



DISABLED AMERICAN VETERANS
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LEGISLATIVE BULLETIN

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Pending Legislation

H.R. 3949, the Veterans' Small Business Assistance and Servicemembers Protection Act of 2009, would amend title 38, United States Code, and the Servicemembers Civil Relief Act, to maintain a single-source database of veteran small business owners, and allow the Secretary to easily verify information provided by and about veteran small business owners, among other matters.

H.R. 4048 would direct the Secretary of Veterans Affairs to carry out a pilot program on the provision of traumatic brain injury care in rural areas.

H.R. 4551, the Keep Our Promise to America's Military Retirees Act, would, among other things, restore health care coverage to retired members of the uniformed services.

S. 1779, the Health Care for Veterans Exposed to Chemical Hazards Act of 2009, would provide health care to veterans exposed in the line of duty to occupational and environmental health chemical hazards.

S. 1963, the Caregivers and Veterans Omnibus Health Services Act of 2009 is a comprehensive bill that includes provisions to provide for family caregivers, removes barriers to emergency care and care for the catastrophically disabled, expands health care services for women veterans, reaches out to rural veterans, improves mental health care, enhances Department of Veterans Affairs (VA) medical services, and enhances outreach for homeless veterans, along with other administrative matters.

Fiscal Year 2011 VA Budget Introduced

On February 1, 2010, the Administration released its budget request for VA programs and services. For VA's total budget, the Administration requested \$125 billion for FY 2011, an increase of \$12.2 billion over last year. Compared to the President's request for VA's total discretionary budget of \$60.3 billion, including medical collections, the *Independent Budget* (IB) recommends \$61.5 billion, \$1.2 billion more than the President's request and an increase of \$5.5 billion over last year.

Medical Care Budget: The Administration's request of \$51.5 billion includes \$3.4 billion in collections. The IB recommends \$52 billion, which is an increase of \$4.4 billion over the FY 2010 level and is \$424 million above the Administration's request—\$375 million of the IB's recommendation includes a long-term care initiative.

Medical and Prosthetic Research: The Administration's request of \$590 million is only \$9 million more than last year's level. The IB recommends \$700 million to allow VA to better understand and develop treatments for the unique injuries and diseases of veterans of the wars in Iraq and Afghanistan, as well as for diseases and injuries of older generations of disabled veterans.

Benefits Processing: The Administration recommends an increase of \$2.1 billion for the Veterans Benefits Administration (VBA), an increase of \$460 million over the FY 2010 appropriated level to reduce the out-of-control claims backlog, and ensure timely, accurate education benefits to service members and veterans eligible for the Post-9/11 GI Bill.

The DAV has concerns, however, with the level of funding recommended for construction projects and grants, biomedical research, and information technology:

- With VA facing a massive backlog of important construction requirements and states becoming ever more reliant on VA to contribute to the funding for construction of state extended care facilities, now is not the time to reduce this critical funding.
- The VA's research program, funded only at the rate of inflation, is an important VA link with academic medicine and cutting-edge technologies, and will make major contributions to restoring the health of wounded veterans returning from service in Iraq and Afghanistan.
- There are a number of critical information technology initiatives for next generation VA health and benefits systems that need to be addressed. Nevertheless, with \$3.3 billion requested, VA should still be able to maintain a steady information technology development program in 2011 that will enable a 21st century VA to fully automate its GI Bill benefits system, replace its aging *VistA* computerized patient care record, and create a seamless electronic record for military members entering the VA system.

VA Fiscal Year 2012 Advance Appropriation

For the first time, advance appropriation for VA's FY 2012 budget was part of the Administration's request this year. The recommendation for VA's medical care budget of \$54.3 billion in advance appropriations for FY 2012 includes \$3.7 billion in collections. This is an increase of \$2.8 billion over the Administration's FY 2011 request.

Important Caregiver Legislation

With ongoing military operations in Afghanistan and Iraq increasing numbers of servicemembers continue to transition to veteran status. Unfortunately, thousands of our military personnel are returning from deployments with physical and mental wounds and permanent disabilities. Already, over 480,324, or 46 percent, of the more than one million discharged veterans from the wars in Iraq and Afghanistan have sought care at VA health care facilities.

As with previous generations of combat veterans—veterans from Operations Enduring and Iraqi Freedom are seeking care for a range of health care issues as a result of their wartime military service. Many need specialized treatment for traumatic brain injury, post-deployment mental health readjustment challenges, including depression, post traumatic stress disorder and substance-use disorders. Timely access to mental health services is essential to preventing the tragedy of suicide and the onset of chronic mental health problems.

Like past military conflicts, these wars have produced a number of veterans with catastrophic injuries in need of highly specialized polytrauma care and life-long services and support. Caregivers of the severely wounded also need comprehensive support services to facilitate the veteran's rehabilitation and recovery while maintaining their own health and well-being. Likewise, with greater numbers of women serving in the military, including in combat and support roles, there is a new generation of women veterans turning to VA with unique health care needs. Millions more veterans have also been disabled from their military service during prior wars and periods of service.

Veterans have fought to defend our nation and our freedoms; they should not need to fight to get the specialized medical services they need. Therefore, we urge Congress to enact legislation, S. 1963, the Caregiver and Veterans Omnibus Health Services Act of 2009, or the House companion bills with similar provisions, as expeditiously as possible to address these critical health issues.

S. 1963 combines the content of two prior measures (S. 252 and S. 801) into a single VA health care omnibus bill that would make significant enhancements in VA health care services. This legislation contains vital provisions to improve and enhance health care programs and services for women and to help assure equal access to—and quality of—medical care for women veterans. S. 1963 would also provide desperately needed support for family caregivers of severely disabled veterans. Provisions contained in this bill have been approved by both House and Senate in various bills and are now in conference to reconcile any differences between the House and Senate measures. A specific concern to DAV during this conference period is to ensure inclusion of *all eras* of veterans for the purpose of caregiver support services, whether their needs are acute or chronic.

Please let your elected officials know that DAV supports legislation that would provide a comprehensive package of supportive services, including but not limited to financial support, health care and homemaker services, respite, education and training and other necessary relief, to caregivers of *all* veterans severely injured, wounded or chronically ill from military service.

Many of the important provisions in this bill have been pending from the 110th Congress. For these reasons, DAV urges immediate action for final approval and enactment of S. 1963, the Caregiver and Veterans Omnibus Health Services Act of 2009, or other measures containing essentially the same provisions.

Fixing The Veterans Benefits Approval System

One of the biggest problems facing veterans today is their inability to get correct and timely decisions on their applications for benefits, particularly for disability compensation. As of February 13, 2010, there were 480,706 claims for disability compensation and pensions awaiting rating decisions by the Veterans Benefits Administration (VBA); 180,785 (37.6 percent) of the claims exceeded the 125-day strategic goal. In March of 2009, VA's Inspector General reported that almost a quarter (22 percent) of all veterans' applications for disability compensation were decided incorrectly in the 12-month period reviewed. In addition, benefit application folders for almost 300,000 veterans were misplaced and the files for 141,000 veterans are lost.

VBA continues to rely on a cumbersome paper-based system to review and evaluate applications for disability compensation and pension and has yet to develop a modern IT infrastructure. During a recent inspection at the VBA Regional Office in Roanoke, Virginia, the VA Inspector General found nearly 11,000 folders sitting on top of file cabinets already filled to capacity with paper claims and supporting evidence for tens of thousands of veterans. After consulting with the building engineer, they determined that the load on floors 10, 11 and 12 of the 14-story building was double what is considered safe and heavy enough to cause the entire building to collapse.

Simply put, too many disabled veterans and their survivors must wait too long for disability compensation and pension rating decisions that are too often wrong or inaccurate. If these problems are not addressed and the VA benefits approval process reformed, the entire system is in danger of collapsing on itself from the sheer weight of the workload.

Congress and the Administration must take whatever actions are necessary to reform the veterans benefits approval process so that disabled veterans and their survivors are able to apply for benefits through a simple, uniform and modern IT-based system that enables VBA to make accurate decisions within acceptable time frames.

To accomplish these goals, Congress and the President must work with VBA to:

1. Develop a work culture that emphasizes quality, not just quantity;
2. Modernize its IT infrastructure and optimize its business processes; and
3. Implement a simpler and more transparent application and approval process.

In the short term, there are several reforms that should be implemented, either by VBA directly or as a result of Congressional action, to reform the benefits approval system:

- Create standardized templates for physicians so that private medical evidence can be developed and delivered in a uniform manner that allows VBA rating specialists to make determinations without the need for redundant VA exams.
- Use existing authority to assign interim ratings when there is sufficient evidence to establish a compensable service-connected condition, thereby quickly providing service-disabled veterans with financial support and access to VA health care.
- Establish comprehensive and uniform systems to train and provide continuing education to VBA's workforce, and implement a new quality control regime that places emphasis on the quality of decisions made, rather than the quantity of work completed.

Eliminating The Offsets

Military retired pay is earned by virtue of a veteran's long service to the nation; disability compensation is for service-incurred disabilities. Yet some service members who retired from the armed forces after 20 or more years of service must forfeit a portion of the retirement pay they earned through that very faithful service to receive VA compensation for service-connected disabilities.

Most nondisabled military retirees go on to pursue second careers in order to supplement their income, thereby justly enjoying a full reward for completion of a military career, along with the added reward of full pay in civilian employment. To put service-connected disabled retirees on an equal footing with nondisabled retirees, disabled retirees rated 40 percent or lower should receive full military retired pay and compensation to account for diminution of their earning capacities.

Disabled veterans should not suffer financial penalties for choosing military service as a career rather than a civilian career, especially where in all likelihood a civilian career would have involved fewer sacrifices and greater rewards. If a veteran must forfeit a dollar of retired pay for every dollar of VA disability compensation otherwise payable, our government is, in effect, compensating the veteran with *nothing* for the service-connected disability he or she suffered.

H.R. 303, H.R. 333 and HR 811 have been introduced in the 111th Congress and would eliminate this longstanding inequity. The DAV supports these bills and asks for their immediate consideration.

Similarly, Survivor Benefit Plan (SBP) annuities are offset by the amount of any survivor benefits payable under the VA Dependency and Indemnity Compensation (DIC) program. Unlike many private sector retirement plans, survivors have no entitlement to any portion of the member's retired pay after his or her death. Under SBP, a survivor's annuity is purchased through deductions from the member's retirement pay. This is not a gratuitous benefit. Upon the veteran's death, the annuity is paid monthly to eligible beneficiaries under the plan.

DIC protects the survivors from the losses associated with the veteran's death from service-connected causes or after a period of time when the veteran was unable, because of total disability, to accumulate an estate for inheritance by survivors.

If a veteran is retired from the military and enrolled in SBP, the surviving spouse's SBP benefits are reduced by the amount of DIC (currently \$1,154 per month). However, if the veteran died of other than service-connected causes or was not totally disabled by service-connected causes for the required time preceding his or her death, beneficiaries receive full SBP payments. There are approximately 61,000 military widows/widowers affected by the SBP offset of DIC benefits.

Where the monthly DIC rate is equal to, or greater than, the monthly SBP annuity, beneficiaries lose all entitlement to the SBP annuity. The offsets affecting military retirement pay and SBP payments are inequitable because no duplication of benefits is involved.

The DAV supports H.R. 775, the "Military Surviving Spouses Equity Act" and S. 535, a bill to amend title 10, United States Code, and repeal requirement for reduction of survivor annuities under the Survivor Benefit Plan by veterans' dependency and indemnity compensation. Both bills would finally end this disparity and would provide surviving spouses with the full spectrum of benefits they have earned and deserve.

The DAV strongly supports the repeal of these offsets, which penalize an already financially vulnerable population of survivors, dependents, and retirees. Urge your elected

officials to support the removal of these offsets. Pass H.R. 303, H.R. 333, H.R. 775, H.R. 811 and S. 535.

DAV Mid-Winter Conference

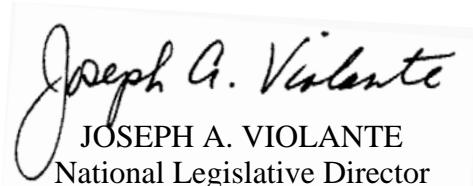
As you know, the DAV's annual Mid-Winter Conference will be held February 28-March 3, 2010, at the Marriott Crystal Gateway in Arlington, Virginia. The opening session will be held Sunday, February 28, 2010 at 9:00 a.m. in the Grand Ballroom, Salon AB/JK. The Legislative Workshop will be held that afternoon, at 1:30 p.m. in the same room.

National Commander Roberto Barrera will present his testimony to a joint session of the House and Senate Veterans' Affairs Committees on Tuesday, March 2, 2010, at 2:00 p.m. in Room 345 of the Cannon House Office Building. That evening at 6:30 p.m., the National Commander's reception will be held at the hotel.

The Mid-Winter conference is designed as an opportunity for you to take the time to meet with your elected officials and/or their staff to discuss issues of vital importance to America's service-disabled veterans and their families. I strongly urge you to take advantage of this opportunity by scheduling meetings with your elected officials during this period, either here in Washington, or at home in your state.

Conclusion

To ensure the successful enactment of veterans' legislation, our DAV and Auxiliary members must be active members of DAV's grassroots – DAV CAN — and we all must do our part to let our elected officials know about our support for legislation that helps to build better lives for our nation's service-disabled veterans, their families, and survivors. Thank you for your continued support.



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