



MILITARY ORDER OF THE PURPLE HEART

CHARTERED BY CONGRESS

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TESTIMONY FOR THE RECORD
SUBMITTED BY
THE MILITARY ORDER OF THE PURPLE HEART
TO
THE UNITED STATES SENATE COMMITTEE ON VETERANS' AFFAIRS
WITH RESPECT TO
PENDING LEGISLATION

WASHINGTON, DC

JUNE 29, 2016

Chairman Isakson, Ranking Member Blumenthal and members of the Committee, on behalf of the Military Order of the Purple Heart of the U.S.A. (MOPH) we would like to thank you for including **S. 3042**, the *Justice for Servicemembers Act of 2016* on today's hearing agenda. We are grateful for the opportunity to provide written testimony in support of this legislation and in support of restoring the rights of service members in the face of forced arbitration. We would like to urge Congress to quickly pass this important legislation on behalf of all of our brave men and women who serve.

Throughout history, Congress has enacted laws that provide additional rights and protections for the men and women who serve our country. Congress did so in recognition of the significant, additional burdens that being called away from your family and your job to serve our country places on these brave individuals; burdens that civilians do not face. One of these landmark laws is the Uniformed Services Employment and Reemployment Act (USERRA). Passed in 1994, the USERRA protects our service members from employment discrimination and guarantees that when called for military service, they can perform their duties with the knowledge and security that they have the right to return to their jobs with the same pay, benefits, and status they would have attained had they not been called away.¹ This law is one of the most important protections for members of the uniformed services and one of the strongest employment-protection laws in our country.

Just as important as the substantive rights afforded by USERRA are the procedural and enforcement rights guaranteed under the law. Under USERRA, when service members' rights are violated, they have the right to bring a USERRA claim to court.² The bill expressly dictates that any employment agreement that limits or eliminates a right or benefit provided by USERRA, including the establishment of additional prerequisites to the exercise of any such right, is facially void.³

Nevertheless, service members and veterans are increasingly unable to enforce their rights under USERRA for one specific reason: forced arbitration clauses buried in the fine print of their employment contracts. Presented on a take-it-or-leave-it basis, employers across the country are requiring service members to sign forced arbitration agreements that

¹ Leisha Self, *A Guide to the Uniformed Services Employment and Reemployment Rights Act and the Recent Hostile Work Environment Amendment*, 28 ABA J. Lab. & Emp. L. 449 (2013)

² 38 U.S.C. § 4323(a) (2).

³ 38 U.S.C. § 4302(b).

effectively eliminate the important rights afforded by USERRA. Forced arbitration clauses undermine the very protections of USERRA, and other laws that Congress has deemed necessary and appropriate to afford to our military, by kicking claims out of court, and funneling them into a rigged, secretive system where all the rules, including who decides the outcome of the forced arbitration, are chosen by the employer that violated the law in the first place.

While forced arbitration clauses used in employment contracts can be harmful and oppressive for all employees, the ramifications are even more serious when these clauses are enforced against our men and women in uniform. When service members become distracted from the mission at hand due to fears of unemployment, paying bills, providing for their family and other financial stresses upon returning home from duty, it directly impacts our national security.

Congress intended for USERRA to ensure servicemembers did not lose their right to take an employer who wronged them to a court of law in order to have their story heard. This bill would honor that intent. Given the expansive use of these clauses by financial institutions and employers in contracts with service members, prohibiting the use of forced arbitration clauses is now more critical than ever. We strongly urge you to support the *Justice for Service Members Act* and any other legislative efforts to prohibit the use of forced arbitration clauses against our nation's heroes: our service members and veterans.

MOPH would also like to add our comments on several other pieces of legislation on today's agenda.

MOPH supports S. 244, a bill to require an independent comprehensive review of the process by which the Department of Veterans Affairs assesses cognitive impairments that result from traumatic brain injury for purposes of awarding disability compensation. Due in part to the devastating effects of improvised explosive devices used on the battlefields of Iraq and Afghanistan, more veterans than ever are claiming disabilities associated with traumatic brain injuries (TBI). Still, not enough is currently known about TBI, and the way it affects veterans' abilities to function properly. By requiring the Institute of Medicine to conduct a review of TBI examinations provided by the Department of Veterans Affairs (VA), this bill will help ensure that injured veterans receive the proper health care and compensation they need.

MOPH supports S. 603, the *Rural Veterans Travel Enhancement Act of 2015*, which would improve transportation options for veterans traveling to and from VA for medical appointments. It would do so by permanently authorizing the Veterans Transportation Service program, which allows VA to offer rides to veterans that need them; allowing veterans to receive travel reimbursement for episodes of care received at Vet Centers; and reauthorizing grants for Veterans Service Organizations that provide veterans with transportation. These provisions are critical to ensuring that no veteran is forced to forgo VA medical care, simply because they cannot provide their own transportation due to impairment or financial reasons.

MOPH supports S. 2210, the *Veteran PEER Act*, which would require VA to establish peer specialists in patient aligned care teams at medical centers of the department. The utilization of peer specialists at VA is a proven model of success. Veterans consistently

report that having access to peer support greatly improves their comfort level at VA facilities, as well as their ability to navigate the often confusing processes they encounter there when newly enrolled. Adding peer specialists to patient aligned care teams would help grant veterans access to this important resource at every stage of their medical care.

MOPH supports some provisions of S. 2279, the *Veterans Health Care Staffing Improvement Act*. We strongly support section 2, which would require VA and the Department of Defense (DOD) to cooperatively facilitate the recruitment of recently separated veterans who served in medical fields in the military as VA health care professionals, known as the “Docs-to-Doctors Program.” Not only have these personnel received superior training in the military, they have also proven their leadership and desire to serve their country, which can only benefit VA. Further, they are uniquely qualified to provide care to their fellow veterans, as they have a first-hand understanding of their military experience. We believe that this program will improve VA’s ability to recruit top talent, while simultaneously increasing patient satisfaction. MOPH also supports section 3, which would require VA to implement a uniform credentialing process for employees of the Veterans Health Administration.

MOPH does not support section 4 of S. 2279, which would require VA to provide full practice authority to advanced practice registered nurses (APRN), physician assistants (PA), and such other licensed health care professionals of the department. While we fully appreciate the importance of APRNs and PAs in the modern health care industry, we would defer to VA on this matter. We note that VA recently published regulations to allow flexibility in full practice authority to meet the access needs of the department. This would allow VA to implement full practice authority in specialties where it is needed, but not require them to do so in specialties where it is not. Accordingly, we do not believe a legislative fix to this issue is necessary or appropriate at this time.

MOPH supports S. 2316, which would improve VA oversight of fiduciaries, and allow for the reissuance of veterans benefits in cases of misuse by fiduciaries. Generally speaking, fiduciaries provide an invaluable service to veterans who are incapable of handling their own finances due to disability. However, there have been cases where fiduciaries, both family members and professional firms, have misused veterans’ benefits for their own personal gain. MOPH believes it is critically important that vulnerable veterans in need of assistance with their finances be properly protected from these unscrupulous actors. For this reason, we believe it is fully reasonable that all fiduciaries be subject to robust oversight, to include the auditing of their bank accounts. Furthermore, we believe it is the right thing to do to restore benefits that are found to have been intentionally misused, to ensure that veterans who are taken advantage of are made whole in those unfortunate cases.

MOPH supports S. 2791, the *Atomic Veterans Parity Act*, which would grant a presumption of service connection for certain cancers to veterans who participated in the cleanup of Enewetak Atoll and the Marshall Islands between January 1, 1977 and December 31, 1980. These veterans would be treated the same as other veterans who were exposed to known sources of radiation for the purposes of VA benefits. Current law provides presumptive service connection for veterans who participated in atomic testing between 1944 and 1958, but not those who were assigned to clean up the debris years later. MOPH strongly believes that toxic wounds incurred in service are wounds just the same, and should be

treated with the same urgency as physical or mental wounds. We are aware that many of these veterans are now suffering from tell-tale cancers associated with radiation exposure, and believe that granting them access to VA health care and benefits as a result is long overdue.

MOPH supports S. 3021, which would allow veterans to use their GI Bill benefits to pursue programs of independent study at schools that do not meet the industry definition of an “institution of higher learning,” such as a state university or a community college. This bill would provide veterans with more options by allowing them to use their benefits to obtain certificates and professional credentials from institutions such as area career and technical education schools. We note that these programs would still be accredited and subject to review by State Approval Agencies, as provided in statute for all courses of study approved for GI Bill use.

MOPH supports S. 3023, the Arla Harrell Act, which would provide for the reconsideration of claims for disability compensation for veterans who participated in DOD experiments with mustard gas and lewisite on a presumptive basis. During World War II, thousands of service members were used as subjects in experiments to test the effects of these harmful agents on the human body. Not surprisingly, this left many of them with chronic health issues. However, most veterans were routinely denied disability compensation for these conditions, as the experiments remained classified for decades. MOPH strongly believes that these claims should be reconsidered on a presumptive basis in order to finally grant these veterans the health care and benefits they need and deserve.

MOPH supports S. 3032, the *Veterans’ Compensation Cost-of Living Adjustment Act of 2016*, which would increase the rate of compensation for disabled veterans and their survivors, effective December 1, 2016. Unlike Social Security benefits, which are automatically increased by statute, Congress must pass a bill each year to ensure that the benefits that disabled veterans and their survivors have earned are increased to keep pace with inflation. This is absolutely critical, given the ever rising prices of food, housing, health care, and other essential goods and services. By providing reasonable increases to those benefits, your legislation would ensure that the most basic needs of disabled veterans and their survivors are met. MOPH is especially pleased that your legislation does not include the “round down” provision of previous years, which is nothing more than a cost-saving device that requires veterans to pay for their own benefits.

MOPH supports S. 3035, the *Maximizing Efficiency and Improving Access to Providers at the Department of Veterans Affairs Act of 2016*, which require the Department of Veterans Affairs (VA) to carry out an 18 month pilot program to increase the use of medical scribes at no fewer than five medical facilities in rural areas where there is a shortage of physicians and each physician has a high caseload. These medical scribes would be responsible for assisting VA physicians with administrative tasks that are normally done by support staff in the private sector.

It is well documented that rural areas across the country suffer from physician shortages. This affects the ability of VA to recruit and retain an adequate number of physicians, resulting in longer appointment wait times. For this reason, MOPH believes that it is absolutely critical that VA physicians in these areas are able to practice medicine as efficiently as possible. The increased use of medical scribes would accomplish this by

allowing VA doctors to spend less time on administrative tasks such as data entry and more time doing what is most important; providing care to veterans.

MOPH supports S. 3055, the *Department of Veterans' Affairs Dental Insurance Reauthorization Act of 2016*, which would require VA to contract with a private insurance company to offer a voluntary dental insurance plan to veterans and certain dependents. Generally, VA only provides dental care to veterans who incurred dental trauma while in service, or who are rated 100 percent service connected. Veterans who are service connected but rated less than 100 percent are generally not offered dental care at VA. MOPH believes that dental care should be considered the same as health care, as a number of serious comorbidities affecting a veterans' overall health can arise from dental neglect, including diabetes and heart disease. These conditions, which may have been preventable with routine dental care, then have to be treated at far greater expense by VA. While MOPH would rather see full VA dental care eligibility extended to all service connected veterans, we would still support the establishment of a voluntary, reasonably priced dental insurance program for veterans and their families, as envisioned by this legislation.

Finally, **MOPH opposes** the draft bill entitled the *Working to Integrate Networks Guaranteeing Member Access Now Act*, or WINGMAN Act. While we appreciate Senator Cassidy's intent to provide faster service to veteran constituents who request assistance from congressional offices, we are concerned that there would be unintended consequences to allowing congressional staff access to veterans' VA claims files. It is yet unclear to us how VA would ensure that staff only gains access to the records of veterans who have provided them with privacy releases. Further, we are concerned that granting congressional staff this access would create confusion in their role in the claims process as it relates to veterans, VA and Veterans Service Organizations. While we cannot support the bill as written, we would be happy to work with Senator Cassidy and his staff on ways to improve congressional offices' ability to provide veteran constituents with more timely responses.

Chairman Isakson, Ranking Member Blumenthal, and members of the Committee, once again, we thank you for the opportunity to submit our views on these important bills.