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***STATEMENT OF
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SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
APRIL 14, 2015***

Chairman Abraham, Ranking Member Titus and Members of the Subcommittee:

Thank you for inviting the DAV (Disabled American Veterans) to testify at this legislative hearing of the House Veterans' Affairs Subcommittee 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.

H.R. 675

The Veterans' Compensation Cost-of-Living Act of 2015, introduced by Chairman Abraham, would increase the rates of compensation, clothing allowance, and Dependency and Indemnity Compensation (DIC), effective December 1, 2015.

Consistent with DAV Resolution No. 024, which calls on Congress to support legislation to provide a realistic increase in disability compensation, we support this bill. H.R. 675 proposes to increase the rates of compensation for wounded, ill and injured veterans, their survivors and dependents, commensurate with that provided to Social Security recipients.

While it has become customary for Congress to determine COLA in parity with Social Security recipients, it is important to note there have been years in which Social Security recipients did not receive a COLA. Those beneficiaries in receipt of compensation and survivor benefits also did not receive a COLA. To resolve this issue, DAV members passed Resolution No. 013, which calls on Congress to support the enactment of legislation to provide a realistic increase in Department of Veterans Affairs (VA) compensation rates to bring the standard of living of disabled veterans in line with that which they would have enjoyed had they not suffered their service-connected disabilities.

DAV has always supported legislation that provides veterans with a COLA; however, DAV is adamantly opposed to the practice of rounding down COLAs to the nearest whole dollar amount. This bill does contain a round down provision, and we oppose the round-down feature of this bill.

H.R. 677

The American Heroes COLA Act of 2015, also introduced by Chairman Abraham, would couple COLAs for wounded, injured and ill veterans, their dependents and survivors to those receiving Social Security benefits. This bill contains what would result in a permanent round down provision.

Consistent with DAV Resolution No. 071, which calls upon our organization to oppose the permanent rounding down of COLAs in veterans' benefits, we oppose this bill. H.R. 677 seeks to permanently link VA compensation payment COLAs to that of Social Security recipients and provide for automatic adjustments whenever an increase occurs, thus negating the need for future legislation to provide an increase each year.

While we do not oppose the automatic adjustment, DAV will continue to oppose legislation that seeks to permanently round down veteran and survivor compensation payments. DAV and our partners in the *Independent Budget* (IB) have documented the cumulative impact on beneficiaries. The cumulative effect has eroded approximately \$10 per month for every veteran and survivor. As an example, a veteran totally disabled from service-connected disabilities would have received \$1,823 per month in 1994 but today will be paid \$2,848 per month. Had this veteran received the full COLA each year for the past two decades, he or she would receive about \$120 extra this year.

DAV and our IB partners call on Congress to permanently end the practice of rounding down COLAs for wounded, ill and injured veterans, their dependents and survivors.

H.R. 732

The Veterans Access to Speedy Review Act, introduced by Mr. Ruiz, would broaden responsibility of the Board of Veterans' Appeals (Board) to determine the locations and types of hearings, whether in person or by videoconference. Appellants would retain the absolute right to choose the hearing venue, if so requested.

DAV is pleased to support this bill because it protects the rights and interests of disabled veterans. H.R. 732 provides that once the appellant is notified of the Board's determination of the type and location of the hearing, the veteran would be afforded the opportunity to request a different hearing type and/or location. If such a request is made, the Board must grant the request while ensuring the hearing is scheduled as soon as possible and without delay.

H.R. 800

The Express Appeals Act, introduced by Mr. O'Rourke and co-sponsored by Chairman Miller, seeks to establish an appeals pilot program. H.R. 800 would direct the Secretary of Veterans Affairs to carry this pilot to provide appellants' with an option of using an alternative appeals process to more quickly determine claims for disability compensation by the Board of Veterans' Appeals (the Board or BVA).

DAV supports this bill in accordance with Resolution No. 192, which calls on Congress to support meaningful reform in the Veterans Benefits Administration's (VBA) disability claims process. If enacted into law, H.R. 800 would provide appellants with an option to bypass some of the processing requirements VBA must perform consistent with protocols established within the current appeals framework.

On January 22, 2015, DAV testified before this Subcommittee and recommended creating a new Fully Developed Appeals (FDA) pilot program. We encourage the Subcommittee to consider the full content of our January 22, 2015, testimony as you deliberate the merits and viability of enacting this legislation.

The FDA pilot proposal continues to have widespread and growing support within the VSO stakeholder community as well as the full buy-in of both VBA and BVA leadership. Several of the leading VSOs responsible for representing the majority of claims and appeals before the VA believe the FDA option holds real promise. It not only provides appellants with different appeal processing options, and addresses some of the overall workload challenges, but also enables Congress and stakeholders to procure tangible information that has the potential to lead to true reform throughout the overall appeals process.

During January's hearing, DAV testified that given the complexity and legal parameters of the appeals process, and the primary role that workload and proper resources will play, no magic bullet solutions exist to address all the challenges associated with the appeals process. A multipronged approach to make measurable and sustainable headway must include reform, innovation and stakeholder collaboration. Submitted for the Subcommittee's consideration at that time was the FDA pilot proposal, which shares many similarities to H.R. 800.

Mr. Chairman, last year, following roundtable discussions on appeals held in the House, the Senate, and at DAV's offices, a core group of VSOs who perform significant appeals work agreed to work informally and collaboratively with both VBA and BVA officials to search for practical improvements to the appeals process. The goal of this group was to explore, analyze and develop consensus ideas on how to improve outcomes for veterans that could also free up VBA and/or BVA resources to further benefit the appeals process for all veterans. The core group would then seek further input and support from additional stakeholders while simultaneously reaching out to Congress to review any such proposals, particularly those that required legislation. Among the ideas the group focused on were strengthening the Decision Review Officer (DRO) program, improving claims decision letters and what has become the FDA pilot proposal.

Our FDA proposal is modeled on the Fully Developed Claims process, in which veterans agree to undertake the development of private evidence in order to enter an expedited processing program. Similarly, to participate in the FDA program, appellants would agree to gather all the additional private evidence necessary for BVA to make its decision on the appeal, thus relieving both VBA and BVA of that workload. When an appellant elects the FDA program for an appeal, he or she would be required to submit all the private evidence they want considered at that time, and may not later submit additional private evidence; such supplemental submission would discontinue participation under the FDA program, with one limited exception. If the Board

develops new federal records not part of the claims record, or orders new exams or independent medical opinions, the appellant will not only be given copies of the new evidence but will also have 45 days to submit additional evidence, including private evidence, pursuant to that newly developed evidence.

In our FDA model, the appellant would agree to an expedited process at VBA that eliminates the Statement of the Case (SOC), Form 9, any hearing and the Form 8 certification process. The elimination of these steps alone could save some veterans up to 1,000 days or more waiting for their appeals to be transferred from VBA to the Board. The veteran would retain the absolute right to withdraw from this program at any time prior to disposition by the Board, which reverts their appeal back to the standard appeal processing model, with the option of DRO review as well as both informal and formal hearing options. The FDA pilot program is not a replacement for either the DRO process or the traditional appeals process; it is another option – a fully voluntary one – that the veteran can withdraw from at any point without penalty.

However, for those veterans who, in consultation with any representatives they may have, determine that the best option is to have the Board review the appeal, and for which they are confident they have the ability to provide sufficient evidence and argument without hearings, the FDA process can save them significant time, plus save VBA and BVA significant processing work. As such, election of the FDA option could free additional resources at both the Board and VBA to increase productivity for processing traditional appeals and DRO reviews, thus benefiting all veterans. Furthermore, by testing this new model with congressionally mandated reporting requirements, Congress and VA could gain valuable insights on potential system-wide reforms that could bring additional efficiencies to the appeals process.

Mr. Chairman, we remain thankful to Mr. O'Rourke and his staff for affording us the opportunity to offer our insights and suggestions while drafting H.R. 800. Their receptiveness to our input will go a long way to ensuring the success of this legislation.

Also, Chairman Miller, who is the lead cosponsor for this bill, has been instrumental moving this legislation forward. His continued leadership and willingness to reach across party lines to support efforts aimed at bettering the lives of our nation's wounded, injured and ill veterans, their dependents and survivors is invaluable.

We believe that several changes would help bolster the successful implementation of H.R. 800 and provide much needed relief to those choosing to appeal their VBA decisions.

Recommendations

To ensure the success of the pilot, while preserving the best interests of appellants, we recommend the following changes to strengthen this legislation.

1. Section (b), subparagraph (2) should be struck in its entirety. Striking this section also negates the need for section (b) (3).

In its current iteration, section (b) (2) permits those with pending appeals to enter into the FDA program; this has the potential to skew data, overwhelm the program and create disparity. Those appellants with active appeals may have received the benefit of additional administrative actions such as hearings, SOCs, SSOCs and development of private medical evidence. Those making elections in the first instance, at the time of their Notice of Disagreement (NOD) filings, do not have the option for these administrative actions, unless they opt out of the FDA program.

In order to obtain the best information possible to validate the success of this pilot, participation should be limited to those individuals at first filing of NODs. These appeals, which would avoid any processing by VBA, would be the best case studies to determine what enhancements could be made within VBA's rating process. It would illustrate the advantages and disadvantages of providing appellants with options to bypass certain VBA appellate procedures.

Furthermore, providing a mechanism for those with pending appeals to opt into this new program midstream in the standard appeals process, could have serious unintended consequences, including the potential to create a backlog within the FDA pilot by causing the program to become overwhelmed with those backlogged appeals that are currently working through the system. This provision alone could cause the FDA pilot to fail.

2. The word "traditional" should be struck and replaced with "standard" to mean the current appeals process to ensure clarity. "Traditional" has a particular meaning within the current appeals framework and signifies a specific type of appeal processing within VBA;
3. Amend section (e) to include more robust reporting requirements, such as the following:
 - Maintain a list of FDA participants by name and claim number;
 - Track the number of participants;
 - Measure average processing time:
 - For an FDA to reach the BVA from ROs;
 - For an FDA compared against those in the standard appeals process;
 - For the BVA to issue a decision on an appeal;
 - To complete any additional development and issue a subsequent decision;
 - When development is required, reasons for such development;
 - Number of issues decided;
 - Disposition of issues in cases where the record is supplemented with additional evidence:
 - Full grant of benefits;
 - Partial grant of benefits;
 - Denial;
 - Disposition of issues in cases where the record is not supplemented by additional evidence:
 - Full grant of benefits;
 - Partial grant of benefits;
 - Denial;

- Number of cases appealed to the Court of Appeals for Veterans Claims (CAVC) and the determinations on cases involved in the FDA program;
- When participants are deemed ineligible for FDA processing and reasons for their removal from the program;

4. Section (4) should be amended, to read:

(4) Reversion.--Any time a claimant who makes an election under paragraph (1) that voluntarily discontinues participation in the FDA pilot, or is otherwise removed from the program consistent with the parameters set forth in this statute, will revert to the standard appeals process without any penalty to the claimant other than the loss of the docket number associated with the fully developed appeal, to include the right to have the appeal reviewed under the Decision Review Officer process.

In the standard appeals process, veterans have two options in which to have appeals processed by the VBA; the DRO process, and the appeal process. In most cases, the DRO process is of greater benefit to appellants; however, a veteran only has 60 days in which to make a DRO election from the date VA mails the veteran the Appeals Process Request Letter.

If an election has not been made within that 60 day timeframe, the appeal defaults to the traditional review process. If the bill were to be enacted in its present form, it is unclear whether FDA participants would simply revert to the traditional appeals process if the appeal is no longer reviewed under the FDA process, thus precluding them from the option of having their appeal reviewed by a DRO.

5. Section (6) should be amended to require VBA to create an online tutorial and provide written notice, in consultation with VSO stakeholders, concerning the advantages and disadvantages of pursuing an appeal under the FDA pilot compared to processing an appeal through the standard appeal model.

The merits of the FDA pilot have been carefully deliberated, keeping veterans' best interests at the forefront of all discussions and any decisions working with major stakeholders, the Board, VBA and VSOs. We have built in as many safeguards as possible within the program to protect veterans, their dependents and survivors if they choose to participate in this program.

The FDA process is not designed for use by a majority of new appellants; it only augments a certain portion of appeals that would otherwise have to be processed by VBA. Instances will occur in which appellants would benefit from additional RO administrative processing. These would be cases of appellants who do not have access to resources to obtain supplemental medical, or other evidence, and when a hearing may be required to provide a more descriptive account of the circumstances surrounding the issues under appellate consideration.

The FDA pilot provides considerable flexibility during its operational period. Changes can be made along the way if deemed necessary and the reporting requirements as recommended would provide Congress with a good body of evidence with the potential to lead to true reform within VA's appeals process.

We are hopeful that Congress will authorize this new option for wounded, ill and injured veterans, their dependents and survivors.

H.R. 1067

The U.S. Court of Appeals for Veterans Claims Reform Act, introduced by Mr. Costello, would extend the temporary expansion of the United States CAVC and ensure that judges of the CAVC could enroll in the Federal Employee Group Life Insurance program.

DAV supports section 2 of H.R. 1067, which would extend the temporary expansion of the number of judges serving on the CAVC to January 1, 2020. The CAVC's caseload averages roughly 4,600 cases per year. As a result, the CAVC has had one of the highest, if not the highest, caseloads per active judge of any federal appellate court in the country. In response, the CAVC was authorized in 2008, as part of the Veterans Benefits Improvement Act, to expand temporarily from seven to nine judges as of January 2010.

The authorization to increase the number of CAVC judges was set to expire at the end of 2012 if the positions were not filled within that time frame. Fortunately for the CAVC, the two available vacancies were filled prior to the expiration date. Due to this temporary authorization the CAVC now stands at nine judges, an increase justified due the growing number of appeals handled by the CAVC.

If these two temporarily authorized appointments become vacant, the CAVC is not authorized to replace them as restricted under title 38, United States Code, §7253 (i) (2), which sets the limit of judges to not more than seven. Allowing the number of judges to drop below nine would adversely impact the CAVC's ability to make timely decisions because the remaining judges would be left to absorb the ongoing workload.

DAV supports section 3 of H.R. 1067 that would authorize the chief judge to recall recall-eligible retired judges for further service on the Court. The chief judge would certify in writing that substantial service would be expected to be performed by the retired judge for a period not to exceed 90 days (or the equivalent), as determined by the chief judge to be necessary to meet the needs of the Court.

It would permit a recall-eligible judge to petition the chief judge to return for a period of service not to exceed 90 days (or the equivalent). The chief judge would approve a request made by a recall-eligible judge unless the chief judge certifies, in writing, that the Court did not possess sufficient work to assign recall-eligible judge; or that there is a lack of sufficient resources to provide such recall-eligible judge appropriate administrative and office support. The chief judge would gain the authority to terminate such recalled service if the chief judge made a written certification at any time during the period.

This provision would also allow the chief judge to recall judges when workload requires such a recall. It would authorize those recall-eligible judges to petition the chief judge for temporary assignment to the CAVC, contingent upon available resources and caseload.

With regard to sections 4, 5 and 6 of this bill, we have no resolution and therefore take no formal position on these provisions.

H.R. 1331

The Quicker Veterans Benefits Delivery Act of 2015, introduced by Mr. Walz, would require the Department of Veterans Affairs (VA) to accept, for purposes of establishing a claim for veterans' disability benefits, a report of a medical examination administered by a private physician. The Veterans Health Administration (VHA) would not be required to confirm this medical evidence by a physician when reports are sufficiently complete.

DAV is pleased to provide our support for this bill, consistent with Resolution No. 192, which calls on Congress to support meaningful reform in the Veterans Benefits Administration's (VBA) disability claims process. The bill defines "sufficiently complete" as "competent, credible, probative, and containing such information as required to make a decision on the claim for which the report is provided." This would eliminate the practice of VA's ordering unnecessary examinations that lead to delays in delivery of benefits, tie up VA resources and add to the frustration of veterans who have provided sufficient medical evidence to support their claims. Requesting a VA examination when acceptable medical evidence has been supplied to issue a rating on a claim gives the impression that private evidence is less valuable than medical evidence procured by VA from its examination providers.

DAV has pressed for changes that improve and streamline the claims processing system, and supports giving due deference to private medical evidence that is competent, credible, probative, and otherwise adequate for rating purposes, as well as legislation and policies that encourage the use of private medical evidence, including allowing private physicians to gain access to all Disability Benefit Questionnaires.

H.R. 1379

H.R. 1379, introduced by Chairman Miller, would authorize the Board to develop evidence in appealed cases. The bill would also prohibit remands to the VBA, thus requiring the Board to issue a decision on the newly obtained evidence.

DAV opposes this bill. In the current process, if the Board determines that additional evidence is required before a final decision can be made in an appellant's case, the Board issues a remand order, to be completed by the VBA. In most remanded appeals, the processing of this additional development occurs at VBA's Appeals Management Center (AMC). Upon completion of any additional development, VBA is required to issue a subsequent decision.

Enacting this legislation would raise several concerns relative to VBA's quality of decisions, finality, and Board capacity.

First, remanding cases to VBA allows another opportunity to correct mistakes VBA may have made during the adjudication. If the Board no longer remanded cases to VBA it would remove accountability for VBA to ensure appealed cases are accurate and complete before

forwarding appeals to the Board. This could create a situation within VBA that once an appeal is under the Board's jurisdiction, VBA would be less concerned with the outcome.

Although VBA mostly addresses remands through the AMC, it affords the VBA the opportunity to correct mistakes made at the local level that have been identified by the Board. This practice enables regional offices to improve upon rating practices locally, avoiding future oversights and mistakes. If such issues are consistently redressed, VBA stands to improve the rating processes for all claims.

Second, requiring VBA to issue another decision helps a veteran avoid finality in more complicated cases. When VBA issues a decision on a claim that is challenged, some element of that decision may not satisfy the appellant. Whether it is a denial of initial entitlement, such as claims for survivor benefits, evaluations assigned for service-connected disabilities, or an effective date, initiating an appeal preserves the status of those issues without reopening a claim. This is particularly sensitive in cases where new and material evidence would be required to reopen claims where initial entitlement is denied and the decision has become final.

H.R. 1379 would create a situation wherein the Board issues a decision based on additional evidence it has obtained in the first instance. Without the benefit of review at the local level, if benefits remain denied, a veteran would have very limited options to seek redress outside of VA because the Board's decision is final and binding on VA. This could be a disastrous scenario for those seeking benefits and medical treatment associated with their appellate issues.

In appeals for increased ratings, the issue continues on appeal until the maximum evaluation is established, or until the appellant expresses satisfaction with the assigned evaluation. As an example in the present framework, the Board could issue a remand order for a new examination; the VBA would carry out the instructions pursuant to the remand and obtain additional medical evidence. Upon the VBA's review of the body of evidence, VBA issues a new decision which could provide for an increase or maintain the current evaluation. The case would then be routed back to the Board for review and disposition that could vary from VBA's findings.

If there are no other procedural or developmental issues impeding the Board's ability to issue a decision, it would complete an assessment of the evidentiary record and issue its final decision. The Board would either grant an increased rating or maintain the previous evaluation. Given the same body of evidence, would the Board and VBA reach the same conclusions? There is a benefit to appellants in the current appeals framework when VBA issues a decision pursuant to the completion of remand orders; it provides appellants with a decision based on VBA's independent assessment of the evidentiary record. H.R. 1379 places this evidentiary assessment and decision making authority solely within the Board.

Third, inherent to H.R. 1379 is the elimination of the AMC, at least in its current VBA capacity. With the elimination of VBA's development/decision capacity, every appeal would be returned to the Board without the benefit of resolution at another point during the appeals

process. For every decision that could have been made within VBA, it would now be required to be made at the Board. This eliminates a potential resolution at an earlier stage of the process, increasing the number of cases returning to the Board. Would the Board have the capacity to efficiently manage this increased workload?

The problems associated with VA's appeals process, particularly the remand process, are certainly complex. However, H.R. 800 does propose a more careful solution to address appeals. H.R. 800 proposes the elimination of remands on a "voluntary" basis. Appellants could choose whether or not to enter into this process and forgo remand by the Board and allow the Board to develop its own evidence. Importantly, if the Board procures additional evidence, the appellant is supplied with a copy to allow a response in kind to this evidence. H.R. 800 also establishes a pilot program that would allow stakeholders the ability to review this process and how well it works.

For all of the above reasons, we oppose H.R. 1379.

H.R. 1414

The Pay as You Rate Act, introduced by Ranking Member Titus, would authorize the Secretary to make interim payments of disability compensation benefits for certain claims, in anticipation of completing the adjudication process.

DAV supports this bill because it would provide the Secretary with authority to issue decisions on each claimed issue during the adjudication process itself, rather than issuing a decision on the entire claim after all the evidence and information has been gathered to make a decision on each issue contained within a claim.

Providing a mechanism for wounded, injured and ill veterans, their dependents and survivors to receive their benefits sooner rather than later is a practical approach in the adjudication of claims, but again, must always be tempered with an emphasis on quality. VA already possesses the ability to issue "intermediate rating decisions" contained within their policy manual. Manual M21-1MR, Part III, Subpart iv, Chapter 6, Section A, provides VBA personnel with guidance on "intermediate rating decisions." VBA's current ability to issue such decisions, prior to the completion of the entire adjudication process, parallels the intent of H.R. 1414.

VBA continues to move toward a more fully automated and paperless adjudication process. VBA may in fact come to obtain the capability to rate individual issues in the near future, rather than the current practice of rating the entire claim only after all the evidence has been obtained. VBA is moving ahead with its National Work Queue (NWQ) initiative, which will provide a paperless claims management system. It will allow claims and appeals to be disbursed throughout all regional offices (ROs).

VBA seeks to leverage the NWQ to disburse work from overwhelmed ROs to other ROs with capacity to handle additional claims and appeals. This new tool may give VBA the ability to

rate issues independently and various ROs; however, there have been no decisions to date to rate by separate issue.

We believe significant improvements can be made to this bill if the following changes are made. We respectfully request the Subcommittee consider these recommendations:

1. Amend section (a) to read:

“(a) IN GENERAL.—In the case of a claim described in subsection (b), ~~prior to adjudicating the claim~~, the Secretary shall make interim **monetary** payments of ~~monetary benefits~~ to the claimant based on any disability for which the Secretary **has obtained sufficient evidence to issue a compensable evaluation during the adjudication process** ~~has made a decision~~”

2. Amend section (b) (2) to read:

(2) for which, during the adjudication process, ~~before completing the adjudication of the claim~~, the Secretary obtains sufficient evidence to make a decision on an issue, ~~makes a decision~~ with respect to a disability that would result in the payment of monetary benefits to the claimant **during** ~~upon~~ the adjudication of the claim,”.

H.R. 1569

H.R. 1569, introduced by Mr. Zeldin, would authorize an estate of a deceased veteran to receive an award of accrued benefits that would have otherwise been paid to a veteran.

Currently, title 38, United States Code, section 5121, authorizes accrued benefit payments to living spouses, children or dependent parents. This legislation would ensure that estates of veterans would also be authorized to receive accrued benefits.

Unfortunately, there are instances when a veteran dies before a claim or appeal has been finally adjudicated, resulting in an award of benefits, but no qualifying survivor exists to receive them. Nothing can be more disconcerting than in those instances where a veteran may have had a lengthy claim or appeal but died before the completion of the adjudication process.

DAV supports this bill to ensure veterans’ receive their due justice so that even in death, those awards that would have otherwise been paid to a living veteran, should also be eligible to be paid to his or her estate. These are benefits that are rightly due to the deceased veteran and should include the estate to ensure that their sacrifices on behalf of our nation are duly recognized, even in death.

H.R. 1607

H.R. 1607, introduced by Ms. Pingee, would improve disability compensation evaluation procedures of the Secretary of Veterans Affairs for veterans with mental health conditions related to military sexual trauma (MST).

The bill seeks to relax the evidentiary standard in MST-related claims. Consistent with DAV Resolution No. 086, which calls for improving the process of establishing service connection for the residuals of MST, we are pleased to offer our support for this legislation.

For decades, VA treated claims for service connection for mental health problems resulting from MST in the same way it treated all claimed conditions—the burden was on the claimant to prove the condition was related to service. Without validation from medical, investigative or police records, claims were routinely denied. More than a decade ago, VA relaxed its policy of requiring medical or police reports to show that MST occurred. Nevertheless, thousands of claims for mental health conditions resulting from MST have been denied since 2002 because claimants were unable to produce evidence that assaults occurred. From 2008 to 2012, grant rates for post-traumatic stress disorder (PTSD) resulting from MST were 17 to 30 points behind grant rates for PTSD resulting from other causes.

Unfortunately, victims of MST often do not report such trauma to medical or police authorities. Lack of reporting results in a disproportionate burden placed on veterans to produce evidence of MST. Full disclosure of incidents occurring during service tend to be reported years after the fact, making service connection for PTSD and other mental health challenges exceedingly difficult.

Establishing a causal relationship between certain injuries and later disability can be daunting due to lack of records or human factors that obscure or prevent documentation or even basic investigation of such incidents after they occur. Military sexual trauma is ever more recognized as a hazard of service for one percent of men serving and 20 percent of women, and later represents a heavy burden of psychological and mental health care for the VA.

An absence of documentation of military sexual trauma in the personnel or military unit records of injured individuals prevents or obstructs adjudication of claims for disabilities of this deserving group suffering the after effects associated with military service, and may interrupt or prevent their care by VA once they become veterans. The VA has issued a regulation that provides for a liberalization of requirements for establishment of service connection due to personal assault, including MST, even when documentation of an “actual stressor” cannot be found, but when evidence in other records exists of a “marker” indicating that a stressor may have occurred. DAV fully supports this relaxed evidentiary practice, consistent with DAV Resolution No. 086.

H.R. 1607 seeks to further relax the evidentiary standard for “stressor” requirements. It provides that any veteran who claims that a covered mental health condition was incurred in or aggravated by MST during active military, naval, or air service would require the Secretary to accept as sufficient proof of service connection, a diagnosis of such mental health condition by a mental health professional, together with satisfactory lay or other evidence of such trauma and an opinion by the mental health professional that such covered mental health condition is related to such MST.

The circumstances of MST would need to be consistent with the conditions or hardships of such service, notwithstanding the fact that no official record exists of such incurrence or

aggravation in such service. Every reasonable doubt would be resolved in favor of the veteran. In the absence of clear and convincing evidence to the contrary, and provided that the claimed MST was consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone would establish the occurrence of the claimed MST.

Service connection of a covered mental health condition could be rebutted by clear and convincing evidence to the contrary. The Secretary would also be required to record, in full, the reasons for granting or denying service connection in each case.

Under this bill, a covered mental health condition would be defined as PTSD, anxiety, depression, or other mental health diagnosis described in the current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, that the Secretary determines to be related to MST.

MST would be defined as a psychological trauma, which in the judgment of a mental health professional, resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred during active military, naval, or air service.

Comprehensive reporting requirements have been built into H.R. 1607 that would require the Secretary to provide VA's findings beginning on December 1, 2016, through 2020.

Enacting this legislation would ease some of the evidentiary requirements for those veterans filing claims for service-connection suffering the aftereffects of a MST. It would bolster the weight afforded to lay evidence. When the lay evidence is corroborated by a mental health professional and a diagnosis is made of one of the covered mental health conditions, the Secretary would be authorized to grant service-connection for said claim.

This legislation does create two separate adjudication procedures for those veterans filing claims related to MST under the proposed legislation and those filing claims related to combat, or exposure to hostile military or terrorist activity. Those currently filing claims for PTSD unrelated to MST are required to have their diagnosis confirmed by a VA psychiatrist or psychologist, or a psychiatrist or psychologist with whom VA has contracted.

Mr. Chairman, along with our support of this bill, we believe VA should address a disparity in current regulation by making similar the adjudication of all stressor-related mental health disabilities. Accordingly, we recommend the following changes:

1. To ensure parity amongst those veterans claiming mental health related disabilities as a result of MST, combat and exposure to hostile military or terrorist activity, title 38, Code of Federal Regulations should be amended to read as follows:

3.304 Direct service connection; wartime and peacetime.

(3) If a stressor claimed by a veteran is related to the veteran's fear of hostile military or terrorist activity and **a certified mental health professional** ~~a VA psychiatrist or psychologist, or a psychiatrist or psychologist with whom VA has contracted,~~ confirms

that the claimed stressor is adequate to support a diagnosis of posttraumatic stress disorder...

2. VA should accept and rate claims using private medical evidence for qualifying disabilities related to MST, combat, or exposure to hostile military or terrorist activity when received by a certified mental health professional, that is competent, credible, probative, and otherwise adequate for rating purposes.

Mr. Chairman, this concludes my testimony. I would be pleased to answer any questions you or members of the Subcommittee might have.