

**STATEMENT OF
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DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON HEALTH
UNITED STATES HOUSE OF REPRESENTATIVES
March 3, 2010**

Mr. Chairman and Members of the Subcommittee:

On behalf of the more than 1.3 million members of the Disabled American Veterans (DAV) and its Auxiliary, I wish to express my appreciation for this opportunity to present the Subcommittee our views for the record on legislation pending before the Subcommittee. Mr. Chairman, as you know, DAV is an organization devoted to advancing the interests of service-connected disabled veterans and their dependents and survivors. For more than eight decades, the DAV has devoted itself to a single purpose: building better lives for our nation's disabled veterans and their families.

First, DAV wishes to thank this Subcommittee for establishing and helping enact what became section 211 of Public Law 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006. This Act validated and completed the 1999 Congressional decision to provide seriously disabled service-connected veterans a guaranteed benefit of Department of Veterans Affairs (VA) nursing home care if their need for such care was based on a service-connected disability or for any condition if they were 70% or more disabled from service-connected disabilities. The Act extended that eligibility to these high-priority veterans in the nation's 137 state veterans homes.

H.R. 4241, a bill introduced by the Chairman, would amend chapter 17 of title 38, United States Code, to allow for increased flexibility in payments to State veterans homes for the care of service-connected veterans. DAV has a longstanding resolution, No. 238, adopted by our membership at our most recent National Convention, as follows: "[i]n accordance with Public Law 109-461, VA [must] pay the full cost, on an equitable basis, for the care of veterans in need of State Home nursing care for a service-connected disability, and for any disability of a veteran with a service-connected disability rated at 70 percent or more." Therefore, we support the purposes of this bill, but point out some concerns that should be addressed before final passage.

Section 1 of the bill would make seven technical changes to existing statutory language governing VA's authority to reimburse state veterans homes their cost of care for service-connected veterans resident in state homes. One primary purpose of the amendment would give the Secretary a new discretionary authority to employ the authority of section 1720 of title 38, United States Code, as a basis for entering into payment agreements with a state home caring for service-connected veterans. Another purpose of the section would replace the payment rate determination in existing law, currently subsiding in subsection 1745(a)(2), with a linkage to the prevailing geographic rate paid by VA under section 1720 to community nursing homes under

contract with VA for the care of eligible veterans. A final focus of the amendment would be to circumscribe VA's reimbursement policy so that some state veterans homes may continue to participate in Medicare and Medicaid reimbursement programs. Continuation of this participation was cast into doubt with issuance of VA instructions under the new reimbursement program for service-connected veterans in state homes.

Public Law 109-461 was enacted in December 2006, but unfortunately VA only promulgated regulations to carry out its intent in April 2009. Since publication of these regulations, Mr. Chairman, we have been informed by the administrators of some state facilities that the "full" reimbursement rates governed by VA regulations will net some state veterans facilities less than their combined payments (from veterans, their state governments, the Department of Health and Human Services, and from VA under the traditional per diem payment subsidy) received before these regulations were issued. Your bill is intended to remedy this inequity.

Current law establishes state veterans home reimbursement rates for service-connected veterans using two formulas: a geographically adjusted per diem rate established by the Secretary as a corollary to the rates VA currently pays community nursing homes; or, a rate determined by the administrator of a state veterans home based on the calculated daily cost of care at that home. Existing law requires the Secretary to reimburse state veterans homes for the care of service-connected veterans at the lesser of these two rates.

As we understand it, these rate choices available to VA and the state veterans homes have been discovered to be complicated significantly by the governing financial and accounting policy of the Office of Management and Budget as expressed in OMB Circular A-87. This circular establishes principles and standards for determining costs for federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments. Under the rules of this circular, a state home in determining its daily cost of care, cannot include in that cost structure the depreciation of buildings that were recipients of VA construction grants. As stated in the circular, "[t]he computation of depreciation or use allowances will exclude: ... (2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides." This restriction on counting depreciation as a part of a home's daily cost of care significantly depresses the payable reimbursement rates. As a result of the state homes' excluding these significant amounts, the rates determined by the existing statutory formula will invariably become the OMB Circular A-87-determined rates. Therefore, in the view of the National Association of State Veterans Homes and other observers, the current statutory language in section 1745(a)(2) is unworkable for the purpose intended by Congress. The unworkability of these rates has served as a denial of access to nursing home care in state extended care facilities to the highest priority veterans, those who need nursing home care for residuals of chronic illnesses and injuries they incurred in military service to America.

While your bill would appear to us to address the problems in the current statutory language and VA's current regulations, and would provide sharper guidance to VA in amending those regulations, we are concerned that the language of this bill may not alter the impact of the OMB policy that governs the overall federal-state cost accounting relationship. We ask that the Subcommittee consider requesting counsel of VA and OMB to assure the Subcommittee that the

proposed language of your bill to restructure section 1745 will have its intended outcome of permitting disabled service-connected veterans to be reimbursed equitably and fully covered by state veterans homes.

Mr. Chairman, this concludes DAV's testimony. Again, we thank the Subcommittee for its leadership and for requesting our views on this legislation.