellence for Education Institutions Serving Service Members, Veterans, Spouses, and Other Family members, section 2(g), which states:

“Provide educational plans for all individuals using Federal military and veterans educational benefits that detail how they will fulfill all the requirements necessary to graduate and the expected timeline of completion.”

However, without this provision of the draft legislation, it is too difficult for higher education institutions and their staff to properly advise their respective GI Bill beneficiaries in this way, as well as ensure their success in higher education.

Sec 5. Role of State Approving Agencies

While The American Legion applauds the expansion of the GI Bill applicability, we find it problematic that State Approving Agencies (SAAs) have been removed from a large portion of the approval process. SAAs focus explicitly on the GI Bill and serve to protect it, and, by extension, the veterans using it. They ensure that programs meet certain eligibility criteria, in order to see that the funds are not wasted, but are put to the best use possible. Their unique focus on how GI Bill funds are spent makes their mission distinct from all other oversight and approving bodies. Furthermore, as federally authorized arms of their respective state

governments, SAAs are in a unique position to evaluate programs that are offered in their state, given their proximity. This arrangement also maintains the federalism required by the Constitution.

Therefore, The American Legion supports the SAAs, and believes that they should have a role in reviewing, evaluating, and approving all educational and training programs for GI Bill use. While some may argue that the work that the SAAs do is redundant to the work of accrediting bodies, The American Legion believes that SAAs approval is, in fact, unique. This is because the charge of the SAAs is to specifically focus on protecting GI Bill funds. While traditional accreditation provided by Department of Education-recognized accrediting bodies does a significant portion of work toward ensuring quality programs, SAA approval should work in tandem with that accreditation, rather than the stark division that is represented in the current statute.

However, under PL 111-377, SAAs lack the statutory authority to inspect many questionable programs that have sprung up since the passage of the Post 9/11 GI Bill at not-for-profit institutions. Given that the original mandate of the SAAs was to protect GI Bill funds from being squandered in unscrupulous programs, it seems reasonable that SAAs should be allowed to inspect all suspicious programs, even if they are housed in not-for-profit institutions. As such, The American Legion supports the portion of the legislative proposal submitted by NASAA that would statutorily make SAAs the primary approving body for all programs approved for GI Bill use. Programs may still be deemed approved, but at the discretion of the SAAs, not the VA secretary.

As the author of the original G.I. Bill and one of the biggest driving forces behind the creation and implementation of the Post 9-11 G.I. Bill, The American Legion has long been at the forefront of supporting and developing legislation that improves higher education benefits for service members.¹⁴ This legislation helps to address some of the legitimate concerns about how some aspects of higher education funding for veterans are administered, and will improve the higher education process for all veterans.

The American Legion supports this draft legislation.

Conclusion

As always, The American Legion thanks this committee for the opportunity to explain the position of the over 2 million veteran members of this organization. For additional information regarding this testimony, please contact Mr. Warren J. Goldstein at The American Legion's Legislative Division at (202) 861-2700 or wgoldstein@legion.org.

¹⁴ [Resolution No. 312: Ensuring the Quality of Servicemember and Veteran Students' Education at Institutions of Higher Learning – AUG 2014](#)