

STATEMENT OF
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FOR THE RECORD

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

WITH RESPECT TO

“The State of the VA: A Progress Report on Implementing 2017 VA Reform Legislation”

WASHINGTON, D.C.

January 17, 2018

Chairman Isakson, Ranking Member Tester, and members of the committee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, it is a great pleasure to submit a statement for the record in response to Secretary of Veterans Affairs David J. Shulkin's state of the Department of Veterans Affairs (VA) testimony.

First and foremost, the VFW would like to thank the committee and VA for all the accomplishments in 2017. Thanks to the bipartisan leadership of this committee, Congress passed ten important veterans bills to improve benefits and service for those who have worn our nation's uniform and their families. While the VFW lauds the committee's efforts, Congress still has a long list of unfinished business. The VFW looks forward to highlighting those topics when the VFW presents its legislative priorities before the committee on March 7, 2018.

Community Care

One item which should not be on the unfinished business list is S. 2193, the *Caring for our Veterans Act of 2017*, which was approved by committee nearly unanimously. This important bill would make much needed improvements to the way VA provides community and internal care to America's veterans. Furthermore, this important bill would also correct a serious inequity between veterans who served before September 11, 2001 (9/11) and their pre-9/11 brothers and sisters by expanding caregiver benefits to veterans of all eras.

The VFW implores the committee to move this important bill as soon as possible. A recent continuing resolution provided VA with additional Choice Program funding, which is estimated to last up to five months, but veterans cannot afford for Congress to wait until the 11th hour to act. Veterans who rely on the Choice Program for their care are directly impacted by Congress' inability to act swiftly on community care legislation. As we have seen in the past when funds were close to being depleted, when the Choice Program faces an immediate uncertainty veterans who are unable to receive VA care are forced to wait or travel long distances for the care they

have earned and deserve simply because Congress has failed to act on comprehensive and permanent community care legislation.

The VFW urges Congress to quickly pass the *Caring for our Veterans Act of 2017*, so we can finally put an end to the constant fear of budget shortfalls that leave veterans without timely access to the high quality and veteran-centric care they have earned.

Forever GI Bill

The historic, bipartisan, and bicameral Forever GI Bill is the most significant improvement to veterans' educational benefits in nearly a decade. Thanks to the hard work of the committee and its staff, the Forever GI Bill tiger team, and a broad coalition of veterans, military, and educational organizations, more veterans and their survivors have an opportunity to pursue their educational goals.

Thanks to the Forever GI Bill, all Purple Heart recipients will have full access to their GI Bill benefits; veterans attending schools that close abruptly through no fault of the veterans will be able to complete their degrees; thousands of involuntarily activated Reservists and Guardsmen will finally receive their well-deserved GI Bill benefits; surviving family members will be able to accomplish their educational goals without having to incur crippling educational debt; and veterans will no longer have a 15-year limitation on their earned educational benefits, which means veterans truly have a lifetime to use their GI Bill.

The VFW is pleased to hear VA has implemented 13 provisions of the Forever GI Bill and that it is committed to ensuring all veterans impacted by changes are fully informed of their new benefits. However, the VFW has received mixed feedback on VA's outreach efforts. VA has published informative websites and releases on the changes to VA education benefits. Yet, the veterans who are impacted tell us they have not been informed by VA about recent changes. Specifically, the VFW reached out to veterans who were impacted by recent school closures, and reported knowing they knew about the Forever GI Bill but had not been contacted by VA to have their educational benefits restored.

Similarly, school certifying officials tell the VFW that they have not received any information from VA on recent changes to the GI Bill. School certifying officials are the first people student veterans turn to for information regarding their benefits. Without proper outreach from VA, school certifying officials are having to turn to other sources for information on impending changes. Doing so could lead to misinformation and confusing messaging to student veterans. VA must improve its outreach efforts and work with veterans organizations to make certain a uniform message is delivered to impacted veterans.

Appeals Modernization

When the negotiation process began for what would become Public Law 115-55, the *Veterans Appeals Improvement and Modernization Act of 2017*, it was made clear that the input and support of veterans service organization (VSO) was paramount to the enactment of the legislation.

The VFW's goal with appeals modernization was to build a process that placed the veteran first, was easy to navigate, and protected a veteran's rights every step of the way. The VFW, along with several other organizations, has long advocated for appeals reform, and were honored to be a part of the process with the assurance that the level of engagement that existed during the bills development would be sustained when implemented.

However, once the legislation was passed, we began having concerns almost about VA's implementation plans. As a result, in September, the VFW and DAV (Disabled American Veterans) sent a letter to Deputy Secretary of Veterans Affairs Thomas Bowman expressing our concerns with the speed of the roll out; the language used in the initial opt-in notification letter and phone script; and the overall lack of engagement that we, and other VSOs have been afforded up to that point.

While VA has addressed of the issues identified on the joint letter, the VFW still has lingering concerns with regard to how VA is implementing these changes and communicating with VSOs regarding the progress that has or has not been made, and the data that supports that narrative.

As an organization that represents a large portion of appellants with cases pending before the Board of Veterans Appeals (BVA), our clients depend on us to provide the most accurate advice in order to increase their chances of a successful appeal. We have been representing veterans for decades and have a good understanding of how the system works. Having researched the possible impact of the program on our clients, we have found that there are circumstances where opting-in may actually be detrimental to the veteran.

Many of our clients have been waiting for years to have their cases heard at BVA. They have invested time and energy into appealing their claims, and many of them are appealing denials for extremely complex issues. For our organization to recommend that they opt-in to a program that is potentially faster, and may lead to their case being decided more quickly, but may also lead to them losing their place in line at BVA if they are denied would be reckless.

As of this submission, we have not yet been shown concrete evidence from VA, or any of our clients that would suggest that Rapid Appeals Modernization Program (RAMP) will actually improve a veteran's chance of a favorable outcome. During the hearing, Secretary Shulkin reported that 75 percent of RAMP decisions "are going in favor of the veteran." While 75 percent may seem to indicate RAMP is a good option for veterans, VA's testimony does not clarify how many appeals were adjudicated and what VA defines as favorable. To VA, issuing a zero percent service-connection may qualify as favorable. A veteran would disagree if the decision is for a debilitating condition that merits a higher rating. As a result, we have declined to recommend to veterans we serve that have received eligibility notices to participate in the program, and will continue to do so until we are provided with more thorough data from VA.

The VFW urges Congress and VA to properly resource Veterans Benefits Administration (VBA) and the Board of Veterans Appeals to ensure they are able to timely adjudicate legacy appeals from veterans who do not opt into the new appeals process, and the potential influx of supplemental claims and higher level review requests at VA Regional Offices. VA must be

empowered to manage its workload, and stakeholders must be properly informed if the new framework is expected to succeed.

Accountability and Whistleblower Protections

The VFW strongly believes that proper accountability is vital to ensuring VA fulfills its mission to care for those who have borne the battle. VFW members across the country have firsthand experience with VA's inability to quickly discipline wrongdoers. That is why the VFW praised the enactment of S. 1094, the *VA Accountability and Whistleblower Protection Act of 2017*.

The VFW is pleased VA has taken steps toward improving accountability and transparency by implementing S. 1094 and publically releasing accountability reports. However, VA still has a long way to go. The VFW continues to hear reports of employees who are allowed to disrespect veterans or provide poor customer service. VFW members also report that whistleblower protections are not working because both patients and employees continue to fear they will be retaliated against if they report malfeasances. One VA employee tells the VFW that he fears the enhanced accountability measures have worsened nepotism at VA medical facilities. The VFW urges Congress to closely monitor implementation of S. 1094 to ensure wrongdoers are swiftly held accountable, whistleblowers are protected, and nepotism is eliminated.

However, Congress cannot simply focus on firing bad employees. It must also ensure VA is able to quickly hire high quality employees. If VA is not able to replace wrongdoers with high quality employees, it will lack the staff needed to accomplish its mission. The VFW urges the committee to work with VA to address barriers in recruiting and retention of high quality professionals, who are willing to work at VA medical facilities.

Specifically, the VFW continues to hear that VA's licensing and credentialing process is excessively long and should be modified to make certain VA is able hire high quality doctors on a timely basis. The VFW also heard from providers who work at VA that they face delays transferring to underserved areas because they are required to undergo credentialing procedures again even though VA policy authorizes transfers between VA medical facilities without having to undergo credentialing. Veterans want more doctors at their VA medical facilities, but requiring doctors who want to serve veterans to jump through hoops prevents this from happening.

Congress must also ensure VA has the authority to timely hire front line staff. Due to the lack of support staff, many VA providers are required to spend time on administrative tasks instead of treating patients or spending more time with their patients. VA is in the process of streamlining its hiring process for medical scheduling assistants (MSAs) and has set the goal of hiring MSAs within 30 days, which is half the time it takes, on average, to hire support staff today. The VFW commends VA for its efforts, but it is time Congress expands direct hire authorities to all Veterans Health Administration staff, not just doctors and nurses. We fear that VA's workforce productivity could decline due to staffing shortages and low employee morale if Congress does not reform VA's hiring authorities.

Homeless Veterans Programs

The nearly 50 percent reduction in veteran homelessness is laudable and the holistic partnerships and approaches taken by VA, the Department of Housing and Urban Development (HUD) and the Department of Labor (DOL) are absolutely critical to that success. Success, however, could be diminished if funding fails to keep pace with demand. Congress cannot allow VA to stymie its homeless veterans by reducing much needed funding.

Specifically, the VFW has great concerns with VA's decision to realign specific-purpose funds allocated for homeless programs as a means to provide VA health care facility directors with more individual control over their location's general funding needs. In theory, this could be a successful idea. But this theory will undoubtedly be a failure without the transparency and desire to work with VSOs and Congress, and that cost should most certainly not come at the expense of homeless veterans.

After receiving negative feedback from VSOs, and a letter from the Senate Appropriations Subcommittee on Military Construction, Veterans Affairs, and Related Agencies, VA chose to put a temporary halt on this initiative. We ask that this committee join us in closely monitoring VA's attempts to handicap its successful homeless veterans programs.

Taking away the guaranteed specific-purpose funding for homeless veteran programs, such as the massive cut initially suggested by VA to HUD- Veterans Affairs Supportive Housing (VASH), would result in a guaranteed failure of the program. The specific funding for HUD-VASH is crucial to the ability of case managers within VA to properly perform their jobs and assist homeless veterans in all the ways they are intended to help. These case managers are like life coaches for homeless veterans getting their feet back on the ground. This program's case management is the embodiment of the holistic approach and the answer to successfully overcoming homelessness.

Since VA has reconsidered and postponed the timeline to readjust this funding, the VFW has eagerly awaited the opportunity to have a transparent and open conversation with VA about the intent and how to responsibly move forward. Yet, just because the decision was put on hold for now does not mean there were no repercussions. The VFW's Department of California's Homeless Service Providers have found that VA's attempts to reallocate HUD-VASH funding has negatively impacted the program.

The two primary concerns they have found thus far include employment rates of HUD-VASH case managers as well as individual state-funded programs for homeless veterans. In communities across California, such as Kerr County, VA has not been able to hire enough HUD-VASH case managers even with current funding. This results in case managers taking on an average of 50 homeless veterans instead of VA's suggestion of 25 homeless veterans per case manager. While managing twice as many veterans as suggested, and with the travel requirements of case management, locations such as these are not able to utilize all the vouchers they receive. With a massive cut in funding, there is a major fear that employment rates for case managers will only get worse. It has also been rumored that voucher distribution will be halted in some communities, out of fear that they will run out.

Also, various states that rely on HUD-VASH funding have implemented their own programs to assist in combating veteran homelessness. For example, California's Proposition 41, Veterans Housing and Homeless Prevention Bond, is heavily dependent on VA's Supportive Housing as a subsidy for the bonds used to provide for homeless veterans and their families. This serves as an example of how cutting HUD-VASH funding could have even more worrisome and unintended consequences that cut deeper than originally thought.

Pre-discharge Claims

As the nation's oldest major VSO, the VFW serves 24 military installations to help veterans navigate and understand their earned VA benefits. To the VFW, filing claims prior to separation from the military is one of the most important processes that a service member can complete during the transition process. Not only does this ensure timely delivery of benefits after discharge, but it also increases the likelihood of granting benefits, setting veterans up for future success.

As transition programs evolve, Congress, the Department of Defense (DOD), and VA all seek to make changes to better suit the transition experience. Many times these changes result in improved service for the transitioning service member, such as the Transition Assistance Program mandate included in the VOW to Hire Heroes Act; DOD's deployment of the military lifecycle model for transition; VA's establishment of the pre-discharge claims program; or the joint DOD/VA commitment to develop a single medical record for service members and veterans.

Unfortunately, sometimes changes have unintended consequences that may result in a degraded transition experience for the service member. This is where the VFW takes its responsibility as a veterans' advocate to inform the agencies of jurisdiction and the committee of our concerns. Recently, VA made two significant changes to its pre-discharge claims programs that make the VFW concerned about the future of this critical interaction and the professional services we provide to our transitioning military members. First, VA shifted its timelines for the Benefits Delivery at Discharge (BDD) program, only allowing service members to submit BDD claims from 180 – 90 days prior to discharge. Second, VA eliminated the Quick Start (QS) claims program entirely, meaning veterans with 89 days or fewer left on active duty no longer have an option tailored to their unique circumstances to easily access their earned benefits.

The VFW understands why VA wanted to shift the timeline for BDD to 90 days. We understand that this allows VA to complete exams and propose rating decisions to deliver benefits as close to a service member's date of discharge as possible. In a vacuum, this is a positive step. However, coupled with the elimination of QS and the military's cumbersome transition timelines, the VFW believes this change would disqualify most service members the VFW serves from easily accessing their benefits on their way out of the military.

According to VA, the VFW's claimants on military installations who filed QS claims fluctuated between 33 and 50 percent over the past year. In visiting with our pre-discharge claims sites, we hear that most clients visit our offices with far fewer than 90 days left on active duty, meaning

most of our past BDD clients would no longer be qualified for the program. Yes, VA still accepts these claims, but they are no longer processed expediently while the veteran still serves on active duty, and they are no longer tracked with a unique end product (EP) code specific to QS claims, formerly EP code 337.

In the past, this EP code allowed the VFW to track pre-discharge claims work to perform rating reviews and ensure the best possible outcome for our transitioning service members. Now, with the elimination of the QS EP code, claims we submit on behalf of transitioning service members are assigned as any other claim in VA's National Work Queue. VA will argue that this is not a big deal and that VFW-accredited representatives anywhere can conduct these rating reviews. While this is technically true, we lose optics on these claims and can no longer properly track and report how well VA is serving the transitioning service member population. If we cannot identify problems this early in the process, we are not setting up the service member for post-military success.

As of this hearing, the VFW has six personnel stationed at the VA regional offices (VARO) responsible for pre-discharge claims adjudication whose sole responsibility is to review rating decisions and correct any possible errors. Our most recent data indicates that our rating review specialists catch VA adjudication errors in up to 20 percent of pre-discharge claims and are able to resolve such errors prior to promulgation of the award.

Several years ago, recognizing the unique needs of transitioning service members, VA committed not to broker work from the consolidated pre-discharge claims worksites at the VAROs in Winston-Salem, Salt Lake City, and San Diego. VA reneged on this promise last year with its across-the-board implementation of the National Work Queue, as we have testified in the past, and we do not expect VA will go back to its old workflows since this has seemed to increase productivity and efficiency for VA. However, through unique EP codes and Station of Origination filtering in the Veterans Benefits Management System, our pre-discharge quality control team was able to track and review work regardless of the VARO of jurisdiction for adjudication. This was a satisfactory middle ground to meet both the needs of VA to broker its work and the VFW's need to maintain optics on transitioning service members' claims for quality control purposes. However, with the elimination of the QS EP code, we lose optics on this work and can no longer fulfill our commitment to transitioning service members to perform the proper quality controls on their claims.

Moreover, VA exacerbated an already tenuous situation by notifying transitioning service members with fewer than 90 days on active duty that they were "disqualified" from filing BDD claims. Since the change went into effect October 1, 2017, we have heard from all of our pre-discharge claims sites and several of our VARO worksites that veterans have called or visited the offices, concerned that something went wrong with their claim. We even have one report from our office at Walter Reed National Military Medical Center that a retiree received a BDD disqualification letter 92 days prior to separation.

This is a situation where language is critical. When the VFW was first presented with this letter, we vehemently disagreed with VA's decision to send it as worded. This concern was ignored until the recent House Veterans' Affairs Disability Assistance and Memorial Affairs

Subcommittee hearing, after which VA has agreed to review these notification letters with VSOs.

The VFW calls on VA to put veterans, not appearances, first. It must accept claims prior to separation, instead of punishing transitioning service members whose chain of command does not permit them the opportunity to begin their transition process 90 days before they separate from military service. At the very least, VA must reestablish an EP code for transitioning service members who file a claim within 90 days of separation to ensure the VFW and other veterans organizations are able to assist veterans in successfully transitioning from military service back to civilian life, regardless of where they choose to call home.

VA must also rework the disqualification letters to simply notify the veterans that their claims have been received, but cannot be worked until they separate from service and submit their DD-214 paperwork. These simple steps will once again ensure that the VFW and similarly-structured organizations can continue to provide the advocacy our clients expect, and transitioning service members will once again have peace of mind that VA is responsibly handling their pending benefits claims.

Unfortunately, the VFW worries there is a larger objective with the recent changes to VA's pre-discharge claims programs. While VA asserts that moving the window to 90 days results in better claims service, the elimination of the QS EP code and the rapid deployment of programs like the Decision-Ready Claims process indicate to the VFW that VA's primary objective is to obfuscate the total pending workload.

Based on the VFW's estimates, we would lose optics on up to 50 percent of our pre-discharge workload simply by VA shuffling the BDD timelines and eliminating the QS EP code. The problem is not only that we lose optics on the claims, but VA will not formally establish the BDD-excluded claims until veterans formally submit their DD-214s after they separate from service. This means that any time from 89 days to the time of the veteran's submission does not count as pending work as it formerly counted when the claim was established under a QS EP code.

To the VFW, the time when service members transition off of active duty is one of the most significant changes they will experience in their lives. This Congress and the VSO community have dedicated substantial resources to make sure that we get this right. The VFW values the role that we are allowed to play in the process through both VA and DOD, and we are always looking for ways to improve. Our goal is that we can move forward together to ensure that our transitioning service members have access to the programs, information, and services they need for a successful transition out of military life.