



# WRITTEN STATEMENT OF THE SERVICE WOMEN'S ACTION NETWORK (SWAN)

Before The Joint Senate and House Committees on Veterans Affairs

Hearing on Legislative Priorities

2<sup>nd</sup> Session 117<sup>th</sup> Congress

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## **Introduction**

The Service Women's Action Network (SWAN) thanks the Senate and the House of Representatives Veterans Affairs Committees for the opportunity to present our legislative goals for the 2nd Session of the 117th Congress. We deeply appreciate your splendid, bipartisan work on behalf of veterans during the 1st Session of this Congress in what was a difficult year for so many. As we begin the 2nd Session of the 117th Congress, we look forward to continuing our work with the members of the Veterans Affairs Committees of both Houses.

SWAN, founded in 2008, is a national, nonpartisan, not-for-profit, member-driven community network advocating for the individual and collective needs of currently serving women and women veterans of all eras. Over the years, SWAN has played a major role in opening all military jobs to qualified women, holding military offenders accountable for sexual misconduct under the military justice system, supporting all survivors of military sexual trauma (MST), bringing about changes in the disability claims system to better help MST survivors, and expanding access to a broader range of primary, reproductive, and mental-wellness services for military women.

### **SWAN's Legislative Goals for Women Veterans in 2022**

- **Eliminate sexual assault and harassment at VA facilities.** All women veterans must feel safe, welcome, and well-cared for when visiting Department of Veterans Affairs (DVA) facilities.
- **Fix the Veterans Benefits Administration's (VBA) broken system for processing disability compensation claims tied to MST.**
- **Reform DBA's Character of Discharge (COD) Determination Process** to include transparency and standardization across VBA Regional Offices.
- **Toxic exposures and Women Veterans:** Ensure upcoming burn pit and toxic exposure studies examine the effect of such exposures on the development of breast cancer and infertility in women and men. Make mammograms regularly, routinely, and easily available for veterans.
- **Reproductive Healthcare:** 1.) Eliminate copays for contraceptives. 2.) Widen access to service-connected IVF treatment.



- **Arlington National Cemetery (NC) Internments:** Designate a second national cemetery for rendering full-military-honors interments.

**Eliminate Sexual Assault and Harassment at VA Facilities:** Ensure all women veterans feel safe, welcome, and well-cared for when visiting DVA facilities.

In the past years, DVA and Congress have made hard-won improvements in the quality and comprehensiveness of women's healthcare and their access to other VA programs, but all that improvement and investment is for naught if women encounter barriers when trying to use this healthcare or access other veterans' benefits, they have earned.

For too many years, too many women veterans have been left in the lurch when trying to report they were sexually harassed or assaulted at VA facilities. A study<sup>1</sup> released in 2019 sampled women veterans at 12 VA Medical Centers and found that one in four women veterans reported receiving catcalls, propositions, and derogatory comments about their military service from male veterans. A New York Times story, also from 2019, recounts how “an entrenched, sexist culture at many Veterans Hospitals is driving away female veterans”.<sup>2</sup> In 2020, instead of dealing with a report of sexual misconduct at a VHA Medical Center, the then Secretary of Veterans Affairs attacked the reputation of the Navy veteran—who was a staff member of the House Veterans Affairs Committee—after she reported that she was sexually assaulted at a VA Medical Center.<sup>3</sup>

These reports shook women veterans and their advocates deeply. Both Congress and the DVA are engaged in efforts to bring about the needed culture changes. However, as the most recent report of the

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<sup>1</sup> Klap, R. Darling, J.E. Hamilton, et al. “Prevalence of Stranger Harassment at VA Medical Centers and Impacts on Delayed and Missed Care,” Women's Health Issues, Jacobs Institute of Women's Health, Apr 2019. ([http://whijournal.com/article/S-1049-3867\(18\)30194-4/fulltext](http://whijournal.com/article/S-1049-3867(18)30194-4/fulltext)).

<sup>2</sup>Steinhauer, Jennifer. “Treated Like a Piece of Meat: Female Veterans Endure Harassment at the VA”, New York Times, March 12, 2019.

<sup>3</sup> Shane, Leo, “House Chair Calls for VA Secretary to Resign Over Handling of Sexual Assault Case”, Military Times, Dec 10, 2020.



Women Veterans Advisory Committee documents, the problems persist.<sup>4</sup> Among the latest Congressional and DVA initiatives are the implementation of the programs and reports required by *P.L. 116-315 the Johnny Isaksen and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act*—which incorporates the provisions of the *Deborah Sampson Act*—aimed at bettering women’s experiences at DVA facilities. Additionally, DVA has initiated a number of in-house programs to bring about the needed cultural transformation such as the White Ribbon Pledge, the Secretary’s Sexual Harassment Working Group, and VHA’s Stand Up to Stop Harassment Now! Declaration. It should be noted that DVA also participated with the Department of Defense in the Individual Review Commission on Military Sexual Misconduct<sup>5</sup> ordered by President Biden.

**SWAN Recommendations:** We deeply appreciate the emphasis and effort both Congress and DVA are making to transform VA’s culture so that women, members of racial and ethnic minorities and LGBT+ veterans are welcome and respected at all DVA facilities. We recommend that Congress and DVA leadership follow-up on these efforts 1.) By holding a hearing later this year to assess progress to date; 2.) By requesting a GAO Report on the successes and failures of current efforts to eliminate sexual harassment and assault of veterans using DVA facilities; 3.) By establishing standardized procedures for submitting and responding to reports of sexual assault and harassment made by veterans using all DVA facilities; and 4.) By establishing a central database for the collecting and tracking all such reports.

### **Fix VBA’s broken system for processing disability compensation claims tied to Military Sexual Trauma (MST)**

Women veterans not only face continuing sexual assault and harassment while seeking care at Veterans Health Administration (VHA) facilities, they and male survivors of MST must also contend with the years-long failure of the VBA to follow Congressional law and DVA guidance when processing and

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<sup>4</sup> 2020 Report of the Department of the Department of Veterans Affairs Advisory Committee on Women Veterans, September 2020.

<sup>5</sup> Hard Truths and the Duty to Change: Recommendations from the Independent Review Commission on Sexual Assault in the Military, July 2021.



adjudicating claims for compensation for service-connected disabilities arising from MST. A report released last August by the DVA Office of the Inspector General (OIG) states that 57% of rejected claims for MST were improperly denied.<sup>6</sup> This long-standing problem has been worsened by the outsourcing of more claims work to civilian contractors. Judging by the number of Congressional Hearings as well as GAO and DVA OIG reports on this matter, this process has been broken for at least a decade—see a selection of these reports below.<sup>7</sup>

**SWAN’s Recommendation:** SWAN strongly supports the passage of the *Servicemembers and Veterans Empowerment and Support Act of 2021* (S.3025) (H.R. 5666) introduced into both the House of Representatives and the Senate in October 2021.

### **Reform DBA’s Character of Discharge (COD) determination process to include transparency and standardization across VBA Regional Offices**

Access to veteran’s benefits is not automatic. Veterans must have an honorable discharge to use GI Bill benefits and a discharge “under honorable conditions” to access most other benefits. Over the years, many veterans suffering from PTSD and other mental health issues related to combat or MST—and also LGBT+ veterans— were discharged under “Other Than Honorable” conditions and were unfairly denied the benefits they earned.<sup>8</sup> Congress has changed the requirements for the composition and procedures of the Services’ Discharge Boards, Discharge Review Boards and Boards for the Correction of Military

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<sup>6</sup> “VA OIG: “Improvement Still Needed in Processing MST Claims” [Report #20-00041-163](#), August 5, 2021.

<sup>7</sup> [GAO Report 14-477](#) “MST: Improvements Made, but VA Can Do More to Track and Improve Consistency of Disability Claims Decisions,” June 2014. [GAO Report-21-444T](#) “VA Exams: Better Planning Needed as Use of Government Contractors Continues to Grow,” March 2021. VA OIG: “VBA Denied Posttraumatic Stress Claims Related to MST” [Report 17-05248-241](#), August 2018. [Hearing](#) before the Subcommittee on Disability Assistance and Memorial Affairs, HVAC, on “Ensuring Access to Disability Benefits for Veteran Survivors of MST”, June 20, 2019. [Hearing](#) before the Subcommittee on Disability Assistance and Memorial Affairs, HVAC, “Supporting Survivors: Assessing VA’s MST Programs,” Nov 17, 2021.

<sup>8</sup> Human Rights Watch. “Booted: Lack of Recourse for Wrongfully Discharged US Military Rape Survivors,” May 19, 2016. Ali R. Tayyeb and Jennifer Greenburg. “Bad Paper:” [The Costs of War for Excluded Veterans](#),” Watson Institutes Brown University, June 20, 2017. Maureen Siedor. [Swords to Plowshares Testimony](#) before the Subcommittee on Disability Assistance and Memorial Affairs, HVAC, July 8, 2020.



Records to avoid unfair “OTH” discharges in the future. To remedy past mistakes, both DoD and VA have conducted outreach to veterans who may now be eligible for a discharge upgrade and the access to VA benefits that would accompany it. However, most Service Discharge Review Boards are experiencing backlogs of months to over a year in processing these discharge reviews delaying veterans access to their earned benefits. Most veterans are unaware that, in the meantime, they can apply directly to VA for those benefits which will trigger a COD determination by the VBA. If granted, the veteran will become eligible for earned benefits immediately. The scanty statistics I’ve come across on the COD determination process indicate VBA seldom decides in the veteran’s favor. But I think that with help from Congress, CODs can become useful for veterans with erroneously awarded OTH and Bad Conduct Discharges (BCD). This would require Congress and the DVA to clarify the vague statutory and regulatory language underlying COD determinations, to standardize COD procedures and transparency across all VBA Regions, to train the COD adjudicators; and to conduct outreach to the public aimed at reaching veterans of all eras who are not users of DVA benefits.

**SWAN’s Recommendations:** 1.) Mandate a GAO study on the current administration of COD determinations across the VBA. The study should examine COD procedures and training at all Regional Offices and gather available data on denial and approval rates across Regional Offices. 2.) SWAN supports passage of the *Unlawful Turn-Aways Act* (H.R. 5321) (S. 2786).

**Toxic exposures and Women Veterans:** As Congress, DoD, DVA and the American public turn their attention to the grievous damage toxic exposures from burn pits and other sources have caused to veterans of the Post 9/11 wars, SWAN strongly believes planned studies of these damages must include data collection on linkages between such exposures and the development of breast cancer and infertility in both women and men. Although women are the fastest growing portion of the veteran’s population, they comprise less than 10% of current users of VA healthcare so there is a possibility of researchers overlooking cancers that mainly affect women for consideration as “presumptive for service-connection.”

VHA follows the American Cancer Society’s breast cancer screening guidelines which recommend beginning routine mammograms at age 45 or at 40 if family history warrants; but VA can also provide



mammograms for younger veterans when appropriate. In light of research suggesting that there may be a higher rate of breast cancer among younger women veterans than among their civilian counterparts,<sup>9</sup> SWAN believes there is a need to communicate to younger veterans that they can request mammograms if they are concerned about service-connected toxic exposures or for other reasons.

**SWAN Recommendations:** 1.) Include breast cancer and infertility in studies of the effects of burn pits and other toxic exposures on service members. 2.) SWAN strongly supports the passage of the *Making Mammography and Medical Options for Veterans Act* (H.R. 4794) (S. 2533). We particularly applaud the provisions of this bill which making access to mammogram services for paralyzed, other disabled veterans and those who live in underserved areas easier.

**Reproductive Healthcare:** 1.) Eliminate copays for contraceptives; 2.) Widen access to service-connected IVF treatment.

**1.) Eliminate Contraceptive Copays:** The Affordable Care Act (ACA) requires most private health plans to cover all FDA-approved birth control methods for women without cost sharing. However, the provisions of the ACA do not extend to healthcare provided by the Department of Veterans Affairs. Thus, while contraception for most women in this country is fully covered by their health insurance, most women veterans are still required to make copays for contraceptives.<sup>10</sup> Even small copays can be prohibitive for those struggling to make ends meet. It is disgraceful that unlike most other women in this country, women veterans are subject to contraceptive copays. To remedy this, the House of Representatives passed the *Equal Access to Contraception for Veterans Act* in June (H.R. 239). The Senate has yet to pass it.

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<sup>9</sup> "Women with Breast Cancer in VHA: Demographics, Breast Cancer Characteristics and Trends," ([pubmed.ncbi.nlm.nih.gov](https://pubmed.ncbi.nlm.nih.gov)). Yuen-Hee Anna Park, MD, Allison Keller, MS, et.al."Screening High Risk Women Veterans for Breast Cancer" ([pubmed.ncbi.nlm.nih.gov](https://pubmed.ncbi.nlm.nih.gov)). Kate Hendricks Thomas. "The Enemy is Lurking in Our Bodies," *Warhorse*, Oct 14, 2021. Rajeev Samant, Proposal Submission to DVA Project Number 2I01BX003374-05 Public Health Relevance Statement. VA contract awarded Feb 05, 2021.

<sup>10</sup>Under the VHA formulary, drug copays currently range from \$5 - \$11 per month depending on which of three tiers the drug falls under.



2.) **Widen access to service-connected IVF treatments:** In 2016, pursuant to a provision attached to the annual Appropriations bill—and included every year since then—the Veterans Health Administration (VHA) began funding IVF for a narrow segment of veterans with service-connected infertility. To be eligible, these veterans had to be legally married, the spouses had to produce the needed gametes and the female spouse had to receive the implanted embryo.<sup>11</sup> The VHA's eligibility requirements deliberately mirrored those used by the DoD when it began providing IVF for service-connected infertility under TRICARE in 2012.<sup>12</sup> These regulatory restrictions remain in effect today. Thus, IVF treatments for service-connected infertility for both active-duty members and veterans are limited to legally married, heterosexual couples able to produce their own gametes with a female spouse able to receive the implanted embryo. Candidates who are single, in same-sex marriages, or who require donor sperm and/or eggs or surrogacy services are not eligible. SWAN is grateful that IVF services are available to at least a segment of the veterans' population experiencing service-connected infertility; but, in fairness, these services should be available to all with service-connected infertility.

**SWN Recommendation:** SWAN strongly recommends that DoD eliminate the restrictions placed on IVF services in 2012 and that their linkage to IVF services provided by VHA be dissolved so that all active-duty members and veterans with service-connected infertility can receive IVF.

### **Arlington National Cemetery (ANC) Interments**

P.L.115-232 *The John S. McCain National Defense Act of 2019 Sec. 598* directed the Secretary of the Army in consultation with the Secretary of Defense to revise the criteria for in-ground burial—interment—at ANC. Under current interment criteria, ANC is expected to reach full capacity in 30 years or so. The goal of revising interment criteria is to ensure space at ANC will be available into the far future defined as 150 years. Under current criteria those eligible for interment include retired members

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<sup>11</sup> 82 Fed Reg. 6273 (Jan 19, 2017).

<sup>12</sup> DoD Implementation Guidance Memorandum: Policy for Assisted Reproductive Services for the Benefit of Seriously Ill/Injured (Category II or III) Active-Duty Service Members (ADSMs) 3 (2012).  
[https://www.sart.org/globalassets/asrm/asrm-content/news-and-publications/news-and-research/press-releases-and-bulletins.pdf/dod\\_policy\\_guidance.pdf](https://www.sart.org/globalassets/asrm/asrm-content/news-and-publications/news-and-research/press-releases-and-bulletins.pdf/dod_policy_guidance.pdf)





of the military receiving retirement pay and those who die while on active duty other-than-for-training. A proposed rule setting forth changes to current ANC burial criteria has appeared in the Federal Register<sup>13</sup> and the final rule is expected to be published in the Federal Register shortly. Under the proposed rule, interment would be limited to POWs; recipients of awards for combat valor at the Silver Star and above level; recipients of the Purple Heart; those on active duty who died while preparing for operations related to combat; U.S. Presidents and Vice Presidents; and veterans with armed conflict service who later served in significant government positions.

Unlike interment at other national and state veterans' cemeteries, interment at ANC includes the rendering of full military honors. The prospective revocation of this long-promised benefit—a great comfort to family members—affects certain groups in particular: 1.) A great number of Cold War veterans—whose final directives express their desire to be buried at ANC; 2.) Most service women;<sup>14</sup> and 3.) Some high-achieving veterans such as astronauts and others who engaged in pioneering and dangerous non-combat operations.

**SWAN Recommendation:** SWAN recommends that interment at a National Cemetery with full military honors remain a benefit for all eligible under current criteria. This can be accomplished by designating an existing National Veterans Cemetery as a site for the rendering of full military honors for those eligible.

**Conclusion:** SWAN supports most of the legislative goals of the VSOs that have testified before the House and Senate Veterans Committees at this year's hearings. We also deeply appreciate the opportunity to present key legislative goals specific to women veterans—who comprise the fastest

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<sup>13</sup> [Federal Register 09/15/2020 "Army Cemeteries"](#) FR document 2020-17801 Citation 85 FR 57640.

<sup>14</sup> Women were excluded from all combat occupations and assignments until the early 90s when most combatant ships and aircraft were opened to them by Congress. In 2016, the Secretary of Defense opened all ground combat positions to qualified women. The combat requirements under the proposed rule eliminate most women from interment at ANC. Those who would remain eligible include four living POWs, two recipients of The Silver Star and recipients of The Purple Heart as a result of terrorist attacks, service in the Gulf War or the Post 9/11 wars.





growing demographic group within the veteran's community. We look forward to working with both Committees to further these goals throughout 2022.

