



Paralyzed Veterans of America
Buckeye Chapter, Inc.
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ADA NOTIFICATION LEGISLATION

The Issue

In 2017, U.S. Representative Ted Poe (R-TX) introduced the ADA (Americans with Disabilities Act) Education and Reform Act of 2017 (H.R. 620), which would limit the ability of people with disabilities to enforce their rights under the ADA to access places of public accommodation in the same manner as all other citizens. This legislation would require a person with a disability to send a letter of notification to the business that it was out of compliance with the law giving it a grace period before one could file suit. This bill, which passed the House Judiciary Committee in 2016, would remove all incentive for businesses, social service establishments, and other places of public accommodation to comply with the ADA's accessibility requirements. Businesses could employ a "wait and see" approach, continuing to violate the law with impunity.

The ADA, which was signed on July 26, 1990, is the most comprehensive disability rights legislation ever passed by any country and it provides a model of compromise between business and people with disabilities. It prevents discrimination in employment, public services, public accommodations, telecommunications and other services based on disability. In 2008, Congress amended the ADA to recalibrate it to address discrimination in a broad array of circumstances after interpretation of the law was narrowed by the federal courts.

Title III of the ADA was intended to balance the interests of small businesses along with the accessibility concerns of people with disabilities. It is a myth that the ADA's requirements are too hard on small businesses. The legislative history of the ADA is rife with concern about the burden on small businesses and as a result, Title III does not require any action with respect to existing buildings that would cause an undue burden or that is not readily achievable. The approach of the ADA was not to exempt small businesses from the requirements of the bill, but rather to tailor the requirements of the Act to take into account the needs and resources of small businesses – to require what is reasonable and not to impose obligations that are unrealistic or debilitating to businesses.

PVA's Position

- Ensure people with disabilities continue to have the ability to enforce the ADA public accommodations provisions through the courts, if needed, without providing notification, by opposing H.R. 620.
- Expand access to ADA technical assistance provided through the ADA National Network to ensure that businesses avail themselves of the guidance and training that is available.



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AIR CARRIER ACCESS ACT

The Issue

Over 30 years ago, President Ronald Reagan signed the Air Carrier Access Act (ACAA) into law. The ACAA prohibits discrimination based on disability in air travel. Despite progress, too many travelers with disabilities still encounter significant barriers, such as damaged assistive devices, delayed assistance, and lack of seating accommodations. Access for people with disabilities in air travel must move into the 21st century. Otherwise, people with disabilities will be left behind unable to compete in today's job market or enjoy the opportunities available to other Americans.

To address disability-related complaints under the ACAA, passengers with disabilities may file a complaint with the specific airline or the Department of Transportation (DOT). In February 2017, DOT released the latest figures on complaints filed directly with airlines. In 2015, passengers filed 30,830 disability-related complaints as reported by 176 domestic and foreign air carriers, which represents a nearly twelve percent increase over 2014. Top complaints with U.S. carriers for passengers with paraplegia or quadriplegia include failure to provide assistance and seating accommodation. In 2015, passengers also filed 939 disability-related complaints directly with DOT.

Many of the difficulties that travelers with disabilities encounter in air travel are not sufficiently addressed by the ACAA and its implementing regulations. Damaged assistive devices, inadequate training for airline and contractor personnel, and inaccessible airplanes result in missed flights, injuries, and delays that lead to lost time and missed opportunities for people with disabilities. Enforcement of ACAA protections is limited to administrative action and civil fines. Unlike most other civil rights laws, the ACAA lacks a guaranteed private right of action. Consequently, people with disabilities typically receive little if any redress to their specific grievances.

PVA's Position:

- ACAA enforcement must be strengthened by amending the statute to include specific protections and a private right of action.
- Airplanes must be designed to accommodate people with disabilities and airlines must acquire airplanes that meet broad accessibility standards. Improved structural access includes safe and effective boarding and deplaning processes, procedures, and equipment along with better stowage options for assistive devices.
- Policies and regulations must be reformed to improve access to seating accommodations and remove heightened restrictions for some psychiatric service animals and emotional support animals.
- Improved training for air carrier personnel and their contractors must include a focus on industry best practices to close remaining service gaps in air travel for passengers with disabilities.



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REFORMING THE BENEFITS CLAIMS AND APPEALS PROCESS

The Issue:

In March 2016, PVA joined the Board of Veterans Appeals, VBA, and other major veterans service organizations to form a working group with the goal of reforming the appeals process. With the number of pending appeals recently passing 465,000 in December 2016, VA projects that the inventory will climb to over two million over the course of the next decade if the system remains unchanged. Ten years from now, veterans will expect to wait six years for a decision. PVA believes reform is necessary, but procedural reform and greater efficiency must not dilute substantive rights and benefits that veterans have earned and deserve.

Layer upon layer of substantive and procedural rights have been added over time to this unique system of administrative law governing veterans' disability claims. But these developments also produced unintended inefficiencies and an inability to identify faults in the process. A long-term fix requires a comprehensive overhaul of the entire claims process, not just appeals. The legislation developed by this working group takes this approach. It consolidates and streamlines redundant processes, provides veterans with more information to help make strategic decisions, and increases protection of the claim's effective date. Ultimately, the increased efficiency and information will produce faster decisions with a greater degree of accuracy, reducing mistakes that lead to avoidable delays.

It is incumbent upon the Administration to request, and for Congress to supply, the resources to implement the new framework and simultaneously tackle the ballooning inventory of appeals.

PVA's Position:

- The Administration and Congress should support comprehensive reform of the benefit claims and appeals process to modernize and streamline the process in accordance with the draft legislation developed and agreed to in 2016 by senior leaders of VA, VBA, the Board of Veterans Appeals, VSOs and other stakeholders.



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EXPAND ELIGIBILITY FOR THE VA COMPREHENSIVE CAREGIVER PROGRAM

The Issue

The current VA Comprehensive Family Caregiver Program is only available to a veteran seriously injured due to their military service on or after September 11, 2001. Congress must eliminate the unjust date of injury requirement and include “service connected illness” as a criterion for the program. Doing so will give the majority of veterans’ caregivers access to critically needed support services.

Caregivers are the most important component of rehabilitation and eventual recovery for veterans with catastrophic injuries. Their well-being directly impacts the care veterans receive. No reasonable justification, other than cost considerations, can be provided as to why pre-9/11 veterans with a service-connected injury or illness should be excluded from the caregiver program.

The program currently provides respite care, a monthly stipend, paid travel expenses to attend veteran’s medical appointments, and healthcare through CHAMPVA. Without these services, caregivers are likely to exhaust their savings, experience burnout, or suffer their own injury or illness. This means the veteran is more likely to be placed in an institutional setting that is far more costly to the taxpayer. Both the exclusion of “serious illnesses and diseases,” and the use of the “date of injury” as eligibility requirements for such an important benefit are unjust. As a result, the veteran suffers.

As the largest cohort of veterans (Vietnam era) ages, the demand for long term care resources will continue to grow significantly. Catastrophically injured veterans will require the most intensive and expensive institutional care. By providing their caregivers the means to care for them at home with family, they will have the opportunity to live a more normal life while also delaying the costs of institutional care. PVA urges Congress to introduce and pass legislation that would open eligibility to before September 11, 2001, and also include as eligible those veterans whose catastrophic illnesses are a result of service.

PVA’s Position:

- Congress must introduce and pass legislation that would expand eligibility for VA’s comprehensive caregiver assistance benefits to seriously ill and injured veterans, regardless of the era in which they served.



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IMPROVE BENEFITS FOR CATASTROPHICALLY DISABLED VETERANS

The Issue

Paralyzed Veterans of America (PVA) believes it is time to improve benefits for the most severely disabled veterans, particularly with regards to the rates of Special Monthly Compensation.

There is a well-established shortfall in the rates of Special Monthly Compensation (SMC) paid to the most severely disabled veterans that the VA serves. SMC represents payments for “quality of life” issues, such as the loss of an eye or limb, the inability to naturally control bowel and bladder function, the inability to achieve sexual satisfaction or the need to rely on others for the activities of daily life like bathing or eating. To be clear, given the extreme nature of the disabilities incurred by most veterans in receipt of SMC, PVA does not believe that a veteran can be totally compensated for the impact on quality of life; however, SMC does at least offset some of the loss of quality of life. Many severely injured veterans do not have the means to function independently and need intensive care on a daily basis. Many veterans spend more on daily home-based care than they are receiving in SMC benefits.

One of the most important SMC benefits is Aid and Attendance (A&A). PVA recommends that Aid and Attendance benefits be appropriately increased. Attendant care is very expensive and often the Aid and Attendance benefits provided to eligible veterans do not cover this cost. Many PVA members who pay for full-time attendant care incur costs that far exceed the amount they receive as SMC-Aid and Attendant beneficiaries at the R2 compensation level (the highest rate available). Ultimately, they are forced to progressively sacrifice their standard of living in order to meet the rising cost of necessary care. As the veteran is forced to dedicate more and more of their monthly compensation to supplement the shortfalls in the Aid and Attendance benefit, it slowly erodes the veteran’s overall quality of life.

PVA’s Position:

- Congress needs to improve benefits for the most severely disabled veterans, to include increasing the rates of Special Monthly Compensation as well as Aid and Attendance benefits.



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PROVISION OF IVF

The Issue

In September, 2016, Congress passed, and President Obama signed, a temporary authorization for the Department of Veterans Affairs (VA) to provide in-vitro fertilization (IVF) to veterans with a service-connected condition that prevents the conception of a child. On January 19, 2017, IVF services became available through VA. However, these services are set to expire on September 30, 2017, at which time the ban on IVF goes back into effect. Veterans will once again, have to bear the total cost for any attempts to have children.

No group of veterans is more affected by the ban on IVF than PVA's members; veterans with spinal cord injury or disease. PVA has long sought an end to the VA ban on providing IVF. Procreative services through VA would ensure that these veterans are able to have a full quality of life that would otherwise be denied to them as a result of their service. Congress must pass legislation to repeal the ban on IVF and make such services a permanent part of the medical benefits package at VA. It is Congress that has a moral obligation to restore to veterans what has been lost in service, to the fullest extent possible. It is Congress that sends young men and women into harm's way and it is Congress that must provide the health care that meets the needs that result from that service.

From 2001 to 2013, over 2,000 service members suffered a genitourinary injury, resulting in the loss of, or compromised ability, to have a child. While the Department of Defense does provide reproductive services to service members and retired service members, VA does is prohibited from doing so. Since age is a factor in successful fertilization and completion of a pregnancy, delaying the provision of IVF services can have a deleterious effect on veterans' family building success.

PVA's Position:

- Congress must pass legislation to repeal the ban on IVF and make the service a permanent part of the medical benefits package at VA.



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STRENGTHEN AND PROTECT SOCIAL SECURITY AND MEDICARE

The Issue

The 115th Congress is expected to take rapid, dramatic steps on tax reform, health care reform, reducing the deficit and debt reduction. As part of those efforts, many policymakers contend that spending in federal benefit programs – specifically Social Security, Medicare and Medicaid - must be reined in. Proposals are expected in the new Congress that will modify cost-of-living adjustments not only for Social Security but also for VA benefits, civilian pensions and military retirement pay, change the age of eligibility for Social Security and Medicare, change Medicare to a voucher program and block grant Medicaid.

Social Security, self-financed through the contributions of workers and employers, will be able to pay full benefits until 2038. Ironically, some legislation that is portrayed as a means to “save” Social Security would cut benefits more than if Congress does nothing. Social Security did not cause the federal deficit and should not be used as a tool for deficit reduction. Over the years, PVA has opposed reductions in COLAs for Social Security, VA compensation and pension and other federal benefit programs in addition to other cuts that would undermine these important safety net programs. Instead, PVA has supported measures to strengthen Social Security’s solvency through long-delayed updates in the system’s financing that don’t require benefit cuts or raising the retirement age.

Medicare is second only to the VA as a major payer of health care for PVA members and many low income, non-service-connected disabled veterans rely on Medicaid for their health care. Spending cuts in these programs that fall disproportionately on recipients will harm millions of veterans who rely on these benefits.

PVA’s Position:

- PVA urges Congress to keep Social Security out of any deficit and debt reduction plans. Efforts to strengthen Social Security and improve its long term solvency should be undertaken separately through regular Congressional order and should not leave beneficiaries in worse circumstances than before any changes were made. Among the proposals that PVA supports are those that would establish an inflation adjustment for benefits that more realistically reflects expenses of beneficiaries [CPI-E], update the amount of wages subject to the payroll tax and extend the life of the trust funds without slashing benefits.
- PVA also believes that the universal nature of Medicare must be preserved and that any proposals for drastic changes to that program and Medicaid should not be camouflaged in opaque budgetary processes. Furthermore, Congress and the administration must not pursue policies that would undermine health and long term services and supports that are vital to millions of people with disabilities.



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PROTECTION OF SPECIALIZED SERVICES

The Issue

Specialized services are part of the core mission and responsibility of the Veteran Health Administration (VHA). VHA's specialized services, to include spinal cord injury/disease (SCI/D), blind rehabilitation, poly-trauma, and mental health, are of paramount importance due to the inability to replicate their comprehensive approach in the private sector. These specialized services must be strengthened and sustained within the VHA through allocation of appropriate resources, and not subject to defunding.

VHA has not maintained its capacity nor mission to provide for the unique health care needs of catastrophically disabled veterans. Reductions in both inpatient beds and staff in Spinal Cord Injury/Disease acute and extended care settings have been continuously reported throughout the system of care. In 2015, SCI/D nurses worked more than 105,000 combined hours of overtime due to understaffing. Lack of staffing is an unnecessary and dangerous trend that has led to staff burnout, low morale and in some circumstances jeopardizes the health care of patients. Considering SCI/D Veterans are a vulnerable patient population, the reluctance to meet legally mandated staffing levels is tantamount to willful malfeasance. Congress must ensure VA is able to maintain its capacity to provide quality specialty care by appropriating funds for needed resources, followed by close oversight to ensure compliance and accountability.

Some political leaders advocate providing health care to veterans by contracting for services in the community. This would move veterans out of the "veteran-centric" care environment which is only found within VHA, lead to a diminution of existing services, and increase health care costs in the federal budget. Furthermore, support services (cardiology, neurology, urology, etc.) are essential to the intricate specialized care provided to SCI/D veterans. If support services are removed from within VHA to the community, then VA specialized care services is also diminished.

For veterans who do receive care in the community, they are not protected under 38 U.S.C. § 1151. If medical malpractice occurs during outsourced care, the veteran must pursue standard legal remedies unlike similarly-situated veterans who are privy to VA's non-adversarial process. Adding insult to literal injury, these veterans are limited to monetary damages instead of enjoying the other benefits available under Title 38. Congress must ensure that these protections follow the veteran into the community.

PVA's Position:

- Congress must provide sufficient funding for VA to hire additional clinicians, to include physicians, nurses, psychologists, social workers, and rehabilitation therapists to meet demand for services in the SCI/D system of care.
- Congressional oversight is needed to ensure that the Department of Veterans Affairs is meeting capacity requirements within the recognized specialized systems of care, in accordance with P.L. 104-262.

- Congress must ensure veterans who receive care in the community retain current protections unique to VA health care under Title 38 U.S.C., particularly including medical malpractice remedies governed by 38 U.S.C Section 1151, clinical appeal rights, no-cost accredited representation, and Congressional oversight and public accountability.