

**STATEMENT FOR THE RECORD**  
**PARALYZED VETERANS OF AMERICA**  
**FOR THE**  
**SENATE COMMITTEE ON VETERANS' AFFAIRS**  
**CONCERNING**  
**PENDING LEGISLATION**

**JUNE 29, 2016**

Chairman Isakson, Ranking Member Blumenthal, and members of the Committee, on behalf of Paralyzed Veterans of America (PVA), we would like to thank you for the opportunity to submit our views on pending legislation before the committee.

**S. 244**

PVA recognizes that the effects of Traumatic Brain Injuries (TBI) are under-studied, and there is a significant need with the current population of veterans for care and treatment. This bill seeks to ensure that when veterans submit disability claims related to TBI, VA is using the appropriate personnel and protocols to conduct the examinations. This measure is a common sense step toward ensuring veterans with TBI receive a fair analysis of their disability claim.

Unfortunately, if implemented, this bill will likely be prevented from reaching its full potential because of current VA practices. Too often we see doctors doing Compensation and Pension exams outside of their practice area. For example, a claimant might have a podiatrist conduct an exam for a vascular disease, and this exam in turn forms the basis of his or her disability claim. Sometimes, an appropriate specialist is simply not available to provide an opinion, but more often it is because VA is inundated with the backlog of claims and appeals which creates an overwhelming incentive to complete as many exams as possible rather than ensure the right type of doctor is conducting the exam. Naturally, claims appeals based on faulty exams are an outcropping of this policy failure, and until issues like these are addressed we will continue to struggle to fix the bigger problems, such as appeals reform, that pervade VA.

**S. 603, "The Rural Veterans Travel Enhancement Act of 2015"**

PVA supports S. 603, the "Rural Veterans Travel Enhancement Act of 2015," a bill that would increase access to transportation options for veterans with disabilities who need vocational rehabilitation, counseling, and medical care from the Department of Veterans Affairs. This legislation includes three important components. First, it would make permanent the Secretary's

authority to transport veterans to and from VA facilities. Second, it would make veterans who use the services provided by Vet Centers eligible for beneficiary travel. Finally, it would extend the authorization for grants to veterans service organizations and state departments of veterans' affairs for transporting veterans in highly rural areas.

Paralyzed Veterans supports extension of VA's authority to transport veterans to and from VA facilities as these services are critical for veterans who have mobility impairments and benefit from the accessible transportation options available through VA. We also support allowing veterans to access needed financial assistance to help them benefit from the services provided through Vet Centers. Without this assistance, some veterans may be forced to forgo this important resource. Lastly, we also support the extension of the Highly Rural Transportation Grants. These grants provide additional transportation options for veterans with disabilities who live in hard to reach areas, particularly those with mobility impairments, because all vehicles must operate under Department of Transportation standards for accessibility under the Americans with Disabilities Act.

### **S. 2210, the "Veteran PEER Act"**

PVA supports S. 2210, the "Veterans Partners' Efforts to Enhance Reintegration (PEER) Act." This bill would carry out a program to establish peer specialists in patient aligned care teams (PACTs) at VA polytrauma and rural medical centers. The effectiveness of the peer support model has been an overall success. These specialists help veterans access mental health services, navigate the healthcare system, and perhaps most importantly, they offer familiarity and acceptance to veterans who may find those experiences lacking. While the stigma surrounding mental health care is declining, for older veterans it can remain a firm barrier to care. In the wake of the jarring statistic that veterans over 50 are committing suicide in greater numbers than the post-9/11 generation, this bill is aptly timed, and necessary.

### **S. 2279, the "Veterans Health Care Staffing Improvement Act"**

PVA supports S. 2279, the "Veterans Health Care Staffing Improvement Act." This bill would carry out a program to allow service members who have served in medical roles to transition directly into the VA. By rapidly absorbing qualified, experienced health care providers, this bill could ease some of the strains on VA's hiring process. VA would be entitled to a list of recently separated service members who have served in a health care capacity, allowing them direct access to recruit in a more expeditious hiring process. Further, it would allow for Advanced Practice Registered Nurses and Physicians Assistants to provide a wider range of health care, through full practice authority, based on the scope of practice recommended by the appropriate professional organizations. This in turn, would help expand care in rural areas.

### **S. 2316**

S. 2316 would make changes to the Department of Veterans Affairs' fiduciary program by requiring the Secretary to reissue or promptly remit as recouped to beneficiaries any benefits

misused by their fiduciaries in a broader range of situations than currently required under the statute. According to the VA's Office of Inspector General's August 27, 2015, report titled "Audit of Fiduciary Program Controls Addressing Beneficiary Fund Misuse," in 16 of 16 cases reviewed, fiduciary hubs failed to restore approximately \$347,000 of misused funds to beneficiaries. Some of the delay in restoring those funds appears to have been due to misunderstanding when a determination of negligence is currently required prior to reissuance. In all of those cases, a negligence determination was not required. We hope that simplifying the requirement for reissuing benefits to all beneficiaries when those funds are misused, without requiring a negligence determination in certain cases, will lead to prompt restoration of needed financial resources for these beneficiaries. This legislation would also provide increased access to the financial records of fiduciaries in an effort to improve oversight of the use of beneficiary's funds. Overall, these changes would likely be helpful to beneficiaries who have been harmed due to the actions of their fiduciaries.

### **S. 2791, the "Atomic Veterans Health Care Parity Act"**

While PVA has no formal position on this issue, we believe that this a clearly reasonable proposal. Over the years, significant numbers of veterans have been denied access to VA health care and benefits due to participation in highly classified and secret activities. Atomic testing and subsequent clean-up activities are no exception. These veterans should be afforded access necessary health care and benefits as a result of their service. Denying these men this opportunity simply because the Department of Defense would never admit to these secret activities at atomic sites is morally unjust.

### **S. 2958**

PVA generally supports this proposed bill. Late last year, PVA, along with our partners in The Independent Budget—DAV and VFW—provided a framework for veterans health care reform that included a recommendation that Congress and the Administration consider the development of public-private partnerships to improve and expedite the process for major medical facility construction. It is a well-established fact that the process for designing and building new facilities currently takes far too long to complete. By leveraging public-private partnerships, VA can align its already limited capital infrastructure dollars to ensure adequate services are provided in given locations while allowing the efficiency of private sector capital planning and building to position the VA to actually provide those services. Ultimately, public-private partnerships will allow VA to bring new health care facilities online faster thereby assuring faster access to critically needed services.

### **S. 3021**

PVA supports this legislation. Not all military members wish to pursue a standard college degree when they leave service. Career and Technical Education (CTE) at area career and technical centers comprise an important part of our education system. Credential-granting

programs offered at these institutions span across many industries, from health care to information technology, and provide a solid pathway to employment for many of our veterans.

### **S. 3023, “The Arla Harrell Act”**

PVA supports the “Arla Harrell Act.” Veterans who have for so long quietly suffered the effects of Mustard Gas or Lewisite exposure as a result of Department of Defense testing deserve to receive critically need care from the VA. Senator McCaskill’s report indicates that the number of service members exposed numbers around 4,000, and yet only 610 have been identified. Currently, only 40 veterans have successfully filed claims and are receiving related benefits. The fact that only 1 percent of the veterans exposed are receiving benefits is attributed to the 90 percent rejection rate of claims. Shifting the burden of proof relating to events that occurred so long ago from the veteran to VA is an appropriate and deserved step toward rectifying the failure to fully identify this population and ensure they are receiving their earned benefits. We would also note that with a new presumption comes increased stress on VA resources. It is imperative that Congress ensure resources are appropriately adjusted to prevent VA from having to rob Peter to pay Paul.

### **S. 3032, the “Veterans’ Compensation Cost-of-Living Adjustment Act of 2016”**

PVA supports S. 3032, the “Veterans’ Compensation Cost-of-Living Adjustment (COLA) Act of 2016,” which would increase, effective as of December 1, 2016, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation (DIC) for the survivors of certain disabled veterans. This would include increases in wartime disability compensation, additional compensation for dependents, clothing allowance, and dependency and indemnity compensation for children.

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

PVA supports S. 3035, the “Maximizing Efficiency and Improving Access to Providers at the Department of Veterans Affairs Act of 2016.” This legislation would allow for a pilot program to increase the use of medical scribes to maximize the efficiency of physicians at medical facilities of the Department of Veterans Affairs. A medical scribe helps to decrease the burden of data entry on the part of the medical provider. They accompany a provider to document the physician-patient interaction, and enter it into the Electronic Health Record (EHR) at that time. The physician later reviews and approves the data entry. This dynamic allows for the physician to spend more uninterrupted time interacting with the patient, and less time dictating notes. Multiple studies have indicated that medical scribes increase physician-patient satisfaction. Further, because the physician is relieved of data entry, they are able to see more patients, thus impacting wait times. We see no reason why VA would should not avail themselves of this pilot program. In a time when VHA is struggling to hire and retain physicians, allowing for medical scribes to help existing providers carry the patient volume is essential.

### **S. 3055, the “Department of Veterans Affairs Dental Insurance Reauthorization Act of 2016”**

PVA supports S. 3055, the “Department of Veterans Affairs Dental Insurance Reauthorization Act of 2016.” This bill would reauthorize the VA administered dental insurance program for five years, allowing current users to maintain their care. The original pilot program began in 2014 and will expire in 2017 without action. While PVA previously expressed concerns about the cost of the program, and the role of VA as insurer, the success of the program is unquestionable. Veterans and their families markedly agree that the care is high quality and low cost. As researchers are beginning to more clearly identify the links between dental care and overall care, particularly cardiac care, this program can only be considered a sound investment into the lifelong well-being of veterans and their families.

### **S. 3076, the “Charles Duncan Buried with Honor Act of 2016”**

PVA supports this draft bill to furnish caskets and urns for burial in cemeteries of States and Indian tribes of veterans without next of kin or sufficient resources. Currently, veterans without next of kin or sufficient resources who are buried in state or tribal cemeteries are not furnished a casket or urn. These veterans buried in state and tribal cemetery are no less deserving of a dignified resting place than those in a national cemetery. This bill is, without question, the decent thing to do.

### **S. 3081, the “WINGMAN Act”**

PVA supports the goal of ensuring veterans receive timely information regarding the status of their claims. We appreciate that this bill ensures that Congressional employees granted access to such a program undergo the same training and certification program that VA currently uses to certify VSO representatives and attorneys representing claimants. This legislation, however, allows access to a claimant’s information regardless of whether the covered employees are acting under a power of attorney. Claims files contain the most private information about that particular veteran and, often times, information of other individuals consulted during the claim’s development. PVA believes that in the interest of maintaining strict protection of such private information, this legislation should be limited to those who hold a power of attorney. Other logistical issues may also arise in the form of the added administrative burden on VA of managing the certification process and tracking users. Certainly we do not want to see resources that should be applied to adjudicating claims shifted to facilitating Congressional involvement unless it produces a significant increase in productivity. Finally, we believe that VSO national service officers and VBA employees are best suited to answering questions regarding a claimant’s file. Unlike a Congressional aide viewing the file in isolation, they have the ability to view the file in context and identify the issues holding up the claim.

## Discussion Draft, “USERRA”

PVA supports strengthening the Uniformed Services Employment and Reemployment Rights Act (USERRA). The Supreme Court of the United States has firmly established a “liberal policy of favoring arbitration agreements.”<sup>1</sup> Courts of inferior jurisdiction have examined service members’ employment and reemployment rights under USERRA and determined that the forum in which a claim is adjudicated is a procedural consideration.<sup>2</sup> Case law holds that whether the claim is adjudicated through arbitration or the U.S. District Courts has no bearing on the substantive statutory rights meant to be protected. While the Courts are free to believe enforcement of substantive rights is equally effected by arbitration and the courts, the service member may not be so persuaded and should be free to determine his forum.

One might argue that a service member exercised a choice by waiving his or her right to avail themselves of the court when they signed the arbitration clause. But this implies that job prospects are elastic to the extent that employees hold a bargaining position strong enough to reject a job solely on the basis of that clause. More and more employers are beginning to require arbitration clauses as conditions of employment. Current employment conditions effectively make that choice for the service member; few, if any, walk away from a job on this basis. As this pattern evolves, the service member is slowly being stripped of his or her choice to employ the court system. To put the choice back in the hands of the service member, Congress must specifically indicate its intent to preclude a waiver of judicial remedies for the statutory rights at issue.<sup>3</sup> This bill would accomplish this by rendering arbitration agreements enforceable only after a complaint has been filed in court. There is an additional threshold requirement of the parties making a knowing and voluntary decision. We also support the additional touch of expanding the venue options to be more in line with those applied in the Federal Rules of Civil Procedure.

### **Discussion Draft, “To expand eligibility to certain members of the Selected Reserve of the Armed Forces for readjustment counseling from the Department of Veterans Affairs.”**

While we appreciate the intent of this bill, PVA has concerns with this legislation as written because it extends the intended benefits to any and all members of the Selected Reserve but does not equally include veterans who served on active duty. The current law under 38 U.S.C. 1712A provides certain mental health services to delineated groups of veterans or members of the Armed Forces, including a reserve component of the Armed Forces. To qualify for these services, individuals must meet one of the listed qualifications, such as deploying to a theatre of combat operations or participating in mortuary services to casualties of combat operations. In essence, current law requires a triggering event or circumstance which demonstrates a nexus

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<sup>1</sup> *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 23 (1991) (citing *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 24 (1983)).

<sup>2</sup> See *Garrett v. Circuit City Stores, Inc.*, 449 F.3d 672 (5th Cir. 2006) and *Landis v. Pinnacle EyeCare, LLC*, 537 F.3d 559 (6th Cir. 2008).

<sup>3</sup> *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626-27 (1985).

between the service member or veteran's mental health condition and their military service. This bill would allow Selected Reserve members to avoid this requirement while still subjecting those who served on active duty to the existing requirements.

### **Draft Bill on Medical Residents at Facilities Operated by Tribes**

PVA supports the draft bill to authorize payment by the Department of Veterans Affairs for the costs associated with service by medical residents and interns at facilities operated by Indian tribes and tribal organizations, and to carry out a pilot program to expand such residencies and internships at those facilities. While recruiting and retaining capable providers continues to be a struggle for VA, rural communities feel these vacancies two fold. In Indian Country particularly, the minimal availability of consistent high quality health care has resulted in some of the worst health care outcomes in the United States. The United States government has a centuries-old legal obligation to provide health care to two groups—Native Americans and veterans. The overlapping, and at times inter-reliability of these two systems is necessary, as Native Americans serve the armed forces at the highest rate of any demographic. In Alaska, where this health care system interoperability is most prevalent, the need for primary care providers is critical. Vacancies are expected to increase in the coming decade, leaving health care systems with a high volume need and little capacity.

This bill would likely provide some relief, by incentivizing medical residents and interns to work at tribal facilities that have existing reimbursement agreements with VA. The five-year pilot program would have VA reimburse the tribal facilities for the recruitment and training of residents. These participants would then be eligible for loan forgiveness through the Indian Health Services Loan Repayment Program. This bill offers a sound step forward to ensuring we meet the needs of those who have served, no matter their zip code.

### **Discussion Draft on American Battle Monuments Commission**

PVA has no formal position on this issue.

This concludes our statement for the record. We appreciate the opportunity to submit our views before this committee.