



Paralyzed Veterans
of America

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UPDATE

Recent news regarding legislation and regulatory actions affecting veterans and people with disabilities.

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*****PRIORITY*****

The Government Relations staff is still looking for stories about problems that our members have experienced during air travel. Please visit www.AirAccess30.org and share your story.

Congress Approves CR, Includes PVA Priorities

Prior to recessing for the November election at the end of September, Congress approved H.R. 5325, the “Continuing Appropriations and Military Construction and Veterans Affairs Appropriations Act for FY 2017,” that included full-year funding for the Department of Veterans Affairs (VA). The bill contains three very important priorities for PVA. These include:

1. Reinstatement of the annual capacity reporting requirement. While a date for implementation has not been established, this is an important accomplishment that will bolster the work done by the PVA Medical Services site visit teams.
2. Authorization of the provision of reproductive services through VA, to include in vitro fertilization (IVF). This has long been a high priority for PVA. For the first time, veterans with service-connected catastrophic disabilities that preclude them from having children will have access to reproductive services through the VA. Unfortunately, we will have to defeat an amendment included in the Labor/HHS Appropriations bill, introduced by Rep. Andy Harris (R-MD), that risks undermining the authority to provide IVF services both at VA as well as the Department of Defense.
3. Beneficiary travel for “some” non-service connected catastrophically disabled veterans, including those with SCI, blindness and amputation. The language in the bill states that it can be provided to those who travel to an inpatient rehabilitation facility, such as an SCI center, and are admitted for overnight stay or provided temporary lodging. Assuming appropriate interpretation, this should at least open the opportunity for beneficiary travel for PVA members receiving annual physicals; however, we do not believe it authorizes beneficiary travel for non-service connected veterans for same-day appointments. Additionally, it remains to be seen when this benefit will actually go into effect. We will obviously have to track implementation of this closely.

Sarah Dean, PVA Associate Legislative Director, deserves a great deal of credit for her tireless work on the capacity reporting issue and the IVF provisions specifically. Hard



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work remains to ensure that proper implementation of these important provisions occurs. This will be particularly true of the capacity report and the beneficiary travel provisions, which I anticipate VA will be resistant to acting on.

Legislation Stalled in the Senate

While key provisions were included in the CR, the lack of compromise generally led to a number of important pieces of legislation being left unfinished. Perhaps the biggest issue that has yet to be resolved is the appeals reform included in H.R. 5620, the “Accountability First and Appeals Reform Act,” introduced by House VA Committee Chairman Jeff Miller (R-FL). That legislation also included strong accountability measures for VA staff. The legislation passed the House in September with strong bipartisan support, but it is being held up in the Senate, primarily over disagreements on the accountability provisions.

Our work also continues on H.R. 3471, the “Veterans Mobility Safety Act.” While we were able to get it passed in the Senate, there has been continued resistance in the Senate. However, Gabe Stultz, Associate Legislative Director, has worked closely with Senator Jerry Moran’s (R-KS) office and they are prepared to move an amended version of H.R. 3471 that will satisfy all interested parties when Congress returns after the election.

Finally, the Senate has been unable to advance S. 2921, the “Veterans First Act.” Of highest importance to PVA in that legislation is provisions that will expand access to the Comprehensive Family Caregiver program to veterans of all eras, not just those injured after September 11, 2001. Unfortunately, cost remains a hurdle to advancing that effort. Additionally, provisions that are generally perceived to water down accountability, per the request of the government unions, have led a stalemate over the bill.

We anticipate a lot of focus on appeals reform and accountability when Congress returns for a lame duck session after the election in November.

DOT ACCESS Committee Completes Work

The U.S. Department of Transportation’s Advisory Committee on Accessible Air Transportation (ACCESS Committee) completed its business on Friday, October 14, 2016. The 25 member Committee was charged with negotiating in good faith to reach consensus on a proposed rule addressing inflight entertainment, service animals, and accessible lavatories on single aisle aircraft. The department intends to use the consensus agreement from the ACCESS Committee as the basis for a proposed rule. After six months’ worth of work, there were varying degrees of success. The Committee focused on three key areas—lavatories, service animals, and inflight entertainment. The following is a review of that work.

Lavatories

The Committee reached consensus that all new aircraft of a certain size shall have accessible lavatories by a certain date. Recognizing that a prior committee failed in this process in 1993 and that there is expense to the industry in complying, the Committee adopted a two tiered approach in providing accessible lavatories on new single aisle aircraft.

The first tier includes all new aircraft delivered three years after the effective date of the final rule. The second tier includes aircraft that are ordered 18 years and delivered 20 or more years after the effective date of the final rule; or are a new type design for which application is filed with the FAA or a foreign carrier civil aviation authority more than 1 year after the effective date of the final rule. Both tiers have multiple levels of access for passengers with disabilities. Access that begins in the first tier carries over into the second tier of accessibility.

Specifically, the first tier applies to all carriers operating aircraft that have FAA-certified maximum passenger capacity of 60 or more seats. This will include flight attendant training on an annual basis to proficiency in use of the new DOT onboard wheelchair and assembly or modifications to the accessible features of the lavatory. Carriers must also provide information upon request to passengers with disability concerning the accessible features of the lavatory including controls and dispensers and the information must be on the carrier's website, in electronic or printed forms with picture diagrams, on the aircraft. Carrier will also remove the international symbol of accessibility (ISA) from all lavatories new and in service that cannot facilitate an independent seated transfer.

All first and second tier aircraft with FAA-certified maximum passenger capacity of 125 or more seats will have at least one lavatory that meets the following specifications. The aircraft shall have a standard toilet seat height ranging from 17-19 inches high, assist handles that support 250 pounds and an array of controls and dispensers that are tactilely accessible and measured for a performance specification that meets the definition of a person with a disability in a seated position. These interior lavatory components include: attendant call buttons, door lock, flush control, faucet controls, paper towel and soap dispensers, and trash and bio waste units. All components where reasonably available in supplier catalogs shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist.

Other features that will apply to a first tier aircraft include a visual barrier that shall be available upon request. It will provide passengers with disabilities using the lavatory (with the door possibly open) a level of privacy substantially equivalent to that provided to ambulatory users. Most importantly is a door sill or threshold that provides minimum obstruction to the passage of the on board wheelchair across the sill while preventing

leakage of fluid or causing a tripping hazard during evacuation. The door sill threshold applies to both tiers of access.

New covered single aisle aircraft with FAA-certified maximum passenger capacity of 125 or more seats entering service three years after the effective date of the final rule must have onboard wheelchairs that meet new standards to be developed by DOT. DOT will consult with advocates, airlines, wheelchair manufacturers, flight attendants and other stake holders in developing these standards. The purpose of the onboard wheelchair standards is to improve the safety of traditional models of onboard wheelchairs and develop, if feasible, specifications for an over-the-toilet onboard wheelchair design. The target date to complete the onboard wheelchair standards is February 2017.

Second tier aircraft with FAA-certified maximum passenger capacity of 125 or more seats in which lavatories are provided will be required to have one lavatory of sufficient size / design to permit a passenger with a disability to perform a seated independent and dependent transfer from the onboard wheelchair to and from the toilet within a closed space that affords to persons using the onboard wheelchair privacy equal to that afforded by ambulatory passengers. To ensure these new lavatories meet the performance specifications they will be designed/modeled with the 95 percent male (6'2, 246lbs) and 5 percent female (4'11, 125lbs) range to meet the required transfers, including the use of a 95 percent male to assist a dependent 95 percent male with a transfer from the onboard wheelchair to and from to toilet within the closed lavatory space.

The committee reached a consensus vote of 17 for the agreement, 1 no vote and 3 abstentions. PVA supported this agreement as first tier accessibility will provide increased access to lavatories in the short-term and ensure full-access at a time-certain in the future.

Service Animals

Despite good faith negotiations, the ACCESS Committee reached an impasse in its efforts to come to a consensus on revising the definition of a service animal and the requirements for access for those animals under the ACAA.

The impasse resulted due to an inability to find a suitable alternative to current regulations which allow airlines to request as a condition of access that users of psychiatric and emotional support animals provide current documentation from a mental health professional stating that they have a mental or emotional disability for which they need the animal. Airlines and advocates considered imposition of a requirement for all service animal and emotional support animal users to complete an attestation confirming that they were a person with a disability and that the animal was needed either in flight or at the destination due to the disability. The proposed attestation would also have alerted the individual to the possibility that attempting to pass a pet as a

service animal or emotional support animal could result in penalties. Ultimately, we were unable to find a solution that would free psychiatric and emotional support animal users from the burdens of medical documentation without imposing new, unacceptable burdens on all service animal users.

Another issue that remains unresolved is the types of species of service animals that should be allowed under the ACAA. Currently, domestic carriers are never required to permit access for unusual service animals such as snakes, rodents, and spiders, but must otherwise permit access for service animals unless the carrier determines that there are factors that preclude the animal from traveling in the cabin. Foreign carriers do not have to provide access to service animal species other than dogs. Stakeholders generally agreed that dogs, miniature horses, and capuchin monkeys should be classified as service animals. An unresolved question remained whether cats should also be included.

In addition, stakeholders were unable to resolve whether emotional support animals should continue to have access. Under the ACAA, the definition of service animal includes emotional supports animals. Stakeholders considered removing emotional support animals from the definition and reclassifying those and other similar animals as “support animals.” Species considered for support animals included dogs, cats, and rabbits. Those animals would have had more limited access than service animals as in many cases they would have been required to travel in a pet-carrier but still able to perform disability mitigation, if needed.

In light of the failure of these negotiations to reach consensus, DOT will now be charged with developing a proposed rule on this issue. The efforts of disability advocates, including PVA, have provided DOT with significant insight. We look forward to weighing in with DOT to ensure that any proposed rule preserves the access rights of all service animal users.

Inflight Entertainment

The ACCESS Committee still has work to do in trying to reach consensus on the issue of accessible inflight entertainment and communication. Currently, airlines are not providing captioning for the deaf or audio description for the blind on movies or television shows packaged by the airlines for inflight entertainment. The problem revolves around technical hardware and software mechanical issues of the seatback display systems that in service airplanes use. The work group on inflight entertainment and communication will meet November 2, 2016 to finish their negotiation in hopes of reaching a consensus.

The DOT Facilitators’ report is due in early December. The report will reflect the entire work of the ACCESS Committee in the three areas they were charged to reach agreement on and all public documents that were sent to the Committee in support of the issues. The DOT onboard wheelchair standards are due in February 2017 and the

Department hopes to publish a Notice of Proposed Rulemaking in the Federal Register by the end of June 2017.

PVA Participates in Suicide Roundtable Discussion

On September 23, 2016, VA gathered a large group of veterans' service organizations (VSOs) to discuss opportunities for collaboration and some of the salient issues with regard to confronting veteran suicide. The primary issues discussed related to both identifying at risk veterans and getting those veterans to engage in VA-provided services. An additional challenge is that even if veterans are identified, not all are eligible for care.

VA discussed briefly the mental health summits that it is holding throughout all VAMCs. The American Legion mentioned that many of their NSOs were not made aware of these summits, and the opportunity for VSOs to reach out to their local members was lost. VA will reevaluate its communications with VSOs for the summits, and they provided the upcoming schedule of all summits so that VSOs can alert their field offices.

VA also explained briefly some of their efforts to assist families of veterans who are contemplating suicide and community providers handling veteran patients contemplating suicide.

Ultimately, the forum was a chance for VA to ask PVA and our fellow VSOs as individual organizations to decide how we can partner with VA to reach veterans who are struggling. Suicide prevention materials being shared publicly by the VA can be viewed at the video links below:

- Newest Suicide Prevention PSA "Be There: Help Save a Life": <https://youtube/MCSZ7FjTq5I>
- Suicide Prevention PSA "I'm good. But are you ready to listen?": <https://youtu.be/YPFo9EvUUvA>
- Suicide Prevention PSA "The Power of 1": <https://youtu.be/WSx11Kmmrg>
- Veterans Crisis Line – After the Call: <https://youtu.be/l8cQHTzTIs>

Deadline for Claims in Department of Justice's Historic Settlement with Greyhound for ADA Violations Approaching

On February 8, 2016, the Department of Justice announced a consent decree resolving a complaint against Greyhound for alleged violations under the Americans with Disabilities (ADA). Allegations against Greyhound included failing to maintain accessibility features on buses, failing to provide assistance to passengers with disabilities, and failing to allow passengers using wheelchairs to complete reservations online. As a result of the consent decree, Greyhound will be required to compensate

travelers with disabilities who experienced disability discrimination while traveling or attempting to travel on Greyhound.

The deadline for passengers with disabilities who encountered disability-related discrimination on Greyhound to submit a claim for compensation is November 10, 2016. To be eligible for compensation, an individual must have a disability; have traveled or attempted to travel on Greyhound between February 8, 2013, and February 8, 2016; and have experienced a disability-related incident during travel or while attempting to travel. Examples of incidents include lack of accessible transportation and failure to make disability-related accommodations.

Individuals who believe they meet these requirements must submit a claim online, by email, or mail to Greyhound's appointed claims administrator by November 10, 2016. Instructions regarding the claims process are available at: www.dojvgreyhoundsettlement.com. To contact the Claims Administrator, please call 1-844-502-5953 or by email at GRYsettlement@classactionadmin.com.

ADA Notification Act Legislation Introduced in the Senate

On September 28, 2016, Sen. Jeff Flake (R-AZ) introduced S. 3446, the "ADA Education and Reform Act of 2016." This legislation would require a person with a disability to give notice to a public accommodation of an architectural barrier under the Americans with Disabilities Act (ADA) prior to filing a lawsuit. Sen. Flake's legislation is a companion bill to H.R. 3765, which was introduced by Rep. Ted Poe (R-TX) and passed by the House Judiciary Committee in July. Despite concerns that H.R. 3765 might be brought to the House floor for a vote in September, no further action on this legislation has occurred.

PVA strongly opposes proposed ADA notification requirements. Notification laws put the onus on the person with a disability to find ADA violations and notify a public accommodation of those violations. No other civil rights group is forced to shoulder the burden of triggering compliance with the law and, once they have done so, to wait to enforce their civil rights. Accessibility standards, such as those the ADA includes, are extremely important. Covered entities should continuously evaluate their businesses for appropriate access under the ADA and not wait to receive a notification before acting to make them fully accessible.

OFCCP Hosts Business Roundtable for National Disability Employment Awareness Month

On October 6, 2016, the Office of Federal Contract Compliance Programs (OFCCP) hosted a forum highlighting successful business strategies for outreach to and recruitment of people with disabilities into the nation's workforce. OFCCP is the agency within the Department of Labor (DOL) responsible for enforcing government contractors'

compliance with Section 503 and VEVRAA. Those regulations require federal contractors to take affirmative steps to recruit and hire people with disabilities and certain targeted veterans, including those with disabilities. The roundtable was part of OFCCP's observance of National Disability Employment Awareness Month and brought together representatives of companies that have excelled in making disability inclusion a vital part of their workforce diversity efforts.

In a keynote address, Robert J. O'Hara, Vice President with United Technologies Corp., expressed support for the regulations that require companies to document their progress in bringing more people with disabilities into their operations. He also described challenges they encountered in broadening their disability outreach including appropriate ways to encourage people to identify as someone with a disability and connecting with talent pipelines to find qualified applicants. Among the strategies that worked for UT and for others at the forum were participation in networking conferences sponsored by organizations such as U.S. Business Leadership Network and National Organization on Disability, creating partnerships with universities to reach students with disabilities, and involvement of top corporate leadership in disability inclusion efforts.

For more information about DOL initiatives undertaken for National Disability Employment Awareness Month go to <https://www.dol.gov/odep/>.

