

STEVE A. ROBERTSON, DIRECTOR, NATIONAL LEGISLATIVE COMMISSION, THE AMERICAN LEGION

STATEMENT OF
STEVE A. ROBERTSON, DIRECTOR
NATIONAL LEGISLATIVE COMMISSION
THE AMERICAN LEGION
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
ON
THE DEPARTMENT OF VETERANS AFFAIRS
FISCAL YEAR 2011/2012 PRESIDENT'S BUDGET REQUEST

FEBRUARY 26, 2010

Mr. Chairman and Members of the Committee:

The American Legion welcomes this opportunity to comment on the President's budget request for Fiscal Year 2011/2012. The American Legion is pleased by the \$125 billion total appropriations for the Department of Veterans Affairs (VA) in FY 2010 and the projected \$64.7 billion in mandatory appropriations and \$60.3 billion in discretionary appropriations.

As a nation at war, America has a moral, ethical and legal commitment to the men and women of the Armed Forces of the United States and their survivors. These current defenders of democracy will eventually join the ranks of their 23.1 million comrades, we refer to as veterans. The active-duty, Reserve Components and veterans continue to make up the nation's best recruiters for the Armed Forces. Young men and women across the country see service members and veterans as role models. Chances are before enlisting in the Armed Forces; these young people will seek the advice of those they see in uniform or family members who have served for their recommendations on military service.

Therefore, it is absolutely critical that the entire veterans' community (active-duty, Reserve Component, and veterans) continue to remain supportive of honorable military service. No service member should ever be in doubt about:

- the quality of health care he or she will receive if injured;
- the availability of earned benefits for honorable military service upon discharge; or
- the quality of survivors' benefits should he or she pay the ultimate sacrifice.

The American Legion and many other veterans' and military service organizations are united in advocating enactment of timely, predictable and sufficient budgets for VA medical care. The American Legion greatly appreciated the leadership of this Committee in passing Public Law 111-81 authorizing advance appropriations for VA medical care accounts. With the decision for advance appropriations behind us, The American Legion continues to urge Congress to pass the VA budget for FY 2011 before the start of the new fiscal year.

After reviewing the proposed President's budget request for VA in FY 2011/2012, The American Legion renders its support as follows:

- Increases funding for VA in FY 2011 by \$11 billion above FY 2010.
- Increases funding for VA's medical care by \$4 billion in FY 2011 and a projected \$2.8 billion increase in FY 2012 to \$54.3 billion.
- Expands enrollment for 500,000 additional Priority Group 8 veterans by FY 2013.
- Enhances outreach and services related to mental health care and cognitive injuries, including post-traumatic stress disorder and traumatic brain injury, with a focus on access for veterans in rural and highly rural areas.
- Invests in better technology to deliver services and benefits to veterans with the quality and efficiency they deserve.
- Full concurrent receipt of military retirement pay and VA disability compensation without offsets.
- Combats homelessness by safeguarding vulnerable veterans. Facilitates timely implementation of the comprehensive education benefits that veterans earn through their dedicated military service.

When National Commander Clarence Hill testified on September 10, 2009 before a Joint Session of the Committees on Veterans' Affairs, he clearly outlined the funding recommendations for FY 2011. This testimony will re-emphasize that support for certain specific areas.

Medical Care

The American Legion fully supports funding "the best health care anywhere" in FY 2011 at \$51.5 billion and in FY 2012 at \$54.3 billion. VA reports that 6.1 million veterans will receive timely access to quality health care in FY 2011. This represents an anticipated increase of 168,904 new patients who will "vote with their feet" in making VA their health care provider of choice. VA medical care is still America's best investment in quality health care delivery – the right care, at the right time, in the right facility.

Medical Care Collections Fund

The Balanced Budget Act of 1997, Public Law (P.L.) 105-33, established the VA Medical Care Collections Fund (MCCF), requiring amounts collected or recovered from third-party payers after June 30, 1997, be deposited into this fund. The MCCF is a depository for collections from third-party insurance, outpatient prescription co-payments and other medical charges and user fees. Funds collected may only be used to provide VA medical care and services, as well as VA expenses for identification, billing, auditing and collection of amounts owed the Federal government.

The American Legion supported legislation to allow VA to bill, collect, and reinvest all third-party reimbursements and co-payments. The American Legion adamantly opposes the scoring of MCCF as an offset to the annual discretionary appropriations since the majority of these funds come from the treatment of nonservice-connected medical conditions. VA's ability to capture these funds is critical to its ability to provide quality and timely care to veterans. Miscalculations of VA required funding levels result in real budgetary shortfalls.

The American Legion continues to oppose offsetting annual VA discretionary funding by the MCCF goal.

Medicare Reimbursements

As do most American workers, veterans pay into the Medicare system, without choice, throughout their working lives, including while on active duty or as active service Reservists in the Armed Forces. A portion of each earned dollar is allocated to the Medicare Trust Fund and, although veterans must pay into the Medicare system, VA is prohibited from collecting any Medicare reimbursements for the treatment of allowable, nonservice-connected medical conditions. Since over half of VA's enrolled patient population is Medicare-eligible, this prohibition constitutes a multi-billion dollar annual subsidy to the Medicare Trust Fund. The American Legion continues to support a legislative initiative to allow VHA to bill, collect and reinvest third-party reimbursements from the Centers for Medicare and Medicaid Services for the treatment of allowable, nonservice-connected medical conditions of enrolled Medicare-eligible veterans.

Medical and Prosthetics Research

The American Legion believes VA's focus in research must remain on understanding and improving treatment for medical conditions that are unique to veterans. Service members are surviving catastrophically disabling blast injuries due to the superior armor they are wearing in the combat theater and the timely access to quality combat medical care. The unique injuries sustained by the new generation of veterans clearly demand particular attention. It has been reported that VA does not have state-of-the-art prostheses like DOD and that the fitting of prostheses for women has presented problems due to their smaller stature.

There is a need for adequate funding of other VA research activities, including basic biomedical research and bench-to-bedside projects. Congress and the Administration should continue to encourage acceleration in the development and initiation of needed research on conditions that significantly affect veterans, such as prostate cancer, addictive disorders, trauma and wound healing, post-traumatic stress disorder, rehabilitation, and other research that is conducted jointly with DOD, the National Institutes of Health (NIH), other Federal agencies, and academic institutions.

The American Legion recommends \$700 million for Medical and Prosthetics Research in FY 2011.

Major Construction

The CARES process identified approximately 100 major construction projects throughout the VA Medical Center System, the District of Columbia, and Puerto Rico. Construction projects are categorized as major if the estimated cost is over \$10 million. Now that VA has disclosed the plan to deliver health care through 2022, Congress has the responsibility to provide adequate funds. The FY 2011 President's budget request calls for ongoing construction of a new medical facility in Denver, CO; New Orleans, LA; and Palo Alto, CA. Also work is to begin on new medical facilities in Omaha, NE and Alameda Point, CA.

The American Legion supports these projects; however, we feel the President's budget request for \$864 million in FY 2011 for Major Construction is inadequate and should be increased to \$2 billion to provide for additional facilities particularly Community-Based Outpatient Clinics in rural and highly rural areas and additional Vet Centers.

Minor Construction

VA's minor construction program has also suffered significant neglect over the past several years. Maintaining the infrastructure of VA's buildings is no small task, due to the age of these buildings, continuous renovations, relocations and expansions. When combined with the added cost of the CARES program recommendations, it is easy to see that a major increase over the previous funding level is crucial and overdue. The President's budget request for FY 2011 would fund Minor Construction at only \$468 million.

The American Legion recommends \$1.5 billion for Minor Construction in FY 2011.

State Extended Care Facility Construction Grants Program

Since 1984, nearly all planning for VA inpatient nursing home care has revolved around State Veterans' Homes (SVHs) and contracts with public and private nursing homes. Under the provisions of Title 38, U.S.C., VA is authorized to make payments to states to assist in the construction and maintenance of SVHs. Today, there are 133 SVHs in 47 states with over 27,000 beds providing nursing home, hospital, and domiciliary care. Grants for Construction of State Extended Care Facilities provide funding for 65 percent of the total cost of building new veterans' homes. Recognizing the growing Long-Term Care needs of veterans, it is essential the State Veterans' Homes Program be maintained as an important alternative health care provider for the VA integrated health care delivery system.

The American Legion opposes attempts to place a moratorium on new SVH construction grants. State authorizing legislation has been enacted and state funds have been committed. Delaying projects will result in cost overruns and may result in states deciding to cancel these much needed facilities.

The American Legion supports:

- increasing the amount of authorized per diem payments to 50 percent for nursing home and domiciliary care provided to veterans in State Veterans' Homes;
- providing prescription drugs and over-the-counter medications to State Homes Aid and Attendance patients along with the payment of authorized per diem to State Veterans' Homes; and
- allowing full reimbursement of nursing home care to 70 percent or higher service-connected disabled veterans, if those veterans reside in a State Veterans' Home.

The American Legion strongly recommends \$275 million for the State Extended Care Facility Construction Grants Program in FY 2011.

Rural Health Care

Research conducted by VA indicates that veterans residing in rural and highly rural areas have poorer health than their urban counterparts. It was further reported that one in five veterans live in a rural setting. Providing quality health care to veterans living in rural and highly rural areas has proven to be an extreme challenge.

The American Legion recommends construction of Community-Base Outpatient Clinics in areas such as Alaska, Montana, Nebraska, Nevada, South Dakota, Utah, Vermont and Wyoming.

Information Technology Funding

Since the data theft occurrence in May 2006, the VA has implemented a complete overhaul of its Information Technology (IT) division nationwide. The American Legion is hopeful VA takes the appropriate steps to strengthen its IT security to regain the confidence and trust of veterans who depend on VA for the benefits they have earned.

Within VA Medical Center Nursing Home Care Units, it was discovered there was conflict with IT and each respective VAMC regarding provision of Internet access to veteran residents. VA

has acknowledged the Internet would represent a positive tool in veteran rehabilitation. The American Legion believes Internet access should be provided to these veterans without delay for time is of the essence in the journey to recovery. In addition, veterans should not have to suffer due to VA's gross negligence in the matter.

The American Legion hopes Congress will not attempt to fund the solution to this problem with scarce fiscal resources allocated to the VA for health care delivery. With this in mind, The American Legion is encouraged by the fact that IT is its own line item in the budget recommendation.

The American Legion believes there should be a complete review of IT security government wide. VA isn't the only agency within the government requiring an overhaul of its IT security protocol. The American Legion urges Congress to exercise its oversight authority and review each Federal agency to ensure that the personal information of all Americans is secure.

The American Legion supports the centralization of VA's IT. The amount of work required to secure information managed by VA is immense. The American Legion urges Congress to maintain close oversight of VA's IT restructuring efforts and fund VA's IT to ensure the most rapid implementation of all proposed security measures.

The American Legion disagrees with freezing funding at the FY 2009 level of \$3.3 billion for Information Technology, as recommended in the President's budget request; therefore, The American Legion recommends \$3.8 billion in FY 2011.

Homelessness

The American Legion notes there are approximately 154,000 homeless veterans on the street each night. This number, compounded with 300,000 service members entering the civilian sector each year since 2001 with at least a third of them potentially suffering from mental illness, indicates that programs to prevent and assist homeless veterans are needed. The American Legion applauds VA's continued emphasis as one of its priority items the elimination of homelessness among America's veterans.

The American Legion fully supports the \$294 million in the FY 2011 President's budget request to help eliminate homelessness among veterans.

National Cemetery Administration

The mission of the National Cemetery Administration (NCA) is to honor veterans with final resting places in national shrines and with lasting tributes that commemorate their service to this nation. The American Legion recognizes the NCA's excellent record in providing timely and dignified burials to all veterans who opt to be buried in a National Cemetery. Further the American Legion applauds the new VA guidelines reducing the required population base for creating a National Cemetery from 175,000 to 85,000. This will allow 90 percent of all veterans a realistic option within 75 miles of their home.

The American Legion feels that the President's budget request for \$251 million for NCA and \$46 million for the State Cemetery Construction Grants program is not enough to carry out this hallowed mission. Therefore, The American Legion recommends \$260 million be allocated to the National Cemetery Administration and further that \$50 million be provided for State Cemetery Construction Grants Programs in FY 2011.

Homeless Providers Grant and Per Diem Program Reauthorization

In 1992, VA was given authority to establish the Homeless Providers Grant and Per Diem Program under the Homeless Veterans Comprehensive Service Programs Act of 1992, P.L. 102-590. The Grant and Per Diem Program, offered annually (as funding permits) by the VA, funds community agencies providing services to homeless veterans.

VA can provide grants and per diem payments to help public and nonprofit organizations establish and operate supportive housing and/or service centers for homeless veterans. Funds are available for: assistance in the form of grants to provide transitional housing (up to 24 months) with supportive services; supportive services in a service center facility for homeless veterans not in conjunction with supportive housing; or to purchase vans.

The American Legion recommends \$200 million for the Grant and Per Diem Program for FY 2011.

Veterans Benefits Administration

Clearly, the current VA claims backlog is a major concern to The American Legion and the rest of the veterans' community. Aggressively addressing this growing problem will require actions from an array of approaches. The President's budget request proposes to add both increases in funding (\$460 million) and in personnel (4,048 new FTE). These increases will be helpful, but The American Legion believes more will be required to "turn the tide." The American Legion will continue to work with VA, Congress and the veterans' community to transform the current process into a more timely and accurate process. The American Legion applauds the \$13.4 billion in supplemental funding to address the newly approved Agent Orange claims.

Summary of Legislation Proposed in the FY 2011 President's Budget Request

In reviewing the proposed legislation in the President's budget request, The American Legion would like to address several of them in detail:

Compensation and Pensions - Proposed Legislation

- **Compensation Cost of Living Adjustment (COLA):** Legislation will be proposed to provide a cost of living increase to all Compensation beneficiaries, including DIC spouses and children, effective December 1, 2010. The percent increase will align with increases in the Consumer Price Index and the increase for Social Security benefits. However, current estimates suggest that the CPI will not increase; therefore, no COLA may be enacted.

The American Legion has no official position on this proposal.

- **Expansion of Concurrent Receipt of Department of Defense Retirement Pay:** Legislation will be proposed by the Administration to expand the veteran eligibility for concurrent receipt of military retirement pay and VA disability benefits to veterans who are medically retired from service by the Department of Defense. Eligibility will be phased in over five years based on the degree of disability assigned by VA. While the primary impact will be on Title 10 and the Department of Defense, VA estimates that the cost to VA of concurrent receipt expansion will be \$47 million in 2011 and \$254 million over the five year period.

The American Legion supports this proposal. Since the offset comes from military retirement pay, The American Legion is somewhat surprised that VA would incur any costs.

- Use of Health and Human Services (HHS) Data for Purposes of Adjusting VA Benefits: Public Law 110-157 requires independent verification of HHS data for purpose of adjusting VA benefits based on economic need. This proposal seeks to remove the expiration date of 9/30/11 and extend through 2020. Benefit costs are estimated to be \$2.0 million in 2012 with a net savings in later years.

The American Legion has no official position on this proposal.

- Special Monthly Pension for Wartime Veterans 65 years of age and older: This proposal amends Section 1513 of Title 38 and repeals the Court of Appeals for Veterans Claims (CAVC) rendered decision in *Hartness v. Nicholson*. The decision affected the qualifications for the special monthly pension (SMP) awarded to veterans who are housebound (H/B). The court decision excluded the SMP requirement of being permanently and totally disabled for veterans 65 years of age and older. By repealing the court decision, a veteran will once again only be eligible for SMP if, in addition to basic pension qualifications, the veteran shows proof of being permanently and totally disabled. Once a veteran reaches age 65, the requirements for H/B pension will require a single disability rated at 100 percent, and a disability or combined disabilities (separate and distinct from the 100 percent disability) independently ratable to at least 60 percent. This proposal will provide for more equitable treatment of veterans under the pension program; currently, veterans with lower disability ratings may receive larger benefits than veterans who are permanently and totally disabled. The 2011 estimated savings is \$3.2 million with an anticipated caseload of 506,000.

The American Legion strongly opposes this proposal. The American Legion believes this proposal would take away a needed benefit provided to disabled elderly wartime veterans as allowed by statute and confirmed in a precedential decision of the United States Court of Appeals for Veterans Claims.

- VA Pension Limitations for Medicaid-covered Veterans Without Spouse or Children: This provision limits the amount of pension payable to a veteran who has neither spouse nor child (or a surviving spouse with no child) and who is covered by a Medicaid plan for services furnished by a nursing facility. Title 38, U.S.C. section 5503(d) will expire on September 30, 2011. This proposal seeks to extend the expiration date an additional five years. Elimination of this provision would result in increased pension expenditures but money available to veterans and survivors would actually decrease. The maximum pension entitlement is not sufficient to cover the normal cost of nursing home care but receipt of that amount would result in the termination of Title XVI Medicaid benefits which currently cover nursing care costs in excess of the projected amount (\$90) that is payable to the veteran under this provision. This is likely to result in veterans and surviving spouses being unable to afford nursing care. This proposal will result in VA benefit cost savings of \$559.4 million and net government-wide savings of \$246 million in 2012. Mandatory VA savings through 2015 are estimated at \$2.3 billion.

The American Legion has no official position on this proposal.

- **IRS Income Data Matching for VA Eligibility Determinations:** Section 6103 (I) (7) of the Internal Revenue Code of 1986 (26 U.S.C. Section 6103 (I) (D)) requires the Secretary of the Treasury and the Commissioner of Social Security to disclose certain income information to any governmental agency administering certain programs, including VA's pension, dependency and indemnity compensation, and health-care programs. Section 5317 of Title 38, U.S.C., governs VA's use of that information. The duty of the Secretary of the Treasury and the Social Security Commissioner to disclose that information and VA's authority to obtain it from them will expire 9/30/2011. This proposal seeks to extend the expiration date for five years. While this proposal will result in net mandatory and discretionary savings of \$20 million in 2012, it will result in net mandatory costs of \$20 million in 2012. However, the proposal will result in net mandatory savings beginning in 2013 and net mandatory savings between 2011-2016 are estimated at \$21.9 million.

The American Legion has no official position on this proposal.

- **Clarification of Monthly Payment Option for the Month of Death for Compensation or Pensions:** This proposal will amend Title 38 U.S.C. 5310 and 5111 (c) (1) to clarify that all surviving spouses are entitled to receive payment in the amount of the veteran's compensation or pension rate for the month of the veteran's death, and to simplify administration of the month-of-death benefit.

The American Legion supports this proposal. There has been much confusion and misinterpretation of the law by VA regarding the month-of-death benefit that has deprived thousands of beneficiaries of the benefits to which they are entitled, causing additional heartache during an already painful period following the death of a loved one.

- **Extension for Contract Physicians to Perform Disability Evaluations:** P.L. 108-183, Section 704, provides authority under which examinations with respect to medical disability of applicants for compensation and pension benefits are carried out by persons not employed by the VA. These examinations are funded through discretionary funds, and there is no limitation to the number of VA regional offices involved. This authority, extended by P.L. 110-329, Section 105, will expire December 31, 2010. The proposal would extend the authority by two additional years to December 31, 2012.

The American Legion has no official position on this proposal.

Readjustment Benefits – Proposed Legislation

- **Change of Terminology for the Administration of the New GI Bill:** Title 38 U.S.C. uses the term “institution of higher learning” throughout chapter 36. For consistency, this proposal would adjust the administrative language of the new Chapter 33 benefit from the use of “institution of higher education” to “institution of higher learning.”

The American Legion has no official position on this proposal.

- **Change in VA Authority to Approve Educational Programs:** This proposal would amend 38 U.S.C. Chapter 36 to expand VA's authority regarding approval of courses for the enrollment of

veterans (and other eligible persons) that are in receipt of educational assistance under the programs VA administers.

The American Legion has no official position on this proposal.

- **Extend the Delimiting Date for Caregivers Use of Education Benefits:** This proposal would amend Title 38 U.S.C. § 3031(d) and Title 38 U.S.C. § 3512, to permit the extension of delimiting dates for eligible individuals who could not pursue, or had to interrupt, a program of education while acting as the primary caretaker for a veteran or service member seriously injured while on active duty in a contingency operation after September 10, 2001.

The American Legion has no official position on this proposal.

- **Expand Employer Support Eligibility:** This proposal would amend Title 38, U.S.C., Section 3116 to expand eligibility for incentives paid to employers who provide on-job training and employment opportunities for veterans with service-connected disabilities who may be difficult to place in suitable jobs.

The American Legion supports this proposal. If enacted this legislative proposal would give employers a greater incentive to hire injured veterans who are trying to obtain gainful employment. The unemployment rate for veterans is above the national average, particularly for those between the ages of 18 to 24. The American Legion believes this legislation will greatly assist service members in their transition into the civilian workforce and allow them to use their expertise and military training to fill desirable positions within high potential industries.

Housing – Proposed Legislation

- **Authority to Pool Loans:** Legislation will be proposed to extend the authority to pool loans for two years to December 2013. This will allow the VA to obtain the best pricing for the pooled and securitized loans and to continue selling loans at a greater return without any additional risk. VA estimates additional revenue of \$87 million in 2012 and overall increased revenue of \$190 million over the 2012- 2014 period.

The American Legion has no official position on this proposal.

- **Permission of Occupancy of Veteran's Child/Children:** Legislation will be proposed to allow occupancy by a dependent child to satisfy occupancy requirements of VA home loans. This will permit a veteran who is unable to occupy a property as his/her primary residence due to active duty status or overseas employment, to use his/her earned Loan Guaranty benefit. No significant costs are anticipated.

The American Legion has no official position on this proposal.

- **First Lien Exemption for Public Entities:** Legislation will be proposed to extend first lien exemption to public entities as well as private entities during disaster relief situations only. This will allow disaster relief agencies and veterans to have more options in the type of assistance available. No significant costs are anticipated.

The American Legion has no official position on this proposal.

Insurance – Proposed Legislation

- **VGLI Increased Coverage Act:** This proposal would provide an opportunity for veterans to increase VGLI coverage in increments of \$25,000 without medical underwriting. The opportunity will be available every 5 years with a total coverage not to exceed current legislated maximum SGLI. Current law limits the amount of VGLI allowed to the amount of SGLI at discharge and as a result, many service-disabled VGLI insured, have no opportunity to increase coverage to meet current family needs. This proposed change would allow veterans, including service-disabled veterans, to purchase adequate amounts of life insurance to protect their families. There are no PAYGO costs associated with this proposal and it does not impact the budget.

The American Legion strongly supports this proposal. The American Legion would welcome such an addition to the VGLI program. This addition would permit veterans who separated from service prior to the latest increases in SGLI coverage, and who are thus restricted by current law to a lower maximum amount of life insurance coverage than those veterans who separated from service after September 1, 2005, when SGLI maximum coverage was raised from \$250,000 to the current \$400,000, a periodic opportunity to increase their VGLI coverage consonant with changes in their family situation and the needs of their beneficiaries. This increases program flexibility and fairness, and provides a greater benefit to this portion of the veteran population. The American Legion would like to comment further, however, that in the cases of severely service-disabled veterans, a federally subsidized premium relief or waiver element should be included to lessen the financial burden of VGLI's high premium costs, particularly in the older age groups.

- **SGLI Two Year Total Disability Extension Retention Act:** Under current law and procedures, if an insured service member is totally disabled at the time of separation from service, the member's SGLI coverage may be continued for up to two years, for free, following separation from service. Effective October 1, 2011, this provision expires and the SGLI extension period will be reduced from two years to 18-months. The SGLI Two Year Total Disability Extension Retention Act will allow for the indefinite retention of the two-year total disability extension period. By maintaining the SGLI Total Disability Extension period at two years, this will maximize the opportunity for totally disabled veterans, who have no hope of obtaining commercial insurance, to make informed decisions regarding their life insurance needs and options. It also guarantees that those most in need, who have been traumatized by their disabilities, will be fully covered under the SGLI program during this transition period with no action or cost on their part. There are no PAYGO costs associated with this proposal and it does not impact the budget.

The American Legion strongly supports this proposal. It is obvious that veterans who separate from service with such extensive disabilities as to render them totally disabled often require a substantial period of time to bring their personal and financial affairs into order, due to the debilitating nature of such disabilities and the resulting period of family adjustment, and so to assist them in later meeting the premium costs of VGLI coverage as the program's structure does not provide for any disability waiver of premiums as other federal and many private life

insurance programs do. The American Legion further believes the process for this extension, which requires application by the veteran to the OSGLI center for such, be streamlined and automated so that veterans leaving active duty in a totally disabled status are automatically granted the extension shortly after separation.

Medical Care – Proposed Legislation

- **Homeless Providers Grant and Per Diem Program:** Legislation will be proposed to amend legislative authority in Title 38 U.S.C., Subchapter VII, section 2061, to obtain statutory authority to offer both capital grants and enhanced per diem payments to eligible community-based entities who serve special needs veterans including female homeless veterans, homeless veterans diagnosed with a chronic mental illness, and those veterans who are failing and/or terminally ill. This proposal would grant VA permanent authority to offer capital grants and per diem to agencies that create transitional housing and supportive services for homeless veterans with special needs; allow for enhancement of the current per diem rate for transitional housing services; and remove the requirement to provide grants to VA health care facilities.

The American Legion supports this proposal. If enacted, this legislative proposal would provide resources for public and private sector agencies and organizations who serve special needs veterans, including female homeless veterans, homeless veterans diagnosed with chronic mental illness and those veterans who are failing and/or terminally ill. With the VA and other homeless care service providers continuing to focus on the various needs (i.e., health issues, economic issues, lack of safe/affordable housing, and lack of family and social support networks) of homeless veterans, and the enactment of this legislation, The American Legion believes that homelessness rates will continue to drop among the veterans' community. The American Legion strongly supports taking the necessary means to combat and aid in ending veterans' homelessness.

- **Reinstate the Health Professional Scholarship Program (HPSP):** Legislation will be proposed to reauthorize the HPSP. The authority to provide the financial assistance will be established by extending the expiration date of the Department of Veterans Affairs Health Professional Scholarship Program described in Title 38, U.S.C., Sections 7611-7618. The HPSP, established by Public Law 96-330, awarded scholarships from 1982 through 1995 to 4,650 students earning baccalaureate and masters degrees. Authority for the program expired in 1998. It is recommended that the Health Professional Scholarship Program be reauthorized and funded because there is no other scholarship program with a VA service obligation available to the public at this time. This program, if reauthorized, will provide financial assistance to competitively selected scholarship recipients in exchange for 2-year VA service obligations upon graduation and licensing.

The American Legion supports this proposal. The Health Professional Scholarship Program maintains the Department of Veterans Affairs presence in the competitive medical professional market, as well as helps to lower the attrition rate amongst medical professionals employed at VA Medical Centers (VAMC).

- **Remove Requirement that VA Reimburse Certain Employees for Professional Education:** Legislation will be proposed to eliminate Title 38, U.S.C., section 7411 that states "The Secretary shall reimburse any full-time board certified physician or dentist appointed under section 7401

(1) of this Title for expenses incurred, up to \$1,000 per year, for continuing professional education.” VHA has a long history of providing educational and training support to all clinical and administrative staff. The Employee Education System and VA Learning University offer a large course catalog with opportunities for physicians and dentists, as well as other occupations, to obtain continuing professional education at VA expense. VHA will continue to manage training and education funding within long-standing parameters in conjunction with published policies at the national and local levels. Continuance of the entitlement in section 7411 is no longer necessary, given the improved competitive recruitment position resulting from the new pay system.

The American Legion has no official position on this proposal.

- **Provide Care for Newborns as Part of the Uniform Benefits Package:** Legislation will be proposed to amend Title 38, U.S.C., to authorize VA to provide care to newborns of enrolled women veterans who are receiving maternity care through the Department of Veterans Affairs. This proposal is to cover costs of newborn hospitalization and is not to exceed 96 hours after delivery. Longer hospitalization or outpatient costs for the newborn, beyond 96 hours post-delivery, would not be authorized in this maternity benefit.

The American Legion has no official position on this proposal.

- **Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) Coverage for Caregivers:** Legislation will be proposed to provide health care coverage through CHAMPVA for any caregiver without entitlement to other health insurance or coverage. Caregivers for severely wounded veterans are in most cases impacted by their inability to sustain employment related health coverage. CHAMPVA health care coverage will help relieve the financial burden of health care costs incurred by the caregiver of severely wounded veterans and allow them the reassurance that their medical care needs will be met while they care for the medical needs of the veteran. This in turn will reduce veterans’ stress as they will not need to worry about how their caregivers health related needs are met.

The American Legion supports this proposal. This legislative proposal would adequately provide timely access to quality health care for those who are unselfishly caring for the nation’s veterans.

- **Travel Expenses, including Lodging and Subsistence, for Caregivers:** Legislation will be proposed to provide travel, incidental expenses [e.g., per diem (inclusive of lodging allowance), tolls etc.] and subsistence for a caregiver of qualifying veterans receiving care for service-related conditions at a VA or VA authorized facility. The Department does not have authority to provide lodging expenses to an attendant if the veteran is not lodging with the attendant. Since the veteran's caregiver in most cases is a close family member, providing travel expenses for the caregiver assures the veteran has the appropriate support while traveling to a VA health care facility. This will allow the veteran's health care provider to communicate directly to the veteran's caregiver about the needs of the veteran. This will also ensure continuity of the veteran's care and help the caregiver better understand the needs of the patient.

The American Legion supports this proposed. This legislative proposal would help to ensure veterans receive complete and uninterrupted care.

- **Education and Training for Caregivers:** Legislation will be proposed to allow VA to develop caregiver education materials for caregivers and individuals who support caregivers. In addition, VA would provide outreach to veterans and their caregivers to inform them of the support available through VA as well as public, private, and non-profit agencies. VA currently provides education and training for veterans and their caregivers regarding medical issues. This proposal would codify and expand those efforts. These programs generally demonstrate significant reduction in caregiver burden and the impact of depressive symptoms on their daily life. This proposal provides VA with the opportunity to implement a formal approach to educating and training caregivers so they are better prepared to care for the veteran.

The American Legion supports this proposal.

- **Survey of Caregiver Needs:** Legislation will be proposed to conduct a caregiver survey every 3 years to determine the number of caregivers, the types of services they provide to veterans, and information about the caregiver (age, employment status, and health care coverage). Currently, VA does not have adequate information on the number of caregivers, the number of family caregivers, and the number of veterans receiving caregiver services from caregivers and family caregivers, including the era in which each veteran served in the Armed Forces.

A survey of veteran caregivers will allow VA to gather needed information that will be used to better understand the population of caregivers and to identify and understand their specific needs. This information will allow VA to appropriately develop education, training, and support programs for veteran caregivers.

The American Legion supports this proposal.

- **Nonprofit Corporations:** Legislation will be proposed to establish a Central Nonprofit Corporation for VA research. Currently, there are 88 of these VA affiliated Non-Profit Corporations (NPC). Each NPC is required to report annually a detailed statement of their operations, activities and accomplishments during the previous year. The purpose of the central Non-Profit Corporation will be to: (1) carry out national medical research and education projects under cooperative arrangements with VA, (2) serve as a focus for interdisciplinary interchange and dialogue between VA medical research personnel and researchers from other federal and non-federal entities, and (3) encourage the participation of the medical, dental, nursing, veterinary, and other biomedical sciences in the work of the central NPC for the mutual benefit of VA and non-VA medicine. The central NPC would enable facility directors or the Under Secretary for Health to have an alternative to individual medical-center-based NPCs in those facilities in which the volume of research and education does not enable the resources to assure adequate management controls.

The American Legion has no official position on this proposal.

- **Clarify Breach of Agreement under the Employee Incentive Scholarship Program (EISP):** Legislation will be proposed to amend Title 38, U.S.C., chapter 76, section 7675, subchapter VI,

to provide that full-time student participants in the EISP would have the same liability as part-time students for breaching an agreement by leaving VA employment. The current statute clearly limits liability to part-time student status participants who leave VA employment prior to completion of their education program. This allows a scholarship participant who meets the definition of full-time student to leave VA employment prior to completion of the education program, breaching the agreement with no liability. This proposal would require liability for breaching the agreement by leaving VA employment for both full- and part-time students. All other employee recruitment/retention incentive programs have a service obligation and liability component. This proposal would result in cost savings for the Department by recovering the education funds provided to employees who leave VA employment prior to fulfilling their agreement.

The American Legion has no official position on this proposal.

- Consider VA a Participating Provider for Purpose of Reimbursement (revenues): Legislation will be proposed that would allow VA to be treated as a participating provider, whether or not an agreement is in place with a health insurer or third-party payer, thus preventing the effect of excluding coverage or limiting payment of charges for care. With the enactment of the Balanced Budget Act of 1997 (BBA), Congress changed the health insurer and third-party program into one designed to supplement VA's medical care appropriations by allowing VA to retain all collections and some other copayments. VA can use these funds to provide medical care to Veterans and to pay for its medical care collection expenses. This law also granted VA authority to begin billing reasonable charges versus reasonable costs for care. Reasonable charges are based on the amounts that health insurers and third-party payers pay for the same care provided by non-government health care providers in a given geographic area. This proposal would prevent a health insurer or third-party payer from denying or reducing payment, absent an existing agreement between VA and any health maintenance organization, competitive medical plan, health care prepayment plan, preferred provider organization, or other similar plan, based on the grounds that VA is not a participating provider.

The American Legion supports this proposal.

- Military Surgeon Association: This proposal would make the Department of Veterans Affairs (VA) an Incorporated Member of the Association of Military Surgeons of the United States (AMSUS). As a result, VA would be authorized to participate in AMSUS activities to the same extent as the military services.

The American Legion has no official position on this proposal.

- Technical Changes to Fee Basis Authority: This proposal would amend Title 38 U.S.C. 1703(a) by adding language similar to the language found in Title 38 U.S.C. § 8123, Procurement of prosthetic appliances, which will strengthen the Department's interpretation of legal authority to purchase health care on an individual basis when needed.

The American Legion supports this proposal. This legislative proposal would seek to ensure veterans receive adequate and timely care, to include medical appliances.

- **Mandatory Disclosure of Social Security Number (SSN) and 3rd Party Health Insurance:** The provision would deny access to hospital care, nursing home care, or medical services that may be provided to any person under the provisions of Title 38 U.S.C. chapter 17 unless that person has disclosed his/her social security number and the social security number of any dependent or beneficiary and furnish VA with current, accurate third-party health insurance information.

The American Legion has no official position on this proposal.

- **Permanent Authority for Co-Pays:** The provision would amend Title 38 U.S.C. § 1710 (f)(2)(B) to make permanent VA authority to collect an amount equal to \$2 or \$10 for every day the veteran receives hospital care for a veteran who is required to agree to pay to the United States the applicable amount determined under paragraph (2) or (4) or this subsection. This current authority expires September 30, 2010.

The American Legion has no official position on this proposal.

- **Permanent Authority for Collections:** The provision would amend Title 38 U.S.C. § 1729 to make permanent VA authority to recover reasonable charges for care or services for care of nonservice-connected conditions from a third party to the extent that the veteran who has a service-connected disability would be eligible to receive payment for care or services from a third party if the care or services were not provided by VA. This current authority expires October 1, 2010.

The American Legion has no official position on this proposal.

- **Eliminate and Change Dates for Certain Congressional Reports:** This proposal would eliminate the Report on Pay for Nurses and Other Health Care Personnel (Title 38, U.S.C., Section 7451(f)) and Report on Long-Range Health Planning (Title 38, U.S.C., Section 8107) and modify the due date and limit the duration of the Annual Report on Federally Sponsored Gulf War Research Activity.

The American Legion has no official position on this proposal.

- **Codify Rules on Billing of Veterans in CHAMPVA:** This proposal would modify Title 38 U.S.C. §1781 to codify, consistent with regulations, that the VA determined allowable amount for reimbursement of medical services represents payment in full and the health care provider may not impose additional charges on the beneficiary above the VA-determined allowable amount.

The American Legion has no official position on this proposal.

Other Legislative Proposals

- **Staying of Claims:** This proposal would amend Title 38, U.S.C., to permit the Secretary of Veterans Affairs (VA) to delay adjudications as needed to preserve program integrity and to clarify that the Board of Veterans' Appeals (Board) may decide certain cases out of docket order.

The American Legion opposes this proposal. The American Legion would oppose VA from initiating stays involving implementation of precedential federal court decisions pending the

appeal of the decision without seeking permission of such a stay from the court as is the current practice. The current procedure for initiating stays in claims adjudication in such instances allows for VA to preserve program integrity but also provides a check by not allowing VA to circumvent the court's authority.

- **Revise Time Limits and Dates for Herbicide and Gulf War Presumptions:** This proposal would modify statutory time limits to the review and rule-making process.

The American Legion has no official position on this proposal.

- **Repeal Obsolete Ethics Provision:** This proposal would eliminate the blanket prohibition against VA employees having interests in, or receiving income or services from, certain for-profit educational institutions.

The American Legion has no official position on this proposal.

- **Notice of Disagreement Filing Period:** This proposal would amend Title 38 U.S.C. § 7105(b)(1) to reduce the time period for filing of a notice of disagreement (NOD) following the issuance of a rating decision from one year to 180 calendar days.

The American Legion strongly opposes this proposal. Claimants currently have one year to initiate the appeals process following the issuance of a VA rating decision by filing a notice of disagreement. Arbitrarily reducing this period from one year to six months for the sake of expediency serves no purpose other than to adversely impact appellants who miss the six month cut off. If the percentage of appellants who file after six months is large, then a large group of appellants would be denied their appellant rights. If the percentage of those who file after six months is small, then there can be no great benefit to timeliness by implementing this change.

- **Automatic Waiver of Agency of Original Jurisdiction Review of New Evidence:** This proposal would amend Title 38 U.S.C. § 7105 to specifically incorporate an automatic waiver of agency of original jurisdiction (AOJ) consideration for any evidence submitted to VA by the appellant or his or her representative following VA's receipt of a VA Form 9 substantive appeal, unless the appellant or his or her representative expressly chooses in writing not to waive such jurisdiction.

The American Legion supports this proposal. The American Legion believes the automatic waiver of agency of original jurisdiction (AOJ) review in instances where the claims file has already been certified and transferred to the Board of Veterans' Appeals (BVA). However, as it takes an average of approximately 600 days for the regional offices (RO) to transfer an appeal to the BVA after the substantive appeal has been filed, an automatic waiver of AOJ review and or submission of the evidence directly to the BVA after the substantive appeal has been received would cause additional delay if the claims file is still at the regional office. It is also in the best interest of the appellant for the RO to review evidence and issue a decision, after the appeal has been perfected, in instances where the claims file is still at the RO and the evidence submitted would allow a grant of the benefit sought. As it now takes a year or more, depending on docket date, for the BVA to make a decision after it has received the claims file, automatically waiving AOJ review in such instances would cause unnecessary delay.

The American Legion also suggests the consideration of legislation addressing the inordinate amount of time it takes the AOJ to certify and transfer the appeal to the BVA after a substantive appeal is received.

- Board of Veterans' Appeals Video Hearings: This proposal would amend Title 38 U.S.C. § 7107(d)(1) and (e)(2) to allow the Board to determine the most expeditious type of hearing to afford an appellant (i.e. an in-person hearing or a video conference hearing), restricting the appellant to the hearing selected by the Board unless good cause or special circumstances are shown to warrant another type of hearing.

The American Legion opposes this proposal. The American Legion does not support a denial of the appellant's right to choose the type of Board of Veterans' Appeals (BVA) hearing he or she desires. The majority of BVA appellants do not opt to have a personal hearing and taking away their right to choose their preferred option serves no good purpose.

- Board of Veterans' Appeals' – Rationale in Decisions: This proposal would amend Title 38 U.S.C. § 7104(d)(1), to define "reasons or bases" to mean "a plausible statement of the reasons for the Board's ultimate findings of fact and conclusions of law."

The American Legion has no official position on this proposal.

- Definition of Prevailing Party for the Equal Access of Justice Act (EAJA) and Veterans Benefits Appeals: This proposal would amend the definition of "prevailing party" for purposes of establishing eligibility to receive attorney fees and expenses fees under Title 28 U.S.C. § 2412 of the Equal Access of Justice Act (EAJA) for cases handled by the United States Court of Appeals for Veterans Claims (Court).

The American Legion has no official position on this proposal.

- Filing of Substantive Appeals: This proposal would amend Title 38, U.S.C., § 7105(d)(3), to establish a clear time period for filing a substantive appeal in order to perfect an appeal to the Board of Veterans' Appeals (Board), to make the filing of a timely substantive appeal a jurisdictional requirement for Board review, and to establish that finality attaches to any matter in which a timely substantive appeal is not filed, all for the purpose of promoting efficiency in the adjudication process.

The American Legion is deeply concerned about the potential impact this proposal will have, but without reviewing the exact statutory language we are unable to provide specific comment.

- Advisory Committee on Homeless Veterans: This proposal would extend the Congressional authority to continue the Advisory Committee for Homeless Veterans (ACHV) for an additional three years until 2014.

The American Legion supports this proposal. VA's new initiative to eliminate homelessness among the veterans' population in five years will require this committee's insight and guidance to making this endeavor a reality.

- Title 38 Pay Authority to Maintain On-Call Pay for Information Technology (IT) Specialists in VA OI&T: This proposal would amend Title 38 to continue to allow Title 5 IT Specialists authority to serve in an “on-call” status and receive “on-call” pay because of the requirement to support VA’s healthcare mission 24 hours a day, 7 days a week.

The American Legion has no official position on this proposal.

- Title 38 Pay Authority to Recruit and Retain Healthcare Professionals in VA OI&T: Legislation will be proposed to allow the Office of Information and Technology (OI&T) Title 38 Pay Authority. This will enable OI&T to recruit and retain healthcare professionals in leadership positions.

The American Legion has no official position on this proposal.

- Office of Small Business Programs: This proposal would change the name of the Office of Small and Disadvantaged Business Utilization to the Office of Small Business Programs. This change will bring VA into alignment with DoD’s name change in accordance with the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163, Section 904).

The American Legion has no official position on this proposal.

- Real Property Enhanced Use Leases (EUL): Legislation will be proposed to extend the current EUL authority from its expiration date of December 31st, 2011 for five years, until December 31st, 2016.

The American Legion has no official position on this proposal.

- Franchise Fund: This proposal would modify Public Law 109-114, Military Quality of Life and Veterans Affairs Appropriations Act of 2006, to provide a better financial procedure for the VA Franchise fund to more quickly return refunds to customers when improper payments are inadvertently made by the fund on the customer’s behalf.

The American Legion has no official position on this proposal.

- VA Police Uniform Allowances: This proposal would update Title 38 U.S.C. § 903-Uniform Allowance for Department Police Officers to make the uniform allowance paid to Department police officers consistent with current Federal statute and regulations.

The American Legion has no official position on this proposal.

CONCLUSION

Mr. Chairman and Members of the Committee, The American Legion will continue to review the President’s budget request. The American Legion had less than 24 hours to review the President’s budget request and prepare this written testimony.

Once again, The American Legion supports:

- Increases funding for VA in FY 2011 by \$11 billion above the FY 2010. Increases funding for

VA's medical care by \$4 billion in FY 2011 and a projected \$2.8 billion increase in FY 2012 to \$54.3 billion.

- Expands enrollment for 500,000 additional Priority Group 8 veterans by FY 2013.
- Enhances outreach and services related to mental health care and cognitive injuries, including post-traumatic stress disorder and traumatic brain injury, with a focus on access for veterans in rural and highly areas.
- Invests in better technology to deliver services and benefits to veterans with the quality and efficiency they deserve.
- Full concurrent receipt of military retirement pay and VA disability compensation without offsets.
- Combats homelessness by safeguarding vulnerable veterans. Facilitates timely implementation of the comprehensive education benefits that veterans earn through their dedicated military service.

The American Legion welcomes the opportunity to work with this Committee and the Administration on the enactment of a timely, predictable and sufficient budget for the Department of Veterans Affairs.

Mr. Chairman, this concludes my testimony and The American Legion would welcome any questions you or your colleagues may have.