STATEMENT OF
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THE AMERICAN LEGION
BEFORE A
JOINT SESSION OF THE
VETERANS' AFFAIRS COMMITTEES
UNITED STATES CONGRESS
ON THE
LEGISLATIVE PRIORITIES OF THE AMERICAN LEGION

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Messrs. Chairmen and Members of the Committees:

As The American Legion's newly elected National Commander, I thank you for this opportunity to present the views of its 2.8 million members on issues under the jurisdiction of your Committees. At the conclusion of The American Legion's Eighty-Fourth National Convention in Charlotte, North Carolina, over 4,000 delegates adopted 194 organizational resolutions with legislative intent. These mandates form the legislative portfolio of The American Legion.

The American Legion greatly appreciates the efforts of your Committees in authorizing veterans' health care, benefits, and programs for the entire veterans' community. The American Legion continues to enjoy a strong working relationship with the Committee Members and the professional staff members. The bipartisan cooperation exhibited by your committees is a welcome change to the seemingly endless political wrangling that too often impedes the legislative process.

Exactly one year ago tomorrow, this nation was attacked and thousands of innocent citizens lost their lives. These mothers, fathers, brothers, sisters, sons, and daughters were going about their daily lives with the sense of security and freedom that every American citizen enjoys as a result of the determined vigilance of the generations of soldiers, sailors, airmen and Marines who have answered the nation's call to arms. Today's servicemembers have once again answered that call and we, as a grateful nation, must not deny this new generation of American veterans the care they have earned through their honorable service to this country.

With that in mind and on behalf of The American Legion, I offer the following budgetary recommendations for the Department of Veterans Affairs (VA) for FY 2004:

BUDGET PROPOSALS FOR SELECTED DISCRETIONARY PROGRAMS FOR DEPARTMENT OF VETERANS AFFAIRS FOR FISCAL YEAR 2004

Program	FY 2002	Legion's FY 2003 Request	Legion's FY 2004 Request
Medical Care	$21.3 billion	$23.1 billion	$24.5 billion
Medical and Prosthetics Research	$371 million	$420 million	$445 million
Construction			
• Major	$183 million	$310 million	$320 million
• Minor	$ 211 million	$219 million	$240 million
State Extended Care Facilities	$100 million	$110 million	$115 million
State Veterans' Cemeteries	$ 25 million	$30 million	$37 million
NCA	$121 million	$140 million	$150 million
General Administration	$1.2 billion	$1.3 billion	$1.3 billion

VETERANS HEALTH ADMINISTRATION

MEDICAL CARE

The American Legion recognizes the Veterans Health Administration (VHA) as a national resource. Over the years, Congress has invested a great deal to establish an integrated health care delivery network to care for America's veterans. VHA's mission is to serve the health care needs of the nation's veterans. Today, there are nearly 24.5 million veterans. As more choose to use VA as their primary health care provider (over 7 million veterans enrolled or waiting to enroll), the strain on the system continues to grow.

The American Legion fully supported the enactment of Public Law (P.L.) 104-262 that authorized eligibility reform and opened enrollment in the VA health care system within existing appropriations. Many veterans who, until this time, were ineligible for VA health care were now

able to enroll. Veterans recognize that VHA provides affordable, quality care that they cannot receive anywhere else. Several other reasons influencing veterans to seek health care from VA are:

- VA's holistic approach to health care,
- VA's full continuum of care to include specialized services,
- VA's medical and prosthetics research,
- VA's affiliation with over 100 medical schools,
- VA's renown patient safety record,
- VA's numerous health care facilities, and
- Camaraderie.

FY 2002 saw the astronomical growth of Priority Group 7 veterans seeking health care at their local VA medical facility. This unprecedented increase in enrollees into the VA health care system has resulted in over 300,000 veterans being placed on waiting lists regardless of their assigned Priority Group. The simple fact is VHA simply does not have the funding needed to treat all veterans seeking care from VA. In fact, many of the Veterans Integrated Services Networks (VISNs) have been operating in the red. Further, many of these veterans on waiting lists are seeking health care for service-connected conditions. Even if the veteran is rated service connected at 100 percent, VHA cannot "squeeze" them in to take care of them. The American Legion finds this inexcusable.

VHA operates under a constant threat of financial uncertainty. A recent decision by the Administration prohibited VA from receiving $275 million of the FY 2002 budget supplemental. These funds are desperately needed. Over the last several years, VHA has struggled to provide quality care while staying within budget constraints. FY 2002 has been somewhat of a roller coaster ride in terms of funding. The American Legion would like to see the ride end with adequate funding for FY 2004 for the health care needs of VA's core mission, Priority Groups 1-6 veterans, and for its myriad programs.

Another casualty of inadequate funding that continues to challenge VHA is the critical shortage of health care professionals available to treat veterans. At the top of this list are specialty doctors, psychologists, nurses and nursing personnel. The crisis of the nursing shortage is so acute that the National Commission on VA Nursing was chartered this year to address the ongoing recruitment and retention issues. The American Legion supports active recruitment of nurses into the VA health care system.

Third-Party Reimbursement

In order for more veterans to access VA health care, additional revenue streams must be generated to supplement (not offset) annual discretionary appropriations. Annual discretionary appropriations for medical care are primarily designed to provide funding for the care of veterans assigned to Priority Groups 1-6, medical and support personnel, research, medical affiliations, its infrastructure and capital assets. The annual discretionary appropriations are distributed throughout the system via the Veterans Equitable Resource Allocation (VERA) formula which takes into account numerous factors; however, the number of enrolled Priority Group 7 veterans or Medicare-eligible veterans is not considered in that formula.

Currently, VA is authorized to bill, collect, retain and reinvest all copayments, deductibles, and third-party reimbursements. While this provides VA with much needed additional resources, these funds are unjustly scored as an offset to annual discretionary appropriations. This offset is detrimental to the overall VHA budget because the amounts actually collected consistently fall short of budgetary projections. When VA does not meet its projected collection goals, the health care system experiences a budgetary shortfall, which results in limited health care services and timeliness of access for veterans seeking care. Third-party reimbursements primarily come from private health insurance providers. Unfortunately, under current law, VA is prohibited by Federal statute from billing the country's largest Federally mandated, pre-paid health insurance provider – Medicare.

A large number of veterans seeking health care services in VA are Medicare-eligible and list Medicare as their health insurance provider. Others list health maintenance organizations (HMO) that traditionally refuse to reimburse VA for treatment of their health care beneficiaries. Others list preferred providers organizations (PPO) however, VA is not listed as a preferred provider – therefore, cannot be reimbursed for care. Finally, many veterans list no private health care coverage at all.

The American Legion strongly advocates Congress authorize VA to bill, collect, and retain third-party reimbursements from the Centers for Medicare and Medicaid Services (CMS) for treatment of Medicare-allowable, nonservice-connected medical conditions of Medicare-eligible veterans. Since Medicare is a Federally mandated, pre-paid health insurance program, The American Legion believes Medicare-eligible veterans should be allowed to choose their health care provider. If VA is a Medicare-eligible veteran's health care provider of choice, then VA should be reimbursed for providing quality health care services.

The American Legion recommends $ 24.5 billion for medical care in Fiscal Year 2004.

VA/DOD SHARING

Access to both VA's and DoD's integrated health care system is an earned benefit based on military service. Although there are many dual-eligible veterans, VA's and DoD's integrated health care system have unique missions with some degree of overlap. For this reason, The American Legion strongly supports maintaining each independent integrated health care system, while seeking opportunities for joint ventures, resource sharing opportunities, and other areas of cooperation.

The primary mission of DoD's health care system is to ensure the health of the active duty troops in order to maintain military readiness. VA's primary mission is providing quality health care for America's veterans, especially those with service-connected disabilities. DoD's patient population includes a significant number of spouses and children. VA's patient population includes a very limited number of spouses and children. VA offers an array of specialized services, such as blind rehabilitation, long-term care, spinal cord injury, brain injury and others. DoD offers few specialized services. Therefore, it would be unwise to ask any

military retiree to choose between enrollment in one integrated health care system or the other. However, the distinct diversities that exist between VA and DoD also offer ample health care sharing opportunities.

With the advent of the first joint venture and the emergence of VA and DoD medical sharing agreements, The American Legion established its own Special Task Force on Veterans' Medical Care to review the effectiveness of these cooperative efforts. The Task Force's initial report stated that the sharing agreements, "represented positive adjuncts to efforts to meet the mission of medical centers. They enhance the availability and variety of services provided to veterans, and they can provide avenues to increase joint education and research endeavors." The American Legion recognizes the current benefits from these sharing agreements and the potential gains from additional efforts. Sharing agreements augment services and build on the respective strengths of the participants.

Currently, VA and DoD sharing occurs among 165 VA Medical Centers (VAMC) with most military medical treatment facilities and 156 Reserve units around the country. VA and the military have agreed to share 6,602 services covering a broad range of hospital related activities. However, this represents a decrease of over 1000 services shared in the year 2000. One of the problems cited is DoD's TRICARE managed care contract structure that fails to promote the use of government agency resource sharing. Both VA and DoD are exploring ways to improve and increase coordination of service delivery in many areas such as long-term care, pharmacy, chiropractic services, and joint ventures.

Currently, there are seven joint venture sites where VA and DoD are co-located on the same campus:

- VA New Mexico Health Care System (HCS) & Kirkland AFB (Albuquerque, NM)
- El Paso VAHCS & William Beaumont Army Medical Center (El Paso, TX)
- VA Key West & Navy (Key West, FL)
- VANCHCS & Travis/Mather AFB (Fairfield, CA)
- Tripler Army Medical Center & VAMROC Honolulu (Honolulu, HI)
- Nellis AFB & Southern Nevada VAHCS (Las Vegas, NV)
- Elmendorf AFB & VAMROC Anchorage (Anchorage, AK)

Now that the hospital at Elmendorf AFB has opened, all of the planned joint ventures are operational. Although leadership at both VA and DoD appear to be motivated to institute new joint ventures, no other new joint venture initiatives have emerged in the past several years, even though demand for services continues to increase. Now would seem an opportune time for DoD to co-locate TRICARE providers at VHA facilities or have VHA primary care clinics located on more military installations.

Existing Barriers

Both VHA and DoD have explored joint ventures with measured success. Clearly, there are barriers – some are tangible, but most appear more philosophical or cultural. Strong management at the local level can readily identify tangible barriers and offer creative solutions, but overcoming philosophical or cultural barriers will require focused leadership. Faced with the

prospects of yet another round of the base realignment and closure (BRAC) recommendations, DoD stands to lose additional military health facilities from its inventory. Since the first BRAC, DoD has lost over 50 percent of its military hospitals. VA is currently undergoing its own version of BRAC, the Capital Asset Realignment for Enhanced Services (CARES). Both VA and DoD would be well advised to seek opportunities to promote joint ventures. Neither program seems to give serious consideration to the adverse impact on veterans' health care.

Another common physical barrier between VA and DoD is the information technology communication gap. The information technology disconnect between Departments severely restricts the seamless transmission of critical information. Current technology exists to establish and maintain electronic medical records capable of storing all data collected in a Federal health care facility. This would help expedite VA's claim and adjudication process by making military medical records immediately available to provide documentation of service-connected injuries or medical conditions.

Another information technology function commonly found throughout the health care industry is the billing and collection of third-party reimbursements. Yet, this fundamental process between VA and DoD, especially its for-profit health care contractors – TRICARE – is extremely problematic. Electronic billing and collection are routine transactions between health care provider and health insurance payers. VA's ability to properly bill and collect from third-party insurers continues to lag behind the Federal discretionary budgetary expectations. This revenue shortfall adversely impacts VA's health care delivery capabilities and limits the cooperative opportunities for TRICARE's subcontracting options as well.

Annual VA medical care discretionary appropriations are offset by the projected collections from third-party insurers, yet no funding credit is awarded for the treatment of enrolled Priority Group 7, Medicare-eligible veterans treated for nonservice-connected conditions. In a joint venture facility, under the new TRICARE for Life provision, this creates internal billing problems for Medicare-eligible military retirees referred to VA by TRICARE providers. Under the conditions of TRICARE for Life, the enrolled Medicare-eligible patient must purchase the Part B supplemental coverage. TRICARE subcontractor must bill Medicare, then the Medigap insurer, and finally DoD for any remaining charges. If VA is a subcontractor for TRICARE and cannot bill Medicare; DoD has a disincentive to send Medicare-eligible patients to VA facilities because of the additional cost to DoD.

Most successful sharing agreements between VA and DoD have been reached at the local level due to budgetary necessity. Quality communication and coordinated strategic planning have ensured the success of these ventures. Maximum utilization of available federal resources should be an element in annual individual performance evaluations. Positive reinforcement should be awarded for stellar performance. Again, with the real prospect of another BRAC coupled with impending CARES recommendations, both Departments should seek sharing agreements to maximize available health services for their patient populations. American Legion representatives have visited several joint venture campuses and found that each joint venture has its own strengths and weaknesses, but their ultimate goal is the same – delivery of quality health care to its beneficiaries.

Cooperation

A commonly identified opportunity for closer VA and DoD cooperation is joint purchasing ventures for pharmaceuticals, medical supplies, and equipment. Combining purchases would enhance the buying power of scarce Federal discretionary dollars. Joint partnerships for contracting of pharmaceuticals have met with very agreeable results. VA and DoD have 55 national contracts and three Blanket Purchase Agreements (BPAs). VA saved some $85 million from these contracts and BPAs in 2001 while DoD saved over $100 million in the same year for all national contracts.

This initiative, coupled with joint ventures and sharing agreements, would enhance coordinated purchases of expensive equipment and help reduce incidents of excess regional purchases. The American Legion would like to see an emphasis on more sharing opportunities considered with pharmaceuticals and medical/surgical supplies.

VHA's reputation in medical and prosthetics research is stellar. VHA is also recognized as the largest trainer of health care professionals. Through its affiliation with medical schools and academic medical centers, as well as other research institutions, VHA continues as a major national research asset. VHA conducts basic clinical, epidemiological and behavioral studies across the entire spectrum of scientific disciplines. In recent studies, VHA's patient safety procedures have received national recognition for excellence. In terms of nuclear, chemical, and biological warfare, Military Health Services (MHS) remains the nations' leading expert in casualty care. Both systems would benefit from shared expertise and best practices in these and other areas.

The American Legion recommends seeking additional joint venture opportunities between VA and DoD. We believe joint ventures offer many more opportunities for cost savings through purchasing of pharmaceuticals and medical/surgical supplies and contracting of services. Advances in information technology should be explored to remove current technology barriers that seem to exist with the exchange of critical information between these health care providers.

LONG-TERM CARE

The American Legion is committed to developing a permanent solution to preserve and improve the VA health care system. This goal includes providing a coordinated continuum of long-term care to meet the needs of the individual veteran. With the ever-growing aging population of veterans, it is critical that VA positions itself to adequately care for all the needs of these veterans to include long-term care.

In recent years VA's approach to long-term care has evolved from an institutional setting to a non-institutional, community based and home based setting. This change brings with it many issues that need to be addressed. One of those is accountability of the patient and for that matter, whether the veteran is informed and understands exactly what is going on with his or her care. Another, of course, is quality of care being provided by non-VA staff and how that care is monitored.

The passage of the Veterans Millennium Health Care and Benefits Act (Public Law 106-117) November 30, 1999, was the first step toward ensuring a comprehensive long-term care plan for veterans. Yet, after nearly three years, VA has not fully implemented all of the provisions of this law.

Long-term care within VA is a continuum of care provided over a period of time to veterans who suffer from severe chronic service-connected disabilities and conditions of aging and/or disease. Within VA, long-term care includes a broad spectrum of services that include geriatric evaluation; Adult Day Health Care (ADHC); home health care; respite, hospice and palliative care; and domiciliary and nursing home care.

VA's plan for a comprehensive long-term care continuum include:

- An integrated care management system that incorporates all of the patient's clinical care needs;
- More care in home and community-based settings as opposed to inpatient settings, when appropriate;
- Greater consistency in access and quality of care provided in all settings;
- Greater consistency across the system in assessing patients for extended care and in managing care, including post institutional care;
- Emphasis on VHA research and educational initiatives that will improve the delivery of services and outcomes for VA's elderly veteran patients; and
- New models of care for diseases and conditions that are prevalent among elderly veterans.

One of the more innovative approaches to long-term care within VA has been the use of telemedicine. Telemedicine technology allows VA to reduce travel time and costs while improving efficiency and providing better quality of care. The Senior Companion Program is another example of keeping long-term care in the home of the veteran. The Advances in Home Based Primary Care for End of Life in Advancing Dementia (AHEAD) program is yet another alternative to institutional care that the VA is evaluating.

While all of these plans and approaches are nice, the caveat to achieving these plans is that it must be done within "existing programmatic resources". VA can only do so much before the money runs out. When the funds are gone, the veteran becomes the bill payer.

Congress and the Administration must recognize their responsibility to provide adequate resources for the purposes of providing long-term care to the nation's veterans. VA must continue to meet the demand veterans will undoubtedly place on the health care system in the next 30 years. The reality of quality long-term care for veterans requires a financial commitment from the government and a coordinated treatment effort on behalf of VA.

Mental Health

The American Legion believes that the primary mission of VHA is to meet the health care needs of America's veterans. Within that overarching umbrella of "veterans" is a special and unique population of veterans- the seriously mentally ill. These veterans' carry their scars

on the inside. They have been diagnosed with diseases such as Post-Traumatic Stress Disorder (PTSD), Schizophrenia, Bipolar Disorder, Personality Disorder, and Dementia. Serious mental illness is not easily treated. It is chronic and complex in nature and requires medication maintenance, therapeutic interventions, intensive case management, socialization and economic education, and social support. The disorders identified in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) published by the American Psychiatric Association can add up to a very expensive lifetime cost per patient.

The American Legion feels that the VA health care system has a special obligation to veterans with mental illness and substance abuse disorders. In fact, we feel Congress shared this same view when it created the capacity provision under section 104 of Public Law 104-262, The Veterans Eligibility Reform Act of 1996. This section requires the Department "maintains its capacity to provide for the specialized treatment and rehabilitative needs of disabled veterans," including those with mental illness. However, VA has yet to fully comply with the capacity provision and as always, the veteran is the one who suffers.

As a member of the Consumer Liaison Council of the Committee on the Care of the Severely Chronically Mentally Ill (SMI) Veteran, The American Legion supports the findings of the Committee as reported in their "Sixth Annual Report to the Under Secretary for Health, Department of Veterans Affairs" (February 5, 2002):

- As the Veterans Health Administration (VHA) reduces inpatient beds, it has not developed sufficient community-based mental health services to treat the veterans who were deinstiutionalized by the closure of inpatient programs.

- Since fiscal year 1996, the number of veterans provided specialized substance abuse treatment declined by 14 percent and the funding for such treatment declined by more than 50 percent.

- The current Veterans Equitable Resource Allocation (VERA) system underfunds by 20 percent the cost of treatment for veterans with serious mental illness, and underfunds by 15 percent the cost of all mental health cohorts.

Thirty years ago, states deinstitutionalized their large psychiatric facilities and promised to open more community clinics and group homes, but never did, leaving individuals suffering from psychiatric conditions, homeless or incarcerated. It is estimated between 45 percent and 65 percent of the homeless population in this country are veterans with mental conditions. While VA has opened up new Community Based Outpatient Clinics (CBOCs) across the country, very few offer mental health services.

The American Legion is also very disturbed with the reported continued loss of professional staff in psychiatric facilities. Some studies site up to a 14 percent loss in clinical staff, most notably psychologists since 1996. VA cannot continue to provide quality care in a timely manner to this special population if it is steadily cutting the very staff that services them.

Also of concern to The American Legion is VA's prescribing guideline for atypical antipsychotic use. The General Accounting Office (GAO) completed a study this spring on VA's prescribing guideline for these drugs to determine whether VA has restricted access to medications that could adversely affect the quality of mental health services provided to veterans. The report found that nearly one in ten VA psychiatrists responding to its survey reported they did not feel free to prescribe the antipsychotic drug of their choice. Further, many VA facilities have procedures that "have limited or could restrict access to certain atypical antipsychotic drugs on the VA's national formulary because of cost considerations."

The American Legion recognizes that these pharmaceuticals can be expensive, but we also realize they are not nearly as expensive as prolonged inpatient stays, incarceration, or prolonged rehabilitation.

The American Legion remains concerned over the state of the mental health programs within VA. Not only are they inadequately funded and/or staffed, but the emphasis on quality treatment for this unique population seems to be dwindling. The VA health care system was designed with a special mission to service a unique population. VA must ensure that that the health care needs of that entire population are being met.

HEPATITIS C

Hepatitis C is an emerging national health care crisis. There is an increased prevalence of Hepatitis C and associated health problems within the veteran population. According to VA, the rate of veterans with Hepatitis C is at least three times higher than the rate of the general population, with Vietnam veterans, in particular, being a high-risk group. This problem is presenting a major challenge for VHA.

The American Legion is pleased with VA's initial response, in terms of their pro-active approach to Hepatitis C education, outreach, testing, and treatment efforts. However, earlier in this fiscal year, citing the lack of sufficient funds to meet the increased demand for all types of VA care, VA has begun to seriously scale back its Hepatitis C outreach and treatment programs. VA has, in fact, begun to discourage the testing of veterans who may be at risk for Hepatitis C and are even turning away some veterans who test positive, because they are not accepting new enrollments and the costs associated with current treatment regimens is so high. This policy is unacceptable.

The President's proposed budget for FY 2002 did not provide sufficient funding for the medical care program to enable VHA to maintain the present level of medical services. Congress recognized that thousands of veterans would be denied medical treatment and passed a much-needed supplemental appropriation. However, as mentioned earlier $275 million dollars of that supplemental has been denied by the Administration.

The President's proposed budget for FY 2003 for VA medical care was even more problematic and stringent. It will again constrain VA's ability to maintain the prior year's level of service. Even though VHA is being forced to curtail many of its Hepatitis C initiatives, it is continuing internal education efforts directed at VHA health care providers and patients. It is

continuing to develop data from ongoing screening of veterans' health records. To the extent possible, VHA is utilizing the latest treatment modalities, which has shown promising results. There are also a number of recently initiated research projects underway to learn more about the risk factors associated with this virus.

The American Legion acknowledges VA's leading role in developing a comprehensive approach to Hepatitis C. We believe it is imperative that VA is provided the necessary funding and resources needed to ensure that:

- All veterans using VA health care services are screened for risk factors associated with Hepatitis C infection.
- All enrolled veterans who have identified risk factors for Hepatitis C infection receive reliable testing along with pre-testing and post-testing counseling.
- All veterans are provided with accurate and up-to-date information about the virus, health risks, and available treatment programs.
- VA health care providers must have the latest disease and treatment information.
- VA's health care program continues to provide all veterans in the system the highest quality care for Hepatitis C.
- VA maintains a vigorous research program to advance knowledge about Hepatitis C and improve its clinical care programs.

The American Legion believes that, in addition to its budgetary responsibilities, Congress has a legislative role in responding to the Hepatitis C challenge. Senator Snowe (ME) has introduced S. 457 to provide a presumption of service connection for those veterans who experience one or more specific risk factors during active military service. Given the nature of the disease and the potential dangers and health risks associated with military service, The American Legion is strongly supportive of this bill. It will help many veterans with Hepatitis C overcome the current legal hurdles that make it extremely difficult, if not impossible, to establish entitlement to compensation and needed medical care. Representative Frelinghuysen (NJ) has introduced HR 639 that would establish a comprehensive program for testing and treatment of Hepatitis in VA. The American Legion is also strongly supportive of this measure, as it would greatly strengthen and enhance VA's current Hepatitis C program.

GULF WAR VETERANS' ILLNESSES

The American Legion continues to actively support Gulf War veterans and their families, as it has since August 1990. The American Legion has created two particular programs specifically for Gulf War veterans, the Family Support Network in October 1990, and the Persian Gulf Task Force in October 1995. Today, The American Legion serves Gulf War veterans and their families at the community, state, and national levels through its 15,000 local posts and an array of programs and services.

Hallmark legislation was enacted in 1994 to ensure compensation for ill Gulf War veterans suffering from unexplained illnesses. Although PL 103-446 looked good on paper, a seventy-five percent denial rate was the reality for our sick Gulf War veterans seeking VA service connection for Gulf War-related undiagnosed illness. As a result, The American Legion

actively supported legislation to amend Title 38 U.S.C. § 1117 (Compensation for disabilities occurring in Persian Gulf War veterans) with the goal of correcting this problem.

On December 27, 2001, the president signed into law the Veterans Education and Benefits Expansion Act of 2001 (PL 107-103). This law clarifies and further expands the definition of undiagnosed illness under the law by including medically unexplained chronic multi symptom illness, such as chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome, that is defined by a cluster of signs or symptoms. The American Legion believes that this provision recognizes the original intent of Congress to compensate ill Gulf War veterans suffering from poorly defined or undiagnosed symptoms and will help to ensure that more Gulf War veterans suffering from these conditions receive the benefits to which they are entitled.

The American Legion will continue to monitor new and reopened undiagnosed illness claims to ensure that VA is accurately and consistently implementing the new changes. Recently, The American Legion and other major VSOs officially requested VA to notify all Gulf War veterans previously denied for undiagnosed illness, fibromyalgia, chronic fatigue syndrome, or irritable bowel syndrome on a direct basis, of the change in law and the opportunity to reopen their claims. This action was necessary after learning that VA had no plans to take such action on its own. We are still waiting for a response to our request from VA.

Another major concern of The American Legion involves a recent study showing a higher rate of amyotrophic lateral sclerosis (ALS) in Gulf War veterans. In December 2001, VA announced the preliminary findings of a joint VA and DoD study that showed deployed Gulf War veterans were nearly twice as likely as their non-deployed counterparts to be stricken with ALS, a fatal and progressive motor neuron disease. Although The American Legion commends the Secretary's decision to expeditiously compensate Gulf War veterans suffering from ALS without waiting for the lengthy process of implementing a regulation, we strongly support regulatory action to officially establish an ALS presumption for Gulf War veterans who develop the disease in the future. While The American Legion realizes additional research regarding ALS is warranted, we submit that if the results of the recent study are strong enough to warrant VA expeditiously service connecting Gulf War veterans currently identified with ALS, then the results are also strong enough to support the establishment of an ALS presumption, under current law, to guarantee comparable treatment for Gulf War veterans diagnosed with this disease in the future. If necessary, we will support specific legislation to accomplish this goal.

The American Legion commends the Secretary of Veterans Affairs for the establishment of a research advisory committee on Gulf War veterans' illnesses in accordance with PL 105-368. Given the inconclusive nature of Gulf war-related research to date, we are confident that this panel, comprised of doctors, scientists, Gulf War veterans, and VSO representatives, will play a key role in recommending ground-breaking research that will shed light on the unexplained illnesses plaguing many Gulf War veterans.

OPERATION SHIPBOARD HAZARD AND DEFENSE (SHAD)

Information pertaining to Project SHAD, a series of experiments conducted in the 1960s designed to test the vulnerability of American war ships to chemical and biological warfare attacks, is slowly being declassified. To date, only twelve out of a possible 113 tests have been

declassified and participant's names provided to VA, resulting in the initial notification this past May of only 622 veterans. In order to ensure that all information relevant to the SHAD tests is provided to VA in an expeditious manner and all identified participants are notified of the possible health consequences, H.R. 5060 and S. 2704, the Veterans Right-To-Know Act of 2002, was recently introduced. The American Legion fully supports this legislation that specifically addresses the tests associated with Project SHAD and calls for the identification of all DoD tests involving chemical or biological weapons in which military personnel may have been exposed to actual or simulated agents with or without their knowledge or consent. We also note that S. 2514, the Defense Appropriations Bill for Fiscal Year 2003, was recently amended to include a provision addressing the SHAD issue.

In the case of Project SHAD and "Project 112," a larger series of tests during the 1960s involving chemical and biological agents, the existence of a potentially hazardous activity, not to mention possible exposure and personnel participation information, was not known for many years afterward because of national security and classification issues. National security is a legitimate concern, but veterans should not have to suffer undue hardship when national security is used unnecessarily as a justification to withhold information that is necessary for a veteran to pursue health care and compensation from VA. An oversight working group on biological and chemical testing, as set forth in the proposed Veterans Right-To-Know Act of 2002, could prove to be a valuable tool in overseeing the identification and declassification of such tests.

The American Legion also believes that a sincere desire in information sharing and mutual cooperation at the highest levels of DoD and VA is needed. A June 2002 letter from the Secretary of Veterans Affairs to the Secretary of Defense, expressing the importance of "VA-DoD cooperation" in quickly declassifying and releasing additional information regarding SHAD, is a good example of such a desire. Such action at this level needs to continue if we are to satisfactorily resolve the issues associated with the declassification and dissemination of SHAD-related information as well as avoid such problems in the future.

MEDICAL AND PROSTHETIC RESEARCH

VA's Medical and Prosthetic Research Program (R&D) is the premier research initiative leading the nation's efforts to promote the health and care of veterans. The mission of R&D is to "discover knowledge and create innovations that advance the health and care of veterans and the nation." R&D has been instrumental in advancing treatments for conditions such as prostate cancer, diabetes, heart diseases, mental illnesses, spinal cord injury (SCI) and aging related diseases, conditions directly related to veterans.

The Quality Enhancement Research Initiative (QUERI) continues to be a top priority issue for R&D. QUERI is a multidisciplinary, data-driven national quality improvement program. There are eight QUERI groups that work to promote "putting research results to work" and to measure the impact of that research at all levels. These groups are chronic heart failure, diabetes, HIV/AIDS, ischemic heart disease (IHD), mental health, SCI, stroke and substance abuse. Additionally, The National Cancer Institute is funding a new Cancer QUERI. These

initiatives focus on veterans' health issues and have already had a profound effect on the care and rehabilitation of the nation's veterans.

Two of the biggest challenges facing R&D are facility infrastructure and recruitment and retention. Like the rest of VHA's buildings, research facilities are in desperate need of repair. They have been neglected over the years due to budgetary constraints. Currently, R&D has nearly 30 facilities in varying states of disrepair. The condition of these facilities directly impacts the recruitment and retention of qualified researchers. The ability to maintain a state-of-the-art facility is vital to retaining talented and motivated researchers.

In the wake of the September 11th terrorist attacks and their aftermath, there has been a renewed focus on bioterrorism research and VHA's fourth mission, which is to support DoD during a national emergency. H.R. 3253, the National Medical Emergency Preparedness Act of 2001, proposes the establishment of four emergency medical preparedness centers. One of the missions of the centers is to conduct research on and develop methods of detection, diagnosis, vaccination, protection, and treatment for chemical, biological and radiological threats to the public health and safety. R&D's expertise in this area is critical.

The accomplishments of the VA research program cannot be overstated. The program has been recognized both nationally and internationally for its efforts toward the betterment of veterans' lives and advancement in their health care. Without proper funding the program cannot possibly maintain its current level of success.

The American Legion recommends $445 million for the research budget in Fiscal Year 2004.

MEDICAL CONSTRUCTION AND INFRASTRUCTURE SUPPORT

MAJOR CONSTRUCTION

Over the past several years The American Legion has testified on the inadequacy of funding for VA's major and minor construction programs. Buildings continue to be neglected and the persistent deterioration results in unsafe environments similar to conditions discovered earlier this year at the VAMC in Kansas City, Missouri. Of course, those that pay the price of this neglect are the veterans who are receiving care at these facilities.

A 1998 study conducted by Price-Waterhouse recommended that VA fund 2 percent to 4 percent of Plant Replacement Value (PRV) per year to reinvest in new facilities to replace aging facilities. The conclusion of this analysis was that VA's reinvestment rate of .84 percent was significantly lower than the benchmark of 2 percent. That equates to hundreds of millions of dollars that conceivably could be used for major construction projects. Private consultants have been warning for years that dozens of VA patient buildings were at the highest level of risk for earthquake damage or collapse yet funding continues to be woefully short of what is actually needed to correct this problem.

The American Legion is concerned that veterans are needlessly being placed in harms way. There are over 60 patient care and other related use buildings in danger of collapse or heavy damage in the event of an earthquake. The sorely needed seismic corrections, along with the necessary ambulatory care and patient safety projects, will require a significant increase in funding to address VHA's current major construction requirements.

The American Legion recommends $320 million for major construction in Fiscal Year 2004.

MINOR CONSTRUCTION

Similar to VA's major construction program, VA's minor construction program has likewise suffered significant neglect over the past several years. The requirement to maintain the infrastructure of VA's buildings is no small task. When combined with the added cost of the CARES program recommendations and the request for minor infrastructure upgrades in several research facilities, it is easy to see that a major increase over the previous funding level of $211 million is crucial.

The American Legion recommends $240 million for minor construction in Fiscal Year 2004.

CAPITAL ASSET REALIGNMENT FOR ENHANCED SERVICES PROGRAM (CARES)

The CARES program was developed in response to a March 1999 General Accounting Office (GAO) report that concluded VA could significantly save money by conducting an efficient utilization analysis of every building within VHA's infrastructure. VHA initiated the CARES process with the goal of enhancing current and future health care services to veterans by realigning its capital assets.

The initial pilot study conducted in VISN 12 raised many concerns. The American Legion questioned the planning assumptions and the lack of involvement of veterans' service organizations. Because of disgruntled stakeholders' outcry over the pilot study and the way it was conducted, VA has undergone a restructuring of the process. Phase II is designed so that VA has control over every step of the process. The remaining 22 VISNs will go through the Phase II program simultaneously, thus making it much harder for stakeholders to monitor the process. Phase II consists of nine steps, culminating with a CARES commission review, all of which are scheduled for completion by August 2003. Even with the restructuring of the process The American Legion remains concerned that CARES may result in the reduction of VA expenditures under the pretext of cost-savings without regard to the needs of the veteran population. Once VA capital assets are disposed of, it is nearly impossible to recoup similar assets.

The American Legion believes that many of the current underutilized or unused spaces in VHA facilities are the result of decisions that were budget-driven rather than demand-driven. Due to limited funding, VHA facilities have had to reduce their expenditures to meet their budgets rather than the demand for services by:

- Reducing the number of inpatient beds to include acute hospital care, subacute care, rehabilitative care, psychiatric care, nursing home care, and residential care.
- Allowing the waiting period for appointments to exceed acceptable standards rather than hiring additional health care personnel.
- Contracting out of services without regard to quality of care.
- Consolidating of services in regions.
- Changing treatment philosophy, such as inpatient versus outpatient care of psychiatric patients.

While these reductions have created a lot of empty buildings, The American Legion believes there are many ways to use those facilities:

- Public Law 106-117, the Veterans Millennium Health Care and Benefits Act, mandates VHA to provide long-term care to service-connected veterans rated 70 percent and higher and those veterans with service-connected conditions that require long-term care. VHA has yet to fulfill the requirements of this Act. VA has no plans to build nursing home units. The underutilized space could be used for long term care.
- DoD and VA could use these facilities in an effort to integrate their health care services through additional sharing agreements and joint venture opportunities.
- Homeland Security requirements will begin at the grassroots level and many VHA capital assets may serve local, state and national needs in its role as a contingency back-up to DoD medical services and the National Disaster Medical System (NDMS) during national emergencies.

The American Legion believes that any CARES recommendations should be considered in the context of a fully utilized VA health care delivery system that takes into consideration VA/DoD sharing, the Veterans Millennium Health Care and Benefit Act and Homeland Security.

GRANTS FOR THE CONSTRUCTION OF STATE EXTENDED CARE FACILITIES

The State Veterans Home Program is an important adjunct to VA's own nursing, hospital and domiciliary programs. The American Legion believes it must continue, and even expand its role as an extremely vital asset to VA. This program has proven to be a cost-effective provider of quality care to many of the nation's veterans, operating in 47 states with 109 facilities and over 23,000 beds.

As many VA facilities reduce long-term care beds and VA has no plans to construct new nursing homes, state veterans' homes must absorb a greater share of the needs of an aging population. Title 38, United States Code (USC), authorizes VA to pay 65 percent of the total cost of building new veterans' homes but VA has not been able to keep up with the number of grant applications. Currently there is over $120 million in unfunded new construction projects pending which equates to hundreds of desperately needed beds.

The American Legion remains concerned about the inadequate per diem rates paid to state veterans' homes. Title 38, USC, authorizes per diem payments for veterans residing in state homes that cover only about 20 percent for the cost of domiciliary care and 30 percent of nursing

home care. The American Legion supports increasing that per diem amount to at least 40 percent of the cost of care.

Finally, The American Legion recognizes the growing long-term health care needs of older veterans and would like to reemphasize the essential service that the State Veterans' Home Program provides to these veterans. The program is a viable and important alternative health care provider to the VA system.

The American Legion recommends $115 million for the Grants for the State Extended Care Facilities in Fiscal Year 2004.

NATIONAL CEMETERY ADMINISTRATION (NCA)

The National Cemetery Administration (NCA) honors veterans with a final resting place and lasting memorials that commemorate their service to the nation. Today, more than 130 years after the first national cemeteries were established NCA is responsible for 120 national cemeteries in 39 states (and Puerto Rico) as well as 33 soldiers' lots and monument sites. More than two million Americans, including veterans of every war and conflict - from the Revolutionary War to the Gulf War - are honored by burial in VA's national cemeteries. Nearly 14,000 acres of land are devoted to this formidable mission.

As a result of the continuing increase in veterans' deaths, NCA is constantly seeking burial space. Total interments for NCA are projected to significantly increase over the next five years, peaking at 107,000 in FY 2008. Currently, of the 120 National Cemeteries, 62 are open for full service, 27 allow only cremations and the remaining 31 are closed. NCA continues to strive to meet its accessibility goal of 90 percent of all veterans living within 75 miles of open national or state veterans' cemetery.

The Veterans Millennium Health Care and Benefits Act (P.L. 106-117) required NCA to establish six new National Cemeteries. Fort Sill opened in 2001 under the fast-track program, while the remaining five, Atlanta, Detroit, South Florida, Pittsburgh and Sacramento are in various stages of completion.

Maintaining cemeteries as National shrines is one of NCA's top priorities. This commitment involves raising, realigning and cleaning headstones and markers to renovate gravesites. The work that has been done so far has been outstanding, however, adequate funding is key to maintaining this very important commitment.

The American Legion recommends $150 million for the National Cemetery Administration in Fiscal Year 2004.

STATE CEMETERY GRANTS PROGRAM

The State Veterans Cemetery Grant Program continues to be a very popular and much needed program administered by VA. This program was designed to assist states in providing gravesites for veterans where NCA is unable to do so. This program is not intended to replace

National Cemeteries, but to complement them. Grants for state-owned and operated cemeteries can be used to establish, expand and improve on existing cemeteries.

Under this program cemeteries must conform to the standards and guidelines prescribed by VA with regards to site selection, planning and construction. Like the NCA, these state cemeteries must be operated solely for the burial of service members who die on active duty, veterans, and their eligible spouses and dependent children.

The State Cemeteries accommodated over 15,000 burials in FY 2001. In light of the aging veteran population and with deaths expected to peak at 687,000 in 2006, it is necessary that this program remain viable. Now is the time to ensure that funding is commensurate with the mission of the program.

The American Legion recommends $37 million for the State Cemetery Grants Program in Fiscal Year 2004.

VETERANS BENEFITS ADMINISTRATION (VBA)

The American Legion believes that veterans and their survivors have the right to have their claim adjudicated in a fair and timely manner. Upon assuming leadership of VA at the beginning of 2001, Secretary Principi made the reduction of the claims backlog problem VBA's number one priority. In the preceding year, the backlog of claims had risen from approximately 370,000 to over 548,000. His stated goal was to reduce the number of pending claims to 250,000 and cut the average processing time to 100 days by the end of FY 2003.

The American Legion commended the Secretary for his concern with the welfare of veterans and their families affected by the long processing delays and for his commitment to providing better, more timely service. One of his first initiatives was to focus effort and attention on the oldest cases of the oldest veterans. In early 2001, the Secretary established the Tiger Team at the Cleveland VA Regional Office and area Resource Centers to expedite the processing of the oldest pending claims. In addition, the Secretary established a Claims Processing Task Force to study the current adjudication system and make recommendations to improve regional office performance and service. The American Legion believes it is now possible to assess the impact these and the many other changes underway within VBA are having on regional office operations and level and quality of service provided this nation's veterans.

While most of VBA's attention has been directed toward the pending claims backlog, the backlog of initial appeals and remands has continued to grow from approximately 86,000 at the beginning of 2001 to over 97,000 currently. Appeals are the oldest pending claims in the system and some of these cases have been in a remand status at the regional offices for five or six years. However, beyond generalities about improving the overall claims processing, there has been no specific commitment by Secretary Principi to reduce the number of pending appeals and remands.

The American Legion has viewed with some concern the means by which the Secretary's claims processing goals are being achieved. Regional office directors have been given monthly production quotas, which they are expected to fulfill. Over the past eighteen months, VA has stated that the claims backlog has been successfully reduced by over 40,000 cases; service to veterans has been improved; and this has all been done without any adverse effect on the quality of decisions on these cases.

The American Legion has found, from firsthand experience, that this much-touted reduction is misleading and fails to tell the whole story. Since the late 1990s, VBA has been candid when discussing the problems with quality of regional office claims' decisions. Prior to Secretary Principi's initiative, VBA acknowledged a 36 percent error rate in the adjudication of veterans' benefit claims. The American Legion's concern about factors that were contributing to poor quality adjudication has been discussed at several congressional hearings. Over the past eighteen months, Legion staff has visited 15 VA regional offices and reviewed hundreds of recently decided claims. Our findings indicate that the error rate has not substantially changed and remains at least 30-40 percent.

Since the establishment of production quotas earlier this year, many regional offices have substantially scaled back or suspended on-going training for the experienced adjudicators. Decision Review Officers have been directed to work on claims processing and defer personal hearings and development of appeals. Supervisors are also required to devote a substantial part of their time to production work, rather than direct supervision, quality checks, and training. Clearly VBA's production goals conflict with the need to bring accountability and quality assurance to the adjudication process.

Listed below are recent examples of the lack of compliance with the Veterans Claims Assistance Act of 2000 (VCAA) and how veterans are being denied due process, prematurely denied benefits, and forced to pursue unnecessary appeals just so that the regional office can meet its mandated production quotas.

- The veteran served from 1950 to 1970. He was initially granted service connection for several injuries in 1970. In August 2000, he reopened his case seeking service connection for hearing loss with tinnitus (ringing in the ears) and cited his 20 years of service in the tank corps. Ten months later in May 2001, the regional office sent him a VCAA letter asking for evidence linking his hearing loss to service. No VA exam was scheduled. In September 2001, his claim was prematurely denied. In February 2002, the veteran submitted a medical statement linking his hearing loss with tinnitus to exposure to acoustic trauma in service. Three months later, service connection was granted with a 20% evaluation back to August of 2000. The veteran's claim should have been settled a year earlier. In addition, the claimed tinnitus continued to be ignored, until it was specifically brought to their attention.

- The veteran served 1971-1975 and injured his left wrist and hand in a car accident. In 1976, he filed a claim for these two injuries. In 1979, he was granted service connection for problems of the left hand. The claim for the left wrist was ignored, even though the service medical records had noted partial fusion of the left wrist. The veteran reopened his

claim earlier this year for an increased rating of his left-hand problems and his right wrist as secondary to the service connected left hand. The regional office sent him a VCAA letter that talked only about the requirements for basic service connection and did not mention the claim for an increased rating and secondary service connection. A VA exam was conducted but proved to be inadequate, since it provided confusing and contradictory comments about the wrist condition. Rather than have the veteran reexamined and the correct issue addressed, the claim was denied. In addition, no one ever took the time to realize that the claim for the left wrist had been pending since 1976.

- The veteran served on active duty in 1976. In June 2001, he filed a claim for a knee condition based on an in-service injury. When the VCAA letter was sent to him, it failed to mention that the regional office had rebuilt his claim folder (C-file), because the original file was lost. The regional office then sent two requests for service medical records to the National Personal Records Center (NPRC) in St. Louis, with negative results. In May 2002, the claim was denied on the basis of no evidence of the claimed injury in service. No mention was made of the lost original C-file, which would include the service medical records. However, the denial notice did state that the veteran's records might have been destroyed in the fire at the St. Louis Records Center. The problem with this statement is that the veteran got out of service in 1976 and the fire at NPRC was in 1973.

From these few examples of recent regional office errors and misstatements, it is easy to understand why so many veterans become confused, frustrated, and angry. The system that Congress put in place to assist them and provide them the benefits earned by their service and sacrifice is letting them down. Moreover, veterans are clearly at a disadvantage in convincing VA to be more concerned and responsive to their needs. In the private sector, if veterans receive poor service from a private company, they can chose to take their business elsewhere. When it comes to service from VA, whether it is a claim for benefits or medical care, veterans have no other place to go. Congress must ensure VA lives up to these historic and statutory duties and responsibilities.

Those claims that have been remanded back to the regional offices by the Board of Veterans Appeals make up a substantial part of the backlog pending appeals. The Under Secretary for Benefits, Daniel Cooper, in a letter dated July 26, 2002 to regional office directors makes some very revealing comments regarding the appeals backlog:

> ***There are nearly 100,000 active appeals nationwide, which have been pending "on average" 572 days. Although this "period" included BVA delay time, the specific and discrete components of the appellate process, which VBA can control, are in dire need of improvement. Looking at the number of days from NOD (Notice of Disagreement) to SOC (Statement of the Case), those to certify an appeal and those to certify a remand, I'm sure you agree with me that the timeframes are ludicrous. I ask you to immediately direct your attention to your local appellate backlog and regain control of this process. I realize some ROs are in full control of appeals and remands and some made the "command decision" to hit "Eps" (work credit end-products) very hard while allowing these and others to "slide". That is no longer an option. Timeliness***

measures incorporating VBA components of the appellate process will be included in performance standards for next fiscal year.

The Under Secretary's comments illustrate the unexpected depth and extent of VBA's quality problems. The American Legion agrees with his assessment of the current situation. However, while emphasizing the need for change, he neglects to direct the regional offices to expedite action on the remands, as required by law. The task of reforming the adjudication process will be difficult and long. The regional office culture has, in recent years, become increasingly focused on process and production. There is a prevailing willingness to ignore the statutory and regulatory protections afforded claimants among managers and adjudicators that The American Legion finds very disturbing.

The continued growth in the backlog of pending appeals and aging remands is unacceptable to The American Legion. Disabled veterans should not be forced to wait years for a decision on a claim. Clearly, they are not receiving the benefits or the level of service they are entitled to under the law. Many have already died, before their claims were ever adjudicated and their survivors have found they are only entitled to partial retroactive benefits. Given the lack of substantial progress toward resolving these claims, The American Legion is unwilling to let this situation continue and is considering legal options to force VA compliance with the law and its own regulations.

As mentioned earlier, another concern of The American Legion that warrants congressional oversight is the backlog of pending new appeals and remands. The American Legion has become increasingly concerned by the fact that VBA's efforts have focused almost exclusively on reducing the backlog pending claims. The Tiger Team and the resource centers are intended to complete action on "old" pending claims, especially those of veterans aged 70 and older. However, despite the progress being made in resolving many of these longstanding cases, minimum or no effort is being directed toward the oldest claims in the system, the over 26,000 outstanding remands. Many of these ongoing cases have been in remand status for 3 years or more. Such extensive delays are outrageous and are clearly contrary to the intent of title 38, United States Code, section 5101, (PL 103-446), which states in pertinent part that "The Secretary of Veterans Affairs shall take such actions as may be necessary to provide for the expeditious treatment, by the Board of Veterans Appeals and by the Regional Offices of the Veterans Benefits Administration, of any claim that has been remanded by the Board of Veterans Appeals or the United States Court of Appeals for Veterans Claims for additional development or other appropriate action."

The United States Court of Appeals for Veterans Claims, in *Stegall v. West* (11 Vet.App. 268, 270 (1998), reiterated the Secretary's duty to expedite remanded claims. The American Legion believes, if any claims should receive priority handling and expedited consideration, it should be these appeals. Many of these appeals have been remanded multiple times, because of the regional office's repeated failure to fully comply with the Board of Veterans Appeals' instructions. The current situation is an injustice that should not be tolerated.

What is particularly distressing in this debate about the regional offices' backlogs and quality problems is that it takes a year or more for a claim to be processed and another several

years for an appeal to reach the Board of Veterans Appeals. If the veteran pursues an appeal to the United States Court of Appeals for Veterans Claims or the United States Court of Appeals for the Federal Circuit, it will take several more years. During this time, hundreds of disabled veterans will have died before they ever receive a final decision from the court or VA.

While this injustice is bad enough, it is compounded by the fact that when the veteran dies, their long-pending claim dies with them. While the surviving spouse or children can apply for accrued benefits, under 38 USC 5121, the payment is currently limited to two years of retroactive benefits. The American Legion believes this restriction is grossly unfair. The veteran's family is penalized for VA's inability to process the veteran's claim in a timely manner. Prior to the enactment of PL 104-275 in 1996, payment was limited to only one year of retroactive benefits. The American Legion supports the elimination of any restriction or limitation on the survivor's entitlement to the payment of accrued benefits from the date of the claim that was pending at the time of the veteran's death. It is hoped that Congress will act to correct what is clearly a longstanding inequity in the law.

In light of the foregoing, The American Legion believes it is imperative that the regional offices have sufficient trained personnel, in order to provide quality, timely service. Even though VBA has increased overall staffing in the last two years, recruitment must continue in preparation for the projected large scale retirement of its senior cadre. The budget request for FY 2003 calls for an additional 125 FTE to support the various claims improvement initiatives now underway. The American Legion continues to support VBA's annual request for additional personnel. However, from our recent quality checks, the reliability and accuracy of regional office workload data supporting the requested increase is open to serious question. VBA's recruitment efforts in the past three years have resulted in a high percentage of trainees. VBA must show a new willingness to invest the time and effort in training for all employees, even though this may adversely impact production. Quality decision-making must become VBA's number one priority, rather than a set of artificial, bureaucratic production goals. In tolerating continued poor quality adjudication and a high rate of appeals, VBA squanders its scarce resources by creating additional and otherwise unnecessary work, employee morale suffers, and, in the final analysis, veterans and their families experience needless frustration and financial hardship.

This is a difficult period of transition for VBA. The American Legion, as a major stakeholder in VBA's benefit programs, is committed to ensuring that it provides the best quality, timely service to veterans and their families.

The American Legion recommends $1.3 billion for VBA-General Operating Expenses in Fiscal Year 2004.

BOARD OF VETERANS APPEALS

VBA's single-minded approach to the backlog crisis is having an adverse effect on the operations of the Board of Veterans (BVA). Over the past year, the majority of the regional offices' time and attention has been focused on processing new and reopened claims to the exclusion of pending new appeals and remands. According to VBA regional office workload

data, in this time period, the number of appeal cases requiring adjudicative action increased from 95,000 to 97,000. This includes over 26,000 remands, many of which date back to 1996 and 1997. Over the past three years, the Board increased its staffing from 468 FTE in FY 1999 to a requested 476 FTE for FY 2002 in anticipation of a continued influx of new appeals and completed remands from the regional offices. However, in recent months, rather than having sufficient cases to keep the attorneys and Board Members busy, the Board has become desperate for work. The Board has, in fact, sent teams to a number of regional offices to help with the completion of Statements of the Case to try and increase the number of certified appeals. Since the first of this year, those cases, which have the good fortune to come before the Board, have received expedited consideration.

The Board's decision to grant, deny, or remand, is a direct reflection on the quality of regional office adjudication and decision making. Through the third quarter of FY 2002, the Board overturned the decisions of the regional office and allowed 26.9 percent of the appeals and remanded 24.3 percent for further development and readjudication. It affirmed the regional office's decision by denying the appeal in 45.8 percent of the cases.

The regional offices' lack of action on the appellate workload has slowed the normal monthly flow of certified appeals and returning remands considerably. By way of comparison, in FY 2000, the Board received 35,500 cases and in FY 2001, it received 18,700 cases. Through the third quarter of FY 2002, 18,300 cases have been received. The Board's output of decisions has shown a similar pattern. In FY 2000, some 34,000 decisions were issued. In FY 2001, the Board decided 31,500 cases. Since there were relatively few cases carried over from 2001 and minimal receipts through the third quarter of FY 2002, the Board has only issued 11,075 decisions.

In response to both the slow pace of cases coming in from the regional offices and the continuing problem of incomplete and inadequate development of remanded cases, the Board has now undertaken the development of certain cases rather than remanding them to the regional office for such action. The new development program initially started in February 2002 with 15 FTE who were drawn from the Board and the Compensation and Pension Service. Staffing is now up to 31 FTE. Currently, over 4,000 cases are under development at the Board, in lieu of being remanded to the regional offices. At this point, it is still too early to tell if this new program will prove to be a more efficient use of the Board's considerable resources.

The American Legion is supportive of the Board's development program and its intent to provide veterans with more timely and better quality decisions. As commendable as this initiative is, it leaves untouched the problems underlying the overall increase in the number of appeals, which are primarily related to poor quality basic adjudication, by the regional offices. Current VBA policies emphasizing production over quality continue to result in claims being arbitrarily or prematurely denied. Such policies, in the view of The American Legion, directly contribute to the growing backlog of new appeals.

Instead of sending cases to the Board, regional offices have set them aside for months or sometimes years, because they are not receiving work credit toward their production quotas for action on appeals. Remands are subject to a similar fate. These longstanding claims continue to

sit in the regional offices waiting for completion of the required action. Once this has been done, the regional office will readjudicate the claim and either grant the benefit sought or deny it and return it to the Board. However, unless and until VBA's policies substantially change, there is little or no immediate prospect that these cases will return to the Board any time soon. It is hoped that Congress will recognize the hardship being imposed on thousands of veterans and their families and ensure that VA take immediate remedial action to provide them the service and benefits they rightly deserve and are entitled to by law.

Reform Recommendations

The foregoing discussion of VBA and the Board has outlined The American Legion's deep concern about the lack of quality and quality assurance in the processing of veterans benefits claims. This discussion has also touched on some of the formidable problems that VBA has yet to effectively address, not the least of which is the continued disregard of its statutory mandates – The Veterans' Claims Assistance Act of 2000 and the Veterans' Benefits Improvement Act of 1994 – and its own regulations. The American Legion has previously shared its views and recommendations for essential reforms in the adjudication process of veterans' claims with the Veterans Affairs Committees and with VA officials, including Secretary Principi's Claims Processing Task Force.

It is recognized that VBA has a variety of initiatives planned and underway, which are intended to improve the quality of adjudicators' decision-making. However, thus far, these efforts appear to be having a negligible impact and are being undermined by competing management priorities that emphasize speed over propriety. If VBA is going to be successful in improving the level and quality of service to veterans and other claimants, The American Legion believes the following changes should be considered:

- Ensure that VA complies with both its statutory and regulatory duty to provide notice to the claimant regarding what evidence to submit in order to substantiate a claim for benefits. Currently, VCAA letters are mostly boilerplate, confusing, and uninformative. They are not individualized to veteran's claims, nor do they provide essential information to the claimant concerning the evidence needed to support the claim. VA is to inform the claimant as to what evidence the claimant is expected to provide, and that which the VA will be responsible for obtaining.

- Fundamental changes must be made in VBA's work measurement system. This system has been in use since the 1970s and is one of the most significant factors contributing to the current backlog of claims and the high rate of appeals. It does not provide accurate, reliable data on the actual amount of work accomplished. The manner in which "work" is reported lends itself to abuse and manipulation. The American Legion advocates the replacement of this system as a top VBA priority. This must be a prerequisite step toward permanently improving the claims adjudication process. Under the present system, managers and adjudicators are evaluated based on the number of claim actions reported, regardless if the claim was denied or granted or whether the claim took one day or two years. Thus, there is a strong incentive to adjudicate claims quickly, even if they are done

incorrectly. This frequently results in failure to properly notify claimants, incomplete development, and premature and arbitrary denials.

The American Legion recommends that a new VA work measurement system be implemented, which would not allow the regional offices to claim work credit for a claim until the appeal period expires. This would provide an incentive to adjudicate claims thoroughly, correctly, and as early as possible. There would be improved evidentiary development and greater claimant confidence in the decision-making process would decrease the number of appeals to the Board of Veterans Appeals. It would also provide more realistic and accurate workload and resource data. Finally and most importantly, it would result in earlier grants of benefits to veterans and their survivors.

- VBA's quality assurance program must be reinvigorated. It must be reliable, and independent from station influence. Results of individual and regional office quality checks must be coordinated with follow-up training.

- Ongoing training for all levels of adjudicators must be a VBA priority.

- The American Legion strongly recommends that area and regional office managers be made accountable for the quality of work in their offices. Currently, performance evaluations are focused on station productivity, rather than the quality of work being done by station personnel. These managers must have rational performance, timeliness, and productivity standards. This recommendation goes hand-in-hand with the discussion of needed changes in the work measurement system. Without accurate, reliable data, it is impossible to properly assess and evaluate how regional offices are actually performing.

- VBA must revise its policies and procedures to ensure that remands are handled expeditiously, as required by law. There must be greater quality control at the regional office level to ensure compliance with the BVA remand instructions the first time, so as to avoid multiple remands and years of wasted time and effort, and continued hardship for the veteran.

TOBACCO-RELATED ILLNESSES

An issue of deep concern to The American Legion is the bar to compensation to veterans who developed a disease or who died of a disease which is relatable to their use of tobacco during their period of active military service. The American Legion believes a great injustice was done to service-disabled veterans with the passage of PL 105-206, the Transportation Equity Act for the 21st Century. This was a purely budget-driven piece of legislation, which had everything to do with politics and nothing to do with fairness and propriety.

Disability claims by veterans, who began to use tobacco in service in World War II, Korea, and Vietnam and who years later develop a tobacco-related disease, are now being denied under Section 1103, title 38, USC. In imposing this bar to benefits, Congress conveniently overlooked 200 years of government pro-tobacco policy, which condoned and encouraged the use of tobacco products by members of the armed forces. In 1998, based on grossly overstated

and misleading VA cost estimates, thousands of veterans had their historic right to compensation and VA medical care abruptly taken away.

The American Legion is committed to the restoration of the rights to these disenfranchised veterans.

VETERANS' EMPLOYMENT AND TRAINING PROGRAMS (VETS)

The mission of VETS is to promote the economic security of America's veterans. This stated mission is executed by assisting veterans in finding meaningful employment. The American Legion views the VETS program as one of the best-kept secrets in the Federal government. It is comprised of many dedicated individuals who struggle to maintain a quality program without substantial funding and staffing increases.

Annually, DoD discharges approximately 250,000 service members. These recently separated service personnel are actively seeking immediate employment or preparing to continue their formal or vocational education. The VETS program:

- Continues to improve by expanding its outreach efforts with creative initiatives designed to improve employment and training services for veterans.
- Provides employers with a labor pool of quality applicants with marketable and transferable job skills.
- Provides information on identifying military occupations that require licenses, certificates or other credentials at the local, state, or national levels.
- Eliminates barriers to recently separated service personnel and assists in the transition from military service to the civilian labor market.

VETS recently started an information technology project with the Computing Technologies Industry Association, to recruit veterans recently separated from the military; assess their interests and skill level for a career in information technology; provide occupational skills training and certification; and place these veterans into information technology jobs. Additionally, VETS continues to expand its existing PROVET (Providing Re-employment Opportunities for Veterans) program in several states. PROVET is an employer-focused job development and placement program that focuses on screening, matching and placing job ready transitioning service members into career-building jobs. In addition to these programs, VETS also provides services through the Transition Assistance Program (TAP), the Disabled Transition Assistance Program (DTAP), Veterans Preference in the Federal workplace, and the Uniformed Services Employment and Re-employment Rights Act (USERRA).

The American Legion believes staffing levels for Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representatives (LVER) should match the Federal mandates or those statutes should be rewritten. We respectively support an additional $54 million and $38 million for the DVOP and LVER programs for FY 2004 funding. These increases will allow the programs to increase staffing to adequately provide comprehensive case management job assistance to disabled and other eligible veterans.

The American Legion recommends a funding level of $330 million for the Veterans' Employment and Training Service in Fiscal Year 2004.

Additionally, The American Legion recommends an increase in the National Veterans Training Institute (NVTI) budget to $3 million in FY 2004. The NVTI provides standardized training for all veterans employment advocates in an array of employment and training functions.

The American Legion recommends that $10 million of VETS funding be provided for incarcerated veterans' transition assistance programs beginning in FY 2004. The American Legion commends VETS current efforts to design a plan to provide outreach services to incarcerated veterans**,** however, no funds have been appropriated. All too often, the state prison systems are not providing adequate vocational and life skills training to inmates that are nearing their release dates. VETS could provide meaningful assistance to veteran inmates. The Federal government, in cooperation with individual states, could provide effective outreach services to incarcerated veterans to assist in a successful transition to a productive civilian life.

The American Legion recommends $30 million be provided for veteran training programs similar to the Service Members Occupational Conversion and Training Act (SMOCTA). SMOCTA was developed as a transitional tool designed to provide job training and employment to eligible veterans discharged after August 1, 1990. Veterans eligible for assistance under SMOCTA were those with a primary or secondary military occupational specialty that DoD has determined is not readily transferable to the civilian workforce; or those veterans with a service connected disability rating of 30 percent or greater.

Eligible veterans receive valuable job training and employment services through civilian employers that built upon the knowledge and job skills the veterans acquired while serving in the military. This program not only improved employment opportunities for transitioning service members, but also enabled the federal dollars invested in education and training for active duty service members to be reinvested in the national job market by facilitating the transfer of skills from military service to the civilian workforce.

The American Legion strongly opposes any attempt to move VETS to VA. The Department of Labor (DoL) is the nation's leading agency for job placement, vocational training, job development, and vocational counseling. Due to the significant barriers to employment experienced by many veterans, VETS was established to provide eligible veterans with the services being provided to job ready Americans. Working with the local employment service offices, VETS gave eligible veterans the personalized assistance needed to enhance the transition into the civilian workforce. VA has very limited experience in the critical areas of job placement, vocational training, job development, and vocational counseling through its Vocational Rehabilitation Program.

In the President's budget request for FY 2003, he proposes to add $197 million to VA's budget for a new competitive grant program that replaces programs currently administered by the DoL. The American Legion expressed opposition to a similar recommendation proposed by the Congressional Commission on Service members and Veterans Transition Assistance in 1999. The American Legion continues to oppose the transfer of VETS from DoL to VA.

VETERANS EDUCATION BENEFITS

ALL-VOLUNTEER FORCE EDUCATIONAL ASSISTANCE PROGRAM

The American Legion commends the 107th Congress for its actions to improve the current Montgomery GI Bill (MGIB). A stronger MGIB is necessary to provide the nation with the caliber of individuals needed in today's Armed Forces. The American Legion appreciates the efforts that this Congress has made to address the overall recruitment needs of the Armed Forces and to focus on the current and future educational requirements of the All-Volunteer Force.

Over 96 percent of recruits currently sign up for the MGIB and pay $1,200 out of their first year's pay to guarantee eligibility. However, only one-half of these military personnel use any of the current Montgomery GI Bill benefits. This we believe is directly related to the fact that current GI Bill benefits have not kept pace with the increasing cost of education. Costs for attending the average four-year public institution, as a commuter student during the 1999-2000 academic year was nearly $9,000. PL 106-419 recently raised the basic monthly rate of reimbursement under MGIB to $650 per month for a successful four-year enlistment and $528 for an individual whose initial active duty obligation was less than three years. The current educational assistance allowance for persons training full-time under the MGIB – Selected Reserve is $263 per month.

The Servicemen's Readjustment Act of 1944, the original GI Bill, provided millions of members of the Armed Forces an opportunity to seek higher education. Many of these individuals may not have been afforded this opportunity without the generous provisions of that act. Consequently, these servicemen and servicewomen made a substantial contribution not only to their own careers, but also to the economic well being of the country. Of the 15.6 million veterans eligible, 7.8 million took advantage of the educational and training provisions of the original GI Bill. Between 1944 and 1956, when the original GI Bill ended, the total educational cost of the World War II bill was $14.5 billion. The Department of Labor estimates that the government actually made a profit because veterans who had graduated from college generally earned higher salaries and therefore paid more taxes. Today, a similar concept applies. The educational benefits provided to members of the Armed Forces must be sufficiently generous to have an impact. The individuals who use MGIB educational benefits are not only improving their career potential, but also, making a greater contribution to their community, state, and nation.

The American Legion recommends the following improvements to the current MGIB:

- The dollar amount of the entitlement should be indexed to the average cost of a college education including tuition, fees, textbooks, and other supplies for a commuter student at an accredited university, college, or trade school for which they qualify

- The educational cost index should be reviewed and adjusted annually,

- A monthly tax-free subsistence allowance indexed for inflation must be part of the educational assistance package,

- Enrollment in the MGIB shall be automatic upon enlistment, however, benefits will not be awarded unless eligibility criteria have been met,

- The current military payroll deduction ($1,200) requirement for enrollment in MGIB must be terminated,

- If a veteran enrolled in the MGIB acquired educational loans prior to enlisting in the Armed Forces, MGIB benefits may be used to repay those loans,

- If a veteran enrolled in MGIB becomes eligible for training and rehabilitation under Chapter 31, of Title 38, United States Code, the veteran shall not receive less educational benefits than otherwise eligible to receive under MGIB,

- A veteran may request an accelerated payment of all monthly educational benefits upon meeting the criteria for eligibility for MGIB financial payments, with the payment provided directly to the educational institution.

- Separating service members and veterans seeking a license or credential must be able to use MGIB educational benefits to pay for the cost of taking any written or practical test or other measuring device,

- Eligible veterans shall have 10 years after discharge to utilize MGIB educational benefits,

- Eligible members of the Select Reserves, who qualify for MGIB educational benefits shall receive not more than half of the tuition assistance and subsistence allowance payable under the MGIB and have up to 5 years from their date of separation to use MGIB educational benefits.

The American Legion believes that each of these provisions are equally important to providing the necessary enhancements to the MGIB.

HOMELESS VETERANS

The American Legion has been committed to assisting homeless veterans and their families for a number of years. There are many programs within The American Legion that support this mission. I have personally been active in homeless veteran issues in my home state of Pennsylvania. With the assistance of my Legion post, I started one of the first Veterans Homeless Shelters in the country ten years ago. Other American Legion posts, for example in Massachusetts and New York, support VA's efforts through volunteerism and donations. The American Legion recognizes the significant contributions that community based programs can make in responding to the needs of homeless veterans.

Last year, VA estimated that there were 344,983 homeless veterans in America, which was a 34 percent increase above the 1998 report. Most homeless veterans today are single men; however, the number of single women with children has drastically increased within the last few years. Homeless female veterans tend to be younger, more likely to be married, and less likely to be employed. They are also more likely to suffer from serious psychiatric illness.

Approximately 40 percent of homeless veterans suffer from mental illness, and 80 percent have alcohol or other drug abuse problems. It cannot go unnoticed that the increase in homeless veterans coincides with the under-funding of VA health care, which resulted in the downsizing of inpatient mental health capabilities in VA hospitals across the country. Since 1996, VA has closed 64 percent of its psychiatric beds and 90 percent of its substance abuse beds. It is no surprise that many of these displaced patients would end up in jail, or on the streets. The American Legion believes there should be a focus on the prevention of homelessness, not just measures to respond to it. Preventing it is the most important step to ending it.

The American Legion applauds the efforts of the 107th Congress, in improving the lives of homeless Veterans by advocating the passage of PL 107-95. This law increases funding for the homeless Veterans Reintegration Program (HVRP). The HVRP program is an employment initiative with strong ties to local communities. Providers operate veteran-specific programs that reach veterans with histories of intertwined posttraumatic stress disorder (PTSD) and substance abuse. HVRP grantees have placed hundreds of veterans in good jobs, with twice the record of job retention expected. This comprehensive piece of legislation has the potential for eliminating chronic homelessness among our nation's veterans. It covers myriad initiatives that address prevention, housing, counseling, treatment and employment for veteran's transitioning out of homelessness. The American Legion also suggests additional funds to implement provisions of this law and direct the Department of Veterans Affairs to ensure funding is segregated outside the VERA model, as special purpose funding for homeless veterans.

Homelessness in America is a travesty, and veterans' homelessness is disgraceful. Left unattended and forgotten, these men and women who once proudly wore the uniforms of this nation's armed forces and defended her shores are now wandering her streets in desperate need of medical and psychiatric attention and financial support. While there have been great strides in ending veteran homelessness there is much more that needs to be done. We must not forget them.

SUMMARY

Messrs. Chairmen and Members of these Committees, The American Legion appreciates the fine work and dedication you have demonstrated throughout the year to facilitate improvements in the many programs that affect the health and welfare of the nation's veterans.

The American Legion has outlined many central issues in our testimony today. We believe all of these issues are important and we are fully committed to working with each of you to ensure that America's veterans receive the entitlements they have earned. Whether it is improved accessibility to health care, timely adjudication of disability claims, involvement in the CARES process, improved educational benefits or employment services, each and every aspect of these programs touches veterans from every generation. Together we can ensure that these

programs remain productive, viable options for the men and women who have chosen to answer the nation's call to arms.

Thank you for granting me the opportunity to appear before you today.