STATEMENT OF
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VETERANS AFFAIRS AND REHABILITATION DIVISION
THE AMERICAN LEGION
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
ON
PENDING AND DRAFT LEGISLATION

October 24, 2017

Chairman Roe, Ranking Member Walz, and distinguished members of the Committee on Veterans' Affairs; on behalf of National Commander Denise H. Rohan and The American Legion, the country's largest patriotic wartime service organization for veterans, comprised of more than 2 million members, and serving every man and woman who has worn the uniform for this country, we thank you for inviting The American Legion to testify today and share our position regarding The American Legion's positions on pending legislation before this committee. Established in 1919, and being the largest veteran service organization in the United States with a myriad of programs supporting veterans, we appreciate the committee focusing on these critical issues that will affect veterans and their families.

Draft Committee Bill to Establish the Veterans Choice Program Permanent

Draft legislation to amend title 38, United States Code, to modify the authority of the Secretary of Veterans Affairs to enter into agreements with State homes to provide nursing home care to veterans, to direct the Secretary to carry out a program to increase the number of graduate medical education residency positions of the Department of Veterans Affairs, and for other purposes.

The Department of Veterans Affairs (VA's) legislative proposal, The Veteran Coordinated Access and Rewarding Experiences (CARE) Act

Healthcare is evolving. Advances in medicine have allowed surgeons to become less invasive, diagnostic tests to become more precise, and we now routinely rely on scientific discoveries inconceivable just ten years ago. Yet our Department of Veterans Affairs (VA) Veterans Health Administration (VHA) is still operating in hospitals more than 50 years old and originated under a statutory framework that was established during the Civil War.

The 2014 wait time scandal helped to expose what veteran service organizations had been warning lawmakers about for years, that the VA has been systemically underfunded and was being forced to manage to budget, and not budgeted to need.

Despite these challenges, as an institution VA has emerged as a world-class leader in a number of veteran-centric medical disciplines, as well as conducting groundbreaking research, lifesaving

emergency disaster preparedness, and leading the nation in medical education and residency programs and partnerships.

The draft legislation introduced by this committee combined with the legislative requests from VA begin to address the evolution of 21st century medicine at VA in a way that will allow the department to provide greater access and develop stronger relationships with non-VA providers, moving toward a more integrated system. This is just the first step in a long overdue transformation and The American Legion expects greater emphasis on VA's modernization in successive legislation that is able to capitalize on VA's strengths and core competencies while ensuring that veterans continue to have access to the best care anywhere.

The American Legion is aware of criticisms that suggests this transformation moves perilously close to increased privatization of VA services, and does not dismiss these criticisms as without merit. Nefarious intentions can indeed serve to undermine modernization efforts and The American Legion will continue to be a watchdog and ensure future political interests do not diminish the capacity or value VA represents in the medical or veteran community. It is with this in mind that The American Legion asks this Committee to include a requirement in the final legislation that requires VA to issue an annual report indicating:

1. How many patients VA intends to provide healthcare to through Veteran Care Agreements (VCAs)?
2. How many patients received healthcare through VCAs over the preceding year?
3. What is VA's plan to reduce dependency on VCAs for VA's primary and core services?
4. What are the projected costs associated with providing patient care through VCAs?
5. What was the cost for providing patient care through VCAs over the preceding year?
6. An analysis of healthcare services VA believes is more cost effective to provide through VCAs.

This effort to refine and make permanent a consolidated community care program begins a redesign of VA's infrastructure and capabilities that will next cause a review of what services VA hospitals and community-based outreach centers (CBOCs) perform, and how.

As internal medicine continues to shorten hospital stays and telemedicine expands medical access, the VA will need to have the statutory flexibility to adjust as patient needs fluctuate, while remaining nimble enough to adapt to advancements in technology. The legislative language introduced by this Committee provides greater detail in a number of areas that VA's request lacks, and The American Legion would only caution the Committee to remember the number of times VA, VSOs and the Committee were called upon to introduce and support legislation needed to fix unintended consequences of the original Choice legislation. Well-crafted legislative language that provided direction while giving VA sufficient flexibility to promulgate regulatory guidance served well during the Appeals Modernization project and should be used as an example of how successful legislative initiatives can work to serve veterans while providing sufficient oversight and stakeholder engagement. With that in mind, The American Legion is particularly grateful for the Committee's diligent and well-articulated procedures as detailed in "Primary and Specialty Care" in Section 101 of the Committee draft.

The American Legion appreciates this Committee's dedication and hard work while producing this comprehensive draft and we would like to take this opportunity to highlight some areas we believe need further discussion.

Under Title I, Section 101 subsection 1703A (a) Program (1) [p.2, line13] "at the election of such veteran" needs to include "through agreement and consultation of their primary care provider" or add "pursuant to (b)(2)(A)." Failure to adjust this provision accordingly insinuates the veteran maintains unfettered unilateral discretion as to whether they are seen by a VA physician, or one contracted by VA.

Under Title I, Section 101 subsection 1703A (d) [p8, line 20] The American Legion believes that the rebates or discounts often negotiated by third party administrators, and overpayment recoupment procedures should be addressed such as outlined in the September 12, 2017 Inspector General Memorandum on Accuracy and Timeliness of Payments Made Under the Choice Program should be addressed.[1]

Under Title I, Section 106 subsection 1703B(b) [p.38 line 16] The American Legion recommends adding sufficient protections for veterans receiving care not provided by a VA healthcare provider by including language that entitles veterans protections under Title 38 U.S.C. 1151, which allows veterans who have suffered an added disability while getting VA medical care or taking part in a VA program designed to help you find, get, or keep a job, to be able to get compensation.[2] This lack of 1151 protection suffered by veterans has always been troublesome, and this legislative effort provides the Committee with a chance to cure this deficiency in the program. This also highlights the dangerous lack of oversight this program would enjoy as there are no provisions or discussions that seek to monitor standards or quality of care being performed through community agreements, and this Committee's oversight jurisdiction ends at VA facilities. Should a contracted physician fail to provide the minimum standards of quality care to a VA patient, Congress has no ability to hold them accountable. Choice has been a functioning program now for three year and it is difficult to believe there have no issues or complaints with the quality or timeliness of care provided by private providers.

Included in the VA request is a provision that seeks to increase capacity while saving on emergency room visits by creating or contracting with a network of walk-in clinics. The American Legion believes Section 202 "Improving Veterans' Access to Walk-in Care" will be a benefit for VA patients and will decrease the prevalence of illnesses that are left untreated because patients are deterred from going to the emergency room until their illness or injury becomes so severe that more costly and time consuming measures are needed to stabilize and cure the patient. The American Legion is concerned about the introduction of a copay feature that would be assessed for care directly related to illness or injuries caused or aggravated by a veterans honorable service. The American Legion looks forward to working with VA and this Committee to come up with a plan to mitigate these charges.

In Section 201 of the VA's proposal [p.14], the Department addresses VA medical facilities the "Secretary has determined is not providing care that meets such quality and access standards as

[1] https://www.va.gov/oig/pubs/admin-reports/VAOIG-17-00000-379.pdf
[2] https://www.benefits.va.gov/COMPENSATION/claims-special-1151.asp

the Secretary shall develop". The American Legion is very concerned about this provision and looks forward to reviewing the criteria the Secretary will establish to evaluate such facilities. Further, The American Legion insists that the Department provide an action plan to properly lead and rehabilitate such facilities so as not to drain a VA medical center of resources and thereby reduce options for veterans in what may already be a community struggling to provide healthcare options. Finally, we adamantly oppose and fear it financially unsustainable line (4) of that section which states, "When the Secretary exercises the authority under this subsection, the decision to receive care or services from a non-Department entity or provider under this subsection shall be at the election of the veteran."

In both legislative proposals there are provisions for patients to appeal the Department's decisions. As it stands now, the VHA is America's largest integrated health care system, providing care at 1,243 health care facilities, including 170 medical centers and 1,063 outpatient sites. Appeals of this nature are overseen and determined by the medical center director, which creates 170 standards for review. The American Legion calls on the Department to come up with a minimum standard for review that is consistent across the Department and referenced in VA's handbook, making appeals equitable for all veterans.[3]

As highlighted in "VA Healthcare - A System Worth Saving," a report written by Phil Longman, author of "Best Care Anywhere", and health-care journalist Suzanne Gordon, it makes sense for VA to partner with community physicians because it serves to enhance VA's ability to serve veterans:

> A related challenge is the acute shortage of doctors, nurses, and other health-care professionals across the U.S. system generally. The problem is particularly acute in rural areas and low-income inner-city neighborhoods. Though VA tends to attract health-care professionals who have an idealistic commitment to veterans issues and to public service, its recruitment efforts are challenged by its inability to offer employees the same income they could earn in the private sector.
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> For these reasons and many more, in some communities it makes sense for VA to partner with other providers rather than offer all medical services itself. Instead of operating its own dialysis centers in every community, for example, in some medical markets it may be more efficient and convenient to patients for VA to contract with an existing local facility. Similarly, in smaller communities there may not be enough heart patients to keep more than one catheterization laboratory working at a safe and efficient volume, and there is no point in VA building a cath lab of its own. Where VA lacks the infrastructure or personnel to offer patients timely and convenient access to a particular kind of care, it may make sense for VA to partner with outside providers in order to shorten wait times or give veterans a greater choice.
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> In doing so, VA must, however, preserve the high levels of evidence-based, coordinated care that has made it a model of best practices in health care and avoid the dangerous fragmentation and overtreatment that is a hallmark of so much of the U.S. health-care system. Outsourcing care simply to maximize choice of doctors does not make sense when

[3] VHA DIRECTIVE 1041: APPEAL OF VHA CLINICAL DECISIONS (October 24, 2016)

it conflicts with other critically important values that VA supplies to its patients, including its excellence in providing care that is safe and effective precisely because it is coordinated. Practically speaking, outsourcing can reduce the choices available to veterans if it causes VA hospitals and clinics to be starved of resources and then forced to close.[4]

Overall, The American Legion is extremely pleased with these proposals and with some minor adjustments, we believe this will begin the type of transformation VA has needed for a very long time.

In closing, with regard to how Congress will pay for the future healthcare for American veterans, The American Legion is appalled that either Congress or the Administration would recommend that veterans disability checks be debited, even one dime, to cover the costs of other veterans benefits. The COLA round down provision as proposed many times over the past several years would tax service disabled veterans to pay for service disabled veteran benefits. Regardless of what the annual amount of money debited from a veterans check would be each month, the very thought that this is okay is insulting and offensive. Veterans' healthcare should not be subjected to offsets or pay-fors, and the full burden of providing care for service disabled veterans needs to be borne by the federal government through a debt to the U.S. Treasury.

H.R. 1133: Veterans Transplant Coverage Act

To amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to provide for an operation on a live donor for purposes of conducting a transplant procedure for a veteran, and for other purposes.

This bill would authorize the Department of Veterans Affairs (VA) to provide organ transplants to veterans from a live donor regardless of whether that donor is a veteran or whether medical services required are done in a VA facility or non-VA facility.

Current VA policy excludes non-veteran live donations from coverage under the VA Choice Program and requires veterans to travel to specific VA treatment facilities. These eligibility constraints mean that veterans are required to travel hundreds, even thousands of miles when non-VA hospitals closer to home can do the same transplants. Overcoming travel distances and other barriers to care is one of the main objectives of the Choice Program and its intent should apply when a veterans needs a necessary organ transplant too.

The American Legion can support this bill through Resolutions No. 25, *The American Legion Support of the VA Organ Transplant Program* which supports a system of organ distribution that will ensure that veteran patients receive equitable consideration when in need of transplants; and No. 46, *Department of Veterans Affairs (VA) Non-VA Care Programs,* which calls on VA to develop a well-defined and consistent non-VA care coordination program, policy and procedure

[4] VA Healthcare - A System Worth Saving (August 2017)

that includes a patient-centered care strategy which takes veterans' unique medical injuries and illnesses as well as their travel and distance into account.[5,6]

The American Legion supports H.R. 1133.

H.R. 2123: "Veterans E-Health and Telemedicine Support Act" or the "VETS Act of 2017"

To amend title 38, United States Code, to improve the ability of health care professionals to treat veterans through the use of telemedicine, and for other purposes.

This bipartisan legislation would allow U.S. Department of Veterans Affairs (VA) health professionals to practice telemedicine across state borders if they are qualified and practice within the scope of their authorized federal duties. Currently, cumbersome location requirements can make it difficult for veterans – especially those struggling with mental health and/or mobility issues – to get the help they need and deserve.

Telehealth is one of VA's major transformational initiatives, one aimed at making care more convenient, accessible and patient-centered. VA Telehealth services have increased in recent years, creating more access to health care for veterans, especially those residing in rural areas throughout the country. However, current legal barriers limit the level of services and number of veterans VA can serve. American Legion Resolution 44, *Department of Veterans Affairs Rural Healthcare Program,* passed at The American Legion's 2016 National Convention urges Congress and VA to look for opportunities to expand telehealth services for veterans residing in rural communities.[7] By clearing away certain legal barriers, the VETS Act would ease access to the care veterans need and deserve.

The American Legion was pleased by the VA's newly proposed rule effectuating the goals of the VETS Act of 2017 and allowing VA telehealth providers to more easily administer care across state lines.[8] We look forward to timely implementation of a final rule and continue to urge Congress to build on this administrative action with permanent legislation in the form of the bipartisan, bicameral VETS Act.

The American Legion supports H.R. 2123.

H.R. 2601: "Veterans Increased Choice for Transplanted Organs and Recovery Act of 2017" or the "VICTOR Act of 2017"

To amend the Veterans Access, Choice, and Accountability Act of 2014 to improve the access of veterans to organ transplants, and for other purposes.

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[5] The American Legion Resolution No. 25 (May 2004): The American Legion Support of the VA Organ Transplant Program
[6] The American Legion Resolution No. 46 (Oct. 2012): Department of Veterans Affairs (VA) Non-VA Care Programs
[7] The American Legion Resolution No. 44 (2016): Department of Veterans Affairs Rural Healthcare Program
[8] VA proposed rule: Authority of Health Care Providers to Practice Telehealth (10.2.17)

This bill would allow veterans who live more than 100 miles from one of the nation's 14 Department of Veterans Affairs' Transplant Centers (VATCs) to seek care at a federally certified, non-VA facility that covers Medicare patients.

The VA's organ transplant system has a well-known problem: To focus specialized expertise and manage costs, the VA only does organ transplants at 14 locations nationwide, and each location only does certain types of transplants. The result is that veterans are required to travel hundreds, even thousands of miles when non-VA hospitals closer to home can do the same transplants.

Currently, these 14 VATCs are located at VA healthcare facilities across the country that specialize in solid organ and` bone marrow/stem cell transplantation to eligible veterans. They are located in Palo Alto, CA (Heart), Portland, OR (Kidney, Liver, Liver-Kidney), Seattle, WA (Bone Marrow, Lung), Houston, TX (Kidney, Liver, Liver-Kidney), San Antonio, TX (Bone Marrow), Salt Lake City, UT (Heart), Iowa City, IA (Kidney-Pancreas, Pancreas), Madison, WI (Heart, Heart-Lung, Liver, Lung), Birmingham, AL (Kidney), Nashville, TN (Bone Marrow, Heart, Heart- Kidney, Heart-Liver, Kidney, Liver, Liver-Kidney), West Roxbury, MA (Heart), Bronx, NY (Kidney), Pittsburgh, PA (Kidney, Liver, Liver-Kidney, Liver- Small-Bowel, Small Bowel), and Richmond, VA (Heart, Liver).

A recent study suggests that travel can have a negative impact on medical outcomes.[9] The study looked into the association between distance from a VATC and veterans actually receiving liver transplantation. The research found the greater the distance from a VATC a veteran lived, the lower their likelihood of being placed on the waitlist, receiving a transplant, and therefore the greater their likelihood of death.

How far a veteran resides from one of the VATCs can, therefore, reduce the veteran's chances of getting evaluated and eventually proceeding with the needed transplant. Some veterans even have to consider the possibility of relocating near one of the VATCs in order to go through the recovery process. VAOIG's October 2015 – March 2016 Semiannual Report to Congress substantiated that some patients referred for liver transplant evaluations at all VATCs experienced delays.[10] Timely organ transplants can be the difference between life and death.

The American Legion can support this bill through Resolutions No. 25, *The American Legion Support of the VA Organ Transplant Program* which supports a system of organ distribution that will ensure that veteran patients receive equitable consideration when in need of transplants; and No. 46, *Department of Veterans Affairs (VA) Non-VA Care Programs,* which calls on VA to develop a well-defined and consistent non-VA care coordination program, policy and procedure that includes a patient-centered care strategy which takes veterans' unique medical injuries and illnesses as well as their travel and distance into account**.**[11,12]

The American Legion supports H.R. 2601.

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[9] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4586113/
[10] https://www.va.gov/oig/pubs/sars/VAOIG-SAR-2016-1.pdf

[11] Resolution No. 25 (May 2004): The American Legion Support of the VA Organ Transplant Program
[12] Resolution No. 46 (Oct. 2012): Department of Veterans Affairs (VA) Non-VA Care Programs

H.R. 3642: "Military Sexual Assault Victims Empowerment Act" or "Military SAVE Act"

To direct the Secretary of Veterans Affairs to carry out a pilot program to improve the access to private health care for veterans who are survivors of military sexual trauma.

This bill would establish a pilot program that would allow survivors of military sexual trauma (MST) to seek specialized care outside the Veterans Health Administration through the Choice program. H.R. 3642 would make a victim of a military sexual trauma potentially eligible for non-VA care under the Veterans Choice Program.

Ultimately, this is about trying to find the right treatment for every patient, and in the case of MST, unique challenges can shape treatment needs, so VA should be flexible to ensure these veterans receive the care they need. The American Legion is deeply concerned with the plight of survivors of MST and has urged Congress to ensure the VA properly resources all VA medical centers, vet centers, and community-based outpatient clinics so that they employ a MST counselor to oversee the screening and treatment referral process, and continue universal screening of all veterans for a history of MST.[13]

A January 2011 landmark women veterans survey conducted by The American Legion found that respondents reported serious challenges receiving gender-specific care sensitive to their needs, *particularly* with regard to MST. The American Legion has since fought for better awareness training in VA for MST sensitivity, significant increases in outreach, and more comprehensive care options for MST survivors, including better availability of female therapists, female group therapy and other options to make MST care more accessible.[14]

VA is working to improve in these areas, as is evidenced by VA publications that note:

- VA knows that MST survivors may have special treatment needs and concerns. For example, a Veteran can ask to meet with a clinician of a particular gender if it would make him or her feel more comfortable. Similarly, to accommodate Veterans who do not feel comfortable in mixed-gender treatment settings, many facilities throughout VA have separate programs for men and women. All residential and inpatient programs have separate sleeping areas for men and women.
- VA has specialized treatment programming available for MST survivors. VA facilities have providers knowledgeable about evidence-based mental health care for the aftereffects of MST. Many have specialized outpatient mental health services focusing on sexual trauma. Vet Centers also have specially trained sexual trauma counselors. For Veterans who need more intensive treatment and support, there are programs nationwide that offer specialized sexual trauma treatment in residential and inpatient settings.
- In VA, treatment for all mental and physical health conditions related to MST is free and unlimited in duration. Veterans do not need to have a disability rating (that is, be "service-connected"), to have reported the incident(s) at the time, or to have other documentation

[13] Resolution No. 67: (Aug. 2014) Military Sexual Trauma
[14] Resolution No. 18: (Oct. 2015) Women Veterans

that MST occurred in order to receive free MST-related care. There are no time limits on eligibility for this care, meaning that Veterans can seek out treatment even many years after discharge.

- Veterans may be eligible for free MST-related care even if they are not eligible for other VA services. There are special eligibility rules associated with MST-related care and many of the standard requirements related to length of service or financial means do not apply.[15]

However, implementation of change within VA can take time, and even the best of programs can have irregular results from facility to facility. Veterans should not have to suffer because the care they need is not well implemented at their local VA facility.

The American Legion recognized that the Choice program was an emergency measure to get care to veterans where VA was struggling to deliver care. In recognition of the needs of an integrated system to deliver non-VA care when needed, The American Legion believes VA needs to "develop a well-defined and consistent non-VA care coordination program, policy and procedure that includes a patient-centered care strategy ***which takes veterans' unique medical injuries and illnesses*** [emphasis added] as well as their travel and distance into account."[16]

One of the unique problems that survivors of MST face is that the treatment environment at VA is not always conducive to their comfort level, and comfort is critical in particular when dealing with issues such as psychiatric care for Posttraumatic Stress Disorder (PTSD) which is frequently a major side effect of MST. In the case of these survivors, getting them to a treatment program within their comfort level can mean the difference between a survivor continuing treatment or abandoning treatment. The latter could result in them feeling further isolation and possibly cause an escalation of their symptoms.

For veterans who are suffering right now, they need to get the treatment they need, but we should also be mindful that this is not a panacea for the problems faced by MST survivors. Ensuring integration with the VA system is also beneficial to their overall health picture. As with any care outside VA, The American Legion stresses the importance of ensuring non-VA care has quality of care standards equal to or better than they receive within VA, that the care is coordinated effectively to ensure veterans are not stuck with billing problems with outside providers that can adversely affect their credit, and perhaps most importantly, that the providers have access to VA healthcare records for the patient and vice versa.[17] One of the best assets of VA healthcare for veterans is the ability for providers within the system to have a total picture of the veteran's health. By seeing all interconnected conditions, and being aware of the unique health challenges of veterans, providers can spot patterns leading to early screening for conditions such as PTSD, health conditions related to environmental exposures like Gulf War Illness and Agent Orange, and other things an average civilian provider would miss. While sometimes it's necessary for veterans to get the care they need outside the system, it's important to make sure when that's done, they do not lose out on the real and tangible benefits to care they get as part of the integrated care network that is VA.

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[15] Top Ten Things All Healthcare & Service Professionals Should Know About VA Services for Survivors of Military Sexual Trauma

[16] Resolution No. 46: *Department of Veterans Affairs (VA) Non-VA Care Programs* OCT 2014

[17] Resolution No. 46: *Department of Veterans Affairs (VA) Non-VA Care Programs* OCT 2014

But first, for veteran survivors of Military Sexual Trauma, we have to make sure they get the care they need in the environment that's going to maximize the effects of treatment.

Through Resolution No. 67: *Military Sexual Trauma*, The American Legion, recognizing the unique and sensitive nature of MST, supports a pilot program relying on VA's over 20 years of experience in treating veterans with MST to determine if this type of care is most beneficial to the veteran and will assess the merits of this program on the findings.[18]

The American Legion supports H.R. 3642.

Draft legislation

To direct the Secretary of Veterans Affairs to conduct a study on the Veterans Crisis Line.

The Veterans Crisis Line (VCL) connects veterans in crisis and their families and friends with qualified, caring Department of Veterans Affairs (VA) responders through a confidential toll-free hotline, online chat, or text. The responders at the VCL are specially trained and experienced in helping veterans of all ages and circumstances.

Since its launch in 2007, the VCL has answered nearly 2.8 million calls and initiated the dispatch of emergency services to callers in crisis nearly 74,000 times. The VCL anonymous online chat service, added in 2009, has engaged in more than 332,000 chats. In November 2011, the VCL introduced a text-messaging service to provide another way for veterans to connect with confidential, round-the-clock support, and since then has responded to more than 67,000 texts. The VCL plays a critical role in VA's initiative of suicide prevention, and ongoing efforts to decrease the estimated 20 veterans who die by suicide each day.

This legislation would direct VA to conduct a study on the VCL, which would require VA to gather data which it does not currently collect – nor should it. Focus rather should be on better understanding the circumstances of the 14 veterans who die by suicide each day who are not actively enrolled in the VA.

The American Legion opposes this draft bill.

Conclusion

The American Legion looks forward to continuing to working closely with VA and this Committee on these important issues and we applaud the Committee for working with VSOs and VA as partners to ensure that The Detriment of Veterans Affairs is properly structured to meet the needs of the 21st century veteran.

[18] Resolution No. 67 (Aug. 2014): Military Sexual Trauma

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 the Legislative Division at The American Legion's Legislative Division at (202) 861-2700.