

## LEGISLATIVE BULLETIN

October 2008

### **S. 2617**

#### **Veteran's Compensation Cost-of-Living Adjustment Act of 2008 Public Law No. 110-324, enacted September 24, 2008**

This bill directs the Secretary of Veterans Affairs to increase, as of December 1, 2008, the rates of veterans' disability compensation; dependents allowance, clothing allowance and dependency and indemnity compensation for surviving spouses and children.

This year, the increase will be 5.8 percent, the same percentage as the Social Security benefits increase. The increase will be reflected in checks received in January 2009.

### **H.R. 2638**

#### **Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 Public Law No. 110-329, enacted September 30, 2008**

On September 27, 2008, Congress enacted a full year appropriation for the Department of Veterans Affairs (VA) and related agencies, as part of a larger appropriations bill that funds the entire government (H.R. 2638, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009). Twelve years have passed since Congress last approved VA's budget before the beginning of the budget year (October 1). Disabled American Veterans (DAV) is grateful for this long overdue positive development, but we will continue our quest to ensure each year that VA funding is sufficient, timely and predictable. We believe this can be best achieved with a basic change in the method by which VA health appropriations are approved annually by Congress. Two bills were recently introduced in Congress (S. 3527 and H.R. 6939) that, if enacted, we believe would move funding reform in the right direction for America's sick and disabled veterans.

The FY 2009 *Independent Budget* (a partnership of four VSOs including DAV) recommended Congress provide VA health care programs a budget of \$42.8 billion. The final budget approved last week provides \$42.99 billion, but that amount included collections from veterans and their private health insurers (these projected collections are estimated at \$2.5 billion next year). Thus, while we are grateful for the generosity of this Congress in meeting our recommended funding levels for VA, absent veterans' and their insurers' contributions having been assumed in the total Congress has provided, even this good budget would still be short of our recommendation by \$2.4 billion.

The increase in medical care is about \$3.9 billion above the FY 08 level and more than \$1.7 billion above the administration's recommendation for FY 2009.

In addition to the improvements in funding for direct VA health care programs, Congress also increased funding for VA's medical and prosthetic research programs, to \$510 million (a \$30 million increase over this year and \$68 million more than recommended by the administration, but \$45 million less than the IB recommendation), and provided nearly \$1.9 billion for VA's construction and construction-related programs, an increase of over \$850 million from the administration's recommended level, but less than the \$2.1 billion dollars recommended by the IB. State veterans homes will receive \$175 million to support renovations and new facilities to provide long-term care to elder and disabled veterans.

VA's General Operating Expense account was also increased, from \$1.6 billion in 2008 to \$1.8 billion in the new year. DAV and the IB had recommended significantly more for this account, primarily to improve VA's ability to work down the disability claims backlog, but the total provided fell short of our expectations.

While there remain a few disappointments in this funding bill, DAV is very pleased overall with the work of the Appropriations Committees, and the full Congress, in recognizing veterans' needs as a high national funding priority.

DAV will continue to call for accountability and responsibility, with strong Congressional oversight, to ensure VA is adequately funded to care for sick and disabled veterans, whether from the current overseas wars or from past military conflicts. We will also continue to call for budget reform. While a sufficient and timely FY 2009 budget is appreciated, our goal of providing VA with a predictable budget has not been met and we will fight to ensure VA appropriations are sufficient, timely *and* predictable.

**S. 2162, as amended**  
**Veterans' Mental Health and Other Care Improvements Act of 2008**  
**Public Law No. 110-387, enacted October 10, 2008**

Title I – Substance Use Disorders and Mental Health Care

- Sec 101 – This title is enacted in tribute to Justin Bailey, who, after redeploying from OIF, died in a VA domiciliary facility while receiving care for PTSD and substance use disorder.
- Sec 102 – Lists findings of Congress on Substance Use Disorders and Mental Health.
- Sec 103 – Defines “full continuum of care” with respect to substance use disorders and requires that all VA medical centers provide ready access to a full continuum of care for substance use disorders.
- Sec 104 – Requires the Secretary to ensure that treatment for substance use disorder and a co-morbid mental health disorder is provided concurrently through a health professional with training and expertise in the treatment of both disorders, by separate services for each disorder, or by a team of experienced clinicians.

- Sec 105 – Requires the Secretary to carry out a 2-year pilot program to test the feasibility and advisability of providing assessment, education and treatment via the Internet to veterans with substance use disorders at VA medical centers that have established “Centers for Excellence for Substance Abuse Treatment and Education” or “Substance Abuse Program Evaluation and Research Centers.” A report is required to Congress no later than six months upon completing the pilot program and \$1,500,000 is authorized to be appropriated for each year of the pilot.
- Sec 106 – Requires the Secretary through the Inspector General at the VA to conduct a review of all residential mental health care facilities, including domiciliary facilities not later than six months after the enactment of this Act and another review not later than two years after completing the first review. A report is required to Congress no later than 90 days after completing the first review.
- Sec 107 – Requires the Secretary to implement a 3-year pilot program in at least 3 VISNs providing peer outreach, peer support, readjustment and mental health services to OEF/OIF veterans through contracts with community mental health centers and the Indian Health Services. Training is required for veterans conducting peer outreach and support, as well as clinicians providing readjustment and mental health services. There is an annual reporting requirement, a mandated program evaluation, and funding is authorized for appropriations as needed.

#### Title II – Mental Health Research

- Sec 201 – Directs the Secretary to carry out a program of research into co-morbid PTSD and substance use disorder through the National Center for Post-traumatic Stress Disorder. Authorizes annual appropriations of \$2,000,000 for 2009 through 2012.
- Sec 202 – Extends authorization for the Special Committee on Post-Traumatic Stress Disorder through 2012.

#### Title III – Assistance for Families of Veterans

- Sec 301 – Includes marriage and family counseling within authorized mental health services and removes the requirement that counseling must be initiated during the veterans’ hospitalization and is essential to permit the discharge of the veteran from the hospital.
- Sec 302 – Directs the Secretary to carry out, through a non-VA entity, a three-year pilot program (with an authorized one-year extension) to assess the feasibility and advisability of providing readjustment and transition assistance to veterans and their families in cooperation with ten VA Vet Centers. A report is required to Congress no later than six months upon the conclusion of the pilot program and \$1,000,000 is authorized to be appropriated each year from 2009 to 2011.

#### Title IV – Health Care Matters

- Sec 401 – Amends the federal veterans' benefits provisions to repeal a requirement that the Secretary of Veterans Affairs adjust the amounts deducted from payments or allowances made by the VA for beneficiary travel expenses in connection with health care whenever the payment or allowance is adjusted. Requires the Secretary to use the mileage reimbursement rate for the use of privately owned vehicles by government

employees on official business. A report is required no later than 14 months upon enactment of the Act.

- Sec 402 – Requires the Secretary to reimburse a veteran for the costs of emergency treatment received in a non-VA facility prior to transfer to a VA facility.
- Sec 403 – Requires the Secretary to establish a pilot program that allows a highly rural veteran, residing in five VISNs and is enrolled in the system of patient enrollment at the start date of the pilot, to receive health care in facilities other than VA.
- Sec 404 – Directs the Secretary to designate at least four but not more than six VA health care facilities as locations for epilepsy centers of excellence. Requires the Under Secretary for Health to establish a peer review panel to assess the scientific and clinical merit of proposals submitted for designation as such a center. Directs the Secretary to designate an individual in the Veterans Health Administration (VHA) as a national coordinator for VHA epilepsy programs. Authorizes \$6,000,000 to be appropriated for each of 2009 to 2013.
- Sec 405 – Establishes the qualifications for peer specialist appointees as follows: (1) A veteran who has recovered or is recovering from a mental health condition; and (2) Certified as having met the criteria for such position. Authorizes the Secretary to enter into contracts with nonprofit entities to provide peer specialist training and certification for veterans.
- Sec 406 – Requires the VA to establish up to seven consolidated patient accounting centers (CPACs) within the next five years. CPACs are required to apply commercial industry standards to coordinate and standardize billing and collections related to health care.
- Sec 407 – Eliminates a rule prohibiting VA from conducting widespread testing for HIV infection in the population of veterans who use VA health care facilities. It also would eliminate current requirements for separate written consent for HIV tests and pre- and post-test counseling.
- Sec 408 – Authorizes the VA to expand the health care benefits provided to the children, born with spina bifida, of certain veterans. Under current law, the children of Vietnam and Korean war veterans who were born with spina bifida are eligible for VA health care related to that condition. This provision expands the benefit and allows the children to receive comprehensive health care through the VA.
- Sec 409 – Prohibits the VA from collecting copayments for hospice care.

#### Title V – Pain Care

- Sec 501 – Directs the VA to develop and implement a comprehensive policy on the management of pain experienced by veterans enrolled for health care services provided by the VA. The Secretary is to:
  - Revise the policy on a periodic basis in accordance with experience and evolving best practice guidelines.
  - Develop and revise the policy in consultation with veterans' service organizations and organizations with expertise in the assessment, diagnosis, treatment, and management of pain.
  - Submit a report on the implementation of the policy no later than 180 days after the date of the completion and initial implementation of the policy and on October 1 of every year thereafter through fiscal year 2018.

#### Title VI – Homeless Veterans Matters

- Sec 601 – Increases authorization of appropriations for comprehensive service programs from \$130 million to \$150 million.
- Sec 602 – Revises provisions establishing a demonstration program of referral and counseling services for at-risk veterans transitioning from institutional living to: (1) remove the "demonstration" designation; (2) require the program to be carried out in at least 12 (currently, six) locations; and (3) extend the program through FY2012.
- Sec 603 – Requires the Secretary to ensure that VA domiciliary care programs are adequate, with respect to capacity and safety, to meet the needs of women veterans.
- Sec 604 – Directs the Secretary to provide financial assistance to private nonprofit organizations or consumer cooperatives to provide and coordinate supportive services for very low-income (less than 50% of the median income for the area) veteran families residing in permanent housing. Provides a preference for families who are transitioning from homelessness to permanent housing. There is a required study of the effectiveness of permanent housing program for 2009 and 2010 and a report must be submitted to Congress no later than 3/31/2011. Funding is authorized to be appropriated in the amount of \$15,000,000 for 2009, \$20,000,000 for 2010, and \$25,000,000 for 2011. Funding is also provided for technical assistance.

#### Title VII – Authorization of Medical Facility Projects and Major Medical Facility Leases

- Sec. 701 – Authorizes medical facility projects for fiscal year 2009 major medical facility projects as follows:
  - \$54,000,000 to construct a facility to replace a seismically unsafe acute psychiatric inpatient building in Palo Alto, California.
  - \$66,000,000 to construct a state-of-the-art polytrauma healthcare and rehabilitation center in San Antonio, Texas.
  - \$225,900,000 to make seismic corrections at a VA medical center in San Juan, Puerto Rico.
- Sec. 702 – Modifies authorization for major medical facility construction projects previously authorized as follows:
  - \$625,000,000 for restoration, new construction, or replacement of the medical care facility for the VA medical center at New Orleans, Louisiana.
  - \$568,400,000 for the replacement of the VA medical center at Denver, Colorado.
  - \$131,800,000 for an outpatient clinic in Lee County, Florida.
  - \$136,700,000 to correct patient privacy deficiencies at the VA medical center in Gainesville, Florida.
  - \$600,400,000 to construct a new VA medical center in Las Vegas, Nevada.
  - \$656,800,000 to construct a new VA medical center in Orlando, Florida.
  - \$295,600,000 to consolidate campuses at the University Drive and H. John Heinz III Divisions in Pittsburgh, Pennsylvania.
- Sec. 703 – Authorizes fiscal year 2009 major medical facility leases as follows:
  - \$4,326,000 for an outpatient clinic in Brandon, Florida.
  - \$10,300,000 for a community-based outpatient clinic in Colorado Springs, Colorado.

- \$5,826,000 for an outpatient clinic in Eugene, Oregon.
- \$5,891,000 to expand an outpatient clinic Green Bay, Wisconsin.
- \$3,731,000 for an outpatient clinic in Greenville, South Carolina.
- \$2,212,000 for a community-based outpatient clinic in Mansfield, Ohio.
- \$6,276,000 for a satellite outpatient clinic in Mayaguez, Puerto Rico.
- \$5,106,000 for a community-based outpatient clinic in Southeast Phoenix, Mesa, Arizona.
- \$8,636,000 for interim research space in Palo Alto, California
- \$3,168,000 to expand a community-based outpatient clinic in Savannah, Georgia.
- \$2,295,000 for a community-based outpatient clinic in Northwest Phoenix, Sun City, Arizona.
- \$8,652,000 for a primary care annex in Tampa, Florida.
- \$3,600,000 for an outpatient clinic in Peoria, Illinois.
- Sec. 704 – Authorizes for appropriations:
  - \$345,900,000 for the aforementioned list of major medical facility projects authorized for fiscal year 2009.
  - \$1,694,295,000 for the aforementioned list of major medical facility construction projects previously authorized.
  - \$70,019,000 for the aforementioned list of major facility leases authorized for fiscal year 2009.
- Sec. 705– Increases the threshold for major medical facility leases requiring Congressional approval from \$600,000 to \$1,000,000.
- Sec. 706 – Authorizes the city of Aurora to donate non-Federal land on the Fitzsimons campus for use by the Secretary of Veterans Affairs to construct a veterans’ medical facility no later than 60 days after the enactment of this section.
- Sec. 707 – Requires the Secretary of Veterans Affairs to submit a report on facilities administration no later than 60 days after the date of the enactment of this section.
- Sec. 708 – Requires an annual report on outpatient clinics no later than the date on which the budget for the next fiscal year is submitted to the Congress under section 1105 of title 31.
- Sec. 709 – Names the VA spinal cord injury center in Tampa Florida, “Michael Bilirakis Department of Veterans Affairs Spinal Cord Injury Center.”

#### Title VIII – Extension of Certain Authorities

- Sec. 801 – Repeals the December 31, 2008, sunset on the inclusion of non-institutional extended care services in the definition of medical services.
- Sec. 802 – Extends the recovery audit authority for fee basis contracts and other medical services contracts in non-VA facilities from September 30, 2008, under current law to September 30, 2013.
- Sec. 803 – Provides permanent authority for the provision of hospital care, medical services, and nursing home care to veterans who participated in certain chemical and biological testing conducted by the Department of Defense.
- Sec. 804 – Extends the expiring collections authorities for the following:
  - Health care copayments, which expires on September 30, 2008, under current law, to September 30, 2010; and

- Medical care cost recovery, which expires on October 1, 2008, under current law, to October 1, 2010.
- Sec. 805 – Extends the authority to provide nursing home care to veterans with service-connected disability, which expires on December 31, 2008, under current law, to December 31, 2013.
- Sec. 806 – Provides permanent authority to establish research corporations.
- Sec. 807 – Extends the requirement to submit an annual report on the committee on care of severely chronically mentally ill veterans through 2012.
- Sec. 808 – Provides for a permanent requirement for a biannual report by the women’s advisory committee on the needs of women veterans including compensation, health care, rehabilitation, outreach, and other benefits and programs administered by the VA.
- Sec. 809 – Extends the pilot program on improvement of caregiver assistance services for a three year period through fiscal year 2009.

Title IX – Other Matters

- Sec. 901 – Provides for a number of amendments, technical in nature, to title 38.

**S. 3023**

**Veterans’ Benefits Improvement Act of 2008  
Public Law No. 110-389, enacted October 10, 2008**

On September 27, 2008, the Senate passed S. 3023, the “Veterans’ Benefits Improvement Act of 2008.” This bill contains a wide range of measures affecting numerous benefits, including compensation and pension, education and vocational rehabilitation, housing, and other matters.

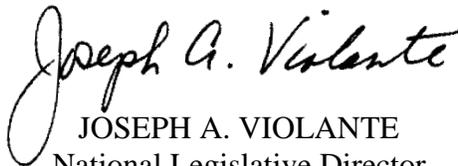
The bill is actually a combination of the original version of S. 3023, which was introduced by Senator Akaka of Hawaii, and H.R. 5892, which was introduced by Congressman Hall of New York. Some important aspects of the bill are listed below.

- Requires the VA to issue regulations that clarify the contents of its “notice” requirements provided to claimants by the VA regarding the substantiation of claims. The change requires such notice to be generally tailored so that claimants are made aware of the basic elements required to substantiate a specific claim.
- Allows for judicial review of adoption and revision of the VA schedule of ratings for disabilities. Such review must be sought in the Court of Appeals for the Federal Circuit, unless the rating schedule is challenged in conjunction with an appeal from the Board of Veterans Appeals to the Court of Appeals for Veterans Claims.
- Adds osteoporosis to disabilities presumed to be service connected in former prisoners of war with post-traumatic stress disorder.
- Requires the VA to assign temporary disability ratings to veterans who file claims within 365 days of discharge and who have certain well-documented disabilities resulting from military service.
- Allows for a dependent who would be entitled to accrued benefits upon the death of a claimant to be substituted as the claimant. This request for substitution as the claimant for accrued purposes must be filed within one year of the original claimant’s death.

- Requires the VA to enter into an independent contract with a third party to assess the Veterans Benefits Administration's (VBA's) quality assurance program. This review will include the performance of each Regional Office, consistency among those offices, and the performance of employees and managers of the VBA.
- Requires the VA to develop a certification examination of VBA employees responsible for processing disability claims.
- Requires the VA to conduct a study of its performance measures and work credit system for VBA claims adjudication.
- Modifies the period of eligibility for Survivors' and Dependents' Educational Assistance (chapter 35) of certain spouses of individuals with service-connected disabilities total and permanent in nature. Eligible spouses will have a 20-year (currently 10) window in which to claim chapter 35 benefits if their veteran spouse is rated as total and permanently disabled due to service-connected disability(ies) within 3 years of discharge from service.
- Provides for a program of independent living services and assistance that exceeds 24 months for veterans with a severe disability incurred in the Post-9/11 Global Operations period, and for other veterans if the VA decides that a longer period is likely to result in an increase of a veteran's level of independence.
- Increases the cap on the number of veterans allowed to participate in the independent living program for any single fiscal year from 2,500 to 2,600.
- Temporarily increases the maximum loan guaranty amount for certain housing loans guaranteed by the VA by decreasing the equity requirement for refinancing.
- Requires annual workload reports from the Court of Appeals for Veterans Claims that greatly exceed its current workload reporting requirements. These reporting requirements will give the Congress a much more detailed outline of the Courts performance and workload so that it can oversee allocated resources more objectively.
- Provides the VA authority to utilize national media to promote awareness of benefits under laws administered by the VA, to include awareness of assistance provided by the VA.

When the 111th Congress convenes in January 2009, DAV will continue its efforts to work for the passage of additional legislation to address the health care needs of disabled veterans and to improve claims adjudication and disability benefits.

As always, thank you for your continued support of the legislative activities of the DAV.

  
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 National Legislative Director