

**STATEMENT OF
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OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON HEALTH
UNITED STATES HOUSE OF REPRESENTATIVES
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Madam Chairwoman, Ranking Member Michaud, and Members of the Subcommittee:

Thank you for inviting me to testify on behalf of the Disabled American Veterans (DAV) at this important hearing of the Subcommittee on Health. DAV is an organization of 1.2 million service-disabled veterans. We devote our energies to rebuilding the lives of disabled veterans and their families.

Madam Chairwoman, the DAV appreciates your leadership in enhancing Department of Veterans Affairs (VA) health care programs on which many service-connected disabled veterans must rely. At the Subcommittee's request, the DAV is pleased to present our views on five numbered bills and two draft measures before the Subcommittee today.

H.R. 198—the “Veterans Dog Training Therapy Act”

If enacted, this bill would require the Secretary of Veterans Affairs within 120 days of enactment to conduct a pilot program for certain veterans through the therapeutic medium of service dogs. The pilot program would include the provision of training, exercising, feeding, grooming and quartering of dogs by VA for veterans with post-deployment mental health challenges for use as service animals. The stated purpose of the pilot program would be to determine how effectively it would assist veterans with post-traumatic stress disorder (PTSD) in reducing mental health stigma; improving emotional stability and patience; reintegrating into civilian society; and, making other positive changes that aid veterans' repatriation after combat. The bill would require a VA study to document such efficacy and a series of reports to Congress.

Madam Chairwoman, we do not have an approved resolution from our membership that addresses this specific topic, so we are unable to take a formal position on this bill. We are supportive of VA's current policy on admittance of service animals to VA facilities provided it is carried out uniformly nationwide. Also, DAV is looking forward to the receipt of findings from VA's ongoing research project to determine the efficacy of service dog usage by veterans challenged by mental illness and other mental health conditions related to combat deployments including PTSD. We recognize that trained service animals can play an important role in maintaining functionality and promoting maximum independence and improved quality of life for persons with disabilities—and that pilot programs such as the one proposed could be of benefit to certain veterans.

H.R. 1154—the “Veterans Equal Treatment for Service Dogs Act”

This bill would prohibit the Secretary of Veterans Affairs from restricting the use of service dogs by veterans on any VA property that receives funding from the Secretary.

Madam Chairwoman, similar to our lack of a resolution on the above bill, we do not have a resolution on this topic either. The Veterans Health Administration (VHA) has published a national policy directive on admittance of service and guide animals to VA health care properties and into its facilities on those properties. A number of complaints have arisen from our members strongly suggesting the actual local policies enforced by facility or network management may differ markedly from VA’s national policy, and that VA makes a distinction between service, guide and “companion” animals, admitting some and restricting others. We believe the current national policy, VHA Directive 2011-013, is adequate and that local enforcement of it clearly addresses this issue and could accomplish the goal of this measure. Therefore, we recommend the Subcommittee provide oversight to ensure standardization of the policy and extension of the policy for VA regional offices under the Veterans Benefits Administration (VBA). We are unaware that VBA has a published policy on veterans and service/guide dogs.

H.R. 1855—the “Veterans Traumatic Brain Injury Rehabilitative Services’ Improvements Act of 2011”

Madam Chairwoman, this measure is similar to a bill introduced by the same sponsor, Mr. Walz of Minnesota, at the end of the 111th Congress. We strongly support this bill. If enacted, it would clarify the definition of “rehabilitation” as that term is understood in title 38, United States Code, to strengthen VA’s mandate to sustain gains made in the rehabilitative process in veterans who have incurred traumatic brain injuries. The bill would focus VA on behavioral, mental health, cognitive and functions of daily living, in an effort to assure that veterans achieve and sustain maximal recovery from the trauma and lasting effects of brain injury.

Our members have approved a national resolution calling for better VA treatments and more research to ensure veterans with traumatic brain injury receive the best care possible. This bill aims to fulfill the goals of maximizing an individual’s independence and quality of life and is fully in keeping with DAV Resolution 215. We commend its sponsors and urge the Subcommittee to recommend its enactment as a high priority.

H.R. 2074—the “Veterans Sexual Assault Prevention Act”

Madam Chairwoman, we appreciate your introduction of this measure following information that came to light earlier this summer indicating a number of sexual assaults occurring in VA facilities had not been properly reported. I had the privilege of testifying before this Subcommittee on that topic, including providing commentary on the Government Accountability Office (GAO) report presented to the Subcommittee at that same hearing.

As I indicated in my earlier testimony, every veteran should be assured of the highest level of quality care and patient safety while receiving health care in a VA facility. A veteran

should never fear for his or her own personal safety while visiting a VA facility. VA was established as a place of care, not a place of fear, for veterans, visitors or staff.

We concur with GAO that when a veteran has a history of sexual assault or violent acts, VA must be vigilant in identifying the risks that such veterans pose to the safety of others at its medical facilities. When a sexual assault involves a VA employee, whether perpetrator or victim, the incident takes on even more meaning, and raises a host of questions that were explored by the GAO, and also discussed during your recent hearing. VA needs to take decisive actions to improve personal safety and promote an environment of care that includes protection from personal assaults, including sexual assaults. To do so will take a commitment from all levels of VA and especially VA's senior leadership. We commend GAO for making this critical report. Hopefully, GAO's findings can serve VA and veterans well in providing a roadmap to promote a new environment of care that encompasses a strong consistent culture of safety, and one that can be closely monitored by this Subcommittee as VA completes the recommended changes.

Madam Chairwoman, your bill firms up VA's requirement to document, track and control—and hopefully, to eliminate—incidence of sexual assaults that occur on properties and grounds of the VA. We believe the bill, if enacted, would be consistent with GAO's findings and would serve veterans and VA well as a means of greater accountability and transparency of VA's actions in combating sexual assaults and related incidents affecting the safety of veterans and VA staff.

H.R. 2530—“To amend title 38, United States Code, to provide for increased flexibility in establishing rates for reimbursement of State homes by the Secretary of Veterans Affairs for nursing home care provided to veterans”

H.R. 2530, introduced by the Subcommittee Ranking Member and the full Committee Chairman, would revise the methodology used to reimburse state veterans homes that provide nursing home care for veterans with service-connected disabilities rated 70% or greater or for veterans who need nursing home care due to a service-connected disability. The legislation is intended to amend existing statute and restore the original intent of Section 211 of Public Law 109-461, which was enacted in order to authorize VA to place 70% service-connected veterans in State Homes and to reimburse them at rates comparable to those received by contract community nursing homes.

DAV strongly supported establishment of the authority contained in Public Law 109-461 that confirmed a VA responsibility to provide full-cost reimbursement to the states for the care of service-connected veterans in order to expand the long-term care options for these highest priority veterans. However, as we noted in prior testimony before this Subcommittee, Public Law 109-461 was enacted in December 2006, but unfortunately VA only promulgated regulations to carry out its intent in April 2009.

The law established 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. The law also required the Secretary to reimburse state veterans homes for the care of service-connected veterans at the lesser of these two rates.

However, the final promulgated rule contained an unexpected complication when the Office of Management and Budget (OMB) applied the governing financial and accounting policy 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.

Since publication of these regulations, many State Homes have found that the “full” reimbursement rates governed by VA regulations will net their 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. Most of the State Homes that were already providing care for service-connected veterans suffered significant decreases in revenue, and other State Homes that were considering placements of service-connected veterans determined that they could not afford to extend such care at the reimbursement rates being offered under the new regulation. As a result, 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. As a result, the intention of Congress to expand long-term care options for the most seriously disabled service-connected veterans has not been achieved.

Over the past two years, VA and State Homes have been working towards a solution that would meet the original intent of Congress in a manner that would be viable for State Homes. Earlier this year, VA submitted draft health care legislation to Congress that contained a provision designed to remedy this situation. The language VA developed in consultation with state homes would end the current reimbursement methodology and replace it with new language requiring VA to, “...enter into a contract (or agreement under section 1720(c)(1) of this title) with each state home for payment by the Secretary for nursing home care provided in the home.” This provision is intended to reimburse state homes at rates comparable to those currently paid to contract community nursing homes that provide care. The bill also contained language requiring the development of new payment methodologies that will “adequately reimburse the state home for the care provided by the state home under the contract (or agreement).” VA has stated that the use of contracts would “...allow the most flexibility to VA and States to ensure that States

are paid adequately and according to the complexity and severity of illness of each Veteran.” VA intends to use contract templates to streamline the contract process, which would include standard language for pricing based on prevailing rates in the community.

Madam Chairwoman, DAV is hopeful that this legislation will address the problems in the current statutory language and VA’s current regulations, and will finally provide a route to resolve this problem. We have some concerns about whether OMB may continue to assert that Circular A-87 would be a controlling factor in determining the level of reimbursement despite the intention of Congress and VA and suggest the Subcommittee may want to make clear its intention on this point in report language. DAV commends the bill’s sponsors for their continuing efforts to ensure that our highest priority veterans may have the option of entering a state home to meet their long-term care needs, and we recommend enactment of H.R. 2530.

Draft Bill—the “Honey Sue Newby Spina Bifida Attendant Care Act”

This bill would establish assisted living and attendant care services for children of certain Vietnam veterans who are challenged by spina bifida. We have not received a resolution from our membership dealing with this specific issue; therefore, we can take no formal position on this bill. However, we are supportive of assisted living options as an alternative to institutionalized care; therefore, DAV would not object to its enactment. Nevertheless, we note that Congress has not further considered establishing an assisted living authority within the VA even though a 2004 study on VA’s Congressionally mandated assisted living pilot program showed great promise and high acceptance by veterans as an alternative to institutional long-term care. We hope that in a future hearing we will be able to testify in support of a new VA assisted living program.

Draft Bill – the “Veterans Health Care Facilities Capital Improvement Act of 2011”

This bill would authorize a number of major medical facility construction projects and capital leases, as well as authorize the appropriations that support these projects. It would also modify previous Congressional authorizations of projects for a number of facilities and modify and provide VA more flexibility in the existing enhanced-use lease authority under which VA may dispose of unnecessary properties by leasing them to outside entities for compatible-use purposes.

The bill would authorize proceeds from enhanced-use leases to be deposited to accounts used by VA to fund minor and major capital projects. The bill would alter existing cost-comparison studies required in title 38, United States Code, section 8104, as VA contemplates pursuing medical facility acquisition versus proposing new construction for major medical facility appropriations accounts. The bill would authorize the naming of a tele-health clinic in Craig, Colorado. Finally, the bill would extend a number of existing but expiring authorities of law.

Madam Chairwoman, we have no resolution from our membership covering these various matters, but DAV would offer no objections to enactment of this bill. We appreciate the Subcommittee’s continuing support of VA’s capital needs to ensure the VA health care system is modernized and meets standards for contemporary health care delivery.

Madam Chairwoman, this completes my testimony. Thank you again for inviting Disabled American Veterans to present this testimony today. I would be pleased to address questions from you or other Members of the Subcommittee.