



National Service & Legislative Headquarters
807 Maine Avenue SW
Washington, DC 20024-2410
tel 202-554-3501
fax 202-554-3581

**STATEMENT OF
SHANE L. LIERMANN
DEPUTY NATIONAL LEGISLATIVE DIRECTOR
OF THE DISABLED AMERICAN VETERANS
FOR THE SENATE COMMITTEE ON VETERANS' AFFAIRS
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Chairman Tester, Ranking Member Moran and Members of the Committee:

I appreciate the opportunity to testify before the Senate Veterans' Affairs Committee today on behalf of DAV (Disabled American Veterans).

DAV is a congressionally chartered 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. To fulfill our service mission, DAV directly employs a corps of benefits advisors, national service officers (NSOs), all of whom are themselves wartime service-connected disabled veterans, at every Department of Veterans Affairs (VA) regional office (VARO) as well as other VA facilities throughout the nation, including the Board of Veterans' Appeals (Board).

We are pleased to offer our views on the bills affecting service-disabled veterans, their families and the programs administered by VA that are under consideration by the Committee.

S. 280, the BEST for Vets Act of 2023

Starting in 1996, as part of a pilot program, the VA was authorized to complete disability examinations from non-VA medical sources to increase its capacity and improve timeliness, but stipulated no more than 10 VA regional offices (VAROs) could participate. These contract exams, originally managed by the Veterans Health Administration (VHA), were expanded from 10 to 15 VAROs between 2014 and 2016.

In 2016, VHA officially transferred the national compensation and pension disability examination contract and program management to the Veterans Benefits Administration (VBA). VA established VBA's Medical Disability Examination (MDE) program to manage and oversee contractors, monitor their performance, and ensure that they meet contract requirements, while enhancing the prompt delivery of disability benefits claims and improving the disability exam experience for veterans. The disability contract examination program was also expanded to allow all VAROs access to use the mandatory contract examination program starting in fiscal year 2017.

The contracts for the vendor-provided VA examinations require a specialized focus on three areas: quality, timeliness and customer satisfaction. The examiners for the vendors are required to complete the same training as provided to VHA examiners. In reference to the timeliness, the contract exams are required to be completed within 20 days generally, or within 30 days for specialized exam requests outside of the vendor's network.

S. 280, the Better Examiner Standards and Transparency for Veterans Act, or the BEST for Vets Act, would ensure that only licensed health care professionals furnish disability examinations under the VA contract examiner program, which allows for contract physicians to conduct VA disability examinations and provide medical opinions. It would amend section 504(a) of the Veterans' Benefits Improvements Act of 1996, Public Law 104-275 and Section 5101 note of title 38, United States Code.

The BEST for Vets Act states that, "no examination as part of this program will be conducted by any health care profession other than a physician, physician assistant, nurse practitioner, audiologist, or psychologist that has a current unrestricted license to practice that health care profession." This is consistent with VA's current policy for VA-provided examinations, per its adjudication manual, M21-1, section IV.i.3.A.1.d. Additionally, there is the requirement that VA provide an annual report to the House and Senate Veterans' Affairs Committees.

DAV supports S. 280 in accordance with DAV Resolution No. 095. The VA Compensation and Pension examination process is a vital part of the claims process as it can be determinative of the existence of a current condition, or if the veteran's illness or injury is related to their active military service or specifically, the severity of that condition. In many cases, the VA examination is the linchpin to establish or deny a claimed benefit.

S. 291, A bill to amend title 38, United States Code, to establish in the Department the Veterans Economic Opportunity and Transition Administration

This bill would establish the Veterans Economic Opportunity and Transition Administration to administer economic opportunity assistance programs for veterans and their dependents and survivors.

Specifically, the Veterans Economic Opportunity and Transition Administration would have control over the following VA programs:

- Veterans Readiness and Employment (VR&E) programs
- Educational assistance programs
- Veterans' housing loan and related programs
- Transition Assistance Program

Establishing a fourth administration within VA dedicated to creating economic opportunities for veterans would increase the visibility and accountability of all veterans' education and employment-related programs. A prime example for the need of the fourth Administration can be found in VR&E.

In over eight years, VR&E has not been able to successfully create and deploy a case management system. We are concerned that over \$20 million has been spent for a system and there is still not one currently in place. We understand VR&E's current approach and we applaud them for trying to ensure it is done correctly this time. However, DAV believes that the failures of the VR&E case management system is indicative of a lack of focus, direction, as well as a constant change of administrations and warrants a new approach.

Therefore, in accordance with DAV Resolution No. 405, we strongly support S. 291 as it would establish a fourth administration within the VA to oversee VR&E and education programs.

S. 350, Fry Scholarship Enhancement Act of 2023

The Fry Scholarship Enhancement Act would expand the eligibility for this scholarship to spouses and children of veterans who have passed away from a service-connected disability within 120 days of separation from active military service.

Under the John Fry Scholarship, students receive the same benefits as a student receiving Chapter 33 Post 9/11 GI Bill benefits at 100% eligibility. Students using the John Fry Scholarship are eligible for the Survivors' and Dependents' Educational Assistance (DEA) program however, they can use only one program at a time. A combined cap of 81 months of full-time training is available if using both programs.

In accordance with DAV Resolution No. 217, DAV supports S. 350, as it would improve VA's education benefits for survivors.

S. 414, the Caring for Survivors Act

Created in 1993, Dependency and Indemnity Compensation (DIC) is a benefit paid to surviving spouses of service members who die in the line of duty or veterans who die from service-related injuries or diseases. DIC provides surviving families with the means to maintain some semblance of economic stability after losing their veteran.

Increase DIC Rates

When a veteran receiving compensation passes away, not only does the surviving spouse have to deal with the heartache of losing their loved one, they also have to contend with the loss of annual income. This loss to a survivor's budget can be devastating, especially if the spouse was also the veteran's caregiver and reliant on that compensation as their sole income source.

While DIC helps many survivors of disabled veterans, the value of the current benefit is insufficient to provide meaningful support to survivors of severely disabled veterans. A veteran who is married and rated 100% service-connected receives approximately \$3,800 a month in disability compensation. The current DIC benefit is a little over \$1,500 a month, which is approximately 40% of the amount the veteran receives.

In contrast, monthly benefits for survivors of federal civil service retirees are calculated as a percentage of the civil service retiree's Federal Employees Retirement (FERS) or Civil Service Retirement System (CSRS) benefits, up to 55%. This difference presents an inequity for survivors of our nation's heroes compared to survivors of federal employees.

The Caring for Survivors Act would increase the rate of compensation for DIC to 55% of a totally disabled veteran's compensation to correspond with what federal employee survivors receive, thus providing parity for veterans' survivors and families.

Reduce the 10-Year Rule for DIC

If a veteran is 100% disabled, to include unemployable, for 10 consecutive years before their death, their surviving spouse and minor children are eligible for DIC benefits even if the death is not considered service connected.

Conversely, if that veteran dies due to a nonservice-connected condition before they reach 10 consecutive years of being totally disabled, their dependents are not eligible to receive the DIC benefit. This happens even though many surviving spouses put their careers on hold to act as primary caregivers for the veteran, and now with the loss of their loved one, they could potentially be left destitute. DAV believes the requirement of 10 years is arbitrary.

The Caring for Survivors Act would modify the DIC program and institute a partial DIC benefit starting at five years after a veteran is rated totally disabled and reaching full entitlement at 10 years. This would mean if a veteran is rated as totally disabled for five years and dies, a survivor would be eligible for 50% of the total DIC benefit, increasing until the 10-year threshold and the maximum DIC amount is awarded.

Consistent with DAV Resolution Nos. 002 and 162, DAV supports S. 414, the Caring for Survivors Act, as it will provide parity for DIC compensation rated and equity concerning the current 10-year rule.

S. 498, Veteran Education Empowerment Act

This legislation would establish a grant program for institutions of higher learning to set up, maintain, improve and operate student veteran centers. These grants would not exceed \$500,000 and have a duration of four years.

DAV understands the value of student veteran centers in providing a refuge for student veterans to share experiences and navigate college life from their own perspective. Therefore, DAV supports S. 498, in accordance with Resolution No. 187.

S. 572, Ensuring Access to VA INFO Act

The Ensuring Access to Department of Veterans Affairs Information Necessary for Oversight Act of 2023, or the Ensuring Access to VA INFO Act of 2023, would require the VA Secretary to submit responses to questions for the record from the Senate Veterans' Affairs Committee (SVAC) within 45 business days of receipt.

In addition to the 45-business day requirement for providing responses, the legislation requires VA to notify members of the SVAC at any time during the 45-day period if they anticipate not meeting the deadline along with a justification of the inability, an estimate of when the response will be submitted, and a description of the outstanding steps required before submission.

As DAV is a resolution-based organization, we do not have a resolution to support or oppose the Ensuring Access to VA INFO Act, therefore we have no position on this legislation.

S. 656, Veteran Improvement Commercial Driver License Act of 2023

The Veteran Improvement Commercial Driver License Act would approve a commercial driver education program at a branch of an institution of higher education if the program offered at the branch by the educational institution is appropriately licensed and uses the same curriculum that is offered at the main campus of the institution and is approved by a state agency.

This legislation would ensure CDL schools that offer courses at new branches do not have to wait two years if the primary institution has been approved by the VA and state approving agencies to receive GI bill benefits. It is estimated that 8,400 commercial driving programs have been approved for use by eligible veterans under the GI bill.

This legislation would provide an option for service-disabled veterans to obtain a CDL and help fill the shortage of truck drivers in our nation. In accordance with DAV Resolution No. 187, DAV supports S. 656.

S. 740, the GUARD VA Benefits Act of 2023

The Governing Unaccredited Representatives Defrauding VA Benefits Act, or the GUARD VA Benefits Act, would impose fines on individuals for soliciting, contracting for,

charging, or receiving any unauthorized fee or compensation with respect to the preparation, presentation, or prosecution of any claim for VA benefits. Previously, statutes did impose fines on these individuals; however, the provision for fines was repealed. The GUARD VA Benefits Act would reinstate those criminal penalties.

In recent years, several entities have emerged that claim to provide veteran resources to file disability claims for a fee however, these entities are not accredited. These groups argue they do not provide representation and therefore, do not need to be accredited nor do any of the above-referenced requirements of VA accreditation apply to them. They charge veterans and their families fees for their resources and these fee agreements are not submitted to or reviewed by the VA Office of the General Counsel (OGC).

At the March 29, 2023 hearing of the House Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs, Christa Shriber, VA Deputy Chief Counsel, testified that veterans who have been charged an unreasonable fee can motion to the OGC to have those fees changed. She reported that in 2022, VA returned \$2.5 million in unreasonable fees back to veterans. Further, she stated that 40% of all complaints they received in 2022, were specifically about unaccredited representatives.

As these groups operate outside of accreditation, they do not fall under the OGC's oversight. Additionally, these entities are not mandatorily required to have their individuals take VA training, follow VA's required code of conduct, nor undergo background checks. We are concerned that the OGC's purpose to protect veterans and their families is being intentionally circumnavigated, thus placing veterans and their families at risk.

In recent months some groups have stated that the GUARD VA Benefits Act would violate a veteran's constitutional rights. We respectfully disagree that the legislation would violate First Amendment rights of free speech or association. This legislation aligns with U.S. Supreme Court precedent recognizing the responsibility of government to regulate certain professional behavior. Reinstatement of penalties against those who charge a fee for unauthorized professional advice in violation of VA standards of competency and accountability is constitutional. See *generally National Institute of Family and Life Advocates v. Becerra*, ___ U.S. ___, 138 S. Ct. 2361 (2018); *Ohralik v. Ohio State Bar Association*, 436 U.S. 447 (1978); *Del Castillo v. Secretary of Florida Dept. of Health*, 26 F.4th 1214 (11th Cir. 2022), *cert. denied*, *Del Castillo v. Ladapa*, 143 S. Ct. 486 (2022).

For many of our nation's disabled veterans, VA disability compensation can be the difference between making ends meet and more severe outcomes such as homelessness. That's why it is so vitally important that veterans are properly represented by accredited individuals and institutions when applying for VA benefits.

At the aforementioned hearing, VA testified they are in support of the GUARD VA Benefits Act and provided it "... would create a single, national standard to serve as a

general deterrent against bad actors and would allow for more meaningful enforcement against unaccredited individuals who are currently not subject to any Federal punishment for violations of VA law with respect to the preparation, presentation, or prosecution of claims before VA.”

In accordance with DAV Resolution No. 095, DAV strongly supports S. 740, the GUARD VA Benefits Act, which will help ensure disabled veterans receive VA-accredited representation while deterring predatory practices that seek to bilk our nation’s heroes of their earned benefits.

S. 774, Veterans Border Patrol Training Act

S. 774 would require the Department of Homeland Security (DHS) to work in conjunction with the Department of Defense (DOD) and VA to establish an interdepartmental pilot program for five years.

Under the program, DHS must use the DOD SkillBridge Program to train and hire transitioning service members as border patrol agents for U.S. Customs and Border Protection. The DOD SkillBridge program is an opportunity for service members to gain valuable civilian work experience through specific industry training, apprenticeships, or internships during the last 180 days of service.

SkillBridge connects service members with industry partners in real-world job experiences. SkillBridge is an excellent benefit for installation and Unit Commanders who have members about to be discharged from active duty. SkillBridge can help service members bridge the gap between the end of service and the beginning of their civilian careers.

In accordance with DAV Resolution No. 187, DAV supports S. 774. As an organization we recognize the importance of increased employment opportunities for transitioning service members and service-disabled veterans.

S.897, Expedited Veteran Appeals Act of 2023

The Expedited Veteran Appeals Act would permanently increase the number of judges presiding over the United States Court of Appeals for Veterans Claims (Court). The Court has exclusive jurisdiction over decisions of the Board of Veterans' Appeals (Board). The Court reviews Board decisions appealed by claimants who believe the Board erred in its decision. As a court of record, the Court is part of the United States judiciary and not part of the Department of Veterans Affairs (VA).

The Court is authorized seven permanent, active judges, and two additional judges as part of a temporary expansion provision. Judges generally are appointed for 15-year terms, and each judge has the option upon retirement to agree to be available for further service as a recall-eligible Senior Judge. During any period of recall service, a Senior Judge has all of the judicial authority and powers of a judge in active service.

During fiscal year (FY) 2019, the Court completed 13,607 dispositions and in FY 2020, the Court completed 15,729 dispositions. In FY 2021, four retired judges were recalled to service as Senior Judges and this, coupled with the seven permanent judges and two temporary judges, the Court completed 17,002 dispositions.

As noted in the Court's FY 2021 Annual Report, "seven permanent active judges are not adequate, and the Court's sustained workload justifies making the nine-judge authorization permanent. Further, based on the Board of Veterans' Appeals' prediction that the number of final Board decisions issued will continue to grow in the near future, the Court has requested 2 additional temporary judgeships in addition to the 9, authorizing a total of 11 active judges when needed." The Court's 2021 report indicates that even with the seven permanent judges and two temporary judges, they had to recall four retired judges due to the strain of the caseload.

The March 29, 2023 Court statement for the record to the House Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs, notes, "the Board has received a significant influx of fulltime employee positions and resources with a goal of increasing its capacity to decide cases, and the Board Chairman expects to produce more decisions in FY 2023 than in any prior year."

DAV strongly supports S. 897, the Expedited Veteran Appeals Act, in accordance with DAV Resolution No. 178, which calls for adequate resources to resolve the backlog of appeals. In closing, we cite the Court's own statement, "Seven permanent active judges are not adequate...."

S. 1090, A bill to direct the Secretary of Veterans Affairs to update the payment system of the Department of Veterans Affairs to allow for electronic fund transfer of educational assistance, administered by the Secretary, to a foreign institution of higher education

This legislation would update the VA payment system to allow educational assistance payments to be made to a foreign institution of higher learning that does not have an employer identification number (EIN) or an account with a domestic bank.

VA education benefits, including the Post-9/11 GI Bill (Chapter 33), Survivors' and Dependents' Educational Assistance Program (Chapter 35), and the VR&E program, can be used at foreign institutions of higher learning. However, this is a much more complicated process than in the United States. It requires advance approval by VA; if it is not currently approved, the beneficiary must take steps to obtain proper authorization and their certificate of eligibility. Additionally, VA advises beneficiaries that they should plan for additional funds as it will take months before the payments are authorized and received by the foreign institution.

DAV strongly supports this bill, in accordance with DAV Resolution No. 217, which calls for improvements and protections for VA's education and employment

benefits for service-disabled veterans, their families, survivors and caregivers. Those who reside abroad should have the same parity in using their educational benefits. This bill would provide that by ensuring foreign institutions of higher education receive payments timely without disruption. Veterans and their families should not have additional financial burdens placed on them for using their earned educational and employment benefits abroad.

Draft bill, Student Veterans Transparency and Protections Act

The Student Veterans Transparency and Protections Act would require the Secretary of Veterans Affairs to improve how the VA discloses information to individuals entitled to educational assistance from the Department regarding risks associated with using such assistance at particular educational institutions and to restore entitlement of students to such assistance who are pursuing programs of education at educational institutions that are subject to federal or state civil enforcement actions.

DAV recognizes that certain VA systems need to be upgraded and improved to help facilitate the flow of information to service-disabled veterans and their dependents, especially those receiving educational assistance from the VA. DAV supports the Student Veterans Transparency and Protections Act, in accordance with DAV Resolution No. 070, which supports reforming and improving the budgeting and funding of VA IT systems for each individual department within the VA.

Draft bill, Love Lives On Act of 2023

The Love Lives On Act would restore payment of dependency and indemnity compensation (DIC) to surviving spouses under title 38, United States Code, section 1311, who remarry before the age of 55. This legislation would also not allow the termination of annuity payments to surviving spouses solely on the basis of them remarrying. In the case of a spouse that has remarried prior to the age of 55 and before this act becomes law, payments would be resumed. This legislation would also entitle a surviving spouse the opportunity to use the commissary and exchange stores.

This bill also expands the definition of a surviving spouse and dependent for entitlement to certain benefits, to include veterans benefits and Tricare. The payment of DIC benefits was intended to provide surviving spouses with the means to maintain some semblance of economic stability for themselves and their families. Surviving spouses that are currently in receipt of DIC benefits should not have to worry about losing their benefits if they remarry before the age of 55.

In accordance with DAV Resolution No. 162, we support the Love Lives On Act. We need to ensure that dependents and survivors of service-disabled veterans are properly cared for and have the resources they need to move forward with their lives after the loss of their loved one.

Discussion Draft, the Veterans Second Amendment Protection Act of 2023

Title 18, United States Code, section 992(d) governs who, under federal firearms laws, is prohibited from possessing firearms, which includes felons, fugitives, persons addicted to controlled substances, undocumented immigrants, people dishonorably discharged from the armed forces, persons who have renounced their U.S. citizenship, subjects of a qualifying domestic protection order, persons convicted of domestic violence, and persons who have been adjudicated by a court of law as mentally defective or who have been involuntarily committed to a mental institution.

The Veterans Second Amendment Protection Act would prohibit the VA from transmitting the name of a veteran to any entity in the Department of Justice, for use by the National Instant Criminal Background Check System, solely on the basis of a determination by VA to pay benefits to a fiduciary, without the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such beneficiary is a danger to themselves or others.

DAV is a resolution-based organization and we do not have a resolution specific to support or oppose this legislation. Therefore, DAV has no position on the Veterans Second Amendment Protection Act.

This concludes my testimony on behalf of DAV. I am happy to answer any questions you or members of the Committee may have.