

**STATEMENT OF  
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NATIONAL VETERANS AFFAIRS AND REHABILITATION DIVISION  
THE AMERICAN LEGION  
BEFORE THE  
COMMITTEE ON VETERANS' AFFAIRS  
UNITED STATES SENATE  
ON  
PENDING AND DRAFT LEGISLATION**

**MARCH 15, 2016**

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

**Burr - S.2646: Veterans Choice Improvement Act of 2016**

*To amend title 38, United States Code, to establish the Veterans Choice Program of the Department of Veterans Affairs to improve health care provided to veterans by the Department, and for other purposes.*

**Tester - S.2633: Improving Veterans Access to Care in the Community Act**

*To improve the ability of the Secretary of Veterans Affairs to provide health care to veterans through non-Department health care providers.*

**Background**

The American Legion believes in a strong, robust veterans' healthcare system that is designed to treat the unique needs of those men and women who have served their country. However, even in the best of circumstances there are situations where the system cannot keep up with the health care needs of the growing veteran population requiring VA services, and the veteran must seek care in the community. Rather than treating this situation as an afterthought, an add-on to the existing system, The American Legion has called for the Department of Veterans Affairs (VA) to "develop a well-defined and consistent non-VA care coordination program, policy and procedure that includes a patient centered care strategy which takes veterans' unique medical injuries and illnesses as well as their travel and distance into account."<sup>1</sup>

Over the years, VA has implemented a number of non-VA care programs to manage veterans' health care when such care is not available at a VA facility, could not be provided in a timely manner, or is more cost effective through contracting vehicles. Programs such as Fee-Basis,

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<sup>1</sup>[Resolution No. 46 \(2012\): Department of Veterans Affairs \(VA\) Non-VA Care Programs](#)

Project Access Received Closer to Home (ARCH), Patient-Centered Community Care (PC3), and the Veterans Choice Program (VCP) were enacted by Congress to ensure eligible veterans could be referred outside the VA for needed, and timely, health care services.

Congress created the VCP after learning in 2014 that VA facilities were falsifying appointment logs to disguise delays in patient care. However, it quickly became apparent that layering yet another program on top of the numerous existing non-VA care programs, each with their own unique set of requirements, resulted in a complex and confusing landscape for veterans and community providers, as well as the VA employees that serve and support them.

Therefore, Congress passed the *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015* (VA Budget and Choice Improvement Act) in July 2015 after VA sought the opportunity to consolidate its multiple care in the community authorities and programs. This legislation required VA to develop a plan to consolidate existing community care programs.

On October 30, 2015, VA delivered to Congress the department's Plan to Consolidate Community Care Programs, its vision for the future outlining improvements for how VA will deliver health care to veterans. The plan seeks to consolidate and streamline existing community care programs into an integrated care delivery system and enhance the way VA partners with other federal health care providers, academic affiliates and community providers. It promises to simplify community care and gives more veterans access to the best care anywhere through a high performing network that keeps veterans at the center of care.

Generally, The American Legion supports the plan to consolidate VA's multiple and disparate purchased care programs into one New Veterans Choice Program (New VCP). We believe it has the potential to improve and expand veterans' access to health care.

### **Burr/Tester bills**

The American Legion commends Senators' Burr and Tester for sponsoring legislation to fix the Choice program and codify the New VCP and we commend the committee for expeditiously considering these bills. Both bills address deficiencies in current law, as well as provide a comprehensive framework and foundation for consolidating the purchase of care in the community in those circumstances where it is not readily available from VA through contracts or existing sharing agreements.

There is a great degree of overlap and a lot to like in these bills. We look forward to a final compromise bill which incorporates the best of both. Where there are differences, The American Legion will highlight below what we would like to see in the final legislative package.

### **Veteran Eligibility**

Eligibility requirements are almost the same in both bills. However, the Tester bill has an additional requirement that should be kept, i.e., The veteran has a primary care provider under section 1705A that is not a health care provider of VA.

## **Network Structure**

The American Legion supports Tester's language allowing VA to set up tiered networks. As we understand it, this structure is meant to empower veterans to make informed choices, provide access to the highest possible quality care by identifying the best performing providers in the community, and enabling better coordination of care for better outcomes. However, it does not dictate how veterans will use the network.

The American Legion wants to make clear, though, that we do not support a wholesale option to circumvent the VA infrastructure or healthcare system entirely.

## **Prompt Pay**

From the Burr bill, we support the provision mandating that all claims be made electronically by January 1, 2019. From the Tester bill, an eligible provider should submit claims to Secretary within 180 days of furnishing care or services.

## **Episode of Care**

We support the Burr provision ensuring that an eligible veteran receives such care and services through the completion of the episode of care, including all specialty and ancillary services deemed necessary as part of the treatment recommended in the course of such care and services.

## **Funding for Program**

The American Legion is pleased to see that both bills call for advanced appropriations for VA's Care in the Community beginning in Fiscal Year 17.<sup>2</sup>

## **Emergency/Urgent Treatment**

The American Legion supports the inclusion of the Tester provision requiring VA to reimburse veterans for the reasonable value of emergency treatment or urgent care furnished in a non-Department facility in a final bill.<sup>3</sup>

## **Conclusion**

Ensuring veterans have access to appropriate, timely, high-quality care is critical. VA needs to overhaul its outside care reimbursement programs, consolidating them into a more efficient bureaucracy able to dynamically interact with the network of federal, public, and private providers that are to supplement VA direct provided care.

The American Legion believes that together we can accomplish legislative changes to streamline Care in the Community programs before the end of this session of Congress. We can't let

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<sup>2</sup> Resolution No. 16: [Assured Funding for VA Medical Care](#)

<sup>3</sup> Resolution No. 100: [Non-Department of Veterans Affairs Emergency Care](#)

another year slip away. Our veterans deserve the same sense of urgency now that Congress has shown numerous times since the VA scandal first erupted in 2014.

### **S. 2473: Express Appeals Act of 2016**

*To direct the Secretary of Veterans Affairs to carry out a pilot program to provide veterans the option of using an alternative appeals process to more quickly determine claims for disability compensation.*

This act, while well-intentioned, may ultimately have a negative impact upon veterans. Under the current proposal, veterans will have the option to elect to pursue a claim in a “*fully developed appeal (FDA)*” format. Through electing to have a claim adjudicated via FDA, a veteran opts to not submit any additional evidence for the record following the submission of the Notice of Disagreement (NOD).

The *Express Appeals Act* is designed to expedite the appellate process within VA. With a growing inventory of claims, VA and veterans service organizations (VSOs) have been working to discover a program that reduces the amount of time that veterans wait to have an appealed claim adjudicated.

In order for a veteran to receive benefits for a service connection condition, the following criteria must be met:

- A current diagnosis (exception: Gulf War Illness)
- An incident in service
- A nexus statement linking the current condition to either service or a previously service connected condition

Unfortunately, VA adjudication letters are often incomplete and unclear to veterans. They are uncertain why they were denied benefits; more importantly, they often do not know what information is needed to successfully overturn the previous decision by the VA regional office. Through passage of H.R. 732, VA will be compelled to find the most expeditious means to adjudicate an appealed claim. The American Legion strongly supports increased transparency in the adjudication of claims.<sup>4</sup>

The current bill could allow the following to occur:

- Veteran receives decision denying the benefit with little explanation regarding how VA arrived at its denial
- Veteran elects to appeal via FDA
- Veteran is denied the benefit sought at the BVA due to not knowing what information to submit

While decisions at the VA regional offices are lacking regarding how a claim is decided, Board of Veterans Appeal (BVA) decisions are lengthy and filled with language common in the legal

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<sup>4</sup> Resolution No. 128: [Increase the Transparency of the Veterans Benefits Administration's Claims Processing](#)

profession, however, it is confusing to veterans who have no legal background. Ultimately, a veteran could file a claim, have it denied at a VA regional office, utilize the appellate process and have a claim adjudicated at BVA meanwhile having little or no understanding of why the claim was denied.

The American Legion believes the FDA program is a program that with some adjustments could hold value. Discussions between The American Legion and VA have occurred regarding the adequacy of the adjudication notification letters. VA Secretary Robert McDonald has agreed to formulate a group of concerned veteran's service organizations to draft a letter to create an adjudication notification that properly advises veterans of the information needed to gain service connection for the condition.

The American Legion is working closely with VA and other VSOs to develop an appeals process that is expeditious meanwhile not shortcutting veterans' due process rights. The American Legion could support this legislation provided the working group makes helpful and productive changes to the notification letter process.

**The American Legion could support this legislation, provided it follows the caveats mentioned above.**

**Discussion Draft: On title 38, United States Code, appointment, compensation, performance management, and accountability system for senior executive leaders in the Department of Veterans Affairs.**

The American Legion supports any mechanism that ensures added accountability while providing VA the freedom to hire the best qualified medical and administrative staff. While we are excited and intrigued about VA's recommendation to convert the Senior Executive Service positions to an alternate hiring authority contained within the United States Code, we remain apprehensive until we are able to fully evaluate how the new program would be implemented in this special circumstance. The ability to convert positions, promote, demote, expedited hiring, as well as removal from government service capabilities need to be clearly outlined, to include an appellate process that is fair and equitable to the government employee, the veteran seeking quality services, and the American taxpayer. The American Legion looks forward to working closely with this Committee and VA to review this proposed plan.

**Conclusion**

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