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**STATEMENT OF
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SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
MARCH 29, 2023**

Chairman Luttrell, Ranking Member Pappas and Members of the Subcommittee:

Thank you for inviting DAV (Disabled American Veterans) to testify at today's legislative hearing of the Subcommittee on Disability Assistance and Memorial Affairs.

DAV is a congressionally chartered non-profit veterans service organization (VSO) comprised of more than one million wartime service-disabled veterans that is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity. To fulfill our service mission, DAV directly employs a corps of benefits advisors, national service officers (NSOs), all of whom are themselves wartime service-connected disabled veterans, at every Department of Veterans Affairs (VA) regional office (VARO) as well as other VA facilities throughout the nation, including the Board of Veterans' Appeals (Board).

We are pleased to offer our views on the bills impacting service-disabled veterans, their families and the programs administered by VA that are under consideration by the Subcommittee.

H.R. 234, the Gerald's Law Act

This legislation would provide a burial allowance for certain veterans who die at home while in receipt of hospice care furnished by VA. Currently, the nonservice-connected burial and plot benefit from the VA covers burial and funeral expenses up to \$800 for the surviving family of a veteran, but only if they are hospitalized at the VA at their time of death.

Gerald's Law would expand the eligibility, applying the burial allowance to terminally ill veterans that are discharged from receiving care at a VA medical facility or long-term care center to pass comfortably at home under hospice care.

In accord with DAV Resolution No. 095, DAV fully supports H.R. 234. No veteran should feel forced to give up this benefit if they wish to pass with dignity in the comfort of their own home, surrounded by their family and loved ones.

H.R. 854, the Captain James C. Edge Gold Star Spouse Equity Act

The Captain James C. Edge Gold Star Spouse Equity Act would allow a surviving spouse of a service member who lost their life while on active duty, to retain their Survivor Benefit Plan (SBP) payments if they remarry prior to the age of 55.

DAV supports the intention of section two of the bill; however, we recommend that it include the surviving spouses of seriously disabled veterans and those who have died due to their service-connected conditions. We believe this would provide parity for surviving spouses of veterans who pass while on active duty and those who succumb due to their service-connected disabilities.

Additionally, H.R. 854 would amend title 38, United States Code, Section 103, Special provisions relating to marriages by noting that, “[t]he remarriage of a surviving spouse shall not bar the furnishing of benefits under section 1311 of this title to the surviving spouse of a veteran.”

DAV strongly supports eliminating the remarriage age for surviving spouses who are in receipt or eligible for Dependency and Indemnity Compensation (DIC). In conjunction with DAV Resolution No. 162, we support lowering/removing the remarriage age for DIC as surviving spouses should not lose entitlement to the benefits they have earned, regardless of remarriage.

H.R. 984, the Commitment to Veteran Support and Outreach Act

The Commitment to Veterans Support and Outreach Act would allow VA to provide grants to states to carry out programs to improve outreach and assistance to veterans and their families and ensure they are fully informed about veterans’ benefits programs.

Applicants would be required to submit to the VA an outline with the details for the use for the grant and provide a plan for how the grant funds will be distributed among its counties and meet the unique needs of American Indian or Alaska Native veterans, elderly veterans, women veterans, and veterans from other underserved communities.

Additionally, VA would be required to prioritize the awarding of grants in the following manner: areas with a critical shortage of county or tribal service officers and areas with high rates of veteran suicide and referrals to the Veterans Crisis Line.

DAV supports outreach, services, and enhanced resources for all service-disabled veterans, to include American Indian and Alaska Native veterans, elderly veterans, women veterans, and veterans from other underserved communities. In accord with DAV Resolution No. 059, we support H.R. 984, the Commitment to Veteran Support and Outreach Act.

H.R. 1139, the GUARD VA Benefits Act

The GUARD VA Benefits Act would impose fines on individuals for soliciting, contracting for, charging, or receiving any unauthorized fee or compensation with respect to the preparation, presentation, or prosecution of any claim for VA benefits. Previously, statutes did impose fines on these individuals; however, the fines were repealed. H.R. 1139 would reinstate those criminal penalties.

In recent years, several entities have emerged that claim to provide veteran resources to file disability claims for a fee. However, these entities are not accredited, as it is argued they do not provide representation and therefore, do not need to be accredited nor do any of the above-referenced requirements of VA accreditation apply to them. They charge veterans and their families fees for their resources and these fee agreements are not submitted to or reviewed by the VA Office of the General Counsel (OGC).

As these groups operate outside of accreditation, they do not fall under the OGC's oversight. Additionally, these entities are not mandatorily required to have their individuals take VA training, follow VA's required code of conduct, nor undergo background checks. We are concerned that the OGC's purpose to protect veterans and their families is being intentionally circumnavigated, thus placing veterans and their families at risk.

For many of our nation's disabled veterans, VA disability compensation can be the difference between making ends meet and more severe outcomes such as homelessness. That's why it is so vitally important that veterans are properly represented by accredited individuals and institutions when applying for VA benefits.

In recent months some groups/or individuals have stated that the GUARD VA Benefits Act violates a veteran's constitutional rights. We respectfully disagree that the legislation violates First Amendment rights of free speech or association. This legislation aligns with U.S. Supreme Court precedent recognizing the responsibility of government to regulate certain professional behavior. Reinstatement of penalties against those who charge a fee for unauthorized professional advice in violation of VA standards of competency and accountability is constitutional. *See generally National Institute of Family and Life Advocates v. Becerra*, ___ U.S. ___, 138 S. Ct. 2361 (2018); *Ohralik v. Ohio State Bar Association*, 436 U.S. 447 (1978); *Del Castillo v. Secretary of Florida Dept. of Health*, 26 F.4th 1214 (11th Cir. 2022), *cert. denied*, *Del Castillo v. Ladapa*, 143 S. Ct. 486 (2022).

In accordance with DAV Resolution No. 095, DAV strongly supports H.R. 1139, the GUARD VA Benefits Act, which will help ensure disabled veterans receive VA-accredited representation while deterring predatory practices that seek to bilk our nation's heroes of their earned benefits.

H.R. 1329, to provide for an increase in the maximum number of judges who may be appointed to the United States Court of Appeals for Veterans Claims

The United States Court of Appeals for Veterans Claims (Court) has exclusive jurisdiction over decisions of the Board of Veterans' Appeals. The Court reviews Board decisions appealed by claimants who believe the Board erred in its decision. As a court of record, the Court is part of the United States judiciary and not part of the VA.

The Court is authorized seven permanent, active judges, and two additional judges as part of a temporary expansion provision. Judges generally are appointed for 15-year terms, and each judge has the option upon retirement to agree to be available for further service as a recall-eligible Senior Judge. During any period of recall service, a Senior Judge has all of the judicial authority and powers of a judge in active service.

In fiscal year (FY) 2019 the Court completed 13,607 dispositions and in FY 2020 the Court completed 15,729 dispositions. In FY 2021, four retired judges were recalled to service as Senior Judges and this coupled with the seven permanent judges and two temporary judges, the Court completed 17,002 dispositions.

As noted in the Court's FY 2021 Annual Report, "[b]y statute, the Court is permanently authorized seven active judges. Based on workload increase, Congress has temporarily authorized two additional judges, bringing the number of active judges currently in service to nine. Seven permanent active judges are not adequate, and the Court's sustained workload justifies making the nine-judge authorization permanent. Further, based on the Board of Veterans' Appeals' prediction that the number of final Board decisions issued will continue to grow in the near future, the Court has requested 2 additional temporary judgeships in addition to the 9, authorizing a total of 11 active judges when needed."

The Court's 2021 report indicates that even with the seven permanent judges and two temporary judges, they had to recall four retired judges due to the strain of the caseload. Based on DAV Resolution No. 178 and the Court's own statement, "Seven permanent active judges are not adequate..." we support H.R. 1329. We agree with the Court's statement and are pleased that the number of permanent Judges would increase to 9 with two temporary Judges.

H.R. 1378, the Veterans' Appeals Backlog Improvement Act

The Veterans' Appeals Backlog Improvement Act would establish an internship program within the Board of Veterans' Appeals (Board), with the goal of providing adequate resources to better support Veterans' Law Judges (VLJs).

As an original collaborator with VA and other stakeholders, DAV supported the Appeals Modernization Act (AMA), which became effective in February 2019. It has dramatically changed how veterans appeal decisions on claims for benefits from VA. At

the Board, appeals are separated between legacy appeals, those pending prior to AMA, and AMA appeals.

The impact of the COVID-19 pandemic mixed with the backlog, slowed efforts to expeditiously move decisions through the appeals process. In January 2022, over 200,000 appeals were pending at the Board with over 84,000 awaiting hearings. In FY 2022, the Board scheduled over 56,000 hearings, but held only a little over 30,000 hearings. At the beginning of FY 2023, over 206,000 appeals were pending with 74,000 awaiting hearings, 6,600 legacy appeals, and 67,000 AMA appeals. The Board needs to be fully staffed and provided adequate resources to increase timeliness and reduce appeals backlog.

For decades, DAV has called on Congress and VA to support significant and meaningful reforms aimed at addressing the growing backlog of VA claims and appeal processing. A key measure in modernizing these processes is providing the Board with adequate resources to better support its judges. By establishing an internship program and authorizing the hiring of entry-level attorneys, the Veterans' Appeals Backlog Improvement Act would vastly improve the Board's ability to hire and retain qualified attorneys to help address the backlog of appeals.

DAV strongly supports H.R.1378, the Veterans' Appeals Backlog Improvement Act, in accord with DAV Resolution No. 178, which calls for adequate resources to resolve the backlog of appeals and hearings at the Board.

H.R. 1529, the Veterans' Compensation Cost-of-Living Adjustment Act of 2023

The Veterans' Compensation Cost-of-Living Adjustment (COLA) Act would increase compensation rates for VA benefits, including clothing allowance, and dependency and indemnity benefits paid to survivors and families of service members who died in the line of duty or suffer from a service-related injury or disease.

Many service-disabled veterans and their families depend on VA compensation benefits just to make ends meet. This COLA will benefit wounded, injured and ill veterans, their families and survivors by helping to maintain the value of VA benefits. Without annual COLAs, many disabled veterans, who sacrificed their own health and family life for the good of our nation, may not be able to maintain the quality of life they deserve.

DAV firmly supports H.R. 1529 in accordance with DAV Resolution No. 102, which calls for a realistic cost-of-living allowance for our nation's disabled veterans, their dependents and survivors.

H.R. 1530, the Veterans Benefits Improvement Act

In 2020, the Veterans Benefits Administration (VBA) decided to stop providing all disability benefit questionnaires (DBQs) online for veterans to access and have completed by non-VA and non-contract exam physicians. Subsequently, legislation was enacted to require VA to provide said forms. The Veterans Benefits Improvement Act would allow the Secretary to exclude DBQs from publication that could not reasonably be completed to a clinically acceptable standard by someone that is not an employee or contractor of the VA.

Currently, VA provides travel pay reimbursement for veterans who attend approved health care appointments including VA compensation and pension examinations. However, this does not apply to veterans who live abroad and must travel to VA examinations. The Veterans Benefits Improvement Act would require VA to submit a report to the House and Senate Committees on Veterans' Affairs on the efforts of the VA to provide reimbursement for a veteran's travel to a VA facility or a contracted provider, regardless of the location, when the travel is for a scheduled compensation and pension examination.

Additionally, H.R. 1530 would mandate the VA to include a requirement that every communication from a contractor to a claimant regarding the scheduling of a covered medical disability examination be provided to the VA accredited representative of the claimant in accord with title 38 sections 5902, 5903, and 5904.

Finally, the Veterans Benefits Improvement Act would require the VA to submit to the Senate and House Veterans' Affairs Committees a report on improving the support by the VA and governmental veterans service officers. This includes an employee of a state, county, municipal or tribal government, who is recognized by the VA as a representative of a VSO to serve as a veterans' service officer.

Based on DAV Resolution No. 095, we support H.R. 1530, the Veterans Benefits Improvement Act, as it will address longstanding concerns of DAV such as veterans having access to DBQs for private providers, improvements to the travel pay reimbursement system, and that VA accredited representatives receive notice of a veteran's contract-VA compensation and pension examination.

This concludes my testimony on behalf of DAV. I am happy to answer any questions you or members of the Subcommittee may have.