

**STATEMENT OF
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BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON HEALTH
UNITED STATES HOUSE OF REPRESENTATIVES
ON
THE DEPARTMENT OF VETERANS AFFAIRS'
LONG-TERM CARE PROGRAMS**

May 22, 2003

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to express The American Legion's views on the 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 critical geriatric care facilities and health care professionals.

It would be an incomplete picture to assess VA's Long-Term Care Programs without referencing it with the entire veterans' integrated health care system. Clearly, VA continues to demonstrate an inability to meet the growing demand for health services as an estimated 200,000 veterans still wait to receive their initial VA medical appointment. Inadequate funding and infrastructure forced VA Secretary Principi to prohibit enrollment of new Priority Group 8 veterans, effectively closing access for millions of eligible veterans to the VA health care system. The rising cost of pharmaceuticals and increased demands for qualified health care professionals are seriously impacting VA's ability to maintain effective and responsive quality health care services. Deterioration of VA's Medical School Affiliations combined with the current nursing shortage and the expected sharp decline in the number of volunteers in VAMCs could spell crisis for the veterans health care system. This is the backdrop in which VA's Long-Term Care programs must be reviewed and assessed.

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 veterans range from 70 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, were held Prisoners of War, contracted malaria and a host of other tropical diseases, not too mention exposure to ionizing radiation are forced to make such decisions. These are the veterans who rescued precious freedoms at a time when it seemed that the entire world was on the verge of totalitarianism. 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...*". We can care for them at the end of their lives, when they are the most vulnerable and in greatest need.

For many years, The American Legion has expressed its commitment to developing comprehensive solutions 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. This continuum is linked to acute care and ambulatory care services provided as needed.

Long-Term Care within VA is a full continuum of primary care provided to veterans, over a period of time, who suffer from severe, chronic service-connected medical conditions associated with aging and disease processes. Within VA, Long-Term Care includes skilled nursing, nursing home care, home health care, adult day care, community residential and specialized rehabilitation, including Alzheimer's, dementia and other psychogeriatric services. Domiciliary care, assisted living, hospice, palliative and respite care and research into geriatric issues are all part of VA's Long-Term Care responsibility.

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, that veteran remains VHA's responsibility.

In January 1999, The American Legion responded to VA Long-Term Care at the Crossroads, a report of the Federal Advisory Committee (FAC) on the future of VA Long-Term Care released in June 1998. The American Legion took umbrage with several key points as conclusive and most beneficial to veterans. Based on its mission to anticipate VA's needs for Long-Term Care in an era of "no growth budgets," the FAC recommended outsourcing. Rather than VHA expanding its capability to provide Long-Term Care, the FAC advocated VA meet its fundamental Long-Term Care obligation by outsourcing new patients to private sector nursing facilities. The FAC's report failed to address a significant dynamic that was taking place during the tenure of the Committee. Most private nursing homes at the time were funded largely by Medicare and Medicaid prospective payment formulae with insured and fee-for-service patients

making up the shortfall in case-mix based reimbursement. In the early to mid 90s, a plethora of corporate for-profit Long-Term Care, skilled nursing and assisted living facilities were created which had the immediate effect of siphoning off the revenues from traditional nursing homes that subsidized the other patients. Based on 1997 data from the FAC report, it cost the VHA \$2.014 billion to care for 63,081 veterans; or \$87.47 per day per veteran. Whether these veterans were cared for in skilled nursing, nursing home care, home health care, adult day care, community residential and specialized rehabilitation, psychogeriatric services care, domiciliary care, assisted living, hospice, palliative or respite care is not stated. Compare these statewide Long-Term Care costs to VA's \$87.47 per day.

In comparison, Medicare provides about 12 percent payments to nursing homes and is a major funding source of home care. Medicare is primarily rehabilitative and is provided on a short-term basis. Chronic long-term care that extends beyond three or four months is not covered by Medicare. Medicaid is a program that pays about 44 percent of nursing home costs, as well as substantial amounts of home care and assisted living costs. There are income and asset tests to qualify for Medicaid.

STATEWIDE DAILY LONG-TERM CARE COSTS

Source: Urban Institute December 1998

Alabama	\$99	Louisiana	\$65	Ohio	\$107
Alaska	330	Maine	105	Oklahoma	64
Arizona	98	Maryland	106	Oregon	89
Arkansas	64	Massachusetts	109	Pennsylvania	114
California	83	Michigan	95	Rhode Island	125
Colorado	98	Minnesota	102	South Carolina	84
Connecticut	130	Mississippi	80	South Dakota	80
Delaware	97	Missouri	86	Tennessee	78
Florida	95	Montana	88	Texas	75
Georgia	75	Nebraska	63	Utah	80
Hawaii	150	Nevada	110	Vermont	94
Idaho	94	New Hampshire	112	Virginia	78
Illinois	78	New Jersey	105	Washington	114
Indiana	86	New Mexico	92	Washington, DC	210
Iowa	69	New York	166	West Virginia	97
Kansas	78	North Carolina	95	Wisconsin	91
Kentucky	83	North Dakota	94	Wyoming	93

Given the wide disparity in the per diem costs of the states in operating nursing homes, The American Legion fails to see how outsourcing veterans would result in a “no growth budget” contracting with state nursing homes. This data does not distinguish between urban and rural facilities, nor Resource Utilization Groups (RUGS III) which assesses the case mix of patients for medical complexity, including fractional FTEs for skilled nursing or physician time.

Concurrently with the FAC's work, quality of care in private and public nursing homes had become a major issue with the repeal of "the Boren Amendment" as part of the Balanced Budget Act of 1997. The Boren Amendment required that Medicaid-funded nursing home rates be adequate and reasonable to meet the costs which must be incurred by efficiently and economically run facilities in order to provide care and services in conformity with state and federal law, regulations and quality and safety standards of Section 1902(a)(13) of the Social Security Act. State Medicaid officials overwhelmingly came to oppose the amendment, believing they were being forced to spend too much on nursing homes at the expense of other programs. If VHA is to place veterans in state-run nursing homes, new legislation will need to be enacted to restore the intent of the Boren Amendment.

The FAC report that seems so overwhelmingly budget driven does not account for the statistics and costs it cites. For example, the numbers provided for nursing home care for 1997 show an average daily census of 13,289 at a cost of \$1.1 billion. This does not translate into meaningful data since there is no way to extrapolate what were the daily costs or what was the yearly census.

The FAC stated that by outsourcing most new demand, VA would be able to maintain, invigorate and re-engineer the core of VA operated services. The recommendation goes on to suggest that the new demand for Long-Term Care would be met primarily through non-institutional services, contracts, and available veterans' state homes. Veterans, who seek to enter VA's Long-Term Care facilities, do so because they are veterans and eligible to seek health care services from VA. Many of these veterans are single, elderly men and women who would rather die at home with extended family or among comrades with whom they can share experiences, strengths, sorrows and hopes.

The Veterans Millennium Health Care and Benefits Act of 1999

In response to the FAC's recommendations, Congress passed the Veterans Millennium Health Care and Benefits Act. This Public Law established VA health care priorities for VA nursing home care, in particular, and Long-Term Care (nursing home, home care, community-based care, etc.) more generally. It established criteria for eligibility for nursing home care to any veteran in need of such care for a service-connected medical condition and to any veteran who is in need of such care and who has a service-connected medical condition rated as 70 percent or more. Once the veteran is placed in a VA nursing home, he or she may not be transferred to a non-VA facility without his or her consent. This effectively precludes access to VA nursing facilities to the vast majority of today's elderly veterans.

Section (b) of the Act requires that, the term "medical services" includes non-institutional extended care services. This provision is due to expire on December 31, 2003 and should be re-authorized. Under the Act, extended care services include geriatric evaluation, nursing home care (either in VA facilities or contract community based facilities), domiciliary services, adult day health care services and "such other alternatives to institutional alternatives to nursing home care as the Secretary may furnish as medical services under § 1701(10) of this title."

That is, VA is required to plan Long-Term Care services for eligible veterans, to estimate and project veterans' sub-populations at risk of use or need for Long-Term Care services, and to

estimate and project potential use of VA's Long-Term Care services. The Act further sets up a series of pilot programs and establishes a Treasury account known as "the Department of Veterans Affairs Extended Care Fund." There appears to be no Treasury offset to this fund, but monies collected may be used solely for the operation of extended care programs. The American Legion recently testified that VHA's Medical Care Collection Fund (MCCF) should also be excluded from Treasury offset as is collections from the Indian Health Service. Even though it is technically not considered an offset, the funds projected to be generated by MCCF are deducted from VHA's annual budget.

The Government Accounting Office, in a letter to the ranking Democratic member of the Committee on Veterans' Affairs, stated that in FY 2001 VA spent approximately \$3.12 billion on a roughly equivalent veterans' Long-Term Care census as in FY 1997. Of that amount less than 10 percent was spent on non-institutional care, a clear disregard for the mandates in the law. More than two years after the passage of the Veterans Millennium Health Care and Benefits Act, VA still has not completely implemented its response to the Act's requirements. Availability to these core services is uneven nationally with the share of VHA's Long-Term Care costs increasing a mere 4 percent between FY 1991 and FY 2001.

End-of-Life Issues

Some non-institutional alternatives to Long-Term Care are to be found in the family and community settings at far lower costs than traditional nursing home residency. Many of the 600,000 aging veterans with dementia and Alzheimer's can be maintained at home for substantial periods of time. There comes a point, however, at which the individual must be committed to Long-Term Care for end-of-life care and services beyond the capabilities of the family or community. The American Legion recognizes that comfort and dignity at the end-of-life for veterans is a priority issue. The need to improve the care of the dying in VHA facilities is well established, however, some 58 percent of VAMCs do not have hospice beds, 27 percent do not refer to community hospice providers, and 59 percent of VAMCs have no palliative care staff. Hospital deaths occurred in intensive care units at twice the rate in VAMCs as in Medicare hospitals.

Counting State Veterans' Homes Beds as Department of Veterans Affairs (VA) Assets

The American Legion believes that VA's practice of counting State Veterans' Homes beds as their own should cease immediately. Certainly, the Federal government contributes to the construction of these facilities, but their upkeep is strictly a State fiscal responsibility. VA should be embarrassed to take credit for some of these facilities; a case in point is the Rocky Hill State Veterans Home and hospital in Connecticut. This 130 plus year old facility was recently toured by The American Legion's National Commander, Ronald F. Conley, as part of his commitment to improving veterans' health care. *The Hartford Courant* in several editorials referred to the home variously as a "pit", and a "hellhole" with "health and safety code violations that would make your stomach churn." The American Legion adamantly opposes this practice.

In the President's budget request for FY 2004, there is an initiative to limit institutional Long-Term Care benefits to Priority Group 1a veterans. The Veterans Millennium Health Care and

Benefits Act of 1999 (Public Law 106-117) directs VA to provide nursing home care service to any veteran whose service-connected disability necessitates nursing home care and to any veteran needing nursing home care who is rated 70 percent or more service-connected disabled. Currently, this mandatory group of veterans (Priority Group 1a) is estimated to comprise 34 percent of the total Nursing Home (VA, Contract Community and State Home) census and Nursing Home Budget in 2002. The vast majority of Priority Group 1a veterans are cared for in either VA Nursing Home Care Units or in contract community nursing homes at VA expense, with an estimated 4-5 percent of veterans in State home nursing homes being in this category. This policy would significantly reduce nursing home care in a VA Nursing Home Care Unit or community nursing home to other than Priority 1a veterans, unless the care is needed for post-acute rehabilitation or specialized care, respite, hospice, or geriatric evaluation and management in the nursing home setting. Enrolled veterans with a spinal cord injury/disease who require nursing home care and are enrolled in Priority Group 1b-7 would also be a priority.

The American Legion adamantly opposes this initiative and does not believe this was the intent of Congress or former President Clinton when this bill was written, passed, and enacted.

Another Long-Term Care initiative in the President's budget request seeks authority to allow all institutional and non-institutional Long-Term Care services to be counted towards meeting the capacity requirements for extended care services. Currently, P.L. 106-117 requires the Secretary to ensure that the staffing and level of extended care services provided by VA nationally in VA facilities during any fiscal year is not less than the staffing and level of such services provided in VA facilities in 1998. The American Legion believes the congressional intent of this provision was very clear and appropriate – to sustain, not decrease VA's Long-Term Care services in VA facilities.

The American Legion applauds VA's effort in non-institutional Long-Term Care services in addition to its institutional care, but is extremely concerned VA has failed to comply with the clear instructions of Congress and the President in sustaining its 1998 level of staffing and services.

Capital Assets Realignment for Enhanced Services (CARES) and VA's Long-Term Care

In the near future, there appears to be a golden opportunity for VA to take positive actions towards addressing VA's Long-Term Care mandates. Through the rehabilitation of VA's current capital assets of vacant buildings and construction of new facilities on VA property, VA's Long-Term Care could meet current demands. Many proposals have already been published in the Federal Register that would lease VA property to commercial assisted living facilities and skilled nursing facilities. Many of these vacant buildings could be brought up to code for a relative pittance and used by VA in compliance with PL 106-117 mandates for the core services of geriatric evaluation, adult day medical care and care-giver respite. The entire Long-Term Care issue has been removed from the CARES process because of CARES model inadequacies. While the model is being revised and the new demand projections analyzed. The American Legion remains concerned over the omission of VA's future Long Term Care plans during the first iteration of CARES.

The CARES Commission is currently reviewing the “planning initiatives” and developing “market plans” for each Veterans Integrated Services Network (VISN) addressing effective and efficient utilization of its capital assets. Since Long-Term Care and mental health care will be “added” later, The American Legion is deeply concerned opportunities to meet the mandates of the Veterans Millennium Health Care and Benefits Act will not receive the appropriate attention, except as an after-thought.

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 – veterans. On Monday, 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 over 200,000 veterans waiting 6 months or longer 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. However, if these veterans can become financially destitute, they can enroll and join their colleagues on the waiting list.

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.

For many of the veterans enrolled in the VA health care system, it is their best health care option. They are attracted to VA for many reasons, but the quality of health care delivery throughout the VA health care system is the most prominent reason. Veterans in need of Long-Term Care are well aware of the quality of care provided by VA extended care services. Currently, the vast majority of veterans seeking Long-Term Care are those of the “Greatest Generation” and the “Forgotten War.” What better way to thank the “Greatest Generation” – those that saved the World -- than meeting their Long-Term Care needs? What better way to prove to the veterans of the “Forgotten War” that they are not a footnote in history books, but rather the “true defenders of democracy”?

On June 15, 1999, Representative Stearns (FL) addressed his colleagues on the House floor and said, “What this legislation does is offer a blueprint to help position VA for the future, and I think it is appropriately entitled the Veterans’ Millennium Health Care Act. Foremost among the VA’s challenges are the Long-Term Care of our aging veterans’ population. For many of the World War II population, Long-Term Care has become just as important as acute care. However, the Long-Term Care challenge has gone unanswered for too long.” The American Legion agreed with Representative Stearns and supported the Veterans Millennium Health Care

Act of 1999. His insight as to VA's Long-Term Care problems was well documented and his solution was very proactive.

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