The President's Fiscal Year 2020 Budget Request for the Department of Veterans Affairs

Mar 26, 2019

Joint Statement of

The Co-authors of the Independent Budget:
Veterans of Foreign Wars
Disabled American Veterans
Paralyzed Veterans of America

Before

Committee on Veterans' Affairs
United States Senate

With Respect To

“The President’s Fiscal Year 2020 Budget Request for the Department of Veterans Affairs”

March 26, 2019

NATIONAL HEADQUARTERS

406 W. 34th Street
Kansas City, MO 64111
Office 816.756.3390
Fax 816.968.1157

WASHINGTON OFFICE

200 Maryland Ave., N.E.
Washington, D.C. 20002
Office 202.543.2239
Fax 202.543.6719
info@vfw.org
www.vfw.org

Online Version: http://stage.vfw.org/advocacy/national-legislative-service/congressional-testimony/2019/3/the-presidents-fiscal-year-2020-budget-request-for-the-department-of-veterans-affairs

Chairman Isakson, Ranking Member Tester, and members of the committee, the co-authors of The Independent Budget (IB)—DAV (Disabled American Veterans), Paralyzed Veterans of America (PVA), and Veterans of Foreign Wars (VFW)—are pleased to present our views regarding the President's funding request for the Department of Veterans Affairs (VA) for Fiscal Year (FY) 2020, including advance appropriations for FY 2021.

Last month, prior to the Administration's budget request, the IB released our comprehensive VA budget recommendations for all discretionary programs for FY 2020, as well as advance appropriations recommendations for medical care accounts for FY 2021.[1] The recommendations also include funding to implement the VA MISSION Act of 2018 (P.L. 115-182) and other reform efforts. The IB believes that Congress must continue vigorous oversight of VA to ensure an accurate assessment of its true needs. Our own FY 2020 estimates affirm that these needs continue to grow.

After reviewing the Administration's budget request for VA and comparing it to the IB recommendations, particularly in light of the requirements of the VA MISSON Act, we believe that the request falls short of meeting the needs of veterans seeking care through VA. Although the budget request provides a seven percent increase in the level of discretionary funding, when factoring in VA's own estimates of the cost of implementing the VA MISSION Act, the shift of $5.5 billion from mandatory to discretionary funding from the Choice program, and the increased cost for providing medical care due to inflation and other factors, VA will not have sufficient resources to meet the health care needs of America's veterans.

The Administration's request of $84 billion for Medical Care is $4 billion less than the IB estimates is necessary to fully meet the demand by veterans for health care during the fiscal year. For FY 2020, the IB recommends approximately $88.1 billion in total medical care funding and approximately $90.8 billion for FY 2021. This recommendation reflects the necessary adjustments to the baseline for all Medical Care program funding in the preceding fiscal year, and assumes the Choice program is fully replaced at the beginning of FY 2020 by the Veterans Community Care Program (VCCP).

For FY 2020, the IB recommends $56.1 billion for VA Medical Services. This recommendation is a reflection of multiple components including the current services estimate, the increase in patient workload, and additional medical care program costs. The current services estimate reflects the impact of projected uncontrollable inflation on the cost to provide services to veterans currently using the system. This estimate also assumes a 2.1 percent increase for pay and benefits across the board for all VA employees in FY 2020.

Our estimate of growth in patient workload is based on a projected increase of approximately 90,000 new unique patients. These patients include priority group 1– 8 veterans and covered non-veterans. We estimate the cost of these new unique patients to be approximately $1.3 billion.

The IB believes that there are additional projected medical program funding needs for VA. Those costs total over $1.2 billion. Specifically, we believe there is a real need for funding to address an array of issues in VA's Long-Term Services and Supports (LTSS) program, including the shortfall in non-institutional services due to the unremitting waitlist for home and community-based services; to provide additional centralized prosthetics funding (based on actual expenditures and projections from the VA's Prosthetics and Sensory Aids Service); funding to expand and improve services for women veterans; funding to support the recently approved authority for reproductive services, to include in vitro fertilization (IVF); and initial funding to implement extending comprehensive caregiver support services to severely injured veterans of all eras.

The Administration's request for VA Medical Services of $51.4 billion is approximately $4.7 billion below the IB recommendation. To better understand the shortfall, it should be noted that the IB does not include anticipated receipts from VA's Medical Care Collections Fund in its recommendation. Although the Administration's request reflects an apparent increase of three percent, the IB believes that when taking into account the increased cost to maintain current services and anticipated increases in workload, as well as increased costs inside VA due to the VA MISSION Act that apparent increase will ultimately result in a shortfall.

Of great concern to our organizations and members, the Administration's budget request makes clear that VA will fail to meet the VA MISSION Act's very clear timetable for expanding its comprehensive caregiver support program to severely injured WWII, Korean, and Vietnam War veterans and their family caregivers. These men and women have waited nearly a decade for equal treatment and it is simply unacceptable to ask them to wait longer.

The VA Caregiver Support Program currently uses the IT system known as the Caregiver Application Tracker (CAT), which was rapidly developed due to time constraints on implementing the program and was not designed to manage a high volume of information as is required today. We are aware VA has requested a reprogramming of nearly $96 million in Medical Care funding to the IT Systems account, which includes just over $4 million to

continue development and stabilization of CAT, while in its FY 2020 budget submission, VA is requesting $2.6 million to update the Caregivers Tool (CareT) to support the first phase of expansion. As this Committee is aware, VA notified Congress in April 2017 that CareT, which at that time was expected to fully automate the application and stipend delivery process for the program, experienced significant delays associated with external dependencies and lost prioritization among competing projects. As a result, a new contract had to be drafted to continue work pushing the delivery of CareT out one year to June 2018.

We are deeply troubled at VA's apparent lack of commitment to accomplish this IT task correctly and on time and that these funding requests appear to uncaringly prioritize caregiver expansion behind that of the VCCP. Moreover, the delay in certifying the IT infrastructure for expansion of the caregiver program until at least 2020 raises troubling concerns about VA's ability to fully deploy the significant IT infrastructure needed to properly implement the more expansive VCCP in a shorter timeframe.

In terms of funding, the Administration included $150 million to expand VA's comprehensive caregiver program. This figure is over $100 million less than the IB recommendation of $253 million to fully implement phase one of the caregiver expansion in FY 2020. The IB's recommendation is based on the Congressional Budget Office estimate for preparing the program, including increased staffing and IT needs, and the beginning of the first phase of expansion.

For Medical Community Care, the IB recommends $18.1 billion for FY 2020, which includes the growth in current services, estimated spending under the Choice program, and additional obligations under the VA MISSION Act of $3.7 billion. The Administration's FY 2020 request for $15.3 billion in discretionary funding appears to be a $5.9 billion increase in funding for Community Care. However, VA has indicated that $5.5 billion of that increase merely represents shifting $5.5 billion that would otherwise be necessary to pay for the Choice program, from mandatory funding. Considering that VA estimated the VA MISSION Act will require $2.6 billion in new funding for expanded access based on new access standards, expanded transplant care, and $271 million for urgent care, there appears to be a significant shortfall for VA community care programs.

Furthermore, during VA's budget briefing on March 11, VHA officials stated that there would be no Medical Community Care funding required to implement the new wait time access standards, that VA would be able to fully meet those standards within VA facilities; therefore, not one veteran would get VCCP eligibility due solely to the wait time standard.

However, VA has also stated that the current median wait time for primary care is 21 days, which would mean that approximately half of all veterans seeking primary care appointments today have a greater than 20 day wait time. Yet, VA's budget request assumes that they would achieve 100 percent compliance with the wait time standard through greater efficiency and an approximate 30 percent increase in VA primary care providers. We have serious doubts about whether this is realistic given the national shortage of primary care providers and the time needed to recruit, hire, and onboard new employees; and certainly, whether it is achievable by the first day of the next fiscal year, just over six months from today.

The Administration's FY 2020 request for VA's construction programs of $1.8 billion dollars is a 44 percent reduction from FY 2019 funding levels, and a disappointing retreat in funding to maintain VA's aging infrastructure. For major construction in FY 2019, VA requested and Congress appropriated a significant increase in funding for major construction projects— an approximate $700 million increase. While these funds will allow VA to begin construction on key projects, many other previously funded sites still lack the funding for completion. Some of these projects have been on hold or in the design and development phase for years. Additionally, there are outstanding seismic corrections that must be addressed. Thus, the IB recommended $2.78 billion in major construction, nearly $1 billion more than VA's total construction request.

To ensure that VA funding keeps pace with all current and future minor construction needs, the IB recommends that Congress appropriate an additional $761 million for minor construction projects. It is important to invest heavily in minor construction because these are the types of projects that can be completed faster and have a more immediate impact on services for veterans. Previously, these changes fell under facilities similar to Non-Recurring Maintenance (NRM), but the IB recommends these specific modifications be under a different authority to ensure their priority.
In addition, the Administration's FY 2020 Medical Facilities request of $6.1 billion, which includes critical NRM to ensure VA facilities have the space to provide care, is a $660 million cut compared to FY 2019 levels. The IB recommends $6.6 billion for FY 2020. This includes nearly $400 million for NRM and leases, which provides funding to address VA research NRM needs. VA uses major and minor leases in lieu of facility construction to address access needs and space gaps to quickly respond to health care advances, and adopt changing technology in order to provide state-of-the-art health care to veterans when a lease is better aligned with the Department's overall capital strategy.

The Administration's request of $762 million for Medical and Prosthetic Research is nearly $80 million below the IB recommendation of $840 million. The request represents a 2

percent cut, at a time when medical research inflation is estimated to be 2.8 percent. The VA Medical and Prosthetic Research program is widely acknowledged as a success, with direct and significant contributions to improved care for veterans and an elevated standard of care for all Americans. This research program is also an important tool in VA's recruitment and retention of health care professionals and clinician-scientists to serve our nation's veterans. This reduction would diminish VA's ability to provide the most advance treatments available to injured and ill veterans in the future, one of VA's core missions.

Overall, the IB believes that the Administration's FY 2020 budget request for VA will neither allow the Department to fully and faithfully implement the VA MISSION Act, nor will it fully meet the rising demand by veterans for care within VA hospitals and clinics. The IB veterans services organizations (IBVSOs) are left with significant questions regarding both the assumptions on which the request was made and how the VA intends to meet the requirements of not only the VA MISSION Act, but also other requirements to provide the health care, benefits, and services that veterans have earned. Below are some of the questions about VA's budget request that have not been answered.

- At its March 11 budget briefing, VA officials stated that the FY 2020 budget request was predicated on a carryover of approximately $3 billion from FY 2019 appropriations, but offered no details or further explanation. Exactly, how much "carryover" is assumed in the FY 2020 budget request and how did VA determine less than halfway through FY 2019 that such a large amount of funding could not be used to meet veterans health care needs? What are the specific dollar amounts being carried over and from what specific accounts, and into what accounts and for what purposes will this carryover funding be used in FY 2020?

- As discussed above, VA officials indicated that there would be zero new dollars necessary for the Medical Community Care account as a result of the new wait time access standards proposed because VA assumes it will be able to meet those standards 100 percent of the time within VA facilities. VA indicated it will do this through workload recapture, greater efficiency, and a 30 percent increase in the total number of VA primary care providers. What new initiatives will VA undertake and what are the specific increases in productivity that each will achieve? What are VA's detailed plans and projections for increasing primary care providers by 30 percent, and how will these new providers be in place at the beginning of FY 2020?

- What factors did VA consider in reaching its decision to cut research spending for the emerging field of genomics research in FY 2020 by 2 percent at a time when medical research inflation is estimated to be 2.8 percent?

- In the full budget documents made available on March 18, the Veterans Benefits Administration budget request seeks appropriations to support the exact same level of FTE for FY 2020 as it does in FY 2019. However, the Direct Labor estimate for the Disability Compensation program shows a decrease of 51 FTE in FY 2020. This small decrease in claims processors occurs at a time that the VA budget is projecting that number of pending claims for disability compensation will rise to over 450,000 by the end of FY 2020, almost a 50 percent increase in just the past three years. Why is VA requesting fewer claims processing staff in FY 2020 when its own data shows that the number of pending claims is rising dramatically?

- VA budget documents state that the Vocational Rehabilitation and Employment (VRE) program will meet and sustain the congressionally-mandated goal of 1:125 counselor-to-client ratio. However, the latest data in the VA budget document also shows that from 2016 to 2018, the number of VRE participants fell from 173,606 to 164,355, more than a five percent decrease. During that same period, VRE's caseload also dropped from 137,097 to 125,513, an 8.4 percent decline. It would appear that VRE is able to meet the 1:125 goal by serving fewer veterans. Given how important and beneficial the VRE program is to disabled veterans -- providing many of them with the ability to increase their economic independence -- why are fewer veterans taking advantage of this program? Has VRE instituted any new policies or practices that have deterred disabled veterans from seeking VRE services and what actions is VRE taking to increase awareness about the availability and benefits of VRE services?

Lastly, the IBVSOs strongly oppose four legislative proposals included in the budget that would reduce benefits to disabled veterans that were earned through their service:

1. **Round-Down of the Computation of the Cost of Living Adjustment (COLA) for Service-Connected Compensation and Dependency and Indemnity Compensation (DIC) for Five Years:**

   In 1990, Congress, in an omnibus reconciliation act, mandated veterans' and survivors' benefit payments be rounded down to the next lower whole dollar. While this policy was initially limited to a few years, Congress continued it until 2014. While not

significant at the onset, the overwhelming effect of twenty-four years of round-down resulted in veterans and their beneficiaries losing billions of dollars.

In the Administration's proposed budget for FY 2019, the Administration sought legislation to round-down the computation of COLA for ten years. This would have cost beneficiaries $34.1 million in 2019, $749.2 million for five years, and $3.11 billion over ten years.

The Administration's proposed budget for FY 2020, is seeking to round-down COLA computations from 2020 to 2024. The cumulative effect of this proposal levies a tax on disabled veterans and their survivors, costing them money each year. When multiplied by the number of disabled veterans and DIC recipients, millions of dollars are siphoned from these deserving individuals annually. All told, the government estimates that it would cost beneficiaries $34 million in 2020 and $637 million for five years and $2 billion over ten years.

Veterans and their survivors rely on their compensation for essential purchases such as food, transportation, rent, and utilities. Any COLA round-down will negatively impact the quality of life for our nation's disabled veterans and their families, and we oppose this and any similar effort. The federal budget should not seek financial savings at the expense of benefits earned by disabled veterans and their families.

2. **Clarify Evidentiary Threshold for Ordering VA Examinations:**

This proposal would increase the evidentiary threshold at which VA, under its duty to assist obligation in 38 U.S.C. § 5103A, is required to request a medical examination for compensation claims. Section 5103A(d)(2) requires VA to "treat an examination or opinion as being necessary to make a decision on a claim" if the evidence of record, "taking into consideration all information and lay or medical evidence . . . (A) contains competent evidence that the claimant has a current disability, or persistent or recurrent symptoms of disability; and (B) indicates that the disability or symptoms may be associated with the claimant's active military, naval, or air service; but (C) does not contain sufficient medical evidence for the Secretary to make a decision on the claim."

The Court of Appeals for Veterans Claims (CAVC), in McLendon v. Nicholson, 20 Vet.App. 79 (2006), determined that in disability compensation claims, VA must provide a VA medical examination when there is:

• Competent evidence of a current disability or persistent or recurrent symptoms of a disability, and
• Evidence establishing that an event, injury, or disease occurred in service or establishing certain diseases manifesting during an applicable presumptive period for which the claimant qualifies, and
• An indication that the disability or persistent or recurrent symptoms of a disability may be associated with the veteran's service or with another service-connected disability, but,
• Insufficient competent medical evidence on file for the secretary to make a decision on the claim. It notes that the requirement of (3) is a low threshold.

We oppose this proposal as it would be inherently detrimental to the VA claims process for all veterans. The Administration asserts the holdings by the CAVC, specifically in McLendon v. Nicholson, are inconsistent and too low a bar when compared to 38 U.S.C. § 5103A(d)(2). However, that is not correct. As noted above, the statutory requirements for a VA examination are consistent with the CAVC's holding. The Administration's proposed legislation would intentionally raise the bar of the VA's Duty to Assist and allow the VA to hold veterans to a much higher threshold and result in fewer examinations with more claim denials. This would lead to more Higher Level Review requests, supplemental claims, and appeals directly to the Board of Veterans' Appeals. Ultimately, this will result in an increased number of veterans never receiving the benefits they earned.
The Administration's proposal would reduce anticipated disability compensation to veterans by $233 million in 2020, $1.3 billion over five years, and $2.8 billion over ten years. We strongly oppose this attempt to limit the due process rights of veterans, particularly when the result will be billions of dollars in lost disability compensation for those who were injured or made ill in service.

3. **VA Schedule for Rating Disability (VASRD) Effective Dates:**

VA seeks to amend 38 U.S.C. § 1155 so that when VASRD is readjusted, such changes would apply to any new or pending claims and may include action to decrease an existing evaluation. Under section 1155, "The Secretary shall from time to time readjust this schedule of ratings in accordance with experience. However, in no event shall such a readjustment in the rating schedule cause a veteran's disability rating in effect on the effective date of the readjustment to be reduced unless an improvement in the

veteran's disability is shown to have occurred."

Currently, if a diagnostic code rating criteria changes, the veteran can only be granted an increased evaluation under the old rating criteria up to the date of the change to the new rating criteria. The new rating criteria must be applied from the date of the change. The Administration's proposal would eliminate a veteran's ability to receive an increased evaluation up to the date of the change and only apply the new criteria.

This proposal would have a negative impact on veterans and would clearly be in contrast to 38 C.F.R. § 3.103, which states, "Proceedings before VA are ex parte in nature, and it is the obligation of VA to assist a claimant in developing the facts pertinent to the claim and to render a decision which grants every benefit that can be supported in law while protecting the interests of the Government."

The Administration's proposed budget does not show any estimate of budgetary savings based on this legislative proposal and mentions only that it would make it easier for VA rating personnel to make decisions on veterans' claims. However, this proposal will eliminate any potential increased evaluations prior to the change of the rating criteria; thereby, lowering the earned benefit for affected disabled veterans. We oppose this proposal as it will have negative consequences on veterans.

4. **Elimination of Payment of Benefits to the Estates of Deceased Nehmer Class Members and to the Survivors of Certain Class Members:**

   VA seeks to amend 38 U.S.C. § 1116 to eliminate payment of benefits to survivors and estates of deceased Nehmer class members. If a Nehmer class member, per 38 C.F.R. § 3.816, entitled to retroactive benefits dies prior to receiving such payment, VA is required to pay any unpaid retroactive benefits to the surviving spouse or subsequent family members. This proposed legislation would deny veterans' survivors and families' benefits that would have otherwise been due to their deceased veteran family member as a result of exposure to these toxic chemicals while in service. It is outrageous that the Administration would deny compensation payments due to a surviving spouse. We adamantly oppose this or any similar proposal that may be offered.

The IBVSOs do support one of VA's legislative proposals regarding VA approved Medical

Foster Homes (MFH). This proposal would require the VA to pay for service- connected veterans to reside in VA approved MFHs.

MFHs provide an alternative to long-stay nursing home (NH) care at a much lower cost. The program has already proven to be safe, preferable to veterans, highly veteran-centric, and half the cost to VA compared to NH care. Aligning patient choice with optimal locus of care results in more veterans receiving long-term care in a preferred setting, with substantial reductions in costs to VA. This proposal would require VA to include MFH in the program of extended care services for the provision of care in MFHs for veterans who would otherwise encumber VA with the higher cost of care in NHs.

Many more service-connected veterans referred to or residing in NHs would choose MFH if VA paid the costs for MFH. Instead, they presently defer to NH care due to VA having payment authority to cover NH, while not having payment authority for MFH. As a result of this gap in authority, VA pays more than twice as much for the long-term NH care for many veterans than it would if VA was granted the proposed authority to pay for MFH. This proposal would give veterans in need of NH level care greater choice and ability to reside in a more home-like, safe environment, continue to have VA oversight and monitoring of their care, and preferably age in place in a VA-approved MFH rather than a NH. The proposal does not create authority to cover veterans who reside in assisted living facilities.

MFH promotes veteran-centered care for those service-connected veterans who would otherwise be in a nursing home at VA expense, by honoring their choice of setting without financial penalty for choosing MFH.

Thank you for the opportunity to submit our views on the Administration's budget request for VA. We firmly believe that unless Congress acts to substantially increase VA's funding for FY 2020, veterans will be forced to wait longer for care, whether they seek care at VA or in the community, leaving unfulfilled the promises made to veterans in the VA MISSION Act.

[1] The full *IB* budget report addressing all aspects of discretionary funding for VA can be downloaded at www.independentbudget.org.