

**STATEMENT OF
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DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
U.S. SENATE
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Good morning, Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee. Thank you for inviting us here today to present our views on several bills that would affect the Department of Veterans Affairs' (VA) programs and services. Joining me today is Dr. Maureen McCarthy, Assistant Deputy Under Secretary for Health for Patient Care Services, Veterans Health Administration (VHA). While VA makes every effort to provide views on all bills that are on the hearing agenda, due to the time of receipt of the draft bill to authorize payment by VA for the costs associated with service by medical residents and interns at facilities operated by Indian tribes and tribal organizations, we are unable to provide views at this time. We look forward to sharing our views on the draft bill in a follow-up letter.

S. 2316 To expand the requirements for reissuance of veterans benefits in cases of misuse of benefits by certain fiduciaries to include misuse by all fiduciaries, to improve oversight of fiduciaries, and for other purposes.

This bill would amend Chapters 55 and 61 of Title 38, United States Code (U.S.C.), to expand the requirements for reissuance of Veterans' benefits in cases of misuse of benefits by certain fiduciaries to include misuse by all fiduciaries and improve access to financial records for purposes of oversight of fiduciaries.

Section 1 of S. 2316 would amend 38 U.S.C. § 6107, to authorize the VA to reissue benefits to a beneficiary in all cases of fiduciary misuse. This bill would extend VA's reissuance authority to include misuse by individual fiduciaries who manage benefits for fewer than 10 beneficiaries, without regard to VA negligence in appointing or overseeing such fiduciaries. The bill would prescribe that VA will pay the beneficiary or the beneficiary's successor fiduciary an amount equal to the misused benefits in any case in which a fiduciary misuses a beneficiary's VA benefits.

Section 2 of S. 2316 would add a new subsection to 38 U.S.C. § 5502, which contains VA's authority to oversee and monitor the activities of fiduciaries. This new subsection would increase VA access to fiduciary-held financial accounts by requiring every fiduciary to authorize VA to obtain any record held by any financial institution

regarding the fiduciary or the beneficiary whenever VA determines that such record is necessary:

- for the administration of a VA program; or
- to safeguard the beneficiary's benefits against neglect, misappropriation, embezzlement, or fraud.

VA supports this bill. It would ensure equal treatment of all fiduciary misuse victims regardless of the nature and scope of the fiduciary's business or the fiduciary's relationship with the beneficiary. This bill would allow VA to promptly reissue benefits that have been misused, thereby avoiding any financial hardship to beneficiaries caused by the misuse or delays in obtaining restitution or VA determining negligence. It would also provide an additional measure of oversight and improve the accountability of fiduciaries serving our most vulnerable beneficiaries by facilitating VA's inspection of financial records when necessary. Any fiduciary who is found to have misused VA benefits is barred from future service.

During calendar year (CY) 2015, VA reissued \$2,507,657 to 76 beneficiaries whose fiduciaries misused benefits as a result of VA's negligence, an average of \$32,995 per beneficiary. Pension and Fiduciary Service estimates that, on average, an additional \$2 million in VA benefits are misused annually by individual fiduciaries where the fiduciary managed the benefits of fewer than 10 beneficiaries, and VA was not negligent in its appointment or oversight. Based on the average reissuance amount of \$32,995, \$2 million in benefits would represent approximately 61 beneficiaries per year.

Under this proposal, VA would make these Veterans or survivors whole by reissuing benefits without regard to the number of beneficiaries an individual fiduciary managed or VA's negligence in its appointment or oversight.

There would be no additional full-time employee (FTE) costs or general operating expenses (GOE) associated with enactment of this proposed legislation.

**S. 2958 To establish a pilot program on partnership agreements to
construct new facilities for the Department of Veterans Affairs**

S. 2958 would authorize the VA Secretary to enter into up to five partnership agreements with a State or local authority; a 501(c)(3) corporation; a limited liability corporation; a private entity; a donor or donor group; or another non-Federal entity in order to secure donations of health care facilities and/or national cemetery assets.

VA strongly supports this legislation, but seeks a critical change needed to preserve civil rights protections. It would enable VA to enter into agreements that could potentially assist in providing high priority assets that have been identified as a need through our long-range capital planning process and are considered to be important in order to serve Veterans in safe, modern, and secure facilities. VA believes that the proposed partnerships will enable the Department to use alternative financing

mechanisms, beyond VA's traditional appropriations, to deliver needed facilities for our Veteran population.

We strongly support the bill's authorization of these partnership agreements provided that the legislation preserves civil rights protections for Veterans and other employees who will be working to construct the facilities resulting from these partnership agreements. We look forward to working with the Committee to revise the language in section 1(b), which as currently drafted could be interpreted as excluding equal opportunity and employment protections.

VA estimates that S. 2958 would be cost-neutral because it provides for the donation of assets at no additional cost to the Federal government beyond funds that have been previously appropriated for a project at the time of the agreement. The bill would not create an obligation by VA to fund the construction of the facilities contemplated by the bill. There would also be no obligation for VA to use future appropriations to fund capital costs related to the partnerships authorized by this section. VA would be pleased to work with the committee to address technical edits to the bill as drafted.

S. 3021 To authorize the use of Post-9/11 Educational Assistance to pursue independent study programs at certain educational institutions that are not institutions of higher learning

The proposed legislation would amend paragraph (4) of section 3680A(a) to authorize the use of Post-9/11 educational assistance to pursue independent study programs at certain educational institutions that are not institutions of higher learning. Currently, under section 3680A(a)(4), the Secretary is explicitly prohibited from approving enrollment in “any independent study programs except an accredited independent study program (including open circuit television) leading (A) to a standard college degree, or (B) to a certificate that reflects educational attainment offered by an institution of higher learning.” As such, VA is not authorized to pay educational assistance for independent study courses at an institution not considered an institution of higher learning (IHL), or for any non-accredited independent study courses.

VA supports the proposed legislation that would expand VA’s approval authority to pay Post-9/11 GI Bill benefits for enrollment in accredited independent study certificate programs at educational institutions that are not IHLs. More specifically, VA supports non-IHL independent study programs that are accredited by an accreditor recognized by the Secretary of Education (which would help ensure the integrity of the accreditor) and, if career and technical, that lead to industry-recognized credentials and certificates for employment. VA understands and appreciates the importance of career and technical education courses and the growth in the utilization of online and other 21st Century training modalities in the delivery of instruction for both degree and non-degree programs. As such, expanding the approval authority for certain independent study programs would be in the best interests of VA education beneficiaries.

We note that because this bill would amend 38 U.S.C. Chapter 36, the expansion of benefits would not be limited to Post-9/11 GI Bill benefits. Benefit costs are estimated to be \$49.2 million in the first year, \$266 million over five years, and \$599.4 million over ten years. There would be no additional FTE or GOE associated with enactment of this proposed legislation.

**S. 3032 Veterans' Compensation Cost-of-Living Adjustment Act of
2016**

S. 3032, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2016," would require the Secretary of Veterans Affairs to increase, effective December 1, 2016, the rates of disability compensation for service-disabled Veterans and the rates of dependency and indemnity compensation (DIC) for survivors of Veterans. This bill would increase these rates by the same percentage as the percentage by which Social Security benefits are increased effective December 1, 2016. Consistent with VA's processing of these benefit payments under current law, the bill would prescribe an increase in each benefit dollar amount without rounding down to the next whole dollar amount. The bill would also require VA to publish the resulting increased rates in the Federal Register.

VA supports this Cost-of-Living Adjustment (COLA) bill because it would express, in a tangible way, this Nation's gratitude for the sacrifices made by our service-disabled Veterans and their surviving spouses and children and would ensure that the value of their well-deserved benefits will keep pace with increases in consumer prices. Although not included in S. 3032, VA would also support inclusion of the round-down provision in effect before December 1, 2013, which provided that "each dollar amount, if not a whole dollar amount, be rounded down to the next lower dollar amount." This round-down methodology would provide the desired benefit increases, and ensure VA's fiscal responsibility. The 2017 President's Budget includes a legislative proposal to reinstate the round-down provision for five years, which would result in benefit savings of \$21.5 million in 2017, \$63.5 million in 2018, and \$599.3 million over five years. Although the proposal would reinstate the round-down for five years, the cumulative effect of rounding-down COLAs for five years would total \$2.0 billion in savings over ten years

Benefits costs that would result from the COLA increase are estimated to be \$490.8 million during the first year, \$3.0 billion for five years, and \$6.6 billion over ten years. The 2017 President's budget assumes annual COLA increases for disability compensation and DIC in its baseline estimate. There would be no increases to costs above the current baseline budget associated with the COLA.

The current COLA estimate from the 2017 President's Budget, effective December 1, 2016, is 0.8 percent. The impact of the COLA was calculated by applying the 0.8 percent increase in payments to the projected caseloads in the fiscal year (FY)

2016 President's budget. The total cost was then compared to the estimated cost without COLA increases to calculate the impact of the COLA.

There would be no FTE or GOE costs associated with enactment of this proposed legislation.

S. 3055 Department of Veterans Affairs Dental Insurance Reauthorization Act of 2016

S. 3055 would make the VA Dental Insurance Program (VADIP) permanent, which was initially implemented as a pilot program on November 15, 2013, through Section 510 of the Caregivers and Veterans Omnibus Health Services Act of 2010 (Public Law 111-163). The VADIP program offers enrolled Veterans and beneficiaries of VA's Civilian Health and Medical Program (CHAMPVA) the opportunity to purchase dental insurance at a reduced cost. Each participant pays a fixed monthly premium for coverage, in addition to any copayments required by his or her plan. Through the pilot, over 75,000 Veterans and CHAMPVA beneficiaries purchased plans as of December 31, 2014. In the 4th quarter of CY 2014, VA conducted a survey of Veterans who have purchased and utilized the insurance plans, and over 92 percent said they would renew and recommend the program to other Veterans, indicating strong overall satisfaction with the program. Providing Veterans, their families, and beneficiaries an opportunity to purchase dental insurance that contains coverage and quality defined by the VA Office

of Dentistry at discounted rates is one step in improving the overall health of the Veteran population.

VA supports S. 3055.

S. 3076 Charles Duncan Buried with Honor Act of 2016

This bill would amend 38 U.S.C. § 2306(f) which currently authorizes the VA Secretary to furnish a casket or urn, of such quality as the Secretary considers appropriate for a dignified burial, for burial in a national cemetery of a deceased Veteran in any case in which the Secretary is unable to identify the Veterans' next-of-kin, if any; and determines that sufficient resources for the furnishing of a casket or urn for the burial of the Veteran in a national cemetery are not otherwise available. By regulation, VA administers this benefit through a reimbursement program.

S. 3076 would change the current authority by expanding the availability of the benefit to Veterans buried in a State or tribal organization cemetery. VA fully supports the bill. We suggest one minor amendment to the language in subsection (1); to add "veterans" before "cemetery of a State or Indian tribe".

The authority to furnish caskets and urns was included in Public Law 112-260, the Dignified Burial and Other Veterans' Benefits Improvement Act of 2012. This

vehicle was used to highlight the issue of Veterans without next-of-kin and without sufficient resources for burial, and the need for expanded benefits for this disadvantaged group. In addition to the new authority to furnish a casket or urn for Veterans without next-of-kin and without sufficient resources for burial who are buried in VA national cemeteries, the public law expanded the plot allowance and transportation allowance and directed specific procedural requirements for national cemetery officials to confirm remains were unclaimed and the final disposition of those remains.

After publishing its final regulation on the casket and urn reimbursement program, on May 13, 2015, VA began accepting requests for reimbursement for caskets or urns purchased for the interment of deceased Veterans who died on or after January 10, 2014, without next of kin and sufficient resources for burial. Currently, any individual or entity may request reimbursement if they purchase a casket or urn to inter in a VA national cemetery an eligible Veteran who died on or after January 10, 2014, without next of kin and without sufficient resources to purchase a burial receptacle. VA will reimburse the actual cost of such a casket or urn, not to exceed an annually established rate based on the average cost of caskets and urns in any given CY. For claims received in CY 2016, the maximum reimbursement rates are \$2,421.00 for caskets and \$244 for urns. The maximum reimbursement amounts are adjusted for inflation on an annual basis.

Regarding the amendment's change to provide the benefit for Veterans interred in a State or tribal organization Veterans cemetery, VA submitted a legislative proposal

concept to make such a change in its FY 2017 budget submission, indicating the Department's willingness to implement this expansion to its current authorities. Through a grants program to establish, expand, and improve State and tribal organization Veteran cemeteries, NCA maintains a valuable partnership with States and tribal organizations to provide a final resting place to those who may not have access to a VA national cemetery burial option. Extending the casket and urn reimbursement benefit for the burial of Veterans without next-of-kin and without sufficient resources for burial who are in State or tribal Veterans cemeteries would support VA's efforts to ensure the unclaimed remains of Veterans receive a dignified burial. VA grant-funded State and tribal Veterans cemeteries conducted nearly 36,000 burials of Veterans and their families in FY 2015. These cemeteries provide the same services and benefits to Veterans and their eligible family members and are required to comply with the same national shrine appearance standards as national cemeteries.

There would be no benefit costs or savings associated with enactment of the provision to expand the benefit to State and tribal organization cemeteries.

S. 2210 Veteran PEER Act

S. 2210 would require the Secretary to phase in and conduct a program whereby peer specialists would be included in patient aligned care teams at VA medical centers (VAMC), to promote the use and integration of mental health services in a primary care

setting. Not later than 180 days after the date of enactment, this program would have to be established at not fewer than ten VAMCs. By not later than two years (from this same date), it would have to be in place at not fewer than 25 VAMCs. Under the bill, the Secretary would be directed to consider specified factors when selecting sites for this program, but, not fewer than five would have to be established at VA designated Polytrauma Centers, and not fewer than ten would need to be established at VAMCs not so designated. S. 2210 would also require that all peer specialist programs established under this mandate: (1) ensure that the needs of female veterans are considered and addressed; and (2) include female peer specialists. Finally, this measure would establish initial, periodic, and final Congressional reporting requirements, as detailed in the bill.

VA supports S. 2210 subject to the availability of additional funding, noting a few technical changes are needed for clarity. This legislation, if enacted, would complement VA's ongoing pilot program (commenced in 2014) whereby peer support through peer specialists has been extended beyond traditional mental health sites of care to include Veterans receiving mental health care in primary care settings. Under the pilot program, trained peer specialists work with VA primary care teams to, in general terms, help improve the health and well-being of other Veterans being treated in VA primary care settings. To date, seven medical centers have volunteered for the pilot, composing the first cohort of sites to deploy peers to primary care. Two more cohorts are being recruited for implementation in July 2016, and January 2017. Peers provide services for ten hours per week, and that time may be divided among two peers. As with VA's long

established mental health peer support model, the pilot program recognizes the therapeutic value of having peer specialists share their own past recovery experiences with Veterans receiving mental health care in the primary care setting, particularly those who are experiencing challenges similar to what the peer specialist experienced.

As mentioned, female peer specialists would have to be included in the program mandated by S. 2210. This is not necessary, however, as women peer specialists are already well represented, with 18 percent of the national peer specialist workforce being women. While at first glance 18 percent may seem a low rate, please bear in mind that this figure is higher than the percentage of Veterans seeking services through VA who are women. We do recognize, however, that the current number of women Veteran peer specialists in the pilot is unevenly distributed across the country, with some medical centers having greater difficulty than others in attracting qualified applicants.

Also, it is unclear if the peers will address substance use disorders under the umbrella of their mental health duties. Given the comorbidity of these issues, the need for integration of substance use disorder identification and care, the need for overdose prevention and linkage as needed to Medication Assisted Treatment for opioid use disorder, and the need to increase the numbers of veterans achieving long term recovery, we recommend that this be clarified and if possible included.

S. 603 Rural Veterans Travel Enhancement Act of 2015

S. 603, the Rural Veterans Travel Enhancement Act of 2015, would make amendments to VA's legal authorities governing transportation benefits.

Section 2 would make permanent VA's authority under 38 U.S.C. § 111A(a) to transport any person to or from a VA facility or other place in connection with vocational rehabilitation, counseling required pursuant to Chapter 34 or 35 of Title 38 U.S.C., or for the purpose of examination, treatment, or care.

Section 3 would amend 38 U.S.C. § 111 to authorize beneficiary travel benefits for travel to and from Vet Centers for readjustment counseling and related mental health services under 38 U.S.C. § 1712A. As a technical matter, we note that counseling under 38 U.S.C. § 1712A is also available to certain Servicemembers and family members.

Finally, Section 4 would extend the authorization of appropriations for the Grants for Transportation of Veterans in Highly Rural Areas program through 2020.

VA supports Sections 2 and 4 of S. 603, assuming resources are provided to continue the operation of these programs. These provisions of the legislation would provide extended transportation authority for Veterans, particularly rural Veterans.

VA does not support Section 3 of the bill. The historic nature of the Readjustment Counseling Service and the concept of ready access with minimal administrative and bureaucratic processing, together with the separate location of Vet Centers and the lack of infrastructure to support consideration payment of BT, are all factors VA considered in choosing not to support this bill.

VA is, however, currently conducting a pilot program, as required in Section 104 of Public Law 112-154, to assess the feasibility and advisability of paying beneficiary travel under 38 U.S.C. § 111 for travel from a residence located in an area that is designated by the Secretary as highly rural to the nearest Vet Center and from such Vet Center to such residence. Based on experience with this pilot, VA does not agree that Veterans traveling to Vet Centers should be reimbursed using the Beneficiary Travel (BT) Program.

The pilot has demonstrated that a significant amount of coordination is necessary between the Vet Centers and corresponding VA medical centers. Because Vet Center visits are not entered into the Veteran's electronic medical record, increased paper documentation and communication with the VA medical center is required. Risk of improper payments would increase with the complexity of this process, as traditional methods of paying BT could not be used.

Feedback from Veterans indicates that they find Vet Centers are more therapeutic and less bureaucratic than VA medical centers, and Veterans are afforded anonymity and the ability to speak freely without fear of repercussion. Participants cautioned that privacy was an issue, especially for police officers, fire fighters, and National Guardsmen, and expressed concerns that the information included in their file may negatively affect their employment. Some participants said they would be comfortable having VA medical center administrative staff see that a Veteran was a Vet Center client, but all participants agreed that they do not want the staff to have access to visit details, such as notes or specific diagnoses. This information is required in order to process most BT claims.

Over time, as travel benefits have improved, VA health care facilities have noted a significant increase in the number of Veterans claiming travel, as well as visits by those Veterans. We anticipate that, if enacted, Vet Centers would see similar changes that could affect provision of services at those facilities or require additional staffing resources to handle the increase of visits. These Vet Center staff would have increased administrative burdens, including documentation of visits and determinations of whether treatment related to service-connected condition(s), which are not currently required.

VA estimates the cost of this bill would be over \$11 million in FY 2017, nearly \$12 million in FY 2018, \$61 million over five years, and \$136 million over ten years.

S. 2279 Veterans Health Care Staffing Improvement Act

Section 2 of S. 2279 would require the VA Secretary, in coordination with the Secretary of Defense, to carry out a program to increase efficiency in the recruitment and hiring by VA of health care workers that are undergoing separation from the Armed Forces. Under Section 2, the Department of Defense (DoD) would have to provide VA a list of members of the Armed Forces, including the reserve components, who served in a health care capacity in the Armed Forces, are undergoing or have undergone separation from the Armed Forces, and will be discharged or have been discharged under honorable conditions.

Section 2 will support VA's ability to recruit qualified and trained health care professionals from the Armed Forces.

VA anticipates that the costs for implementing Section 2 for FY 2017 would likely amount to \$4.9 million, and for a five-year period, from FY 2017 to FY 2021, the costs for implementing Section 2 would likely amount to \$27.3 million.

Section 3 of S. 2279 would require VA to create uniform credentialing standards for positions specified in 38 U.S.C. § 7421(b). VA does not support this section as it already has uniform credentialing standards for its health care providers. VA prescribes these standards and the process for obtaining and retaining them through VA and VHA policy, including VHA Handbook 1100.19, Credentialing and Privileging, and VHA

Directive 2012.030, Credentialing of Health Care Professionals. All credentialing occurs in VHA's electronic credentialing software platform, VetPro, and credentialing files can be easily shared and transferred throughout VA. At this time, VA does not have a cost estimate for this section.

Section 4 of S. 2279 would require VA to provide full practice authority to advanced practice registered nurses (APRN), physician assistants (PA), and other licensed health care professionals. The Rulemaking for APRNs is currently open for public comment until July 25, 2016, and we have received many public comments on this regulation. VA will consider and respond to the issues raised by these comments in the final rulemaking

At this time, VA does not have a cost estimate for this section.

S. 244 Independent Comprehensive Review of VA Assessment of Traumatic Brain Injuries

S. 244 would require VA, within a reasonable period of time, to enter into an agreement with the Institute of Medicine (IOM) or another organization, if VA is unable to enter into an agreement with IOM, to conduct a comprehensive review of examinations provided by VA to individuals who submit claims to the Secretary for compensation under Chapter 11 of Title 38, U.S.C., for traumatic brain injury (TBI). The

comprehensive review would be required to include a determination of the adequacy of the tools and protocols used by VA to provide examinations for compensation claims for TBI and a determination of the credentials necessary for health care providers and specialists to perform such portions of such examinations that relate to assessment of cognitive functions. The IOM would be required to convene a group of experts in clinical neuropsychology and other related disciplines. VA would be required to submit a report to Congress within 540 days of entering into an agreement with IOM detailing the findings of the IOM with respect to the comprehensive review it would conduct and recommendations of the IOM for legislative or administrative action that could improve the adjudication of these claims.

While VA appreciates the objective of this bill, we do not believe it is necessary. We are committed to ensuring that all Veterans receive comprehensive, quality compensation and pension (C&P) examinations by qualified professional health care providers in a timely manner. Mental health professionals must make a clinical determination when conducting a C&P examination as to whether any psychometric testing is to be done; if the examiner determines that testing should be utilized, it is up to the examiner to determine what test to administer, based on the specifics of the Veteran's case. VA subject matter experts have thoroughly reviewed the policies regarding TBI examinations and, based on best clinical practices and protocols, do not believe that TBI C&P examinations are insufficient. VA's existing regulations reflect the special nature of complicated TBI claims and the unique criteria and process used to evaluate TBI. Under these rules, VA employs a holistic approach using cognitive,

emotional/behavioral, and physical criteria to evaluate TBI. Notably, S. 244 would direct the IOM to analyze VA's criteria for evaluating cognitive function, with no mention of emotional, behavioral, and physical symptoms. VA would characterize such a limited analysis as a step backwards. In an effort to provide continuous process improvement to evaluating disability under the VA Schedule for Rating Disability, VA employs legal, medical, and administrative experts who routinely review the sufficiency of examination and rating criteria and recommend changes necessary to maintain accuracy, fairness, and efficiency in the claims resolution process. Establishing an external reviewing body would essentially duplicate VA's existing process.

VA currently has authority to work with IOM or others, and if we determine that such input is necessary, we will not hesitate to do so.

S. 2791 Atomic Veterans Healthcare Parity Act

This bill would amend Title 38, U.S.C. to provide for the treatment of Veterans who participated in the cleanup of Enewetak Atoll, as radiation exposed Veterans for purposes of the presumption of service-connection of certain disabilities by the Secretary of Veterans Affairs.

DoD conducted atomic bomb testing on Enewetak Atoll in the Pacific Marshall Islands during the 1950s. Senate bill 2791 would provide that Veterans who

participated in the cleanup effort on Enewetak Atoll from January 1, 1977, through December 31, 1980, engaged in a “radiation-risk activity” and will be classified as radiation-exposed Veterans for purposes of establishing a presumption of service connection for certain enumerated radiation-related diseases.

When considering the creation of benefits presumptions, VA relies on science-based models that can be used to establish association between an in-service event and a post-service disability. VA has thoroughly reviewed the best available analysis of Enewetak cleanup exposure data, the 1981 Defense Nuclear Agency (DNA) Report, *The Radiological Cleanup of Enewetak Atoll*, and other available evidence. That evidence establishes that radiation doses among servicemembers participating in the cleanup were well below recommended thresholds for both acute and latent health effects, such as cancers. Since the best available evidence found radiation exposure among those individuals involved with the cleanup well below acceptable thresholds, there is no factual basis that would warrant a determination that this group of Veterans engaged in a radiation-risk activity sufficient to justify a presumption of service connection.

VA continues to evaluate any individual Veteran involved with the Enewetak Atoll cleanup on a direct facts-found basis under the ionizing radiation dose-evaluation regulations at 38 Code of Federal Regulations (CFR) § 3.311. While the VA appreciates the Committee’s attention and efforts to address this very important matter,

the VA is unable to support S. 2791 as the proposed policy is inconsistent with known Enewetak Atoll exposure data and associated scientific analysis.

The costs that would be associated with enactment of this bill are to be determined.

S. 3023 The Arla Harrell Act

S. 3023 would (1) provide for reconsideration of claims for disability compensation from Veterans who allege mustard gas or lewisite exposure during World War II (WWII) that were previously denied by VA; (2) create a presumption of full-body exposure to mustard gas or lewisite if VA or the Secretary of Defense makes a determination regarding such exposure; (3) preclude use of information in the DoD and VA Chemical Biological Database or any list of known testing sites as the sole reason for finding that such veteran did not have full-body exposure; (4) require development by DoD and VA of a policy for processing future claims; (5) require a report by DoD regarding mustard-gas or lewisite experiments conducted by DoD during WWII, including each testing location, dates of experiments and number of members of the Armed Forces who were exposed; and (6) require VA to investigate and assess actions taken to notify exposed Veterans and investigate and assess the mustard-gas and lewisite claims from WWII Veterans that are filed and the percentage of these claims that are denied by VA.

Section 2(a)(3) of the bill would provide that, in reconsidering claims for VA disability compensation based on exposure to mustard gas or lewisite, if VA or DoD “makes a determination regarding whether” a Veteran experienced full-body exposure to those substances, VA or DoD “shall presume” that the Veteran experienced such exposure. Section 2(a)(3)(B), would prohibit VA from denying a claim based “solely” on the presence or absence of information in the DoD and VA Chemical Biological Warfare Database, which was compiled based upon information available to DoD, or other lists maintained by the Departments.

The VA appreciates the Committee’s attention to this very important issue. Providing Veterans with the care they need when they need it remains VA’s top priority. We owe it to Veterans to ensure our decisions are fair, clear, and consistent across the board. Due to a number of concerns, we are unable to support S. 3023. The direction that VA ignore certain evidence, which may already be in the Veteran’s claims file, would not only be unfair to other Veterans, but would conflict with other applicable provisions of law. Under 38 U.S.C. § 1154(a), in determining whether a condition is related to service, VA must give "due consideration" to the "places, types, and circumstances of" a Veteran's service "as shown by such [V]eteran's service record, [and] the official history of each organization in which such [V]eteran served." In addition, 38 U.S.C. § 5107(b) requires VA to "consider all information and law and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary." Finally, under 38 U.S.C. § 1154(b), in the case of

a Veteran who engaged in combat with the enemy, VA must accept lay or other evidence of service regarding service incurrence of a disease or injury, notwithstanding the absence of an official record of such incurrence. However, the Veteran must first establish that he or she engaged in combat with the enemy, which usually involves consideration of service department records, and the lay or other evidence must be "consistent with the circumstances, conditions, or hardships of such service."

The proposed presumption of exposure to mustard gas and lewisite, which would not be supported by service department records or other objective evidence, would be unprecedented if enacted. It appears that the presumption would be invoked solely on the basis of a Veteran's statement that such exposure occurred and generally would be irrebuttable. Existing presumptions of an in-service exposure or event apply to discrete groups of Veterans whose service records reflect unique circumstances of service. Examples include Vietnam and Korean Veterans who are presumed exposed to Agent Orange during certain time periods, Veterans whose records indicate participation in WWII and cold war nuclear weapon detonations who are presumed exposed to ionizing radiation, and combat Veterans of all eras who are presumed exposed to the sort of traumatic stressor that can cause post-traumatic stress disorder. Each of these sets of Veterans will have service department evidence of an in-service event or circumstance that may have triggered post-service disability.

Under the standard proposed in the bill, any WWII Veteran who has claimed participation in a mustard gas or lewisite test would be entitled to a presumption of full

body exposure. This includes Veterans who may be confusing exposure to mustard gas or lewisite, with more routine agents such as tear gas, or even to placebo agents. All WWII claimants would essentially be presumed exposed to mustard gas – even Veterans who participated in no chemical testing.

Section 2(b) of the bill proposes a joint VA/DoD policy for processing future disability compensation claims based on exposure to mustard gas or lewisite. VA notes that mustard gas and lewisite claim policies and procedures are already in place and have and continue to lead to fair and equitable outcomes. VA promulgated a regulation in 1994 to address full-body mustard gas and lewisite claims (see 38 CFR. § 3.316) and recently updated procedural guidance directing VA claims processors to consider all relevant evidence, including both service department data and information from outside sources.

We share the committees concern for these Veterans and we will continue to do everything we can, within the scope of the law, to provide care for those who have been identified by DOD as having had full body exposure to Mustard Gas and have been diagnosed with conditions due to that exposure. Changing the rules for one set of individuals is simply unfair for the thousands of other Veterans seeking care at VA. We value our Veterans lives equally and want to ensure that each and every Veteran seeking care is treated fairly under the law.

Costs that would be associated with enactment of this proposed legislation are to be determined.

S. 3081 Working to Integrate Networks Guaranteeing Member Access Now Act (WINGMAN Act)

Section 2 of this bill would amend Chapter 59 of Title 38, U.S.C. by adding new Section 5906 to direct the Secretary to, within 180 days, provide “accredited,” permanent congressional staffers designated by a Member of Congress with remote, read-only access to Veterans Benefits Administration’s (VBA) electronic records of Veterans who reside in the area represented by the Member, regardless of whether the Veteran whose record is accessed has consented to the disclosure of information. The bill also clearly states that the provision of access to the congressional staffer is not for purposes of representing Veterans in the preparation, presentation, and prosecution of claims for Veterans’ benefits.

VA understands the interest of Members in Congress in having current casework information for their Veteran constituents. However, VA strongly opposes this bill because it would provide congressional employees with unprecedented access to the records of Veterans and other VA claimants, raising significant privacy concerns, and because it improperly conflates the concept of access to claims records with the distinct mission and function of VA’s Accreditation Program in ensuring that Veterans have access to competent and qualified claims representation.

Regarding the nature of the access provided, the bill would provide congressional staff who assist constituents of a Member of Congress with greater access to VA records than is provided to a VA employee or contractor. Under the Privacy Act, Federal employees generally may access private records only when necessary to perform their duties. This bill would impose no similar restriction on access by congressional staff. From a privacy and information security standpoint, granting congressional staff unrestricted access to the medical records of Veterans and other VA claimants is not in the best interest of Veterans and their families. VA patients and claimants entrust VA with their personal, medical, and other information, and they do not generally expect that such information could be viewed by Congress without their explicit consent. To the extent that congressional staffers require access to an electronic claims record for which the Member possesses an appropriate release from the individual, access may be provided in the form of a disc or under supervision at a VA facility because those types of access are within the current capabilities of VA systems.

Regarding how the bill conflates the concepts of access to claims records and representation of claimants, accreditation by VA as attorneys, claims agents, and Veterans Service Organization (VSO) representatives is not done for purposes of providing access to VBA's electronic records system. Rather, as stated at 38 CFR § 14.626, "the purpose of [VA's accreditation and oversight] of representatives, agents, attorneys, and other individuals is to ensure that claimants for [VA] benefits have responsible, qualified representation in the preparation, presentation, and prosecution of

claims for veterans' benefits." In contrast, as specifically stated in draft § 5906(d), this bill is unrelated to that purpose. The laws governing accreditation do not address the issue of access to claimants' records, which are governed separately by other laws. Instead, the provisions in Chapter 59 address the authority for regulation and oversight of representation before VA, including the ethical standards of professional conduct for representatives, and whether fees charged in a particular case may be considered reasonable. VA's Accreditation Program serves the important function of ensuring that Veterans have information on and access to qualified and competent representatives who can assist with their claims for benefits and who are subject to appropriate VA regulation and oversight in that role. Making congressional employees' access to claimant records a function of VA's accreditation program would unnecessarily complicate the operation of that program. Referring to congressional staff as "accredited" can only create confusion about whether staffers are accredited by VA for purposes of claims representation and what their role is in the claims process.

Access to claims records is authorized under Chapter 57 of Title 38, U.S.C., as well as other privacy and information laws. Specifically, 38 U.S.C. § 5701(b)(1) authorizes VA to disclose records to a "duly authorized agent or representative of a claimant." There are numerous provisions in Chapter 57 that provide for release of VA records and that have nothing to do with representation and or the status of being a VA-accredited representative. Because the bill pertains to congressional access to Veterans' records, placing this new authorization in Chapter 59 would be an additional source of confusion.

Additionally, there are serious technological obstacles to implementing this bill. The bill would impose on VA a substantial burden to accommodate the contemplated access. Our system provides access to one representative per Veteran or claim and for only the records of a Veteran who has specifically authorized access. VA would need to re-design its system architecture to allow more than one representative per Veteran or claim. Absent such system changes, in order to provide the type of electronic access to congressional staff contemplated by the bill, VA would have to displace the electronic access of current representatives – VSO representatives, private attorneys, and claims agents -- causing substantial administrative burdens on VA and hardships on those representing Veterans and the Veterans they represent, while also interfering with the relationship between Veterans and their representatives.

Finally, Members of Congress and their employees already have access to claims status information through VA's regional offices and central office when specifically authorized by a Veteran constituent or when they have proper authority to conduct oversight. Each VA regional office has a Congressional Liaison, who may be contacted for claims information assistance, and VA's Office of Government Relations serves as a central point of contact for inquiries originating from Capitol Hill. If enacted, this bill would delay both the development of information technology components critical to VA's electronic claim process transformation, and the resolution of pending claims for benefits.

Due to the short time-frame and the magnitude of the system changes needed, we are unable to provide an accurate cost-estimate at this time, although costs associated with changes to VA information systems would likely be substantial. VA is always ready to discuss with the Committee other ways VA can improve a Member of Congress' ability to effectively work with VA to resolve casework issues on behalf of their constituents.

**S. 3035 Maximizing Efficiency and Improving Access to Providers at the
Department of Veterans Affairs Act of 2016**

Section 2 of S. 3035 would require VA, within 120 days of the date of the enactment of the bill, to carry out a pilot program to increase the use of medical scribes to maximize the efficiency of physicians at VA medical facilities. The pilot program would be carried out for a period of 18 months and would be located at not fewer than five VA medical facilities that VA has determined have a high volume of patients or that are located in rural areas at which the Secretary has determined there is a shortage of physicians and each physician has a high caseload. VA would be required to enter into contracts with one or more appropriate non-governmental entities, defined as an entity that trains and employs professional medical scribes who specialize in medical data collection and entry, to carry out the pilot program. VA would be required to collect various data on the pilot program to determine the effectiveness of the program. VA would be required within 180 days after the commencement of the pilot program, and

not less frequently than once every 180 days thereafter, to submit to Congress a report on the pilot program.

VA does not support this bill. Currently, VHA has an Enterprise Wide Front End Speech Recognition contract that includes unlimited licenses for clinical end users for the Nuance Dragon Medical 360 Network Edition (DMNE) Version 2.3, which is the current version. DMNE provides advanced, secure, speech recognition solutions that allow clinicians to document the complete patient story using voice while allowing healthcare organizations to deploy and administer medical speech recognition across the enterprise. VHA is in the process of administering a request for proposals that includes the use of scribes (contracted or hired) and transcription, as well as a health advocate. An evaluation plan of all methods of provider documentation support has been developed as well. The pilot should commence by end of this FY.

VA estimates this bill would cost \$464,427 in FY 2017, and \$475,899 in FY 2018.

Draft Bill Readjustment Counseling Services for Members of the Selected Reserve of the Armed Forces

The draft bill would authorize VA, in consultation with the Secretary of Defense, to provide VA readjustment counseling services to any member of the Selected Reserve of the Armed Forces who has a behavioral health condition or psychological trauma, to

assist the individual in readjusting to civilian life. These services may include a comprehensive individual assessment of the member's psychological, social, and other characteristics to ascertain whether he or she has difficulties associated with readjusting to civilian life. Such a member would not be required to obtain a referral before receiving these services. If enacted, these amendments would become effective one year after the date of the Act's enactment.

VA does not support this bill. The Readjustment Counseling Service (RCS) was created in 1979 to provide the specific and unique function of assisting individuals to life after combat related military service. This bill would authorize VA to expand RCS services related to assisting the individual in readjusting to civilian life to all members of the Selected Reserve of the Armed Forces who have behavioral health conditions or psychological trauma, regardless of connection to combat related service. VA currently has authority to provide readjustment counseling services to members of the Selected Reserve who meet other qualifying criteria; namely: (1) having served on active military duty in any combat theater or an area at a time during which hostilities occurred in that area; (2) having experienced military sexual trauma while serving on active military duty, active duty for training, or inactive duty training; (3) having provided direct emergency medical or mental health care or mortuary services to the casualties of combat operations or hostilities; (4) having engaged in combat with an enemy of the United States or against an opposing military force in a theater of combat operations or an area at a time during which hostilities occurred in that area by remotely controlling an unmanned aerial vehicle; or (5) having received readjustment counseling before

January 2, 2013. We are concerned that this bill would expand the scope of RCS and would be inconsistent with the intended design of RCS.

Draft Bill To clarify the scope of procedural rights of members of the uniformed services with respect to their employment and reemployment rights, to improve the enforcement of such employment and reemployment rights, and for other purposes.

The draft legislation on employment rights for the uniformed services would amend Chapter 43 of Title 38 to clarify the scope of employment and reemployment rights of members of the uniformed services and to amend the enforcement of employment and reemployment rights of members of uniformed services with respect to a State or private employer. VA respectfully defers to the Department of Justice and the Department of Labor for views on this draft legislation.

Discussion Draft To authorize the American Battle Monuments Commission to acquire, operate, and maintain the Lafayette Escadrill Memorial in Marnes-la-Coquette, France.

The discussion draft would authorize the American Battle Monuments Commission to enter into an agreement to acquire, operate, and maintain the Lafayette

Escadrille Memorial in Marne-la-Coquette, France. Because this bill concerns responsibilities under the purview of the American Battle Monuments Commission, VA defers to the views of that agency on the discussion draft.

Mr. Chairman, this concludes my statement. Thank you for the opportunity to appear before you today. We would be pleased to respond to questions you or other Members may have.