

**STATEMENT OF HARMAR, KEMPF, INC., PRIDE MOBILITY PRODUCTS CORP., AMS VANS, MOBILITY PLUS, HOMECARE MOBILITY, PATRIOT MOBILITY, AMERIGLIDE ACCESSIBILITY SOLUTIONS, AMERICAN ACCESS, JOHN GEORGE WELDING AND ROLLX VANS**

**HEARING ON PENDING LEGISLATION  
SENATE COMMITTEE ON VETERANS AFFAIRS  
MAY 24, 2016**

Mr. Chairman, Ranking Member Blumenthal, and Members of the Committee:

Our companies are grateful for the opportunity to submit this statement for the hearing record on the draft Veterans Mobility Safety Act of 2016 (VMSA), which is a companion bill to H.R. 3471. On behalf of our employees and the disabled veterans whom they serve, we are hopeful that your Committee will modify the draft legislation and insist on changes to the House bill so that the proposed new regulatory regime does not create unintended consequences that could limit veterans' access to the services of certified providers of certain mobility solutions such as wheelchair and scooter lifts and could ultimately increase prices for the VA by limiting true competition.

**Highlights**

The VMSA is intended to develop a new regulatory framework for the Veterans Administration to implement minimum safety standards and require certification from mobility dealers it chooses to perform Automotive Adaptive Equipment (AAE) work. We support the notion of ensuring that veterans' vehicles are safe to operate when they've benefited from accessibility modifications paid for by the VA. And, we are pleased that the legislation continues the current practice of manufacturer certification of the installers that provide the actual services to the veterans. However, the legislation still would benefit greatly from some minor improvements and we urge you not to facilitate Senate passage of this legislation until the flaws are cured.

Specifically, we believe that the bill: (1) needs a more robust conflict of interest provision related to the use of a third party certification organization for the new safety standards and (2) should differentiate better between simple and complex modifications of vehicles, as explained below. Simple changes to the bill could accomplish these goals and ensure that a new regulatory regime does not create more problems for veterans and the businesses that service them.

**Background**

Manufacturers of AAE and their independent dealers are critical to helping the Department of Veterans Affairs address the growing need for mobility solutions for our nation's veterans. Many companies in this field are small businesses, often owned by veterans with service-connected disabilities. Ironically, their livelihoods and the accessibility of the veterans they serve are at risk due to this legislation in its current form.

As the Committee knows, tens of thousands of disabled veterans each month are provided vehicle lifts and/or fully modified vehicles, based upon the degree of their mobility limitations. This benefit permits them to be able to maintain as much freedom to go about their daily lives as they deserve. Veterans with limited mobility (as opposed to no mobility) are often able to have their needs

satisfied with an exterior lift that is installed on their vehicles via a standard trailer hitch and which allows for the transport of a scooter or power wheelchair. Under current law, the vast majority of these lifts are installed in the driveway of the veteran's home in as little as 30 minutes, as opposed to an equipment dealer's place of business, which is far more convenient for veterans and their families. These driveway installations are completed by our installers that have been trained and certified by the manufacturers of the equipment. Our home service has historically worked quite well because disabled veterans do not have to contend with weather, traffic, parking, and wait times as they would in a brick and mortar commercial establishment. This is important to preserve in any new regulatory environment.

### **The Need for An Improved Conflict of Interest Provision**

It is possible that the "minimum standards" promulgated under this legislation would impose new limitations on where one can add a lift, with no corresponding evidence that such a restriction would improve safety. Further, the bill puts at-home installations at risk because it reflects the significant influence of a trade group that represents only a portion of the industry and which wants to shift to a more centralized installation process for the benefit of its own members at the expense of convenience to veterans. This trade group has made it clear that it is seeking to have an affiliated entity become the "third party organization" designated by the Department of Veterans Affairs to certify dealer/installers. It would then be in a position to exert market dominance on behalf of its members. That would have a coercive effect on small business dealers, who would have to pay this organization that could charge unlimited rates for the certification, and who may choose to leave the program rather than absorb significant new costs.

We are not alone in having this concern, as VA Undersecretary Janet Murphy, appearing before the House Veterans Affairs Subcommittee on Health last year, provided testimony that echoes our concerns when she stated that HR 3471 "*may be too restrictive and cause undue hardship for small businesses that are not members of a certified organization and/or certified by the state in which the modification service is performed. This, in turn, may restrict the access and choice Veterans have.*"

Accordingly, we need the Senate to amend this legislation to prohibit an organization from becoming a certifying body if it is comprised of members that engage in the same commercial activities as other companies that would have to seek certification. There are plenty of independent and neutral third party organizations that could certify compliance with new standards, in addition to the manufacturers in our field. There is no reason for Congress to depart from its usual custom of enacting conflict of interest provisions for third party accreditation in other contexts that prohibit such self-dealing. The current bill provision is insufficient to protect manufacturers, dealers, and their veteran customers from market manipulation.

We have taken it upon ourselves to provide the Committee with legislative language that would do a great deal better to protect against the conflict of interest that could occur if the current bill were enacted:

“(e) CONFLICTS.—

(1) In developing and implementing the policy under subsection (a), the Secretary shall minimize the possibility of conflicts of interest, to the extent practicable.

(2) The Secretary may approve a private organization as a third party certification organization pursuant to Section 3(b)(4) of this Act if the third party organization meets conflict of interest standards as described in paragraph (3).

(3) The Secretary shall establish standards for conflicts of interest for third party organizations selected to certify providers, including—

(A) standards that prohibit such organizations from having members that are businesses engaged in commercial activities related to automotive adaptive equipment; and

(B) standards that ensure that a third party organization is not owned, managed, or controlled by any person that owns or operates a provider eligible to be certified by such organization.

(4) Any third party organization selected by the Secretary to certify providers shall establish and implement measures that the Secretary shall approve to reduce the possibility of conflict of interest or bias on the part of individuals acting on the organization's behalf.”

Amending the VMSA Discussion Draft would be consistent, for example, with the Food Safety Modernization Act, which requires FDA to ensure competence and independence of third-party auditors/certification bodies that conduct foreign food safety audits. It ensures the reliability of food and facility certifications issued by third-party auditors/certification bodies that FDA will use in making certain decisions relating to imported food (including pet food and animal feed). The law provides that an accredited third-party auditor “shall not be owned, managed, or controlled by any person that owns or operates an eligible entity to be certified by such auditor.” 21 USC § 384d(c)5. The Senate Discussion Draft of the VMSA and H.R. 3471 would permit a trade association to become a certification organization, which is the equivalent of a third party auditor under these FDA regulations, and to certify providers that are its own members or potentially to disadvantage non-members that seek certification.

Similarly, a more robust conflicts provision in the VMSA would be consistent with regulations related to the Occupational Safety and Health Administration (OSHA). To make sure equipment is safe in the workplace, OSHA relies upon a group of private sector organizations that it recognizes as Nationally Recognized Testing Laboratories (NRTLs) to perform testing and certification of products using consensus-based standards. Under federal law, any NRTL must demonstrate “complete independence from users (i.e., employers subject to the tested equipment requirements) and from any manufacturers or vendors of the certified products.” 29 CFR § 1910.7(b)(3) The Senate Discussion Draft and H.R. 3471 contain no such independence requirement.

Lastly, to implement the National Organic Program, USDA relies upon certifying organizations that inspect farms and other food production operations to ensure that they adhere to federal organic standards. Federal regulations list multiple requirements for preventing conflicts of interest in the certification process which a certifying organization must follow. 7 CFR § 205.501(a)(11) The Discussion Draft and H.R. 3471 contain no such conflict analysis or independence.

### **Simple Modifications vs. Complex Modifications**

Another way to ensure the continued ability of veterans to receive home installations is to modify the bill to distinguish specifically between installations of wheelchair and scooter lifts to the outside of the vehicle and the more complex vehicle modifications that change the structure or controls of a vehicle. Exterior lifts for unoccupied motorized wheelchairs or scooters are fundamentally different as they do not directly affect the operation of, or alter the structure of the vehicle and thus should not be included in such new regulations. An exterior lift is more like adding a bike rack to a

vehicle, as opposed to the taking apart of the actual vehicle or its operational controls to install a new adaptive steering system, for example.

We believe that the Senate could improve this legislation by letting the Department of Veterans Affairs decide whether a new set of standards is essential for simple modifications. Such a determination should be made based on available safety information and a cost-benefit analysis. If the Department believes such safety standards are needed, then the consultation provisions of the bill will be very helpful in ensuring that manufacturers and dealers have a seat at the table to provide key input from the perspective of the entities that actually provide the veterans the equipment and services.

## **Conclusion**

It would be easy for the Senate to take the House bill, which has bipartisan cosponsors, and pass it using an expedited procedure. After all, any bill that speaks of veterans and their safety should be a high priority for Congress. However, if you get in the weeds on the issues surrounding the Department's AAE program, the aspirations of a trade group that is only partly representative of the sector, and the plain meaning of the proposed legislation, you'll find that this is a matter worth studying further and that modifications to the bill that we have outlined above would be in the public interest. Our suggested amendments would ensure continued access for veterans to safe vehicles and would also preserve small businesses by creating a level playing field within the new regulatory regime that the bill would establish.

Thank you for the chance to share our views with you on this important public policy issue.

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