



Paralyzed Veterans  
of America

## WASHINGTON UPDATE

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

Written and produced by Paralyzed Veterans of America - Government Relations Department

September 20, 2019

.....Volume 25, Number 9

### **PVA TESTIFIES AT SEPTEMBER 11 SUBCOMMITTEE ON HEALTH LEGISLATIVE HEARING**

On September 11, PVA Associate Legislative Director, Roscoe Butler testified at a House Veterans' Affairs Committee, Subcommittee on Health legislative hearing. The pending legislation discussed at this hearing would improve oversight of women veterans' health care programs, provide vital assistance to help veterans overcome the pain and suffering from domestic violence, enhance VA access and benefits, and increase health care provider staffing levels.

In his written and oral testimonies, Mr. Butler provided examples of the barriers PVA members are encountering when accessing services at VA. Specifically, he mentioned women veterans having to sit in their wheelchairs outside a model three women's health clinic, because the facility did not have a system in place to alert staff that someone was waiting to gain access into the clinic. He also addressed poorly designed facilities that limited VA's ability to provide medical care to women with catastrophic disabilities and the lack of appropriate on-site diagnostic equipment to conduct mammography examinations on spinal cord injured veterans. He also noted that identifying these and other barriers that women veterans face is an important first step toward improving the care they receive from VA.

### **VA DEPUTY SECRETARY CONFIRMED**

The Senate confirmed James Byrne to fill VA's number two slot by an 81-11 vote on September 11. Byrne had served as the agency's general counsel since August 2017 and acting deputy secretary since August 2018. President Trump nominated him for the deputy position on April 29 and the Senate held his confirmation hearing in mid-May. Byrne's confirmation fills one of several persistent vacancies in the VA's leadership. Most notably, the Administration has yet to nominate a permanent leader for the Veterans Health Administration, which has been led by Dr. Richard Stone in an acting capacity for more than two years.

**Paralyzed Veterans of America**

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# WASHINGTON UPDATE

September 20, 2019

Volume 25, Number 9

---

## CAVC: “VA MUST REIMBURSE EMERGENCY MEDICAL EXPENSES”

On September 9, the U.S. Court of Appeals for Veterans Claims (CAVC) [struck down](#) a VA regulation, finding it wrongly denied reimbursements to veterans who received emergency medical care at non-VA facilities, a decision that could result in payouts to veterans totaling billions. In an additional and unusual move in the case, *Wolf v. Wilkie*, the CAVC also certified a class action to cover these veterans, who incurred medical expenses that are not covered by private insurance for the emergency care at non-VA facilities.

This is the second time since [2016](#) that the court struck down VA regulations barring such payments, reaffirming that VA must step in as a “secondary payer” to prevent emergency medical expenses from being unfairly passed on to veterans when their non-VA health insurance doesn’t cover the full cost. In its decision, the CAVC noted, “Even after [our previous decision], VA was affirmatively informing veterans that they were not entitled to reimbursement for non-VA emergency medical care if they had any insurance covering the service at issue. In other words, the Agency was telling veterans that the law was exactly opposite to what a Federal court had held the law to be.” The law the court is referring to is the Emergency Care Fairness Act of 2010, which amended 38 U.S.C. § 1725 to expand reimbursements to veterans for emergency care under certain circumstances. The regulation that the court struck down is 38 C.F.R. § 17.1005(a)(5).

While VA may still decide to appeal the ruling, any PVA member or veteran who has received emergency care in the community and had their claim for reimbursement denied, or has not filed a claim with VA for reimbursement, should contact a PVA National Service Officer for assistance.

## RAISE FAMILY CAREGIVING ADVISORY COUNCIL HOLDS FIRST MEETING

On August 28 and 29, the RAISE Family Caregiving Council held its first meeting in Washington, DC. The council was authorized under the RAISE Family Caregivers Act, which became law on January 22, 2018, and directs the Secretary of Health and Human Services (HHS) to develop a national family caregiving strategy. The strategy is supposed to identify actions that communities, providers, government, and others are taking and may take to recognize and support family caregivers. To support the development and execution of the strategy, the RAISE Act also charged the council with providing recommendations to HHS on effective models of both family caregiving and support to family caregivers, as well as improving coordination across federal government programs.

The council is composed of representatives from federal agencies and the private sector as well as individuals who are caregivers or recipients of caregiving. Among the members of the council are Lynda C. Davis, Ph.D., Chief Veterans Experience Officer with VA, Casey Shillam, Ph.D.,

# WASHINGTON UPDATE

September 20, 2019

Volume 25, Number 9

R.N., an Air Force veteran with a disability who serves on the American Association of Colleges of Nursing's Health Policy Advisory Council, and Theresa Tanous, M.A., who retired from the VA in 2012 after 33 years of service, working mostly in the field of health information technology on a national level.

Mr. Lance Robertson, Administrator of the Administration on Community Living (ACL) at HHS and one of the co-chairs of the council, welcomed the members and outlined the processes that the council would follow during its operation. He also pointed to a RAISE Act Family Caregiver Resource Center that would soon be set up and serve as a national resource portal for state policymakers and other stakeholders. To ground the advisory council in its work, the first day was devoted to an overview of federal programs that support family caregivers in various ways and to the national landscape of services and policies affecting caregivers. While uneven funding and programmatic silos were identified as current challenges that need to be overcome, the VA Caregiver program was cited as a model system that blends the needs of the care recipient and the caregiver. In developing the National Family Caregiver Strategy, the council was directed to involve not only HHS but also VA and the Department of Labor. The council broke into small groups for report outs on the second day concerning issues the members believe need to be addressed. Among those issues were a lack of knowledge about resources among caregivers and those they care for, finding evidence based best practices to support caregivers, and enhancing public awareness of the value of caregiving. Information about the RAISE Family Caregiving Advisory Council and ACL's programs that support caregivers can be found at <https://acl.gov/programs/support-caregivers>.

## CONGRESS APPROVES VA COLA BILL

Unlike Social Security payments and federal pensions, VA's disability and compensation programs require a special act of Congress in order to receive an annual increase. Recently, lawmakers approved H.R. 1200, "Cost of Living Adjustment (COLA) Act of 2019," which will provide cost-of-living increases for wartime disability compensation; compensation for dependents; clothing allowance; dependency and indemnity compensation to surviving spouses; and dependency and indemnity compensation to children. The rate of next year's increase won't be known until the Bureau of Labor Statistics announces the COLA for Social Security recipients in mid-October. Assuming there is a COLA, the higher rates would go into effect on December 1 and are payable in January 2020.

## HAVEN ACT PROTECTS VA, DoD DISABILITY COMPENSATION

Until recently, disability benefits paid by VA and the Department of Defense (DoD) were included in the calculation of a debtor's disposable income, increasing the portion of the debtor's income that is subject to the reach of creditors. By contrast, bankruptcy law explicitly exempts Social Security disability benefits from this calculation. In late August, President Trump signed the "Honoring American Veterans in Extreme Need Act of 2019" or the "HAVEN Act," which

# WASHINGTON UPDATE

September 20, 2019

Volume 25, Number 9

---

excludes VA and DoD disability payments made to veterans or their dependent survivors from the monthly income calculation used for bankruptcy means testing. The bipartisan, bicameral legislation introduced earlier in the year by Representative Lucy McBath, (D-GA) and Senators Tammy Baldwin (D-WI) and John Cornyn (R-TX) passed both legislative bodies by voice vote.

## CONGRESS STRUGGLES WITH FY2020 FUNDING LEGISLATION

The two-year budget deal passed in August was supposed to make the annual funding process easier but unfortunately that hasn't been the case. The House has approved 10 of the 12 annual funding bills, while the Senate has approved none. With roughly two weeks left in the fiscal year, lawmakers appear resigned to passing a continuing resolution (CR) to give themselves more time to iron out the details of these line-by-line appropriations bills.

The House has passed a CR that would keep the government running through mid-November. The Senate will need to take action on the bill before the end of September, which would leave little time in between for either chamber to adjust should they encounter resistance with the stopgap measure. There is little appetite for another government shutdown so it is highly likely that the legislative and executive branches will work out an agreement that is acceptable to both parties. In the meantime, PVA will continue to keep a close eye on the budgetary process and work to preserve key funding increases in the FY2020 Military Construction, Department of Veterans Affairs, and Related Agencies Appropriations bill.

## DISABILITY EMPLOYMENT AND BENEFITS LEGISLATION INTRODUCED BEFORE RECESS

Just before the August congressional recess, several bills were introduced that would improve employment opportunities for people with disabilities, expand the inventory of accessible housing, and provide faster access to Social Security disability benefits for those with terminal illnesses.

On July 25, Representative Josh Harder (D-CA) introduced the House version of the Disability Employment Incentive Act (H.R. 3992) to expand tax credits and deductions that are available for employers who hire and retain employees with disabilities and to make their places of business more accessible. Like its Senate companion, S. 255 introduced at the beginning of the year by Senator Bob Casey (D-PA), the bill expands the work opportunity tax credit to include the hiring of employees who receive Social Security Disability Insurance (SSDI) benefits. For employers who hire vocational rehabilitation referrals, Supplemental Security Income recipients, or SSDI recipients, the bill also (1) increases the amount of wages that may be taken into account for the credit, and (2) allows an additional credit for second-year wages. H.R. 3992 and S. 255 also increase a tax credit for expenditures by eligible small businesses to provide access to disabled individuals and expand the tax deduction for expenditures to remove architectural and transportation barriers to persons with disabilities and the elderly. In addition, the legislation

# WASHINGTON UPDATE

September 20, 2019

Volume 25, Number 9

---

allows the deduction to be used for certain improvements in the accessibility of Internet or telecommunications services.

Also on July 25, Senator Tammy Duckworth (D-IL) and Representative Jan Schakowsky (D-IL) introduced the Eleanor Smith Inclusive Home Design Act. Introduced as S. 2291 in the Senate and H.R. 4064 in the House, the bill would require all newly constructed, federally assisted, single-family houses and town houses to meet minimum standards of "visitability" for persons with disabilities. Housing developed with assistance from the Departments of Housing and Urban Development, VA, or Agriculture would have to comply with Standards for Type C (Visitable) Units of the American National Standards Institute (commonly known as "ANSI") Standards for Accessible and Usable Buildings and Facilities (section 1005 of ICC ANSI A117.1-2009). These generally require a no-step entrance to the property, a usable bathroom on the main level, and an accessible path of travel throughout the main floor.

Lastly, July 25 also saw introduction of the Expedited Disability Insurance Payments for Terminally Ill Individuals Act, S. 2262, which expedites the payment of SSDI benefits to individuals who will not live long enough to receive any benefits under the five-month waiting period in existing law. Under the legislation, eligible individuals would begin receiving benefits in the first month of eligibility. "Terminally ill" is defined as a person who has a medical prognosis that his or her life expectancy is six months or less. To prevent fraud and abuse, at least two physicians, who are unrelated and not in the same physician group practice, must certify that the individual is terminally ill. This is bipartisan legislation sponsored by Senators John Barrasso (R-WY) and Sherrod Brown (D-OH). It is a companion bill to a similar measure introduced in January by Representative Rodney Davis (D-IL), H.R. 142. In addition to Barrasso and Brown, the bill is cosponsored by Senators Susan Collins (R-ME), Maggie Hassan (D-NH), Patrick Leahy (D-VT), Jeff Merkley (D-OR), Lisa Murkowski (R-AK), and Jack Reed (D-RI).

## **AMTRAK RESTORES FARE DISCOUNTS FOR VETERANS**

Amtrak has restored the 10 percent fare discounts for military veterans. The discontinuance of the veteran's fare discount in March 2018 had been widely criticized. In a news release, Amtrak said the discount will apply to active duty military personnel as well as veterans of the Army, Marines, Navy, Air Force, and Coast Guard. The discount applies to standard fares in coach and Acela Business Class but is not valid on weekday Acela service. It cannot be used with Saver fares, non-Acela business class, first class, or sleeping-car accommodations. Other terms and restrictions may apply and are spelled out on the Amtrak website.

Also, Amtrak has announced that new Acela Express interiors will be accessible. Amtrak's Acela Express trainsets will have restrooms that are ADA compliant and come with changing tables. Likewise snack cars are ADA complaint and the fixed seating has been eliminated.

# WASHINGTON UPDATE

September 20, 2019

Volume 25, Number 9

---

## ACCESS BOARD ISSUES DRAFT ONBOARD WHEELCHAIR GUIDELINES

The U.S. Access Board has released for public comment advisory guidelines for wheelchairs used on commercial passenger aircraft during flight. These onboard wheelchairs are provided by air carriers as a means of facilitating the transfer of passengers with disabilities to aircraft lavatories since personal wheelchairs cannot be used in the cabin. The Department of Transportation (DOT) has expressed its intention to supplement its regulations under the Air Carrier Access Act (ACAA) to include performance standards for onboard wheelchairs on covered aircraft. The Board is developing these non-binding guidelines as technical assistance to air carriers and manufacturers of onboard wheelchairs by providing an example of how to meet DOT's planned performance standards.

The guidelines specify dimensions, features, and capabilities for onboard wheelchairs that will allow passengers with disabilities to be more safely and comfortably transported aboard airplanes in flight. In addition, the guidelines include criteria to allow the onboard wheelchair to fully enter the lavatory in a backward orientation and be positioned over a closed toilet, and for the lavatory door to be closed. This feature would afford those passengers who cannot independently transfer to the toilet to have privacy in performing non-toileting tasks related to personal hygiene or medical needs. The Board has posed a number of questions to the public about specific provisions in the guidelines but welcomes input on all portions of the document.

On September 12, Shaun Castle, Deputy Executive Director, testified during a public hearing before the Access Board regarding the proposed guidelines. Mr. Castle testified that PVA unequivocally believes that passengers with disabilities must have access to lavatories on single-aisle aircraft. He also noted that we believe there should be safe and dignified transport to and from the lavatory on these aircrafts. In the short-term, the over-toilet design would allow passengers with disabilities the opportunity to privately address many non-toileting hygiene and medical needs. However, if this design is deemed not feasible, he testified that the other proposed changes to improve the safety of these devices must move forward as some air carriers already have accessible lavatories on some of their single-aisle aircraft.

In addition to Mr. Castle's testimony, PVA will submit substantive written comments for the record, which are due on October 21. Related information, including instructions for submitting comments, is posted at [www.regulations.gov](http://www.regulations.gov) (Docket ATBCB-2019-0002).

## VETS SAFE TRAVEL ACT PASSES THE SENATE

The Veterans Expedited TSA Screening (VETS) Safe Travel Act, S. 1881, passed the Senate on September 10 by unanimous consent. It was introduced by Senators Todd Young (R-IN) and Tammy Duckworth (D-IL). This legislation would allow severely injured or disabled veterans, as defined by the VA Secretary, whether service connected or not, to have cost-free access to the TSA PreCheck program. Now, the House either needs to pass its version of the bill, H.R. 3356,

# WASHINGTON UPDATE

September 20, 2019

Volume 25, Number 9

which was passed by the House Homeland Security Committee on July 17, or take up the Senate version. PVA strongly supports this legislation.

## **PVA SERVES AS A PANELIST ON DISABILITY ACCESS IN AIR TRAVEL BEFORE AMERICAN BAR ASSOCIATION FORUM**

On September 12, Heather Ansley, Associate Executive Director of Government Relations, spoke on a panel entitled, "Airline Disability Regulation: A Nose-To-Tail Review of Emerging Global Trends and Other Hot Topics," at the American Bar Association's Forum on Air and Space Law in Seattle. The Forum brings together airline in-house counsel, federal agencies, outside counsel for airlines, and other stakeholders. It presented a tremendous opportunity to talk with air carriers about the issues facing PVA members, including the lack of a private right of action under the Air Carrier Access Act; damage to wheelchairs; delayed or poorly trained assistance for boarding and deplaning; and injuries to passengers with disabilities in the air travel process.

Also on the panel were Maren Matal, Senior Attorney, Southwest Airlines; Doug Lavin, Vice President, Member and External Relations, North America, International Air Transport Association; and Livaughn Chapman, Deputy Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation. The panel was moderated by Evelyn Sahr, Chair, Aviation Group, Eckert Seamans Cherin & Mellott, LLC.

## **TOTAL AND PERMANENT DISCHARGE PROGRAM FOR VETERANS**

The Higher Education Act of 1965, as amended, honors veterans who are totally and permanently disabled as a result of their service by providing for the discharge of their federal student loan debt. It is not applicable to private student loans. For veterans to be eligible for the program they must be rated as 100 percent service connected or determined by VA to be totally disabled due to individual unemployability.

This program has been a lifesaver for veterans who are unable to meet the financial burden of paying their student loans due to the severity of their service-connected disabilities. Unfortunately, due to the lack of outreach and red tape associated with the program application, only half of the 50,000 eligible veterans have even applied to have their loans forgiven. This resulted in many veterans having their accounts placed in collection status which could have detrimental effects.

In response to this critical issue, President Donald Trump issued an Executive Order that directs the Secretary of Education to develop a process to facilitate the swift and effective discharge of the federal student loan debt of totally and permanently disabled veterans. To the maximum extent feasible, the process developed by the Secretary of Education should account for and

# WASHINGTON UPDATE

September 20, 2019

Volume 25, Number 9

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make use of disability determinations made available to the Secretary by VA. The VA and Education Secretaries are also required to consider all pathways for VA to share disability determinations with the Department of Education, so that veterans may be relieved of the burdensome administrative impediments to federal student loan debt discharge.

PVA has been advocating for easier access to this program and will work with our stakeholders on its prompt implementation.

## **NEW (FREE) MOBILE APP STREAMLINES VA HEALTH CARE ACCESS**

[VA Launchpad](#) is a new mobile app that simplifies and organizes several existing tools and resources into one convenient location. It arranges all of VA's previous apps into five categories for veterans: health management, health care team communication, vital health information sharing, mental health improvement, and quality of life improvement. Some of the apps include

- Airborne Hazards and Open burn Pit Registry
- Annie App for Veterans (set up reminders for self-care and health tracking)
- My VA Health Journal (track and record military and health history)
- Pressure Ulcer Resource (resources to help prevent ulcer injuries)
- Summary of Care (access your official medical record)
- VA Online Scheduling (if you are already enrolled, you can schedule primary care appointments)
- NetResponse Mobile (answer health questions and update with biometric inputs)
- Secure Messaging (ask your VA care team non-urgent personal health questions)
- VA Health Chat (ask VA staff minor health questions)
- VA Video Connect (connect with your health care team from anywhere)
- MobileKidney (track and enter kidney health information)
- REVAMP (Connect with positive airway pressure machine)
- ACT Coach (works with mental health professional during acceptance and commitment therapy)
- Anger and Irritability Management Skills
- CBT-i Coach (Get the most out of cognitive behavioral therapy for insomnia)
- Concussion Coach (support for physical, cognitive, and emotional symptoms related to traumatic brain injury)
- PE Coach (for therapy with a prolonged exposure therapy health professional)
- PTSD Coach (for those who, or may have, post-traumatic stress disorder (PTSD))
- PTSD Family Coach (for family members of those living with PTSD)
- MOVE! Coach (weight loss app for Veterans, service members and their families)
- Stay Quit Coach (resources and tools to help with quitting smoking)

# WASHINGTON UPDATE

**September 20, 2019**

**Volume 25, Number 9**

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Click on the link in the first paragraph if you're interested in trying out the new app.