



National Service & Legislative Headquarters  
807 Maine Avenue SW  
Washington, DC 20024-2410  
tel 202-554-3501  
fax 202-554-3581

**STATEMENT OF  
JIM MARSZALEK  
NATIONAL SERVICE DIRECTOR**

**COMMITTEE ON VETERANS' AFFAIRS  
UNITED STATES SENATE  
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**FIXING AND STRENGTHING VA'S CAREGIVER SUPPORT PROGRAM**

Chairman Tester, Ranking Member Moran, and members of the Committee:

Thank you for inviting DAV (Disabled American Veterans) to testify about the Department of Veterans Affairs (VA) Caregiver Support Program (CSP) – specifically the Program of Comprehensive Assistance for Family Caregivers (PCAFC) – the challenges it faces and how best to move the program forward to properly support seriously injured, ill and disabled veterans and their family caregivers.

As you know, DAV is a non-profit veterans service organization (VSO) comprised of more than one million wartime service-disabled veterans that is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity. Tens of thousands of our members and Auxiliary are themselves caregivers, many of them in the PCAFC. These men and women have selflessly dedicated years or decades to provide loving care for a seriously disabled veteran family member who would otherwise have required institutional or non-institutional care from VA. These unsung heroes deserve our thanks and our full support, and we appreciate the opportunity to share DAV's perspectives and recommendations with the Committee.

**BACKGROUND**

Mr. Chairman, May 5, 2010, was a historic day. Following unanimous congressional approval of the *Caregivers and Veterans Omnibus Health Services Act of 2010* (P.L. 111-163), President Obama signed this landmark legislation that formally recognized the critical role family caregivers play in keeping our promise to America's veterans, and for the first time, provided meaningful support directly to family caregivers. The new law created a comprehensive program (PCAFC) to support these caregivers through the payment of a stipend, provision of health insurance, guaranteed respite care, and mental health services, along with training and counseling to support them. The law also created a program that offered a lower level of support, known as the Program of General Caregiver Support Services (PGCSS), offering family caregivers ineligible for PCAFC with access to training, coaching, educational materials, and peer support.

In July 2011, the first approved family caregivers entered the PCAFC; by the end of the year more than 2,000 family caregivers were enrolled and by 2014, there were over 20,000 deserving family caregivers receiving desperately needed support. However, the law only provided eligibility for the PCAFC to veterans whose injuries had occurred on or after September 11, 2001, leaving behind tens of thousands of veterans from World War II, the Korean, Vietnam, and Persian Gulf War eras. In addition, the regulations promulgated by VA left out thousands of veterans whose severe disabilities were the result of illnesses, rather than injuries.

In 2016, DAV launched The Unsung Heroes Initiative, an advocacy and awareness campaign to change the law to include veterans of all eras and veterans whose disabilities were caused by illnesses. The initiative helped generate significant new media coverage of the problems and additional congressional focus. Together with our VSO partners, we delivered a national petition to Congress signed by hundreds of thousands of supportive Americans, calling for comprehensive caregiver benefits for severely disabled veterans of all eras.

## **CAREGIVER EXPANSION**

With a growing consensus on the need for change, and strong bipartisan, bicameral congressional support, Congress included provisions in the VA MISSION Act of 2018 (P.L. 115-182) to expand PCAFC eligibility to veterans from all eras in a two-part phase-in. Unfortunately, VA failed to deliver the required new caregiver IT system (Caregiver Records Management Application, or “CARMA”) on-time, and as a result the first phase of the expansion – covering WWII, Korean and Vietnam War veterans—was delayed until October 1, 2020, a year later than mandated by Congress. Consequently, the second phase (post-Vietnam thru 9/11) was also delayed by a year and is now scheduled to begin October 1, 2022.

Concurrent with expansion of the program to pre-9/11 veterans, VA proposed and promulgated new PCAFC regulations to address persistent problems with the program’s eligibility and reassessment rules. In April 2017, then-VA Secretary Shulkin had suspended removals from PCAFC based on VA reassessments due to concerns about inconsistency, transparency, and equity of the decisions. After an internal review of the program, the reassessments were restarted in September 2017, but it soon became apparent that the problems had not been resolved. In December 2018, then-VA Secretary Wilkie also temporarily suspended removals from the PCAFC citing the same recurring issues with reassessments and removals.

## **NEW CAREGIVER REGULATIONS**

In an effort to address these recurring problems, VA began working on changes to the PCAFC regulations, formally proposing new eligibility rules in March 2020, which following a short public comment period, were adopted on July 31, 2020, and became effective on October 1, 2020, the same day that the first phase of the expansion took place. In addition to providing details necessary to implement the mandated expansion

of eligibility to pre-9/11 veterans, the legislation made some significant changes to key definitions impacting eligibility.

The new regulation changed the definition of “serious injury” to cover “any service-connected disability” that was rated at 70% or more, or that when combined with other service-connected disabilities resulted in a combined rating of 70% or more. This definition had two major consequences: first, veterans whose disabilities resulted from serious illnesses would now have the same eligibility as those with serious injuries. Second, veterans rated less than 70%, including thousands currently receiving caregiver benefits, would no longer be eligible for the PCAFC. In our formal comments on the proposed rule submitted to the Federal Register in May 2020, DAV expressed support for expanding this definition to cover illnesses; however, we cautioned that the new 70% requirement could negatively impact thousands of family caregivers whose needs were moderate to severe.

Another major change was the new definition of “inability to perform an activity of daily living (ADL),” which now required a veteran to need assistance “each time” they completed an ADL. In our Federal Register comments, DAV expressed serious concerns about whether this new “each time” standard could be consistently assessed and applied, and whether it would be an equitable standard for veterans across the full spectrum of disabilities. We questioned whether it was logical or equitable for VA to assess a veteran who could complete an ADL one time each week or month as not requiring assistance “each time” they perform that ADL.

The new “each time” ADL standard became even more important because the new regulation changed the requirements for caregivers to receive the highest level of stipend support. Under the new rule, a veteran must have at least three qualifying ADLs meeting the “each time” standard to be eligible for the higher tier of stipend support. As I will describe below, and I’m certain you have heard and will hear again today from other witnesses, these new rules are resulting in far too many veterans being found ineligible for the PCAFC, and thousands have already been notified they will soon be removed from the program.

## **PERSISTANT ROBLEMS WITH THE CAREGIVER PROGRAM**

Since October 1, 2021, well over 125,000 veterans have applied to the PCAFC, mostly pre-9/11 veterans who had been waiting more than a decade to finally become eligible. However, many of the same problems that caused two different VA Secretaries to halt reassessments and removals, continue to plague the caregiver program under the new regulations. The latest statistics received from the Veterans Health Administration (VHA) indicated that out of approximately 116,000 applications since the phase one expansion began in October 2021 through January 2022, only about 16,000 were approved; that’s greater than an 85% denial rate.

More troubling, the CSP has been unable or unwilling to provide complete and meaningful details regarding the categories, reasons, and bases of these denials.

Similarly, despite completing more than half of all the legacy reassessments for veterans and their caregivers in the program before the new regulations took effect, the CSP has yet to provide VSOs and other stakeholders with relevant data on how many will be removed or reduced to a lower tier, and a breakdown of the reasons for these changes. Considering the time, resources and delays involved in developing and deploying the new CARMA IT system, it would be concerning if VHA was unable to retrieve and share such data.

As discussed above, perhaps the most significant concerns about the PCAFC eligibility process is the near total lack of transparency for veterans, caregivers, and their authorized representatives regarding how and why VHA is making its decisions. The notification letters disseminated to date have offered no details of the evidence or findings that were used in making eligibility decisions. Typically, the notification letters failed to cite evidence or findings to justify the inclusion or exclusion of certain ADLs in the decision. We understand that the CSP is currently developing new models for decision notification letters that will comply with the AMA's requirement under 38 USC 5104 to provide specific categories of information, often referred to as an "8-point letter." We look forward to seeing this requirement fully and faithfully implemented as intended by Congress in the near future.

Pursuant to the problems discussed above, DAV has serious concerns whether the "each time" standard in the regulation could ever be consistently and equitably assessed and applied. In conversations with the CSP, we have raised the question of whether a veteran who is able to complete an ADL only one time in a month would fail to meet the "each time" standard; we were told that it is not the intention of VHA to 'penalize a veteran for a moment of independence.' We agree with that intention; however, we are unable to verify if that statement is accurate until we can review the assessments of veterans we represent. Despite repeated requests, we have yet to be provided explanations of how the CSP uses and scores its current assessment tools. Without such basic transparency, it is impossible to determine whether the new eligibility regulations are being properly administered, or whether they are faithfully fulfilling the intention of the law.

The same problems exist for reassessments. Thousands of legacy veterans and caregivers have undergone reassessments of their eligibility over the past year, and we are increasingly hearing from many who are unhappy about both the process and the outcomes. VHA's notifications, whether verbal or in writing, provide little or no meaningful explanation for why a reassessment resulted in a reduction or removal of a caregiver from PCAFC. We have heard anecdotal stories of reassessments, both virtual and telephone conversations, that were aggressive or hostile, and within days resulted in reductions or removals. While VA had projected that thousands of veterans would be removed from the PCAFC under the new eligibility regulations, without full and comprehensive data from VHA, it is impossible to determine if the reports we have heard represent merely anecdotal information or broader systemic problems. Moreover, complete statistical data is necessary to determine the accuracy of VHA's projection that 98% of former tier one caregivers would be removed from the program based on

the new eligibility regulations, but only 2% of former tier two and three caregivers. We urge the Committee to request and make public all such data.

## **THE *BEAUDETTE* DECISION**

Mr. Chairman, in addition to new regulations, another major change to the PCAFC occurred last year when the Court of Appeals for Veterans Claims (CAVC) issued a ruling in the *Beaudette v. McDonough* case on April 19, 2021. The Court held that VA's interpretation that the original caregiver law (P.L. 109-461) precluded veterans from appealing unfavorable decisions to the Board of Veterans' Appeals ("the Board")—as is allowed for all other VA benefits under the Veterans Judicial Review Act (P.L. 100-687)—was incorrect. The CAVC held that not only would Mr. Beaudette be allowed the right to appeal his removal from the caregiver program to the Board, but that VA's error was so grave that VA would be required to notify every veteran and caregiver who had ever applied for the caregiver program and received a decision of their new options to appeal to the Board or utilize the appellate provisions of the 'Veterans Appeals Improvement and Modernization Act of 2017 (P.L. 115-55), commonly referred to as the "AMA."

On August 5, 2021, VA formally agreed to implement the *Beaudette* decision, even though the Administration would later file an appeal to overturn that decision with the U.S. Court of Appeals for the Federal Circuit in December 2021. However, more than seven months after agreeing to implement *Beaudette*, VA has yet to fully establish and fully operationalize new appellate processes. While veterans and caregivers have already filed almost a thousand appeals to the Board and an unknown number of AMA supplemental claims and higher level reviews with VHA, there is no process for veterans or their authorized representatives to confirm if their appeals have been received, whether power-of-attorney authorizations have been received and recognized, or when the next steps on those appeals will take place, including requests for hearings and informal conferences.

## **THREE VETERANS AND THEIR FAMILY CAREGIVERS**

Mr. Chairman, to better illustrate the problems we have observed with the new PCAFC regulations, below are three stories from veterans and their family caregivers, each of whom has given DAV permission share their recent experiences.

### **Brad and Donna Barton**

In 1968, during the battle of Khe Sanh, a Marine named Brad Barton was hit by shrapnel from a North Vietnamese mortar round, which severed his spinal cord and instantly paralyzed and confined him to a wheelchair for the rest of his life. Like others who suffered such catastrophic injuries, Brad required tremendous support in his recovery and rehabilitation. Brad was lucky to meet and later marry Donna, who has been by his side supporting him since 1974. While Brad worked hard throughout his life to develop as much independence as possible, he relies increasingly on Donna.

Although disappointed in 2010 when the new VA caregiver program excluded pre-9/11 veterans, Brad and Donna were excited when the *VA MISSION Act of 2018* authorized the program to expand to include Vietnam era veterans. After a further unnecessary year-long delay caused by VA's failure to field the new CARMA IT system on time, Brad and Donna were among the first to apply for the PCAFC when the first phase of the expansion took place in October 2021. Within a couple months, Brad and Donna received notification from VHA that she was approved into the PCAFC. However, according to the VHA notification, Brad was found to only have two ADLs that qualified under the new regulations; VHA did not qualify him for the mobility ADL, which would have been the third ADL necessary for the higher tier of the program. Instead, Donna was admitted into the lower tier of the program.

Brad and Donna are at a loss to understand how his mobility challenges did not meet the new ADL standard, since Brad needs assistance every day maneuvering his environment, whether transferring from his bed to his wheelchair or to another chair or in some other way. Neither the letter notifying them of the decision nor the summary of the assessment he was able to obtain provided any explanation of why he did not qualify for the mobility ADL. Brad requested but was unable to get a copy of the complete assessment to understand VHA's rationale nor to obtain all the other evidence used by VHA to make this decision. He filed two clinical appeals with VHA as allowed under the new regulations (pre-*Beaudette*), both of which were unsuccessful and neither of which provided any additional explanation. Following the CAVC ruling in the *Beaudette* case, Brad asked DAV to represent him in filing a new appeal allowed by the CAVC decision, and DAV subsequently filed a higher level review with VA and requested an informal conference. To date, we have heard nothing further from VHA on when, how or who will conduct the higher level review. Furthermore, we have not been able to obtain the evidence used by VHA – a basic right under the Veterans Judicial Review Act. Brad, like thousands of others, is once again left waiting for support he and his family caregiver need.

### **Dennis and Donna Joyner**

In the summer of 1969, just 32 days after arriving in Vietnam, 20-year old Dennis Joyner was on patrol in the Mekong Delta with his Army unit when he was catastrophically wounded by a landmine explosion that resulted in the amputation of both of his legs above the knees and his left arm below the elbow. Dennis almost died right there on the battlefield, but thanks to heroic actions by his fellow soldiers, he survived. After numerous surgeries and months of recovery, with indispensable support from the VA and his family, he was slowly able to begin building a new and meaningful life. In 1981, Dennis married Donna, and they have been together ever since. Donna knew she would be taking on a permanent role as caregiver and eventually gave up her own job to care for Dennis full time. As Dennis and Donna enter their twilight years, he requires more and more support, even for activities that he was able to do on his own in his younger years.

Like Brad and others, Dennis has waited and worked for more than a decade to get Congress to expand the PCAFC to seriously disabled veterans of all eras. After waiting an additional year due to VA's IT failure, Dennis and Donna woke up early on October 1<sup>st</sup> of 2020 to apply for the caregiver benefits she so richly deserved. Within weeks, they had begun the interview and assessment process, and within a couple of months, he was found eligible and she was admitted to the program at the higher tier. Both were thrilled to finally receive the same support as post-9/11 veterans already in the program, and relieved to know that as they continued to age, VA would be giving Donna its maximum support to enable them both to continue living at home for as long as possible.

A couple of months ago, almost exactly one year from the date Dennis and Donna began to receive full caregiver benefits, the CSP initiated a "reassessment" of his condition and her caregiving. After what they found to be an aggressive interview and follow up by CSP staff, Dennis and Donna were notified that she was being downgraded to the lower tier of the PCAFC because VA had determined that Dennis required less caregiver support. No specific explanation or additional information was provided, other than links to forms explaining how they could appeal this decision under the new *Beaudette* appeals regime. For Dennis and Donna, it was unfathomable that VA could have determined he needed less support since his injuries have not and will never improve, and the only difference was that they were both a year older. Dennis asked DAV to represent him in his appeal and we have requested a hearing on the proposed reduction in caregiver benefits. Like others in the same situation, neither Dennis nor DAV, his authorized representative, have been permitted access to the evidence and assessments used to make this decision.

### **Dave and Yvonne Riley**

Dave Riley served both in the Army and in the Coast Guard, where he became an elite helicopter rescue swimmer. While on active duty in 1997 at the Coast Guard Aviation Training Center in Mobile, Alabama, Dave contracted a rare bacterial infection that quickly began destroying his organs and limbs, threatening his life. While in a medically-induced coma, his wife Yvonne had to make the gut-wrenching decision to allow his doctors to amputate both his legs below the knees and both his arms below the elbows in an attempt to save his life. Dave did survive but his life was forever changed. He was, however, blessed to have a wife who committed to care for him, to allow him to live as fulfilling a life as they could build together. From his return home and for the next 25 years, Yvonne has been the person who takes care of him: from attaching his four prosthetic limbs in the morning, to meeting his basic needs throughout the day.

With the love and daily support of his wife, Dave has been able to raise a family and have a successful life. But he realizes that none of it would have been possible without Yvonne. That's why Dave was dedicated to supporting DAV's Unsung Heroes Initiative, and why he traveled to Capitol Hill numerous times over the years to advocate for expanding the caregiver program to veterans of all eras, and to include those disabled by illnesses. Dave knows that the challenges that he and Yvonne face today will only

get harder as they grow older. Dave has been waiting for years for Yvonne to get the recognition and support she needs and deserves, and they are both anxiously waiting for VA to implement the second phase of the PCAFC expansion this October, without any further delays.

## **DAV RECOMMENDATIONS**

Mr. Chairman, for Brad, Dennis and Dave, the caregiver program is not just about meeting their needs, it is also about providing the honor, respect, and tangible support that Donna, Donna, and Yvonne—and many other caregivers—have earned and deserve. The expansion of the PCAFC to veterans of all eras, and the inclusion of severe disabilities resulting from illnesses, are both overdue changes that will benefit tens of thousands of veterans and caregivers for decades to come. The support provided by the PCAFC has been a lifeline for so many, and the dedicated staff of the Caregiver Support Program deserve great credit and thanks for helping improve so many lives. However, the new regulations adopted in 2020 have not fixed longstanding problems with the eligibility and reassessment process, and VA has failed to implement the new Court-ordered appeals process. VA, Congress, VSOs, and other key stakeholders must work together to improve the eligibility, reassessment, and appeals processes. We must develop a consensus for the best path forward, and then modify the statute, regulations, and administrative processes so that VA prioritizes getting veterans and caregivers into, not out of the caregiver program. To that end, DAV offers the following recommendations.

### **1. VA must complete the phase two expansion of the PCAFC to all eras of veterans on October 1, 2022, as scheduled without any further delays.**

After already waiting a decade for the expansion of eligibility to all eras, and then an additional year due to VA's IT failure, it would be unconscionable to force severely disabled veterans and their caregivers to continue waiting. Congress must take every action necessary, including providing additional resources to the CSP if required, to ensure that phase two of the caregiver expansion takes place as currently scheduled on October 1, 2022.

### **2. VA must prioritize the processing of PCAFC applications and appeals, not reassessments, reductions, or removals.**

The primary focus of VA now must be to admit veterans into the caregiver program or to elevate them into a higher tier of assistance, not to conduct reassessments that would remove or reduce caregivers into a lower tier unless there is reason to believe that removal or reduction would be in the veteran's best interest. This is particularly true for those newly-approved veterans and caregivers who became eligible with the phase one expansion. It is hard to understand why the CSP, which is overwhelmed with work from a higher-than-expected number of applications, as well as new appeals work due to the *Beaudette* decision, would divert resources to conduct reassessments leading to removals and reductions. The CSP has indicated



its central ethos is now focused on “getting to yes,” the prioritization of its time and resources should be reordered to reflect that goal.

**3. VA should not require annual reassessments of a veteran’s qualifying ADLs if they are based on disabilities unlikely to improve.**

While the statute requires VA to “...monitor the well-being of each eligible veteran receiving personal care services under the program...” [38 USC 1720G(a)(9)(A)], it does not mandate an annual reassessment. Furthermore, even though the new regulations call for annual reassessments, they also allow that, “Reassessments may occur on a less than annual basis if a determination is made and documented by VA that an annual reassessment is unnecessary.” [38 CFR 71.30]

We understand and agree with the program’s interest in regularly checking and monitoring the needs, health, and well-being of all caregivers; that is a strength of the program. However, VHA should take into consideration whether the underlying conditions for a qualifying ADL are likely to improve in determining when to reassess a veteran’s need for caregiver assistance, similar to how the Veterans Benefits Administration (VBA) administers regulations related to routine future disability compensation reexaminations. [38 CFR 3.327]

The optimal frequency of reassessing a severely disabled veteran’s need for caregiver support depends on the type of injury, illness, and disability, as well as age and other factors. For example, a 60-year old veteran in the PCAFC who is paralyzed or missing multiple limbs is extremely unlikely to have less need for caregiver support one year after the initial assessment; whereas a young and recently-disabled veteran may not yet have reached their full potential for recovery, rehabilitation, and independence.

**4. The Administration should withdraw its appeal of the *Beaudette* decision and immediately and fully implement it and all AMA requirements.**

As discussed above, the CAVC in *Beaudette* ruled that VA must provide every veteran and caregiver who received a decision since inception of the PCAFC in 2011 with the right to appeal any unfavorable decision to the Board of Veterans’ Appeals, along with the right to choose AMA options and receive full due process rights contained in the Veterans Judicial Review Act (VJRA). Notwithstanding VA’s settlement in the *Beaudette* case, its acceptance and implementation of the class action ruling by the CAVC, and the preliminary actions taken to establish new appellate procedures for the CSP, the Administration last December appealed the *Beaudette* decision to the Court of Appeals for the Federal Circuit.

We believe that Board and CAVC oversight would help address the systemic problems in providing consistent, equitable and transparent decisions. Regardless of what the language of the original statute, or the intent of some or all of its authors, allowing VA to provide only a “clinical appeals” process has been and would

continue preventing too many veterans from receiving caregiver benefits and therefore should be rejected. VA has already conceded in the *Beaudette* case that its caregiver benefits are “benefits” within the scope of the VJRA, and thus should have all VJRA due process rights. Moreover, the lack of confidence in the process by veterans and caregivers undermines the integrity of the law and the program, which judicial review can bolster.

**5. Congress should enact legislation to separate PCAFC eligibility determinations for veterans from eligibility determinations for family caregivers; and require VBA to make veterans’ eligibility decisions while continuing to have VHA make caregiver eligibility decisions.**

To improve accuracy and consistency of PCAFC eligibility decisions, we recommend separating the determination of a veteran’s eligibility for PCAFC from that of their designated family caregiver. For veterans applying to the PCAFC, the determination of their eligibility is based on specific criteria in the regulations, as applied to clinical and other relevant evidence assembled by VHA. In most respects, the adjudication process for determining eligibility for PCAFC benefits is not materially different than what VBA uses for making disability compensation determinations, particularly when assigning rating levels. For example, in the disability claims process, a VBA rating specialist reviews primarily clinical evidence and medical opinions, and then adjudicates based on how it aligns with the appropriate regulatory standards. Now that caregiver decisions must contain the same elements as VBA claims notifications, and veterans must be provided the same AMA and VJRA rights as all other benefit claimants, it makes even more sense to use VBA’s established experience and expertise to adjudicate veteran eligibility for the PCAFC.

Under this concept, the VHA CSP would continue to have responsibility for all other aspects of the program’s administration as it does today, including determining caregiver eligibility; providing caregiver education, training, and counseling support; delivering and coordinating all PCAFC benefits; conducting assessments, reassessments and making “best interest” determinations; and overseeing and making recommendations for how to better achieve the purposes of the program. While clinical assessments, medical opinions and other relevant evidence would continue to be assembled by VHA, it would be forwarded to VBA to adjudicate a veteran’s eligibility for the PCAFC based on the existing law and regulations.

We recognize that this change would increase the workload of VBA, which is already facing a rising number of benefit claims. However, the work required to adjudicate veterans’ eligibility for PCAFC benefits would be more easily accomplished inside VBA where similar work, processes and IT infrastructure already exists, rather than in VHA, where it would be necessary to re-create a parallel level of expertise and infrastructure.

**6. Congress or VA should replace the “each time” standard for qualifying ADLs with a more realistic, measurable, and equitable standard.**

As discussed above, the new regulatory standard that a veteran must require assistance “each time” they complete an ADL has proven unworkable. Contrary to the plain meaning of the phrase “each time,” VHA has openly stated that if a veteran completes an ADL one time in a week or month, that ADL is not disqualified from consideration on that basis alone. As such, the “each time” standard is not being strictly enforced, raising questions about whether PCAFC assessments and eligibility determinations are arbitrary.

On the other hand, if a literal “each time” standard was strictly applied, it would mean that a veteran who could not complete each of the seven ADLs without assistance 99 of 100 times a week, but who could muster the physical energy and mental acuity to complete each ADL one time a week, would not even qualify for the lower tier of the PCAFC. DAV had warned during consideration of the new caregiver regulation that establishing a new ADL standard without first determining if it can be objectively, consistently, and equitably assessed and administered would lead to problems, as have clearly manifested.

**7. VHA must provide full transparency for all assessment tools, questionnaires and methodologies used to make PCAFC decisions, and must provide veterans and their representatives full access to all evidence, information and deliberations used to make eligibility decisions.**

Despite repeated requests over the past two years, VHA has not provided transparency of the assessment tools, questionnaires and methodologies used to make eligibility determinations for the PCAFC. Preventing veterans and their advocates from understanding how caregiver eligibility decisions are made does not benefit veterans, caregivers or ultimately, VHA itself.

Moreover, now that the CAVC has ruled, and VA has agreed to accept the *Beaudette* ruling (notwithstanding the Administration’s subsequent appeal of that ruling), there is no reason for VHA to prevent veterans and their authorized representatives from having full access to all evidence, information and deliberations related to their decisions. The fact that veterans and caregivers now have a right to file an appeal with the Board or through additional AMA options, requires full access to all evidence used in making the decisions being appealed. As such, the Board of Veterans’ Appeals would require VHA to present all evidence—including clinical evidence, assessments, and opinions during consideration an appeal; and the Board would then make all such evidence fully available to veteran appellants and their authorized representatives. VHA’s continued failure to provide such access in contravention of accepted AMA and VJRA principles serves only to delay and deny veterans their due process rights.

**8. Congress must require VA to regularly publish all relevant data on PCAFC applications, approvals, denials, admissions, reassessments, and appeals – including details on the specific reasons for each decision.**

Just as individual veterans must have full access to all the facts and evidence related to their caregiver claims and appeals, VA must also make fully and openly available all the program data and statistics to Congress, veteran stakeholders, and the public. Since the phase one expansion of the PCAFC, the CSP has only intermittently provided meaningful data requested by Congress and VSOs. Such information is essential for stakeholders to assess whether the PCAFC is operating as Congress intended and as the law and regulations require.

Further, without complete and timely data, it is impossible to determine if the new caregiver regulations promulgated in 2020 are achieving the goals identified by VA during rulemaking. As discussed above, until VHA releases detailed information on the number of legacy veterans and caregivers removed from the program due to new eligibility regulations, Congress cannot determine whether the regulation is working as VA intended, or whether Congress is satisfied with the outcome. VHA must provide the same level of transparency for caregiver benefits that VBA provides for benefit claims, which includes regular reporting, such as its weekly “Monday morning” workload reports.

Mr. Chairman, VA’s Caregiver Support Program, both the comprehensive (PCAFC) and the general (PGCSS) programs, provide much-needed and deserved assistance to severely disabled veterans and their family caregivers. For those admitted into these programs, this support is beneficial and life-changing, and veteran and caregiver satisfaction is very high. Unfortunately, the eligibility, reassessment and appeals processes are not and have not been functioning properly from the beginning of the program. We urge the Committee to continue aggressive oversight of VA’s caregiver program, carefully consider the recommendations that DAV and our colleagues have proposed, and work together with all interested stakeholders to fix the identified problems and strengthen this invaluable program.

That concludes my testimony, and I would be happy to answer any questions you or members of the Committee may have.