

Congress of the United States

Washington, DC 20510

February 24, 2017

The Honorable Donald J. Trump
President of the United States
White House
1600 Pennsylvania Ave. N.W.
Washington, D.C. 20500

President Trump:

Today, we write regarding your recent executive order titled “Reducing Regulation and Controlling Regulatory Costs” signed on January 30, 2017. And though we offer our strong support for cutting needless red tape and addressing burdensome barriers to economic development or efficient government, we have concerns about the implications this executive order could have on the Department of Veterans Affairs. Rather than achieving our shared goal of minimizing burdensome bureaucracy, for the VA, it could jeopardize the Agency’s ability to provide well-earned benefits and care to our nation’s veterans.

In Fiscal Year 2016, forty-two regulations were published by the VA. Many of these were critical to ensuring that our nation’s veterans have access to quality care and are served by a more efficient administrative process. Rules published this fiscal year allow:

- Veterans to enroll in VA health care over the phone, eliminating unnecessary and burdensome paperwork and processes;
- Increased disability ratings for veterans with skin conditions, after incorporating medical advances and additional information;
- Expanded access to Vet Centers for a broader group of veterans;
- Expanded eligibility for health care to children of Vietnam and Korea Veterans who have spina bifida; and
- Increased retention incentives for newly hired psychiatrists.

So while it can often appear that regulations are burdensome, they are also the mechanism by which VA adaptively delivers health care, benefits and other services to veterans. Thus, these rules have a direct positive impact on veterans and their dependents and come about through an open and transparent process in the Federal Register.

Federal Register publications require a period of notice and public comment in order to guarantee that agencies take into account the perspectives of veterans and other organizations that have a vested interest in the outcome of a proposed rule. One of our concerns is that your executive order could ultimately drive VA to cut corners in order to achieve necessary policy changes without providing the public with awareness and an opportunity to weigh-in. And by doing so, we will have significantly decreased the Department’s transparency. As you know and referenced during your campaign, government agency processes and decisions seem arbitrary

and confusing to the American people. To further eliminate opportunities for public engagement in the critical rulemaking process would be the wrong move.

While we appreciate the initial guidance from the Office of Management and Budget allowing agencies to proceed with actions in order to comply with an “imminent statutory or judicial deadline” without having to immediately identify rules to appeal, we remain concerned that the executive order may have the effect of slowing down the implementation of important legislation that Congress passes into law on behalf of veterans and their dependents. If VA must wait until they can identify two current regulations to repeal before they write implementation regulations for critical new programs or initiatives, that may inappropriately circumvent Congressional intent and veterans and their dependents may suffer.

According to VA, regulations are published in order to “establish certain generally applicable rules in order to effectively implement its programs... and because it needs to establish uniform procedures,” and other reasons. Uniformity in application of processes, rules, and procedures across all 1,700 VA points of care is critical to ensure that Veterans from Montana to New York receive the same quality of service. The disparities that exist in access and quality of care and services are already too great.

In addition, the provisions of the Administrative Procedure Act, sections 551 to 553, title 5, United States Code, require VA to keep records and publish its rules in the Federal Register when creating new presumptions for veterans exposed to Agent Orange and other toxic substances. We’re sure you would agree that connecting veterans exposed to toxic substances with benefits is the right thing to do. As medical science progresses and our service members continue to be sent into harm’s way, VA will need to continue to create presumptions. However, this executive order could effectively prevent VA from providing veterans the full measure of the country’s obligation by dis-incentivizing VA from creating new presumptions. This is just an example of how VA uses regulations to improve the lives of our veterans by expanding benefits and services.

At a time when VA has made substantial progress improving its processes and increasing access to care, we do not want to unnecessarily or inadvertently reverse this progress. Therefore, we urge you to broadly interpret the exemptions for military and national security functions in OMB’s guidance to include those rules that have an impact on veterans. We further urge you to reconsider this executive order given the repercussions of this action on the transparency of government rulemaking and the disincentive it creates for VA to expand benefits and care for those who have served our country. We greatly appreciate your attention to this matter, and look forward to your response.



Jon Tester
United States Senate



Tim Walz
United States House of Representatives