STATEMENT OF
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THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
H.R. 241, THE VETERANS BENEFICIARY FAIRNESS ACT; H.R. 533, THE AGENT ORANGE VETERANS' DISABLED CHILDREN'S BENEFITS ACT; H.R. 761, THE DISABLED SERVICEMEMBERS ADAPTED HOUSING ASSISTANCE ACT; H.R. 850, THE FORMER PRISONERS OF WAR SPECIAL COMPENSATION ACT; H.R. 966, THE DISABLED VETERANS RETURN-TO-WORK ACT; AND H.R. 1048, THE DISABLED VETERANS ADAPTIVE BENEFITS IMPROVEMENT ACT.

APRIL 10, 2003

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to present The American Legion's views on H.R. 241, the Veterans Beneficiary Fairness Act; H.R. 533, the Agent Orange Veterans' Disabled Children's benefits Act; H.R. 761, the Disabled Servicemembers Adapted Housing Assistance Act; H.R. 850, the Former Prisoners of War Special Compensation Act; H.R. 966, the Disabled Veterans Return-to-Work Act; and H.R. 1048, the Disabled Veterans Adaptive Benefits Improvement Act. We commend the Subcommittee for holding a hearing to discuss these important issues.

H.R. 241, the "Veterans' Beneficiary Fairness Act of 2003"

This bill would repeal the two-year limitation on the payment of accrued benefits to which the deceased veteran would have otherwise been entitled to at the time of the veteran's death, as currently set forth in title 38, United States Code, section 5121.

The American Legion's longstanding position has been that any limitation on the payment of accrued benefits is unfair. The enactment of PL 104-275 in 1996, which extended entitlement to accrued benefits from one year to two years, was a much needed step in the right direction. However, it still fell short of providing appropriate compensation to the veteran's family in a claim that had been pending for more than two years prior to the veteran's death.

VA currently has over 313,000 pending claims and another 134,000 cases requiring some type of action. While considerable progress has been made over the past year in reducing the overall backlog with particular attention to the older pending claims, a substantial number of these cases have essentially been "in process" for a year, two years, or more. In addition, there are also currently 118,000 pending appeals. These claims, by their very nature, are several years old, at a minimum. Very often, veterans filing these claims and appeals are very ill and, because of the

long processing times, many die before a final decision is ever made on their claim. The delays they and their families experience can result in adverse health effects and financial hardship. Upon the veteran's death, the pending claim or appeal also dies, unless a claim for accrued benefits is filed within one year of the veteran's death. Regardless of how long the veteran's case had been pending, whether at the regional office level or the Board of Veterans Appeals, an eligible survivor can only receive two years of retroactive benefits, rather than the full amount entitled to the veteran had he or she lived.

Mr. Chairman, H.R. 241 would remove this inequity and The American Legion fully supports this measure.

H. R. 533, the "Agent Orange Veterans' Disabled Children's Benefits Act of 2003"

This legislation would amend the current definition of a child eligible for spina bifida benefits set forth in Title 38, United States Code, section 1801. It would provide that any natural child of a veteran who performed qualifying herbicide-risk service and who has this disability is eligible for such benefits, not just those whose parent or parents served in Vietnam between January 9, 1962 and May 7, 1975. It defines qualifying herbicide-risk service to include an area in which a Vietnam-era herbicide was in use or where a veteran was otherwise exposed to such agents.

The American Legion believes this legislation is important in recognizing that Agent Orange was used in places other than Vietnam and that United States armed forces personnel were at risk of exposure. Spina bifida in their offspring is one of the potential consequences of such herbicide exposure. It has been known for sometime that during the Vietnam Era, Agent Orange was tested or used in the United States at locations such as Fort Drum, New York and used overseas in locales such as the Korean Demilitarized Zone from 1967-68. We wish to commend Ranking Member Lane Evans of the Full Committee for his efforts to encourage VA and DOD to follow up on any non-Vietnam veterans who may have been exposed to Agent Orange in such areas.

The American Legion strongly endorses the expansion of the spina bifida program provided for by the enactment of H.R. 533. It will ensure that the child of any veteran who suffers from this crippling birth defect resulting from their parent's exposure to Agent Orange during military service receives compensation, medical care, and entitlement to vocational training and rehabilitation.

H.R. 761, the "Disabled Servicemembers Adapted Housing Assistance Act of 2003."

The bill would authorize the Secretary of Veterans Affairs to provide adapted housing assistance to disabled members of the Armed Forces who are still on active duty and in the process of being separated for medical reasons. Currently, this program of assistance is only available to those service disabled individuals who have left active duty and become veterans.

Under this legislation, individuals who are undergoing medical board proceedings would become eligible for VA assistance in making certain modifications to their residence to accommodate their service-related disability. Although we do not have a formal position on this proposal, The American Legion believes this additional statutory authority will enable VA to help better

facilitate a service-disabled individual's transition to civilian life. This type of proactive approach is consistent with the concept of VA's Benefits Delivery at Discharge (BDD) program to reach out to servicepersonnel prior to their separation and provide direct assistance, rather than waiting upon discharge from service.

H.R. 850, the "Former Prisoners of War Special Compensation Act of 2003."

This legislation proposes the establishment of a special compensation program for former prisoners of war based on the length of their confinement. It would authorize payment of $150 monthly for those held up to 120 days; $300 monthly, if held more than 120 days but less than 540 days; and $450 monthly, if held more than 540 days. This benefit would not be affected by any other benefits to which the veteran may be entitled and would not be considered as income or resources for purposes of determining eligibility for any Federal or federally assisted program. In the absence of a mandate on the subject of special compensation, The American Legion takes no formal position on this proposal.

This bill would remove the current requirement in title 38, United States Code, section 1712, that an individual had to have been detained or interned for a period of not less than 90 days in order to be entitled to VA outpatient dental treatment. The American Legion has no objection to this provision. Studies have shown that there can be long lasting adverse health effects resulting from even a relatively short period of confinement as a prisoner of war. Given their experiences and hardships, access to dental care becomes an important factor in helping maintain these veterans' overall good health and we support the proposed change.

Mr. Chairman, The American Legion is very concerned by Section 3 of this bill, which is entitled "Clarification of Prohibition on Payment of Compensation for Alcohol or Drug-related Disability." It would amend title 38, United States Code, sections 1110 and 1131, to specifically state that disability compensation will not be paid to a former prisoner of war or any other veteran who is suffering from alcohol or substance abuse which is secondary to a service connected disability. The American Legion has always held the position that veterans who succumb to alcohol or drug-abuse caused by their service-connected disability are entitled to a level of compensation that reflects all aspects of their disability. The American Legion believes these veterans are in a very different category from those who engaged in conscious, willful wrongdoing and become alcoholics and/or drug abusers. The American Legion is, therefore, categorically opposed to any attempt to legislate away the rights of veterans who are suffering from disabilities resulting from their military service.

The intent of this proposal seemingly is to overturn the 2001 decision of the United States Court of Appeals for the Federal Circuit (the Federal Circuit or the Court) in *Allen v. Principi* (F.3d 1368). In *Allen*, the Court held that Congress, in enacting PL 96-466, the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), did not intend to preclude compensation for an alcohol or drug-related disability resulting from or secondary to a non-willful misconduct service-connected disability. Prior to OBRA 90, VA considered alcoholism and drug abuse disabilities unrelated to a service connected psychiatric disorder as willful misconduct. The term "willful misconduct" was defined in VA regulations as a deliberate and intentional act involving conscious wrongdoing or known prohibited action, with knowledge of or wanton and reckless

disregard of the probable consequences. However, the definition noted that mere technical violation of police regulations and ordinances will not per se constitute willful misconduct and that willful misconduct will not be determinative unless it is the proximate cause of injury, disease, or death. VA's policy was that the misconduct bar to benefits did not apply to those veterans whose alcohol or drug addiction was secondary to a service connected mental or physical disability.

OBRA 90 specifically provided in Title 38, United States Code sections 1110 and 1131 that an injury or disease that is the result of the abuse of alcohol or drugs is not considered to have occurred in the line of duty and VA may not pay compensation for disabilities that are the result of "the veteran's own willful misconduct or alcohol or drug abuse." Under OBRA 90, VA as a matter of policy and practice, would not grant secondary service connection for substance abuse, but would, where appropriate, incorporate the symptoms of alcohol and drug abuse into the overall evaluation of the primary service connected disability. As an example, a veteran may be rated for "PTSD with alcoholism." In 1998, the United States Court of Appeals for Veterans Claims (CVAC), in *Barela v. West* (11 Vet.App. 280), held that, while OBRA 90 provided for service connection of alcohol and drug-related disabilities as being secondary to a service connected disability, VA could not pay compensation for such disabilities.

As a result of the Federal Circuit's interpretation of title 38, United States Code, sections 1110 and 1131, in the *Allen* decision, there are now three possible categories of disabilities involving alcohol and drug abuse: 1) Alcohol or drug abuse disability, developed during service, which results from the voluntary and willful abuse of alcohol or drugs and OBRA 90 still bars service connection for primary alcoholism or drug addiction and any associated disability; 2) Alcohol or drug abuse disability is recognized as secondary to a service connected condition; And, 3) Disabilities that result from or are aggravated by an alcohol or substance abuse disability for which secondary service connection has been established.

Scientific studies over the years have highlighted the fact that there is a higher incidence of substance abuse among veterans who suffer from severe physical or psychiatric disabilities. A recent article by Dr. Andrew Meisler, "Trauma, PTSD, and Substance Abuse, from the PTSD Research Quarterly". (Attachment) notes, "Studies of individuals seeking treatment for PTSD have a high prevalence of drug and/or alcohol abuse." Research suggests "that 60-80 percent of treatment seeking Vietnam combat veterans with PTSD also met the criteria for current alcohol and/or drug abuse." Cited was a study of Persian Gulf War veterans that found a "PTSD diagnosis was strongly linked to problems with depression and substance abuse, supporting earlier research on comorbidity." Section 3 of H.R. 850, if enacted, would penalize veterans whose service connected condition has caused them to develop an alcohol or drug-abuse disability.

The United States is again sending men and women into harms way. As a consequence, some may sustain lifelong physical or mental disability. Should they subsequently develop a substance abuse problem, which VA recognizes as being related to a service connected condition, there should be no question that this additional disability is also "service connected." The American Legion believes Congress should not be seeking ways to deprive these veterans of their right to compensation benefits earned by virtue of their service to this nation.

Mr. Chairman, the basic intent of H.R. 850 is to assist veterans who are former prisoners of war. Many of these veterans suffer physical and mental disabilities related to their traumatic experiences during their confinement. As a result, some may have developed substance abuse problems. Section 3 of this bill would expressly deny compensation to such former prisoners of war or any other veteran for a substance abuse disability that is secondary to a service connected disability or for conditions caused or aggravated by a substance abuse condition for which secondary service connection has been established. The American Legion believes that this would be inherently unfair. It clearly sends the wrong message to past, present, and future generations of veterans. The American Legion recommends that Section 3 be stricken, so that the merits of the other benefit provisions of this legislation can be clearly considered.

H.R. 966, the "Disabled Veterans' Return-to-Work Act of 2003."

The bill proposes to reinstate the program of entitlement to vocational training for certain pension recipients that expired on December 31, 1995. It afforded disabled veterans who were awarded pensions an opportunity to pursue vocational training with the goal of regaining employability and employment. The American Legion supported this program during its ten years of existence and believes it would be worthwhile to now make this type of training and employment assistance available to those individuals who are both interested and able. Within two years of enactment, VA would also be required to provide Congress a report on the cost-effectiveness and outcomes of this training program.

H.R. 1048, the "Disabled Veterans' Adaptive Benefits Improvement Act of 2003."

Under this legislation, the special adapted housing assistance allowance would be increased from $48,000 to $50,000 and the allowance for acquiring a residence with existing disability modifications would be increased form $9,250 to $10,000. The automobile and adaptive equipment allowance would be increased from $9,000 to $11,000. The American Legion has no objection to the proposed increases, since these allowances have not been regularly adjusted to reflect rising building and automotive costs over the past several years.

As the conflict with Iraq continues, it is important for congress to address these essential veterans' programs that can assist these men and women to transition back into the civilian world.

Again, I appreciate the opportunity to present testimony before the Subcommittee and The American Legion looks forward to working with each of you on these important issues. That concludes my testimony.