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STATEMENT OF
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BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
ON
HEALTH CARE LEGISLATIVE INTITIATIVES

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Mr. Chairman and Members of the Committee;

The American Legion appreciates this opportunity to express our views on the many important bills being considered today by the Committee. We applaud the Committee for holding hearings on these vital issues. Due to the late arrival of some of the draft legislation to our offices, we are unable to comment on all of them at this time. We therefore ask permission of the Committee to supplement the written record with our views as soon as we have the opportunity.

S.____,?The Veterans Health Care Improvements Act of 2005.?
SEC. 2. Copayment Exemption for Hospice Care;
This section would exempt veterans receiving end?of?life outpatient hospice care from copayments for those services. The American Legion supported legislation in the 108th Congress, which subsequently became law, applying to inpatient care. We support the extension of this exemption to outpatient care as well as the exemption of copayments for inpatient hospice care

SEC. 3. Nursing Home Bed Levels and Exemption of Extended Care Services Copayments for Former Prisoners of War;
The President's fiscal year 2006 VA budget request contains a legislative proposal to repeal the provision of the Millennium Act requiring VA to maintain its Nursing Home Care Unit (NHCU) bed capacity at the 1998 level of 13,391. The language in the budget request refers to this mandate as ?a baseline for comparison.? The Millennium Health Care Act requires VA to maintain its in-house bed inventory at the 1998 level; however, this capacity has significantly eroded rather than been maintained. In 1999 there were 12,653 VA NHCU beds, 11,812 in 2000, 11,672 in 2001 and 11,969 in 2002. VA estimated it had 12,239 beds in 2003 and 12,245 in 2004. The President's budget request projects only 9,975 in fiscal year 2006, a 27% decrease from the Millennium Act mandate. VA claims that it cannot maintain both the mandated bed capacity and implement all the non-institutional programs required by the Millennium Act.

According to VA's FY 2002 Annual Accountability Report Statistical Appendix, in September 2002, there were 93,071 World War II and Korean War era veterans receiving compensation for service-connected disabilities rated 70 percent or higher. The American Legion believes that VA should comply with the intent of Congress to maintain a minimum LTC nursing home capacity for those disabled veterans who are in the most resource intensive groups; clinically complex, special care, extensive care and special rehabilitation case mix groups. The nation has a special obligation to these veterans. They are entitled to the best care that VA has to offer and they should not be dumped onto Medicaid, as is now the trend. Providing adequate inpatient LTC capacity is good policy and good medicine. The American Legion opposes this provision of Section 3.

This section also exempts former prisoners?of?war from copayments for extended care services for non service?connected disabilities. Veterans who have suffered the hardships, deprivations and indignities of captivity by an enemy government or other entity should receive the best care that we have to offer at no cost. They have already bought and paid for it. The American Legion is pleased to support this provision of Section 3.

SEC. 4. Authorize VA reimbursement for non?VA?provided emergency care;
This section will authorize VA to reimburse emergency medical care for which veterans are personally liable; either directly to the veteran, to the facility providing the emergency care or to a third party that paid for the care. To qualify, the veteran must be enrolled in VA healthcare and must have received treatment from VA within 24 months prior to the emergency care. The veteran must have insurance or other third party coverage that pays some of the costs and leaves the veteran liable for uncovered costs such as deductibles and copayments. This section is separate from similar statute that provides similar coverage to veterans who have no insurance or who needed emergency treatment for a service?connected condition, a non service?connected condition aggravating a service?connected one, a totally service?connected disability or who is enrolled in VA vocational rehabilitation.

The American Legion supports this section; however, we note that it does nothing to correct the problems with VA policy on non?VA emergency treatment, generally, especially as regards local ambulance transportation. This has become an issue of concern to many American Legion veterans' advocates around the country.

We relate a case?specific in which a veteran rated 60 percent disabled and 100 percent individually unemployable had had bilateral knee replacements for his service?connected condition. He ambulates with the assistance of braces and cane. On a visit to the local mall, the veteran's knees gave out and he fell forward, injuring his hands, elbows and knees. The veteran's wife called the local rescue squad because the veteran was in extreme pain. The nearest VA Medical Center was in Roseburg Oregon, 150 miles to the north, so the decision was made to transport the veteran to the local hospital for stabilization. The VA Outpatient Clinic in White City, 15 miles away, was not staffed for emergencies or orthopedic trauma and the veteran was not seen there until several days after the incident. The attending at the VAOPC confirmed that the veteran's left knee was fractured. The veteran requested that VA pay the charges from the local hospital, but VA denied on the basis that the injury was not emergent; that is, life?threatening, and the injury could have been handled within the VA system. This despite the fact

that, even if the VAMC was close enough to use, it was on ?divert?, meaning it would not receive inbound ambulances. The denial of the veteran's claim is currently on appeal.

The American Legion believes Congress should closely examine the criteria under which VA is authorized to reimburse emergency non?VA treatment versus how it actually does.

SEC. 5. Authorize VA, for a 14?day period, to provide care for newborn infants of veterans who have delivered in a VA facility (or at VA expense);
This section adds two weeks of neonatal care of a newborn infant that has delivered to a veteran in a VA medical facility or at VA expense. As of March 2005, 1.7 million of the nation's 24.7 million veterans are women. Women now account for 15 percent of active duty military personnel and are currently serving in Iraq and Afghanistan under identical conditions as male servicemembers. VA now provides a full continuum of comprehensive medical services including health promotion and disease prevention, primary care, women's gender-specific health care; e.g., hormone replacement therapy, breast and gynecological care, maternity and limited infertility (excluding in-vitro fertilization), acute medical/surgical, telephone triage, emergency and substance abuse treatment, mental health, domiciliary, rehabilitation and long term care. Given the unknowns of military environmental exposures in the current conflicts, Congress is wise to extend this care to the newborn children of these veterans. The American Legion supports this section.

SEC. 6. Allow providers of care to Vietnam veterans' spina bifida children and children with covered birth defects to seek from third party payers payment for the difference between amount billed and amount reimbursed by VA;
VA will provide a Vietnam veteran's child who has been determined to suffer from spina bifida and children with covered birth defects with such health care as the VA determines is needed by the child for spina bifida or covered birth defects. Under 38 C.F.R. 17.901, VA is the ?exclusive payer? for spina bifida services and services related to covered birth defects regardless of any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. The rates paid by VA for the care of children of Vietnam veterans with spina bifida and covered birth defects, in many cases, do not cover the amounts billed by non?VA providers, exposing the parents to ?balance billing? for the amounts not reimbursed. This legislation would clarify that the ?exclusive payer? language in 38 C.F.R. 17.901 does not preclude providers from balance billing third?party payers and relieves the parents of responsibility for VA underpayment by holding harmless the parents of beneficiary children from balance billing by providers.

Caring for a child with spina bifida and/or covered birth defects imposes economic and emotional burdens on the parent that may be compounded by medical debt incurred as a result of balance billing. The American Legion supports this provision.

SEC. 7. Authorize on a permanent basis grants and per diem payments to providers of services to the homeless, and increase from $99 million to $130 million per year;
Homelessness in America is a travesty, and veterans' homelessness is disgraceful. Left unattended and forgotten, these men and women, who once proudly wore the uniforms of this nation's armed forces and defended her shores, are now wandering the streets in desperate need of medical and psychiatric attention and financial support. While there have been great strides in

ending veteran homelessness there is much more that needs to be done. We must not forget them. The American Legion supports funding of the Homeless Veterans Grants and Per Diem Program at $133 million.

SEC. 8. Marriage and Family Therapy;
This section adds Marriage and Family Therapy to the list of professionals authorized to practice in VA facilities. A major criticism of VA Post?traumatic Stress Disorder Treatment programs has been the exclusion of spouses and children from the recovery process. In many cases, the residuals of the veteran's traumatic experiences impact the family members of the veteran as severely as the veteran him or herself. Education about post-traumatic stress reactions, training in coping skills, the use of efficacious therapies such as exposure therapy, cognitive restructuring and family counseling are generally accepted as methods of care for PTSD. The addition of Marriage and Family Therapy to multi?disciplinary treatment in VA will add a needed dimension to the holistic treatment model required to successfully help the veteran and his loved ones recover from the trauma of war. The American Legion supports this provision.

SEC. 9. Authorize Senior Executive Service compensation to the Director, VA Nursing Service;
The American Legion has no position on this issue.

SEC. 10. Repeal of cost comparison studies prohibition;
The American Legion has no position on this issue.

SEC. 11. Mental health/PTSD service improvements;
In the 2003 report of the Special Commission on Post-traumatic Stress Disorder, released before the invasion of Iraq, it was noted that demand for VA PTSD specialized services is growing. Fifty percent of all veterans service-connected for PTSD became service-connected within the last five years and the population served by VA specialized PTSD outpatient programs grew by 86 percent between FY 1995 and FY 2001. The Commission noted that the intensity of services provided to veterans service?connected for PTSD actually fell by 9.3 percent over the five years preceding the report. This decline in capacity is illustrated by the fact that of the 205,996 veterans who had a VA clinic visit where PTSD was the focus of treatment, only 28 percent received it in a specialized PTSD program. The other 72 percent received treatment in some other setting, including 17 percent who were seen in a non-mental health setting. Additionally, of the 128,000 veterans seen in Vet Centers in FY 2002, only 55 percent were receiving services of any kind in a VA medical center. In its 2002 report, the Commission noted that the average waiting time to enter a specialized PTSD inpatient program was 47 days with waits approaching one year in some facilities. The Commission concluded that VA's specialized PTSD services are so fully saturated that that they cannot absorb new patients (now, Iraq war returnees) without diluting the intensity of service provided to each veteran.

This section directs VA to: (1) expand the number of clinical treatment teams dedicated to Post? traumatic Stress Disorder (PTSD) in VA medical facilities (funded at $5 million in each of fiscal years 2006 and 2007); (2) expand and improve diagnosis and treatment of substance abuse ($50 million); (3) expand and improve tele?health services where veterans are remote from VA facilities ($10 million); (4) improve education of VA primary care professionals to diagnose and treat mental health issues ($1 million); expand the delivery of mental health services in VA Community Based Outpatient Clinics ($20 million) and; (5) expand and improve Mental Health

Intensive Case Management Teams for veterans with serious and chronic mental illness ($5 million).

These improvements come at a time when VA is experiencing an upswing in demand for mental health services by veterans of Operations Iraqi Freedom and Enduring Freedom. The American Legion has long advocated the reinstatement of mental health and substance abuse capacity that was severely curtailed in the 1990s and we support this section of this bill. However, we have concerns that by earmarking the $95 million the bill would appropriate in fiscal years 2006 and 2007, VA will be forced to further ration other programs and services. VA's fiscal year 2006 appropriation already falls well short of what VA needs to maintain currents levels of service and access. The American Legion believes the Congress should authorize additional funding to cover the costs of implementing this section.

SEC. 12. Data Sharing Improvements;
This section authorizes the exchange of protected health information between VA and the Department of Defense (DoD) on patients receiving treatment from VA and any person who may receive treatment from VA including ?current and former members? of the Armed Services. This language is vague and seems to propose that VA become the repository of all medical records of ?all current and former? members of the Armed Services. This would place an extreme burden on VA and require it to take over some of the functions of the National Archives' National Personnel Records Center (NPRC) that currently manages the service medical and personnel records of millions of former servicemembers at its facility in Saint Louis. When VA requires the medical records of an individual, usually for compensation and pension claims purposes, it requests them from NPRC. For soldiers separated or released from active duty after October 1994, their health records already go directly to the Department of Veterans Affairs' Record Management Center (VA RMC), also in St. Louis. Additionally, VA and DoD currently have a number of ongoing information exchange initiatives in development in their efforts to meet the Seamless Transition mandates of Congress. The American Legion defers comment on this section and requests the Committee to provide clarification.

SEC. 13. Expansion of National Guard Outreach and Assessment;
This section directs VA to collaborate with State National Guard officials and expand the total number of VA employees dedicated to outreach under the VA's Rehabilitation Counseling Service's Global War on Terrorism Outreach Program. The American Legion supports this section.

Many of our servicemembers returning home from duty on Operations Iraqi Freedom and Enduring Freedom are not being properly advised of the benefits and services available to them from the Department of Veterans Affairs and other Federal and State agencies. This is especially true of Reserve and National Guard units that are demobilized at hometown Reserve Centers and National Guard armories, rather than at active duty demobilization centers. To assist in making sure that these servicemembers are aware of the services and benefits they have earned through their honorable service in the Global War on Terrorism, The American Legion has developed a Welcome Home brochure. This brochure outlines the basic entitlements and benefits available from VA and provides contact phone numbers and Internet websites from which servicemembers may obtain more information. The American Legion intends to distribute this document to

demobilization centers, Reserve Centers, National Guard armories and Transition Assistance Programs nationwide.

SEC. 14. Expansion of Tele?health Services;
This section directs VA to install tele?medicine technology in a larger number of Veterans Readjustment Counseling Services facilities (Vet Centers) and to report to Congress its plan to do so in fiscal years 2005 through 2007. The American Legion supports this section and further believes that Vet Centers in highly rural and isolated areas should receive priority for this technology.

SEC. 15. Mental Health Data Sources Report;
This section requires VA to submit a report to the Congress on the mental health data maintained by VA, including a list of the sources of such data, and assessment of the advantages and disadvantages of the current data and recommendations for improving the collection, use and location of such data. The American Legion has no position on this issue.

S.____,?The Blinded Veterans Continuity of Care Act of 2005.?
In this bill, Congress has found that approximately 1500 veterans are on waiting lists for admission to VA blind rehabilitation programs nationally and that this situation is due largely to shortages of blind rehabilitation specialists in VA facilities. This legislation directs VA to establish blind rehabilitation specialist positions at VA facilities having 150 or more currently enrolled legally blinded veterans and prioritizes implementation by fiscal year starting with VA facilities having the highest numbers of blind veterans. The bill further appropriates $5 million a year for each of fiscal years 2006 through 2010 for implementation. The American Legion supports this initiative; however, we have concerns that by earmarking the $5 million the bill would appropriate in fiscal years 2006 through 2010, VA will be forced to further ration other programs and services. VA's fiscal year 2006 appropriation already falls well short of what VA needs to maintain currents levels of service and access. The American Legion believes the Congress should authorize supplementary funding to cover the costs of implementing this section.

S.____,?To require the Secretary of Veterans Affairs to publish a strategic plan for long?term care, and for other purposes.?
The American Legion supports this bill, however, due to restraints of time The American Legion requests the Committee to allow us to submit our views as an addendum to the written record.

S.____,?To establish a grant program to provide innovative transportation options to veterans in remote rural areas.?
The American Legion supports this bill; however, due to restraints of time The American Legion requests the Committee to allow us to submit our views as an addendum to the written record.

S.____,?The Mental Health Capacity Act of 2005.?
The American Legion supports this bill; however, due to restraints of time The American Legion requests the Committee to allow us to submit our views as an addendum to the written record.

S.____, ?The Neighboring Islands Veterans Health Care Improvements Act.?
The American Legion has consistently supported the establishment of VA facilities to serve

veterans in remote and underserved areas. The American Legion supports this bill; however, due to restraints of time The American Legion requests the Committee to allow us to submit our views as an addendum to the written record.

S. 481, To extend combat veterans' post?discharge 2?year period of eligibility for VA health care to 5 years.
The American Legion supports this bill; however, due to restraints of time The American Legion requests the Committee to allow us to submit our views as an addendum to the written record.

S. 614, ?The Veterans Prescription Drugs Assistance Act of 2005.?
This bill mandates VA to provide prescription medications to Medicare?eligible veterans who are receiving disability compensation, nonservice?connected pension, aid and attendance or are housebound. VA must fill prescriptions written by ?a duly licensed physician? for any condition under this legislation. Veterans receiving nonservice?connected pension who are also receiving aid and attendance may continue to receive this benefit even if their incomes exceed maximum income limitations by not more than $1000.00. Under current law, such veterans would lose eligibility for any VA care or services once their incomes exceed the maximum income limitation.

This bill also requires VA to fill prescriptions written by ?duly licensed physician[s]? for any condition where the Medicare?eligible veteran makes an annual, irrevocable, renewable election to get his or her medications from VA. VA is required to provide the veteran making the election with information about the benefits, costs and consequences prior to permitting the election. The bill takes care to make sure that the new benefit is cost?neutral to VA by allowing VA to establish new schedules of annual enrollment fees, co?payments and allowing VA to charge the full cost of medications to veterans. VA is also authorized to provide immunizations to Medicare?eligible veterans, provided that the vaccines required are furnished to VA by the Department of Health and Human Services at no charge.

Mr. Chairman, The American Legion believes that while well?intentioned, this bill has serious problems.

First, it requires the Medicare?eligible veteran to make a decision as to where to get his or her medications based on information that is not yet available and it further complicates already unfathomable extant and pending regulation and criteria for federal prescription drug benefits. Unforeseen and unintended consequences will be rife; for example, the new Medicare Part D drug benefit includes penalties for late enrollment, therefore, should a veteran elect to use VA, then later elect to use Medicare Part D, the veteran could end up paying a premium for having elected to use VA first. If enacted, implementation of this benefit should be delayed for several years to allow the entire federal drug benefit landscape to stabilize.

Second, despite VA's renowned buying?power in pharmaceutical markets, it is unclear how manufacturers will react to hundreds of thousands of new beneficiaries receiving medications with pricing predicated on the Federal Supply Schedule for Pharmaceuticals (FSS?P) or VA's negotiated off?schedule pricing. If history is any indication, the pharmaceutical industry will react negatively to any siphoning?off of more profitable non?FSS?P volume with predictable effects on VA's drug costs.

Lastly, this bill represents yet another windfall for the Center for Medicare and Medicaid Services (CMS), which VA already subsidizes for the nonservice?connected care of Medicare? eligible veterans to the tune of billions of dollars per year. The requirement that VA recover all its costs for filling prescriptions through enrollment fees, new co?payment schedules and direct cost billing relieves CMS of fiscal exposure for this population of beneficiaries and places it on the backs of veterans. VA should be authorized to recover incurred costs not covered by existing co? payments in this new benefit from CMS.

The American Legion has consistently opposed enrollment fees for VA eligibility, including any prescription?only benefit. We restate that position today and express adamant opposition to the introduction of new co?payment schedules not already in law. Additionally, The American Legion has opposed the filling of prescriptions written by non?VA providers. VA Consolidated Mail Outpatient Pharmacies (CMOPs) are already running at over?capacity and would require significant additional infrastructure to meet the demand imposed by this bill.

S. 716, ?The Vet Center Enhancement Act of 2005.?
The American Legion supports this bill; however, due to restraints of time The American Legion requests the Committee to allow us to submit our views as an addendum to the written record.

S. ____, : ?The Sheltering All Veterans Everywhere Act.?
This bill authorizes funding of the VA Grants and Per Diem Program at the full rate for domiciliary care and appropriates $200 million per fiscal year for fiscal years 2006 through 2011, expands eligibility for veterans at imminent risk of homelessness and appropriates an additional $50 million for that purpose for those years expands outreach to at?risk veterans, including those separating from active duty. It further extends authorization for treatment and rehabilitation for seriously mentally ill and homeless veterans and permanently reinstates VA authority to transfer properties obtained through foreclosure of VA home mortgages wherein VA may sell, donate, lease, or lease with option those properties to nonprofit organizations, States or localities for use in sheltering homeless veterans. The bill reauthorizes $5 million per year for fiscal years 2005 through 2011, funds the Homeless Veterans Service Provider Technical Assistance program at $1 million for the same period, expands eligibility for dental care for homeless veterans, requires an annual report to Congress from VA on the status of its assistance to homeless veterans and extends the life of the VA Advisory Committee on Homeless Veterans.

The current Administration has vowed to end the scourge of homelessness within ten years. The clock is running on this commitment, yet words far exceed deeds. On any given night in this nation, there are as many as 300,00 homeless veterans with as many as 600,000 homeless during the year. While less than nine percent of the nation's population are veterans, 34 percent of the nation's homeless are veterans and 75 percent are wartime veterans. This bill is the first major proposal in years to fund veterans homelessness programs at levels that have a potential to make a real impact and The American Legion vigorously supports it. The American Legion has concerns that by earmarking the funding required by this bill from existing appropriations, VA will be forced to further ration other programs and services. VA's fiscal year 2006 appropriation already falls well short of what VA needs to maintain currents levels of service and access. The American Legion believes Congress should authorize additional funding to cover the costs of implementing this forward?thinking legislation.

Mr. Chairman, this concludes my testimony. I will be happy to answer any questions.