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***STATEMENT OF
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COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
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Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee:

Thank you for inviting DAV (Disabled American Veterans) to testify at this legislative hearing, and to present our views on the bills under consideration. As you know, DAV is a non-profit veterans service organization comprised of 1.2 million wartime service-disabled veterans that is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

S. 469, the Women Veterans and Families Health Services Act of 2015

This is a comprehensive bill that would expand child care and women veteran retreat pilot programs in the Department of Veterans Affairs (VA), and would direct the Department of Defense (DOD) and VA to furnish voluntary fertility treatment and counseling programs.

Section 101 would direct the Secretary of Defense to furnish fertility treatment and counseling, including through the use of assisted reproductive technology, to a spouse, partner, or gestational surrogate of a severely injured, ill or wounded member of the armed forces who has an infertility condition incurred or aggravated while serving on active duty. This service would be provided regardless of the service member's sex or marital status. This section would further require that if the service member were unable to provide gametes for fertility treatment purposes, DOD would pay or reimburse the reasonable cost of the member's procuring donor gametes. In addition, a maximum of three completed cycles or six attempted cycles of *in vitro* fertilization (IVF) could be provided to a spouse, partner, or gestational surrogate of the member.

Section 102 would direct DOD to establish procedures for gamete retrieval from a severely injured, ill or wounded service member when the fertility of the member is potentially jeopardized as a result of military service.

Section 103 would mandate DOD to give active duty members the opportunity to cryopreserve and store gametes prior to deployment to a combat zone, at no cost. The gametes would be stored until one year after the retirement, separation, or release of the member from the armed forces, and the member would retain the option of extending the preservation of gametes by paying out-of-pocket to continue such storage or transfer the material to a private

cryopreservation and storage facility, or to a VA facility if cryopreservation and storage were available.

Section 104 would require DOD and VA to share best practices and facilitate fertility treatment and counseling referrals for eligible individuals.

Section 201 would amend section 1701(6) of title 38 to include fertility counseling and treatment under the definition of authorized VA medical services.

Section 202 would direct the VA Secretary to furnish fertility treatment and counseling, including through the use of assisted reproductive technology, to a spouse, partner, or gestational surrogate of a severely injured, ill or wounded veteran who is enrolled in VA and has an infertility condition incurred or aggravated while serving on active duty. In the case of IVF treatment furnished, a maximum of three completed cycles or six attempted cycles of IVF would be authorized, whichever occurs first, to a spouse, partner, or gestational surrogate of the veteran.

Section 203 would authorize VA to pay adoption expenses for up to three adoptions for a severely wounded, ill, or injured veteran with an infertility condition incurred or aggravated in the line of duty, and who is enrolled in the VA health care system.

Sections 204 and 205 would direct VA to report annually to Congress on the counseling and treatment provided under this act; and would require prescribed regulations on the furnishing of such counseling, treatment, and adoption assistance.

Section 206 would direct VA to facilitate research conducted collaboratively by DOD and the Department of Health and Human Services in order to improve VA's ability to meet the long-term reproductive health care needs of veterans with service-connected genitourinary disabilities or conditions incurred or aggravated in the line of duty that affect reproductive ability.

Section 207 would require VA to enhance the capabilities of the women veterans contact center to respond to requests for assistance with accessing VA health care and benefits, and would require referral of such veterans to federal or community resources to obtain assistance not furnished by VA.

Section 208 would modify the Caregivers and Veterans Omnibus Health Services Act of 2010 that authorized a pilot program of group retreat reintegration and readjustment counseling for women veterans recently separated from service. Section 208 would increase the number of counseling locations from three to 14, and extend the program through December 31, 2018.

Section 209 would establish VA programs to provide child care assistance to qualified veterans so that such veterans could receive regular mental health care services; intensive mental health care services; other intensive health care services; and, readjustment counseling and related mental health services.

DAV is pleased to support this bill, parts of which are in accord with DAV's Resolution No. 040, which supports enhanced medical services and benefits for women veterans. DAV also supports this bill on the strength of Resolution 220, calling for VA to provide comprehensive services to enrolled veterans. While DAV has no specific resolution from our membership related to reproductive and infertility treatments *per se*, this bill is focused on improving VA's authority to meet the long-term reproductive health care needs of veterans with service-connected conditions that negatively affect their reproductive health. For these reasons, DAV looks forward to favorable consideration and enactment of this bill.

S. 901, the Toxic Exposure Research Act of 2015

The 2008, 2010 and 2012 Institute of Medicine (IOM) Committees to Review the Health Effects in Vietnam Veterans of Exposure to Herbicides concluded there is a plausible basis that male veterans exposed to the herbicides the US military deployed in Vietnam could result in adverse effects being manifested in the adult children and grandchildren as a result of epigenetic changes, and such potential would most likely be attributable to the 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) contaminant, the most toxic form of dioxin in Agent Orange.

The 2012 Agent Orange Study Committee reported it favors renewed efforts to conduct epidemiologic studies on all the developmental effects in offspring that may be associated with paternal exposure. In addition, new studies should evaluate offspring for defined clinical health conditions that develop later in life, focusing on organ systems that have shown the greatest effects after maternal exposure, including neurologic, immune, and endocrine effects. Finally, although the IOM committee recognized that there is evidence that environmental exposures can affect later generations, epidemiologic investigations designed to associate toxic exposures with health effects manifested in later generations will be even more challenging to conduct than research on adverse effects on the first generation.

While TCDD mostly associated with herbicide-exposed Vietnam veterans, it is also one of 56 pollutants, including several types of dioxins, of interest to the 2011 IOM Committee on the Long-Term Health Consequences of Exposure to Burn Pits in Iraq and Afghanistan. Moreover, the Agency for Toxic Substances and Disease Registry has been working on possible adverse health outcomes from exposure to volatile organic compounds (VOCs) perchloroethylene (PCE), trichloroethylene (TCE), and benzene, in the water supply at the Camp Lejeune Marine Corps Base, North Carolina.

This bill would establish a national VA center to conduct research on the diagnosis and treatment of health conditions of the descendants of veterans exposed to any toxic substance, as defined by the Environmental Protection Agency, during military service provided those health conditions are related to the veterans' exposures. The bill would also establish an advisory board to oversee and assess the national center, to advise the VA Secretary on issues related to the national center, and to assess the health care needs of the descendants of exposed veterans. Finally, the bill would authorize no additional funds for the purposes of this program.

DAV does not have a resolution from our membership to enable DAV to support this legislation. We encourage the Committee and VA to work together to ensure the legislation is in consonance with the IOM committees' recommendations.

S. 1117, the Ensuring Veteran Safety Through Accountability Act of 2015, and
S. 1082, the Department of Veterans Affairs Accountability Act of 2015

S. 1117 would amend section 713, title 38, United States Code, which authorizes the VA Secretary to remove senior VA executives for performance or misconduct. This bill would expand the Secretary's authority, to enable the Secretary to remove anyone employed on a full-time basis under a permanent appointment in a position listed in section 7401, title 38, United States Code. Positions identified in section 7401 are all of VA's direct health care providers.

S. 1082 would provide the VA Secretary the authority to remove from the civil service or demote a VA employee through a reduction in grade or annual pay rate based on performance or misconduct.

Under S. 1082 employees affected by removal or demotion would be given seven days to appeal to the Merit Systems Protection Board. An administrative law judge would be required to make a final decision within 45 days of such appeal, or the original decision would become final.

The bill would prohibit removal or demotion of an employee without the approval of the Special Counsel if the individual sought corrective action from the Office of Special Counsel based on an alleged prohibited personnel practice.

The bill also would prescribe a minimum 540-day probationary period for appointment of an individual to a permanent position within the competitive service or as a career appointee within the Senior Executive Service, and would give the Secretary discretion to extend this probationary time. Final appointment to a permanent position would be the exclusive decision of the employee's supervisor, but based on regulations established for this purpose by the Secretary.

Lastly, under S. 1082, the Government Accountability Office would be required to study and report to Congress the amount of time spent by VA employees carrying out labor organization activities, the amount of VA space used for such activities, and provide a cost-benefit analysis of the use of such time and space for the conduct of these activities.

In order to ensure that veterans receive the benefits and services they have earned, every VA employee, manager and leader must faithfully fulfill their duties and responsibilities. When they fail to do so, whether due to poor performance or misconduct, systems must be put in place to support decisive and timely actions to hold them accountable, including appropriate training, demotion, suspension, and termination when appropriate.

Mr. Chairman, we, too, become frustrated and angry when veterans are harmed due to poor performance or misconduct by a VA employee, manager or leader, and more so when no action is taken to hold them accountable.

However, it is also vitally important to VA's long-term future to create an environment in which the best and brightest professionals choose VA over other federal or private employers. While poor performance and misconduct cannot be tolerated, VA employees must be confident that fairness and due process govern how they are selected, promoted, demoted, sanctioned or terminated.

Without such assurances of fairness and due process in the workplace, talented doctors, nurses and other professionals may not even entertain working in the VA, especially since they must already be willing to accept below-market salaries, pay and hiring freezes, government shutdowns, and other challenges of working in the federal government.

We must not forget that civil service protections enacted decades ago came about as a result of politicization and ill treatment of government employees, including terminations for almost any reason, or no reason.

Ensuring that the civil service remains free of political influence is a principle that we must protect to guarantee that employees are neither appointed, demoted nor terminated for political reasons, and that benefits and services are delivered to veterans without any partisan bias.

While DAV has no resolution from our membership on this topic or these specific proposals to enable us to take a position on these bills, we do want to stress to the Committee and these bills' sponsors that any legislation changing the existing employment protections in VA must strike an appropriate balance between holding civil servants accountable for their work, while maintaining VA as an employer of choice for the best and brightest individuals.

S. 1085, the Military and Veteran Caregiver Services Improvement Act

This measure would expand eligibility for VA's Comprehensive Caregiver Support Program to veterans of all eras, by phasing in veterans based on need, allowing VA to manage the new workload, while keeping service quality high. It would also include a wider range of injuries and illnesses that require caregiving, place a greater emphasis on mental health injuries and traumatic brain injury (TBI), and remove certain restrictions in current law on those eligible to become caregivers.

The bill would also make improvements to the VA caregiver program by making caregivers eligible for VA child care programs, or by providing a stipend to offset the cost of child care. Also, the bill would authorize VA to provide caregivers financial advice and legal counseling.

This bill would affect the Department of Defense caregiver program as well. Improvements in DOD's Special Compensation for Assistance with Activities of Daily Living (SCAADL) would include expanding eligibility for the program by making the criteria similar to those for the VA caregivers program and make caregivers of service members receiving SCAADL eligible for a range of critical supportive services provided by VA.

DAV supports this bill based on Resolution No. 042, which calls for legislation that would expand eligibility for comprehensive caregiver support services, including but not limited to financial support, health and homemaker services, respite, education and training, and other necessary relief to caregivers of veterans from all eras of military service.

VA's comprehensive caregiver program had been operating for over three years when Congress held a hearing late last year on how best to expand eligibility for the services and benefits of this program to severely ill and injured veterans of all eras. During the hearing, concerns were expressed about the program, and arguments were made that improvements should be made to the existing program prior to its further expansion.

We believe that program improvements can be achieved while expanding eligibility without further delay. DAV continues to address concerns about the program with VA, and we are engaging Congress to ensure caregivers of all severely disabled veterans receive comprehensive support.

Members of Congress pointed out that additional VA caregiver support coordinators (CSC) were needed in order to be responsive and meet the needs of caregivers currently participating in the program. DAV worked with VA to ensure funding was allocated for an additional 42 CSCs at the beginning of the current fiscal year (FY), and we are working with Congress to ensure a minimum of \$10 million is directed to hire additional CSCs for FY 2016. Also, as was noted in the hearing, the information technology (IT) system that supports caregivers needs improvement. We have worked with VA to ensure that funds were released in FY 2015 to make necessary IT corrections and we have urged the Department to request additional funding for FY 2016 to deliver a comprehensive IT solution for the program that would serve caregivers of severely ill and injured veterans of all eras.

The greatest obstacle to expanding this program is the cost for enacting legislation that would provide comprehensive caregiver support to all severely disabled veterans; nevertheless, we must also acknowledge the cost of deploying service members to war. Caregivers of veterans severely ill and injured before September 11, 2001, bear that cost already, with little recognition or services for their sacrifices.

The business case to expand the comprehensive caregiver program has already been made in the report *Hidden Heroes: America's Military Caregivers*, by the RAND Corporation. The loving assistance provided by family caregivers saves taxpayers billions of dollars each year in health care costs, and enables severely wounded, injured and ill veterans to live at home rather than in institutions. DAV believes it is time for Congress to act to expand these benefits to veterans of all eras.

Draft Bill – the Jason Simcakoski Memorial Opioid Safety Act

This draft bill, the “Jason Simcakoski Memorial Opioid Safety Act,” named in honor of a Wisconsin veteran who died from prescribed opioid drugs while in the care of the Department of Veterans Affairs (VA), would strengthen and better regulate VA's policies on the use of opioids

and drugs containing benzodiazepine, particularly patients with mental health challenges and those suffering from chronic pain.

We strongly support the sponsor's intention to control and reduce the use of addictive substances in VA health care. The VA has previously acknowledged it is challenged by the prescribing practices of some of its providers.

Title I of the bill would establish a far-reaching and ambitious new program to deal with, protect against, control, and report any over-prescribing of benzodiazepines and opioid substances in the care of veterans enrolled in health programs of VA. While VA has made recent efforts to address overprescribing, its existing pain management program is not well organized, and is insufficiently staffed in our view, so enactment of this bill would call attention to the need for VA to better manage and staff this function at both the national and local levels.

DAV strongly supports Title II of the bill, which would establish a formalized national patient advocacy program in VA. As a co-author of the *Independent Budget*, DAV has called for improvements in patient advocacy and ombudsman programs in VA for several years. We believe the bill would give this program the weight and importance it deserves to help veterans to better navigate the VA health care system.

Title III of this bill would enhance complementary and alternative health care programs in VA. We support the advent of complementary and alternative care, both in substitute to VA's use of pharmacological agents, and to better respond to the needs and demands of a younger generation of veterans, who often do not want traditional medical management – especially if it involves the prescribing of pain and psychotropic medications.

Title IV of the bill would require VA to strengthen its scrutiny in hiring practices for physicians and other providers by validating that such candidates for employment in VA carry no blemishes on their state licenses. If a VA provider were to violate a requirement of medical licensure, VA would be required by the bill to report any such violation to the state medical board(s) of the state(s) that had granted licensure. Also, if the VA provider were to resign from VA, or transfer from one VA facility to another, this bill would require VA to determine whether there were any “concerns, complaints, or allegations related to the medical practice” of the individual during VA employment, and to take appropriate action in response. In respect to these requirements, the Committee may wish to consider amending the bill to clearly define the term “provider,” and whether the intention is to include all or only some of the individuals identified as direct care providers in section 7401 of title 38, United States Code.

Title V of the bill would require the establishment and reporting to Congress of a series of internal audits of VA administrations and key offices.

In summary, based on several resolutions adopted by our membership in our most recent National Convention (Resolution Nos. 039, 201, 218, and 220, DAV supports this bill, we appreciate the sponsor's leadership in developing this proposal, and we urge Congress to proceed with its enactment this year.

Draft Bill – the Biological Implant Tracking and Veteran Safety Act of 2015

This draft bill would require VA to establish a biological implant inventory identification and management system with the same features and requirements of an existing system in use by the Food and Drug Administration to regulate origin, movement, surgical implantation, and recall (if necessary) of any such biological material.

The bill would define the term biological implant as any “animal or human cell, tissue, or cellular or tissue-based product,” and would tie that definition to the existing regulatory definition under the Federal Food, Drug, and Cosmetic Act.

The bill would set a number of milestone and deadline dates for implementation, and would require VA to submit a series of reports to document its progress in implementation of this system.

The bill would restrict the procurement of biological implants to vendors who meet certain conditions laid out in the bill, and would sanction any VA procurement employee involved in the procurement of biological implants who acted with intent to avoid, or with reckless disregard of the requirements of the bill.

DAV has received no resolution from our membership that deals with the specific topic of biological implants. However, DAV’s Resolution No. 220 calls for VA to provide a comprehensive health care service for all enrolled veterans. Better control of the origins, movement, surgical implantation and recall, if necessary, of implantable biological material would be in keeping with the intent of our resolution. Therefore, DAV supports the purposes of this bill and endorses its enactment.

Discussion Draft

Section one would require a report to the House and Senate Veterans’ Affairs Committees from VA about its plan to establish or expand advance degree programs in orthotics and prosthetics for the purposes of improving such care to veterans. Under the bill, a plan would be developed in consultation with veterans service organizations, institutions of higher education with accredited degree programs in prosthetics and orthotics, and with representatives of the prosthetics and orthotics field.

As part of the *Independent Budget* (IB), DAV supports the intent of this section of the bill that would develop future VA prosthetists and orthotists. The VA Prosthetic and Sensory Aids Service (PSAS) is a special-emphasis program that serves approximately half of the veterans that receive health care services in VA, and continues to have major positive impact on meeting the specialized needs of severely disabled veterans.

This measure is consistent with the IB’s recommendation for VA to revise qualification standards for prosthetics representatives and orthotics/prosthetics personnel to most efficiently meet the complexities of programs throughout the VA health care system and to attract and retain qualified individuals. Additionally, VA must ensure that PSAS departments are staffed by

certified professional personnel or contracted staff that are capable of maintaining and repairing the latest and most advanced prosthetic devices.

To this end, we urge the Committee to include a provision in this bill that would specify that the plan to be reported to Congress would directly improve and enhance orthotic and prosthetic care for veterans. For example, VA contracts with academic affiliates encompass the Department's education and training program for health professional trainees to enhance the quality of care provided to veteran patients through coordinated programs and activities in partnership with academic affiliates.

Additionally, we ask the Committee to consider defining the term "veterans service organizations" the same as this term is defined in section 5902, title 38, United States Code.

Section two of this measure would require VA to consult with the Department of Defense (DOD) and other agencies as appropriate, and afterward to submit a report to Congress on the extent to which Laotian military forces provided combat support to the armed forces of the United States in Southeast Asia between February 28, 1961, and May 15, 1975; whether the current classification by the DOD Civilian/Military Service Review Board is appropriate; and to make any recommendations for legislative action.

DAV has no resolution on this specific issue, and takes no position on this section of the bill.

H.R. 91, the Veteran's I.D. Card Act

This legislation would authorize the Secretary of Veterans Affairs to issue cards to certain former military service members that identify them as veterans. While DAV has no resolution or position on this matter we recommend this be a collaborative effort between the two principal agencies; DOD, in issuing this type of identification card to those eligible at time of discharge, and VA, in issuing this type of identification card to those already separated from military service.

Mr. Chairman, this concludes my testimony. DAV appreciates your request for our views on this legislation. I would be pleased to answer any questions from you or members of the Subcommittee dealing with this testimony.