



Issue #9 • Volume #30

May 16, 2022

# Washington Update

Check out the [PVAction Force](#) page to view our latest alerts and a list of key legislation and its status.

## HVAC HOLDS HEARING ON VA'S FY 2023 BUDGET REQUEST

On April 28, PVA along with our Independent Budget (IB) partners, DAV (Disabled American Veterans), Veterans of Foreign Wars (VFW), and PVA testified in a House Veterans' Affairs Committee (HVAC) hearing examining the VA's budget request for Fiscal Year (FY) 2023. For nearly two and a half hours, VA Secretary Denis McDonough fielded questions from HVAC members on a wide variety of subjects ranging from funding for the department's community care programs to the pending Asset and Infrastructure Review (AIR) Commission.

During its portion of the hearing, the IB noted that while our recommendations and the Administration's recommendations for FY 2023 are much closer than they have been in recent years, we continue to differ on the appropriate amount for VA health care. The IB testified about the need for additional projected medical program funding needs for VA totaling over \$2.7 billion. Specifically, the cost to expand and improve services for women veterans, to implement the phase two expansion of the VA's Program of Comprehensive Assistance for Family Caregivers (PCAFC), to address the

*Beaudette v. McDonough* court ruling regarding the PCAFC, and the cost to fill at least 33 percent of the Veterans Health Administration's vacant positions.

The IB also differed with the Administration in terms of funding for suicide prevention. The Administration plans to reduce spending in this area by \$101 million which is largely driven by the completion of the requirements of the 2019 Executive Order 13861, the President's Roadmap to Empower Veterans and End a National Tragedy of Suicide (PREVENTS). The IB believes the move to reduce funding in this area is premature and could undermine the recent progress achieved in combating this complex problem.

Finally, to overcome VA's infrastructure challenges, the IB stressed that Congress must not only provide significantly increased funding to address long-standing issues and enact comprehensive planning, budgeting, management, and oversight reforms to ensure effective use of those funds. We recommended that VA's construction budget be at least three percent of the department's budget to keep up with the department's backlog of construction projects and even more if it intends for the department to get ahead on infrastructure. A

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recording of the hearing can be found [here](#), and the IB's written statement, [here](#).

## VA WORKFORCE LEGISLATION INTRODUCED IN THE SENATE

On May 6, Senate Veterans' Affairs Committee Chairman Jon Tester (D-MT) and Senator John Boozman (R-AR) [introduced bipartisan legislation](#) to bolster the recruitment and retention of the VA's workforce.

The VA Workforce Improvement, Support, and Expansion (WISE) Act of 2022 (S. 4156) would provide increased pay and benefits for VA's workforce, expand opportunities in rural VA facilities, support training for current and future VA clinicians, and provide additional oversight of VA Human Resource operations and their use of hiring authorities. This legislation will also better prepare the VA to respond to current and future toxic exposure claims.

Specifically, the VA WISE Act of 2022 would:

- Allow increased pay for VA employees;
- Extend VA's hiring, recruitment, and retention authorities, including extending temporary appointments and waiving pay limitations for employees performing mission critical work during the national health emergency;
- Direct VA to develop and implement a national VA Rural Recruitment and Hiring Plan, including best practices for recruiting health care professionals to rural VA facilities; and
- Create a Rural Health Quality and Access Fellowship program for graduate or post-graduate health care professionals to serve at a rural or highly rural VA facility.

PVA has endorsed this legislation in furtherance of our policy priority to protect access to VA's specialized health care services.

## SVAC EXAMINES VA WORKFORCE CONCERNS

On May 3, the Senate Veterans' Affairs Committee (SVAC) held a hearing to examine VA's workforce with particular emphasis on ways the department can improve its recruitment and retention of medical personnel. The VA has been plagued by staffing shortages for many years. The department's reporting for the first quarter of Fiscal Year 2023 shows the Veterans Health Administrations' (VHA) open vacancies have risen to 56,674.

During the hearing, VA's chief witness indicated that number has risen even further to 59,000. Issues like managing employee burnout, local pay surveys, improving the employee experience, scholarships, and student debt reduction were discussed as well as maximizing bonuses and retention incentives for certain employees. Jessica Bonjorni, VA's Chief of Human Capital Management, said she would rate the shortages at the VHA at a seven out of ten, compared to a four or five before the pandemic. Also, while there are concerns about nurses, the biggest labor pressure is in positions such as housekeeping aides, health technicians, and foodservice workers. PVA has noted absences in many of these positions at VA's SCI/D Centers during our annual site visits. The hearing, which was [recorded](#), ended without reaching any conclusions on the best way to shore up VA's workforce.

## SENATE INTRODUCES LEGISLATION TO INCREASE ACCESS TO ASSISTED LIVING THROUGH VA

On May 11, Senate Veterans' Affairs Committee Chairman Jon Tester (D-MT) and Ranking Member Jerry Moran (R-KS) have [introduced legislation that will increase the access of veterans to assisted living services](#) through VA. Senator Patty Murray (D-WA) is an original cosponsor.

VA is currently restricted from paying room and board fees at assisted living facilities—a policy that precludes veterans from utilizing this long-term care option. The Expanding Veterans' Options for Long Term Care Act (S. 4169) would create a pilot program for eligible veterans to receive assisted living care paid for by the VA. The pilot program

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would be conducted at six Veterans Integrated Services Networks (VISNs) nationwide, including at least two program sites located in rural or highly rural areas and two State Veterans Homes.

PVA is an endorser of this legislation because it would help veterans and the VA alike by giving greater access to assisted living and reducing costs for long-term care, allowing more veterans to receive needed assistance. Expanding access to VA long-term services and supports is a policy priority for 2022.

### **HOUSE VETERANS' SUBCOMMITTEE EXAMINES VA INFRASTRUCTURE**

On May 12, the House Veterans' Affairs Health Subcommittee held a short hearing on improving VA infrastructure and operational efficiency but much of the discussion focused on VA's recommendations for the Asset and Infrastructure Review (AIR) Commission. Witnesses provided testimony and answered questions on many subjects including VA's current construction plans, private sector partnerships, and CHIP-IN authorities.

CHIP-IN, which is short for the Communities Helping Invest through Property and Improvements Needed for Veterans Act of 2016, allows non-federal entities to donate existing facilities to the VA or build a donated facility on VA property. The pilot program is due to expire soon, and witnesses recommended Congress eliminate the CHIP-IN sunset date altogether. Concerns expressed about the AIR Commission include the fact that Commission members have not been confirmed yet, the extremely tight timeline that panel members would have to do their work once confirmed, and the accuracy of the information VA provided for the Commission to examine. A recording of the hearing can be viewed [here](#).

### **EMOTIONAL DISTRESS DAMAGES ARE NOT AVAILABLE UNDER SECTION 504 AND THE AFFORDABLE CARE ACT**

On April 28, in a 6-3 decision, the U.S. Supreme Court ruled that emotional distress damages are not recoverable under Section 504 of the Rehabilitation Act and the Affordable Care Act (ACA). In the case, *Cummings v. Premier Rehab Keller, P.L.L.C.*, an individual who is deaf and blind brought a lawsuit alleging that the defendant, a physical therapy provider, violated the laws by refusing to provide an American Sign Language (ASL) interpreter at her sessions. The plaintiff argued that failing to provide an interpreter constituted discrimination on the basis of her disability under Section 504 and the ACA and sought emotional distress damages.

The district court initially dismissed the lawsuit, holding that emotional distress damages were not available under the laws. The Fifth Circuit affirmed. The Supreme Court upheld the lower courts' rulings. The Court looked to contract law to determine what kinds of remedies were available. The majority concluded that since emotional distress damages are generally not available in breach of contract cases, they were not recoverable under Section 504 or the ACA. Based on the ruling, plaintiffs may only obtain injunctive relief, which requires a party to stop doing something, or monetary damages, like compensation for an injury. In the dissent, Justice Breyer foreshadowed the impacts of this case. He warned that the decision means that emotional distress damages will not be available when individuals suffer discrimination by doctors, teachers, or others.

In light of the decision in this case, we are concerned about the future impacts on people with disabilities in seeking to enforce their disability rights under these laws. PVA filed an amicus brief in support of Cummings in the Supreme Court.

### **DOJ SETTLES WITH HOTEL, FINDING ADA ACCESSIBILITY VIOLATIONS**

On May 4, the Department of Justice (DOJ) entered a settlement agreement with the Holiday Inn Express Hotel & Suites in Columbus, Ohio. The

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complainant's spouse uses a wheelchair due to multiple sclerosis. The family called the hotel and the staff told them it had two accessible rooms with roll-in showers, which the family reserved. However, when the family arrived to the hotel, they discovered that neither room had a roll-in shower.

The couple was forced to find another hotel to accommodate her wheelchair.

After an investigation, the DOJ found that the hotel violated the Americans with Disabilities Act (ADA) since the advertised "accessible" rooms were not actually accessible. Furthermore, due to architectural barriers, certain aspects of the hotel did not meet ADA standards. Under the agreement, the hotel must make a series of modifications for better access, including for individuals who use wheelchairs. The hotel must add a room with an accessible tub and remove architectural barriers by modifying its parking spaces, building entrances, public restrooms, front desk, drinking fountains, and interior routes. In addition, hotel personnel must undergo training to ensure all guests with disabilities receive equal service.

Separately, PVA is working on efforts to improve access to hotels by urging DOJ to move forward with regulations on bed height. We are also working to produce additional resources for PVA members and the hotel industry regarding best practices for serving wheelchair users.

### **U.S. ACCESS BOARD HOSTS VIRTUAL PUBLIC MEETING ON LOW TRANSFER SURFACE HEIGHT FOR MEDICAL DIAGNOSTIC EQUIPMENT**

The U.S. Access Board held a [virtual public information meeting](#) on accessible medical diagnostic equipment (MDE) and the adjustability of transfer surfaces for patients who use wheelchairs. The Board hopes to gather information on the minimum heights that MDE with transfer surfaces, including examination tables and chairs and diagnostic imaging medical equipment with tables, can be adjusted to accommodate the broadest range of users.

The Board published a set of MDE Accessibility Standards in January 2017. However, there was a lack of consensus on what the low height for transfer surfaces should be, and the Board specified a temporary range of 17 – 19 inches with a sunset provision to allow time for further study. An analysis of a database on wheelchair seat heights was commissioned to estimate the number of people with seat heights within this specified range. That [study](#) estimates that 4.5 percent of wheelchair users have a seat height of 17 inches or less, 21 percent have a seat height of 18 inches or less, and 42 percent have a seat height of 19 inches or less.

The Board is particularly interested in information about low transfer heights for adjustable MDE products that are currently on the market and any changes or innovations in their design and engineering that may have occurred since the Board issued its MDE standards. Additionally, the Board seeks information on the incremental costs for the design or redesign and manufacture of examination tables and chairs and diagnostic imaging medical equipment with tables that can provide a low transfer height of 17 inches.

Written comments may be submitted via email to [mde@access-board.gov](mailto:mde@access-board.gov) until May 27, 2022. PVA will be submitting comments on behalf of the organization.

### **SSI SAVINGS PENALTY ELIMINATION ACT**

On April 28, Ohio Senators Sherrod Brown (D) and Rob Portman (R) introduced S. 4102, the SSI Savings Penalty Elimination Act, to make long overdue improvements in the Supplemental Security Income (SSI) program that offers federal benefits for low income disabled, blind, and elderly persons. SSI was created in 1972 to provide very modest financial support for the poorest Americans and comes with strict limits on earnings and assets. SSI provides a maximum monthly benefit of \$841 per individual or \$1,261 for couples where both individuals are eligible for the program. However, some beneficiaries receive far less. The average monthly benefit for all recipients is currently \$625.50.





The legislation would update the asset limits, which would enable beneficiaries to have more savings in case of an emergency without affecting their benefits. Under current law, individuals receiving SSI are limited to \$2,000 in assets. For married couples, the limit is \$3,000. S. 4102 would raise those caps to \$10,000 and \$20,000, respectively. This would also remove the SSI marriage penalty since the current asset limit is not double that for a single person. In addition, the bill would adjust these thresholds annually for inflation based on Consumer Price Index data, much like Social Security benefits.

Senator Brown put forth a more expansive SSI proposal earlier in the 117th Congress, the SSI Restoration Act. That measure would have lifted the program's income restrictions and brought monthly benefits to 100 percent of the federal poverty level and indexed them to inflation. Under current law, beneficiaries can have up to \$20 in unearned income per month, while their first \$65 in earnings is exempt from the program's rules. Beyond that threshold, SSI benefits are reduced by 50 cents for every dollar of income. Those thresholds have not been changed since 1972.

The Ohio Senators hope that their more modest proposal might be included in a retirement measure known as Secure 2.0.

## NEWS OF NOTE

### VA Launches New EHR System to Columbus, Ohio, Medical Facilities

On April 30, the [VA launched its new electronic health record](#) (EHR) at the VA Central Ohio Healthcare System in Columbus, Ohio. The VA reported this is the third rollout of its EHR modernization efforts.

The launch at the VA Central Ohio Healthcare System includes its VA clinics in Grove City, Marion, Newark, and Zanesville, Ohio. The next two EHR system deployments are scheduled for June 11 at the Roseburg VA Health Care System in Roseburg, Oregon, and VA Southern Oregon

Rehabilitation Center and Clinics in White City, Oregon.

### Older Americans Month

May is Older Americans Month and is being recognized by the Department of Health and Human Services' Administration for Community Living under the theme "Age My Way." To help celebrate this annual event, please visit the [OAM website](#) for materials, resources, and activity ideas.

### Military Caregiver Month

Military Caregiver Month is observed in May to honor more than five million caregivers in the U.S. Resources for this occasion can be found at the Elizabeth Dole Foundation's [HiddenHeroes.org](#), where readers can learn more about their [Respite Relief Fund](#).

### The COVID-19 Pandemic and Caregiver Discrimination Under Federal Employment Laws

The U.S. Equal Employment Opportunity Commission (EEOC) has issued [supplementary policy guidance](#) on unlawful discrimination against persons with caregiving responsibilities during COVID-19. In addition to updating earlier EEOC policy guidance, there is a fact sheet as well as a best practices document for employers, all of which discuss caregiver discrimination in a broad range of circumstances beyond the pandemic.

## WEBINARS AND HEARINGS

### The ADA in Small Cities and Towns

The Great Lakes ADA Regional Center and the ADA Network Knowledge Translation Center will host a webinar, [The Americans with Disabilities Act \(ADA\) in Small Cities and Towns](#), on May 17 from 2:00-3:30 p.m. ET.

Presenters will discuss how people with disabilities must have an equal opportunity to participate in and benefit from a town's services, programs, and activities. Presenters will also discuss the ADA requirements for town facilities, communications



with the public, and policies and procedures governing town programs, services, and activities.

Registration is free and required by May 16.

### **Upcoming VA Committee Activities**

Please visit the House Veterans' Affairs Committee [webpage](#) and the Senate Veterans' Affairs Committee [webpage](#) for information on upcoming hearings and markups.

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