

**STATEMENT OF
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OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
SENATE COMMITTEE ON BUDGET
FIELD HEARING BISMARCK, NORTH DAKOTA
MARCH 28, 2008**

Mr. Chairman and other Members of the Committee:

Thank you for inviting the Disabled American Veterans (DAV) to testify at this field hearing concerning our views of the funding levels for Department of Veterans Affairs (VA). DAV is an organization of 1.3 million service-disabled veterans, and devotes its energies to rebuilding the lives of disabled veterans and their families.

Each year DAV along with AMVETS, Paralyzed Veterans of America and the Veterans of Foreign Wars co-author *The Independent Budget*, a comprehensive budget and policy document that represents the true funding needs of the Department. *The Independent Budget* uses commonly accepted estimates of inflation, health care costs and health care demand to reach its recommended funding levels. This year, the document is endorsed by 53 veterans' service organizations, and medical and health care advocacy groups.

Last year proved to be a difficult year for the appropriations process. The year started with a Continuing Resolution for fiscal year (FY) 2007 because the 109th Congress had been unable to pass an appropriations bill. This Congress eventually completed the FY 2007 funding bills in February and while the funding levels provided were very good, the fact that the bill was not completed for nearly five months after the start of that fiscal year presented a number of challenges for VA. Congress then followed that action up by providing more than \$1.8 billion in supplemental funding for the VA.

DAV and the veterans community were extremely elated when, under your leadership, the Senate Budget Committee, as well as the House Budget Committee, developed a budget for VA that exceeded the recommendations of the *Independent Budget*. Collectively, we felt that our government was finally on track to provide VA with a budget that was sufficient, timely and predictable.

Unfortunately, the FY 2008 appropriations process did not go any smoother than it had in prior years. Due to political wrangling over the federal budget, the VA did not receive its appropriation until December. We were very disappointed that the VA was forced to endure this situation for the 17th time in the last 19 years. The appropriations bill was eventually enacted, but the vast majority of the increase was contingent upon the Administration making an emergency funding request for this additional money. Fortunately, the Administration recognized the importance of this critical funding and requested it from Congress. This

emergency request provided the VA with \$3.7 billion more than the Administration requested for FY 2008.

For FY 2009, the Administration requested \$41.2 billion for veterans' health care. This included approximately \$2.5 billion for medical care collections. Although this funding level represented another step forward in achieving adequate funding for the VA, it still falls short of the recommendations of *The Independent Budget*.

For FY 2009, *The Independent Budget* recommends approximately \$42.8 billion for total medical care budget authority, an increase of \$3.7 billion over the FY 2008 operating budget level established by P.L. 110-161, the Omnibus Appropriations bill, and approximately \$1.6 billion above the Administration's FY 2009 request. It is important to note that our budget recommendations reflect a distinct change from past years as it reinforces the long-held policy that medical care collections should be a supplement to—not a substitute for—real dollars. The Administration, year-after-year, chooses to include medical care collections as part of its overall funding authority for Medical Services. However, we believe that the cost of medical care services should be provided for entirely through direct appropriations. In order to develop this recommendation, we used the maximum appropriation amount included in P.L. 110-161 for VA medical care and added the projected medical care collections to that amount to formulate our baseline.

The medical care appropriation in past years has included three separate accounts—Medical Services, Medical Administration, and Medical Facilities—that comprise the total VA health care funding level. However, for FY 2009, the Administration's Budget Request recommends consolidating Medical Services and Medical Administration into a single account. In order to properly reflect this in our recommendations, the separate accounts for Medical Services and Medical Administration must be added together. For FY 2009, *The Independent Budget* recommends approximately \$38.2 billion for Medical Services. Our Medical Services recommendation includes the following recommendations:

Current Services Estimate.....	\$32,574,528,000
Increase in Patient Workload.....	\$1,045,470,000
Policy Initiatives.....	\$1,000,000,000
Medical Administration.....	\$3,625,762,000
Total FY 2007 Medical Services.....	\$38,245,760,000

In order to develop our current services estimate, we first added the estimated collections for FY 2008 to the Medical Services appropriation for FY 2008. This best reflects the total budget authority that the VA will use to provide health care services. This amount was then increased by relevant rates of inflation. We also use the Obligations by Object in the President's Budget submission in order to set the framework for our recommendation. We believe this method allows us to apply more accurate inflation rates to specific accounts within the overall account. Our inflation rates are based on five-year averages of different inflation categories from the Consumer Price Index-All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics every month.

Our increase in patient workload is based on a projected increase of 120,000 new unique patients—Category 1-8 veterans and covered non-veterans. We estimate the cost of these new unique patients to be approximately \$792 million. The increase in patient workload also includes a projected increase of 85,000 new Operation Iraqi Freedom and Operation Enduring Freedom (OIF/OEF) veterans at a cost of approximately \$253 million.

The policy initiatives include \$325 million for improvement of mental health services and traumatic brain injury care. This amount represents the growing trend both within the Administration and the Congress to enhance the mental health services within the VA. Furthermore, it reinforces our belief that resources should be provided to the VA to allow VA to be the lead for these specialized services, not outside health care organizations. We also recommend \$250 million for long-term care services. The policy portion of *The Independent Budget* further explains the shortfall that the VA has in meeting the Average Daily Census mandated by the Millennium Health Care Act. We also recommend that the VA be appropriated \$325 million for funding the fourth mission which encompasses homeland security and emergency preparedness initiatives. Currently, the VA already spends approximately this amount, but this funding is drawn directly out of the Medical Services account. Finally, we recommend \$100 million to support centralized prosthetics funding.

As mentioned previously, our Medical Administration recommendation must be added to our Medical Services recommendation to properly reflect the format of the FY 2009 Budget Submission. As such, *The Independent Budget* recommends approximately \$3.6 billion for Medical Administration for FY 2009. Finally, for Medical Facilities *The Independent Budget* recommends approximately \$4.6 billion. This amount includes an additional \$250 million for non-recurring maintenance for the VA to begin addressing the massive backlog of infrastructure needs.

Although *The Independent Budget* health care recommendation does not include additional money to provide for the health care needs of Category 8 veterans being denied enrollment into the system, we believe that adequate resources should be provided to overturn this policy decision. During FY 2008, the VA estimated that a total of over 1,500,000 Category 8 veterans would have been denied enrollment into the VA health care system. Despite that fact that we have not seen any solid empirical data to substantiate this continued growth rate in denied Category 8 veterans, the VA continues to project higher and higher numbers of Category 8 veterans denied enrollment into the health care system. Based on the projected increase in this population of veterans over the last five years, *The Independent Budget* estimates that more than 1,870,000 will have been denied enrollment by FY 2009. Assuming a utilization rate of 20 percent, in order to reopen the system to these deserving veterans, *The Independent Budget* estimates that the actual total cost to reopen the system will be approximately \$1.4 billion in order to meet this new demand. For the sake of discussion, if the projected collections for this group of veterans were to be considered in this estimation, the actual cost in appropriated dollars would be approximately \$456 million. We believe that the system should be reopened to these veterans and that adequate funding should be provided in addition to our Medical Care recommendation.

Although not proposed to have a direct impact on veterans' health care, we are deeply disappointed that the Administration chose to once again recommend an increase in prescription drug co-payments from \$8 to \$15 and an indexed enrollment fee based on veterans' incomes. These proposals will simply add additional financial strain to many veterans, including those with catastrophic disabilities. Although the VA does not overtly explain the impact of these proposals, similar proposals in the past have estimated that nearly 200,000 veterans will leave the system and more than 1,000,000 veterans will choose not to enroll. Congress has soundly rejected these proposals in the past and we call on you to do so once again.

For Medical and Prosthetic Research, *The Independent Budget* is recommending \$555 million. This represents a \$75 million increase over the FY 2008 appropriated level established in the Omnibus Appropriations Act and \$113 million over the Administration's request for FY 2009. We are particularly pleased that Congress recognized the critical need for funding in the Medical and Prosthetic Research account. Research is a vital part of veterans' health care, and an essential mission for our national health care system. VA research has been grossly underfunded in comparison to the growth rate of other federal research initiatives.

The Independent Budget recommendation also includes a significant increase in funding for Information Technology (IT). For FY 2009, we recommend that the VA IT account be funded at approximately \$2.165 billion. This amount includes approximately \$121 million for an Information Systems Initiative to be carried out by the Veterans Benefits Administration. This initiative is explained in greater detail in the policy portion of *The Independent Budget*.

We remain concerned that the Major and Minor Construction accounts are significantly underfunded in the FY 2009 Budget Request. The Administration's request slashes funding for Major Construction from the appropriations level of \$1.1 billion to \$582 million. The Minor Construction account is also significantly reduced from the appropriated level of \$631 million to only \$329 million. These funding levels do little to help the VA offset the rising tide of necessary infrastructure upgrades. Without the necessary funding to address minor construction needs, these projects will become major construction problems in short order. For FY 2009, *The Independent Budget* recommends approximately \$1.275 billion for Major Construction and \$621 million for Minor Construction. The Minor Construction recommendation includes \$45 million for research facility construction needs.

We appreciate the fact that before leaving for the Spring District Work Period, both houses of Congress passed budget resolutions to govern the coming appropriations process for fiscal year 2009. In the case of the Senate, your resolution improves VA discretionary accounts by \$3.2 billion more than the President proposed for next year. These additional funds will be greatly appreciated within the VA and by veterans in North Dakota and all States, because these additional dollars will help VA address a number of chronic problems that have impeded VA in the past. These funds will be especially important in VA's health care and disability adjudication services. We are also grateful that Congress is moving rapidly to approve the budget resolution, to give appropriators time to complete their work before the new budget year begins. On behalf of the DAV Department of North Dakota and DAV members everywhere, thank you for supporting sick and disabled veterans.

Finally, Mr. Chairman, as you know, we strongly support mandatory funding for VA health care. However, if the Congress cannot support mandatory funding, there are alternatives which could meet our goals of sufficient, timely and predictable funding. Congress could change VA's medical care appropriation to an advance appropriation which would provide approval one year in advance, thereby guaranteeing its timeliness. Furthermore, by adding transparency to VA's health care enrollee projection model, we can focus the debate on the most actuarially-sound projection of veterans' health care costs to ensure sufficiency. Under this proposal, Congress would retain its discretion to approve appropriations; retain all of its oversight authority; and most importantly, there would be no PAYGO problems.

During this period of war, emphasis has been placed on ensuring that newly returning war wounded veterans have top priority for treatment at VA facilities. Although no one would question that this new generation of veterans deserves ready access to VA's specialized health care services, we must not forget there are previous generations of veterans who continue to rely on the VA health care system for service-related injuries incurred decades ago. As veterans age, those with catastrophic spinal cord injury, limb loss, blindness, post-traumatic stress disorder, and traumatic brain injury often require more medical attention than in the past for their service-connected conditions. Likewise, other veterans dependent on VA health care services deserve timely access to care as well. Funding must be sufficient to provide timely quality health care to all enrolled veterans.

DAV recognizes that providing full funding for VA health care will not solve all of VA's problems. However, VA, as the largest integrated health care system in the United States, must have a sufficient budget to effectively manage its health care programs and services, and to hire the appropriate number of clinicians, nurses, and support staff to meet the demand for high-quality medical care. VA must also have the ability to adequately prepare for the coming year well in advance. With a health care budget that is sufficient, timely, and predictable, VA can strategically plan for the future to optimize its assets, achieve greater efficiency, and realize long-term savings. The current politically-charged discretionary funding mechanism for VA medical care benefits neither VA, nor taxpayers, and it is having a negative impact on veterans.

Therefore, we ask the Budget Committee to consider either mandatory funding or this new advance appropriations approach to take the politics out of health care for all of our Nation's wounded, sick and disabled veterans.

Concerning the VA's Benefits Administration (VBA) I will focus my remarks on two of the most critical areas—understaffing and the claims backlog. Without a doubt the claims backlog is growing. Rather than making headway and overcoming the delays in the claims processing, the VA continues to lose ground on its claims backlog. According to VA's weekly workload report, as of January 26, 2008, there were over 816,000 pending compensation and pension claims, which include appeals. By February 22, 2008, there were over 831,000 claims pending in VA, an increase of over 15,000 claims in less than one month. In the three years from the end of 2004 to the end of 2007, the total number of pending Compensation and Pension (C&P) claims rose by over 188,000 for an average of 63,000 additional pending claims per year. The VA's pending claims rose by over 21,500 just from the end of 2007 to February 22, 2008—less than two months. At this rate, VA's caseload will pass one million claims in three years.

With the wars in Iraq and Afghanistan still ongoing, together with the mass exodus from military service that usually occurs following cessation of combat operations, new and re-opened claims received by VA are more likely to increase than decrease. VBA's new claims per year also continue to increase from one year to the next. VA's 2009 budget submission reveals the VA added 277,000 beneficiaries to its C&P rolls in 2007. The significance of these new beneficiaries is that large portions of VA's workload increase via new claims each year are re-opened claims rather than claims from veterans who have never filed for VA benefits.

Therefore, the growth in new beneficiaries into the system will inevitably increase further the number of re-opened claims, ultimately causing the total number of claims received by VA each year to continue growing at faster rates. The complexity of the workload has also continued to grow. Veterans are claiming greater numbers of disabilities and the nature of those disabilities such as post-traumatic stress disorder (PTSD), complex traumatic brain injuries, diabetes and related conditions, and environmental diseases are becoming increasingly more complex. For example, the number of cases with eight or more disabilities increased by 135 percent from under 22,000 in 2000 to over 51,000 in 2006. Such complex cases will only further slow down VBA's claims process.

Based on an estimated receipt of 920,000 claims in FY 2009, the *Independent Budget* recommended Congress authorize 12,184 full time employees (FTE) for FY 2009. That number equates to 83 cases per year per each direct program FTE. We realize that 83 claims per FTE are below VA's historical projections per FTE. Nonetheless, an infusion of new personnel into VBA's workforce will certainly result in a reduced output per FTE for a significant length of time. These newly allotted employees will be unable to process claims at rates equal to experienced employees. Additionally, senior staff within VBA will be forced to frequently halt production of their own workload in order to provide necessary training to inexperienced employees. Therefore, the reduction in workload per FTE is unavoidable.

Another issue of concern to DAV is the passage of legislation in December 2006, when Congress passed, and the President signed into law, S. 3421, Public Law 109-461, which, in part, amended existing law to permit lawyers and agents to charge claimants for services rendered in the "preparation, presentation, and prosecution of claims" after a Notice of Disagreement has been filed. The DAV and many veterans felt betrayed by Congress by the passage of this law. This measure authorized the Secretary of Veterans Affairs to collect a minimal fee, set limitations for fees charged to claimants, prescribe standards of conduct, and expand grounds for suspension or expulsion from further practice for attorneys and agents providing such services.

The change—allowing lawyers and agents to charge a fee to represent a veteran or other claimant before the agency of original jurisdiction—is not in the best interests of veterans for several reasons, and would be detrimental to the administrative process at the VA. The principal reason for DAV's opposition is based in the public policy underlying the prohibition against charging veterans for claims assistance. Veterans and their dependents or survivors should not have to resort to hiring and paying lawyers and agents to obtain benefits to which they are rightfully entitled. Veterans and other beneficiaries should be able to file claims for benefits and receive fair decisions from the VA without a large portion of their benefits being paid to

attorneys and agents. Congress designed the current administrative claims process to be non-adversarial and veteran-friendly. Unlike litigation in our court system, where the parties must discover and produce their own evidence and affirmatively demonstrate, by a preponderance of the evidence, that they are entitled to the relief sought, Congress obligated VA to assist the claimant in obtaining potential evidence and placed the duty upon VA to consider all relevant law and avenues of entitlement.

Veterans are accorded a privileged status and are due more personal assistance from VA than claimants receive when seeking benefits from other federal forces. Again, it is important to remain mindful that veterans obtain their benefits through an informal, non-adversarial, and benevolent claims process, not a litigation process. The paramount distinction between the VA process and litigation reflects a calculated Congressional intent and design to permit veterans to receive all the benefits they are rightfully due without any necessity to hire and pay a lawyer.

Mr. Chairmen, DAV believes that it is bad public policy to allow veterans to pay a fee to obtain their earned benefits. Furthermore, it demeans the service of our brave young men and women who defend our cherished freedoms to convince them that it might be necessary to pay a lawyer to represent them to obtain the benefits to which they are rightfully entitled. It is believed by the DAV and others that this measure will have far reaching detrimental effects that will far outweigh the emotional gratification of having the right to choose representation by a lawyer or agent. This legislative change will profoundly alter the administrative claims process to the detriment of all veterans and other claimants. We believe there is a potential for wide-ranging unintended consequences that will be beneficial for neither claimants nor the government. Beyond the cost to veterans, added administrative costs for VA are likely to be substantial, without commensurate added advantages or benefits for either. This organization does not stand alone in its opposition to this bill or support to repeal this ill-advised measure. This legislation was also opposed by the VA, Veterans of Foreign Wars of the United States, and AMVETS. Therefore, the DAV again calls upon Congress to support the repeal of the attorney fee provision.

As an organization dedicated to building better lives for disabled veterans and their families, DAV has an awesome responsibility regarding these important benefit and health care issues that impact our veterans and generations of veterans to come. Now, with our fighting men and women in a protracted battle against terrorism and our veterans from past eras battling for needed care and benefits, our message is more important than it ever has been. Make the commitment now that you will Stand Up For Veterans by supporting a VA health care budget process that is sufficient, timely, and predictable. By doing so you will ensure the sacrifices of those who have served our nation in uniform are recognized and honored.

Mr. Chairman, this completes my testimony. Thank you for allowing me the opportunity to appear before you on behalf of the DAV to share our views. We hope that you will consider the recommendations set forth in the FY 2009 *Independent Budget*. We also want to thank you for all this Committee has done and for your continued support for our Nation's sick and disabled veterans in the future.