NASDVA
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The National Association of State Directors of Veterans Affairs, Inc.

May 17, 2017

The Honorable Johnny Isakson
Chairman
U.S. Senate Committee on Veterans Affairs
Russell Senate Office Building
Washington, D.C. 20510

The Honorable Jon Tester
Ranking Member
U.S. Senate Committee on Veterans Affairs
Russell Senate Office Building
Washington, D.C. 20510

RE: National Association of State Directors of Veterans Affairs (NASDVA) comments to The U.S. Senate Committee on Veterans Affairs

Dear Senator Isakson and Senator Tester:

On behalf of the National Association of State Directors of Veterans Affairs (NASDVA), thank you for the work and support of the Senate Committee on Veterans Affairs on behalf of our Nation's Veterans and for your commitment to making the systems and process that serve them better. We sincerely appreciate the opportunity to comment on the following legislation:

1. **S. 1024 - Veterans Appeals Improvement and Modernization Act of 2017**

NASDVA is honored to have been a part of the working group, including VA and a very wide group of our Nation's Veterans Service Organizations, whose work resulted in a workable framework, language and legislation that was introduced last year. The work and cooperation last year that yielded workable and sustainable Appeals Reform is unprecedented and should be the model for getting things done in the future. The process included stakeholders who are actually "on the ground" serving Veterans every day. We are hopeful that any final Appeals Modernization legislation will accurately reflect the work and majority agreement reached last year.

After reviewing S. 1024 "Veterans Appeals Improvement and Modernization Act of 2017" we submit the following comments:

NASDVA has been and continues to be concerned about (and cautions against) language that may be intended to allow/encourage expansion of fees charged by attorneys who represent Veterans in the appeals process. While there may be some claim that the aggrieved language enhances Veterans' rights, the real rights of our Veterans are best preserved when claims/decisions are made at the lowest possible level with the greatest efficiency; the core intent and foundation of the framework that was developed.

We are specifically concerned about language, as to effective date after the courts (Page 14, line 3-6 *"(E) A supplemental claim under section 5108 of this title on or before the date that is one*

year after the date on which the Court of Appeals for Veterans Claims issues a decision"), contained in S. 1024. The following items are germane:

a. An intentional feature of the design developed collaboratively with the Appeals Working Group was that Veterans would not be encouraged to initiate judicial review when there is an efficient administrative remedy available.
b. Allowing effective date protection after the Courts will likely provide incentive for filing an appeal to the Court for the sole purpose of generating attorney fees, notwithstanding the fact that a more immediate remedy is available in the administrative process.
    (1) As we understand, attorney fees would be available for representing claimants in the higher-level review, supplemental claim, and appeal lanes.
    (2) A reason behind effective date protection after the Courts (for paid attorneys) could be that it would delay resolution and generate more past due benefits; advantageous for attorneys but not good for Veterans.
    (3) As NASDVA has maintained previously, judicial review should be reserved for Veterans who believe they have exhausted their administrative remedies and have a meritorious legal issue.
    (4) <u>There is currently no effective date protection if the Court of Appeals for Veterans Claims (CAVC) affirms a Board of Veterans Appeals decision. The improved process, reflected in the collaborative/cooperative VA/stakeholder proposal, is not a change from the current system (on that point). Just as currently exists, in the new process, if CAVC vacates and remands the Board decision, the effective date is protected. Veterans lose no rights, as they exist in current law, in the Appeals Working Group proposal.</u>

There has been much work that has gone into developing meaningful Appeals Modernization/Reform over the past year and a half. The work has focused, putting the Veteran first, on a system that seeks the best possible and timely outcome at the lowest level that is both advantageous to the Veteran and the American taxpayer.

Contrary to what seems to be a fairly common misperception, by some, <u>nearly 80% of the Veterans' Appeals process takes place in the Veterans Benefit Administration (VBA)</u>; not in the Board of Veterans Appeals nor the Court. The framework developed by stake-holders places emphasis, responsibility and accountability on VBA (where it should be). **<u>The aggrieved language (effective date after the court) serves to encourage leaving the VBA process early, thereby (functionally) denying Veterans opportunity for early resolution at the lowest possible level and relieving VBA of responsibility "to get it right"</u>**. We sincerely hope attention will be refocused on making sure the largest number of Veterans are served in the most efficient manner possible; at the lowest possible level.

Regardless of whatever final language may come from S. 1024 or any related bill, there should be specific language included in the bill that imposes severe penalties, financial or otherwise, on any (paid) attorney who is found to intentionally induce a Veteran client to initiate judicial review when there is an efficient administrative remedy available that would better serve the Veteran.

2. S. 764 – Veterans Education Priority Enrollment Act of 2017

NASDVA is concerned about unintended consequences that may result from S. 764, if passed in its current form. Depending on U.S. Department of Veterans' Affairs promulgation of resultant rules, it could cause requirement of a system of formal priority advising for GI Bill recipients to be conducted a reasonable length of time before the first day of priority registration. It is our understanding that there is an informal priority advising that takes place now; however, this is

up to the advisor. This legislation will cause universities/states to have to devote additional staff time to formally track that all GI Bill recipients have been advised before the first day of priority registration. Also, this legislation will add another audit point for the State Approving Agency's (SAA) audits; again adding administrative time.

Although it is understood that not all institutions have priority registration for GI Bill recipients and we want to insure that Veterans have every opportunity to get the classes they need in order for them to maximize their limited GI Bill education benefits; universities/states have a process that works now and it seems the legislation is intended to "help" but, most accurately, adds additional requirements.

For State Directors of Veterans Affairs, the increased burden to SAA's would be negative and will generate justifiable opposition from some States. SAA's ongoing issues of decreased contract funding (from VA) and increased requirements/workloads are a problem already for many States. This (seemingly) unfunded mandate for States' SAAs could prove problematic.

3. S. ____ - Serving our Rural Veterans Act

The "Serving our Rural Veterans Act" has considerable merit and its apparent intent to seek ways to increase the number of providers for our Veterans in rural, underserved areas is highly commendable. We realize roughly 75% of America's physicians trained, in some way, at VA facilities and any additional efforts to train rural providers for Veterans will ultimately benefit our Nation's citizens (and, hopefully, rural citizens) at large.

NASDVA sincerely appreciates this opportunity to submit our views on important legislation for our Nation's Veterans.

Sincerely,

Randy Reeves
President
NASDVA