

**STATEMENT OF  
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BEFORE THE  
COMMITTEE ON VETERANS' AFFAIRS  
UNITED STATES SENATE  
ON  
LEGISLATIVE PROPOSALS CONCERNING  
THE DEPARTMENT OF VETERANS AFFAIRS'  
LONG-TERM CARE PROGRAMS**

**MAY 12, 2005**

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to express The American Legion's views on current legislative proposals concerning Department of Veterans Affairs' (VA) Long-Term Care programs. This hearing could not have been scheduled at a better time as many World War II and Korean War veterans age into a population that exceedingly relies on geriatric care facilities and professionals.

The American Legion is disturbed by VA's continuing efforts to abdicate its responsibility to America's aging veterans. This year's VA budget request contains three legislative proposals that would further those efforts. The first would repeal language in the Millennium Health Care Act that requires VA to maintain its own nursing home bed inventory at the 1998 level of 13,391. The second would change eligibility criteria for VA nursing home care and deny State Veterans Homes Per Diem to all but veterans in Priority Groups 1 through 3 and catastrophically disabled Priority Group 4 veterans. The third would cut all funding for the State Veterans Homes Construction Grants Program for fiscal year 2006. The American Legion opposes all these measures.

**Impoverishment Among Aging Veterans**

There is currently a substantial aging veterans' population that is now and will continue to present significant demands on the Veterans Health Administration's (VHA's) budget well into the 21st century. The ages of World War II and Korean War veterans range from 65 to well over 90 years old. The vast majority of these veterans live on fixed incomes with medical expenses exceeding their disposable income, especially those requiring maintenance medications to sustain their quality of life. Medical care quickly becomes a hardship for these veterans and their families. We do not need to remind the Committee that in such cases, many decisions are made about whether to buy heating fuel, food, electricity or telephone service or to pay for medicines and care required to merely to stay alive. The American Legion believes that it is a national disgrace that veterans who stormed the beaches of Europe and the Pacific, stopped the advance

of communism in Korea, were held prisoners of war, suffered frostbite, contracted malaria and a host of other tropical diseases, not to mention exposure to ionizing radiation, are forced to make such decisions. How do we, as a nation, now repay them for their sacrifices of body and psyche, of friends lost, and opportunities forsaken? We do so by keeping former President Lincoln's promise – "...to care for him who shall have borne the battle...". VA should, at a minimum, meet the mandates for long term care set forth in the Millennium Health Care Act and provide care for America's veterans at the end of their lives, when they are the most vulnerable and in greatest need.

### **VA Nursing Home Care Unit Bed Capacity**

The President's fiscal year 2006 VA budget request contains a legislative proposal to repeal the provision of the Millennium Act requiring VA to maintain its Nursing Home Care Unit (NHCU) bed capacity at the 1998 level of 13,391. The language in the budget request refers to this mandate as "a baseline for comparison." The Millennium Health Care Act requires VA to maintain its in-house bed inventory at the 1998 level; however, this capacity has significantly eroded rather than been maintained. In 1999 there were 12,653 VA NHCU beds, 11,812 in 2000, 11,672 in 2001 and 11,969 in 2002. VA estimated it had 12,239 beds in 2003 and 12,245 in 2004. The President's budget request projects only 9,975 in fiscal year 2006, a 27% decrease from the Millennium Act mandate. VA claims that it cannot maintain both the mandated bed capacity and implement all the non-institutional programs required by the Millennium Act.

According to VA's FY 2002 Annual Accountability Report Statistical Appendix, in September 2002, there were 93,071 World War II and Korean War era veterans receiving compensation for service-connected disabilities rated seventy percent or higher. The American Legion believes that VA should comply with the intent of Congress to maintain a minimum LTC nursing home capacity for those disabled veterans who are in the most resource intensive groups; clinically complex, special care, extensive care and special rehabilitation case mix groups. The nation has a special obligation to these veterans. They are entitled to the best care that VA has to offer and they should not be dumped onto Medicaid, as is now the trend. Providing adequate inpatient LTC capacity is good policy and good medicine.

### **VA Proposal to Change Long Term Care Eligibility**

VA's budget request for fiscal year 2006 contains a legislative proposal that would modify eligibility for long term (maintenance) care to veterans in Priority Groups 1 through 3 and catastrophically disabled Priority Group 4 veterans. Non-catastrophically disabled Priority Group 4 and Priority Groups 5 through 8 would be entitled to only short-term care. Currently, VA is only required to furnish nursing home care to veterans who are rated 70 or higher service-connected disabled and to those veterans who require it because of a service connected condition. According to the U.S. Census, there were 328,363 such veterans in 2000. VETPOP2001 Adjusted projects this number to increase to 462,581 by 2010 and 533,695 by 2020, representing 29.1 percent and 39.5 percent increases over 2000, respectively. An examination of the VA Long Term Care Fact Sheet shows that State Veterans Homes ADCs will have risen between 1999 and 2004 (estimated) by approximately the same number of veterans as the decline in VA's NHU ADC.

VA may also furnish nursing home care to veterans who have service connected disabilities less than 70%, who were discharged from active duty because of an injury or illness incurred, were disabled due to VA medical care or vocational rehabilitation, were veterans of the Mexican border period or World War I, were exposed to toxic substances or radiation or are unable to defray the costs of care. Subject to resource and facility availability, VA may also furnish nursing home care to veterans who agree to make payments.

The FY 2006 VA Budget request anticipates a reduction of 3,299 full time equivalent (FTE) employees based on the proposed new Nursing Home eligibility criteria (PGs 1-3 and catastrophic 4s only) being enacted. Eliminated under the proposal are; 1098 registered nurses (RNs), 665 licensed practical nurses (LPNs) and nursing assistants (NAs), and 766 technicians and allied health professionals. New mental health initiatives would, however, add 627 FTE, resulting in a net reduction of 2,672 FTE VHA-wide. Obligations by object reflect a flat appropriation for fiscal year 2006 over fiscal year 2005 (\$3.49 billion for RNs and 1.05 billion for LPNs and NAs - no change). The American Legion is incredulous that VA would consider eliminating nearly 1800 nursing positions at a time when VA is in the midst of a national nursing shortage.

### **Effect on the State Veterans Homes Per Diem Grants Program**

Since 1984, nearly all planning for VA inpatient nursing home care has revolved around State Veterans Homes (SVH) and contracts with public and private nursing homes. The reason for this is obvious; VA pays a per diem of only \$59.48 (FY 2004 rate) for each veteran it places in SVHs, compared to the \$354.00 VA says it cost in FY 2002 to maintain a veteran for one day in its own Nursing Home Care Units (NHCUs). VA NHCUs employ experienced nursing staff paid salaries comparable with state or regional locality pay rates and VA tends to fill vacancies with registered nurses rather than less skilled workers, such as nurses aides. In FY 2001, 79 percent of veterans served in VA NHCUs were in the clinically complex, special care, extensive care and special rehabilitation case mix groups. These groups are the four highest resource intensive categories, resulting in a higher cost of care. SVHs, on the other hand, are required to provide the same levels of care to an increasing Average Daily Census for the VA per diem, plus whatever Medicaid, private insurance and veteran co-payments are available. Any shortfall in SVH operating revenue must come from private donations and state treasuries.

The State Veteran Homes have been a successful cost-sharing program between VA, the States and the veteran. Veterans in SVHs tend to be without family, indigent and requiring of aid and attendance. One SVH has estimated that the changes in eligibility criteria contained in the FY 2006 budget proposal would cut its Average Daily Census by 80% and cost the facility \$2 million per year. This proposal would spell financial disaster for SVHs and would result in a new population of homeless elderly veterans on our streets, especially in states with low Medicaid nursing home reimbursement rates. It has also been suggested that a surge in claims for service connection would ensue as SVHs scramble to qualify veterans for inclusion in Priority Groups 1 through 3 and catastrophically disabled Priority Group 4. The American Legion opposes the application of the proposed nursing home eligibility criteria to the State Veterans Homes per diem grant program and supports increasing the amount of authorized per diem payments to 50

percent of the cost of nursing home and domiciliary care provided to veterans in State Veterans Homes and full reimbursement for veterans with 70 percent or greater service-connected disabilities

### **VA Proposal to Zero-Out the State Veterans Homes Construction Grants Program in FY 2006**

Under the provisions of Title 38, United States Code (U.S.C.), VA is authorized to make payments to states to assist in the construction and maintenance of SVHs. Today, there are 109 SVHs in 47 states with over 23,000 beds providing nursing home, hospital, and domiciliary care. The Grants for Construction of State Veterans Homes provides funding for 65 percent of the total cost of building new veterans homes and about 3,500 beds per year are planned for the next four years. VA has not been able to keep pace with the number of grant applications; and currently there is over \$120 million in unfunded new construction projects pending. Recognizing the growing long-term health care needs of older veterans, it is essential that the State Veterans Home Program be maintained as a viable and important alternative health care provider to the VA system.

The fiscal year 2006 VA Budget Request contains zero dollars for the State Extended Care Facility Grants Program; instead VA would impose a one-year “moratorium” on grants for new facilities construction while VA completes a nationwide infrastructure assessment study of its institutional long term care. We fail to see the utility in suspending payment of construction grants in FY 2006, especially in states having never previously applied and in states having significant need. The American Legion recommends \$124 million for the State Extended Care Facility Grants Program in FY 2006.

### **Mandatory Funding for VHA**

The American Legion believes that the current discretionary appropriations mechanism that funds VA’s Long-Term Care programs remains inadequate to meet the growing demands of the veterans’ community. The American Legion believes that without significant budgetary reform, VA will continue to shift the burden of Long-Term Care onto families, communities and other federal programs. The American Legion continues to advocate mandatory funding for VA medical care. This budgetary move would enable VA to meet its obligation to provide geriatric and other health care services for aging and service-connected disabled veterans. The passage of the Veterans Millennium Health Care and Benefits Act (PL 106-117) charged VA to provide quality Long-Term Care through VA or by contract. The American Legion believes once VA accepts a veteran as a Long-Term Care patient, no matter when or under what provision of law, the long-term care of that veteran should be provided through VHA.

### **Conclusion**

Mr. Chairman and Members of the Subcommittee, as a nation at war; we are reminded of the hardships and sacrifices of a small portion of America – our veterans. On Memorial Day, across the nation, we will praise veterans – past, present, and future. The thanks of a grateful nation will echo in national veterans’ cemeteries and in the halls of VA medical facilities. But

regrettably, there are thousands of veterans waiting for access to VA's quality health care and even worse, hundreds of thousands of Priority Group 8 veterans will not even be allowed to enroll – regardless of their medical conditions. It is a sad commentary that when frail, elderly veterans become financially destitute, they may enroll as Priority Group 6 veterans and join their colleagues on the waiting list. Under the Administration's current proposals, even this limited opportunity for a dignified end-of-life would be foreclosed.

The American Legion believes there are better alternatives in meeting the health care needs of America's veterans:

- VA medical care should be funded as mandatory, rather than discretionary appropriations;
- VA should be recognized as a Medicare provider and be authorized to collect and retain third-party reimbursements for the treatment of allowable nonservice-connected medical conditions of enrolled Medicare-eligible veterans; and
- VA should be authorized to offer a premium-based health benefit packages (to include specialized services) to veterans with no private or public health insurance to meet their individual health care needs.

Thank you for the opportunity to present testimony on this critical issue. This concludes The American Legion's testimony.