

**STATEMENT OF  
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NATIONAL VETERANS AFFAIRS & REHABILITATION DIVISION  
THE AMERICAN LEGION  
BEFORE THE  
COMMITTEE ON VETERANS' AFFAIRS  
UNITED STATES SENATE  
ON  
S. 23; S. 112; S. 324; S. 543; S. 591; S. 609; S. 681; S. 764; S. 784; S. 804; S. 899; S. 1024  
AND ALL  
SUBSEQUENTIAL DRAFT BILLS**

**MAY 17, 2017**

Chairman Isakson, Ranking Member Tester, and distinguished members of the committee; On behalf of our National Commander, Charles E. Schmidt, and the over 2.2 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. Established in 1919, and being the largest veteran service organization in the United States with a myriad of programs supporting veterans, we appreciate the committee focusing on these critical issues that will affect veterans and their families.

**S. 23: Biological Implant Tracking and Veteran Safety Act of 2017**

*To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to adopt and implement a standard identification protocol for use in the tracking and procurement of biological implants by the Department of Veterans Affairs, and for other purposes.*

The American Legion remains concerned about the Veterans Health Administration's (VHA) lack of a robust prosthetic supply tracking system. The American Legion has testified about the Department of Veterans Affairs' (VA) prosthetic tracking system at numerous hearings. On January 15, 2014, The American Legion testified before House Veterans' Affairs Subcommittee on Oversight and Investigations urging Congress to require VA to implement an automated tracking system that addresses vulnerabilities. The recommendations were: one, initially record the serial number of a surgical implant device when procured and placed into VA's inventory; two, record the expiration date; and three, that a record tracking flag be put into place to alert VA staff when the product is nearing its expiration date.

On March 19, 2015, The American Legion's written testimony for the record was presented to the House Veterans' Affairs Subcommittee on Oversight and Investigations in support of H.R. 1016: The Biological Implant Tracking and Veteran Safety Act of 2015.

VA's Office of Inspector General (VAOIG) has conducted numerous audits looking at VA's prosthetic inventory system with the last audit completed in 2012. VAOIG issued Report No. 11-02254-102 on March 8, 2012, titled "Audit of VA's Management and Acquisition of Prosthetic Limbs." The VAOIG identified the following challenges:

VHA needed to strengthen the VA medical centers (VAMC) management of prosthetic supply inventories to avoid spending funds on excess supplies and disruptions to patient care due to supply shortages. VHA also needs to improve the comprehensiveness of its inventory information and standardize annual physical inventory requirements. It was estimated that during April through October 2011, VAMCs maintained inventories of nearly 93,000 prosthetic supply items with a total value of ~\$70 million. Of the 93,000 items, it was estimated that VAMC inventories exceeded current needs for almost 43,500 items (47 percent) and were too low for nearly 10,000 items (11 percent), increasing the risk of supply shortages.

VAMCs did not maintain optimal inventory levels because of the following reasons:

- Lack of integration between the prosthetic inventory system and other VHA systems,
- Inefficiencies from using two inventory systems,
- Inadequate staff training on inventory management principles and techniques,
- Insufficient VHA Central Office and Veterans Integrated Service Network (VISN) oversight of VAMC inventory management practices, and
- Inadequacies in VHA's Inventory Management Handbook.

As a result, VAMCs spent ~\$35.5 million to purchase unnecessary prosthetic supplies and increased the risk of supply expiration, theft, and supply shortages. In addition, VHA could not accurately account for these inventories.

VHA responded to the report stating the VA would work to develop a plan to replace the Prosthetic Inventory Package (PIP) and the Generic Inventory Package (GIP) with a more comprehensive system. The target completion date was March 30, 2015. As noted in the 2012 VAOIG report, VHAs hope is to "removing recalled products from inventory within 24 hours of a recall."

The American Legion is concerned that there is still no clear policy on how veterans who have received implants are tracked. Attention must be paid to veterans who are already downstream in the process. Without consistent tracking of implants, including positive identification by serial number and other identifying factors, uncertainty remains as to how veterans are served in the case of recalls. The American Legion wants to see a more comprehensive procedure and policy clearly defined by Central Office to ensure consistency in all Veteran Integrated Service Networks (VISNs).

In 2014, VHA required VA Medical facilities to begin using the Catamaran Point of Use (POU) Inventory System that interfaces with the Veterans Health Information Systems and Technology Architecture (VistA). The system is not utilized at every VA medical center, case in point, the Washington DC VA Medical Center.

In response to allegations made by a confidential complainant, the VAOIG investigated equipment and supply issues at the Washington DC VA Medical Center. The VAOIG released an Interim Summary Report on April 12, 2017, which identified some serious and troubling deficiencies at the Medical Center that place patients at unnecessary risk. Although VAOIG has not identified at this time any adverse patient outcomes, they found that there was no effective system to ensure that supplies and equipment that were subject to patient safety recalls were not used on patients and over \$150 million in equipment or supplies had not been inventoried in the past year and therefore had not been accounted for.

Five years have passed since VAOIG reported on this issue and VA promised Congress, veterans, and American taxpayers that they would develop a plan to replace the Prosthetic Inventory Package (PIP) and the Generic Inventory Package (GIP) with a more comprehensive system.

We are here today because the plan VA put in place is not working. Implementing a biological implant tracking system is essential to assuring the health, safety and the life of a veteran is safeguarded.

Resolution No. 377, *Support for Veteran Quality of Life*, supports any legislation and programs within the VA that will enhance, promote, restore or preserve benefits for veterans and their dependents, including, but not limited to, the following: timely access to quality VA health care, timely decisions on claims and receipt of earned benefits; and final resting places in national shrines and with lasting tributes that commemorate their service.<sup>1</sup>

**The American Legion supports passage of S. 23.**

### **S. 112: Creating a Reliable Environment for Veterans' Dependents Act**

*To amend title 38, United States Code, to authorize per diem payments under comprehensive service programs for homeless veterans to furnish care to dependents of homeless veterans, and for other purposes.*

S. 112 will help ensure that VA funded homeless shelters may be reimbursed for services provided to the dependent of a veteran, thereby reducing the risk of separating families during a difficult time. Based upon the Point-in-Time count on a single night in January 2016, almost all veterans were experiencing homelessness in households without children (97 percent or 38,340 veterans). About 3 percent (1,131) were veterans who were homeless as part of a family. If enacted, S. 112 would provide reimbursement for VA grantees who house homeless veterans with a dependent.

This would be quite beneficial for those homeless veterans with dependents, particularly women veterans who often carry the most responsibility of taking care of their children. Housing is a key component in stabilizing the veteran and putting him/her back on track to independent living. This bill would provide an avenue where the veteran would not separate from their child and/or

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<sup>1</sup> American Legion Resolution No. 377 (2016): [Support for Veteran Quality of Life](#)

spouse to obtain housing, and crucial services, for a successful reintegration back into mainstream society.

The American Legion strongly believes that homeless veteran programs should be granted sufficient funding to provide supportive services such as, but not limited to, outreach, health care, rehabilitation, case management, personal finance planning, transportation, vocational counseling, employment, and education. Furthermore, The American Legion continues to place special priority on the issue of veteran homelessness. With veterans making up approximately 11 percent of our nation's total adult homeless population, there is plenty of reason to give this issue special attention. Along with various community partners, The American Legion remains committed to seeing VA's goal of ending veteran homelessness come to fruition. Our goal is to ensure that every community across America has programs and services in place to get homeless veterans into housing (along with necessary healthcare/treatment) while connecting those at-risk veterans with the local services and resources they need. We hope to see that with the expansion of assistance afforded to homeless veterans and their dependents, there will also be an increase in funding to support. We estimate that an additional \$10 million annually will be sufficient to accomplishing this goal.

Resolution No. 324, *Support Funding for Homeless Veterans*, supports any legislation and programs within and outside the VA that will enhance, promote, and assist homeless veterans in a timely fashion.<sup>2</sup>

**The American Legion supports S. 112.**

### **S. 324: State Veterans Home Adult Day Health Care Improvement Act of 2017**

*To amend title 38, United States Code, to improve the provision of adult day health care services for veterans.*

State Veterans Homes are facilities that provide nursing home and domiciliary care. They are owned, operated and managed by state governments and date back to the post-Civil War era when many states created them to provide shelter to homeless and disabled veterans.

Currently, there are only two Adult Day Health Care programs at State Veterans Homes in the United States. Both are located on Long Island, New York. However, these programs could easily be offered at the other 151 State Veterans Homes located throughout the country.

S. 324 would provide a no cost, medical model Adult Day Health Care to veterans at State Veterans Homes who are 70 percent or more service-connected disabled. This bill is an extension of Public Law (P.L.) 109-461: Section 211, Veterans Benefits Health Care, and Information Technology Act of 2006, which currently provides no cost nursing home care at any State Veterans Home to veterans who are 70 percent or more disabled for their service-connected disability and who require significant assistance from others to carry out daily tasks.

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<sup>2</sup> American Legion Resolution No. 324 (2016): [Support Funding for Homeless Veterans](#)

Adult Day Health Care is a daily program for disabled veterans who need extra assistance and special attention in their day to day lives. Adult Day Health Care programs provide disabled veterans and their families with a high-quality alternative to nursing home care and quality outpatient services for those suffering from debilitating illnesses or disabilities. These programs provide a range of services, from daily activities such as bathing, full medical services, and physical therapy. The focus of the program is on improving a disabled veterans' quality of life, which is why we support expanding this great option of care for our veterans.

American Legion Resolution No. 377, *Support for Veteran Quality of Life* supports any initiative that urges Congress and the Department of Veterans Affairs (VA) to enact legislation and programs within the VA that will enhance, promote, restore or preserve benefits for veterans and their dependents, including, but not limited to, the following: timely access to quality VA health care; timely decisions on claims and receipt of earned benefits, and final resting places in national shrines and with lasting tributes that commemorates their service.<sup>3</sup>

**The American Legion supports passage of S. 324.**

**S. 543: Performance Accountability and Contractor Transparency Act of 2017**

*To amend title 38, United States Code, to require the Secretary of Veterans Affairs to include in each contract into which the Secretary enters for necessary services authorities and mechanism for appropriate oversight, and for other purposes.*

The provisions of this bill falls outside the scope of established resolutions of The American Legion. As a large, grassroots organization, The American Legion takes positions on legislation based on resolutions passed by the membership in meetings of the National Executive Committee. With no resolutions addressing the provisions of the legislation, The American Legion is researching the material and working with our membership to determine the course of action which best serves veterans.

**The American Legion has no current position on S. 543.**

**S. 591: Military and Veteran Caregiver Services Improvement Act of 2017**

*To expand eligibility for the program of comprehensive assistance for family caregivers of the Department of Veterans Affairs, to expand benefits available to participants under such program, to enhance special compensation for members of the uniformed services who require assistance in everyday life, and for other purposes.*

The struggle to care for veterans wounded in defense of this nation takes a terrible toll on families. In recognition of this, Congress passed, and President Barack Obama signed into law, the *Caregivers and Veterans Omnibus Health Services Act of 2010*. The unprecedented package of caregiver benefits authorized by this landmark legislation includes training to help to ensure

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<sup>3</sup> American Legion Resolution No. 377 (2016): [Support for Veteran Quality of Life](#)

patient safety, cash stipends to partially compensate for caregiver time and effort, caregiver health coverage if they have none, and guaranteed periods of respite to protect against burnout.

The comprehensive package, however, is not available to most family members who are primary caregivers to severely ill and injured veterans. Congress opened the program only to caregivers of veterans severely “injured,” either physically or mentally, in the line of duty on or after Sept. 11, 2001. It is not open to families of severely disabled veterans injured before 9/11, nor is it open to post-9/11 veterans who have severe service-connected illnesses, rather than injuries.

The American Legion has long advocated for expanding eligibility and ending the obvious inequity it created. Simply put, a veteran is a veteran, and all veterans should receive the same level of benefits for equal service. As affirmed in American Legion Resolution No. 259: *Extend Caregiver Benefits to Include Veterans Before September 11, 2001*, The American Legion supports legislation to remove the date September 11, 2001, from Public Law 111-163 and revise the law to include all veterans who otherwise meet the eligibility requirements.<sup>4</sup>

The American Legion is aware of the obstacles to an expansion of the program, though. Perhaps the biggest is protracted frustration over how the current caregiver program operates. Thus, we applaud the Department of Veterans Affairs (VA) recent decision to conduct an internal review of the program. That decision is an acknowledgment that the VA cares about the success of this program, and is committed to the difficult task of improvement.

The American Legion is also committed to the success of this program. We have long supported our veteran caregivers by providing accredited representation, advice and education. We created a new Caregiver Coordinator position in our Washington Office. We participated in the numerous roundtables conducted during the present review of the program. We are honored to be working with a broad coalition to identify and bolster support for caregivers, both now and long-term.

We have joined on to a coalition letter organized by the Elizabeth Dole Foundation to Secretary Shulkin dated May 15, 2017. This letter offers some perspective on the issues that have clouded this program since its inception, and its recommendations are informed by the experiences and stories of caregivers themselves. The letter is incorporated by reference, and we think action based on the letter will go a long way to righting the program and preparing it for expansion.<sup>5</sup>

The American Legion is also rolling out a comprehensive caregiver program to our Departments and recently passed Resolution No. 24: *Caregiver Program*. The program promises to “address the needs of military and veteran caregivers by assisting with, but not limited to employment/vocational referral, federal and state education assistance, Post 9/11 caregiver benefit support, veteran directed care, partner support with the Elizabeth Dole Foundation and various caregiver support organizations, assistance with death gratuity, and terminal illness.”<sup>6</sup>

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<sup>4</sup> American Legion Resolution No. 259 (2016): [Extend Caregiver Benefits to Include Veterans Before September 11, 2001](#)

<sup>5</sup> [VA Caregiver Program Coalition Letter](#)

<sup>6</sup> American Legion Resolution No. 24: [Caregiver Program](#)

The American Legion, together with The American Legion Auxiliary, is building a comprehensive program that is sustainable and replicable and will be included in the department and post activities and programs through our network of more than 15,000 posts and detachments across the United States and abroad. The American Legion's Caregiver Coordinator will work to ensure that veterans and their caregivers are well informed and educated about the benefits and resources available to them. The burden of ensuring support for these caregivers does not – and should not – fall to the VA alone.

The American Legion is optimistic that providing expanded support services and stipends to caregivers of veterans to all eras is not only possible but also feasible. We are, therefore, proud to offer our support for S. 591, the *Military and Veteran Caregiver Services Improvement Act of 2017*.

**The American Legion supports passage of S. 591.**

### **S. 609: Chiropractic Care Available to All Veterans Act of 2017**

*To amend the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001 and title 38, United States Code, to require the provision of chiropractic care and services to veterans at all Department of Veterans Affairs medical centers and to expand access to such care and services, and for other purposes.*

It is not uncommon for veterans who suffer from musculoskeletal and connective system diseases to go untreated at VA medical centers because of a lack of available chiropractic care and services. At present, less than one-third of VA medical centers offer chiropractic care. S. 609 will require a program under which the Secretary of Veterans Affairs will provide chiropractic care and services through the VA at (1) no fewer than 75 medical centers by December 31, 2018, and (2) all medical centers by December 31<sup>st</sup>, 2020.

According to VA, the most frequent medical diagnosis among Iraq and Afghanistan veterans are musculoskeletal and connective system diseases.<sup>7</sup> Since 2002, there have been over 195,000 Post 9/11 veterans that have pursued care for these conditions. The American Legion, thus, views easy access to chiropractic care as a priority necessity for veterans.

American Legion Resolution No. 377, *Support for Veteran Quality of Life*, supports any legislation and programs within the VA that will enhance, promote, restore or preserve benefits for veterans and their dependents, including, but not limited to, the following: timely access to quality VA health care, timely decisions on claims and receipt of earned benefits, and final resting places in national shrines and with lasting tributes that commemorate their service.<sup>8</sup>

**The American Legion supports passage of S. 609.**

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<sup>7</sup> Sally G. Haskell, M.D., [Post-Deployment Pain: Musculoskeletal Conditions in Male and Female OEF/OIF Veterans](#) (August 2012)

<sup>8</sup> American Legion Resolution No. 377 (2016): [Support for Veteran Quality of Life](#)

## **S. 681: Deborah Sampson Act**

*To amend title 38, United States Code, to improve the benefits and services provided by the Department of Veterans Affairs to women veterans, and for other purposes.*

Women veterans have consistently been overlooked by the Department of Veterans Affairs for decades. The American Legion feels that it is time that we thank this growing military demographic with, at a minimum, the healthcare they deserve. Women veterans are the fastest growing demographic serving in the military, so we can expect the number of women veterans using Department of Veterans Affairs (VA) healthcare to increase dramatically. The United States has more than 2 million women veterans who live in every Congressional district in the nation, and the number of women veterans seeking VA health care has doubled since 2000.

Although the VA has made improvements in women's healthcare, many challenges remain. The Deborah Sampson Act would help rectify many issues women veterans face by improving the ability of the VA to provide women's care, improve services, and change its culture to embrace this growing population. It does so by, inter alia:

- Enhancing services that empower women veterans to support each other,
- Establishing a partnership between the Department of Veterans Affairs and at least one community entity to provide legal services to women veterans,
- Make adjustments to care that the VA can provide newborns,
- Addressing significant barriers women veterans face when seeking care,
- Require the VA to collect and analyze data for every program that serves veterans, including the Transition Assistance Program, by gender and minority status, and require that they publish data as long as it does not undermine the anonymity of a veteran.

The American Legion recommends the following change to the bill. A separate track to address specific needs of women veterans attending the Transition Assistance Program. It has been noted that women veterans are more likely to seek assistance by talking with other women on gender-sensitive assistance. For example, the VA Trauma Service Program (TSP) allows women veterans to choose to partake in a TSP information session with a group or with an individual woman coordinator. More women veterans opt to conduct the information session with an individual woman coordinator.

Additionally, The American Legion requests the Department of Defense transfer contact information of all transitioning women veterans to the VA and the Department of Labor (DoL). This would provide an opportunity for the VA, DoL, and Veterans Service Organizations to follow-up with women veterans after separation to offer additional support, programs, and services.

American Legion Resolution No. 147, *Women Veterans*, calls on The American Legion to work with Congress and the VA to ensure that the needs of current and future women veteran



populations are met. It calls on the VA to provide full comprehensive health services for women veterans department-wide.<sup>9</sup>

American Legion Resolution No. 364, *Department of Veterans Affairs to Develop Outreach and Peer to Peer Program for Rehabilitation* supports the President of the United States and the U.S. Congress passing legislation to call on the Secretary of Veterans Affairs to develop a national program to provide peer to peer rehabilitation services based on the recovery model tailored to meet the specialized needs of current generation combat-affected veterans and their families.<sup>10</sup>

**The American Legion supports passage of S. 681 with amendments as noted above.**

### **S. 764: Veterans Education Priority Enrollment Act of 2017**

*To amend title 38, United States Code, to improve the enrollment of veterans in certain courses of education, and for other purposes.*

S.764, the *Veterans Education Priority Enrollment Act of 2017* would mandate that if an educational institution administers priority enrollment to certain students and receives educational benefits from the VA, then they shall also administer priority enrollment to student veterans and active military students.

Resolution No. 318: *Ensuring the Quality of Servicemembers and Veteran Student's Education at Institutions of Higher Education* urges Congress to find a solution that ensures colleges and universities that receive federal tuition payments grant priority enrollment to those individuals who qualify for either the Department of Defense or Department of Veterans Affairs education benefits.

However, due to inherent complexities with priority enrollment, The American Legion requires consultation and endorsement from the military education collaborative Servicemembers Opportunity Colleges and the National Association of Veterans' Program Administrators before supporting. If the present language of the *Veterans Education Priority Enrollment Act of 2017* results in reputable institutions of higher learning choosing to stop processing GI Bill benefits, than it will do more harm than good. Additionally, implementation concerns such as equity questions (should a freshman student veteran get priority over the last semester senior who needs the course to graduate) and existing priority systems on public institutions need to be resolved. While we applaud the attention that has been shown on this, the unknown second and third-order affect preclude our immediate support.

**The American Legion has no current position on S. 764.**

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<sup>9</sup> American Legion Resolution No. 147 (2016): [Women Veterans](#)

<sup>10</sup> American Legion Resolution No. 364 (2016): [Department of Veterans Affairs to Develop Outreach and Peer to Peer Program for Rehabilitation](#)

## **S. 784: Veterans' Compensation Cost-of-Living Adjustment Act of 2017**

*To increase, effective as of December 1, 2017, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans, to amend title 38, United States Code, to improve the United States Court of Appeals for Veterans Claims, to improve the processing of claims by the Secretary of Veterans Affairs, and for other purposes.*

S. 784 would provide a Cost-of-Living Allowance (COLA) effective December 1, 2017. Disability compensation and pension benefits awarded by the Department of Veterans Affairs (VA) are designed to compensate veterans for medical conditions incurred through service, or who earn below an income threshold. When the cost of living increases due to inflation, it is only appropriate that veterans' benefits correspondingly increase.

For nearly 100 years, The American Legion has advocated on behalf of our nation's veterans, to include the awarding of disability benefits associated with chronic medical conditions that manifest related to service of this nation. Annually, veterans and their family members are subjects in the debate regarding the annual COLA for these disability benefits. For these veterans and their family members, COLA is not simply an acronym or a minor adjustment in benefits; instead, it is a tangible benefit that meets the needs of the increasing costs of living in a nation that they bravely defended.

As affirmed in The American Legion's Resolution No. 187, *Department of Veterans Affairs Disability Compensation*, passed at the 2016 National Convention, The American Legion supports legislation "*to provide a periodic cost-of-living adjustment increase and to increase the monthly rates of disability compensation.*"<sup>11</sup>

**The American Legion supports S. 784.**

## **S. 804: Women Veterans Access to Quality Care Act**

*To improve the provision of health care for women veterans by the Department of Veterans Affairs, and for other purposes.*

Women veterans are the fastest growing demographic currently serving in the military. They deserve a robust and comprehensive VA health care system to care for them when they transition from active duty to civilian life. Over the years, VA has made great strides in making healthcare services available for women veterans, such as ensuring more women veterans see providers who meet their gender-specific health care needs. However, there is still much work to be done to meet the overall healthcare needs of women veterans. Even though the military has seen a significant increase in the number of women joining the military, the number of women veterans enrolling in the VA health care system remains relatively low when compared to their male counterparts.

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<sup>11</sup> American Legion Resolution No. 187 (2016): [Department of Veterans Affairs Disability Compensation](#)

Despite improvements VA has taken to broaden their healthcare programs and services for women veterans, The American Legion has found there are still numerous challenges, and barriers women veterans face with enrolling in the VA including:

- Women veterans often do not self-identify as veterans,
- Women veterans are often not recognized by VA staff as veterans,
- Among women veterans, there can be a lack of awareness, knowledge, and understanding of their VA benefits,
- There is an incorrect, but prevalent stigma, that the VA healthcare system is an “all-male” healthcare system, and
- The VA does not provide all of the gender-specific health care needs of their enrolled women veterans.

As a result, The American Legion believes in ensuring women veterans receive the highest quality VA health care, and that the care is tailored to meet their gender-specific health care needs.

This legislation directs VA to establish standards ensuring all VA facilities meet gender-specific healthcare needs, integrate those standards into VA’s prioritization methodology when determining funding needs, and issue reports on those standards, especially where facilities may be failing to meet standards. S. 804 would make VA’s compliance with women’s healthcare needs transparent through public dissemination of information on VA websites. Finally, S. 804 would ensure greater representation within the VA’s women’s healthcare provider positions including obstetricians and gynecologists. These measures will help address concerns of women veterans and improve the comprehensive nature of healthcare available to women throughout the VA.

American Legion Resolution No. 147: *Women Veterans*, supports, inter alia:

- That the VA provides full comprehensive health services for women veterans department-wide, including, but not limited to, increasing treatment areas and diagnostic capabilities for female veteran health issues, improved coordination of maternity care, and increase the availability of female therapists/female group therapy to better enable treatment of Post-Traumatic Stress Disorder from combat and MST in women veterans;
- That the VA furnish gender-specific prosthetic appliances, orthotics, and services while eliminating the male-only approach to the treatment of all injuries and illnesses.<sup>12</sup>

**The American Legion supports S. 804.**

### **S. 899: Department of Veterans Affairs Veteran Transition Improvement Act**

*To amend title 38, United States Code, to ensure that the requirements that new Federal employees who are veterans with service-connected disabilities are provided leave for purposes*

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<sup>12</sup>American Legion Resolution No. 147 (2016): [Women Veterans](#)

*of undergoing medical treatment for such disabilities apply to certain employees of the Veterans Health Administration, and for other purposes.*

Wounded Warrior Federal Leave Act (P.L.114-75) was signed into law after unanimous passage by Congress. The Act allowed up to 104 hours of paid sick leave available to new federal employees hired by “Title 5” federal agencies with service-connected veteran disabilities rated at 30 percent or more to attend medical treatment related to these conditions.

Some employers are not required by law to allow veterans with service-connected disabilities to be absent from the workplace to receive the necessary medical treatment for their disabilities. In its current state, the Wounded Warrior Federal Leave Act does not protect veterans working for the Department of Veterans Affairs (VA). Senator Hirono’s bill extends this protection to VA employees, who are “Title 38 employees” and don’t have the same level of protection as “Title 5” federal employees.

If enacted, this bill would amend Title 38, United States Code, to prohibit discrimination and acts of reprisal against persons who receive treatment for illnesses, injuries, and disabilities incurred in or aggravated by service in the Armed Forces. In addition, it would promote the well-being of the veteran and create an atmosphere for efficiency and productivity within the agency. The American Legion believes it is in the best interest of the veteran, and the VA, that this bill pass.

American Legion Resolution No. 307, *Prohibit Discrimination and Acts of Reprisal by Employers Against Veterans that Seek Treatment for their Service-Connected Disabilities*, supports any legislation that prohibits the discrimination and acts of reprisals by employers against veterans that seek treatment for their service-connected disabilities.<sup>13</sup>

**The American Legion supports this S. 899.**

### **S. 1024: Veterans Appeals Improvement and Modernization Act of 2017**

*To amend title 38, United States Code, to reform the rights and processes related to appeals of decisions regarding claims for benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.*

The American Legion currently holds power of attorney on more than three-quarters of a million claimants. We spend millions of dollars each year defending veterans through the claims and appeals process, and our success rate at the Board of Veterans Appeals (BVA) continues to hover around 80 percent.

When VA invited stakeholders to the table to discuss appeals modernization, The American Legion knew that appeals modernization could not start with looking at the appellate process; the conversation needed to begin at the point of the initial adjudication; so the first things the group looked at was the VBA decision notice. As a negotiated component of this framework, VBA has

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<sup>13</sup> American Legion Resolution No. 307 (2016), [Prohibit Discrimination and Acts of Reprisal by Employers Against Veterans that Seek Treatment for their Service-Connected Disabilities](#)

promised to improve their decision notice which will better inform veterans and their advocates. More importantly, a better decision letter will not only help veterans better prepare if they need to appeal, but it will help prevent appeals from being introduced because the veterans were not properly informed about the basis for denial. After VA's commitment to improving the initial decision letter, stakeholders helped sort through barriers that slowed appeals processing and highlighted another of The American Legion's primary concerns – centralized training.

VA further argued that if there were a process within the appeals system that allowed judges to review disputed decisions that were adjudicated at the regional offices, based only on the same information that the regional office had at the time the claim was originally decided, then BVA would be able to provide a "feedback loop" they could use to help train and educate VBA's regional offices. Additionally, this would help identify regional offices where the decisions uniformly fail to address specific legal issues and improve initial decisions.

It was with these two foundational underpinnings that the big six VSOs, in addition to state and county service officers, veteran advocate attorneys, and other interested groups worked with senior VA officials from VBA and BVA to design the framework of the legislation being discussed again here today.

The guiding principle leading all of our discussions was ensuring that we preserved all of the claimant's due process rights while ensuring that they did not lose any claims effective date time, which we were not only able to do successfully, but we were able to increase protections for veterans through this new process.

As you are aware, the design of the proposed appeals process allows for multiple options for claimants, as well as options for additional claim development, the option to have the decision reviewed by another adjudicator (difference of opinion) and the chance to take your case straight to the court to have a law judge review the decision and make a ruling on your claim.

The proposed bill provides veterans additional options while maintaining the effective dates of original claims. Veterans can elect to have an original decision reviewed at the ROs through a Difference of Opinion Review (DOOR) which is similar to the current functions of the Decision Review Officers (DROs). A DOOR provides an opportunity for a claimant to discuss concerns regarding the original adjudication of a particular issue, or the entire claim, prior to appealing to the BVA. Additionally, the administrative actions remove the need for a Notice of Disagreement (NOD), a process that took 412.8 days, according to a report released to The American Legion following the end of last fiscal year. The April 24, 2017 VA Monday Morning Workload Report indicates the delay has increased over two weeks, to 429.4 days VA Monday Morning Workload Report, April 24, 2017.

Beyond improvements in administrative functions, the proposed bill enables claimants to select a process other than the standard multi-year long backlog, if they want to have an appeal addressed more expediently if they believe they have already provided all relevant and supporting evidence. Similar to the Fully Developed Claims program, veterans will be able to elect to have their appeals reviewed more expeditiously by attesting that all information is included within the claim, VA's records, or submitted with VA Form 9 indicating the intent to have their claims expeditiously forwarded to BVA for review.

Veterans indicating that they may need additional evidence or time could elect to have their claim reviewed in BVA's current format of allowing additional evidence entered. For veterans requiring additional evidence, such as lay statements from friends and families or a private medical examination rebutting VA's medical examinations, this is a viable alternative to allow the time and opportunity to prove a veteran's case and secure the benefits they have earned.

Recognizing that an increased burden is placed upon veterans, VA will ensure veterans maintain their effective dates, even if BVA denies the claim. If a veteran's appeal is denied by BVA, the veteran can submit new and minimally relevant evidence to reopen the claim at the RO while holding the original effective date that may have been established long before the second filing for benefits.

Similar to FDC, The American Legion will work tirelessly to ensure this program is successful and appreciates the Committee's support by including stakeholders in the certification process as this program is officially launched. We recognize the increased burden it can place on veterans; we also recognize that our approximately 3,000 accredited representatives have the tools to ensure success for the veterans and claimants we represent. Throughout the year we will continue to work with our representatives, our members, and most importantly our veterans to understand the changes in law, and how they will be able to succeed with these new changes.

The American Legion recognizes that this is a huge undertaking and that as with any contract, the agreement is only as good as the people who sign it. We agree that there is a lot that is not going to be included in the statutory language and that this initiative places a lot of trust and responsibility on VA to do the right thing. The American Legion believes that the Secretary needs this flexibility to set this program up effectively and that VA will continue to work with stakeholders and Congress as we move forward. Any deviation from that plan will upset overseers and stakeholders alike, and will surely result in veterans being cheated as we all will ending up right back here in this hearing room to fix it.

To come to an agreement, stakeholders needed to trust VA to do the things they promised to do, and do them in good faith. There are a lot of nuances that aren't able to be legislated, and the VSOs are going to be providing constant feedback as we move forward with appeals modernization. We believe that the architects of this proposal have acted in good faith, and we support their efforts to modernize the appeals process for the good of veterans, for the good of the process, and for the good of the American taxpayer.

As affirmed in The American Legion's Resolution No. 5, *Department of Veterans Affairs Appeals Process*: The American Legion urges the Department of Veterans Affairs to address all claims, to include its growing inventory of appeals in an expeditious and accurate manner.<sup>14</sup>

**The American Legion supports S. 1024: Veterans Appeals Improvement and Modernization Act of 2017**

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<sup>14</sup> American Legion Resolution No. 05 (2016): [Department of Veterans Affairs Appeals Process](#)

**Draft Bill: Department of Veterans Affairs Accountability and Whistleblower Protection Act**

*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 2014, 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.”<sup>15</sup>*

The American Legion believes it is important to ensure there is accountability at all levels within VA and that the process is transparent. Where VA employees are found to have engaged in wrongdoing, The American Legion supports any legislation that increases the authority given to the Secretary of VA to remove unscrupulous employees.

The American Legion 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, to abuse relocation reimbursement, or to remain employed found watching pornographic material at work is unacceptable. We also believe in providing the Department of Veterans Affairs (VA) whistleblowers with a means to solve problems at the lowest level possible, while offering them protection from reprisals and genuine protection for those who reprise against them. This bill would establish a new system that employees could use to report retaliation claims, and supervisors would be required to report all retaliation claims to facility directors, eliminating the possibility for facility leaders to claim plausible deniability of such assertions.

There are some apprehensions with this bill we would like to address. The provision that seeks to lower the threshold of evidence from “preponderance of the evidence” to “substantial evidence” is concerning. We do not want to encourage an atmosphere that reduces the burden of managers to collect appropriate documentation. Managers need to be held accountable to perform expert leadership and oversight, and that includes being diligent about documenting poor performance or bad behavior. Egregious behavior would not be affected by this provision as it would surpass the already established evidentiary threshold of a preponderance of evidence.

The second concern we raise is with the provision that strips the Merit Systems Protection Board (MSPB) of the ability to mitigate penalties. While on its face it seems logical to accept the agency’s decision regarding discipline or termination, The American Legion is reminded of the Linda Weiss decision which the presiding judge stated, in part;

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<sup>15</sup> [“Legion: VA director’s overdue firing applauded”: Nov. 24, 2014](#)

“In conclusion, I find that appellant has rebutted the presumption that the penalty was reasonable. If 38 U.S.C. § 713 did not prohibit it’; I would mitigate the penalty. However, because that is not allowed, the only option is to reverse the action outright. 5 C.F.R. §§ 1210.18(a), (d). Therefore, agency’s decision to remove the appellant from the Federal service is *reversed*.”<sup>16</sup>

The American Legion wants to ensure that Congress provides the VA with tools that are functional, enforceable, and allow the agency to act in a manner that promotes good order, discipline, and esprit de corps. Poorly crafted legislative language that fails legal and constitutional standards only serves to ruin morale and create a system of indecision and lack of surety.

The American Legion applauds this bipartisan effort to provide Secretary Shulkin additional tools to increase accountability and address poor performance within the Department of Veterans Affairs. Despite multiple verified cases of gross misconduct for multiple employees, the Secretary of the VA had little authority to hold employees accountable, and many veterans subsequently lost faith in the system. This is why The American Legion vociferously urged Congress to provide the Secretary much-needed authorities so that he may take action to improve morale, incentivize desired behavior, deter misconduct, and eliminate corrupt or uncaring employees.

American Legion Resolution No. 3, *Department of Veterans Affairs Accountability*, supports any legislation that provides the Secretary of Veterans Affairs the authority to remove any individually from the VA that the Secretary determines warrants such authority or to transfer or demote an individual to a General Schedule position without any increased monetary benefit.<sup>17</sup>

### **The American Legion supports the Draft Bill titled: Department of Veterans Affairs Accountability and Whistleblower Protection Act**

#### **Draft Bill: Serving our Rural Veterans Act**

*To authorize payment by the Department of Veterans Affairs for the costs associated with service by medical residents and interns at facilities operated by Indian tribes, tribal organizations, and the Indian Health Service, to require the Secretary of Veterans Affairs to carry out a pilot program to expand medical residencies and internships at such facilities, and for other purposes.*

The provisions of this bill fall outside the scope of established resolutions of The American Legion. As a large, grassroots organization, The American Legion takes positions on legislation based on resolutions passed by the membership in meetings of the National Executive Committee. With no resolutions addressing the provisions of the legislation, The American Legion is researching the material and working with our membership to determine the course of action which best serves veterans.

### **The American Legion has no current position on this Draft Bill titled: Serving our Rural Veterans Act**

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<sup>16</sup> [Weiss v. DVA](#), 2016 MSPB (February 16, 2016)

<sup>17</sup> American Legion Resolution No. 3 (2016), [Department of Veterans Affairs Accountability](#)



## **Draft Bill: Veteran Partners' Efforts to Enhance Reintegration (PEER) Act**

*A bill to require the Secretary of Veterans Affairs to carry out a program to establish peer specialists inpatient aligned care teams at medical centers of the Department of Veterans Affairs, and for other purposes.*

A peer support specialist is a person with significant life experience who works to assist individuals with chemical dependency, mental disorder, or domestic abuse and other life effecting issues. Due to a PEER's life experiences, such persons have expertise that profession training cannot replicate. Tasks performed by peer support specialists may include:

- Assisting their peers in articulating their goals for recovery,
- Learning and practicing new life skills,
- Helping monitor their progress,
- Assisting them in their treatment,
- Modeling effective coping techniques and self-help strategies based on the specialist's own recovery experience, and
- Supporting in obtaining effective services in and outside the VA.

This draft bill would expand VA's current use of peer specialists being utilized in primary care settings including mental health clinics. The PEER Act would require the Department of Veterans Affairs (VA) to establish a pilot program of peer specialists to work as members of VA's patient-aligned care teams (PACT), for the purpose of promoting the integration of mental health services in a VA primary care setting. This bill would authorize the establishment of this pilot program in 25 VA sites, to include the VA's five Polytrauma centers across the country. The bill would also require a series of reports, including a final report to recommend whether the program should be expanded beyond the pilot program sites.

As affirmed in The American Legion's Resolution No. 364, *Department of Veterans Affairs to Develop Outreach and Peer to Peer Program for Rehabilitation*: The American Legion urges the President of the United States and the U.S. Congress to call on the Secretary of Veterans Affairs to develop a national program to provide peer to peer rehabilitation services based on the recovery model tailored to meet the specialized needs of current generation combat-affected veterans and their families.<sup>18</sup>

**The American Legion supports the Draft Bill titled: Veteran Partners' Efforts to Enhance Reintegration (PEER) Act**

### **Conclusion**

The American Legion thanks this committee for the opportunity to elucidate the position of the over 2.2 million veteran members of this organization. For additional information regarding this testimony, please contact the Deputy Director of Legislative Affairs, Mr. Derek Fronabarger, at The American Legion's Legislative Division at (202) 861-2700 or [dfronabarger@legion.org](mailto:dfronabarger@legion.org).

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<sup>18</sup> American Legion Resolution No. 364 (2016): [Department of Veterans Affairs to Develop Outreach and Peer to Peer Programs for Rehabilitation](#)