



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
PAUL R. VARELA
ASSISTANT NATIONAL LEGISLATIVE DIRECTOR
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
JUNE 23, 2016***

Mr. Chairman and Members of the Committee:

Thank you for inviting the DAV (Disabled American Veterans) to testify at this legislative hearing of the House Veterans' Affairs Committee. As you know, DAV is a non-profit veterans service organization comprised of 1.3 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 be here today to present our views on the bills under consideration by the Committee.

H.R. 3216, Veterans Emergency Treatment Act

This measure seeks to apply the statutory requirements of the Emergency Treatment and Labor Act (EMTALA) to emergency care furnished by the VA to enrolled veterans who arrive at the emergency department of a VA medical facility and indicate an emergency condition exists.

Specifically, the bill would require a VA health care facility to conduct a medical examination of an enrolled veteran to determine if an emergency medical condition exists; if such condition exists, the VA facility must either stabilize the patient or comply with the statutory requirements of a proper transfer; and if an emergency medical condition exists and has not been stabilized, the facility may not transfer the patient unless the patient, after being made aware of the risks, makes a transfer request in writing or a physician certifies that the medical benefits of a transfer outweigh the risks.

DAV previously testified in February 2016 before the Subcommittee on Health urging consideration be given to use the Emergency Medical Treatment and Labor Act and we thank the sponsor for its introduction and the Committee for its consideration.

Because of the high prevalence of mental and behavioral challenges in the veteran patient population, we ask the Committee consider strengthening this bill to include behavioral conditions in defining "emergency medical condition," so that the definition of an emergency condition for VA purposes would be "a medical or behavioral condition manifesting itself by

acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in....” Furthermore, we recommend the Committee consider conforming title 38, United States Code, section 1725(f)(1) to these new requirements should this bill become law.

With the recommended modifications above, DAV would strongly support this legislation based on DAV resolutions 103 (enhance VA mental health programs), 104 (enhance medical services for women veterans) and 125 (integrate emergency care as part of VA’s medical benefits package).

H.R. 4150, Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act

This bill would authorize VA to arrange flexible physician and physician assistant work schedules to be more or less than 80 hours in a biweekly pay period if the total of such employees’ hours of employment in a calendar year do not exceed 2,080 hours per individual.

The 80-hour work week limit required by federal law is adversely affecting VA’s ability to hire emergency medicine physicians and hospitalists. There are no private sector health care systems that have this kind of 80-hour week requirement.

Emergency medicine physicians and hospitalists specialize in the care of patients in the hospital, often working irregular work schedules to accommodate the need for continuity of efficient hospital care. This change would accommodate the unusual work schedule requirements for emergency medicine physicians and align VA practices with the private sector, facilitating the recruitment, retention of emergency physicians and hospitalist physicians at VA medical centers.

DAV has received no resolution on this specific issue but would not oppose the bill’s favorable consideration due to its beneficial nature.

H.R. 4764, Puppies Assisting Wounded Servicemembers (PAWS) Act of 2016

This bill if enacted would create a five-year pilot program to pair eligible veterans suffering from the most severe levels of post-traumatic stress with service dogs, including the provision of VA-funded veterinary insurance. Veterans participating in this program would need to complete evidence-based treatment but remain significantly symptomatic as evidenced by their Global Assessment of Functioning score. Veterans enrolled in the program would be referred to an accredited dog assistance organization to be paired with a service dog. Training for the dog would be paid by VA not to exceed \$27,000 per dog. Participating veterans must see a VA primary care or mental health care provider at least quarterly. At the conclusion of the five-year program, the Government Accountability Office would be required to conduct a study to evaluate the effectiveness of the program and impact on health outcomes.

DAV recognizes that trained service animals can play an important role in maintaining functionality and promoting veterans' recovery, maximum independence and improve their quality of life. We also recognize service dogs can be instrumental in improving symptoms associated with post-deployment mental health problems, including PTSD. We recognize this pilot program could be of benefit to veterans suffering from post-deployment mental health struggles, including PTSD, and are supportive of non-traditional therapies and expanded treatment options for veterans.

DAV resolution 221, adopted at our most recent convention, calls for VA to complete its plan to conduct thorough research and expansion of ongoing model programs to determine the most efficacious use of guide and service dogs in defined populations, in particular veterans with mental health conditions, and to broadly publish the results of that research. We are pleased to offer our support of the intent his bill; however, we are concerned with the \$10 million offset for fiscal years 2017-2022 from VA's department of Human Resources.

It is important to be mindful of the difficulties facing VA as it seeks to fill vacancies throughout the health care system. Human Resources must have the resources it needs to attract, train, and hire health care professionals on all levels. We are concerned that funds from VA Human Resources to support this pilot program could impede necessary modernization of this department diminish the effectiveness of these programs.

H.R. 5047, Protecting Veterans' Educational Choice Act of 2016 (Hice)

This bill would direct the Secretary of Veterans Affairs and the Secretary of Labor to provide information to veterans and members of the Armed Forces about articulation agreements between institutions of higher learning.

There are currently nearly one million student veterans using their Post-9/11 GI Bill benefits to pursue their educations, and that number is only expected to increase over the next several years. Despite this generous benefit, many veterans still end up having to take out student loans to cover the full cost of their education. In many cases, this is due to situations where veterans are unaware that credits earned at one institution of higher learning will not transfer to another school until after they are in the transfer process and have already expended a significant portion of their Post-9/11 GI Bill benefits.

This bill would require the VA to include information about the educational services available to all veterans seeking to use their Post-9/11 GI Bill benefits. In addition, H.R. 5047 would also require VA counselors who provide educational or vocational counseling to inform the veterans about the various agreements that exist between schools that govern the transfer of credits.

This information concerning articulation agreements could serve those seeking higher education by removing unnecessary time spent on void classes. Knowledge of articulation agreements would alleviate potential delays pursuing courses that do not transfer.

DAV has received no resolution from our members concerning this bill, but we would not oppose its passage.

H.R. 5083, VA Appeals Modernization Act of 2016 (Titus)

Mr. Chairman, H.R. 5083, the VA Appeals Modernization Act of 2016 comes as a result of a collaborative effort among VBA, the Board and 11 major stakeholder organizations—including DAV—that assist veterans with their appeals. For the past three months, this workgroup has been meeting intensively with the goal of developing a new structure and system for appealing claims decisions. However, this recent effort actually builds on that of a very similar workgroup involving VSOs, VBA, and the Board that began meeting over two years ago. That workgroup spent over six months examining the cause of and possible solutions to the rising backlog of appeals. At that time, the claims backlog was finally beginning to drop after years of transformation efforts.

The signature achievement of that first VSO-Department of Veterans Affairs (VA) workgroup was the development of and widespread support for the “fully developed appeals” (FDA) proposal. Under the FDA proposal, veterans could have their appeals routed directly to the Board by agreeing to eliminate several processing steps at the regional office level, forego hearings, and take greater responsibility for developing evidence necessary to properly consider their appeals. The FDA was modeled on a similar claims initiative – the “fully developed claims” (FDC) program – which has contributed to dramatic improvement in claims processing times at VBA.

As a result of that VSO-VA collaboration, legislation was drafted and introduced by Rep. O’Rourke and Chairman Miller in the House and approved as part of H.R. 677. Senate legislation was also introduced by Senators Sullivan, Casey, Heller and Tester (S. 2473) and has been approved by the Senate Veterans’ Affairs Committee as part of the Veterans First Act omnibus bill. We want to thank everyone involved for your efforts in advancing FDA legislation.

As you are aware, the FDA’s premise of eliminating certain appeals processing steps at VBA while providing a quicker route for appeals to the Board has essentially been incorporated into this comprehensive appeals reform bill. Though not as far-reaching as this proposed legislation, the FDA pilot program could reduce the time some veterans wait for their appeals decisions by up to 1,000 days, while lowering the workload on both VBA and the Board.

Building on the work of the earlier VSO-VA workgroup, and particularly its FDA proposal, VA convened the latest workgroup in March of this year to examine whether agreement could be reached on more comprehensive and systemic change. Over a very compressed but intensive couple of months, that included a number of closed-door, all-day sessions, the workgroup was able to reach general consensus on principles, provisions and ultimately the legislation before us. DAV and most of the other stakeholders support moving forward with this appeals reform legislation, notwithstanding some remaining issues yet to be addressed.

We believe that if all stakeholders continue working together – in a good faith partnership with full transparency – we have a good chance of resolving the remaining issues and achieving an historic reform this year. However, as we have long said, the most important principle for reforming the claims process was getting the decision right the first time; we must also ensure that this appeals reform legislation is done right the first time. Further changes to any part of H.R. 5083 could affect our ultimate support for the bill; therefore, we urge this Committee and VA to continue working with DAV and other stakeholders in a transparent and collaborative manner.

With that in mind, while the latest workgroup was initially focused on ways to improve the Board’s ability and capacity to process appeals, from the outset we realized that appeal reforms could not be fully successful unless we simultaneously looked at improving the front end of the process, beginning with claims’ decisions. One of the issues that development of the FDA proposal exposed was the importance of strengthening decision notification letters provided by VBA in order to improve decisions about appeals options. A clear and complete explanation of why a claim was denied is key to veterans making sound choices about if and how to appeal an adverse decision. Therefore, a fundamental feature of the new appeals process must also ensure that claims’ decision notification letters are adequate to properly inform the veteran.

The workgroup agreed that decision notification letters must be clear, easy to understand and easy to navigate. The notice letter must convey not only VA’s rationale for reaching its determination, but also the options available to claimants after receipt of the decision. H.R. 5083 would require that in addition to an explanation for how the veteran can have the decision reviewed or appealed, all decision notification letters must contain the following information to help them in determining whether, when, where and how to appeal an adverse decision:

- (1) A list of the issues adjudicated;
- (2) A summary of the evidence considered;
- (3) A summary of applicable laws and regulations;
- (4) Identification of findings favorable to the claimant;
- (5) Identification of elements that were not satisfied leading to the denial;
- (6) An explanation of how to obtain or access evidence used in making the decision; and
- (7) If applicable, identification of the criteria that must be satisfied to grant service connection or the next higher level of compensation for the benefit sought.

DAV recommends that in order to better inform veterans about this new notification provision and the redesigned claims and appeals process being proposed, the legislation should include a requirement that VA create an online tutorial and utilize other web or social media tools to enhance veterans’ understanding of how claims decisions are made and how to choose the best options available in the redesigned appeals system.

The Current Appeals System

In order to evaluate the new appeals framework proposed in H.R. 5083, it must be compared to the existing system. Currently, if a veteran is not satisfied with their claims decision, they may appeal the decision by completing a Notice of Disagreement (NOD) form

which provides them two options: a de novo review or a traditional appeal to the Board of Veterans Appeals. The de novo option takes place locally within the VARO, and is performed by a Decision Review Officer. The de novo process allows the introduction of new evidence and a hearing, requires VBA to fulfill its “duty to assist” throughout the process, and provides a full de novo review of the claim. If benefits are granted in the de novo process, the effective date for the award would be the date of the claim, if the facts found support entitlement from that effective date.

The second NOD option is to formally appeal to the Board. When a veteran chooses this option, the VARO must prepare a Statement of Case (SOC) for the veteran and then the veteran must complete the VA Form 9 specifying the issues they are appealing and the reasons supporting their appeal. If new evidence is submitted after the NOD requiring development, a Supplemental Statement of Case (SSOC) may also be issued. A veteran who elected a de novo review but who was not awarded the full benefits sought may also continue their appeal to the Board as described above. As part of the Board process, appellants have the opportunity to request a hearing and introduce new evidence at any time. Throughout its consideration of an appeal, the Board is required to comply with VA’s “duty to assist” and performs a de novo review of all the evidence submitted, before and after the date of the NOD filing.

If the Board does not grant the full benefit sought, the veteran’s primary recourse would then be to appeal to the Court of Appeals for Veterans Claims (“Court”), which can take many more years before final disposition. Alternatively, the veteran at any time could file a new claim with new evidence, which could be processed under the FDC program in less than 125 days, however the effective date for this claim would be the new filing date, potentially requiring the veteran to forfeit months or years of entitlement to earned benefits.

In many cases the Board will remand the claim back to VBA for either procedural errors (i.e. – “duty to assist” errors) or for the development of new or existing evidence needed to make a final determination. More than half of all pending appeals will be remanded at least once under the current system, lengthening the time veterans wait for final resolution of their appeals and contributing to the growing backlog of pending appeals.

The current system allows veterans unlimited opportunities to submit new evidence to support their appeals, requires that VA fulfill its “duty to assist” to veterans by securing and developing all potential evidence but requires that the formal appeal be maintained in order to protect the effective date of the original claim. While these features help ensure that veterans rights are protected, they have evolved into a system that incentivizes many veterans to file and maintain formal appeals because there is no other option available to protect their earliest effective dates, which could affect thousands of dollars in earned benefits.

A New Framework for Veterans’ Claims and Appeals

Understanding the benefits and weaknesses of the current system, the workgroup developed a new framework that could protect the due process rights of veterans while creating multiple options to receive favorable decisions more quickly. A critical factor was developing a system that would allow veterans to protect their earliest effective dates while allowing them

opportunities to introduce new evidence, without having to be locked into the long and arduous formal appeals process at the Board.

In general, the framework embodied in H.R. 5083 would have three main options for veterans who disagree with their claims decision and want to challenge VBA's determination. Veterans must elect one of these three options within one year of the claims decision.

First, there will be an option for readjudication and supplemental claims when there is new evidence submitted or a hearing requested. Second, there will be an option for a local, higher-level review of the original claims decision based on the same evidence at the time of the decision. Third, there will be an option to pursue a formal appeal to the Board – with or without new evidence or a hearing.

The central dynamic of this new system is that a veteran who receives an unfavorable decision from one of these three main options may then pursue one of the other two appeals options. As long as the veteran continuously pursues a new appeals option within one year of the last decision, they would be able to preserve their earliest effective date, if the facts so warrant. Each of these options, or “lanes” as some call them, have different advantages that allow veterans to elect what they and their representatives believe will provide the quickest and most accurate decision on their appeal.

For the first option – readjudication and supplemental claims – veterans would be able to request a hearing and submit new evidence that would be considered in the first instance at the VARO. VA's full “duty to assist” would apply during readjudication, to include development of both public and private evidence. The readjudication would be a de novo review of all the evidence submitted both prior to and subsequent to the claims decisions until the readjudication decision was issued. If the veteran was not satisfied with the new decision, they could then elect one of the other two options to continue pursuing their appeal.

For the second option – the higher-level review – the veteran could choose to have the review done at the same local VARO that made the claim decision, or at another VARO, which would be facilitated by VBA's electronic claims files and the National Work Queue's ability to instantly distribute work to any VARO. The veteran would not have the option to introduce any new evidence nor have a hearing with the higher-level reviewer, although VBA has indicated it will allow veterans' representatives to have informal conferences with the reviewer in order for them to point out errors of fact or law. The review and decision would be de novo and a simple difference of opinion by the higher-level reviewer would be enough to overturn the original decision. If the veteran was not satisfied with the new decision, they could then elect one of the other two options to pursue resolution of their issue. .

For this higher-level review, the duty to assist would not apply since it is limited to the evidence of record used to make the original claims decision. If a duty to assist error is discovered that occurred prior to the original decision, unless the claim can be granted in full, the claim would be sent back to the VARO to correct any errors and readjudicate the claim. If the veteran was not satisfied with that new decision, they would still have all three options to resolve their issue.

Mr. Chairman, we are pleased that H.R. 5083 contains one additional change that we have suggested and VA has agreed to include, but that is not in the Senate companion draft. H.R. 5083 has language to clarify that all higher-level reviews would be done as *de novo* reviews, without the veteran having to affirmatively elect a *de novo* review option. We strongly recommend this provision be maintained in any legislation moving forward.

These first two options take place inside VAROs and cover much of the work that is done in the current *de novo* process, although it would be separated into two different lanes: one with and one without new evidence and hearings. VA has also proposed eliminating the position of Decision Review Officers and reassigning these personnel to functions that are appropriate to their level of experience and expertise, such as higher-level reviewers.

For the third option – Board review – there would be two separate dockets for veterans to choose from: an “expedited review” that allows no hearings and no new evidence to be introduced; and a more traditional appeal that allows both new evidence and hearings. Both of these Board lanes would have no duty to assist obligation to develop any evidence submitted. For both of these dockets, the appeal would be routed directly to the Board and there would no longer be SOCs, SSOCs or Form 9s completed by VBA or the veteran.

The workgroup established a goal of having “expedited review” appeals resolved within one year, but there was no similar goal for the more traditional appeals docket. While eliminating introduction of evidence and hearings would naturally make the Board’s review quicker, it is important that sufficient resources be allocated to the traditional appeal lane at the Board to ensure a sense of equity between the two dockets. We would recommend that language be added to H.R. 5083 to ensure the Board does not inequitably allocate resources to the “expedited review” lane.

For the traditional Board appeal lane, veterans could choose either a video conference hearing or an in-person hearing at the Board’s Washington, DC offices; there would no longer be travel hearing options offered to veterans. New evidence would be allowed but limited to specific timeframes: if a hearing is elected, new evidence could be submitted at the hearing or for 90 days following the hearing; if no hearing is elected, new evidence could be submitted with the filing of the NOD or for 90 days thereafter. If the veteran was not satisfied with the Board’s decision, they could elect one of the other two VBA lane options, and if filed within one year of the Board’s decision, they would continue to preserve their earliest effective date. The new framework would impose no limits on the number of times a veteran could choose one of these three options, and as long as they properly elected a new one within a year of the prior decision, they would continue to protect their earliest effective date.

If the Board discovers that a “duty to assist” error was made prior to the original claim decision, unless the claim can be granted in full, the Board would remand the case back to VBA for them to correct the errors and readjudicate the claim. Again, if the veteran was not satisfied with the new VBA claim decision, they could choose from one of the three options available to them, and as long as they properly make the election within one year of the decision, they would continue to preserve their earliest effective date.

One additional option becomes available after a Board decision: the appellant would also have the opportunity to file a Notice of Appeal to the Court of Appeals for Veterans Claims (“Court”) within 120 days of the Board’s decision, which is the current practice today. Decisions of the Court would be final.

H.R. 5083 would also amend existing statute to change the “new and material evidence” standard to a “new and relevant evidence” standard, as it relates to readjudication and supplemental claims. Under current law, a claim can only be reopened if “new” and “material” evidence is presented, which was designed to prevent unnecessary work reviewing immaterial evidence that would not affect the outcome of a claim. However, in practice this standard has often had the opposite effect, requiring VBA to make a “new and material” determination, which can then be appealed to the Board, often requiring a hearing, and adding years of delay before getting to the core issue of whether the evidence would actually change the claim decision.

This provision would replace the term “material” with the term “relevant,” and add a definition of “relevant evidence” as “evidence that tends to prove or disprove a matter in issue.” While we understand the intention of VBA in trying to deter submission of unrelated evidence, we believe that this revised standard would not be any more effective in preventing submission of truly unrelated and irrelevant evidence. Instead, creating a new and untested standard could result in additional appeals on procedure before the substance was adjudicated, and then it, too, could be appealed.

For this reason, DAV and others involved in the first appeals workgroup had discussed revising this standard by amending section 5108 of title 38, United States Code, to require VBA to review all evidence submitted in order to directly address the substance of the issue rather than be required to first clear a procedural hurdle. The workgroup considered changing section 5108 to read as follows:

§ 5108 Evidence presented for disallowed claims

If evidence is presented with respect to a claim which has been disallowed that adds to or changes the facts as previously found by the Secretary, the Secretary shall develop or adjudicate the claim as appropriate.

For truly unrelated evidence, the determination that such evidence does not “add to or change the facts” underlying the claim decision should not require any more time than a determination of whether such evidence is new or material. Thus, we recommend the Committee consider incorporating this alternative approach as an amendment to the bill.

H.R. 5083 also includes an amendment to section 5104A to require that any finding made during the claims or appeals process that is favorable to the claimant would be binding on all subsequent adjudicators within the Department, unless clear and convincing evidence is shown to the contrary to rebut such favorable finding. In the new structure in which appeals can move back and forth from the Board to VBA, veterans must be reassured that favorable findings cannot be easily overturned by a different adjudicator or reviewer during this process. Thus, we strongly support this section.

Overall the new framework embodied in H.R. 5083 could provide veterans with multiple options and paths to resolve their issues more quickly, while preserving their earliest effective dates to receive their full entitlement to benefits. The structure would allow veterans quicker “closed record” reviews at both VBA and the Board, but if they become aware that additional evidence was needed to satisfy their claim, they would retain the right to next seek introduction of new evidence or a hearing at either VBA or the Board. If implemented and administered as envisioned by the workgroup, this new appeals system could be more flexible and responsive to the unique circumstances of each veteran’s claim and appeal, leading to better outcomes for many veterans.

Remaining Issues and Questions Related to Appeals Reform Legislation

Over the past several weeks, DAV and other VSO stakeholders have continued to work with the Board and VBA to resolve and clarify a number of issues, further improving the proposed new appeals structure. While we believe H.R. 5083 should be moved forward in the legislative process, there are still some critical issues that need to be further explored to ensure that there are no unintended negative consequences for veterans.

One of the most critical questions is how the introduction of new evidence will be treated by VBA and the Board, and how “duty to assist” requirements will apply. For the higher-level review, no new evidence is allowed; however, there is an informal opportunity for the veteran’s representative to conference with the reviewer to point out errors. If during this conference, the representative identifies evidence not yet submitted as part of their discussion, how will the higher-level reviewer acknowledge or treat this information? Will they refer the claim back to the readjudication option as a supplemental claim, indicating there is evidence that needs to be developed? Will they inform the representative or the veteran directly that if there is new evidence that may affect the decision, the veteran should file a supplemental claim for readjudication to present that evidence directly or through a hearing?

Similarly, there are questions that need to be answered about how the Board will handle new evidence introduced outside the limited opportunities allowed at and 90 days after the filing of an NOD or a Board hearing. What happens if a veteran elects the Board option with a hearing and submits new evidence to the Board prior to the hearing date: will the Board hold the evidence until the hearing and then consider it, or will the Board return or ignore the evidence?

In addition, since there is no “duty to assist” requirement after the NOD filing, what if evidence properly submitted indicates that additional evidence exists which could affect the decision: will the Board ignore that evidence or inform the veteran that there was additional evidence that could have changed the decision but that it was not sought nor considered? Will or should the Board remand the appeal back to the VBA for readjudication to allow for full development of all evidence? In order to protect the veteran’s due process rights, we would recommend that these uncertainties be resolved before final legislation is enacted into law, preferably through clear and unambiguous statutory language.

There are also two critical operational concerns that will effect whether the new appeals structure can be properly implemented as envisioned. First, the Board and VBA must develop and implement a realistic plan to address the almost 450,000 appeals currently pending, most of which are still within VBA's jurisdiction. Until these pending appeals are properly resolved, no new appeals structure or system can expect to be successful. While we have been in discussion with VBA and the Board about how best to address these legacy appeals, we have yet to agree on formal plans to deal with its current backlog of appeals. We need Congress to perform aggressive oversight of this process to ensure a proper outcome.

Furthermore, since appeals that are filed today can take years to be completed, some will last more than a decade, how will VBA and the Board operate two different appeals systems simultaneously, each with separate rules for treating evidence and the "duty to assist?" How will new employees be trained under both the old and new systems so that there is efficient administration of these two parallel appeals systems? How will the Court view the existence of two different standards for critical matters such as the "duty to assist" veterans? We would recommend that these questions be thoroughly considered by the Committee and discussed with VSOs to avoid future problems.

Finally, as mentioned above, the most critical factor in the rise of the current backlog of pending appeals was the lack of sufficient resources to meet the workload. Similarly, unless VBA and the Board request and are provided adequate resources to meet staffing, infrastructure and IT requirements, no new appeals reform will be successful in the long run. As VBA's productivity continues to increase, the volume of processed claims will also continue to rise, which has historically been steady at a rate of 10-11 percent of claims decisions. In addition, the new claims and appeals framework will likely increase the number of supplemental claims filed significantly. We are encouraged that VA has indicated a need for greater resources for both VBA and the Board in order to make this new appeals system successful; however, too often in the past funding for new initiatives has waned over time. We would urge the Committee to seriously consider proper funding levels are appropriated as this legislation moves forward.

Mr. Chairman, H.R. 5083 represents a true collaboration between VA, VSOs and other key stakeholders in the appeals process. Building on the work first begun two years ago, tremendous progress has been made this year culminating in this appeals reform legislation. There are still a number of improvements and clarifications that must be made to H.R. 5083 but we remain committed to working with Congress, VA and other stakeholders to resolve them as soon as feasible. Working together, we are hopeful that the Senate and House will enact comprehensive appeals reform legislation before the end of this year to provide veterans with quicker favorable outcomes, while fully protecting their due process rights.

H.R. 5162, Vet Connect Act of 2016 (O'Rourke)

Currently, title 38, United States Code, section 7332(b)(2) prohibits VA from providing or sharing patient information relating to drug abuse, alcoholism or alcohol abuse, infection with HIV or sickle cell anemia (7332-protected information) with public or private health care providers, including with Indian Health Service (IHS) health care providers, providing care to

the shared patient under normal treatment situations without the prior signed, written consent of the patient.

Clearly current law places the restriction on this protected information because discussing, diagnosing, and treating drug abuse, alcoholism or alcohol abuse, infection with HIV or sickle cell anemia are sensitive, private issues between a patient and his or her provider. This privacy has been deemed particularly important because any breach of privacy may result in stigmatization or discrimination against such patients. Veteran patients who are concerned that their health information will not be held private or secure may be discouraged from seeking treatment for these conditions and may be dissuaded from pursuing or adhering to recommended treatment regimens.

Despite these concerns, this measure would include a provision for the disclosure of VA records of this protected information to a health care provider in order to treat or provide care to a shared patient. It is purported this restriction poses *potential barriers* to the coordination and quality of care provided to veterans who are shared patients with other public or private health care providers. In DAV's judgement, a potential barrier is not a compelling interest to overcome a patient's right to privacy.

As this Committee is aware, the protection of information under section 7332 is not immune to all circumstances. In medical emergencies VA is allowed to disclose such protected information" to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and who requires immediate medical supervision. The medical emergencies exception only extends to medical personnel for the purpose of treating a condition that poses a certain type of medical threat or emergency; it does not extend to treatment of a patient in non-emergent situations.

It has been asserted that public and private health care providers are often unable to obtain a signed, written consent from prior to patient presenting for a care appointment, resulting in a delay in treatment to the patient. In some cases the public or private health care provider is not able to obtain a signed, written consent due to a patient's lack of competency.

Veteran patients who are legally incompetent have the same right to privacy enjoyed by veterans who are competent. To this end, the medical community has been clear in that the patient deemed to lack capacity to make reasoned medical decisions, a surrogate selected by the patient would need to be enlisted to make decisions on the patient's behalf.

DAV understands and supports increased use and appropriate sharing of health data; however veteran patients also want to be assured of the privacy and security provided for protected information. We urge the committee and the sponsor of this legislation strike a more balanced policy between the competing aims of sharing data and protecting privacy. We recommend such broad language be amended to affect only shared patients and only for the purpose of completing a treatment plan to which the veteran patient has agreed.

H.R. 5166, the Working to Integrate Networks Guaranteeing Member Access Now Act

This bill would provide certain permanent Congressional employees with read-only remote access to the electronic Veterans Benefits Administration (VBA) claims records of veterans who are constituents of Members. These employees would be prohibited from modifying any data, processing, preparing or prosecuting of claims.

These designated Congressional staff members could utilize this system to provide their constituents with information relevant to the processing of their claims or appeals. Designated staff members would require certification by the VA in order to access this system in the same manner currently required for agents or attorneys under title 38, United States Code. Any costs associated with gaining access to these VA systems would be incurred by the particular Member of Congress whose staff accessed these records.

DAV has no resolution relative to this issue, but would not oppose passage of the legislation.

H.R. 5392, No Veterans Crisis Line Call Should Go Unanswered Act

If enacted, this bill would seek to improve the responsiveness and performance within the Department of Veterans Affairs (VA) Veterans Crisis Line, and its backup centers, by directing the Secretary to establish a quality assurance process. Upon enactment of this bill the Secretary would have 180 days to submit to Congress a quality assurance process that outlines performance indicators and objectives to improve the responsiveness in calls, texts, or other communications received by the Veterans Crisis Line and backup call centers. Under this bill, the crisis line and backup call centers would periodically be tested and any noted deficiencies corrected.

DAV acknowledges the importance of ensuring that a call from a veteran in crisis does not go unanswered, and we acknowledge the crisis line as a successful component in VA's suicide prevention efforts. However, only one month ago, DAV testified before this Committee that despite the measurable success with answered calls, dispatched emergency services and referrals to care, service problems were identified earlier this year in a VA Inspector General report. Specifically, complaints included some calls going unanswered, lack of immediate assistance, delayed arrival of emergency services, and difficulty using the call line during a crisis. We understand these deficiencies have been corrected, but continued evaluation and program improvement is needed. For these reasons, we are pleased that an outside evaluation of the VA's mental health system is now underway, as mandated by the Clay Hunt SAV Act, to be completed by the end of fiscal year 2017. Going forward, these evaluations will be continued on an annual basis.

VA has also taken steps to address the increase in demand for the crisis line by increasing the number of responders to a total of 310 full time employee equivalents. On May 12, 2016, VA provided testimony stating that, since January 1, 2016, 29 administrative personnel have been brought on to augment specific areas such as analytics, knowledge management, quality assurance, and training. While the crisis line is a very important element to VA's suicide

prevention efforts, the area of crisis management needs more focus. When a veteran is experiencing a mental health crisis and is asking for help, ready access to a mental health specialist and/or specialized program is crucial. Other areas of VA focus should include negative perceptions and concerns veterans may have about VA care, and continuing challenges in scheduling appointments. VA should utilize its peer specialists to follow up with veterans waiting for care. According to VA, peer-to-peer interactions have been extremely helpful to patients and treating clinicians.

H.R. 5407, to direct the Secretary of Labor to prioritize the provision of services to homeless veterans with dependent children in carrying out homeless veterans reintegration programs

If enacted, this bill would modify title 38, United States Code to prioritize the provision of services to veterans who are homeless with dependent children in carrying out homeless veterans' reintegration programs. This bill also includes a Congressional reporting requirement, not only to identify any gaps in services, safety and shelter provided to homeless veterans with dependents, but also to provide recommendations for improvements of discovered deficiencies.

DAV has not received a specific resolution that calls for prioritization of services to homeless veterans with dependent children; however, DAV Resolution 118 calls for the improvement of the coordination of services of federal, state and local agencies, and improved comprehensive housing and child care services, which allow our support of the intent of this bill. Also, DAV's report, *Women Veterans: The Long Journey Home*, identifies the need for VA to work with community partners as it seeks to strengthen homeless veterans programs and in its efforts to prevent veterans homelessness.

H.R. 5416, to expand burial benefits for veterans who die while receiving hospital care or medical services under the Veterans Choice Program of the Department of Veterans Affairs

This bill would add new eligibility criteria for VA burial allowance for veterans who die while receiving hospital or medical care under section 101 of the Veterans Choice and Accountability Act of 2014 (Choice).

Current law provides that when a veteran's death occurs in a non-VA facility that has been authorized to provide hospital services, a death will be treated as if it occurred in a VA facility for the purpose of a burial or plot allowance. However, veterans receiving care and services at non-VA facilities, under the Choice program are not currently authorized this plot allowance.

This bill would bring parity between those veterans already covered under law for non-VA care and those authorized for hospital and medical care services under the Choice program.

DAV has not received a resolution regarding this issue, but would not object to enactment of this legislation.

H.R. 5420, to authorize the American Battle Monuments Commission to acquire, operate, and maintain the Lafayette Escadrille Memorial in Marne-la-Coquette, France

This measure would allow the American Battle Monuments Commission to acquire, operate, and maintain the Lafayette Escadrille Memorial, located outside Paris, France in Marnes-la-Coquette—a memorial that pays tribute to and is a final resting place for America’s first combat aviators.

DAV has received no resolution, and takes no position on this bill.

Draft Bill, Military Residency Choice Act

This measure would amend the Servicemembers Civil Relief Act to authorize spouses of service members to elect to use the same residence as the service members. This would ease tax preparation for spouses who would accompany their service members on military duty assignments.

Under the 2003 Servicemembers Civil Relief Act, “a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.” This allowed the service member to establish a state of residency during their career. Regardless of duty station, they maintain the same state for tax and voting purposes as their state of residency.

Many service members choose a state early in their career and maintain that same state throughout their career. In 2009, the Military Spouse Residency Relief Act (MSRRA) was signed into law, The MSRRA amends the Servicemember Civil Relief Act to include the same privileges to a military service member’s spouse, provided that the service member and the spouse choose residency in the same state for tax purposes.

DAV has received no resolution, and takes no position on this bill.

This concludes my testimony, Mr. Chairman. DAV would be pleased to respond to any questions from you or the Committee Members concerning our views on these bills.