

**STATEMENT OF  
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THE AMERICAN LEGION  
BEFORE THE  
COMMITTEE ON VETERANS' AFFAIRS  
UNITED STATES HOUSE OF REPRESENTATIVES  
ON  
PENDING AND DRAFT LEGISLATION**

**JUNE 23, 2016**

Chairman Miller, Ranking Member Brown, and distinguished members of the committee, on behalf of National Commander Dale Barnett and The American Legion; the country's largest patriotic wartime service organization for veterans, comprising over 2 million members and serving *every* man and woman who has worn the uniform for this country; we thank you for the opportunity to testify regarding The American Legion's position on the pending and draft legislation.

**H. R. 3216: Veterans Emergency Treatment Act or the VET Act**

*To amend title 38, United States Code, to clarify the emergency hospital care furnished by the Secretary of Veterans Affairs to certain veterans.*

The VET Act would require that every enrolled veteran is afforded the highest level of emergency care at every health care facility that is capable of providing emergency care services under VA jurisdiction.

In 1986, Congress enacted the Emergency Medical Treatment & Labor Act (EMTALA) to ensure public access to emergency services regardless of ability to pay. Section 1867 of the Social Security Act imposes specific obligations on Medicare-participating hospitals that offer emergency services to provide a medical screening examination (MSE) when a request is made for examination or treatment for an emergency medical condition (EMC), including active labor, regardless of an individual's ability to pay. Hospitals are then required to provide stabilizing treatment for patients with EMCs. If a hospital is unable to stabilize a patient within its capability, or if the patient requests, an appropriate transfer should be implemented.

H.R. 3216 would apply the statutory requirements of the EMTALA to emergency care furnished by the VA to enrolled veterans who arrive at the emergency department of a VA medical facility by indicating an emergency condition exists. This bill would also enhance VA's existing legislative authorities to allow VA to ensure veterans are provided with appropriate medical screening examinations.

The American Legion believes anytime a veteran reports to an emergency department at a VA or non-VA medical facility, the veteran should receive a thorough examination to include all appropriate ancillary tests to assist the treating clinician to properly diagnose the problem.

The American Legion supports any legislation and programs within the VA that will enhance, promote, restore or preserve benefits for veterans and their dependents, including timely access to quality VA health care.<sup>1</sup>

**The American Legion supports H.R. 3216.**

**H. R. 4150: Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act**

*To amend title 38, United States Code, to allow the Secretary of Veterans Affairs to modify the hours of employment of physicians and physician assistants employed on a full-time basis by the Department of Veterans Affairs.*

The Veterans Affairs Medical Staffing Recruitment and Retention Act would give the Veterans Health Administration (VHA) the ability to address the unbalanced work schedules that are often associated with providing emergency room health care. Since 2003, The American Legion through the “System Worth Saving Program” has been actively tracking staffing shortages at VA medical centers across the country. The American Legion’s 2014 System Worth Saving report entitled “Past, Present, and Future of VA Health Care” found that several VA medical centers continue to struggle to fill critical positions across many disciplines within the healthcare system.

The American Legion believes the Veterans Health Administration must continue to develop and implement staffing models for critically needed occupations.<sup>2</sup>

**The American Legion supports H.R. 4150.**

**H. R. 4764: Puppies Assisting Wounded Servicemembers (PAWS) Act of 2016**

*To direct the Secretary of Veterans Affairs to carry out a pilot program to provide service dogs to certain veterans with severe post-traumatic stress disorder.*

Since 1991, the United States has been at war and as a result thousands of men and women have returned home with mental and physical injuries. The PAWS Act of 2016 would expand access to service dogs for veterans suffering from Post-Traumatic Stress Disorder (PTSD) which is one of the “signature wounds” of the wars in Iraq and Afghanistan.

H.R. 4764 would create a five-year pilot \$10 million program that pairs veterans who served on active duty in the Armed Forces on or after September 11, 2001 and for veterans who have been diagnosed with PTSD rated at a severity level of three or four on the Clinician-Administered PTSD

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<sup>1</sup> American Legion Resolution No. 23 (May 2016): [Support for Veteran Quality of Life](#)

<sup>2</sup> American Legion Resolution No. 101 (Sept. 2015): [Department of Veterans Affairs Recruitment and Retention](#)

Scale (CAPS-5) for Diagnostic and Statistical Manual of Mental Disorders (DSM-5) with a service dog. Eligible veterans must have also completed an evidence-based treatment program and remain significantly symptomatic by clinical standards.

This legislation is important to veterans because it allows the use of service dogs to assist in the therapy plan for injured veterans returning home from war with traumatic brain injury (TBI) and posttraumatic stress disorder (PTSD). Service dogs can act as an effective complementary therapy treatment component, especially for those veterans who suffer on a daily basis from the physical and psychological wounds of war.

The American Legion urges Congress to provide oversight and funding to the VA for innovative, evidence-based complementary and alternative medicine (CAM) in treating various illnesses and disabilities.<sup>3</sup>

**The American Legion supports H.R. 4764.**

**H. R. 5047: Protecting Veterans' Educational Choice Act of 2016**

*To direct the Secretary of Veterans Affairs and the Secretary of Labor to provide information to veterans and members of the Armed Forces about articulation agreements between institutions of higher learning, and for other purposes.*

H.R. 5047 would provide student-veterans with information on which institutions of higher learning could potentially give them credit for completed courses if they choose to transfer from their college/university. This legislation adds to the necessary information that empowers student-veterans in making the best decisions in what college/university they choose to attend for the ultimate goal of obtaining their college degree and finding gainful employment.

The American Legion seeks and supports any legislative or administrative proposal that improves, but not limited to, the GI Bill, Department of Defense Tuition Assistance (TA), Higher Education Title IV funding (i.e. Pell Grants, Student Loans, etc.) and education benefits so servicemembers, veterans, and their families can maximize its usage.<sup>4</sup>

**The American Legion supports H.R. 5047.**

**H.R. 5083: VA Appeals Modernization Act of 2016**

*To amend title 38, United States Code, to improve the appeals process of the Department of Veterans Affairs.*

More than 1.4 million claims for veterans' disability were processed last year, and the Veterans Benefits Administration (VBA) is on track to surpass even that number this year. At a ten to

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<sup>3</sup> American Legion Resolution No. 99 (Sept. 2015): [Complementary and Alternative Medicine](#)

<sup>4</sup> American Legion Resolution No. 312 (August 2014): [Ensuring the Quality of Servicemember and Veteran Student's Education at Institutions of Higher Learning](#)

twelve percentage rate of appeal, the workload at the Board of Veterans Appeals (BVA) will likely never disappear.

With an appeals inventory at roughly half a million pending claims, the Department of Veterans Affairs (VA) asked stakeholders to gather in several high intensity day-long working meetings to help come up with a system that would recommend solutions to help VBA and the Court of Appeals for Veterans Claims (CAVC) better process and manage this existing workload.

The American Legion currently holds power of attorney on more than three quarters of a million veteran claimants. We spend more than two million dollars a year on veteran claims and appeals processing and assistance. Our success rate at the BVA hovers at around 80 percent, either outright grants of benefits or remands to properly process a claim that VA had failed to properly process at the lower level of the Regional Office.

When VA invited stakeholders to the table to discuss appeals modernization, The American Legion knew that appeals modernization was not about appeals alone, that the recommendations required to streamline appeals needed to take place much earlier in the process, at the point of the initial adjudication. With that, one of the first things the group looked at was the VBA decision notice. Refining the initial decision notice is not as easy as it sounds and several of the Veterans Service Organizations (VSOs) worked with VA for months in 2014 to try and improve these letters, with frustrations over lack of clarity still remaining. Getting VBA to agree to improve the quality of the letter was a landmark accomplishment that got the process off to a good start.

After the initial VA commitment to improve the decision letter, the stakeholders listened to what they perceived as barriers to improved appeals processing, which supported another of the primary American Legion concerns, the lack of a centralized training process. The BVA has complained that the appeal case file that is finally presented to a veterans law judge looks nothing like the claim that was adjudicated at the Regional Office (RO) level in almost all cases, due to the allowance of additional evidence during the appeals process. Therefore VBA claims they have no way to determine how, or if ROs are misinterpreting the law or making mistakes.

BVA further argued that if there were a process within the appeals system that allowed law judges to review disputed decisions that were adjudicated at the regional offices, based only on the same information that the regional office had at the time the claim was originally decided, then BVA would be able to provide a “feedback loop” they could use to help train and educate ROs, and additionally help identify regional offices where the decisions uniformly fail to address specific legal issues.

It was with these two foundational underpinnings that the big six VSOs, in addition to state and county service officers, veteran advocate attorneys, and other interested groups worked with senior VA officials from VBA and BVA to design the framework of the legislation being discussed here today.

The guiding principle leading all of our discussion was ensuring that we preserved all of the veteran’s due process rights while ensuring that they did not lose any of the claim’s effective date, which we were able to do successfully.

When we started the design process, we had to suspend dealing with the current caseload of appeals while we designed the new model and treated the two sets of cases as independent of each other. Now that we have designed a more streamlined and effective model for future claims, all stakeholders will still need to determine how to deal with the existing inventory of appealed claims.

The design of the proposed appeals process allows for multiple options for claimants, as well as options for additional claim development, the option to have the decision reviewed by another adjudicator (difference of opinion) and the chance to take your case straight to the board to have a law judge review the decision and make a ruling on your claim.

The proposed bill provides veterans additional options while maintaining the effective dates of original claims. Veterans can elect to have an original decision reviewed at the ROs through a Difference of Opinion Review (DOOR) which is similar to the function of what the Decision Review Officers (DROs) do now. A DOOR provides an opportunity for a claimant to discuss concerns regarding the original adjudication of a particular issue, or the entire claim, prior to appealing to BVA. Additionally, the administrative actions remove the need for a Notice of Disagreement (NOD), a process that currently takes 403.6 days, according to the April 25, 2016, Monday Morning Workload Report.

Beyond improvements in administrative functions, the proposed bill will enable claimants to select a process other than the standard multi-year backlog if they want to have an appeal addressed more expediently, and if they believe they have already provided all relevant and supporting evidence. Similar to the Fully Developed Claims (FDC) program, veterans will be able to elect to have their appeals reviewed more expeditiously by attesting that all information is included within the claim, VA records, or submitted with VA Form 9 indicating the intent to have their claims immediately forwarded to BVA for review.

Veterans indicating that they may need additional evidence or time, could elect to have their claim reviewed in the current BVA format allowing additional evidence to be entered into the record. For veterans requiring additional evidence, such as lay statements from friends and families or a private medical examination rebutting VA medical examinations, this is a viable alternative to allow the time and opportunity to provide further development necessary to substantiate the claim for benefits.

Throughout this entire process, veterans will be able to maintain their effective date of the original claim. Recognizing that an increased burden is being placed upon veterans, VA will permit veterans to maintain their effective dates, even if BVA denies the claim. If an appeal is denied by BVA, the veteran can submit new and minimally relevant evidence to reopen the claim at the RO while holding that effective date that may have been established long before the second filing for benefit.

Just as we did when we worked in partnership with VA to roll out the Fully Developed Claims process, The American Legion is willing to put in the necessary work to ensure this program is successful. We recognize the increased burden it can place on veterans; we also recognize that our approximately 3,000 accredited representatives have the tools to ensure success for the

veterans and claimants we represent. Throughout the year, we will continue to work with our representatives, our members, and most importantly, our veterans to understand the changes in law, and how they will be able to succeed with these changes.

Reforming a process as complex as the disability claims system is not simple, and not every aspect of appeals reform is able to be legislated, some parts are more nuanced and require the attention of all stakeholders. The American Legion is committed to providing constant feedback as we move forward with appeals modernization. We believe that the architects of this proposal have acted in good faith, and we support their efforts to modernize the appeals process for the good of veterans.

**The American Legion supports H.R. 5083.**

### **H. R. 5162: Vet Connect Act of 2016**

*To amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to disclose to non-Department of Veterans Affairs health care providers certain medical records of veterans who receive health care from such providers.*

With over 43,000 unfilled positions within VA, the Veterans Healthcare Administration (VHA) is relying on an increase of community healthcare providers to supplement care for veterans. By VHA referring care to health care providers out in the community, sharing of a veteran medical record continues to be a barrier which creates delays in care. By not having access to a veterans' medical records, physicians will not be able to get the full medical history of the veteran they are treating.

H.R. 5162 would decrease the bureaucratic red tape at VA by allowing non-VA doctors who are involved in the veterans' care easier access to their medical records so doctors and veterans can make better health care decisions.

The American Legion requires that VA provide non-VA to VA providers with full access to VA's Computer Patient Record System (CPRS) to ensure the contracted community provider can review the patient's full history; allow the community provider to meet all of the quality of care screening and measures tracked in CPRS; and speed up receipt and documentation from the non-VA provider encounter to ensure it is added to the veterans' medical record.<sup>5</sup>

**The American Legion supports H.R. 5162.**

### **H. R. 5166: Working to Integrate Networks Guaranteeing Member Access Now Act or the "WINGMAN Act"**

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<sup>5</sup> Resolution No. 46: (Oct 2012): [Department of Veterans Affairs \(VA\) Non-VA Care Programs](#)

*To amend title 38, United States Code, to provide certain employees of Members of Congress and certain employees of State or local governmental agencies with access to case-tracking information of the Department of Veterans Affairs.*

H.R. 5166 would grant access to the Department of Veterans Affairs (VA) Veterans Benefits Management System (VBMS) for the purpose of assisting constituents. According to the bill, Members could select an employee, and at a cost to the employee or member, would receive the necessary training to gain accreditation to legally review veterans' records within VBMS. The American Legion has over 3,000 accredited representatives located throughout the nation. These professionals receive regular professional training to ensure they have the most current understanding of the impact of changes in statutes, regulations, and case law. It is simply not a matter of receiving initial training and meeting the requirement of being accredited; like many professions, it requires on-going, thorough training. Additionally, veterans are repeatedly advised of their opportunity to elect to have a Veterans Service Organization (VSO) represent them in their quest to receive VA disability benefits without a cost to the veteran. The American Legion does not have a resolution to support the enactment of this bill; however, we urge Congress to consider the long-term ramifications of supporting legislation that only requires their own employees to have the minimal level of understanding in veterans' law assisting their constituents. To ensure their constituents receive the assistance they deserve, we highly recommend that a VSO advocate on their veterans' behalf.

**The American Legion opposes H.R. 5166.**

#### **H. R. 5392: No Veterans Crisis Line Call Should Go Unanswered Act**

*To direct the Secretary of Veterans Affairs to improve the Veterans Crisis Line.*

The Veterans Crisis Line (VCL) through a confidential toll-free hotline, online chat, or text connects veterans, families and friends who are in crisis with qualified, compassionate Department of Veterans Affairs responders.

H.R. 5392 would take measures to ensure that when a veteran calls the VCL or backup call center that their call gets answered in a timely fashion and is in accordance with the guidelines established by the American Association of Suicidology. This bill would also improve the responsiveness and performance within the VA by ensuring that suicide prevention and crisis resources are available to all veterans.

The American Legion calls upon the VA to directly connect the call of a distraught veteran to the Veterans Crisis Line.<sup>6</sup>

**The American Legion supports H.R. 5392.**

#### **H. R. 5407**

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<sup>6</sup> American Legion Resolution No. 27 (May 2015): [Veterans Crisis Line](#)

*To amend title 38, United States Code, to direct the Secretary of Labor to prioritize the provision of services to homeless veterans with dependent children in carrying out homeless veterans reintegration programs, and for other purposes.*

H.R. 5407 would rightly prioritize homeless veterans with dependents within the Department of Labor. Please note – the Homeless Veterans Reintegration Program (HVRP) within the Department of Labor’s Veterans Employment and Training Service (DOL-VETS) is the only nationwide program focused on assisting homeless veterans to reintegrate into the workforce. Women veterans are far more likely to be single parents than men; consequently, this legislation would provide vital resources for the fastest growing cohort within the homeless veteran population.

In addition, this bill would provide gap analysis regarding access to shelter, safety and other relevant services for homeless veterans with dependent children. This kind of information gives federal/state agencies, community service providers and other stakeholders an idea of the immense problem and the ability to figure out ‘best practices’ in the fight to combat veteran homelessness, particularly those homeless individuals with children.

Furthermore, The American Legion continues to place special priority on the issue of veteran homelessness. With veterans making up approximately 11 percent of our nation’s total adult homeless population, there is plenty of reason to give the cause special attention. Along with various community partners, The American Legion remains committed to seeing VA’s goal of ending veteran homelessness come to fruition. Our goal is to ensure that every community across America has programs and services in place to get homeless veterans in housing (along with necessary healthcare/treatment), while connecting those at-risk veterans with the local services and resources they need. Lastly, HVRP is a highly successful grant program that needs to be fully funded at \$50 million. Currently, HVRP is funded at \$38 million.

The American Legion continues to support the efforts of public and private sector agencies and organizations with resources necessary to aid homeless veterans and their families.<sup>7</sup>

**The American Legion supports H.R. 5407.**

### **H.R. 5416**

*To amend title 38, United States Code, to expand burial benefits for veterans who die while receiving hospital care or medical services under the Veterans Choice Program of the Department of Veterans Affairs, and for other purposes*

VA burial allowances are partial reimbursements of an eligible veteran’s burial and funeral expenses. When the cause of death is not service related, the reimbursements are generally described as two payments: a burial and funeral allowance, and a plot or interment allowance.

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<sup>7</sup> American Legion Resolution No. 306 (August 2014): [Support Funding for Homeless Veterans](#)

Currently, under existing law, the family of a veteran in the Choice Program who passes away in a non-VA hospital receives a \$300 burial allowance. The family of a veteran who passes away in a non-VA under a VA contract receives a \$747 burial allowance. H.R. 5416 would set the burial allowance for veterans who die in a non-VA Health Care facility under the Choice program as the same as if the veteran dies in a VA or contracted medical facility.

The American Legion urges Congress and the VA to enact legislation and programs within the VA that will enhance, promote, restore, or preserve benefits for veterans and their dependents.<sup>8</sup>

**The American Legion supports H.R. 5416.**

### **H.R. 5420**

*To authorize the American Battle Monuments Commission to acquire, operate, and maintain the Lafayette Escadrille Memorial in Marne-la-Coquette, France.*

The Lafayette Escadrille Memorial is dedicated to the memory of the American pilots who volunteered to assist the Allied Army in 1914. The central platform is crowned with a triumphal arch and flanked with porticos leading to the underground crypt. The "art deco" style highlights the pilots' sacrifice and the Franco-American friendship.

There are statues of La Fayette and Washington facing one another and, on the ground, a mosaic of the famous Sioux warrior's head, the squadron's ensign. The crypt holds the ashes of 66 American pilots. It is decorated with 13 stained glass windows depicting the great aerial combats of the war. The monument was inaugurated on American Independence Day, July 4, 1928.

H.R. 5420 would authorize the American Battle Monuments Commission (ABMC), which was established by the Congress in 1923, as the guardian of America's overseas commemorative cemeteries and memorials and honors the service, achievements and sacrifices of the United States Armed Forces by overseeing the operations of the memorial which has been erected to honor those who gave the ultimate sacrifice for their country.

The American Legion urges Congress to appropriate adequate funding and human resources to the American Battle Monuments Commission in order to properly maintain and preserve the final resting place of America's war dead located on foreign soil.<sup>9</sup>

**The American Legion supports H.R. 5420.**

### **Draft Bill: Military Residency Choice Act**

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<sup>8</sup> American Legion Resolution No. 23: (May 2016): [Support for Veteran Quality of Life](#)

<sup>9</sup> American Legion Resolution No. 50 (August 2014): [Support for the American Battle Monuments Commission](#)

*To amend the Servicemembers Civil Relief Act to authorize spouses of servicemembers to elect to use the same residences as the servicemembers.*

**The American Legion does not have a position on the Military Residency Choice Act.**

### **Conclusion**

As always, The American Legion thanks this committee for the opportunity to explain the position of the over 2 million veteran members of this organization. For additional information regarding this testimony, please contact Mr. Warren J. Goldstein at The American Legion's Legislative Division at (202) 861-2700 or [wgoldstein@legion.org](mailto:wgoldstein@legion.org).