

# Pending Legislation

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Statement of

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National Legislative Service

Veterans of Foreign Wars of the United States

Before the

United States House of Representatives

Committee on Veterans' Affairs

Subcommittee on Disability Assistance and Memorial Affairs

With Respect To

**Pending Legislation**

Washington, D.C.

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Chairman Luttrell, Ranking Member McGarvey, and members of the subcommittee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide testimony with regard to this pending legislation.

The VFW continues to lead the charge against unaccredited, unscrupulous actors we call Claim Sharks who charge service members, veterans, and survivors illegal fees. Our resolutions urge Congress to pass legislation that protects Department of Veterans Affairs (VA) beneficiaries from predatory companies and individuals attempting to bypass the VA accreditation system and monetize the disability or death benefits of veterans and surviving families.

Due to the stalemate in Washington D.C., our members have worked to pass state-level legislation that installs consumer protection to enforce the federal statute. Currently, nine states have laws that prohibit charging fees that are not allowed by federal law and have various degrees of penalties for violating its state law. Washington, Iowa, Michigan, New York, Illinois, Nevada, New Jersey, Maine, and Massachusetts have laws that require anyone who charges fees to do so adhering to federal law and regulation. Conversely, only one state, Louisiana, allows charging up to \$12,500 for an initial claim.

The VFW has expressed to the committee our redlines regarding any comprehensive bill put forth seeking our support. Veterans should not have to pay future benefits, active duty service members should not have to pay for claims assistance prior to transition, and no one who prepares claims should have any financial affiliation with medical examiners that could possibly affect the outcome of the claim. These are commonsense concerns that we insist be in any bill advanced by this committee.

**Discussion Draft, To amend title 38, United States Code, to allow for certain fee agreements for services rendered in the preparation, presentation, and prosecution of initial claims and supplemental claims for benefits under laws administered by the Secretary of Veterans Affairs, and for other purposes.**

The VFW does not support this legislation as written. We appreciate the committee's

attempt to provide a compromise, but this bill is still slightly off target. There are portions of this draft bill that we do support and believe could provide necessary protections for veterans. However, the major redline we cannot support is the fee of five times future benefits for claims preparation.

We support the provision in this draft to ensure veterans are fully informed of their options when filing a claim. Notifying veterans of all the choices they have to assist them in filing a VA claim would hopefully result in more veterans accessing the care and benefits they have earned. Additionally, requiring VA to maintain a system through which a claimant may report unaccredited entities charging illegal fees is positive. Currently, the staff at the VA Office of General Counsel (OGC) is inept at dealing with this issue and needs assistance to perform this basic task. We urge this committee to provide that office with additional resources so it can be adequately staffed with competent employees who have 21st century tools to accomplish their day-to-day tasks.

We also support VA providing warnings to veterans in order to make them aware of unaccredited entities who are in violation of the law. The VA OGC has sent numerous cease and desist letters to individuals and companies, including two of the witnesses at this hearing, but never bothered to follow up with any further actions. That office and the staff who work there abdicated responsibility for the past decade concerning this issue. The OGC has been unhelpful and unresponsive about this aspect of accreditation. We believe the responsibility for overseeing and maintaining accreditation should be removed from OGC, and instead placed under the authority of the Veterans Benefits Administration and tasked to an appropriate office that can competently carry out this mission.

We support individuals seeking accreditation to be allowed a conditional and temporary status that may be extended if necessary. The inefficient staff at OGC cannot process accreditation applications for agents in a timely manner. Providing flexibility would allow upstanding individuals seeking to become accredited agents the ability to still work with claimants under the law while they await the process to be completed.

We support extending accreditation to employees of non-profit organizations who are seeking to assist veterans, caregivers, and survivors but do not primarily work with VA claims. The VFW has worked with other organizations to provide accreditation under our authority so they can also assist people filing claims. The VFW extended accreditation to

case workers from Wounded Warrior Project before they were able to do so on their own. We have also offered a similar dynamic to our partners from Student Veterans of America and the Tragedy Assistance Program for Survivors. There are numerous organizations that could benefit from having accredited staff on board to help with claims assistance for the beneficiaries they represent. This proposal would be a step in the right direction.

We fully support the portion of this draft bill that would prohibit charging service members for claims through the Benefits Delivery at Discharge (BDD) process. BDD claims are processed separately and faster than other VA claims. Additionally, the claimants are still on active duty, so the conditions applied for are mostly incident to service and would automatically be service connected.

We support protecting veterans' legal option to terminate the representation agreement prior to a decision being rendered to the claimant. This is similar to the protection afforded to veterans who work with accredited agents and attorneys, and this is important to maintain. The VFW has worked with too many veterans who had severed relationships with Claim Sharks only to have them reappear years later seeking fees for work they did not perform. Additionally, we support prohibiting charges for existing claims and work that was not directly performed by said individuals.

What we do not support in this draft bill is the prospective fees of five months of future benefits. Charging fees from future benefits is illegal and predatory, and has the potential of putting veterans in debt. We will never support a paradigm that could put veterans in debt simply for accessing their earned benefits, and neither should this committee.

Charging future benefits is called "Assignment of Benefits" and it is prohibited by VA and the Social Security Administration. It is also prohibited in civil court case claims such as tort, workers' compensation, mesothelioma, and asbestos. According to VA, under Title 38 of the United States Code (U.S.C), Section 5301(a), a contract with a claimant generally may not obligate that claimant to pay fees from their VA benefit payments. The only legal option for charging fees in these cases is from payments for retroactive benefits.

The reason for allowing fees only from retroactive benefits is because it is guaranteed the

claimant has the money in hand to pay the bill. Every VA claim comes with a retroactive payment based on how long it took to process the claim. The current processing time for a claim is 146 days, which means a veteran would receive an average of 146 days' worth of benefits. If a claimant is charged a future amount of benefits, that individual might not have enough money to cover that cost when they are billed.

Veterans Guardian states that its average time to complete a claim is approximately three months. That means a veteran who works with Veterans Guardian would receive retroactive payment for three months of benefits from VA, but then get charged a fee of five months of benefits by Veterans Guardian. Consequently, veterans could be in debt for two months of benefits to companies such as this, in addition to late fees and penalties for not paying the full amount that some of them charge. This prospective fee structure is illegal, predatory, and could lead to veterans being in debt.

A percentage of fees charged out of the retroactive payment is the only guaranteed method to ensure the veteran has enough money to cover whatever fees may be assessed for services. Accredited agents and attorneys are allowed to charge 20 percent of a retroactive payment if VA processes the payment, and 33 percent of the retroactive payment if the client is billed directly by the accredited agent or attorney. This is the fee structure the VFW has been amenable to with other accredited individuals, and this is what we believe would be reasonable for initial claims as well. Putting veterans in debt is the last thing this committee should propose, and the VFW and our allies would oppose any bill that financially harms veterans.

The VFW questions how this discussion draft arrived at five months of future benefits and \$10,000 as a *reasonable* fee. VA regulation—Title 38 Code of Federal Regulations 14.636—currently outlines nine specific factors that determine whether a fee is reasonable, including factors of the complexity of the case; the level of skill and competence required of the representative in giving the services; the amount of time the representative spent on the case; the level of review to which the claim was taken and the level of the review at which the representative was retained; or the rates charged by other representatives for similar services.

To be frank, when considering factors like skill and complexity coupled with VA's statutory duty to assist, we cannot ascertain how this fee structure could ever be considered

reasonable. Instead, we see this as just a rehash of what the Claim Sharks have lobbied for in states around the country. This is what these companies want to charge, so this is all they will accept.

To the VFW, this has never been about the money. Accredited agents and attorneys can make a healthy living operating within the ethical confines of the established, non-predatory fee structure. When payment comes from retroactive benefits, it is hard to consider it predatory since the veteran is guaranteed to be able to settle the debt.

### **H.R. XXX, Governing Unaccredited Representatives Defrauding (GUARD) VA Benefits Act**

The VFW strongly supports this legislation that seeks to reinstate penalties against unaccredited representatives who charge unauthorized fees for aiding veterans filing for VA disability compensation claims.

Prior to the enactment of Public Law 109-461 on December 22, 2006, Title 38 U.S.C. included criminal penalties against the involvement of unaccredited representatives in the claims process. Unfortunately, the elimination of these criminal penalties so that accredited attorneys and agents could charge fees for appeals provided a loophole through which unaccredited representatives could illegally charge for claims preparation without penalty. This problem was exacerbated following the increase in claims attributable to the passage of the *Honoring our PACT Act of 2022*.

The VFW asserts that this legislation, which adds only one sentence to Title 38 U.S.C. is a sound policy proposal that simply institutes a penalty for breaking current law. It would signify a substantial step toward holding these unaccredited representatives accountable to the intent of the law and to ethical practices.

### **H.R. XXX, Preserving Lawful Utilization of Services (PLUS) for Veterans Act of 2025**

The VFW does not support this legislation that seeks to implement a fee structure for providing initial claims assistance under the guise of veteran choice.

Chairman Luttrell and Ranking Member McGarvey, this concludes my testimony. I am happy to answer any questions you may have.

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**Information Required by Rule XI2(g)(4) of the House of Representatives**

Pursuant to Rule XI2(g)(4) of the House of Representatives, the VFW has not received any federal grants in Fiscal Year 2025, nor has it received any federal grants in the two previous Fiscal Years.

The VFW has not received payments or contracts from any foreign governments in the current year or preceding two calendar years.