



National Service & Legislative Headquarters
807 Maine Avenue, S.W.
Washington, D.C. 20024-2410
Phone (202) 554-3501
Fax (202) 554-3581
www.dav.org

***STATEMENT OF
ADRIAN M. ATIZADO
DAV DEPUTY NATIONAL LEGISLATIVE DIRECTOR
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
SEPTEMBER 16, 2015***

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee:

Thank you for inviting DAV (Disabled American Veterans) to submit testimony for the record of 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 nearly 1.3 million wartime service-disabled veterans. DAV is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

S. 290, Increasing the Department of Veterans Affairs Accountability to Veterans Act

This bill would make significant changes to the status, working conditions, incentives, and environment of work of members of the Senior Executive Service (SES) who work in the Department of Veterans.

Section 2 of his bill would impose reduction in retirement benefits of a removed member of the SES of the Department of Veterans Affairs (VA) if that former member were convicted of a felony, provided the felony influenced the individual's performance while employed in the previous VA position. The bill would establish a number of procedures to govern and regulate the retirement reduction and its amount, and would define the pertinent terms associated with this authority.

Section 3 would establish a new performance appraisal system to be used in VA for its SES members, and would cap the rating levels of "outstanding" and "exceeds fully successful" in any year not to exceed 10 percent and 20 percent of the members of the VA SES whose performance is appraised, respectively.

This section also would require SES performance evaluations to include review and consideration of relevant information from the VA Inspector General (IG), Government Accountability Office (GAO) and the Equal Employment Opportunity Commission, related to any facility or program managed by the SES member whose performance is being evaluated and rated.

This section would also require each member of the VA SES to relocate each five-year period to a different location that would exclude the supervision of the personnel or programs

managed in the prior position. The Secretary could waive this requirement in individual cases by providing notice and explanation to the Committees on Veterans Affairs of the House and Senate.

This section would require VA to make an annual report to Congress on SES appraisals and related information, and require VA to contract with an outside entity to review the SES management training program in use in VA, compared to that of other agencies and private sector organizations, and to make associated reports to the VA Secretary and to Congress.

Section 4 of the bill would impose a 14-day limit on the use of administrative leave for VA SES members, and would require VA to make an annual report to Congress on the use of administrative leave by SES members.

The delegates to our most recent National Convention approved Resolution No. 214, calling for the imposition of meaningful employee accountability measures in VA, but with due process for employees targeted for such sanctions, to strike a balance between accountability and VA's need to employ the best and brightest to serve veterans. Thus, we support the sanctions embedded in section 2 of the bill in the wake of a criminal conviction by a member or former member of the VA SES. This policy should be made applicable to all federal agencies.

Regarding section 3 of the bill, we understand the desire to make VA's performance bonus system more meaningful by statutorily limiting the number of senior executives eligible to receive top performance ratings and thus qualify for performance bonuses. However, the VA is but one of all federal agencies competing to attract high performing senior executives; it is important that VA's performance bonus structure remain comparable to that of other federal agencies, many of which award executive bonuses at significantly higher rates than VA. Any changes to VA's SES compensation structure must properly balance these sometimes competing concerns to ensure that VA is able to recruit and retain the most highly qualified executives and managers.

In addition, the mandatory relocation provision in this bill is vague with respect to defining "a different location." We caution against forcing individuals and their families to move every five years, a requirement that may serve as a disincentive for even high performing employees to continue their careers with VA.

S. 563, Physician Ambassadors Helping Veterans Act

This bill would require the VA Secretary to employ certain physicians without regard to civil service or classification laws, rules, or regulations, on a without-compensation basis in any VA practice area or specialty for which the average waiting time for veterans seeking an appointment with a physician exceeds the VA's waiting time goals, or, at any VA medical facility where the physician would be employed has demonstrated certain staffing shortages.

The bill would require each VA medical facility to designate a coordinator of volunteer physicians to establish relationships with medical associations serving the area, recruit

physicians for uncompensated employment at the VA facility, and serve as the initial point of contact for physicians seeking uncompensated employment.

The bill would require a physician volunteer to commit to providing a minimum of 40 hours for the initial year as a condition of receiving credentials and privileges to practice in a VA facility, and the bill would require the Secretary to decide whether to grant an uncompensated physician's request for credentials and privileges to practice in the VA facility within 60 days of a filed application.

The bill would require the director of a VA medical facility to approve, and accept the uncompensated services of, any physician who has made the requisite service commitment and receives credentials and privileges to practice in the facility.

DAV has received no resolution on this specific matter, but would offer no objection to enactment. Nevertheless, given VA's struggles over the past several years in recruiting and employing clinical and other personnel, but especially physicians, for both full- and part-time appointments, and considering the priority and resource diversion this act would impose on VA's limited human resources activities, we question whether the administrative burden might be too heavy, given that these physician ambassadors would be committing so little time to their practices in VA facilities. Also, the credentialing and privileging procedures are complex and time consuming, and would be as complicated for these volunteers as they are for full- or part-time VA physicians. For these reasons, we ask that the Committee carefully consider the practicality of this bill versus VA's need to ramp up human resources improvements physician hiring indicated recently by VA Secretary Bob McDonald, to be one of VA's top priorities.

S. 564, Veterans Hearing Aid Access and Assistance Act

This bill would add authority under title 38, United States Code, to VA's current authority under title 5, United States Code, to employ licensed hearing aid specialists. In addition, the measure would require VA to submit to Congress an annual report on the timely access of veterans to VA's specialized hearing health services, and on VA's contracting policies regarding the provision of specialized hearing health services to veterans in non-VA facilities.

In a previous Congress, VA testified on a similar bill authorizing hearing specialists to be employed by VA. During that hearing, VA indicated that direct employment of hearing aid specialists would potentially fragment VA's well-established national audiology program. In addition, VA asserted a pre-existing statutory authority to employ hearing aid specialists should they be determined to meet an unmet need.

The VA Office of Inspector General's (OIG) 2014 audit of VA's specialized hearing aid services described the delays in providing such services as attributable to inadequate staffing to meet an growing workload, due in part to the large number of veterans requiring compensation and pension (C&P) audiology examinations. We understand that these C&P examinations typically take priority over other appointments, such as those to issue hearing aids, in order for VA to process C&P claims as timely as possible.

Accordingly, the waiting time report required by this bill would include the average waiting time for a veteran to receive an appointment for a disability rating evaluation for a hearing-related disability. This time would be measured beginning on the date the veteran made the request.

The vast majority of C&P audiology examination appointments in the VHA are not made at a veteran's request but rather at the request of the Veterans Benefits Administration. We believe the no-show rate is much higher in these instances where an appointment is made without regard to the veteran's preference.

We recommend amending these provisions to ensure the information being reported is more meaningful and provides greater granularity, particularly if VA policy continues to place a higher priority on C&P examinations over other hearing health appointments.

Moreover, the bill's required reporting of staffing levels and performance measures related to appointments and specialized hearing health within VHA should be considered in light of VHA's audiology productivity standards (due to commence in fiscal year 2016) to provide a more accurate depiction of utilization rates of audiologists and hearing aid specialists in and outside of the VA health care system.

We laud the bill's efforts to create more transparency in VA performance to provide specialized hearing health services; however, the Committee must also ensure that sufficient funding is appropriated commensurate with the increase in services this measure would intend to provide. DAV has not received a resolution from our membership dealing with the specific matter taken up by this bill; however, DAV takes no issue with Congress encouraging VA to use all professional avenues available in order to address the backlog and improve care for veterans as long as it does not diminish the quality of care and the capacity to provide such care within the VA health care system itself.

S. 1450, Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act

The proposed authority would align VA practice with the private sector, facilitating the recruitment and retention of emergency physicians and the recruitment, retention and operation of a hospitalist physician system in VA medical centers.

To accommodate the need for continuity of efficient hospital care, emergency medicine (EM) physicians often work irregular schedules. This measure would modify the hours of employment for a full-time physician or physician assistant to more or less than 80 hours in a biweekly pay period provided the employee's total hours of employment in a calendar year would not exceed 2,080. Consequently, VA medical centers would gain the ability to implement flexible physician and physician assistant work schedules that could accommodate hospitalist and EM physicians' schedules and practices.

DAV does not have a resolution calling for this specific legislation; however, because of the measure's beneficial nature, we would not oppose its favorable consideration.

S. 1451, Veterans' Survivors Claims Processing Automation Act of 2015

This bill would authorize the VA Secretary to pay benefits to a qualified survivor of a veteran who did not file a formal claim, provided the veteran's records contained sufficient evidence to establish entitlement to survivor benefits to a qualified survivor. Additionally, the bill would require VA to associate the date of the receipt of a claim under this authority as the date of the survivor's notification to VA of the death of the veteran.

Providing a reasonable exemption from standard form-filing requirements is one way to streamline the claims process, as well as ease some of the processing burdens a survivor would otherwise experience. DAV supports this bill in accordance with Resolution No. 091, adopted at our most recent National Convention. This resolution calls on Congress to support meaningful reforms in the Veterans Benefits Administration's disability claims process, and this bill is consistent with that goal.

Furthermore, DAV testified before the Disability and Memorial Affairs Subcommittee of the House Veterans' Affairs Committee on June 24, 2015, in support of H.R. 2691, the Veterans' Survivors Claims Processing Automation Act of 2015, a companion measure.

S. 1460, Fry Scholarship Enhancement Act of 2015

This bill would amend title 38, United States Code, to extend the Yellow Ribbon Post 9/11 G.I. Bill education enhancement program to cover eligible recipients of the Marine Gunnery Sergeant John David Fry Scholarship.

Currently, surviving spouses and children are eligible to receive Post 9/11 G.I. Bill benefits in cases when a service member's death occurs in the line of duty, on or after September 11, 2001, and while serving on active duty as a member of the armed forces. Yellow Ribbon eligibility currently does not apply to the surviving spouse or child, but this bill would extend this benefit to the fallen service member's eligible survivor(s).

DAV does not have a resolution pertaining to this issue, but we would not oppose this legislation.

S. 1693, a bill to expand eligibility for reimbursement for emergency medical treatment to certain veterans that were unable to receive care from the Department of Veterans Affairs in the 24-month period preceding the furnishing of such emergency treatment

Section 1725, title 38, United States Code, was enacted in the Millennium Health Care and Benefits Act, Public Law 106-117, and took effect on May 29, 2000. The statute authorizes the Secretary to reimburse an eligible, non-service-connected veteran the reasonable value of emergency treatment furnished in a non-Department facility.

To be considered an active Department health-care participant at the time of the emergency treatment, a veteran must be enrolled in the VA health care system and have received

care under chapter 17 of title 38, United States Code, within the 24-month period preceding the furnishing of the emergency treatment.

DAV has a long-standing resolution to eliminate the provision that requires enrolled veterans to have received care from VA within the 24-month period prior to the date of the emergency care. However, we note Congress has passed legislation over the years to address numerous issues veterans with which veterans have had to contend due to rules limiting eligibility to VA's emergency care benefit. While we support the intent of this legislation, this approach allows many other existing restrictions to remain in place. These restrictions force veterans to choose between seeking life-saving emergency care or facing financial hardship.

It is for this reason the delegates to our most recent national convention adopted DAV resolution No. 125, calling for a more comprehensive legislative solution to integrate emergency care as part of VA's medical benefits package and allow veterans to receive the full-continuum, including emergency care, of holistic patient-centered services. Thus, DAV supports this bill.

S. 1856, a bill to provide for suspension and removal of employees of the Department of Veterans Affairs for performance or misconduct that is a threat to public health or safety and to improve accountability of employees of the Department

If enacted, this bill would establish new procedures to govern the suspension and removal of employees of the VA for performance or misconduct that is determined to be a threat to public health or safety, or, to suspend or remove an employee in the interests of public health or safety.

Section 2 of the bill would empower the VA Secretary on a discretionary basis to suspend or remove an employee in the above circumstances, without pay; the employee so affected would be provided a written statement of charges, and would be given not less than seven days to provide a response to them. A suspended employee pending removal would be entitled to a formal review by a designated VA official, and could be represented by an attorney or another party. In the case of an affirmed removal recommendation, the Secretary would be required to review the case, and VA would provide the employee a written statement of the Secretary's decision.

An individual suspended or removed under this authority would be entitled to appeal to the Merit Systems Protection Board (MSPB), and would retain the right to seek judicial remedy of MSPB's decision.

The bill would provide back pay restoration to an employee suspended or removed whose case was later determined to be not warranted or constituted a prohibited personnel practice as that term is defined by law, rule, regulation, or collective bargaining agreement.

The bill would require an annual report by the VA Inspector General (IG) to Congress on VA's use of this authority, its various elements, and any associated IG recommendations made to the VA Secretary.

Section 3 of this bill would create a requirement for the VA Secretary to establish performance plans for political appointees similar to those which already exist for career appointees.

Section 4 would require all VA managers who supervise probationary employees to provide them not less than 30-day notices on whether they have demonstrated successful performance during their probationary periods. This section would also require VA to add to the performance plans of all managers of probationary employees a requirement to provide effective feedback to probationary employees, and to make timely determinations regarding these employees' probationary status.

Section 5 of the bill would require VA to include in all VA managers' performance plans measures that focus on taking action in the case of poor performance and misconduct, as well as improving performance and sustaining employee engagement.

Section 6 would require VA to provide periodic training to all managers in dealing with their employees, including training in the rights of whistleblowers, motivating and rewarding employees, and effectively managing poor performers.

Section 7 of the bill would establish a requirement for VA to create a new career field of "technical experts," who would gain the means to advance their careers without needing to become VA managers.

Section 8 of the bill would add performance evaluations of VA employees to the definition of "personnel action" as described in section 2302 of title 5, United States Code.

Sections 9 and 10 of the bill would restrict recently terminated VA employees who had previously made or influenced significant acquisition decisions in employment with VA contractors under certain circumstances, and would place additional requirements on such contractors who hire these former VA employees.

Section 11 would impose a 14-day limit on the use of administrative leave for certain VA employees, and would require VA to make an annual report to Congress on the use of administrative leave.

Section 12 of the bill would require the Office of Medical Inspector to provide an annual report to Congress, as well as to provide Congress individual reports of problems or deficiencies in the Veterans Health Administration observed and reported internally by the Medical Inspector.

Section 13 of this bill would require the Government Accountability Office to report to Congress on the implementation of section 713 of title 38, United States Code (enacted in Public Law 113-146), focused on performance and accountability of VA employees, and on recruitment and retention of Senior Executive Service members in the VA.

Delegates to our most recent National Convention approved Resolution No. 214, calling for the imposition of meaningful employee accountability measures in VA, but with due process

for employees targeted for such sanctions. Parts of this bill meet the intent of DAV’s resolution; therefore, DAV supports enactment of sections 2 through 6. Nevertheless, with respect to section 2, DAV recommends that the term “public health” and “public safety” either be defined in bill language or be reconsidered as the foundation for the authority proposed.

The World Health Organization defines public health as “...refer[ring] to all organized measures (whether public or private) to prevent disease, promote health, and prolong life among the population as a whole. Its activities aim to provide conditions in which people can be healthy and focus on *entire populations*, [emphasis added] not on individual patients or diseases. Thus, public health is concerned with the total system and not only the eradication of a particular disease. The three main public health functions are:

- The assessment and monitoring of the health of communities and populations at risk to identify health problems and priorities.
- The formulation of public policies designed to solve identified local and national health problems and priorities.
- To assure that all populations have access to appropriate and cost-effective care, including health promotion and disease prevention services.”

Public safety carries a looser definition but generally means the responsibility of a state, federal or local governmental subdivision that protects the safety of the public. Those who work in public safety are typically members of organizations such as emergency medical services, police and fire departments, and other governmental functions that are intended to keep the public safe.

By these definitions, arguments could be made that, except in a few instances (biomedical researchers handling hazardous toxins, or armed VA police officers, for example) VA employees play no role in public health or public safety—rather, VA employees work in, conduct, and manage programs to deliver services and benefits to a fraction of the public. On the other hand, perhaps these terms could be applied to any number of activities or events in which VA employees might have been involved or managed, and could be held accountable (contaminated food; poor water quality; inadequate snow removal from parking lots; wet or slick waxed floors that constitute a falling hazard, etc.).

We believe the Committee should clarify the intent of the bill with respect to the use of the concepts of public health and public safety, to avoid misinterpretation or misapplication of its meaning if this bill is advanced. We suggest consideration of concepts adapted from the Uniform Code of Military Justice such as “gross negligence,” “incompetence,” and “willful misconduct” as actionable behaviors. These terms might serve as a stronger foundation to reflect the intent of this measure to root out VA employees who should not be serving veterans for specific and justifiable reasons.

S. 1938, Career Ready Student Veterans Act

This bill would ensure that VA education benefits are paid for duly recognized educational and employment programs and courses.

VA and state approving agencies are authorized to approve applications of institutions providing veterans non-accredited courses. Approval is authorized when institutions and their non-accredited curricula are found to meet criteria specified in law.

This bill would add two new standards for such approvals. First, approval could be granted in cases of programs designed to prepare individuals for licensure or certification in a state when programs meet any instructional curriculum, licensure or certification requirements of the state concerned. Second, approval could be given in cases of certain programs if they are designed to prepare individuals for employment.

The bill also would provide the Secretary with waiver authority when warranted and also require the Secretary to disapprove certain courses, unless the educational institution providing the course of education publicly discloses any conditions or additional requirements, such as training, experience, or examinations required to obtain licenses, certifications, or approval for which the course of education is designed to provide preparation.

On June 2, 2015, DAV testified before the Economic Opportunity Subcommittee of the House Veterans Affairs Committee regarding H.R. 2360, the Career-Ready Student Veterans Act, the companion bill. At that hearing, we noted DAV did not have a resolution from our membership on this particular issue, but would not oppose passage of this bill; our position remains unchanged.

Discussion Draft, to make improvements in the laws administered by the Secretary of Veterans Affairs relating to educational assistance

This bill seeks to make changes in educational programs authorized in title 38, United States Code. If enacted into law, these changes would affect the Post 9/11 GI Bill program and require additional reporting and survey responsibilities. The legislation also addresses when certain entities petition the VA for recognition as a qualified program of education for VA benefits purposes. Furthermore, the bill would make changes to the amounts payable to certain public institutions, including institutions of higher learning when specific contractual agreements are formed.

DAV does not have a resolution pertaining to the issues outlined within this bill and takes no position on the proposed legislation.

Mr. Chairman and Members of the Committee, this concludes DAV's testimony. We thank the Committee for inviting DAV to submit this testimony for the record of this hearing. DAV is prepared to respond to any further questions by Committee Members on the positions we have taken with respect to the bills under consideration.