



# Washington Update

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

## SENATE CONFIRMS VA UNDER SECRETARY FOR HEALTH

After waiting more than five years, the Veterans Health Administration finally has a Senate-confirmed official leading it. The Senate voted 66-23 on July 21 to confirm Dr. Shereef Elnahal as VA's Under Secretary for Health. Following Dr. Elnahal's confirmation, PVA Executive Director Carl Blake issued the following statement:

"We are pleased that the Senate has confirmed an Under Secretary for Health to lead the Veterans Health Administration (VHA)" said PVA Executive Director Carl Blake. "This position has been vacant for far too long and Dr. Shereef Elnahal's arrival is very overdue. This is a critical time for the Department of Veterans Affairs as it continues to move forward with Electronic Health Record Modernization, deals with the impacts of the COVID pandemic and staffing shortages, plans to care for more veterans exposed to toxic substances, and considers the need to address VA's aging infrastructure. We look forward to working collaboratively with Dr. Elnahal to advance the mission of VHA and ensure it continues to meet the unique needs of veterans with spinal cord injuries and disorders."

## U.S. DOT ISSUES BILL OF RIGHTS FOR AIR TRAVEL PASSENGERS WITH DISABILITIES

On July 8, the U.S. Department of Transportation (DOT) issued its "[Airline Passengers with Disabilities Bill of](#)

[Rights](#)." The document outlines ten fundamental rights of air travelers with disabilities and the obligations of airlines (to include their employees and contractors) under the Air Carrier Access Act (ACAA). The Bill of Rights does not expand airlines' ACAA obligations or establish new requirements under the law. We hope that it will both empower and educate passengers with disabilities and help hold airlines more accountable for compliance with the law.

DOT was required to do a Bill of Rights following enactment of the Federal Aviation Administration (FAA) Reauthorization Act of 2018. The FAA Reauthorization also required DOT to establish an advisory committee to advise the Secretary of Transportation on the air travel needs of these passengers. PVA was selected to serve on this committee and in this role was able to advise the department on the development of the Bill of Rights. Among some of the protections outlined in the Bill of Rights include requirements by airlines to provide prompt, timely assistance from properly trained airline personnel and to better train personnel to be aware of the needs of passengers with disabilities.

## ADA 32 CELEBRATED

Numerous events took place at the end of July to commemorate the 32nd anniversary of the signing of the Americans with Disabilities Act (ADA) on July 26, 1990.



The House Bipartisan Disabilities Caucus held a reception on Capitol Hill in honor of the ADA anniversary and Rep. Jim Langevin (D-RI), co-chair of the caucus who is retiring from Congress at the end of this year. The occasion was also used to introduce the new co-chairs of the caucus, Rep. Debbie Dingell (D-MI) and Rep. Brian Fitzpatrick (R-PA), and to hear remarks from speakers such as Sen. Bob Casey (D-PA), House Speaker Nancy Pelosi (D-CA), and Majority Leader Steny Hoyer (D-MD). President Biden, who is recovering from COVID-19, provided greetings by video and the White House issued a [statement](#) highlighting actions that the Administration has taken to advance the rights and opportunities for people with disabilities.

The U.S. Department of Transportation held an event that featured Secretary Pete Buttigieg and other leaders from the department as well as Emily Voorde, Associate Director, White House Office of Public Engagement. In his comments, the Secretary cited one of PVA National President Charles Brown's flight experiences as an example of the motivation behind the department's decision to work toward a future rule to allow passengers to remain in their wheelchairs during air travel. The event also featured a discussion of the recently released air travelers with disabilities bill of rights and an [announcement](#) that grants are now available to upgrade the accessibility of legacy rail public transportation systems for people with disabilities.

In a U.S. Department of Labor [blog](#), Assistant Secretary of Labor for Disability Employment Policy (ODEP) Taryn Williams reflected on the 32nd anniversary of the ADA and its impact on employment. As part of this commemoration, Williams addressed the impact of the 1999 Olmstead ruling and how it set the stage for advancing competitive integrated employment and explored how the ADA has guided ODEP in responding to changing needs in recent years, including the shifting employment landscape caused by the COVID-19 pandemic and an increased focus on worker mental health.

The U.S. Department of Justice issued a [statement](#) highlighting actions taken by the department to address web accessibility, artificial intelligence in hiring, access to transportation, fair treatment for individuals with

opioid use disorders, and the segregation and criminalization of people with disabilities.

Finally, the U.S. Department of Health and Human Services' Administration for Community Living (ACL) and Office for Civil Rights (OCR) created a [website](#) to celebrate the ADA featuring a history of the law's development, showcasing some of the progress made toward achieving its promise, and sharing some of the work done by ACL and OCR to strengthen and advance disability rights.

### HOUSE PASSES SIX APPROPRIATIONS BILLS

On July 20, the House passed a package containing six fiscal 2023 appropriations bills, sending a \$405 billion minibus package to the Senate where it will likely set unaddressed until the two chambers reach agreement on the coming fiscal year's topline funding levels. The [bill](#), which passed by a party line vote of 220 to 207 contains language from the Transportation-Housing and Urban Development, Agriculture, Energy-Water, Financial Services, Interior-Environment, and Military Construction-VA bills. The Military Construction/VA portion of the bill provides \$314.1 billion to support veterans, servicemembers, and their families. \$118.8 billion of that amount goes toward veterans' medical care to meet their comprehensive health care needs, including:

- \$13.9 billion for mental health care to provide treatment and support for the two million veterans receiving mental health services
- \$498 million for suicide prevention outreach
- \$911.1 million for gender-specific care and programs to support over 600,000 women veterans
- \$183.3 million for substance use disorder programs and \$662.8 million for opioid abuse prevention
- \$2.7 billion for homeless assistance programs to better reach homeless veterans

The bill invests another \$16.2 billion for other VA programs, including:

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- \$926 million for medical and prosthetic Research
- \$1.76 billion to continue the implementation of the VA's Electronic Health Record Modernization effort
- \$2 billion for VA construction programs
- \$3.9 billion for operating expenses of the Veterans Benefits Administration
- \$150 million for grants for construction of state extended care facilities

The bill also includes \$155.4 billion in fiscal year 2024 advance mandatory funding for VA benefit programs which was equal to the President's budget request. A last-minute amendment by the House transferred \$5 million from the Asset and Infrastructure Review (AIR) Commission to VA Medical Services and another blocks VA from transferring funds from the Medical Facilities and General Administration accounts to the AIR Commission. These moves essentially strip the Commission of its funding and further reduce the likelihood that it would be resurrected. Additional information about the contents of the legislation can be found [here](#).

### **HOUSE PASSES ITS VERSION OF THE ANNUAL DEFENSE POLICY BILL**

The House passed its version of the Fiscal Year 2023 National Defense Authorization Act (NDAA) on July 14 by a vote of 329-101. The focus of this legislation is on defense matters so only a handful of veterans-related provisions made it into their final bill. One of those provisions includes language calling for the removal of the 180-day delay for hiring military retirees into the military health care system in an effort to combat nationwide health care shortages and allow continued uninterrupted service to servicemembers, veterans, and beneficiaries. Other provisions require the Department of Defense (DOD) and VA to jointly brief Congress on the electronic health record implementation, interoperability, data security, and system accuracy by the end of the year. The bill also requires VA, in coordination with DOD, to provide a report to Congress explaining how procedures outlined in VA guidance are followed in assisting veterans in obtaining or reconstructing service records and medical information

damaged or destroyed in the July 1973 fire at the National Personnel Records Center.

Also included in the bill are three provisions related to assisted reproductive technologies. The first one requires DOD to study and report to Congress by December 1, 2023, the rates of infertility among active-duty servicemembers and their spouses, as well as their access to services to address it. The second provision would ensure servicemembers can cryopreserve and store gametes prior to deployment in support of combat or special operations. Finally, for servicemembers who cannot conceive or carry a child due to injury or illness incurred in the course of military service, the third provision would allow them to use donated gametes and surrogates. This applies for all servicemembers, regardless of marital status.

One key provision that did not make it into the bill would have addressed the issue of concurrent receipt for medical retirees with less than 20 years of service. Lawmakers attempted to insert the language of the Major Richard Star Act into the NDAA which would have allowed these disabled veterans to receive both their retirement pay and VA disability compensation without offset. A similar effort is likely when the Senate resumes work on its version of the bill this fall.

### **U.S. ACCESS BOARD ISSUES DESIGN RECOMMENDATIONS FOR ACCESSIBLE ELECTRIC VEHICLE CHARGING STATIONS**

The U.S. Access Board recently released [Design Recommendations for Accessible Electric Vehicle Charging Stations](#), a technical assistance document that reviews existing requirements and new recommendations for making electric vehicle (EV) charging stations accessible. The Board's document covers Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA) accessibility requirements applicable to EV charging stations, such as technical provisions for operable parts and accessible routes. It also clarifies differences between EV charging spaces and parking spaces.

The document also provides multiple recommendations for designing accessible EV charging stations by offering guidance on elements not addressed in the current ADA



and ABA Accessibility Guidelines, including the size of EV charging spaces and location of the access aisle.

Additionally, the document discusses recommendations for EV charging stations installed in the public right-of-way, in parking garages, at residential facilities, and at pull-through locations. The technical assistance document raises the issues of scoping and signage and introduces a “use last” model for signage that designates the accessible EV charging stations and spaces without restricting use to only people with disability parking placards/license plates.

Separately, the Board plans to publish a notice of proposed rulemaking on accessibility guidelines for EV charging stations. These guidelines will supplement the Board’s Accessibility Guidelines under the ADA and ABA with scoping and technical requirements specific to EV charging stations.

#### **CHICAGO CUBS SUED FOR FAILING TO PROVIDE ADEQUATE WHEELCHAIR SEATING AND REMOVE PHYSICAL BARRIERS**

On July 14, the U.S. Attorney’s Office for the Northern District of Illinois filed a [lawsuit](#) against the Chicago Cubs, alleging the team failed to ensure that recent alterations and construction at Wrigley Field were appropriately accessible for individuals with disabilities, including wheelchair users, as required by the Americans with Disabilities Act (ADA).

The Cubs recently completed a multi-year renovation, expansion, and reconstruction of Wrigley Field under the “1060 Project” (Project). The alterations and constructions are required to comply with the 2010 ADA Standards for Accessible Design. Instead, the results of the Project removed the best wheelchair seating in the stadium, failed to incorporate wheelchair seating into the new premium clubs and group seating areas, and failed to remove architectural barriers in other portions of the stadium. In addition, portions of the wheelchair seating were noncompliant because they were not constructed to provide wheelchair users with lines of sight over standing spectators. The lawsuit alleges that the Project had a significant adverse impact on individuals with disabilities and their ability to access the stadium. The lawsuit requests that the Cubs fix the deficiencies, award compensatory damages to the

defendants that suffered from the inaccessibility, and pay civil fines.

#### **VA OIG REPORT CITES VA’S NEW ELECTRONIC HEALTH RECORD FOR PUTTING PATIENTS AT RISK**

In May 2021, after VA identified several patient safety concerns with its new Electronic Health Record (EHR), a Veterans Health Administration (VHA) National Center for Patient Safety team (patient safety team) was deployed to Mann-Grandstaff VA Medical Center. The patient safety team identified 60 safety concerns across nine core domains and ranked these issues based on severity. One of the three concerns with the highest patient safety risk was described as the “unknown queue.” The VA Office of Inspector General (OIG) [reviewed](#) the unknown queue patient safety risk and found that the new EHR sent thousands of orders for medical care to an undetectable location, or unknown queue, instead of the intended care or service location (e.g., specialty care, laboratory, diagnostic imaging).

The OIG found that VHA determined the new EHR’s unknown queue created significant risk and caused harm to multiple patients. In late 2021, VHA informed senior VA and Office of Electronic Health Record Modernization leaders about the risk and harm to patients. VHA staffing resources were required to assess, remedy, manage, and mitigate the unknown queue. VHA initiated a clinical review in June 2021 to ensure that staff acted on orders sent to the unknown queue and assessed patients for harm from delays in care. Assessments of patient safety events included evaluation of the severity of harm, likelihood of how frequently an event may occur, and detectability of the technology risk. The clinical reviewers conducted 1,286 facility event assessments and identified and classified 149 adverse events for patients.

Based on the multiple events of patient harm, insufficient mitigations that burden VHA staff, and continued risk to patient safety, the OIG remains concerned with the management of the new EHR’s unknown queue.

The OIG made two recommendations to the VA Deputy Secretary related to Oracle Cerner’s failure to inform VA





of the unknown queue and evaluation of the unknown queue technology and mitigation process.

### **UBER WILL REFUND CUSTOMERS' WAIT TIME FEES AND PROVIDE WAIVERS**

As a result of a [settlement](#) with the U.S. Department of Justice, Uber will pay millions of dollars in wait time fee refunds to customers with disabilities. In April 2016, Uber began charging customers wait time fees if the rider was unable to board the vehicle within two minutes. The [lawsuit](#), filed in November 2021, alleged that Uber violated the Americans with Disabilities Act (ADA) by discriminating against people with disabilities by failing to modify its policy for individuals, who because of their disability, may need additional time to board the car. For example, an individual may need time to break down and load their wheelchair, which could take longer than two minutes.

Under the two-year agreement, Uber will waive wait time fees for riders with disabilities who self-certify that they, or someone with whom they frequently travel with, need additional time to get into a vehicle. Riders must fill out the [waiver](#) on the Uber app or online. Riders who do not fill out the waiver, but are charged wait time fees, can request a [refund](#) within 30 days. In addition, Uber will credit more than 65,000 eligible riders double the amount of wait time fees charged. These riders will receive an email and be notified by their app that they are eligible for a refund. Uber will also pay more than \$1,700,000 to over 1,000 riders who complained to Uber about being charged a wait time fee due to their disability. Under the agreement, Uber must train their customer service representatives on the new policy.

### **DOJ SETTLES WITH KY COUNTY TO ENSURE ACCESSIBLE POLLING SITES**

The U.S. Department of Justice (DOJ) recently reached a [settlement agreement](#) with the Jefferson County, Kentucky, Board of Elections to ensure that polling places are physically accessible for voters with disabilities. Title II of the Americans with Disabilities Act (ADA) requires equal access to state and local government programs, services, and activities for

individuals with disabilities. This includes voting. Under the ADA, polling places must be physically accessible and provide individuals with disabilities the same level of privacy and independence given to other voters.

After a survey of 22 polling places used during the November 5, 2019, election, DOJ found that all 22 contained non-ADA-compliant elements that caused the facility to be inaccessible for voters with disabilities. Violations included lack of accessible van parking, steep ramps, gaps in exterior routes, and protruding objects. The accessible voting machines also lacked knee and toe clearance for individuals in wheelchairs and did not provide the same level of privacy given to other voters. Under the agreement, the Board must use accessible polling places for individuals with mobility or vision disabilities. The Board must also remove existing physical barriers at polling places or relocate to accessible facilities. For future elections, the Board must ensure that all accessibility features and equipment are maintained on election days and follow the [ADA checklist for polling places](#) and [ballot drop box requirements](#). Lastly, the Board must continue to survey polling places and train poll workers on ADA requirements.

### **PVA PARTICIPATES IN VSO ROUNDTABLE**

On July 19, PVA participated in a roundtable discussion on veterans issues with the Speaker of the House, Chairman of the House Veterans' Affairs Committee (HVAC), nearly a dozen other democratic lawmakers and many veterans service organizations. The conversation opened with a discussion on VA funding and passage of the Richard Star and PACT Acts which address concurrent receipt for medical retirees and care of toxic exposures (respectively).

PVA used the opportunity to explain the difficulty that members regularly encounter in accessing transportation options like air travel and ride sharing that are available to other Americans. As a result, many of them routinely drive, sometimes great distances, to access health care and attend events. Unfortunately, the VA provides veterans with catastrophic service-connected disabilities with only one automobile grant in their lifetime. We pressed for their support of legislation

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like the CARS for Vets Act which would fix this issue by allowing these veterans to receive an automobile grant every 10 years. When asked about the status of the legislation, the HVAC Chairman said passing this is the Committee's number one benefits goal after toxic exposure legislation and he pledged to try and move it in this Congress.

Finally, the urgent need to pass H.R. 6823, the Elizabeth Dole Home and Community Based Services for Veterans and Caregivers Act of 2022, was also discussed. This legislation seeks to improve VA's home and community-based services so more veterans can age at home, enjoy a higher quality of life, and support their caregivers. The Speaker, HVAC Chairman, and the Chairwoman of the HVAC Health Subcommittee agreed that passage of the bill is urgently needed. They promised they would continue to work with the VA, the Senate, and others to try and advance this important bill.

#### **WOMEN VETERANS TASK FORCE REAUTHORIZED**

On July 19, the House Committee on Veterans' Affairs agreed to reauthorize the Women Veterans Task Force. Originally established in the 116th Congress, the Women Veterans Task Force works to increase the visibility of the two million women who have served in the U.S. military and promote inclusivity and equitable access to comprehensive health care, benefits, education and economic opportunity, and other federal resources, particularly at the VA. It also helps to write legislation particular to women veterans and fosters collaboration for stakeholders who support women veterans such as veterans service organizations, VA staff, congressional members, and other providers.

PVA welcomes its reauthorization as we have been working directly with the Task Force since its inception to ensure the women veterans we represent are not forgotten or left out of the conversation. We have had the opportunity to submit multiple statements and provide oral testimony during Task Force meetings and roundtables regarding the needs of our members.

With increasing numbers of women relying on the VA for their health care, the department is working to expand the number of women veteran clinics and

related services. We want to ensure the department's facilities are accessible to all women veterans, but especially those with spinal cord injuries or disorders.

#### **NEWS OF NOTE**

##### **VA Acknowledges it Will Miss Legacy Appeals Goal**

VA recently acknowledged to Congress that it will miss its initial goal of resolving all legacy appeals by the end of 2022. The department has already reduced the legacy backlog from a high of 472,000 appeals in November 2017 to less than 135,000 today but the pandemic slowed their progress and made it more difficult to collect data and evidence needed to review an appeal. Additional time is needed to clear the backlog and VA hopes it can resolve the legacy backlog sometime in 2023.

##### **New Veterans Crisis Line Phone Number**

Effective July 16, veterans now have the option of calling 988 (then press 1) to connect with caring, qualified responders for 24/7 crisis support. In response to the National Suicide Hotline Designation Act designating the 988 Suicide and Crisis Lifeline, the VA has made it more user friendly to access the Veterans Crisis Line.

While 988 is a new option for contacting the Veterans Crisis Line, the original number: 1-800-273-8255 (then press 1), remains available, and veterans can continue to reach out via chat at [VeteransCrisisLine.net/Chat](https://VeteransCrisisLine.net/Chat) or by text to 838255.

##### **DRIVE Act Introduced in the House**

Rep. Julia Brownley (D-CA) and Rep. Peter Welch (D-VT) recently introduced legislation to increase VA's beneficiary travel reimbursement rate. H.R. 8398, the Driver Reimbursement Increase for Veteran Equity (DRIVE) Act, would require the VA to ensure its beneficiary travel reimbursement rate is at least equal to the U.S. General Services Administration's (GSA) reimbursement rate for federal employees. Unlike VA's beneficiary travel reimbursement rate, the GSA rate is reviewed and adjusted annually. GSA's current mileage rate for government employees traveling on official

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business in privately owned vehicles is \$0.62.5 per mile whereas VA's rate is just \$0.41.5 per mile. You can read more about the new bill [here](#).

### **Amtrak Plans for Greater Accessibility**

Amtrak recently [released information](#) on planned upgrades to Amtrak trains that will improve efficiency and reduce environmental impacts while increasing accessibility and comfort for passengers. Access features will include inductive hearing loops, accessible restrooms and vestibules, an accessible food service car, and lifts for customers with mobility disabilities. Lee Page, Senior Associate Advocacy Director, and Heather Ansley, Associate Executive Director of Government Relations, toured a mockup of the new cars in Philadelphia earlier this month to provide feedback on proposed accessibility features.

### **EEOC Updates Guidance on ADA, Employment and COVID-19 Response**

The U.S. Equal Employment Opportunity Commission (EEOC) updated its [guidance](#) on the application of the Americans with Disabilities Act and other laws in employment situations related to the COVID-19 pandemic. The Q&A document provides information related to disability-related inquiries, medical examinations, vaccination requirements, reasonable accommodations for workers with disabilities, and more. The date of posting or revision is noted at the end of each question in the document, so it is easy to see those most recently updated (7-12-22).

### **VA Disability 2023 Increase?**

Is VA disability compensation going up in 2023? In this episode of [theSITREP](#), hear how current Cost of Living Allowance (COLA) projections could mean a significant increase for veterans and their dependents.

## **HEARINGS & WEBINARS**

### **Patient Rights Action Fund Hosts Webinar on Disability Perspectives on Assisted Suicide**

On September 9 at 4 p.m. ET, the Patient Rights Action Fund (PRAF) will sponsor a webinar focusing on assisted suicide from the viewpoint of the disability community. Featured presenters include Lydia X. Z. Brown, Esq. with the Autistic Women and Non-Binary Network, John Kelly from Not Dead Yet, Vincenzo Piscopo with United Spinal Association, and Ian McIntosh with PRAF. To register, click [here](#).

### **U.S. Access Board Webinar: Accessible Recreational Boating Facilities and Fishing Piers and Platforms**

The next webinar in the U.S. Access Board's free monthly series will take place August 4 from 2:30 – 4:00 p.m. ET and provide information on accessibility requirements for boat slips and technical provisions that apply to gangways connecting floating facilities, routes connecting fixed facilities, clear space, handrail, and edge protection. Additionally, Accessibility Specialists from the Board will address associated elements and facilities that support recreational boating and fishing facilities. To register, click [here](#).

### **Now Available: PVA's Webinar on Improving VA Home and Community-Based Services for Veterans and Caregivers**

On June 29, PVA held a webinar on improving access to VA home and community-based services. To view the webinar recording and presentation, click [here](#).

### **Upcoming Veterans' Affairs Committee Action**

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

