

**STATEMENT OF
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AND
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DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
U.S. SENATE**

October 30, 2013

Good Morning Chairman Sanders, Ranking Member Burr, and Members of the Committee. Thank you for inviting us here today to present our views on several bills that would affect Department of Veterans Affairs (VA) healthcare and benefits programs and services. Joining us today are Richard Hipolit, Assistant General Counsel, and Jane Clare Joyner, Deputy Assistant General Counsel.

VA is still in the process of formulating views on the following bills for which VA received notice or drafts on September 30, 2013: Sections 3-5 of S. 1155, S. 1296, S. 1540, S. 1556, and S. 1559. We will forward the views and estimates to the Committee as soon as they are available. Other bills were provided to VA at various points during the month of October. VA also will provide views and costs to the Committee on those bills at a later time: S. 1573, supplemental analysis to what is presented in this testimony regarding the draft bill entitled the "Veterans Health Care Eligibility and Expansion Act," views and costs on the draft bills entitled "Mental Health Support for Veterans Families and Caregivers," the "Survivors of Military Sexual Assault and Domestic Abuse Act," the "Medical Foster Home Act," and a draft bill regarding eligibility for emergency medical treatment.

Additional bills provided to VA during October for which views will be provided for the record are: draft bills entitled the "Enhanced Dental Care for Veterans Act," the "Improved Compensation for Hearing Act," the "SCRA Enhancement and Improvement Act," the "Ensuring Safe Shelter for Homeless Veterans Act; the "Servicemember Housing Protection Act,"; the "Support for Joint Federal Facilities Act," a bill to re-designate the name of a VA Medical Center, a bill regarding replacement automobiles for certain disabled veterans, a bill concerning the health conditions of descendants of Veterans exposed to toxic substances during service in the Armed Forces, and finally a bill concerning infectious disease reporting and the organizational structure of VHA.

S. 1148 - Veterans Benefits Claims Faster Filing Act

Section 2(a) of S. 1148, the “Veterans Benefits Claims Faster Filing Act,” would require VA to post in a conspicuous place in each regional office and claims intake facility and on VA’s internet website information concerning the average processing times for claims based on various formats in which a claim can be submitted, and information concerning the percentage of claims for which benefits are awarded, categorized by whether the claimant was represented by a Veterans Service Organization (VSO), a representative other than a VSO, or not represented via a durable power of attorney. The bill would require such information to be updated at least quarterly. Section 2(b) of the bill would require VA to provide each claimant with the same information. Section 2(b) would further require VA to notify each claimant that he or she may become eligible for up to one extra year of benefit payments by submitting a fully developed claim (FDC). The notice required by section 2(b) would have to be provided before the recipient submits a claim.

VA understands and appreciates the importance of transparency and the need to keep Veterans, Congress, and other stakeholders informed. There are currently many ways for Veterans, VSOs, and others to get information and data about claims. For example, information is included in our annual budget request to Congress, the Annual Benefits Report, the annual Performance and Accountability Report, monthly ASPIRE updates, monthly Congressional Tracking Reports, the Monday Morning Workload Report, various Veterans Benefits Administration (VBA) websites (including www.eBenefits.va.gov), responses to calls at our National Call Centers, and other responses to specific requests from Members of Congress, stakeholders, and the media.

VA does not support this bill, for several reasons. The bill would create a significant administrative burden that would effectively delay the processing of disability compensation claims. The requirement that VA provide certain information to each claimant potentially would require VA to revise a number of forms and would implicate the requirements of the Paperwork Reduction Act, requiring two periods of public notice prior to changing the form. VA currently provides notice on FDC forms stating that the FDC program is the fastest way to receive a decision on a claim. Soon, VA will be revising the notice to inform claimants of the potential entitlement to an extra year of benefit payments for original FDC claims.

VA has concerns about the complexity of data that would be required based on the bill. Some of the metrics outlined in the bill are not currently available in VA systems. For example, VA generally does not routinely track grant rates for particular types of claims or whether claims are submitted in standard or non-standard paper form. Similarly, the term “for which benefits are awarded,” as used in section 2(c) of this bill, is ambiguous. Awards of service connection for a disability evaluated at zero percent do not result in payment. Disability compensation claims can involve a single disability contention or multiple contentions, and several claims from the same individual

may simultaneously await resolution. It is unclear whether VA would be required to report awards per claimant, per claim, or per individual contentions within each claim.

The complex data that would be provided under the bill could easily mislead or confuse claimants rather than help them understand what they should do to support their claims. Providing this type of information could be seen as directing claimants to file, or not file, certain types of claims or to elect a particular type of representative. However, the data provided may not be the best indicator of the most appropriate course of action for the particular claimant. Also, reporting the percentages of claims with a power of attorney naming a VSO may be misleading, as Veterans with authorized VSOs often file claims without the direct involvement of their designated VSOs. Furthermore, most powers of attorney used to authorize claim representatives are not “durable.”

VA also notes that H.R. 1148 does not specify which VA benefit(s) would be impacted by this bill. Although VA believes the bill is likely intended to apply to claims for service-connected disability compensation, the bill does not explicitly state this and would therefore apply to all benefits. Further, although the bill would require VA to notify each claimant of the availability of an extra year of benefit payments if a person files a FDC, section 506 of Public Law 112-154, which authorizes a one-year retroactive payment for persons who file FDCs, applies only to original (i.e., initial) claims by Veterans for disability compensation. Providing notice of the retroactivity provision to persons claiming other benefits, or to Veterans attempting to reopen disability compensation claims or to claim increased compensation, may be confusing and misleading. In addition, the FDC retroactivity provision has a sunset date, while the bill would require in perpetuity notice of the availability of the benefits.

VA estimates that there would be no benefit costs associated with enactment of S. 1148. VA estimates the general operating expenses (GOE) for section 2 of S. 1148 would be \$5.5 million in the first year, \$27.7 million over five years, and \$58.8 million over ten years. VA estimates the information technology (IT) costs for section 2 of S. 1148 would be \$122,000 in the first year, \$655,000 over five years, and \$1.4 million over ten years.

S. 1155 - Rural Veterans Mental Health Care Improvement Act

Section 2 of S. 1155 would amend section 117(c) of title 38, United States Code, to add accounts providing funds for information technology, including subaccounts of the medical services, medical support and compliance, and medical facilities accounts, to the list of accounts in section 117 that receive advance appropriations.

We appreciate how Congressional support for VA advance appropriations for our medical care accounts has enabled a multi-year approach to medical budget planning and ensured continued medical services for Veterans. The advance medical care appropriation was designed to ensure continuity of critical medical operations in the face of fiscal uncertainty.

A proposal to expand VA advance appropriations to other accounts needs to take into consideration the advantages and disadvantages of such an approach not only for VA, but potentially other programs and agencies. We cannot therefore offer a position on section 2 of S. 1155 at this time. We very much appreciate the concern for Veterans services reflected in the proposal, and look forward to working with the Committee on how to best maintain the provision of VA benefits and services in light of fiscal uncertainties.

We are finalizing our views and costs on sections 3-5 of S. 1155. We will forward the views as soon as they are available.

S. 1165 - Access to Appropriate Immunizations for Veterans Act of 2013

S. 1165 would amend section 1701 of title 38, U.S.C., to include certain adult immunizations as part of the preventive services detailed in subsection 9 of the statute. The bill would also amend section 1706 of title 38, U.S.C., to require VA to develop quality measures and metrics to ensure that Veterans receiving medical services also receive the immunizations.

VA strongly supports preventive care measures, including making a wide range of immunizations available at VA medical facilities. However, because we believe VA is already satisfying the purpose of this bill, we do not support this legislation. Under current policy, VA already provides preventive immunizations at no cost to the Veteran. In addition, VHA is represented as an ex-officio member of the Advisory Committee on Immunization Practices (ACIP) and VA develops clinical preventive services guidance statements on immunizations in accordance with ACIP recommendations (VHA Handbook 1120.05). All ACIP-recommended vaccines are available to Veterans at VA medical facilities. These vaccines currently include: hepatitis A, hepatitis B, human papillomavirus, influenza, measles/mumps/rubella, meningococcal, pneumococcal, tetanus/diphtheria/pertussis, tetanus/diphtheria, varicella, and zoster. As the ACIP recommendations change, VHA policy reflects those changes.

The delivery of preventive care including vaccinations has been well established in the VHA Performance Measurement system for more than 10 years with targets that are appropriate for the type of preventive service or vaccine. VA updates the performance measures to reflect changes in medical practice over time. Adding the additional legislative process of regulations to the development of targets would be burdensome and lengthy.

Moreover, the legislative process does not allow for nimble changes as new research or medical findings surrounding a vaccine come to light. Because the clinical indications and population size for vaccines vary by vaccine, blanket performance monitoring of all vaccines can be cost prohibitive and may not have a substantial positive clinical impact.

S. 1211 - Regarding the use of the phrases “GI Bill” and “Post 9/11 GI Bill”

S. 1211 would amend chapter 36 of title 38, United States Code, to add a new section 3697B, which would prohibit, except with the written permission of the Secretary, the use of the words and phrases “GI Bill” or “Post-9/11 GI Bill” in connection with any promotion, goods, services, or commercial activity in a manner that reasonably and falsely suggests that such use is approved, endorsed, or authorized by VA or any component thereof. A determination that the use of one or more words or phrases covered by section 3697B does not violate that section could not be based solely on the ground that such use includes a disclaimer of affiliation with VA or any VA component. S. 1211 would authorize the Attorney General of the United States to initiate a civil proceeding in a district court to enjoin an existing or potential violation of section 3697B. Further, S. 1211 would specify that the district court could, at any time before final determination, enter such restraining orders or prohibitions, or take such other action as is warranted, to prevent injury to the United States or to any person or class of persons for whose protection the action is brought.

VA supports this bill. VA has already taken action to prevent the misuse and misrepresentation of the phrase “GI Bill.” The phrase “GI Bill” is a trademark owned by VA and registered with the U.S. Patent and Trademark Office as of October 16, 2012. If this bill were enacted, it would assist in further diminishing aggressive advertising towards Veterans, as addressed in Executive Order 13607: Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses and Other Family Members.

VA estimates there would be no costs to VA associated with implementing this bill because, according to the bill text, the Attorney General’s office would be responsible for enforcing the prohibition. If VA was notified of, or became aware of, prohibited use of the phrases “GI Bill” or “Post-9/11 GI Bill”, VA would refer the incident to the Department of Justice (DOJ).

S. 1216 - Improving Job Opportunities for Veterans Act of 2013

Section 2 of S. 1216, the “Improving Job Opportunities for Veterans Act of 2013,” would reduce, during the 4-year period beginning on the date that is one year after the date of enactment, the amount of wages paid the eligible Veteran or person in an OJT program not later than the last full month of that training period from 85 percent to 75 percent of the wages paid for the job for which such individual is being trained

Section 3 of the draft bill would require VA, beginning 1 year after the date of enactment, to enter into agreements with other Federal departments and agencies to operate their own OJT programs under section 3677 of title 38, United States Code, to train eligible Veterans or persons in skills necessary to obtain employment by those entities. Finally, section 4 of the draft bill would extend from November 30, 2016, until December 31, 2016, the requirement in 38 U.S.C. § 5503(d) to reduce pension payments for certain beneficiaries who receive services from a nursing facility under a Medicaid plan.

VA does not object to the provision in section 2 that would temporarily reduce the wage requirement from 85 percent to 75 percent, subject to Congress identifying appropriate offsets for the increased benefit costs that would result from the increased participation in the OJT program. VA anticipates that this amendment may increase employer and Veteran participation in OJT programs, increasing the number of job-training programs for Veterans in the future. However, VA cannot determine how much OJT participation would increase until more data become available after the implementation of this program. VA supports the intent underlying section 3; however, we do not believe legislation is necessary because VA currently has the authority to approve Federal OJT and apprenticeship programs under section 3672(b) of title 38, United States Code. Furthermore, the bill is unclear as to: (1) the purpose of such agreements beyond VA approval (For instance, it could be to document exchange of funds, specify program content, or require or commit such departments/agencies to carry out such training); and (2) what entity would provide the training (VA or the other Federal department/agency).

VA will provide views and a cost estimate for section 4 of the bill for the record at a later date.

S. 1262 - Veterans Conservation Corps Act of 2013

Section 2(a) of S. 1262 would require the Secretary of Veterans Affairs, in cooperation with the Attorney General, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Homeland Security, the Secretary of the Interior, and the Chief of Engineers, to establish a Veterans conservation corps to assist Veterans in the transition from service in the Armed Forces to civilian life and to employ Veterans in conservation, resource management, and historic preservation projects on public lands and maintenance and improvement projects for cemeteries under the jurisdiction of the National Cemetery Administration; and as firefighters, law enforcement officers, and disaster relief personnel. This bill would establish a priority for Conservation Corps hiring for Veterans who served after September 11, 2001.

Section 2(b) of the bill would require as part of the Veterans conservation corps that the Secretaries of Veterans Affairs, Agriculture, Commerce, and the Interior and the Chief of Engineers employ Veterans; or award grants to, or enter into contracts with

State governments, local governments, or nongovernmental entities, to employ Veterans to carry out the projects described in section 2(a) of the bill.

Section 2(c)(1) of the bill would require as part of the Veterans conservation corps that the Secretary of Homeland Security award grants under section 34 of the Federal Fire Prevention and Control Act of 1974 to hire Veterans as firefighters. Section 2(c)(2) of the bill would require the Attorney General to award grants under part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 to hire Veterans as law enforcement officers. Section 2(c)(3) would require the Secretary of Homeland Security to provide funds to increase participation by Veterans in the Federal Emergency Management Corps program.

Section 2(d) of the bill would authorize the Secretary of Veterans Affairs to provide assistance to the officials listed in section 2(a) of the bill to carry out the Veterans conservation corps. Such assistance could take the form of transfers from amounts appropriated or otherwise made available to the Secretary of Veterans Affairs to carry out the Veterans conservation corps. Section 2(d)(3) of the bill would require the Secretary of Veterans Affairs to establish a steering committee consisting of the Secretaries of Veterans Affairs, Agriculture, Commerce, and the Interior and the Chief of Engineers to establish selection criteria and provide advice in connection with award of assistance as authorized under section 2(d) the bill.

Section 2(e) of the bill would require the Secretary of Veterans Affairs to establish a reporting framework to ensure proper oversight and accountability of the Veterans conservation corps. Section 2(f) of the bill would require the Secretary of Veterans Affairs to ensure that Veterans employed under the Veterans conservation corps are aware of benefits and assistance available to them under the laws administered by VA. Finally, Section 2(g) would authorize appropriations to the Secretary of Veterans Affairs to carry out the bill in the amount of \$600,000,000 for the period of FY 2014 through FY 2018.

S. 1262 includes similar concepts to the Administration's Veterans Job Corps proposal presented in its Fiscal Year 2014 budget. VA would welcome the opportunity to work with the Committee on this bill.

S. 1281 - Veterans and Servicemembers Employment Rights and Housing Act of 2013

S. 1281, the "Veterans and Servicemembers Employment Rights and Housing Act of 2013," would prohibit discrimination in employment and housing on the basis of military service. Section 2 of S. 1281, which would prohibit employment-related discrimination on the basis of military service, would affect programs or laws administered by the Equal Employment Opportunity Commission (EEOC) and Office of Personnel Management (OPM). In addition, section 2(g), which addresses employment practices related to national security, would affect matters under the jurisdiction of Department of Homeland Security (DHS). Section 3, which would prohibit residential housing-related discrimination on the basis of military service, would affect programs or

laws administered by the Department of Housing and Urban Development (HUD). In addition, both sections 2 and 3 of the bill relate to matters of Department of Justice (DOJ) enforcement. Further, because S. 1281 addresses current as well as former members of the uniformed services, the bill would involve matters related to Department of Defense (DoD). Accordingly, we defer to those departments' views on this bill. We understand that DOJ appreciates the goals of the bill, but may suggest alternative approaches more consistent with current enforcement schemes.

S. 1295 - Regarding notice to Veterans filing electronic claims for benefits of the availability of services from Veteran Services Organizations

S. 1295 would add to title 38, United States Code, a new section 5103B, which would require, “[t]o the degree practicable,” VA to notify claimants, when they electronically file applications for VA benefits, that relevant services may be available from VSOs. S. 1295 would also require VA to provide claimants a list of VSOs and applicable contact information.

VA appreciates the intent of S. 1295, but does not support the bill because VA has been able to carry out its purpose under current law. VA already notifies claimants who file claims electronically that VSO representation is available. In addition, VA already provides claimants easy access to information about claim representation from VA-accredited VSO representatives, claims agents, and attorneys. For example, the electronic benefits website (<http://www.ebenefits.va.gov/>) provides a link to a directory of all VA-recognized VSOs with their contact information. This directory is searchable and allows a claimant to search for VA-accredited VSO representatives, claims agents, and attorneys by location. Although VA views the bill as unnecessary, VA supports the intent of the bill and will continue to ensure that notice of available representation is clearly indicated on its electronic application portal, eBenefits.

VA estimates that there would be no benefit costs or GOE costs associated with enactment of this bill.

S. 1361 - World War II Merchant Mariner Service Act

S. 1361, the “World War II Merchant Mariner Service Act,” would direct the Secretary of DHS to accept certain types of evidence for verifying that an individual performed honorable service as a coastwise merchant seaman during the period beginning on December 7, 1941, and ending on December 31, 1946, for purposes of eligibility for certain Veterans’ benefits. Although service as a merchant seaman does not generally constitute active duty service conferring eligibility for Veterans’ benefits, the GI Bill Improvement Act of 1977 authorized DoD to designate the service of certain groups as active duty service sufficient to confer eligibility for Veterans’ benefits. Pursuant to that authority, DoD has determined that the service of the “American Merchant Marine in Oceangoing Service during the Period of Armed Conflict, December

7, 1941, to August 15, 1945,” shall constitute active duty for purposes of eligibility for Veterans’ benefits.

DHS is responsible for verifying that an individual served in the American Merchant Marine in oceangoing service during the specified period. A finding in section 2 of S. 1361 identifies the types of documentation DHS currently accepts to establish such qualifying merchant-seaman service. Section 3 of S. 1361 would direct DHS to accept certain alternative types of evidence as sufficient to establish qualifying merchant-seaman service for purposes of certain Veterans’ benefits and other purposes. In the absence of a Coast Guard shipping or discharge form, ship logbook, merchant mariner’s document or Z-card, or other official employment record, the alternative sources of evidence would include Social Security Administration records together with validated testimony and other official documentation. Under section 3(c) of the bill, a finding of qualifying active duty service based on such alternative forms of evidence would establish eligibility for burial benefits under chapters 23 and 24 of title 38, United States Code, but would not establish eligibility for other Veterans’ benefits. Section 3(c) would further provide that a person found to have qualifying service pursuant to this bill would be eligible for applicable medals, ribbons, and military decorations and would be “honored as a veteran,” but would not be entitled to Veterans’ benefits other than those specified in the bill.

VA supports measures to ensure that individuals who have qualifying service can establish eligibility for the benefits they have earned. However, because DHS, rather than VA, is responsible for the service verifications to which this bill pertains, VA defers to the views of DHS regarding section 3 of this bill.

VA’s National Cemetery Administration (NCA) has not encountered significant difficulties in obtaining verification of qualifying oceangoing service in the merchant marine. NCA reviewed the number of cases in its Burial Operations Support System from September 25, 2012, through June 10, 2013, that listed Merchant Marine as the Branch of Service. NCA approved 168 requests for burial, while only three requests were denied because qualifying oceangoing service during World War II was not established.

VA cannot determine whether this bill would lead to any increase in the provision of burial benefits to merchant mariners and their survivors. Therefore, VA cannot provide a cost estimate.

S. 1399 - Amending the Servicemembers Civil Relief Act

S. 1399 would extend the interest rate limitation on debts incurred before military service to debts incurred during military service to consolidate or refinance student loans incurred before military service. This bill would affect issues relating to current members of the uniformed services and consequently is of primary concern to DoD. The bill further relates to matters of the Department of Education, the Consumer Financial

Protection Bureau and DOJ enforcement. Accordingly, we defer to those agencies' views on this bill.

S. 1411 - Rural Veterans Health Care Improvement Act of 2013

S. 1411, Rural Veterans Health Care Improvement Act of 2013 (the "Act"), would direct the Department to apply specified consultation, information, and transmittal requirements when issuing VHA's planned update of the 2010-2014 Strategic Plan of the VHA Office of Rural Health (ORH). Specifically, the bill would require the ORH update or successor plan to be prepared in consultation with the Director of VHA's Office of Health Care Retention and Recruitment, the Director of Quality and Performance, and the Director of Care Coordination Services. It would also have to include the following information (relevant to the reporting period):

- Goals and objectives for the recruitment and retention of health care personnel in rural areas;
- Goals and objectives for ensuring timeliness and improving quality in the delivery of health care services in rural areas through contract and fee-basis providers;
- Goals and objectives for the implementation, expansion, and enhanced use of telemedicine services in rural areas, including through coordination with other appropriate offices of the Department;
- Goals and objectives for ensuring the full and effective use of mobile outpatient clinics for the provision of health care services in rural areas, including goals and objectives for the use of such clinics on a fully mobile basis and for encouraging health care providers who provide services through such clinics to do so in rural areas;
- Procedures for soliciting from each VA facility that serves a rural area the following information: the clinical capacity of facility; the procedures of such facility in the event of a medical, surgical, or mental health emergency outside the scope of the clinical capacity of such facility; the procedures and mechanisms of such facility for the provision and coordination of health care for women veterans, including procedures and mechanisms for coordination with local hospitals and health care facilities, the oversight of primary care and fee-basis care, and the management of specialty care;
- Goals and objectives for the modification of the funding allocation mechanisms of the ORH to ensure that the Office distributes funds to components of the Department to best achieve the goals and objectives of the Office and in a timely manner;
- Goals and objectives for the coordination of, and sharing of resources with respect to, the provision of health care services to veterans in rural areas between the VA, DoD, the Indian Health Service of the Department of Health and Human Services (HHS), and other Federal agencies, as appropriate and prudent;

- Specific milestones for the achievement of the goals and objectives developed for the update; and
- Procedures for ensuring the effective implementation of the update.

Finally, S. 1411 would require the Secretary to transmit the first update (or successor plan) to Congress not later than 90 days after its issuance, along with comments and recommendations deemed appropriate.

VA believes the bill is duplicative of both past and continuing Departmental efforts and thus does not support S. 1411. Specifically, ORH produced a 5-year strategic plan for FY 2010-2014 to ensure that ORH programs and initiatives meet the health care needs of rural Veterans. That plan was refreshed in FY 2011 to better align ORH resources with identified health care needs, especially in light of new technologies and delivery systems for rural Veterans.

Further, ORH is currently developing a new strategic plan for FY 2015-2019 to better align our goals with those outlined in the FY 2013-2018 VHA strategic plan to better serve the future health care needs of rural Veterans given the changing landscape of health care delivery and access and the stronger emphasis on prevention and community wellness. Goals of the FY 2015-2019 ORH strategic plan include strategic dissemination and integration within and outside VA of best practices in rural health care delivery to increase access and quality; strengthening of the rural health infrastructure through partnerships and collaborations with other Federal and community entities; enhancing rural provider capacity through increased student clinical training opportunities in rural areas and increased rural provider training opportunities; and enhancing rural telehealth capabilities. ORH will also continue to evaluate its ongoing programs, including the pilot and demonstration projects that ORH currently funds across the VA health care system, in order to assess their effectiveness in delivering quality care to rural Veterans and improving those individuals' access to care.

The FY 2015-2019 ORH strategic plan will be re-evaluated annually to determine if additional initiatives or actions are needed. During FY 2019, ORH will draft a new strategic plan based on its evaluation of the success of past projects undertaken to date and updated assessments of the health care needs of Veterans residing in rural areas.

S. 1434 - To designate the Junction City Community-Based Outpatient Clinic as the Lieutenant General Richard J. Seitz Community-Based Outpatient Clinic

S. 1434 would designate the Junction City Community-Based Outpatient Clinic located at 715 Southwind Drive, Junction City, Kansas, as the "Lieutenant General Richard J. Seitz Community-Based Outpatient Clinic." VA defers to Congress in the naming of this facility.

S. 1471 - Alicia Dawn Koehl Respect for National Cemeteries Act

Section 2 of S. 1471, the “Alicia Dawn Koehl Respect for National Cemeteries Act,” would authorize the Secretary of Veterans Affairs and the Secretary of the Army to reconsider a decision to inter the remains or honor the memory of a person in a NCA national cemetery or in Arlington National Cemetery, respectively, when the appropriate Federal official receives information that the person may have committed a Federal capital crime or State capital crime but had not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution.

If the appropriate Federal official finds, based on a showing of clear and convincing evidence and after an opportunity for a hearing in a manner prescribed by the appropriate Federal official, that the person committed a Federal capital crime or a State capital crime but was not convicted of such crime by reason of not being available for trial due to death or flight to avoid prosecution, section 2 would require the official to notify appropriate survivors and provide an opportunity to appeal the decision to disinter the remains or remove the memorial headstone or marker.

Regarding VA, when a decision to disinter remains or remove a memorial headstone or marker becomes final by either failure to appeal the decision or by a decision of the Board of Veterans’ Appeals (BVA or Board) upholding the decision, VA would have the authority to: (1) disinter the person’s remains from a VA national cemetery and provide for reburial or other appropriate disposition of the disinterred remains in a place other than in a VA national cemetery or in Arlington National Cemetery; and (2) remove a Government-furnished memorial headstone or marker. The authority for reconsideration would apply to any interment or memorialization conducted by the Secretary of Veterans Affairs or the Secretary of the Army in a VA national cemetery or in Arlington National Cemetery after the date of enactment of the Act. VA supports section 2 of this legislation.

Section 3 of the bill would require the Secretary of Veterans Affairs to disinter the remains of Michael LaShawn Anderson from Fort Custer National Cemetery. VA would be required to notify Mr. Anderson’s next-of-kin of record of the impending disinterment of his remains and upon disinterment relinquish his remains to the next-of-kin of record or arrange for an appropriate disposition of the remains if the next-of-kin of record is unavailable.

Section 2 of S. 1471 would not authorize VA to reconsider a decision if an individual was convicted of a Federal or State capital crime or convicted of a Tier III sex-offense and VA had not received prior written notice of the conviction. VA would support closing this gap and will be glad to work with the Committee to provide technical assistance to effect broadening the scope of the legislation. Regarding the portions of section 2 which apply to the Department of the Army, we defer to that Department’s views on this bill.

VA has another technical concern regarding the bill language in proposed section 2411(d)(4)(B) that states, “A notice of disagreement filed with the Secretary under subparagraph (A) shall be treated as a notice of disagreement filed with BVA under chapter 71 of this title, and shall be decided by the BVA in accordance with the provisions of that chapter.” The language is problematic because notices of disagreement are not filed “with the Board” under chapter 71. Under section 7105(b)(1) of title 38, United States Code, notices of disagreement are filed “with the activity that entered the determination with which disagreement is expressed.” Thus, the language “with the Board of Veterans’ Appeals under chapter 71” should be changed to “under section 7105.”

VA will provide a cost estimate for S. 1471 for the record at a later date.

S. 1547 - Veterans Dialysis Pilot Program Review Act of 2013

If enacted, S. 1547 would prohibit VA from expanding VA’s dialysis pilot program to facilities other than the four participating outpatient facilities until after VA has implemented the pilot program at each facility for at least 2 years, VA has provided for an independent analysis of the pilot program at each facility, and a report to Congress has been submitted. The report must address any recommendations from the Government Accountability Office (GAO) with respect to the pilot.

This bill would have the effect of prohibiting VA from activating any additional free-standing dialysis centers until at least July 2015 because one of the pilot facilities (in Cleveland, Ohio) was not activated until July 2013. VA supports using the results from the dialysis pilot to help inform future decisions on delivering care. VA would be glad to work with the Committee to ensure the Committee is briefed on the results of the pilot program before establishing any new free-standing dialysis clinics. VA is concerned that enactment of this bill in its current form would delay activating additional VA free-standing dialysis centers that could adversely impact VA’s efforts to optimize Veterans’ dialysis care.

An independent review of two of the pilot facilities (Raleigh and Fayetteville, North Carolina) has already been conducted by the University of Michigan Kidney Epidemiology and Cost Center, and VA has responded to, and concurred in, the five recommendations identified in the GAO report on the VA Dialysis Pilot issued in May 2012.

S. 1558 - A bill to require the Secretary of Veterans Affairs to carry out a program of outreach for Veterans

S. 1558, the “Veterans Outreach Enhancement Act of 2013,” would require VA to establish a five-year program for the purpose of increasing Veterans’ use of the range of Federal, State, and local programs that provide compensation or other benefits, as well

as increasing Veterans' awareness of such programs and their eligibility. VA would have authority to enter into agreements with Federal and State agencies to further the purposes of the program. VA also would have authority to enter into agreements with certain named regional authorities and commissions to provide technical assistance, award grants, enter into contracts, or otherwise provide amounts to persons or entities for projects that accomplish specifically enumerated purposes. The bill also would require within 4 years a comprehensive report to Congress on VA's outreach activities.

VA appreciates and shares the Committee's interest in expanding outreach activities through collaborative agreements and partnerships and is very supportive of the concept and purpose of this legislation. As detailed below, VA currently has a number of agreements and programs with similar aims as this bill. Unless Congress provides additional funds to support S. 1558, however, entering into the grants and contracts envisioned by the bill would require offsets from funding for existing programs. We therefore are concerned about the impact on the legislation on existing VA outreach programs.

Section 2(d)(1) of S. 1558 would allow VA to "enter into agreements with other Federal and State agencies to carry out projects under the jurisdiction of such agencies to further the purpose" of the bill. VA is continually seeking to improve our collaboration and coordination with State, local, and tribal agencies to increase awareness and access to VA benefits and services. VA has existing agreements regarding outreach to Veterans with DoD, DOL, the National Association of State Directors of Veterans Affairs, and the National Association of County Veterans Service Officers, to name a few. We believe VA already has the authority to carry out the purpose of section 2(d)(1).

Section 2(d)(2) of the bill would provide VA authority to "enter into agreements with" specifically enumerated "applicable authorities and commissions" in order "to provide technical assistance, award grants, enter into contracts, or otherwise provide amounts to persons or entities for projects and activities that" pursue specifically enumerated goals. VA certainly encourages expanded authority to further the goals of the bill. However, the language in section 2(d)(2) is ambiguous with regard to the nature and scope of the authority, and how such authority differs from the authority provided for under section 2(d)(1), apart from the entities to which each section refers. We are concerned that the authorizing language may not be specific enough to provide sufficient guidance for the creation of a grant program.

Moreover, section 2(d)(2)(D) is focused on education and outreach related to the Uniformed Services Employment and Reemployment Rights Act (USERRA), a law that falls under the jurisdiction of the Department of Labor (DOL). VA believes that any such education and outreach on USERRA should be coordinated through a Memorandum of Understanding with DOL.

Section 2(d)(3) specifically enumerates the “applicable authorities and commissions” discussed in section 2(d)(2). VA believes the funding authority should also encompass local and tribal governments. Many local and tribal governments have established Veterans agencies with which VA currently partners to conduct outreach. The ability to provide direct assistance to those governments could be a more efficient use of funds in some situations.

Section 2(e) would provide VA the authority to provide, or contract with public and private organizations to provide, information, advice, and technical assistance to nonprofit organizations. VA supports the authority provided in this subsection, but recommends expanding this authority to provide technical assistance to other entities as well. Circumstances vary by jurisdiction. We believe States may be in a better position in some instances to meet the goals of this section. Expanding the scope of this provision to encompass States would allow VA a wider range of options.

With regard to the comprehensive report on the outreach activities of VA that would be required under section 2(f), VA is already required to provide a biennial report on all VA outreach activities under section 402 of Public Law 109-233. All outreach activities associated with this legislation would be included in the outreach reports to be provided to Congress under Public Law 109-233. VA believes this additional reporting requirement is unnecessary.

VA has a strong interest in ensuring that Veterans know of the benefits they have earned—the role of outreach is critical throughout the myriad missions of VHA, VBA, and NCA. We would be glad to meet with the Committee to discuss ongoing outreach efforts and the ideas represented in this bill. VA will provide its cost estimate for this bill at a later time.

S. ___ (Draft Bill)- Veterans Health Care Eligibility Expansion and Enhancement Act of 2013

The draft bill would expand eligibility for VA health care. While VA understands the intent behind expanding eligibility and enhancing services for Veterans. However, before providing definitive views, VA must carefully consider the implications of each provision of this bill, including the cost for such expansion and the impact upon existing eligible populations. VA received the text of this bill on October 11, 2013 and is continuing this analysis. VA will provide a more detailed response that will specifically address each provision - including cost information - within a short time of this hearing.

Section 2 of the bill would amend 38 USC 1710(a)(3) by replacing “may, to the extent resources and facilities are available,” with “shall.” We are evaluating the impact of this proposed change, particularly as it pertains to section 1705, which specifies how the Secretary is to manage the system of patient enrollment.”

Section 3 of the bill would add a new subsection to 38 U.S.C. 1705 which would require the Secretary to provide for the enrollment of certain veterans who are unable to enroll in the VA health care system as of the date of the enactment of the bill and who do not have access to health insurance except through a health exchange established pursuant to section 1311 of the Affordable Care Act. Section 3 would require VA to work with HHS and the Department of Treasury to access information regarding the “access to healthcare” via the exchanges.

Section 3 of the bill presents many potential complications and uncertain effects on VA’s enrollment system, as well as issues that will require detailed consultation with HHS and the Department of Treasury. We will address issues concerning section 3 in a more detailed response to the Committee.

Section 4 of the bill would expand the combat eligibility provision in 38 U.S.C. 1710(e)(1)(D) for Veterans discharged after January 28, 2003, from 5 years from the date of the Veteran’s discharge to 10 years. Section 4 would also extend eligibility for Veterans who were discharged before January 28, 2003 until January 27, 2018. VA supports the intent of section 4 of the bill but would be interested in further discussion on other options to expand access to Combat Veterans.

Section 6 of the bill would require VA and the Secretary of Health and Human Services to carry out the “Medicare VA reimbursement program” wherein HHS would reimburse VA for certain health care furnished to Medicare-eligible Veterans. Section 7 of the bill would direct VA to make certain modifications for purposes of determining whether veterans qualify for treatment as low income families for enrollment under 38 U.S.C. 1705(a)(7). Section 8 of the bill would require VA to use the capitation-based resource allocation model in entering into contracts for the furnishing of health care services.

From our preliminary review to date, VA has particular concerns with Sections 6, 7 and 8 of this bill, and needs additional time to fully study the impact on existing business infrastructure, billing systems, and net Federal costs. In regards to section 6, VA needs additional time to fully understand the impact of obtaining Medicare reimbursement, which will require consultation with HHS. VA expects there will be costs to set up the infrastructure for billing Medicare, as well as new benefit costs to the Medicare program. Section 7 is technically feasible, but requires further investigation to ensure it represents an equitable approach to expanding health care eligibility for low-income Veterans. Section 8 would be challenging because it would change the payment structure for non-VA medical care.

Mr. Chairman, as noted above, we are working diligently to provide fuller analysis and notes on anticipated costs shortly after this hearing. As you know, we have had the opportunity to discuss the critical subject of access to health care for Veterans with you and Committee staff prior to receiving the text of this bill. We look forward to continuing those discussions.

S. ____ - (Draft Bill) Regarding the Service-Disabled Veterans Insurance program

The draft bill would update the Service-Disabled Veterans Insurance (S-DVI) program by amending section 1922(a) of title 38, United States Code, to base premium rates on the 2001 Commissioners Standard Ordinary (CSO) Mortality Table instead of the 1941 CSO Mortality Table currently used in that program.

VA supports the intent of this draft bill to change the mortality basis of the S-DVI program, provided Congress finds corresponding funding offsets. The S-DVI program was intended to enable service-disabled Veterans to purchase insurance coverage at “standard” premium rates. Currently, S-DVI premiums are based on an old mortality table, i.e., the 1941 CSO Mortality Table, with 2.25 percent interest. In 1951, when this program began, these premium rates were competitive with commercial insurance policy rates. However, because life expectancy has significantly lengthened over the past 50 years, a more recent mortality table would reflect lower mortality and, hence, lower premium rates.

The draft bill would base S-DVI premiums on the 2001 CSO Mortality Table, which is the current mortality standard in the commercial insurance industry. This would result in significantly lower premium costs for service-connected disabled Veterans. As a result, VA could see a greater number of such Veterans applying for S-DVI coverage, thereby enhancing financial security for them and their families. Further, because this draft bill would also reduce premiums for current policyholders, it would allow both new and current policyholders who are paying premiums to use funds they currently expend on their S-DVI premiums for other purposes. Approximately 60 percent of current policyholders have their premiums waived because they have been determined to be “totally disabled.” A comparison conducted by VA of current premium rates with those that would be charged shows that premiums would be dramatically reduced for some individuals, and all policyholders would see their premiums significantly reduced.

VA recommends that the bill be amended to also change the interest rate basis from 2.25 percent to 3 percent. Current economic indicators suggest that 3 percent more accurately reflects a realistic long-term interest rate for this program. Changing the basis to 3 percent would further lower the premium rates for S-DVI policyholders.

VA will provide a cost estimate for the record at a later time.