



Paralyzed Veterans
of America

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UPDATE

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

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*****PRIORITY*****

The Government Relations staff is still looking for stories about problems that our members have experienced during air travel. Please visit www.AirAccess30.org and share your story.

Congress Approves Choice Funding Extension

Prior to leaving for the August recess, the House of Representatives and Senate approved legislation that would provide additional funding to keep the Department of Veterans Affairs (VA) Choice program operating. Due to significant increases in utilization of the Choice program over the last 6 months, the VA faced the prospect of the program running out of funding by August 15th. In an effort to relieve that problem, Congress approved a bill that provides approximately \$2.1 billion to keep the Choice program running for an additional six months. The bill also includes funding to open 28 capital leases that have been held up for budget reasons for nearly two years, as well as provisions to improve workforce innovation, recruitment and retention of providers in the VA health care system.

Unfortunately, Congress will be forced to deal with this issue again six months from now. A long term solution for how VA will manage its community care programs, which includes the current Choice program, has not been finalized. Meanwhile, the House and Senate Committees on Veterans' Affairs are already developing their own legislative solutions to community care. They range from VA coordinating all community care decisions to veterans having unfettered choice to decide when and where they will seek care.

PVA has already testified on a couple of occasions this year on the future of the Choice program. In the spring, the VA unveiled its own C.A.R.E. program that it hopes to make the basis of all of its community care going forward. However, much work remains to reach a consensus on the final program, **to include how VA will invest in and sustain its "foundational commitments" (spinal cord injury/disease care, blinded rehabilitation, prosthetics, etc).**



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801 Eighteenth Street, NW • Washington, DC 20006

(800) 424-8200 • (800) 795-4327 • www.pva.org

Congress Approves Permanent Change to the Post-9/11 GI Bill

The latest update to the Post-9/11 GI Bill made its way through Congress prior to the August recess and now awaits the President's signature. The "Harry W. Colmery Veterans Education Assistance Act of 2017," wielded strong bipartisan support throughout both chambers of Congress allowing the bill to be fast-tracked to the President's desk. After a unanimous vote in the House, the Senate followed suit by passing the bill by voice vote.

The bill's namesake, the Forever GI Bill, comes from the elimination of the "use it or lose it rule" that requires the benefit to be used within fifteen years. In today's world, it is common for veterans to make career changes later in life. This makes it all the more important to retain education benefits that can help facilitate successful transitions. One significant change makes all Purple Heart recipients eligible for 100 percent of the benefit. Because the benefit percentages are based on time in service, veterans removed from service due to wounds sustained in combat were often unable to reach the full 100 percent rating.

The bill addresses a number of other inadvertent inequities as well. One deals with the Fry Scholarship. Surviving spouses and children of service members who die in the line of duty after September 10, 2001, who are utilizing the GI Bill to attend school are currently ineligible for the Yellow Ribbon Program which fills the gap between the GI Bill benefit amount and full tuition at private institutions. Another oversight in the original law precluded reservists mobilized in support of a Department of Defense (DOD) combatant command and when Governors' request federal assistance in responding to major disasters or emergencies from counting that service time for eligibility.

Other changes include a long-overdue increase in monthly payments for Dependents' Education Assistance (DEA) by approximately \$200. However, the eligibility time period will be reduced from 45 months to 36 months. Most, if not all, GI Bill benefits now cover 36 months of education time, which equates to approximately four school calendar years. The bill also encourages more students to enter into science, technology, engineering and math (STEM) programs, and it restores benefits to students whose schools closed or lost accreditation in the middle of a semester, costing the veteran a semester of eligibility without actually earning any credits.

While the provisions in the bill were far from controversial, the bill got off to a rocky start as VSOs battled over how it would be funded. The original proposal that had widespread support would have mimicked the Montgomery GI Bill, which required active duty service members to pay a nominal amount of their salary into the program to

become eligible. Some groups, however, balked at forcing service members to pay for this benefit. The visceral backlash sunk the bill initially. It regained momentum, however, and was ultimately successful using a different funding mechanism which aligns Basic Allowance for Housing (BAH) rates for GI Bill users with current DOD rates for active duty service members. The GI Bill's current rates were higher than DOD rates, and the reduction in amount will ultimately cover the cost of expanding the GI Bill.

Senate Approves Appeals Modernization Act

On August 2, 2017, the Senate moved appeals modernization one step closer to becoming a reality. H.R. 2288, the "Veterans Appeals Improvement and Modernization Act of 2017," was introduced and overwhelmingly passed in the House earlier this year. The Senate tacked on a few more technical refinements and passed the bill under voice vote just before the August recess. Despite being in recess, the House passed the appeals modernization bill by unanimous consent (meaning there were no objections to the minor technical changes) on August 11, 2017.

Once the bill is enacted into law, the earliest changes are expected to be seen approximately eighteen months after enactment. The massive overhaul of the disability claims and appeals process has long been in the works, but the new law will require extensive efforts to implement and widespread changes to the regulations that govern the process.

PVA Files Lawsuit over Wheelchair Damage Rule

At the end of July, PVA filed suit against the Department of Transportation (DOT) for abruptly rolling back a rule intended to make airline travel safer and easier for passengers with disabilities. The rule, which requires domestic airlines to track and report data on lost and damaged wheelchairs and scooters, was delayed by the Administration without seeking input from people with disabilities. DOT originally published the rule in November 2016, following a five-year rulemaking process that included input from air travelers, consumer and disability advocacy groups, and airlines.

The rule was scheduled for implementation in January 2018. In March 2017, DOT abruptly delayed the rule's implementation date by one year, until January 2019, without providing the public any notice or opportunity to comment, in violation of the Administrative Procedure Act. DOT claimed the delay was necessary due to implementation "challenges" faced by the airline industry. However, the only evidence of these challenges DOT presented was a single email the agency received from the airline industry.

Since DOT's decision, PVA has informed Administration officials and members of Congress about how the rule's delay will hurt people with disabilities and asked that DOT allow these critical protections to move forward. Together with the complaint, PVA filed a motion to reinstate the rule's original effective date. The case was filed in the United States District Court for the District of Columbia.

Senate Effort to Repeal and Replace Affordable Care Act Fails

In a series of votes over the course of a week in late July, the Senate rejected a variety of proposals intended to repeal all or parts of the Affordable Care Act (ACA) and replace the 2010, health care law with dramatically different provisions that would have resulted in increased numbers of uninsured Americans and millions more exposed to insurance discrimination due to pre-existing health conditions and disabilities. Senators were first presented with an amendment to the bill that passed the House of Representatives in May that would have capped and cut Medicaid by over \$700 billion, eliminated most home and community based services programs in Medicaid, adjusted downward the ACA's affordability tax credits and allowed insurers to sell health plans that imposed lifetime caps on benefits and excluded from coverage many services vital to people with disabilities. That bill—the "Better Care Reconciliation Act (BCRA)"—failed on a vote of 43 to 57.

The Senate then considered a motion to repeal the entire ACA with nothing to replace it. The effective date of the repeal would have been delayed for two years under the assumption that Republicans would draft a replacement plan during that period. The Congressional Budget Office (CBO) estimated that this proposal would have resulted in 32 million more uninsured over the next decade. That proposal also failed with all Democrats and seven Republicans voting against the measure.

During the course of the week, numerous motions were made to send the bill to the appropriate committees with instructions to conduct hearings on the proposals to amend the ACA, obtain CBO scores and receive input from stakeholders affected by suggested changes to the law. All of these efforts failed along with other motions designed largely for political messaging purposes

In a final effort to pass something that could ostensibly go to conference with the House-passed bill, the Senate GOP leadership put forward what was called "Skinny Repeal and Replace." This amendment would have eliminated both the individual and employer mandates of the ACA as well as the medical device tax but left the remainder of the ACA intact. Even so, this measure would have destabilized insurance markets, added 16 million Americans to the ranks of the uninsured and still have cut Medicaid by over \$200 billion. Moreover, there were serious concerns among Senators on both

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sides of the aisle that a conference report would be drafted in secret and return with provisions reinstating insurance discrimination, making steep reductions in financial assistance to make insurance affordable and even more damaging cuts to Medicaid. These were the concerns that had compelled the opposition of Senators Collins and Murkowski throughout the debate and which led them to vote “No” on this final package. Their votes, coupled with the 48 Democratic votes against the amendment, set the stage for one of the most dramatic scenes witnessed in the Senate in years.

Earlier in the week, Sen. John McCain (R-AZ) returned to the Senate after being diagnosed with an aggressive form of brain cancer to vote in favor of advancing the debate on health care reform. Sen. McCain made a very eloquent statement about the failure of the Senate to pursue bipartisan solutions to health care reform and to follow “regular order” on this very important legislation. Regular order is a Senate term of art which means that the health care bill or bills would have been considered in committee hearings, been open to amendment, received full vetting by the CBO and provided opportunities for those affected by the proposals to testify. In the early morning hours of July 28, the vote on the “skinny repeal” was defeated when Sen. McCain shockingly voted against the measure.

At the beginning of debate, PVA sent a letter to all Senators echoing the concerns expressed by Sen. McCain. Lack of transparency in the development of the Senate bill and the method under which the legislation was put forward meant that many of PVA’s objections to the legislation could not be addressed. As written, the Senate bill would continue to exclude the children of catastrophically disabled veterans covered by CHAMPVA from its provisions ensuring dependent insurance coverage up to age 26. Unanswered questions remained regarding the availability of affordability tax credits for veterans who are not enrolled in the VA health care system if the Senate bill had become law. Perhaps most significantly, little attention was paid to the impact of Medicaid cuts to over 2 million veterans that rely on that program and what that might mean for increased demand on the VA health care system. The VA Secretary himself had expressed concern about potential new demand on the VA health care system if these veterans lose Medicaid coverage but without hearings on the bill there was no chance to examine this issue.

There is increasing bipartisan consensus that something must be done to help those in the small employer and individual insurance markets who face increasing premiums, excessive deductibles and loss of health plan choices. Perhaps most urgent is an impending need to fund the ACA’s cost sharing subsidies for lower income health plan customers. Insurers will soon be making decisions for 2018, about their participation in the health insurance exchanges based on these subsidies.



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Senators Lamar Alexander (R-TN) and Patty Murray (D-WA), the chairman and ranking member of the Health, Education and Labor Committee, plan to hold hearings in September to explore options for shoring up the financing of health insurance exchanges and other fixes to the ACA that have bipartisan support. Meanwhile, in the House, a Problem Solvers Caucus that is almost evenly comprised of Republicans and Democrats has begun putting together proposals that would increase the number of workers from 50 to 500 for companies subject to the ACA employer mandate and create a federal stability fund to help states reduce premiums and other costs for those with expensive medical needs.

It remains to be seen how far these discussions will progress after the August recess in light of other demands on Congressional time, such as completion of the budget and the need to increase the debt limit. PVA will nonetheless be encouraging Congress to pursue a more open and bipartisan approach to health system reforms that respond to the needs of all Americans, including veterans and people with disabilities.



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