Paralyzed Veterans of America

# Washington UPDATE

Produced by the Paralyzed Veterans of America • Government Relations Department

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

**April 18, 2017** **Volume 23, No. 4**

*****PRIORITY*****

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## House VA Health Subcommittee Considers Pending Legislation

On March 29, 2017, the House Committee on Veterans' Affairs, Subcommittee on Health, held a hearing on pending legislation. Sarah Dean, Associate Legislative Director, testified on behalf of PVA. This testimony was Sarah's first opportunity to testify before Congress.

Of particular importance to PVA was H.R. 95, the "Veterans' Access to Child Care Act." This legislation, introduced by Rep. Julia Brownley (D-CA), would make permanent the provision of child care for a veteran receiving covered health services at VA. PVA knows child-care is critical to expanding access to care. When veterans have reliable child care their participation in their own health increases, no-shows and cancelations decrease. Women veterans particularly report the inability to obtain child-care as one of their greatest barriers to VA.

PVA also supported H.R. 907, the "Newborn Improvement Act," introduced by Rep. Doug Collins (R-GA). This bill would authorize hospital stays of up to 42 days for newborns under VA care. Currently, only seven days after birth is covered, after which the veteran takes on the cost. As the average hospital stay for a health newborn is two day, any newborn needing additional coverage is likely to be facing serious complications. PVA is specifically concerned about veterans with catastrophic injuries that can cause or exacerbate high-risk pregnancies or pre-term deliveries. A seven day limit arguably impacts veterans with disabilities at a greater rate than other veterans.

PVA also offered support for H.R. 1545, the "VA Prescription Data Accountability Act of 2017," introduced by Rep. Ann Kuster (D-NH). All VA facilities now share prescription information of veterans and their dependents with state Prescription Database Monitoring Program (PDMP). However, due to technical oversight in the law the information of non-dependent, non-veteran, VA beneficiaries is not shared. This bill would rectify the flaw. While PVA strongly supports the bill, we expressed concern that the PDMPs may not be capturing those veterans who travel across multiple states to

receive care from the SCI/D Centers. PVA encouraged Congress to ensure state PDMPs are able to share information across multiple state lines to offer all veterans the benefits that will come from these opioid safety measures.

All of the bills considered in this hearing were later passed by the subcommittee and sent to the full committee for consideration.

To read PVA's full written testimony, please visit www.pva.org.

## House VA Subcommittee on Disability Assistance and Memorial Affairs Holds Legislative Hearing

On April 5, 2017, the House Veterans Affairs' Subcommittee on Disability Assistance and Memorial Affairs held a legislative hearing to consider a number of bills. Among them were two provisions affecting the annual cost-of-living allowance (COLA). PVA supported both measures. The first bill would authorize a cost of living adjustment effective December 1, 2017 equal to the percentage increase implemented by Social Security. The second provision being considered would make the annual adjustment automatic, not requiring Congressional action. Historically, the annual COLA bill has been important legislation that must pass each year. During times of particularly contentious relations in Congress, this legislation has been used as a vehicle to pass other important veterans legislation. While we have voiced this concern in the past, PVA did not object to making the COLA adjustment automatic going forward, as it would add a level of certainty for veterans expecting annual increases.

PVA also supported Ranking Member Tim Walz's (D-MN) legislation which would prevent VA from demanding redundant compensation and pension (C&P) exams when veterans provide private medical evidence. While VA has the legal authority to rely on private medical evidence, too often it seems that VA requires a second medical exam from the veteran with a VA doctor despite having quality evidence already in hand. The pattern suggests a prejudice toward private medical evidence and the possibility that VA is seeking further evidence solely to avoid granting a claim.

Rep. Brownley (D-CA) offered a bill, H.R. 105 that would add greater protections to veterans who are fraudulently deprived of benefits being administered by a fiduciary. Currently, VA may only reissue lost benefits to veterans who are harmed by fiduciaries who administer benefits to more than ten veterans or if the fiduciary is an institution. If the veteran is not served by a qualifying fiduciary, VA can only reissue benefits to the extent that it recoups money from the bad actor. PVA supported this measure because it would allow VA to reissue benefits under all circumstances, regardless of whether it recoups the funds.

PVA also continues to support a service-connected presumption for Blue Water Navy Veterans who are claiming exposure to herbicides containing dioxin, including Agent Orange. We stressed that as more evidence and information becomes available on the connection that Congress take appropriate steps to ensure these veterans receive the appropriate care and compensation.

Finally, PVA supported H.R. 1390. Currently, VA is only authorized to transport veterans' remains to the nearest national cemetery with available burial space. This proposal, though, would extend the options to state and tribal cemeteries. It would limit, however, the amount of reimbursement to the cost of the nearest national cemetery so as not to increase the financial burden on VA.

To view PVA's full statement, please visit www.pva.org.

## Congress Passes Choice Program Extension

With the Choice program set to expire on August 7, 2017, Congress recently passed a law eliminating the mandatory expiration date for the program, allowing it to continue to deliver health care services to veterans in the community and use up the remaining funds in the program. Without the extension, the projected remaining funds would be returned to the Treasury. This extension now provides extra time for Congress to address the shortfalls of the current program and move toward a wider and more permanent health care reform in VA. The bill now awaits the President's signature.

## Subcommittee on Disability Assistance and Memorial Affairs Leadership Holds Round Table on Appeals Reform

On March 28, 2017, PVA participated in a widely attended round table sponsored by Disability Assistance and Memorial Affairs Subcommittee Chairman Mike Bost (R-IL) and Ranking Member Elizabeth Esty (D-CT) to discuss moving forward with plans developed over the last year to modernize the disability claims and appeals process. The legislation proposed during the last Congress reflected the work product of numerous veterans' service organizations, organizations representing private attorneys practicing veterans' law, and leadership from the Board of Veterans Appeals and the Veterans Benefits Administration. The legislation ultimately failed to secure passage due to a number of concerns, primarily related to the necessity of further discussions on how the new system would be implemented without hurting veterans who have current claims pending. A renewed effort by stakeholders to push the legislation forward during this Congress is gaining traction, and a hearing on an updated version of the legislation is expected to take place in the coming months.

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# ACA Repeal and Replace Health Care Reform Effort Fails

In early March, the House of Representatives took up legislation to repeal the Affordable Care Act (ACA) and replace it with the American Health Care Act (AHCA). While portrayed as an effort to reduce health care costs for American consumers, the bill also proposed major changes to the Medicaid program through per capita caps and block grants and to repeal many provisions of the ACA that are critical to people with disabilities. In addition, the AHCA continued several problematic policies for veterans left over from the last effort to reform the health care system and created a potential roadblock for veterans to take advantage of tax credits offered in that measure.

The AHCA included cuts in Medicaid of some $880 billion along with caps on federal spending for the program. In return for greater flexibility for designing their own Medicaid programs, states would have received a lump sum—either in the form of block grants or a per capita spending formula—to provide services to their residents. Under the cap and cut proposal, the federal government would no longer share in the costs of providing health care services and community services beyond the capped amount. This would eliminate the enhanced federal match for the Community First Choice Option under Medicaid that provides attendant care services in the community. Thanks to this program, many poor veterans with serious nonservice-connected disabilities have been able to move from nursing homes into their communities. The AHCA would also have ended the ACA Medicaid expansion at a date earlier than current law. Data from the Robert Wood Johnson Foundation shows that the Medicaid expansion has helped thousands of veterans and caregivers obtain affordable health insurance coverage.

During its time under consideration in the House, the AHCA went through a number of changes in an effort by the leadership to garner sufficient votes to ensure its passage. However, each successive version made the bill even more challenging for people with pre-existing health conditions.

- **Loss of essential health benefits:** One proposed change was to give states the option to waive important consumer protections in current law. For example, states could choose to ignore the essential health benefits rules that ensure that health plans cover basic services, many of which are particularly important to people with disabilities. Without a requirement that basic services be included in health insurance plans, insurers are likely to drop coverage of therapies or medications that support people with more health care needs.

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- **No more protections for pre-existing conditions**: Another troubling change being discussed was to let states waive the requirement for community rating. This would allow insurance companies to charge people with pre-existing conditions - including people with disabilities -- whatever they wanted, essentially making any pre-existing condition protections meaningless. The combination of these changes would make it nearly impossible for people with pre-existing conditions to find affordable plans that cover basic health care services.

For veterans and PVA members in particular, the AHCA would have continued several problematic policies of the ACA as well as troubling new provisions that could affect the ability of many veterans to afford health insurance in the private market. The AHCA:

- Continued to exclude CHAMPVA beneficiaries—dependents of the most catastrophically disabled veterans—from the dependents' coverage policy up to age 26.

- Failed to remove the prohibition on enrollment into the VA health care system for Priority Group 8 veterans, thus denying these veterans access to the principal health care system for veterans.

- Denied access to tax credits making health insurance affordable to anyone eligible for a host of other federal health programs, including those "eligible" for coverage under Title 38 health care programs. This would prevent many veterans who may be "eligible for" but not enrolled in the VA health care system from accessing these tax credits intended to help people buy insurance.

On March 24, 2017, House Speaker Paul Ryan declared that there were not enough votes for the bill to pass the House of Representatives and the bill was pulled from the calendar. Nevertheless, discussions have continued between the Congressional leadership and the White House to craft a version of the AHCA that will be acceptable to a majority of Republicans in the House and Senate. PVA plans to continue monitoring developments in the health care reform debate to ensure that veterans and people with disabilities are not harmed by changes to vital health care programs on which they depend.

## Update on the ADA Education and Reform Act of 2017

The "ADA Education and Reform Act of 2017," H.R. 620, continues to gain co-sponsors. PVA opposes this legislation because it would limit the ability of people with disabilities to enforce their rights under Title III of the ADA. It was introduced by Rep. Ted Poe (R-

TX). Original co-sponsors include Rep. Scott Peters (D-CA), Rep. Ken Calvert (R-CA), Rep. Ami Bera (D-CA), Rep. Jackie Speier (D-CA), and Rep. Michael Conaway (R-TX).

H.R. 620 has gained nine additional co-sponsors since it was introduced on January 24th:

- Representative Pete Aguilar (D-CA)
- Representative Ralph Lee Abraham (R-LA)
- Representative J. Luis Correa (D-CA)
- Representative Doug Collins (R-GA)
- Representative Bill Foster (D-IL)
- Representative Jeff Denham (R-CA)
- Representative Krysten Sinema (D-AZ)
- Representative Paul Mitchell (R-MI)
- Representative Darrell E. Issa (R-CA)

Please contact your Representatives to let them know that PVA opposes this legislation because it would require a person with a disability to send a letter of notification to the business that it was out of compliance with the law giving it a grace period before one could file suit. Instead of complying with the law now, businesses (large and small) could employ a "wait and see" approach, continuing to violate the law with impunity. Instead, businesses should be proactive in complying with the ADA and work with the ADA National Network and other entities for any needed technical assistance.

The bill is pending before the House Judiciary Committee and may be marked up by the full committee in the coming weeks.

## The "Social Security 2100 Act" Reintroduced

On April 5, 2017, PVA Senior Associate Advocacy Director Susan Prokop joined Members of Congress, disability advocates and representatives of the aging community at a Capitol Hill roll out of H.R. 1920, the "Social Security 2100 Act," introduced by Rep. John Larson (D-CT). Rep. Larson is Ranking Minority Member on the House Ways and Means Social Security Subcommittee. Citing polling data that shows 72 percent of Americans believe that Social Security benefits should be increased, not cut, Rep. Larson described provisions in his bill favored by 7 out of 10 Americans. Among those provisions are:

- **Adoption of the CPI-E for inflation increases:** Using the CPI-E for the annual Social Security cost of living adjustment (COLA) would better reflect the costs incurred by seniors and people with disabilities who spend a greater portion of their income on health care, utilities and other necessities.

- **Protections for low income workers:** To ensure that low income working people who pay into the system over a lifetime don't retire into poverty, the bill establishes a new minimum benefit set at 25 percent above the poverty line.

- **Adjustments in the payroll tax wage base to help finance the system:** Presently, payroll taxes are not collected on annual wages over $127,000. H.R. 1902 would apply the payroll tax to wages above $400,000 which would affect the top 0.4 percent of wage earners.

- **A gradual increase over 20 years in the payroll contribution rate to keep the system solvent:** Beginning in 2018, FICA taxes would rise 0.05 percent annually so that workers and employers would pay an additional 1.2 percent by 2041. For the average worker this would mean paying an additional 50 cents per week to ensure the system's longevity.

In addition, HR 1902 would provide a modest increase in benefits for all beneficiaries equivalent to 2 percent of the average benefit, cut taxes for upper income beneficiaries by raising the thresholds at which benefits are taxed to $50,000 for individuals and $100,000 for couples and combine the old age and survivors and disability insurance trust funds to foreclose future arguments over the disability insurance program by eliminating the artificial separation of the trust funds.

PVA supports H.R. 1902 because of its more realistic cost-of-living-adjustment for beneficiaries, enhanced protections for low income workers, and long overdue adjustments in the financing mechanisms for the system. Indeed, an independent analysis by the Social Security Administration's Chief Actuary indicates that this legislation will extend the financial health of the system beyond the next 75 years. PVA believes this legislation demonstrates that preserving and strengthening Social Security can be done without causing harm to beneficiaries.

## U.S. Access Board Issues Guidance on the International Symbol of Accessibility

The U.S. Access Board has released guidance on the International Symbol of Accessibility (ISA) to address questions that have arisen on the use of alternative symbols. Some cities and states have adopted a different symbol that was created to be more dynamic and suggestive of movement. The Board's guidance explains how use of a symbol other than the ISA impacts compliance with the Americans with Disabilities Act (ADA).

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Standards issued under the ADA require that the ISA label certain accessible elements, spaces, and vehicles, including parking spaces, entrances, restrooms, and rail cars. Similar requirements are contained in standards issued under the Architectural Barriers Act (ABA) for federally funded facilities. The ISA, which is maintained by the International Organization for Standardization (ISO), has served as a world-wide accessibility icon for almost 50 years.

"Consistency in the use of universal symbols is important, especially for persons with limited vision or cognitive disabilities," states Marsha Mazz, Director of the Board's Office of Technical and Information Services. "In addition to the ADA and ABA Standards, many codes and regulations in the U.S. and abroad also require display of the ISA."

While the ADA Standards do not recognize specific substitutes for the ISA, they do generally allow alternatives to prescribed requirements that provide substantially equivalent or greater accessibility and usability under a provision known as "equivalent facilitation." However, in the event of a legal challenge, the entity pursuing an alternative has the burden of proof in demonstrating equivalent facilitation. Under the ABA Standards, use of a symbol other than the ISA requires issuance of a modification or waiver by the appropriate standard-setting agency.

The ISA bulletin is posted on the Board's website along with other issued guidance on the ADA Standards and the ABA Standards.