STATEMENT FOR THE RECORD

PARALYZED VETERANS OF AMERICA

FOR THE

SENATE COMMITTEE ON VETERANS' AFFAIRS

CONCERNING

PENDING LEGISLATION

MAY 13, 2015

Chairman Isakson, Ranking Member Blumenthal, and members of the Committee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to submit our views on pending legislation before the committee. We appreciate the Committee focusing on these critical issues that will affect veterans and their families. We will also limit our comments on the Department of Defense (DOD) proposals to those issues that are governed by title 38 U.S.C.

S. 270, the "Charlie Morgan Military Spouses Equal Treatment Act of 2015"

PVA does not have an official position on this legislation. However, we believe that VA regulations should be consistent with current federal law and how the larger federal government handles this issue.

S. 602, the "GI Bill Fairness Act of 2015"

PVA supports S. 602, the "GI Bill Fairness Act of 2015." This legislation would include time spent receiving medical care from the Department of Defense as active duty time for the purpose of eligibility for Post-9/11 GI Bill. We have no doubt that this time should be considered active duty for purposes of eligibility for the Post-9/11 GI Bill. We also appreciate the fact that this legislation would be retroactive to the date of the enactment of the Post-9/11 GI Bill.

S. 627

PVA supports S. 627 to revoke bonuses paid to employees involved in electronic wait list manipulations. Our only caution is to ensure that due process is afforded to any employees identified in the Inspector General (IG) report. These employees violated the public trust and deserve appropriate discipline which may include the loss bonuses; however, they must be afforded the protections that federal service has provided.

S. 681, the "Blue Water Navy Vietnam Veterans Act of 2015"

PVA supports S. 681, the "Blue Water Navy Vietnam Veterans Act of 2015," which would amend title 38 and expand the presumption for service connection related to the exposure of herbicides containing dioxin, including Agent Orange. As more information becomes available about these types of exposures, it will be imperative for Congress to take appropriate steps to ensure that these men receive just consideration for health care and benefits eligibility.

Military Compensation and Retirement Modernization Commission Proposals

PVA generally supports the proposals identified by the Military Compensation and Retirement Commission as they apply to title 38 U.S.C. However, we have strong objections to Section 1108. The Post-9/11 educational benefit is earned by a servicemember after serving the prescribed length of service. In an effort to retain high quality mid-grade servicemembers, the program included the ability to transfer the benefits to family members. The only change this section offers is to reduce the earned benefit by denying the Basic Housing Allowance (BHA) to family members to whom GI

Bill benefits have been transferred. PVA believes the only reason for this change is to save money. We are seriously disappointed that by this effort to force our military members and veterans to pay for the cost savings through the reduction of their "earned" benefits. This section is wholly unacceptable and should not be part of any Congressional action.

Department of Defense Legislative Proposals

As previously stated, PVA does not generally involve itself in matters governed by DOD. However, PVA generally supports the Department of Defense legislative proposals as they apply to title 38 U.S.C. The bulk of these proposals correct provisions of public law to more appropriately treat Reserve and National Guard members when they are called to active duty, either involuntarily or for medical purposes.

PVA concurs with Section 545. While there are those Reserve and National Guard members who could possibly benefit from the TAP program, this was not the purpose of TAP and should not be applied to active duty for training status.

Regarding Section 1041 that eliminates the Federal Advisory Board for Radiation Dose Reconstruction Program, DOD indicates the Board has achieved its objectives. Too often we find Federal Agencies will claim something is no longer needed simply to save money. If in fact the Board's work has been accomplished, then PVA sees no issue with the elimination of the Board. However, we would encourage the Committee scrutinize this issue carefully and not simply take DOD's word for it.

The "21st Century Veterans Benefits Delivery Act"

PVA generally supports the provisions of the draft bill, the "21st Century Veterans Benefits Delivery Act." Under Title I, PVA supports Section 101 that will prevent DOD from allowing TAP to be conducted entirely on-line. While improvements to the eBenefits Internet website will be valuable, we see too many instances of organizations moving more and more content and actions to the impersonal internet. The lack of face-to-face interaction that we find with the internet can significantly reduce the efficacy

of services provided during a TAP program by eliminating the ability of the TAP instructor to identify body language that may indicate a lack of understanding or comprehension on the part of a soon to be discharged servicemember. In addition, individuals may be less likely to engage or ask questions when all content or training are on-line. Ensuring some level of personal interaction will benefit the veteran and make the transition to civilian life easier.

PVA welcomes the provisions of Section 102 which will better explain the advantages for filing an appeal and see it as valid. However, we believe this issue is already being addressed in the revision of the Simplified Notification Letters (SNL) and we are heavily involved in this ongoing project. PVA supports Section 103 that will provide the opportunity for a veteran to request and be granted an in-person hearing before the Board of Veterans Appeals. While PVA strongly supports the use of video hearings and encourages those veterans served by our service officers to seek a video hearing, veterans that may feel uncomfortable with the technology should be allowed to seek an in-person hearing. We are glad to see that this legislation would require the Board to comply with this request.

Under Title II, PVA supports the intent of Section 201 that will assess the consistency of decisions at a Regional Office (RO). Too often we see wide disparities between different RO's and how they treat a disability claim. The identification of Best Practices, if implemented by the Secretary and the Regional Offices, may better provide for veterans and remove the "luck of the draw" that is found today. But we caution that trying to have the Comptroller General audit what is an individual human assessment is unlikely to produce a valid outcome. While there may be the ability to determine some trends, only in the area of gross differences in opinions will there be any significant basis for evaluation.

In addition, the training identified in Section 202 and the analysis of communication required by Section 203, may also improve the processes within VA as well as between its stakeholders in the veterans community and with Congress. Service center

managers are the key to efficient claims processing. They are responsible for the training and development of the employees who are the heart and soul of claims processing. In the same way that Veterans Health Administration (VHA) employees were put under pressure to report timely service, Veterans Benefits Administration (VBA) managers have felt the need to demonstrate increased productivity. However, it seems late in the game to realize that key management personnel now need management training. PVA's fear is that the response by VA to such legislation will be enrollment in management courses that will enable VA to check off the block for training requirements without actually improving performance. If VA was truly interested in such improvement, this management training would already be occurring.

While tasking the IG to review the practices of RO's regarding use of suspense dates, we believe Section 204 needs to better identify what this review is meant to achieve. It would be unfortunate if after almost a year of review, the IG provides information that is either of no value, or does not address the issues Congress sought by the legislation. Similarly, with Section 205, PVA believes the requirement to report on the capacity of the VBA to process benefits claims should be expanded to include the capacity of VA to process appeals and not just claims. PVA and other veterans' service organizations (VSO) predict a coming wave of appeals in the near future and information on VA's ability to process appeals may prove equally valuable. Regarding Section 206, PVA looks forward to seeing VA's plan for revising the resource allocation model for VBA.

PVA will be interested in the findings of the semiannual report on implementation of the Veterans Benefits Management System (VBMS) under Section 207. PVA has been very supportive of VBMS as a tool that can speed the completion of simpler and more straight-forward claims. Automation and rules based processing has an important place in VBA claims processing. However, as PVA has always cautioned, VBMS is not an end-all and be-all for claims. While VBMS works for simple claims, those that are more complicated or have a significant number of issues cannot be easily processed with a rules-based system. These are the claims that need the "human touch" of an experienced claims adjudicator who fully understand the impact of wide ranging

disabilities and their impact on each other. It has always been a fear of PVA that as VBMS became the standard for claims processing, VA would look to reduce costs or transfer personnel to other areas of VA thereby reducing the numbers of adjudicators needed for the more complex claims. As part of Section 207, PVA would like to see a report on how VA is handling those more complex claims and how VA has been able to improve the accuracy and reduce processing time of these more complex claims. Additionally, the legislation seems to only seek input from VBA employees and VSOs. We recommend that input also be received from employees of the Board of Veterans Appeals to ensure that the downstream impact of VBMS is also assessed.

Section 208 requires a report on the Secretary's plans to reduce the inventory of claims for Dependency and Indemnity Compensation (DIC) and claims for Pension. PVA is as interested as Congress to see this plan. Additionally, it is absolutely critical that the increased transparency in Monday Morning Workload reports required by Section 209 be enacted. It is impossible to improve processes without metrics to track success or failure. PVA is pleased to see the inclusion of partial ratings assigned and the information on Fully Developed Claims (FDC) as well as indentifying the Regional Office processing the FDC.

Finally, including public access to reports on appeals decisions outlined in Section 210 will also increase transparency. This is perhaps one of the most opaque aspects of the claims process. While great attention is paid to processing times of initial claims, appeals seem to sit hidden away from view. We encourage the reporting of detailed information from previously adjudicated claims by the Appeals Management Center to identify problematic trends. As stated earlier, PVA sees a coming wave of appeals that may dwarf the current claims backlog in time, if not in number. Greater information for veterans and their representatives may help in better understanding the appeals process and shine some sunlight on this interminable process.

PVA supports the provisions of Section 211 that will modify the pilot program for use of contract physicians for disability examinations. Hopefully this provision may allow VA to

ensure that an appropriate physician is available to conduct a proper examination. Too often PVA sees exams performed by physicians not familiar with the disability in question.

Discussion Draft for other Veterans Legislation

PVA supports Title I, Sections 101 and 102, of the draft legislation that would modify the law governing the treatment of veterans' small businesses after the death of the disabled veteran business owner. Businesses are not built in a day. Moreover, they are built as an enterprise, and often as a family enterprise. The veteran may not expect to die while still owning his or her business and PVA believes it is only fair that the surviving spouse be able to have adequate time to maintain and then sell the business. This is particularly true in the case of the disable veteran who dies as a result of their service-connected disability or who dies in the line of duty.

Currently if the veteran business owner passes away from a non-service connected illness or injury, and is rated less that 100 percent service-connected, the surviving spouse only has one year to transition the business out of SDVOSB status with VA. If the SDVOSB has contracts with any other federal agency, the business immediately loses its SDVOSB status upon the passing of the veteran and all business must stop. This legislation will allow the business to retain the SDVOSB status for three years upon the passing of the veteran to allow for a transition of the business. This three year period would apply to SDVOSB contracts with the VA and all federal agencies.

PVA supports Sections 201-203 of the draft legislation that address Military Sexual Trauma. Our position is consistent with a previous stated position on H.R. 1607, the "Ruth Moore Act," which addresses similar issues. According to reports, sexual assault in the military continues to be a serious problem, despite several actions by DOD to combat the issue, including required soldier and leader training. As the military works to reduce the threat and incident of military sexual trauma (MST), it is important that victims of MST, both women and men, have the ability to receive care from the VA and receive timely, fair consideration of their claims for benefits. This is particularly

important given the number of MST occurrences that go unreported. While current policies allowing restricted reporting of sexual assaults should reduce the number of incidents which have ”no official record,” it can still be anticipated that there are those who will not report the incident out of shame, fear of reprisals or stigma, or actual threats from their attacker. To then place a high burden of proof on the veteran, who has experienced MST to prove service-connection, particularly in the absence of an official record, would add further trauma to an already tragic event.

One particular recommendation that PVA would like to make about the proposed language is a clarification of what constitutes a “mental health professional.” We would hope that the intent of this legislation is not to limit “mental health professionals” to only VA health care professionals.

PVA supports the provisions of Section 204. This section establishes a pilot program on treatment of certain applications for dependency and indemnity compensation (DIC) as fully developed claims. Additionally, we support Section 205 that requires a review of determination of certain service in Philippines during World War II. This has been an ongoing effort for multiple years. PVA supports the proper identification of service for the purposes of compensation and supports efforts to achieve that goal.

PVA supports the provisions of Section 206. PVA has consistently testified on what we see as unnecessary medical examinations scheduled by VHA when sufficient non-VA medical information is present. But we would like to see more detail in the report as it applies to specialized care, in particular, care and treatment in Spinal Cord Injury (SCI) Centers. Because of the extensive use of SCI centers and specialists by PVA members, we need to be sure that the report includes not only "private physician" but "VA treating physician" information. There is a tremendous distinction between a C & P examiner doing the one time exam of a patient and the SCI physician who sees the patient on a regular basis. This distinction is critical to PVA and the proper care and evaluation of SCI patients as well as other disabled veterans who receive specialized care from VA.

PVA supports the provisions included in Title III and IV of the draft legislation. However, in the case of Title IV, we would caution the Committee about anticipated confusion on the part of those members of the Reserves who gain recognition as “veterans.” We expect that these former members of the Reserves will eventually wonder that if they are in fact “veterans,” why they do not get the benefits of being veterans.

Once again, we thank you for the opportunity to submit for the record. We look forward to working with the Committee to see these proposals through to final passage. We would be happy to take any questions you have for the record.