



STATEMENT FOR THE RECORD  
OF THE  
WOUNDED WARRIOR PROJECT  
BEFORE THE  
COMMITTEE ON VETERANS AFFAIRS  
UNITED STATES SENATE

JUNE 24, 2015

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee:

Thank you for inviting Wounded Warrior Project® (WWP) to provide our views on pending veterans’ legislation today. Several of the measures under consideration directly relate to policy priorities of injured service members and caregivers and we are encouraged to see their consideration. What follows are our comments on those bills.

**S. 469 – The Women Veterans and Families Health Services Act of 2015**

WWP thanks the Committee specifically for the opportunity to provide our thoughts regarding the fertility treatments provided by the Department of Veterans Affairs (VA). In our decade-long experience working daily with this generation of wounded warriors and their families, we believe that there is a serious, unmet need to provide reproductive services and adoption assistance to assist in helping severely wounded, ill, or injured veterans who have service-incurred infertility conditions to have children.

Families play a critical role in wounded veterans’ reintegration, recovery, and rehabilitation. Military families have a unique culture, and learn to live with the shared sacrifices that come with military service. Those who return from war with visible or invisible wounds that prevent them from having children can find the transition home even more challenging.

Blasts from widespread use of improvised explosive devices in Iraq and Afghanistan, particularly in the case of warriors on foot patrols, have increasingly resulted not only in traumatic amputations of at least one leg, but also in pelvic, abdominal or urogenital wounds.<sup>1</sup> While not widely recognized, the number and severity of genitourinary injuries has increased over the course of the war, with more than 12% of all admissions in 2010 involving associated genitourinary injuries.<sup>2</sup> With that increase has come not only Department of Defense (DoD) acknowledgement of the impact of genitourinary injuries on warriors’ psychological and reproductive health,<sup>3</sup> but the adoption of a policy authorizing and providing implementation guidance on assisted reproductive services for severely or seriously injured active duty service members.<sup>4</sup> DoD’s policy, set forth in revisions to its TRICARE Operations Manual, applies to service members of either gender who have lost the natural ability to procreate as a result of neurological, anatomical, or physiological injury. The policy covers assistive reproductive technologies (including sperm

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and egg retrieval, artificial insemination, and in vitro fertilization) to help reduce the disabling effects of the service member's condition to permit procreation with the service member's spouse.<sup>5</sup>

For veterans, however, VA coverage is very limited in scope. The regulation describing the scope of VA's "medical benefits package" states explicitly that in vitro fertilization is excluded<sup>6</sup> and that "[c]are will be provided only...[as] needed *to promote, preserve, or restore the health* of the individual... (italics added)."<sup>7</sup> Consistent with that limiting language, the VA's benefits handbook advises women veterans with regard to health coverage that "...infertility evaluations and limited treatments are also available."<sup>8</sup>

The VA's policy of providing only "limited" services to veterans unable to procreate likely rests on at least two grounds. First, the VA has long construed its authority as limited to "treatment" of a disability, and as not extending to procedures that did not "treat" the underlying disability but were aimed at "overcoming" it. The VA's references to "limited treatment" likely also reflect a view that its statutory health care role is one of providing services to the veteran (and the veteran only), and thus does not extend to procedures or advanced technologies that involve not only the veteran, but a spouse or partner.

In a departure from longstanding policy, the VA stated last year that "[t]he provision of Assisted Reproductive Services (including any existing or future reproductive technology that involves the handling of eggs or sperm) is in keeping with VA's goal to restore the capabilities of Veterans with disabilities to the greatest extent possible and to improve the quality of Veterans' lives."<sup>9</sup> In its statement, VA also expressed support in principle for legislation authorizing VA to provide assistive reproductive services to help a severely wounded veteran with an infertility condition incurred in service and that veteran's spouse or partner have children. It conditioned that support, however, on "assurance of the additional resources that would be required."<sup>10</sup> While these advanced interventions require resources, cost should not be a barrier as it relates to this country's obligation to young warriors who sustained horrific battlefield injuries that impair their ability to father or bear children.

WWP supports this bill, and urges the Committee to enact legislation that brings parity to veterans who are unable to conceive because of the warrior's severe service-incurred injury or illness to receive fertility counseling and treatment, including assisted reproductive services, similar to services provide to active duty service members.<sup>11</sup>

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### **S. 1085 – The Military and Veteran Caregiver Services Improvement Act of 2015**

In working daily with family members of disabled warriors who have sustained severe or catastrophic injuries, WWP continues to see the profound toll the lack of assistance can take on caregivers. While caring for severely disabled warriors—sometimes for years and without assistance—many caregivers have left their jobs, exhausted savings, and suffered tremendous strain to their own health in order to provide the very best care for their warrior.

Five years ago, this Committee passed historic legislation (Caregivers and Veterans Omnibus Health Services Act of 2010, P.L. 111-163; Caregiver Law) that established the framework for a VA program that now provides critical support to caregivers of seriously disabled veterans. That legislation recognized the risk that the extraordinary toll of caregiving could overwhelm the caregiver—whether physically, emotionally, or financially—and result in unwanted, but very costly, institutionalization for the service member. The Caregiver Law established the framework for the Department of Veterans Affairs' (VA)

Caregiver Program, which now provides critical services and support to over 19,000 caregivers of injured veterans.

We appreciate S.1085’s attempts to improve the Caregiver Program by extending those critical services to veterans of all conflict eras. Before extending the Caregiver Program, however, we feel that Congress should address several long-standing, unresolved issues that continue to frustrate caregivers already in the program.

Specifically, vagueness and ambiguity in VA’s final caregiver regulations have resulted in wide variability in determinations of eligibility and support, with evidence of clearly erroneous decisions creating hardship. The final regulations, for example, leave “appeal rights” unaddressed (including appeals from adverse determinations of law), and set unduly strict criteria for determining a need for caregiving for veterans with severe behavioral health conditions, including veterans with Traumatic Brain Injury (TBI). In addition, the vagueness of the regulations, in terms of clinical decision-making, engenders arbitrary, inconsistent implementation. These are serious issues that we feel should be addressed prior to extending the Caregiver Program.

We ask your help in resolving these long-outstanding concerns, as well as in easing the Veterans Benefits Administration (VBA) reporting and oversight requirements on Veterans Health Administration-recognized (VHA) caregivers who are also fiduciaries for their loved ones.<sup>12</sup>

**Conclusion**

WWP envisions a future in which the most successful, well-adjusted generation of injured service members in our nation’s history not only survives, but also thrives. This vision requires sustained public support, and relevant programs and services for veterans and their caregivers. Helping injured service members requires a lifetime of commitment. WWP commits to serving this population for their lifetime, and working with Congress and the Administration to realize this vision.

Thank you for the opportunity to comment on these important bills.

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The mission of Wounded Warrior Project® (WWP) is to honor and empower Wounded Warriors. WWP’s purpose is to raise awareness and to enlist the public’s aid for the needs of injured service members, to help injured service men and women aid and assist each other, and to provide unique, direct programs and services to meet their needs. WWP is a national, nonpartisan organization headquartered in Jacksonville, Florida. To get involved and learn more, visit [www.woundedwarriorproject.org](http://www.woundedwarriorproject.org).

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<sup>1</sup> Dismounted Complex Injury Task Force, “Dismounted Complex Blast Injury: Report of the Army Dismounted Complex Injury Task Force,” I (June 18, 2011) available at: <http://www.armymedicine.army.mil/reports/DCBI%20Task%20Force%20Report%20%28Redacted%20Final%29.pdf>.

<sup>2</sup> Id. at 16.

<sup>3</sup> Id.

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<sup>4</sup> Asst. Secretary of Defense (Health Affairs) & Director of TRICARE Management Activity, Memorandum on Policy for Assisted Reproductive Services for the Benefit of Seriously or Seriously Ill/Injured (Category II or III) Active Duty Service Members (April 3, 2012) available at: [http://www.veterans.senate.gov/upload/DOD\\_reproductive\\_letter.pdf](http://www.veterans.senate.gov/upload/DOD_reproductive_letter.pdf).

<sup>5</sup> Dept. of Defense, TRICARE Operations Manual 6010.56-M, Chapter 17, Section 3, para. 2.6 (Sept. 19, 2012).

<sup>6</sup> 38 C.F.R. § 17(c)(2).

<sup>7</sup> 38 C.F.R. § 17(b) (Emphasis added).

<sup>8</sup> Department of Veterans Affairs, “Federal Benefits for Veterans, Dependents and Survivors” available at [http://www.va.gov/opa/publications/benefits\\_book/benefits\\_chap01.asp](http://www.va.gov/opa/publications/benefits_book/benefits_chap01.asp)

<sup>9</sup> *Health and Benefits Legislation Hearing Before the S. Comm. on Veterans Affairs*, 112<sup>th</sup> Cong. (2012).

<sup>10</sup> *Id.*

<sup>11</sup> To learn more about the how important fertility issues are to wounded service members, visit <http://www.woundedwarriorproject.org/programs/policy-government-affairs/key-policy-priorities/objective-3-optimal-long-term-rehabilitative-care/initiative-4.aspx>.

<sup>12</sup> WWP submitted a Statement for the Record on the VA Caregiver Program in December 2014, accessible online here: [http://www.woundedwarriorproject.org/media/723028/veterans\\_affairs\\_caregiver\\_program\\_assessing\\_current\\_prospects\\_and\\_future\\_possibilities.pdf](http://www.woundedwarriorproject.org/media/723028/veterans_affairs_caregiver_program_assessing_current_prospects_and_future_possibilities.pdf). For more information about the challenges facing this generation of caregivers, visit: <http://www.woundedwarriorproject.org/programs/policy-government-affairs/key-policy-priorities.aspx>.