

**STATEMENT OF
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THE AMERICAN LEGION
TO THE
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON VA, HUD AND INDEPENDENT AGENCIES
UNITED STATES SENATE
ON
THE DEPARTMENT OF VETERANS AFFAIRS'
FISCAL YEAR 2004 APPROPRIATION'S REQUEST**

April 30, 2003

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to submit testimony reflecting the views of the 2.8 million members of The American Legion regarding the Department of Veterans Affairs' (VA) Fiscal Year (FY) 2004 budget request. As veterans' advocates, it is our job to ensure that VA is funded at a level that is adequate to fulfill the mandate "to care for him who has borne the battle, his widow and his orphan."

On April 11, the House and Senate passed the budget resolution which lays out the funding levels for the appropriations of the federal government and its agencies. Included in this resolution is an understanding that the VA mandatory levels (Compensation and benefit programs) will not be subject to budget offsets in FY04. The Senate and House agreed to set the funding level for VA at \$63.8 billion in budget authority. The Conference also agreed to provide within that level \$30 billion for discretionary spending for FY 2004. This is a \$3.5 billion increase from the levels appropriated for 2003, but is slightly less than the Administration's budget request.

The American Legion is adamant that VA is provided full funding at these levels. In the wake of Operation Iraqi Freedom it is clear that VA will have a vital role in providing health care and transitioning programs to our returning service members. The ability of the VA to provide these necessary and earned benefits and programs will be incumbent on the funding provided by Congress.

For over a decade, The American Legion has advocated allowing veterans to spend their health care dollars on the health care system of their choice. The American Legion believes the Veterans Health Administration (VHA) can efficiently expand to meet the health care needs of the men and women who have honorably served this nation in its armed forces – in war and in peace.

The American Legion believes the level of funding proposed in the FY 2004 budget request may meet the President's goals, but will lead to over 1.2 millions veterans leaving the system. The American Legion also has reservations about the budgetary impact on other aspects of VA operations, to include the Veterans Benefit Administration (VBA).

MEDICAL CARE

The American Legion recommends \$24.5 million for direct medical care in FY 2004; however, strongly recommend to add, rather than offset, MCCF and authorize VA to bill, collect, and retain third-party reimbursements from the nation's largest health insurance program – Medicare – for the treatment on nonservice-connected medical conditions on a fee-for-service basis.

VA's integrated health care delivery system is not only the largest health care provider in the nation, but it has established itself as a formidable leader in the health care industry. Veterans receive quality health care and are choosing VA as their health care provider in record numbers. VA is currently struggling to meet their needs and, with VA's proposed FY 2004 budget, it will continue to struggle.

The President's FY 2004 budget request introduces several proposals to generate increased revenues from the pockets of veterans through an enrollment fee, copayments and third-party reimbursements. According to VA, these proposals will reduce the resource demand by \$1.3 billion collectively and hopefully encourage 1.2 million veterans to leave the system. The budget request also seeks management savings of over \$1.1 billion. This adds up to a \$2.4 billion offset to the requested \$25.4 billion budget for medical care.

The American Legion is concerned with several of the budget proposals:

- Limit enrollment – VA proposes to continue the suspension of enrollment of new Priority 8 veterans. These veterans have incomes above \$24,644 for a single veteran and above the Housing and Urban Development (HUD) geographic means test level, to include noncompensable, 0 percent service-connected veterans. Although these service-connected veterans may seek health care for their service-connected disability, they are prohibited from enrolling for treatment of or prescriptions for any nonservice-connected medical conditions.

The American Legion continues to disagree with this recent decision. We believe denying veterans access to VA health care, particularly while we prepare to go to war, is unacceptable. Many recently separated veterans would fall into this Priority Group. By denying health care to Priority Group 8 veterans, VA is sending the message that these veterans are not welcomed, even if they have the expendable income or private health insurance coverage that VA can bill for the cost of their nonservice-connected medical treatment. In some cases, a simple "zip code" is the difference between being listed as a Priority Group 7 or 8 – not their honorable military service.

In order for more veterans to access VA health care, additional revenue streams must be generated to supplement the discretionary funding. The American Legion strongly advocates Congress authorize VA to bill, collect, and retain third-party reimbursements from 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.

- Assess an annual enrollment fee - VA proposes a \$250 annual enrollment fee for non-service-connected (NSC) Priority 7 veterans and all Priority 8 veterans. Priority 7 veterans have incomes

above \$24,644 for a single veteran and below the HUD geographic means test level, to include noncompensable, 0 percent service-connected disabled veterans. This annual enrollment fee would apply even if the veteran has third-party health insurance that reimburses VA for the treatment of nonservice-connected medical conditions. This annual enrollment fee would apply even if the veteran were willing to make copayments for treatment of nonservice-connected medical conditions, pharmacy, and specialized care (like long-term care). However, this annual enrollment fee does not guarantee timely access to quality health care. According to President Bush and Secretary Principi, these veterans are their primary focus.

The American Legion cannot support this proposal because it is designed to discourage the enrollment of veterans based solely on their income and not their honorable military service. Furthermore, it does not guarantee these veterans timely access to quality health care. There are Priority Group 7 and 8 veterans with military awards and decorations for wartime service that, for the grace of God, were not seriously wounded.

The American Legion would urge Congress to reject this proposal just as it did the Administration's plan last year to charge Priority Group 7 veterans a \$1,500 deductible.

- Change the veteran's share of outpatient and pharmacy co-payments – This proposal entails reducing the pharmacy co-payment burden for Priority 2-5 veterans, while increasing Priority 7 and 8 pharmacy co-payments from \$7 to \$15. It also increases outpatient primary care co-payments from \$15 to \$20 for all Priority 7 and 8 veterans.

While The American Legion applauds the reduction of the pharmacy co-payment for veterans in Priority Groups 2-5, the recent increase in copayments from \$2 to \$7 was accompanied by a decrease in the outpatient copayment from \$50 to \$15. The American Legion would rather VA seek reimbursements from CMS for all enrolled Medicare-eligible veterans being treated for nonservice-connected medical conditions, before trying to balance the budget on the backs of Priority Groups 7 and 8 veterans.

- Require reimbursement for services provided to health maintenance organization and preferred provider organization members - This proposal seeks to establish VA as a preferred provider for members of Health Maintenance Organizations (HMOs) and Preferred Provider Organizations (PPOs) and would obligate these organizations to reimburse VA for health care provided to their members.

The American Legion believes this change would help VA increase third-party reimbursements. The fact that VA currently cannot bill HMOs and PPOs is unfair considering VA treats many veterans who belong to these organizations. The American Legion would welcome this change; however, it seem odd to mandate private sector insurance plans to recognize VA as a preferred provider and not mandate CMS to recognize VA as a Medicare provider, especially since VA meets or exceeds most of CMS' own quality performance standards. If CMS' goal is to provide its beneficiaries with the best quality health care, VA should be a recognized Medicare provider. In fact, CMS Director Scully claimed before the Presidential Task Force To Improve Health Care Delivery for Our Nation's Veterans (PTF) that he encourages veterans to go to VA rather than private health care providers.

- Change the institutional long-term care services provided to veterans – This proposal would allow non-institutional, as well as institutional workload, in community and State Home Nursing programs along with VA Nursing to count toward the 1998 capacity level. VA would supposedly expand their total long-term care capacity by increasing non-institutional long-term care.

The American Legion believes the proposal will further stagnate long-term care services. The passage of the Veterans Millennium Health Care and Benefits Act (Public Law 106-117) on November 30, 1999, was the first step toward ensuring a comprehensive long-term care plan for veterans. The American Legion fully supported this insightful decision by Congress, especially with the aging veterans' population. It required the VA to bring the census back to 1998 levels. So far they have failed to do that. VA has the authority to establish copayments for nonservice-connected veterans in need of long-term care – a time in their lives when they and their families desperately need help from VA. The President and the Secretary want to reduce the number of long-term care beds without any recommendations from the PTF or the Capital Assets Realignment for Enhanced Services (CARES). In fact, the CARES process is currently not addressing either long-term care or mental health inpatient needs. The “market plans” currently being developed by each VISN will not be including institutionalized care involving long-term care or mental health. The American Legion cannot accept this recommendation.

MEDICAL AND PROSTHETIC RESEARCH

The American Legion recommends \$445 million for medical and prosthetic research in Fiscal Year 2004.

Two of the biggest challenges facing VA's Medical and Prosthetic Research Program 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 have nearly 30 facilities in varying states of disrepair. The condition of these facilities 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.

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 advances in their health care. Without proper funding the program cannot possibly maintain its current level of success. The American Legion believes VA's budget request for \$408 million is inadequate.

MEDICAL CONSTRUCTION AND INFRASTRUCTURE SUPPORT

MAJOR & MINOR CONSTRUCTION

The American Legion recommends \$320 million for major construction and \$240 million for minor construction to make a combined total of \$560 million.

Year after year, needed major and minor construction projects are not funded, because the money is just not there. A 1998 study conducted by Price-Waterhouse recommended that VA fund 2 percent to 4 percent of Plant Replacement Value (PRV) per year and 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 President's budget request of \$422 million falls well short of funds needed to ensure the safety of the nation's veterans.

GRANTS FOR THE CONSTRUCTION OF STATE EXTENDED CARE FACILITIES

The American Legion recommends funding of \$115 million for this program.

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.

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.

NATIONAL CEMETERY ADMINISTRATION (NCA)

The American Legion recommends \$150 million for the National Cemetery Administration in FY 2004.

The National Cemetery Administration (NCA) honors veterans with a final resting-place and lasting memorials that commemorate their service to the nation. 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.

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 renovating gravesites by raising, realigning and cleaning headstones and markers. The work that has been done so far has been outstanding however, adequate funding is key to maintaining this very important commitment.

STATE CEMETERY GRANTS PROGRAM

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

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.

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.

VETERANS BENEFITS ADMINISTRATION

The American Legion is gravely concerned by the proposed straight line staffing request for the Veterans Benefits Administration's (VBA) Compensation and Pension Service and for the Board of Veterans Appeals. There are long-term workload demands associated with the current backlog of pending claims that will extend well into FY 2004. VBA acknowledges there will also be a continued influx of new and reopened claims, based on the enactment of expanded benefit entitlements by the 107th Congress, including the Combat Related Special Compensation Pay Program, an expectation of additional presumptive diseases, and recent precedent decisions of the courts.

Despite assertions of improved quality decision making, the number of appeals being filed continues to increase as does the number of appeals requiring further development either by the regional offices or the Board of Veterans Appeals. The American Legion believes these organizations will require additional personnel, if they are to achieve the ambitious service improvement goals promised the nation's veterans and their families in this budget request.

VETERANS BENEFITS ADMINISTRATION LEGISLATIVE INITIATIVES

VBA's net mandatory funding request reflects the enactment of several legislative proposals. These include:

- A two-percent COLA in compensation benefits. The American Legion supports an annual cost-of-living adjustment in disability compensation and DIC benefits.
- Legislation to overturn the decision of U.S. Court of Appeals for the Federal Circuit in *Allen v. Principi*, which held that VA must pay compensation for alcohol or drug-abuse disabilities, if they are secondary to a service-connected disability. The American Legion is opposed to any effort to eliminate or restrict a veteran's right to compensation for any disability or disabilities that are determined to be secondary to or a manifestation of the service connected disability. VA is responsible for administering the law not making moral judgment concerning what is or is not misconduct, as it did with the issue of tobacco-related illnesses. Such legislation would be an effort to punish certain disabled veterans for their service-related problems.
- Legislation to pay the full rate of compensation to certain Filipino veterans and their survivors. The American Legion continues to support this change in the law to recognize the military service performed by these veterans during World War II.

- Legislation to extend the operations of the Manila VA Regional Office for an additional five years. The American Legion favors the VA's continued presence in the Philippines, in order to provide timely service to these veterans and their families.
- Amend the law to extend the time limit for education benefits for members of the National Guard. Because the National Guard is now such an integral part of the armed forces, The American Legion believes this will be a much needed change in the law.
- Amendment of the Montgomery GI Bill to provide for on-the-job training for certain self-employment training programs. This will assist veterans in taking advantage of additional training through self-employment training programs.
- Legislation authorizing the extension of the Education Advisory Committee.
- Terminate the Education Loan Program. If this program were, in fact, not being utilized as it was originally intended, The American Legion would not object to its termination.
- Convert the Homeless Veterans Guaranteed Transitional Housing Loan Program to grant program. The American Legion has been a strong supporter of the Homeless Veteran Transitional Housing Program. The American Legion would have no objection to making it into a grant rather than a loan guaranty program.
- Elimination of the 45-day rule for Death Pension. The American Legion has sought the elimination of this restriction, since enactment of OBRA 90.
- Authorize entitlement to government grave marker or headstone for a veteran's marked or unmarked grave, effective from November 1, 1990. This will enable the families of thousands of deceased veterans to obtain a government marker or headstone to reflect their honorable service to the nation.
- Authorize the payment of the burial plot allowance to state veterans' cemeteries. The American Legion has long favored this additional support for the State Veterans Cemetery Program.

Under the new budget format, the request for VBA provides for a total of \$33.7 billion in mandatory funding for compensation, pension, education, vocational rehabilitation, and other benefit entitlements. Within this total, \$26.3 billion will be required for the compensation program, \$3.3 billion for the pension program, \$1.9 billion for education, and \$2.4 billion for the other veterans benefit programs. This represents an overall increase of \$9.8 billion, over FY 2003. Compensation benefits will increase by \$1.8 billion reflecting the proposed two-percent COLA, additional benefit payments as a result of *Allen v. Principi*, an increase in diabetes cases, and increases in the net caseload and benefit payments.

Discretionary funding for VBA's nine business lines totals \$1.2 billion. While it provides for an additional 17 FTE for the Education Program, which is much needed, The American Legion is deeply disturbed by the lack of any increase in staffing for compensation programs. We believe

this will constrain VBA's ability to address the many challenges emerging in FY 2003, which will have profound budgetary and operational implications for the FY 2004 budget.

Given the varied issues that VBA is faced with, it is imperative that Congress critically evaluate the level of discretionary funding requested and whether this will enable the regional offices to operate efficiently and provide timely, quality service that this nation's veterans expect and deserve. Individuals currently on active duty must also be assured that VA will not only be ready and willing to assist them, but have physical capacity to provide them the timely, quality service they expect and deserve, without compromising current operations or benefits programs.

Over the course of FY 2002 and FY 2003, VBA has been able to make substantial progress toward realizing Secretary Principi's goal of a pending case backlog of 250,000 cases with an average processing time of 100 days by the end of September 2003. In March 2002, the regional office backlog peaked with over 423,000 pending cases requiring rating action. 40 percent of these cases were over six months old. There were also 147,000 case requiring some other type of action. Only 12 percent were six months or older. In addition, there were approximately 107,000 cases in appellate status. Of these, over 20 percent were cases that had been remanded by the Board of Veterans Appeals for further required development and readjudication. In human terms, there were over 670,000 claimants waiting and waiting for action on their case. Those with remanded appeals would have been waiting two to three years or longer.

According to VA data, by January 2003, the number of cases awaiting rating action had been reduced to 330,300 with only 32 percent older than six months and the number of cases requiring some other type of action was down to 81,500 but over 28 percent were older than six months. However, the number of cases in appellate status had grown to over 122,000. These statistics give a false impression of improvement. The drop in the claims backlog has been achieved largely at the expense of those whose claims were on appeal at the regional offices. VBA's efforts and resources were focused almost exclusively on pending claims, while appeals, including remands, were virtually ignored, since there was no work credit toward the station's production goals. In response to The American Legion's criticism concerning the lack of action on appeals and the hardship imposed on disabled veterans, regional offices have, within the last several months, begun to address their appellate workload and pending remands, in particular.

The backlog of claims and appeals are, in our view, a symptom of unresolved systemic problems that have for years adversely affected the claims adjudication and appeals process. These problems include frequent decision-making errors, lack of compliance with the VCAA's notice and development requirements, the absence of personal accountability, ineffective quality control and quality assurance, and inadequate training. The current work measurement system does not provide reliable, accurate data upon which to assess VBA's real resource needs. VBA is faced with a serious dilemma. While endeavoring to address these thorny quality-related issues, the regional offices are, at the same time, aggressively trying to process claims faster. From the results, it appears they still have not found a way to successfully balance these competing priorities. The American Legion remains concerned by the effects of VBA's emphasis on production rather than quality decision making, i.e., ensuring full and complete development with a decision that is fair and proper - the first time. This results in cases continuing to churn through the system, for the sake of an artificial goal.

The straight line staffing level requested for FY 2004 is based on the assumption that, with the realization of the Secretary's backlog reduction goal, VBA would be able to more effectively address the many quality-related problems as well other long-outstanding issues. Given past performance, The American Legion believes this is an unrealistic strategy and will not afford VBA the flexibility to cope with current workload demands, let alone some unanticipated contingency.

The American Legion believes that an increase in staffing in the compensation and pension programs for FY 2004 is both prudent and necessary. This reflects the increasingly complex nature of the claims and appeals process, the volume of additional work anticipated in FY 2003-2004, and the ongoing need to rebuild the core adjudication staff to replace the increasing number of experienced decision makers who are retiring within the next one to two years.

APPEALS

Staffing at the Board of Veterans Appeals in FY 2004 will decrease by 3 FTE from the FY 2003 level to 184 FTE. The proposed reduction in personnel is predicated on the expected lower volume of incoming new appeals and returning remands. However, given the number of appeals currently in the system and regional offices' continuing quality problems, The American Legion is concerned that the Board's new Development Program will require additional support both from the Board and from the C&P Service.

Beginning in February 2002, the BVA was given the authority to further develop appeal cases rather than remanding them to the regional office. 15 FTE were assigned to this unit. By the end of FY 2002, of the 17,231 appeals decided, the Board had remanded 3,328 or 19 percent. This figure is somewhat misleading, since, in addition to the regular remands, the Board has undertaken development of over 9,000 cases that would have previously required a remand back to the regional office for further needed development and readjudication. Staffing for this unit is 32 FTE. The goal of the program is to ensure greater attention to full due process and quality decision-making, while providing claimants more timely action on the appeal. However, without a substantial improvement in the quality of regional office decisions, the BVA will have to assume more and more of the regional office's development and adjudication workload, which will require additional staffing resources.

The American Legion is concerned that regional office's focus on speed and production versus quality and propriety is directly contributing to the growth of the appellate backlog, which now tops 123,000 appeals. Each of these cases represents a veteran or a veteran's family who, after many months of waiting, is very dissatisfied with the decision they received on their claim for disability or death benefits. They will wait many more months before their case gets before the Board. In 2002, the average appeals resolution time was 731 days. This is projected to improve to 590 days in FY 2003 and to 520 days in FY 2004.

EDUCATION

The American Legion commends the increased-funding request for educational programs and support staff for the FY 2004 budget. The American Legion deeply appreciates Congress' attempts to provide for a stronger Montgomery GI Bill, (Chapter 30) including an increase in the monthly entitlement rate for active duty members from \$900 to \$985. However, due to the

increased use of Reservists for homeland security and various overseas commitments around the world, there needs to be a significant increase in their monthly entitlement rates that are currently below \$300 a month.

The American Legion also acknowledges the proposed increase in benefits to children and spouses of veterans who died of a service-connected disability or whose service-connected total disability is rated permanent, under Chapter 35 of title 38, United States Code. Having a stronger dependent/survivor educational benefit program is necessary to provide the nation with the caliber of individuals needed in today's all volunteer Armed Forces. Without providing incentives, the military of the 21st century will be hard pressed to carry out its mission.

VOCATIONAL REHABILITATION AND EMPLOYMENT

The American Legion is pleased with the funding level requested for the Vocational Rehabilitation and Employment program in FY 2004. The American Legion has always been a strong supporter of the services this program provides eligible service-disabled veterans. The training and education assist disabled veterans in becoming employable and helps them obtain and maintain suitable employment. The American Legion is pleased by the emphasis placed on the new Employment Specialist position as a means of redirecting the program toward the veteran's employment. During this time of economic uncertainty, meaningful employment should never be denied to veterans, especially those with a service-connected disabling condition.

CONCLUSION

Mr. Chairman and Members of the Subcommittee, The American Legion has outlined many issues in this 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, 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 allowing The American Legion the opportunity to submit testimony.