



# WASHINGTON UPDATE

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

Written and produced by Paralyzed Veterans of America - Government Relations Department

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## **ROBERT WILKIE CONFIRMED AS SECRETARY OF VETERANS AFFAIRS**

The Senate confirmed Robert Wilkie to serve as Secretary of the Department of Veterans Affairs, on July 23rd. The vote was 86-9 in favor of confirmation. Wilkie's confirmation marks the first time that such a vote was not unanimous. He has been sworn in and is now at the reigns of the Department.

Secretary Wilkie has many crucial tasks ahead of him at VA. One of the most important of these tasks is the need to shepherd the implementation of the VA MISSION Act and the consolidation of the VA's community care programs, including the Choice Program, into the new Veterans Community Care Program. In addition, VA is currently in the process of implementing the Appeals Modernization Act. Another key task will be managing and implementing the new electronic health record modernization project with the Cerner Corporation.

In light of reports of a shadow advisory team controlling VA that is comprised of non-VA, non-governmental individuals, Secretary Wilkie will need to navigate many competing interests both internal to VA and external. PVA has already established a good relationship with Secretary Wilkie. Moving forward, we will be a consistent presence to ensure that VA remains focused on its mission to serve veterans.

## **PVA FILES LAWSUIT AGAINST DOT IN RESPONSE TO DELAYS IN PUBLISHING A RULE ON LAVATORY ACCESS**

On July 31st, PVA, along with PVA National Treasurer Tom Wheaton, filed a lawsuit against the Department of Transportation (DOT) for its delay in issuing a proposed rule that would improve the accessibility of aircraft lavatories for passengers with disabilities. In 2016, PVA worked with Congress to ensure inclusion of a requirement in a 2016 Federal Aviation Administration (FAA) extension bill for DOT to issue a supplemental notice of proposed rulemaking on this and other Air Carrier Access Act issues by July 2017. DOT missed this deadline. Furthermore, DOT has taken little action to date to move forward with this important rule.

There is a heightened need for DOT to move forward with this rule because of the agreement reached by the ACCESS Committee during the 2016 negotiated rulemaking on this and two other

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issues. That agreement provides, in the long-term, for accessible lavatories. PVA is concerned that if DOT continues to stall in publishing a proposed rule, which is to be based on that agreement, that all of the forward momentum gained during the negotiated rulemaking will be lost.

PVA's suit was filed in the 10<sup>th</sup> U.S. Circuit Court of Appeals by Democracy Forward. Democracy Forward also represents PVA in our ongoing suit against the rollback of a rule requiring domestic airlines to track and report data on lost and damaged wheelchairs and scooters. That case is set for a hearing on September 7th, in the U.S. Court of Appeals for the D.C. Circuit.

## SENATOR CASEY INTRODUCES DISABILITY LEGISLATION

On the eve of the 28th anniversary of the ADA, Senator Robert Casey (D-PA) introduced S. 2360, the Disability Employment Incentives Act (DEIA) and S. 3261, the Office of Disability Policy Act.

The DEIA is designed to encourage employers to hire and retain employees with disabilities by enhancing three existing tax credits to support employers who hire individuals with disabilities and make workplaces more accessible to those employees. It would do so by extending coverage of the Work Opportunity Tax Credit (WOTC) for hires of persons receiving Social Security Disability Insurance (SSDI) and raise the amount of the salary considered for credit from \$6,000 to \$12,500, raising the maximum available tax credit from \$2,400 to \$5,000.

The DEIA also provides a tax credit for any business that retains an employee for a second year of employment and permits the business to take a credit on 20 percent of the employee's salary up to \$12,500, which is a \$2,500 credit. The measure also makes long overdue improvements in the Disability Access Expenditures Tax Credit that is available to small businesses with gross receipts of less than \$3 million annually or with no more than 60 full-time employees. The maximum tax credit will be raised from \$5,000 to \$10,000. In addition, S. 2360 improves the Architectural and Transportation Barrier Tax deduction by increasing to \$30,000 the amount that can be deducted by a business for expenses incurred in removing existing physical barriers in qualified facilities or in transportation vehicles. Businesses will also be able to take the deduction for expenses for making their telecommunications and on-line business operations accessible. The credit and tax deduction may not be used for new structures, only for existing structures where the expenses are used to create accessible spaces to the standards of the U.S. Access Board.

S. 3261 would establish within the General Accountability Office an Office on Disability Policy to provide analyses of how proposed federal legislation, proposed regulations and proposed guidance will affect individuals with disabilities, their families, and those who support individuals with disabilities by providing services. The Office will conduct reviews, upon the request of members of Congress, and produce an annual report on the bills and regulations enacted and considered that will affect the disability community.

In remarks introducing the DEIA, Sen. Casey said, "We need more people with disabilities in competitive integrated employment to strengthen our economy and to enhance the capacity of our

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businesses. As a nation, our duty now is to take the actions that protect and enhance the rights of all Americans, including those with disabilities, and make equality for all a reality." Explaining the need for the Office of Disability Policy, the Senator noted the recent attacks on laws vital to people with disabilities, such as H.R. 620, the ADA Education and Notification Act, show why "non-partisan information about the proposals that could harm people with disabilities and the infrastructure that makes it possible for them to participate in our society" is so important.

## **PELOSI HOLDS ROUNDTABLE WITH VSOs—VA MISSION ACT FUNDING FOCUS OF DISCUSSION**

Heather Ansley, Acting Associate Executive Director of Government Relations, represented PVA at a VSO roundtable meeting held by House Minority Leader Nancy Pelosi (D-CA), on July 25th. The main topic of conversation at the roundtable was funding for implementation of the VA MISSION Act. Prior to passage of that bill, Leader Pelosi, House Veterans' Affairs Committee Ranking Member Tim Walz (D-MN), and others expressed concerns about the unfunded requirements in the legislation.

During the roundtable, PVA acknowledged the funding difficulties and the potential for tradeoffs as a result of discretionary spending caps. Many programs that veterans depend on beyond the VA are funded using discretionary monies. In light of a recent decision by Senate Appropriations Committee Chairman Richard Shelby (R-AL) to pull back on his efforts to attach a VSO-supported amendment to the Fiscal Year (FY) 2019 Military Construction and VA appropriations bill that would have addressed funding concerns, Leader Pelosi sought new ideas from participants about how to meet this need.

For our part, PVA, and the other leading VSOs, committed to fighting for the funds needed to ensure that the VA MISSION Act can be implemented as Congress intends. Although the Administration contends that the Act's requirements can be funded from existing discretionary allocations, Congress and the VSOs have expressed doubts about this assertion. In the meantime, we are working with the appropriators on this issue as they finalize the FY 2019 funding bill for VA.

## **PVA SUBMITS TESTIMONY IN SENATE VETERANS' AFFAIRS COMMITTEE LEGISLATIVE HEARING**

On August 1st, the Senate Veterans' Affairs Committee held a hearing on pending legislation. Bills on the agenda included the Blue Water Navy Vietnam Veterans Act of 2018 (H.R. 299), the Veterans Dental Care Eligibility Expansion and Enhancement Act of 2018 (draft), the VA Hiring Enhancement Act (draft), and draft legislation to improve the Transition Assistance Program. PVA submitted testimony for the record on the bills most relevant to our membership.

The main focus of the hearing was the Blue Water Navy bill, which would extend the presumption of exposure to herbicides containing dioxin, including Agent Orange, to veterans who served in "blue water" or off the shores of Vietnam. Although H.R. 299 has bi-partisan and VSO support, the VA opposes this legislation based on the assertion that scientific evidence does not show that these

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veterans were exposed to such herbicides. It is not clear whether the Senate will be able to move this or any of the other bills addressed in the hearing due to the limited time left in the legislative calendar.

PVA's written testimony on H.R. 299 and the other bills addressed, along with a recording of the hearing, is available here: <https://www.veterans.senate.gov/hearings/pending-legislation-08012018>.

## **INCLUSIVE HOME DESIGN ACT REINTRODUCED**

On July 26th, Congresswoman Jan Schakowsky (D-IL) introduced H.R. 6509, the Eleanor Smith Inclusive Home Design Act named after the long-time advocate for "visitability" in single family homes. The legislation would require all newly-built single-family homes and townhouses receiving federal funds to meet several accessibility standards, including: at least one accessible (or "zero step") entrance into the home; doorways wide enough for a wheelchair on the main level; one wheelchair accessible bathroom; and light switches and thermostats at reachable heights from a wheelchair.

Currently, only 5 percent of new single-family homes and townhouses built with federal assistance require any access features that make it possible for people with mobility impairments to live in or even visit the homes. The remaining 95 percent are built with unnecessary architectural barriers. The average added cost to incorporate accessibility features at the time of construction is between \$100 and \$600. Retrofitting a home, on the other hand, can cost thousands of dollars.

While the Fair Housing Act Amendments of 1988 and Section 504 of the Rehabilitation Act require accessibility features in multifamily housing, both privately and publicly-funded, neither of these laws apply to the millions of single-family homes and townhomes built in this country. As PVA noted in a letter endorsing H.R. 6509, this legislation will reduce the isolation felt by many people with disabilities barred from visiting friends, family, and coworkers who live in single family houses and townhouses. The inclusion of basic architectural accessibility features in such dwellings will also alleviate the need for people to leave their homes when they acquire a disability.

## **PVA ATTENDS THE 2018 TSA DISABILITY AND MULTICULTURAL COALITION CONFERENCE**

The Transportation Security Administration (TSA) hosted its 16th annual disability and multicultural coalition conference in Arlington, Virginia, on August 7th. The keynote speaker was David Pecoske, Administrator for TSA. Mr. Pecoske said that the 60,000 employees of the TSA are dedicated to ensuring the safety and security of our nation's airports and the flying public. Over two million people are screened everyday by TSA officers before boarding a flight to their destination. TSA is in the process of rolling out new screening technology that will allow agents to see better what is in passengers' carry-on luggage. This will result in quicker processing through the security line and fewer invasive inspections of luggage.

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TSA has several programs to assist passengers with disabilities to streamline the process of going through security. First, TSA Cares allows a passenger with a disability, medical condition, or any other special circumstance to contact a hotline, (855) 787-2227, weekdays 8AM – 11PM or weekends 9AM-11PM, as early as 72 hours prior to travel to receive answers to questions about screening policies, procedures, and what to expect at the security check point. TSA Cares can also arrange assistance for passengers with medical conditions as well as injured service members, veterans, and wounded warriors.

TSA Pre-check is a smarter travel experience with fewer hassles and less stress. TSA Pre-check is an expedited security screening program that connects travelers departing from within the United States with smarter security and a better air travel experience for a cost of \$85 for a five year membership. Using a risk-based, intelligence driven approach to pre-screen travelers, TSA Pre-check delivers the most effective and efficient security experience for the passenger. For eligible passengers, they will pass through a dedicated security line, where they will no longer need to remove their shoes, belts, light jackets, liquids, or laptops. Once approved, a passenger will receive a Known Traveler Number (KTN) which can be entered into the reservation process to ensure the Pre-check benefit is listed on the passenger's ticket / boarding pass. Passengers with disabilities may also be Pre-check approved, which will expedite the screening and alleviate the "pat down" process.

Administrator Pekoske encouraged participation in the Pre-check program and TSA Cares saying that they were ready to assist passengers with disabilities to ensure a seamless travel experience.

## **PVA PROVIDES GUIDANCE TO VA ON HEALTH CARE ACCESS STANDARDS**

On July 13th, Heather Ansley, Acting Associate Executive Director of Government Relations, presented PVA's views at a public meeting in Arlington, Virginia, regarding VA's requirement to establish access standards that will assist them in designing a network of providers for the new Veterans Community Care Program. PVA was one of two VSOs that presented views at the meeting to VA community care officials.

Ms. Ansley's oral comments reflected the need to ensure that VA designs a system that meets the clinical needs of veterans and that allows for the decision between a physician and veteran to be the most important determining factor for accessing outside care. In the event an SCI/D veteran is referred to the community, Ms. Ansley stated that the veteran's primary care physician must be alerted to the referral. She also expressed that any community providers selected to provide care to veterans must have facilities and equipment that are accessible and appropriate for patients with disabilities.

In addition to accepting comments at the public meeting, VA also requested stakeholders to submit written comments. PVA's submitted comments reflected our oral comments from the public meeting. To view PVA's written comments, please visit: <https://www.regulations.gov/document?D=VA-2018-VACO-0001-157>.

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## **U.S. ACCESS BOARD RELEASES ANIMATION ON SALES AND SERVICE COUNTERS**

The U.S. Access Board has released an [animation](#) on accessible sales and service counters as part of its online guide to standards issued under the Americans with Disabilities Act (ADA) and the Architectural Barriers Act (ABA). The 12-minute animated film shows how access can be achieved to different types of counters, including sales counters and hotel check-in counters. It also covers access to teller and service windows, queues and waiting lines, check-out aisles, food service lines, self-service shelves, and food and beverage dispensers.



This animation is the most recent in a [series](#) produced by the Access Board. Other animations address wheelchair maneuvering, entrances and doors, toilet and bathing facilities, protruding objects, parking and passenger loading zones, and signs. The animations can be viewed or downloaded through the Board's website. They are also available on the Board's new [YouTube channel](#) along with videos about the Board and its work.

The Board's online guide to the ADA and ABA Standards also features technical bulletins that explain and illustrate requirements and address common questions. Bulletins are currently available on the first five chapters of the standards, including application and scoping, building blocks, accessible routes, accessible means of egress, parking and passenger loading zones, and stairways. The [Guide to the ADA Standards](#) covers design requirements for places of public accommodation, commercial facilities, and state and local government facilities subject to the ADA. The [Guide to the ABA Standards](#) addresses similar standards that apply under the ABA to facilities that are federally funded.

Future installments to the guides will be released as they become available. Users can [sign-up](#) to receive email updates on the release of other animations and bulletins in the series.

## **COMMENT PERIOD OPENS FOR PROPOSED REGULATORY CHANGES NEEDED TO IMPLEMENT APPEALS MODERNIZATION**

In the fall of 2017, the Veterans Appeals Improvement and Modernization Act (Public Law 115-55) was passed and signed into law. Part of this legislation requires VA to make changes to its existing regulations to implement the law's provisions. On August 10th, VA published the proposed changes that will impact VA claims and how they are appealed. These changes are divided into the following sections:

- Part 3 Adjudication
- Part 8 National Service Life Insurance
- Part 14 Legal Services, General Counsel and Miscellaneous Claims



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- Part 19 Board of Veterans' Appeals – Appeals Regulations
- Part 20 Board of Veterans' Appeals – Rules of Practice
- Part 21 Vocational Rehabilitation and Education

It is important to review these changes for a few reasons. First, is VA changing the rules based on how Congress gave them the authority to do so when passing Public Law 115-55? Also, do the rule changes make sense in a way that our National Service Officers will understand, that our clients will understand, but most importantly, VA employees will understand?

PVA has testified that although we support the Appeals Modernization Act, we believe care must be taken when implementing the law. VA has testified that the law will be implemented in February 2019; however, we have concerns that by rushing to make the deadline, little details will be overlooked that will cause more problems further down the road. PVA's claims and appeals staff will carefully evaluate the proposed changes and submit comments for VA's consideration.

## **CONSORTIUM FOR CITIZENS WITH DISABILITIES RELEASES REVIEW OF DISABILITY-RELATED CASES INVOLVING SUPREME COURT NOMINEE JUDGE BRETT KAVANAUGH**

On July 9th, President Trump nominated Judge Brett Kavanaugh to serve on the United States Supreme Court. Judge Kavanaugh was nominated to replace retiring Justice Anthony Kennedy. He currently serves as a judge on the federal Court of Appeals for the District of Columbia. In his time on that court, he has issued a number of decisions relevant to people with disabilities.

Senate Judiciary Committee Chairman Charles Grassley (R-IA) has scheduled Judge Kavanaugh's confirmation hearing to begin on September 4th. The Consortium of Citizens with Disabilities recently released a document that serves as a summary of Judge Kavanaugh's decisions and statements that either directly or indirectly concern people with disabilities. The document is available on CCD's website at <http://www.c-c-d.org/fichiers/Kavanaugh-memo-CCD-Rights.pdf>.

## **PVA PARTICIPATES IN HOUSE VETERANS' AFFAIRS COMMITTEE ROUNDTABLE ON PROSTHETICS**

On July 25th, PVA participated in a roundtable hosted by House Veterans' Affairs Committee, Subcommittee on Health Chairman Dr. Neal Dunn and Ranking Member Julia Brownley. The focus of the roundtable was current practices and future trends of VA prosthetics care. Fred Downs, PVA's Prosthetics Consultant, and Heather Ansley, Acting Associate Executive Director of Government Relations, represented PVA at the event. Although the focus of the roundtable was on prosthetic limbs and orthotics, the event opened the door to sharing information about our concerns with the status of the VA's Automobile Adaptive Equipment (AAE) program and VA's Prosthetics Service in general. PVA will be further exploring our concerns with the committee about the AAE program in particular later this fall.