

# **H.R. 91, H.R. 95, H.R. 467, H.R. 907, H.R. 918, H.R. 1005, H.R. 1162, H.R. 1545, H.R. 1662, And Draft Legislation**

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Statement Of

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Before The

Subcommittee on Health  
Committee on Veterans' Affairs  
United States House of Representatives

With Respect To

“H.R. 91, H.R. 95, H.R. 467, H.R. 907, H.R. 918,  
H.R. 1005, H.R. 1162, H.R. 1545, H.R. 1662,  
And Draft Legislation”

WASHINGTON, D.C.

Chairman Wenstrup, Ranking Member Brownley and members of the Subcommittee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, I want to thank you for the opportunity to present the VFW's views on today's pending legislation.

## **H.R. 91, Building Supportive Networks for Women Veterans Act**

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The VFW strongly supports this legislation, which would make permanent VA's counseling in retreat setting program for women veterans. VA's retreat counseling program has served as an invaluable tool to help newly discharged women veterans seamlessly transition back into civilian life. The VFW supported the original program established by the Caregivers and Veterans Omnibus Health Services Act of 2010 and subsequent year-long extensions. The VFW believes it is time to make this important program permanent.

### **H.R. 95, Veterans' Access to Child Care Act**

This legislation would extend and expand the VA child care pilot program, which helps veterans attend their health care appointments and complete their treatment plans by providing necessary child care services. The VFW supports this legislation and has a recommendation to improve it which we urge this subcommittee to consider.

Veterans with dependent children face diverse barriers when obtaining their earned care and benefits. A barrier specific to parents is finding child care so they can attend medical appointments. Currently, VA has three pilot programs which offer child care services to enable veterans to attend medical appointments. Veterans who have used this program tell the VFW they would not have completed their treatment plans if it were not for the VA child care program.

The lack of child care is particularly difficult for homeless veterans who may forgo needed inpatient treatments for fear of losing custody of their children. The VFW firmly believes child care service would also improve access to employment training and counseling services that homeless veterans need to obtain meaningful employment that will allow them keep their homes and stay off the streets. That is why the VFW urges this subcommittee to expand eligibility for this important program by giving homeless veterans the opportunity to receive child care services while they attend employment training programs.

### **H.R. 467, VA Scheduling Accountability Act**

The VFW believes all VA medical facilities must comply with scheduling laws and directives. However, the VFW cannot support this legislation because it would not resolve the underlying issue with scheduling at VA medical facilities.

Before requiring compliance, Congress and VA must first improve VA's wait time metric and scheduling directives. In the VFW's most recent VA health care report, only 67 percent of veterans indicated they obtained a VA appointment within 30 days, which is significantly less than the 93 percent of appointments VA reported were scheduled within 30 days during the same timeframe. This is because the way VA measures wait times is not aligned with the realities of scheduling a health care appointment.

VA also uses a wait time metric called the "preferred date" to measure whether a veteran is given an appointment within 30 days from the date a veteran would like to be seen or is told it is clinically necessary, which fails to account for the full length of time a veteran waits for care. The VFW is also concerned that VA's preferred date metric remains susceptible to data manipulation. For example, when veterans call to schedule appointments, they are asked when they prefer to be seen. The first question a veteran logically asks is, "When is the next available appointment?" Schedulers have the ability to input the medical facility's next available appointment as the veteran's preferred date — essentially zeroing out the wait time. VA must correct its wait time metric to more accurately reflect how long veterans wait for their care.

VA has established an arbitrary wait time goal of scheduling appointments within 30 days of a veteran's preferred date. This not only ignores whether a veteran should be seen earlier, but it is not aligned with how the health care industry measures wait times. In a recent report, the RAND Corporation found the best practices in the private sector for measuring timeliness of appointments are generally based on the clinical need of the health care requested and in consultation with the patient requesting the care. That is why the VFW has urged VA and Congress to move away from using arbitrary standards to measure whether an appointment was delivered in a timely manner, and adopt industry best practices by basing the timeliness of appointment scheduling on a clinical decision made by health care providers and their patients.

The VFW does not believe this legislation can be successful if VA's wait time metric remains flawed and susceptible to data manipulation. Compliance with flawed metrics does not lead to better health care outcomes for veterans.

The VFW also has serious concerns with the requirement to withhold bonuses from VA medical center directors who fail to comply with scheduling standards. Section 205 of Public Law 113-146, the "Veterans Access, Choice, and Accountability Act of 2014" prohibited the use of scheduling and wait time metrics in determination of performance awards. Congress did so because the VA Office of the Inspector General and congressional

oversight found VA employees were manipulating scheduling and wait time data to receive bonuses or appease management. The VFW fears this legislation would reinstate a culture of cover ups to receive awards.

Instead of linking bonuses to compliance with scheduling requirements, which will not result in veterans receiving more timely care, Congress must focus on evaluating and addressing the underlying reasons for high wait times. The VFW has highlighted many of these issues in the past. VA's medical support assistance (MSA) positions, who handle scheduling for the veterans, face the highest rate of turnover in the VA health care system. Due to the cumbersome hiring process and the low compensation levels for MSAs, it takes an average of six months to fill an MSA vacancy. The VFW urges Congress to expand VA's direct hire authority for this critical position.

VA's scheduling system is also archaic and hard to use. VA is in the process of implementing a modification to its scheduling system and is pursuing a commercial off the shelf (COTS) scheduling system. The VFW supports a COTS solution to VA's scheduling system and urges Congress to make certain VA has the resources needed to finally update its outdated scheduling system with a state-of-the-art COTS system.

### **H.R. 907, Newborn Care Improvement Act**

The VFW supports this legislation, which would expand VA's authority to provide health care to a newborn child, whose delivery is furnished by VA, from seven to 42 days post-birth.

According to the Centers for Disease Control and Prevention, newborn screenings are vital to diagnosing and preventing certain health conditions that can affect a child's livelihood and long-term health. The VFW understands the importance of high quality newborn health care and its long term impact on the lives of veterans and their families. Congress must ensure newborn children receive the proper post-natal health care they need.

### **H.R. 918, Veteran Urgent Access to Mental Health Care Act**

This legislation would ensure veterans with other than honorable discharges, also known as "bad paper" discharges, have the opportunity to receive urgent mental health care from VA.

The VFW supports the intent of this legislation, but believes it should be expanded before it is passed.

Under current law, eligibility for VA health care and benefits is based on many different factors. Most benefits, including VA health care and disability compensation, require veterans to have obtained a discharge that is other than dishonorable to be eligible. This means veterans who receive bad paper discharges and meet other eligibility requirements are eligible for VA health care and most benefits. However, VA has implemented a stringent interpretation of current law. In a recent report entitled *Underserved: How the VA Wrongfully Excludes Veterans with Bad Paper*, Swords to Plowshares found VA's process for determining health care and benefits eligibility is not consistent with the law, and results in 90 percent of veterans with bad paper discharges being denied eligibility to much needed health care and benefits.

When veterans go to a VA medical center for non-emergent care as a new patient, they are required to undergo an eligibility determination before they can receive care. Veterans who have an honorable discharge and meet other criteria -- such as having service-connected disabilities, combat service, low income, or certain earned service medals -- are allowed to receive care immediately or schedule an appointment. When veterans with bad paper discharges present to a VA medical facility for the first time, they are told they must undergo a VA character of discharge determination before they can receive care, which takes an average of 1,200 days according to Swords to Plowshares' report.

It is also important to clarify that the term "dishonorable" has different legal definitions for the Department of Defense (DOD) and VA. Whereas DOD only issues dishonorable discharges to service members who have been convicted of major offenses in a general court martial, title 38, United States Code (U.S.C.) specifies that veterans can be characterized as "dishonorable" when they are discharged for specific offenses, conscientious objector status, desertion, or for being AWOL for more than 180 days, regardless of whether or not such veterans received a dishonorable discharge from DOD. For that reason, VA created a character of discharge evaluation process to evaluate whether a veteran received a discharge that is considered dishonorable under title 38 U.S.C., but not by DOD standards. The VFW believes that this review process has been misapplied to all bad paper discharges absent the specific disqualifying criteria, which has resulted in VA depriving certain veterans with bad paper discharges of benefits they not only earned, but in many cases need.

Veterans who served honorably in combat, but were administratively discharged upon returning home due to relatively small infractions, like missing formations or self-

medicating undiagnosed conditions, should not have to wait years before they can receive VA health care and benefits. Currently, veterans with bad paper discharges are three times more likely to die by suicide. Without access to VA health care, those suffering from service-related mental health injuries are left on their own to deal with their mental health symptoms, making recovery nearly impossible.

The VFW is pleased that Secretary of Veterans Affairs David J. Shulkin has announced he will expand access to urgent mental health care to veterans who have received bad paper discharges. However, the VFW firmly believes VA does not and should not provide sporadic care. VA provides veterans a full continuum of high quality care that has been found to outperform the private sector and leads to a lower likelihood of attempts or death by suicide. That is why the VFW has urged VA to expand its proposed regulations to ensure veterans with bad paper discharges receive full eligibility to VA health care, rather than simply receiving access to sporadic urgent mental health care.

If VA fails to act, the VFW urges Congress to amend relevant sections of title 38, U.S.C., to make clear these veterans are eligible for full VA health care, not just urgent mental health care. The VFW recognizes that doing so would significantly increase VA's patient load and could exacerbate access issues. That is why the VFW urges Congress to make certain VA receives the resources it needs to care for these vulnerable veterans.

### **H.R. 1005, to improve the provision of adult day health care services for veterans**

The VFW supports this legislation, which would expand adult day health care benefits for veterans who are eligible for long-term inpatient care.

Currently, veterans who are at least 70 percent service-connected are eligible to receive cost free nursing home or domiciliary care at any of the more than 120 state veterans' homes throughout the country. While nursing home care is a necessity for veterans who can no longer live in the comfort of their home, the VFW strongly believes veterans should remain in their homes as long as possible before turning to inpatient and long-term care options. This legislation would ensure veterans have the opportunity to receive adult day care so they can remain in their homes as long as possible.

### **H.R. 1162, No Hero Left Untreated Act**

The VFW opposes this legislation, which would require VA to carry out a pilot program to provide veterans Magnetic eResonance Therapy (MeRT) to treat post-traumatic stress disorder (PTSD) and other mental health conditions.

The VFW supports expanding access to integrated and complementary therapies that have proven to effectively treat veterans who have not responded to conventional or evidence-based mental health care. However, MeRT is not approved by the U.S. Food and Drug Administration (FDA) and has shown little to no evidence of effectiveness in treating PTSD. VA already offers similar treatments that have been proven to work, cost less, and are FDA approved.

Additionally, this legislation would not provide VA additional funding to test the efficacy of MeRT. The VFW believes that VA must spend its already scarce health care resources on therapies which have shown promise or have a proven track record.

### **H.R. 1545, VA Prescription Data Accountability Act 2017**

The VFW supports this legislation, which would expand VA's requirement to report prescription data to state prescription drug monitoring programs (PDMP).

Current law requires VA to report certain data on prescription of opioids and other narcotics to state PDMPs. The requirement is for VA to share the data of veterans and dependents.

However, VA systems cannot differentiate between dependents and other non-veterans who have received care through the VA health care system. While the vast majority of non-veterans receive VA care through the Civilian Health and Medical Program of the VA (CHAMPVA) outside of VA medical facilities, VA does provide care to some non-veterans in its medical facilities, particularly in the emergency room. The VFW supports the sharing of prescription data with state agencies and agrees VA should share data for non-veterans as well.

### **H.R. 1662, to prohibit smoking in any facility of the Veterans Health Administration**

The VFW does not have a position on this legislation that would prohibit smoking in and



around VA medical facilities. We do have some points to consider, however.

According to the Centers for Disease Control and Prevention, smoking is the leading cause of preventive death in the United States. The VFW is aware of the health hazards associated with smoking and understands that the overwhelming majority of America's health care systems and facilities have moved to smoke-free campuses. On the other hand, VA is required by Public Law 102-585, the "Veterans Health Care Act of 1992," to establish and maintain "a suitable indoor area in which patients or residents may smoke."

As a result, 120 VA community living centers (nursing homes) have co-located smoking facilities for veteran residents. Recent news reports also indicate that VA operates nearly 1,000 outdoor and 15 other designated smoking areas. While the VFW understands the reasons for shifting VA medical facilities to smoke-free campuses, we are concerned that this legislation would force VA to comply with arbitrary implementation dates that would require a significant lifestyle change for veterans who rely on VA for their health care without enough time to adjust to new requirements, particularly for veterans who reside in VA nursing homes.

This legislation would require VA to prohibit indoor smoking within 90 days of enactment, and outdoors by October 2022. This means that veterans who reside in the 120 VA nursing homes with co-located smoking areas, most of which are ventilated indoor smoking rooms, would only be given three months to adjust to a smoke-free environment. Approximately 9,225 veterans currently reside in VA community living centers. This legislation would force approximately 20 percent of veterans estimated to be smokers (2,000 average daily census) to either leave or quit smoking within 90 days -- neither of which are easy decisions. If this subcommittee advances this legislation, the VFW urges it to consider extending the effective date to allow veterans more time to adjust to a new lifestyle.

If VA medical facilities are to become smoke-free campuses, VA must strengthen and expand its smoking cessation programs. This includes nicotine replacement therapy for veterans residing in VA nursing homes who tend to be older with severe service-connected disabilities, and who may not be able to easily travel off campus to smoke, as well as veterans using VA rehabilitation therapies for substance abuse of illicit drugs and alcohol. Treatment must be provided to veterans, not forced upon them. By forcing veterans to not smoke, unintended consequences of veterans' not seeking care and treatment they need will be inevitable. VA must also find ways to mitigate the loss of non-clinical benefits veterans identify with smoking, such as socializing with other veterans in smoking rooms.



## **Draft legislation, Veterans Affairs Medical Scribe Pilot Act of 2017**

This legislation would require VA to carry out a pilot program to evaluate the efficacy of using medical scribes. The VFW supports this bill and has a recommendation to improve it.

A recent VA study evaluating common challenges faced by clinicians in their day-to-day environments, conducted by VA's Emerging Health Technology Service, concluded that burdensome non-clinician-centered electronic health care systems have a significant impact on morale and retention of VA physicians and veterans' experiences due to reduced facetime with providers. This legislation would reduce the time physicians spend on the keyboard and maximize face-to-face time with their patients.

The Emerging Health Technology Service assessment determined that searching and navigating disparate data systems consumes vast amounts of time VA clinicians can spend interacting with their patients. That is why the VFW is glad this legislation would require medical scribes to help providers navigate a veteran's electronic medical record and respond to messages, such as secure messages, in addition to serving as a scribe during appointments.

VA currently operates a Health Advocate Program in six VA medical facilities that is very similar to the medical scribe pilot programs this legislation would establish. However, the majority of VA's Health Advocate Program uses nurses instead of medical scribes to assist VA physicians. In addition to serving as a scribe during medical appointments and helping physicians navigate a veteran's electronic health care record, health advocates ensure veterans understand their treatment plans when the appointment has concluded. They also have appointments with veterans to evaluate whether they are making progress with their treatment. While the VFW does not believe scribing is the most effective use of nurses, we do urge this subcommittee to base the medical scribe pilot programs on VA's health advocate program. Medical scribes should be trained to help veterans understand their treatment plan and ensure veterans are on track to successfully complete their treatments.

## **Information Required by Rule XI2(g)(4) of the House of Representatives**

Pursuant to Rule XI2(g)(4) of the House of Representatives, the VFW has not received any federal grants in Fiscal Year 2017, nor has it received any federal grants in the two previous Fiscal Years.

The VFW has not received payments or contracts from any foreign governments in the current year or preceding two calendar years.