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**STATEMENT OF  
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COMMITTEE ON VETERANS' AFFAIRS  
SUBCOMMITTEE ON HEALTH  
UNITED STATES HOUSE OF REPRESENTATIVES  
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Chairwoman Brownley and Members of the Subcommittee:

Thank you for inviting DAV (Disabled American Veterans) to testify at this legislative hearing of the Subcommittee on Health. DAV is a non-profit veterans service organization (VSO) comprised of more than one million wartime service-disabled veterans that is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity. DAV is pleased to offer our views on the bills under consideration by the Subcommittee.

**H.R. 4993, the Veterans Emergency Care Reimbursement Act of 2021**

This bill would modify the limitation on reimbursement for emergency treatment of amounts owed to a third party or for which a veteran is responsible under a health plan contract. The Department of Veterans Affairs (VA) would be responsible for any amounts of more than \$100 veterans owe to health plans. Any reimbursement claim received on or after February 1, 2010, or those related to the *Wolfe v. McDonough* certified class would be eligible for reimbursement. Currently, 38 USC Sec. 1725(c)(4)A states "the Secretary may not reimburse a veteran under this section for any copayment or similar payment that the veteran owes the third party or for which the veteran is responsible under a health-plan contract."

While DAV supports this legislation, we believe VA has additional debts it must still reconcile. In a joint letter dated February 12, 2021, DAV and other VSOs reminded the VA Secretary that Congress has already directed the Department to reimburse veterans participating in the VA's health care system for emergency treatment at non-VA health care facilities through the Emergency Care Fairness Act of 2010. Yet, for years, VA has defied this statute and two judicial decisions (*Staab v. Shulkin* and *Wolfe v. Wilkie*) from the U.S. Court of Appeals for Veterans Claims (CAVC).

The Court, in the *Wolfe v. Wilkie* decision, was unequivocal and ruled that the Emergency Care Fairness Act of 2010 prohibits the VA from denying reimbursement for deductibles and coinsurance that veterans owed under their health insurance policy for emergency medical expenses incurred at a non-VA facility. The VA has appealed the *Wolfe* decision and as a result, thousands of veterans continue to suffer severe financial hardships as they wait to be reimbursed.

While these debts remain, DAV also acknowledges the financial burden veterans suffer when bills come due for their share of costs for emergency care provided by non-VA providers. Most veterans believe that VA will pay any share that is not covered by their insurers, but copayments for emergency care and transportation can be much higher than they anticipate. DAV Resolution No. 019 calls for legislation to eliminate or reduce VA and Department of Defense health care copayments for service-connected disabled veterans. Premiums, health care cost sharing and deductibles are a feature of health care systems in which some costs are shared by the insured and the insurer in a contractual relationship, but asking veterans to pay for part of the benefits a grateful nation provides for them is fundamentally contrary to the spirit and principles underlying the provision of benefits to veterans.

DAV also believes that sheltering veterans from excessive payments for emergency care comports with the intent of the Veterans Millennium Health Care and Benefits Act (Public Law 106-117), which contained this provision—specifically, to offer a benefit that was consistent with the guarantee of emergency care coverage in the Patients’ Bill of Rights.

We support H.R. 4993—the Veterans Emergency Care Act of 2021—in accordance with DAV Resolution No. 373, which calls for legislation to simplify the eligibility for emergency care paid for by the VA and urges the Department to provide a more liberal and consistent interpretation of the law governing payment for emergency care and reimbursement to veterans who have received emergency care at non-VA facilities.

### **H.R. 5738, the Lactation Spaces for Veteran Moms Act**

H.R. 5738, the Lactation Spaces for Veteran Moms Act, calls for the VA to ensure all medical facilities have hygienic lactation spaces available for nursing mothers.

The population of women veterans continues to climb, and a significant number of those individuals—more than 43% according to VA’s figures—are of childbearing age. The reality today is that many women veterans are utilizing VA for their basic health care and coordination of care for their maternity care services. However, for veteran mothers who are nursing or require a space to pump, many VA facilities still lack dedicated spaces appropriate for this need. In some instances, the only private lactation spaces available have been public restrooms, which can ultimately create a barrier to care for such veterans as they are left with few suitable options to safely or comfortably perform this task while at a VA facility.

H.R. 5738 would require each VA facility to establish a secure, disability accessible space dedicated expressly for this purpose for use by veteran mothers. This bill is a commonsense solution to reflect the needs of the growing population of America’s women veterans.

DAV supports the Lactation Spaces for Veteran Moms Act in accordance with DAV Resolution 015, which calls for enhanced medical services and benefits for women veterans.

### **H.R. 5754, the Patient Advocate Tracker Act**

H.R. 5754 would require the Office of Patient Advocacy to develop a new or upgrade its existing IT system to allow patients, or their designated representatives, to electronically file complaints and view the status of filed complaints.

VA currently advises veterans to first attempt to address complaints with their care team. If complaints or concerns cannot be resolved at that level, then veterans can file a complaint directly with the Patient Advocate office, usually in person, by email or by telephone. Patient Advocates then record, file, and track resolution of these complaints. Patient Advocates work directly with management and staff to resolve complaints, but the office does not always inform veterans of actions the medical center takes to resolve their complaints or concerns.

VA has now implemented the Patient Advocate Tracking System Replacement (PATS-R), a web-based application to manage complaints and compliments nationwide. The system helps VA's patient care teams at VA Medical Centers collaborate to understand and address veterans' feedback and concerns more timely. Unfortunately, PATS-R is an internal VA system. While VA has an IT system that allows all veterans' interactions with patient advocates to be monitored, compiled and analyzed, veterans lack access to this system. This legislation provides an appropriate resolution to this issue by requiring VA to develop the information technology infrastructure necessary for veterans to file and track their complaints.

DAV Resolution No. 025 calls upon VA to establish equitable grievance processes and train staff to administer them. DAV believes veterans have the right to a transparent process that adequately addresses their complaints and, thus, we are pleased to support H.R. 5754, the Patient Advocate Tracker Act.

### **H.R. 5819, Autonomy for Disabled Veterans Act**

H.R. 5819, the Autonomy for Disabled Veterans Act, would increase the maximum amount allotted to the Home Improvements and Structural Alterations (HISA) grant program. The HISA program provides funding for essential home accessibility for disabled veterans. Currently, a maximum grant amount of \$6,800 is available for veterans with a service-connected condition and \$2,000 is available for veterans with a nonservice-connected condition.

Congress last increased funding for HISA grants in 2009. Due to inflation, HISA grants no longer cover the actual cost of renovations, and as a result, veterans are often left with unfinished home improvement projects leading to partial accessibility in their residences. H.R. 5819 would increase the maximum amounts from \$6,800 to \$10,000

and from \$2,000 to \$5,000, respectively. In addition, the bill would require VA to provide an annual increase for the maximum amounts based on the Consumer Price Index.

DAV strongly supports the Autonomy for Disabled Veterans Act, in accordance with DAV Resolution No. 197, which calls for an increase in HISA grant amounts. The HISA grant program has made an invaluable difference in the everyday lives of countless veterans and their families. Congress must re-evaluate and update the program's grant amounts to ensure that veterans are receiving a benefit that meets their needs without any shortcomings.

### **H.R. 5941, the Fairness for Rural Veterans Act of 2021**

Under current law, when states apply for a VA grant to construct a new State Veterans Home, VA assigns a priority based on the number of nursing home and domiciliary care beds that already exist in the state's program. The highest priority is assigned to states that have never applied previously for a State Home Construction Grant, followed by states with "great," "significant" and "limited" need, as defined in 38, Code of Federal Regulations, § 59.40.

This legislation would establish a new priority group, above the category of "great" need, for grant applications from states that have a "great" or "significant" need for beds if the new State Veterans Home would be located at least 100 miles away from any other State Veterans Home.

Access to health care has long been a problem for rural veterans, particularly as they age, become more disabled, or lose family caregivers. DAV agrees with the goal of increasing long-term care options for rural veterans; however, the legislation could also be used to gain higher priority for a grant application to build a home in an urban or suburban area as long as the closest State Veterans Home was at least 100 miles distant.

Additionally, there are questions about whether Congress and VA should be prioritizing the construction of State Veterans Homes in rural areas considering the challenges of recruiting and retaining clinical staff necessary to operate homes, as well as attracting enough veterans to maintain sufficient capacity to be sustainable. Congress should consider alternative long-term care options that may be better suited for rural areas than State Veterans Homes, including medical foster homes, as proposed in the Long-Term Care Veterans Choice Act on the agenda today.

### **H.R. 6647, to make certain improvements relating to the eligibility of veterans to receive reimbursement for emergency treatment furnished through the Veterans Community Care program**

This bill would authorize VA to provide reimbursement for emergency care for newly enrolled veterans who receive emergency treatment during the first 60 days following their enrollment, regardless of whether VA has treated such veterans. Current

law requires enrolled veterans to have used VA health care services within the past 24 months in order to qualify for emergency care reimbursement. We understand that this requirement that veterans have used VA health care within the past two years was intended to ensure that only veterans who were VA patients would receive reimbursement for emergency care. We agree with the intention of this legislation to provide a grace period for new enrollees; however, two months may be too short a window given the wait times for new appointments at some VA medical facilities.

DAV supports this bill as a means of eliminating an unnecessary barrier to emergency care for newly enrolled veterans. Similarly, because waiting times are significant at many VA facilities, we also believe that the legislation should be expanded to authorize VA to reimburse care for any veteran with a pending appointment for care, notwithstanding their previous use of VA health care.

DAV supports H.R. 6647 as a means of improving reimbursement for emergency care for veterans who are new to the VA health care system in accordance with DAV Resolution No. 373, which supports legislation to simplify the eligibility requirements and reimbursement for emergency care for veterans paid for by the VA.

### **H.R. 6823, the Elizabeth Dole Home and Community Based Services for Veterans and Caregivers Act of 2022**

The purpose of this legislation is to make improvements to VA's home and community-based services for veterans. This would be accomplished by:

- Increasing the amount VA may spend on Home and Community Based Services;
- Mandating the Veteran Directed Care Program, the Home Maker and Home Health Aide Program, the Home-Based Primary Care Program, and the Purchased Skilled Home Care Program be made available at all VA medical centers;
- Ensuring that a veteran or family caregiver who is denied or discharged from the Program of Comprehensive Assistance for Family Caregivers (PCAFC) is assessed for participation in all other available Home and Community-Based Services programs; and
- Mandating VA to review programs administered through the office of Geriatric and Extended Care for staffing needs, consistency of eligibility standards and geographic alignment of care.

VA's Office of the Chief Strategy Officer estimates that by 2039, the number of elderly veterans will double, and the number of VHA-enrolled veterans who are 85 years or older will grow by almost 40%. Most aging veterans – around 90 – prefer to receive long-term care through home and community-based programs, and VA has committed to honoring veterans' preference. However, for home and community-based services to work effectively, these programs have to be widely available, and they must focus on prevention and engaging the veteran before they have a devastating health crisis that

requires more intensive care in a state veterans nursing home or VA community living center. DAV is pleased to see many of these issues addressed in this legislation.

VA is able to provide home and community-based services at a significantly lower cost than institutional care. This, along with veterans' preference for these services, has incentivized VA and Congress to shift spending for long-term supports and services from institutional care to home and community-based services. We remind Congress that there will be a tremendous need for both institutional and non-institutional care in the near future, and VA must have significantly increased funding for both. Rather than shifting resources from institutional care into home-based care, we urge Congress to take the approach of growing home-based care at a faster rate than institution-based care.

DAV is pleased to support this comprehensive legislation in accordance with DAV Resolution No. 022, which calls for legislation to improve the VA's program of long-term services and supports for service-connected disabled veterans, and urges the VA to ensure each VA medical facility is able to provide service-connected disabled veterans timely access to both institutional and non-institutional long-term services and supports.

### **Draft Bill, the Long-Term Care Veterans Choice Act**

This draft legislation would provide VA with a new authority to place and pay for veterans, including those already placed prior to enactment, in medical foster homes meeting VA standards. Medical foster homes are homes offering a small group of veterans long-term care in more family- and community-oriented settings. Veterans who have a service-connected disability rated at 70% or greater, or who need nursing home care due to a service-connected disability, would be able to request placement in a medical foster home certified and inspected by the VA. The bill would place a limit of 900 in average daily census that VA would be authorized to support.

Medical foster homes provide a long-term care alternative for veterans who want to have greater independence and remain closer to their families and communities than institutional care might provide. It also allows VA to meet the veterans' needs for assistance with daily living and independent living when these needs are no longer able to be met safely in the veterans' homes. In VA's fiscal year 2022 budget proposal, the Department requested this legislative authority, noting that medical foster homes have "...proven to be safe, preferable to Veterans, highly Veteran-centric..." and cost less than traditional nursing home care.

DAV supports this legislation in accordance with DAV Resolution No. 022, which notes that VA lacks sufficient non-institutional long-term care alternatives, such as medical foster homes, and calls for VA to provide veterans access to a wider range of options for this type of care. As we learned during the COVID-19 pandemic, older residents in grouped quarter living facilities are vulnerable to, and at increased risk of, contracting and spreading infectious diseases, and therefore VA must ensure that

guidelines to prevent and restrict the spread of infectious diseases in medical foster homes are adequate.

Chairwoman Brownley, this concludes my testimony. I would be happy to answer any questions you or members of the Subcommittee may have.