STATEMENT OF
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THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON HEALTH
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
THE PRESIDENT'S BUDGET REQUEST FOR
THE VETERANS HEALTH ADMINISTRATION

FEBRUARY 14, 2006

Mr. Chairman and Members of the Subcommittee:

On September 20, 2005, The American Legion's newly elected National Commander, Thomas L. Bock presented the views of its 2.7 million members on issues under the jurisdiction of your Subcommittee. At the conclusion of The American Legion's 87th National Convention in Honolulu, Hawaii, over 3,100 delegates adopted 42 organizational resolutions with 36 having legislative intent. These organizational mandates will add to the legislative portfolio of The American Legion for the remainder of the 109th Congress.

As Legionnaires gathered at the National Convention to once again determine the path of the nation's largest veterans' service organization, it was with respect for those who have worn the uniform before us, friendship for those with whom we served and admiration for those who currently defend the freedoms of this great nation. Each generation of America's veterans has earned the right to quality health care and transitional programs available through the Department of Veterans Affairs (VA). The American Legion will continue to work with this Subcommittee and your colleagues in the House to ensure that VA is indeed capable of providing *"…care for him who shall have borne the battle and for his widow and his orphan."*

The Administration's VA budget request for 2007 has been hailed for adding nearly $3 billion in real appropriations for veterans' health care, compared to 2006. Although there is a real increase in actual funding in some areas, it still relies on assumed collections from initiatives that seek to place the burden of payment on the veterans seeking treatment from VA. It's a budget request built on charging new annual enrollment fees for VA care, nearly doubling drug co-payments, charging veterans for uncollected reimbursement from third-party payers, and assumed efficiency savings. Even VA documents that these proposals may lead to the loss of more than a million enrolled veterans from VA.

This budget request relies on $1.1 billion in cost-saving "efficiencies" - the subject of a recent Government Accountability Office report that criticized past VA health-care projections from the president's Office of Management and Budget. The American Legion is extremely disappointed that this budget request continues to count "phantom savings" as real healthcare dollars. Real

veterans are suffering from real injuries and VA needs real dollars to treat them. Any increases in VA funding should be the result of actual funds and not assumed savings based on management efficiencies.

The Senate Military Construction and Veterans Affairs Appropriations Subcommittee, chaired by Senator Hutchison, expressed concern over VA being underfunded due to unrealized legislative proposals that seek to charge veterans co-payments and increased co-payments. The American Legion agrees fully with the recommendation of that Subcommittee last year that VA "request a funding level that adequately represents the real needs of veterans **without** devising new fees."

The American Legion is also concerned with the highly ambitious anticipated increase in third-party collections from insurance companies expected in FY 2007. VA's estimate for third-party collections in 2006 was just over $2 billion. The FY 2007 budget request is relying on collecting almost $800 million more, the majority of which are expected to come from new enrollments and increased prescription co-payments. Again, these numbers do not reflect actual funds and should not be considered a real increase to the VA budget. In early 2005, VA had $3 billion in uncollected debts. Assumed collections do not equate to real dollars and veterans health care should not be reliant on possible collections that never match the demand for dollars. Such miscalculations result in real budgetary shortfalls that lead to reduced care and treatment, hiring freezes, delays in nonrecurring maintenance and other tough spending decisions.

VA Research will also suffer from this budget request. It takes a $13 million bite out of VA research in medical care support and relies on increased dollars from Federal Resources and other Non-Federal Resources. Reliance on other Federal and Non-Federal Resources subjects VA research funding to an overall decrease in funding if those resources are forced to slash their respective budgets. Medical Care Support funding should be increased, not decreased. The medical advances resulting from VA research not only benefit the veteran patient, but also they benefit all Americans. Over the years many medical breakthrough have resulted from research initiatives within VA healthcare facilities and through partnerships with civilian medical schools. Adequate funding to continue the important research of VA must be provided. Such budgetary shortfalls make VA's recruiting and retention of medical researchers extremely challenging.

It is imperative that any budget request submitted for VA reflects a true estimate of the patient population. The under-estimated number of VA patients returning from Iraq and Afghanistan contributed to the $1.5 billion budget shortfall for VA health care in 2005. While we applaud Congress for responding with supplemental funding for VA in 2005, the estimates must accurately reflect the demand for care VA can expect.

With that in mind and on behalf of The American Legion, I reiterate the following budgetary recommendations for VA's discretionary funding in FY 2007:

BUDGET RECOMMEDATIONS FOR SELECTED DISCRETIONARY PROGRAMS

FOR DEPARTMENT OF VETERANS AFFAIRS FOR FISCAL YEAR 2007

Program	President's Budget Request	Legion's FY 2007 Request
Medical Care Including:	$32.1 billion	$33.5 billion
• *Medical Services*	*$25.5 billion*	
• *Medical Administration*	*$3.1 billion*	
• *Medical Facilities*	*$3.5 billion*	
Medical Care Collections	($2.8 billion)	$2.1 billion*
Emergency Supplemental		
Medical & Prosthetics Research	$399 million	$469 million
Construction		
• Major	$399 million	$343 million
- CARES		$1 billion
• Minor	$198 million	$274 million
State Extended Care Facilities	$85 million	$250 million
State Veterans' Cemeteries	$32 million	$44 million
NCA Operations	$161 million	$174 million
General Administration	$1.5 billion	$1.9 billion

* Third-party reimbursements should supplement rather than offset discretionary funding.

MEDICAL CONSTRUCTION AND INFRASTRUCTURE SUPPORT

Major Construction

Over the past several years, The American Legion has testified on the inadequacy of funding for VA's major and minor construction programs. This inadequacy has become even more apparent in light of the congressionally imposed moratorium on construction funding during the CARES process. The American Legion is both relieved and encouraged to see that the first two years worth of VA designated high-priority projects include critically needed seismic corrections to nine vulnerable structures in California and Puerto Rico. The American Legion has consistently expressed its concern about veterans being treated in unsafe facilities. There are over 60 patient care and other related use buildings in danger of collapse or heavy damage in the event of an earthquake. The sorely needed seismic corrections, along with the necessary ambulatory care and patient safety projects, will require a significant increase in funding to address VHA's current major construction requirements. We believe these designated seismic projects, other seismic corrections and life safety upgrades, should be dealt with first on an emergency basis.

The American Legion opposes the use of medical care appropriations for construction and urges Congress to separately and fully fund these projects.

The American Legion recommends $343 million for Major Construction and a separate $1 billion for the implementation of the CARES recommendations in FY 2007.

Minor Construction

VA's minor construction program has likewise suffered significant neglect over the past several years. The requirement to maintain the infrastructure of VA's buildings is no small task. When combined with the added cost of the CARES program recommendations and the request for minor infrastructure upgrades in several research facilities, it is easy to see that a major increase over the previous funding level is crucial. We question the transfer of prior-year minor construction funds into CARES. During our site visits to all VHA medical centers over the past three years, we noted a recurrent theme in which facilities managers are routinely forced to divert funds from other priorities to repair roofs, replace boilers and upgrade utilities and life safety and other critical systems. The American Legion believes that these funds should be used for the purposes for which they were intended and that the "transfer authority" does not include monies designated for patient care.

The American Legion recommends $274 million for Minor Construction in FY 2007.

THE AGING OF AMERICA'S VETERANS

A July 1984 study, Caring for the Older Veteran, predicted that a "wave" of elderly World War II and Korean Conflict veterans would occur some 20 years ahead of the elderly in the general U.S. population and had the potential to overwhelm the VA Long Term Care (LTC) system if not properly planned for. The most recent available data from VA, 2000 Census-based VETPOP2001Adjusted, show there were 25.6 million veterans in 2002 and 9.76 million, or 37 percent are aged 65 or older. According to the 2003 National Survey of Veteran Enrollees' Health and Reliance on VA enrolled in VA health care; 14 percent of the veteran population was under the age of 45, 39 percent were between the ages of 45 and 64, and 47 percent of veterans were 65 years or older. Compared to the 2001 Survey, in which age distribution was 21, 41 and

39 percent, it's clear that the "demographic imperative" predicted in 1984 is now upon us.

The study cited an "imminent need to provide a coherent and comprehensive approach to long-term care for veterans." Twenty–one years hence, the coherent and comprehensive approach called for has yet to materialize. The American Legion supports a requirement to mandate that VA publish a Long Term Care Strategic Plan.

The Veterans Millennium Health Care and Benefits Act of 1999 provided VA authority to act on these projections. Based on an "aging in place" continuum of care model, VA was mandated to begin providing a variety of non-institutional services to aging veterans, including; home–based primary care, contract home health care, adult day health care, homemaker and home health aides, respite care, telehealth and geriatric evaluation and management.

On March 29, 2002, GAO issued a report that stated that nearly two years after The Millennium Act's passage, VA had not implemented its response to the requirements that all eligible veterans be offered adult day health care, respite care and geriatric evaluation. At the time of GAO's inquiry, access to these services was "far from universal." While VA served about one-third of its 3rd Quarter 2001 LTC workload (23,205 out of an Average Daily Census of 68,238) in non-institutional settings, VA only spent 8 percent of its LTC budget on these services. Additionally, VA had not even issued final regulations for non-institutional care, but was implementing the services by issuing internal policy directives, according to GAO. Of 140 VAMCs, only 100 or 71 percent were offering adult day health care in non-institutional settings.

By May 22, 2003, over one year later, GAO testified before this Subcommittee that things had not improved and that veterans' access to non-institutional LTC was still limited by service gaps and facility restrictions. GAO's assessment showed that for four of the six services, the majority of facilities either did not offer the service or did not provide access to all veterans living in the geographic service area. GAO summed up the problem nicely when it testified that "[f]aced with competing priorities and little guidance from headquarters, field officials have chosen to use available resources to address other priorities."

In the area of nursing home care, VA is equally recalcitrant in implementing the mandates of the Millennium Act. The Act required VA to maintain its in-house Nursing Home Care Unit (NHCU) bed capacity at the 1998 level of 13,391. In 1999 there were 12,653 VA NHCU beds, 11,812 in 2000, 11,672 in 2001, 11,969 in 2002 and 12,339 beds in 2003. VHA estimates it had 11,000 beds in 2004 and projects only 8,500 beds for fiscal year 2005. VA claims that it cannot maintain both the mandated bed capacity and implement all the non-institutional programs required by the Millennium Act. Providing adequate inpatient LTC capacity is good policy and good medicine**. The American Legion opposes attempts to repeal 38 U.S.C. § 1710B(b).**

The American Legion believes that VA should take its responsibility to America's aging veterans much more seriously and provide the quality of care mandated by Congress. Congress should do its part and provide adequate funding to VA to implement its mandates.

State Extended Care Facility Construction Grants Program

Since 1984, nearly all planning for VA inpatient nursing home care has revolved around State Veterans Homes (SVHs) and contracts with public and private nursing homes. The reason for this is obvious; for fiscal year 2004 VA paid a per diem of $59.48 for each veteran it places in SVHs, compared to the $354.00 VA said it cost in FY 2002 to maintain a veteran for one day in

its own NHCUs.

Under the provisions of title 38, U.S.C., VA is authorized to make payments to states to assist in the construction and maintenance of SVHs. Today, there are 109 SVHs in 47 states with over 23,000 beds providing nursing home, hospital, and domiciliary care. Grants for Construction of State Extended Care Facilities provide funding for 65 percent of the total cost of building new veterans homes. Recognizing the growing long-term health care needs of older veterans, it is essential that the State Veterans Home Program be maintained as a viable and important alternative health care provider to the VA system. State authorizing legislation has been enacted and state funds have been committed. The West Los Angeles State Veterans Home, alone, is a $125 million project. Delaying this and other projects will result in cost overruns from increasing building materials costs and may lead states to cancel these much–needed facilities.

The American Legion supports increasing the amount of authorized per diem payments to just 50 percent for nursing home and domiciliary care provided to veterans in State Veterans Homes. The American Legion also supports the provision of prescription drugs and over-the-counter medications to State Homes Aid and Attendance patients, along with the payment of authorized per diem to State Veterans Homes. Additionally, VA should allow for full reimbursement of nursing home care to 70 percent service-connected veterans or higher, if the veteran resides in a State Veterans Home.

The American Legion recommends $250 million for the State Extended Care Facility Construction Grants Program in FY 2007.

MEDICAL SCHOOL AFFILIATIONS

VHA and its medical school affiliates have enjoyed a long-standing and exemplary relationship for nearly 60 years that continues to thrive and evolve to the present day. Currently, there are 126 accredited medical schools in the United States. Of these, 107 have formal affiliation agreements with VA Medical Centers (VAMCs). More than 30,000 medical residents and 22,000 medical students receive a portion of their medical training in VA facilities annually. VA estimates that 70 percent of its physician workforce has university appointments. At some medical schools, 95 percent of medical staff at affiliated VAMCs has dual appointments.

VHA conducts the largest coordinated education and training program for health care professions in the nation and medical school affiliations allow VA to train new health professionals to meet the health care needs of veterans and the nation. Medical school affiliations have been a major factor in VA's ability to recruit and retain high quality physicians and to provide veterans access to the most advanced medical technology and cutting edge research; VHA research has made countless contributions to improve the quality of life for veterans and the general population.

The American Legion affirms its strong commitment and support for the mutually beneficial affiliations between VHA and the medical schools of this nation.

MEDICAL AND PROSTHETICS RESEARCH

VA's Medical and Prosthetic Research Service has a history of productivity in advancing medical knowledge and improving health care not only for veterans, but all Americans. VA research has led to the creation of the cardiac pacemaker, nicotine patch, and the Computerized Axial Tomography (CAT) scan, as well as other medical breakthroughs. Most recently, VA research has shown that an experimental vaccine against shingles prevented about 51 percent of cases of shingles, a painful nerve and skin infection, and dramatically reduced its severity and complications in vaccinated persons who got shingles. Over 3800 VA physicians and scientists conduct more than 9,000 research projects each year involving more than 150,000 research subjects.

The American Legion supports adequate funding for VA research activities, including basic biomedical research as well as bench-to-bedside projects. Congress and the Administration should encourage acceleration in the development and initiation of needed research on conditions that significantly affect veterans - such as prostate cancer, addictive disorders, trauma and wound healing, post-traumatic stress disorder, rehabilitation, and others jointly with the Department of Defense (DoD), the National Institutes of Health (NIH), other Federal agencies, and academic institutions.

The American Legion recommends $469 million for Medical and Prosthetics Research in FY 2007.

MANDATORY FUNDING FOR VETERANS HEALTH CARE

A new generation of young Americans is once again deployed around the world, answering the nation's call to arms. Like so many brave men and women who honorably served before them, these new veterans are fighting for the freedom, liberty and security of us all. Also like those who fought before them, today's veterans deserve the due respect of a grateful nation when they return home.

Unfortunately, without urgent changes in health care funding, new veterans will soon discover their battles are not over. They will be forced to fight for the life of a health care system that was designed specifically for their unique needs. Just as the veterans of the 20th century did, they will be forced to fight for the care each one is eligible to receive.

The American Legion continues to believe that the solution to the Veterans Health Administration (VHA) recurring fiscal difficulties will only be achieved when its funding becomes a mandatory spending item. Funding for VA health care currently falls under discretionary spending within the Federal budget. VA's health care budget competes with other agencies and programs for Federal dollars each year. The funding requirements of health care for service-disabled veterans are not guaranteed under discretionary spending. VA's ability to treat veterans with service-connected injuries is dependent upon discretionary funding approval from Congress each year.

Under mandatory funding, VA health care would be funded by law for all enrollees who meet the eligibility requirements, guaranteeing yearly appropriations for the earned health care benefits of enrolled veterans.

The American Legion is pleased to support legislation pending in the 109th Congress that would establish a system of capitation-based funding for VHA by combining the total enrolled veteran population with the number of non-veterans who received services from VHA, then dividing that number into 120 percent of the current VHA budget or to another amount, depending on the bill. This baseline per-capita amount is then adjusted for medical inflation each year and is multiplied by the veteran and non-veteran population for the prior fiscal year to arrive at a total budget for VHA for each succeeding fiscal year. This new funding system would provide the bulk of VHA's Medical Services funding, except funding of the State Extended Care Facilities Construction Grant Program, which would be separately authorized, and third-party reimbursements. Annual funding would be without fiscal year limitation, meaning that any savings VHA realized in a fiscal year would be retained rather than returned to the Treasury, providing VHA with incentives to develop efficiencies and creating a pool of funds for enhanced services, needed capital improvements, expanded research and development and other purposes.

The Veterans Health Administration is now struggling to maintain its global preeminence in 21st century health care with funding methods that were developed in the 19th century. No other modern health care organization could be expected to survive under such a system. The American Legion believes that health care rationing for veterans must end. It is time to guarantee health care funding for all veterans.

Mr. Chairman, as a member of the Partnership for Veterans Health Care Budget Reform, we strongly encourage you to hold a hearing on the VA funding process to explore the best way to meet the budgetary needs of VA health care.

MEDICAL CARE COLLECTIONS FUND

The Balanced Budget Act of 1997, P.L. 105-33, established the VA Medical Care Collections Fund (MCCF), requiring that amounts collected or recovered from third party payers after June 30, 1997 be deposited into this fund. The MCCF is a depository for collections from third-party insurance, outpatient prescription co-payments and other medical charges and user fees. The funds collected may only be used for providing VA medical care and services and for VA expenses for identification, billing, auditing and collection of amounts owed the government. In FY 2004, VHA collected $1.7 billion, a significant increase over the $540 million collected in FY 2001. In FY 2005 VA collected $1.9 billion and the VA FY 2006 budget estimate called for $2.1 billion to supplement appropriations, a 10.8 percent increase over FY 2005. VA's ability to capture these funds is critical to its ability to provide quality and timely care to veterans.

Government Accountability Office (GAO) reports have described continuing problems in VHA's ability to capture insurance data in a timely and correct manner and raised concerns about VHA's ability to maximize its third-party collections. At three medical centers visited, GAO found inability to verify insurance, accepting partial payment as full, inconsistent compliance with collections follow-up, insufficient documentation by VA physicians, insufficient automation and a shortage of qualified billing coders were key deficiencies contributing to the shortfalls. VA should implement all available remedies to maximize its collections of accounts receivable.

Technically, the MCCF is not considered a Treasury offset because the funds collected do not actually go back to the MCCF treasury account, but remain within VHA and are used as operating funds. When developing the agency's budget proposal, the total appropriations request

is reduced by the estimate for MCCF for the fiscal year in question. We fail to see the difference in the net effect on VISNs and VAMCs. Offsetting estimated MCCF funds largely defeats the purpose of realigning VHA's financial model to more closely approximate the private sector.

The American Legion opposes offsetting annual VA discretionary funding by the MCCF recovery.

MEDICARE

As do all other citizens, veterans pay into the Medicare system without choice throughout their working lives. A portion of each earned dollar is allocated to the Medicare Trust Fund and although veterans must pay into the Medicare system they cannot use their Medicare benefits to reimburse allowable treatment and services received in VA health care facilities. VA, unlike the Department of Defense or Indian Health Services, cannot bill Medicare for the treatment of allowable Medicare eligible veterans' nonservice-connected medical conditions. This prohibition constitutes a multibillion-dollar annual subsidy to the Medicare Trust Fund. The American Legion does not agree with this policy and supports Medicare reimbursement for VHA for the allowable treatment of nonservice-connected medical conditions of enrolled Medicare-eligible veterans.

Mr. Chairman, nowhere in this budget request does VA receive any credit for the real savings in mandatory appropriations through VA not billing Medicare for the care and treatment of Medicare-eligible enrolled veterans. By denying VA the opportunity to bill Medicare for the treatment of Medicare-eligible veterans, the VA is picking up the care and cost of thousands of veteran patients who would otherwise be billing Medicare for treatment from another health care provider.

CAPITAL ASSET REALIGNMENT FOR ENHANCED SERVICES

VA's Capital Asset Realignment for Enhanced Service (CARES) has entered into the final steps of the process - implementation and integration. The CARES decision released in May 2004 directed VHA to conduct 18 feasibility studies at those health care delivery sites where final decisions could not be made due to inaccurate and incomplete information. The 18 studies fall into two broad categories: 1) studies of sites where no specific decisions have been made to date for the delivery of health care, i.e., do we decide to merge these facilities or not; and 2) studies of sites where the Secretary's decision defines the health care solution to be implemented, i.e., how to best use or re-use the campus as a capital planning decision. VHA contracted Pricewaterhouse Cooper (PwC) to identify and determine the best approach to provide veterans with health care services equal to or better than is currently provided and evaluate in terms of access, quality, and cost effectiveness, while maximizing any potential re-use of all or portions of the current real property inventory. The entire process was scheduled for 13 months with a completion date of no later than February 2006.

One of the components of the CARES Phase II process was stakeholder input. In order to ensure the concept was not lost during the ongoing studies, Local Advisory Panels (LAPs) were set up at each of the study sites. The membership of the LAPs consist of key stakeholders including community leaders, veterans groups, VA affiliated medical schools and VA representation. The LAPs are to hold four public meetings to gather and share stakeholder input during the yearlong studies. Ideally, PwC and LAPs will work together to develop options that PwC will eventually present to the Secretary. The American Legion was concerned when the first meetings had to be pushed back from March to the end of April. This could only mean that the final decision was

going to be delayed. VA was already behind their established timeline. When the meetings were finally held, The American Legion was present at every single one. We will ensure our presence at all LAPs throughout the process. The American Legion intends to hold accountable those who are entrusted to provide the best health care services to the most deserving population – the nation's veterans.

The implementation of the CARES decision promises to be long. VA has estimated that it will require $1 billion per year for the next six years, with continuing substantial infrastructure investments into the future. The American Legion is opposed to CARES funding coming out of the discretionary medical care account. The American Legion believes the CARES implementation must occur in the context of a fully utilized VA health care system. It must take into consideration VA's role in emergency preparedness, organizational capacity for services such as long-term care and Homeland Security. Further, there must be continued oversight of the integration of the CARES process into the strategic planning process. Without that oversight, plans and promised services may be overlooked.

CONCLUSION

Thank you for the opportunity for The American Legion to reiterate its budget recommendations for FY 2007.

Clearly, The American Legion remains deeply concerned with VA medical funding in recent years. Repeatedly, the President advanced seriously flawed legislative initiatives that undermined the "thanks of a grateful nation." Fortunately, Congress joined the veterans' community in rejecting them. The American Legion will continue to oppose any "enrollment fees" targeted towards a selected group of veterans with the goal of discouraging enrollment or that does not guarantee timely access to quality health care in return.

The American Legion has joined with eight other veterans' service organizations in calling for an immediate fix of the broken annual Federal appropriations process that is budget driven rather than demand driven. In recent years, the Office of Management and Budget's budgetary recommendations to Congress fell well short of the mark. Congress, not OMB, is responsible for providing adequate funding for VA medical care. We do not see lengthy discussions on the "right amount" for funding Social Security benefits, Medicare, Veterans' Compensation and Pension, TRICARE for Life or even your salaries as Members of Congress because they are scored as mandatory funding items and, therefore, an entitlement – funding that is guaranteed.

If an entitlement is a statement of national priority, where should the care and treatment of veterans rank among Federal spending programs?

The American Legion respectfully requests a future Committee hearing on evaluating the best funding methodology for VA medical care. This hearing would also address alternative revenue streams to complement annual Federal appropriations.

Mr. Chairman, that concludes my testimony.