

**STATEMENT OF
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THE AMERICAN LEGION
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
REPORT OF THE PRESIDENT'S TASK FORCE TO IMPROVE HEALTH CARE
DELIVERY FOR OUR NATION'S VETERANS**

JUNE 17, 2003

Chairman Smith and the Members of the Committee, I appreciate the opportunity to appear today to offer this Commissioner's views on the Final Report of the President's Task Force (PTF) to Improve Health Care Delivery For Our Nation's Veterans.

I was honored to be asked by the President to serve as a Commissioner on the Task Force. I am equally honored to appear before this bi-partisan Committee of veterans' advocates. I say bi-partisan because taking care of America's veterans is a national mandate. About the only question not asked of an enlistee is what is your political affiliation, because it really doesn't matter. Once you raise your hand and take the oath of enlistment, everything that really matters will be taught to you by your drill sergeant and your fellow service members.

I have never met a veteran that said, "The military didn't change me as a person." Some of the changes were more dramatic than others. Some of the changes left scars, both physical and mental. But I can honestly say that every veteran contributed to the price of freedom. Granted, some contributions were minimal, while others paid the ultimate sacrifice. Freedom was obtained, is sustained, and will continue to be secured by military veterans.

I understood the mission of this Task Force was to help this Nation meet its obligation to the men and women of the armed forces – past, present, and future.

As a veterans' advocate, I would commend to you and your colleagues a book entitled **The Wages of War – When America's Soldiers Came Home – From Valley Forge to Vietnam.** The authors present a vivid account of the treatment of American veterans throughout history. Tragically, it is not a very proud record. Well-documented words of praise used all too often in this city: like "to care for him who shall have borne the battle" and the "thanks of a grateful nation," are lacking in actions and filled with broken promises. The one point that is clearly obvious, is that not all veterans – past, present, or future -- are treated equally. Nothing supports that statement more than does Recommendation 5.3 in this newest report.

Contrary to comments made during Commission meetings, there are no "core veterans" – a veteran is a veteran. The "traditional" veterans treated in VA medical facilities are any veteran needing medical care. In the 1980s, "budgetary constraints" created distinctions through means-testing; before then any veteran was welcomed in a VA medical facility.

Just like the other barriers for collaboration identified in this final report, removal will require a degree of leadership and personal commitment by you and your colleagues. Nearly every barrier identified by this Task Force was identified by previous commissions in 1991 and 1998 and some of the recommendations are similar. However, the very best recommendations are meaningless without the necessary actions to bring about change.

On June 3, Dr. Wilensky testified as the Task Force's Co-Chair. I welcome the opportunity today to specifically discuss the only portion of the PTF report that failed to muster consensus by all Commissioners – Recommendation 5.3 addressing Priority Group 8 veterans. Personally, I believe this is the most critical issue in the entire report because it deals with the greatest portion of the veterans' population – the average G.I. Joe and Jane. Needless to say, I am less than pleased with this final recommendation.

This Task Force was asked to offer recommendations, not to draft legislation. Every other recommendation in this report will require a paradigm shift either administratively or legislatively. Recommendation 5.3 provides little guidance other than "good luck." However, the dissenting recommendation provided as a "footnote" in the full report on page 80 offered tangible, achievable actions.

The title of the Task Force includes the phrase to "Improve Health Care Delivery for Our Nation's Veterans" -- not just "core veterans" or "traditional veterans," but rather all American veterans. The leadership of the PTF, in my opinion, did not make the funding issue the primary concern of the Commission.

Some Commissioners came to the PTF with experience and knowledge of the VA health care delivery system. They had an understanding of VA health care funding. They were consistent in asking that health care funding be the primary goal on the PTF agenda.

That, however, did not happen. The issue of funding was relegated to the fourth or fifth item on the agenda. The Commission was still trying to reach consensus on a funding recommendation at its meetings of March and April 2003. Funding was still being discussed during the final Commission meeting April 25, 2003.

Though funding the veterans health care system was discussed throughout the life of the Commission, it was never the first topic discussed. On more than one occasion, when Commissioners asked about funding, they were reminded that in the opinion of the Chair the primary PTF mission was, first and foremost, to make recommendations on VA and DOD collaboration.

In PTF's early meetings, stakeholder panels of veterans' service organizations and military associations were invited to offer their views. Their views were consistent. Funding the VA health care system was their first priority. They encouraged the Commission to make funding its first priority. I also must note that none of the testimony received from the veterans' community was listed in the bibliography.

There are some organizations that would say that the PTF majority recommendation on full funding Priority 1-7 veterans was a landmark recommendation. I do not share that opinion. For the record, the recommendation is as follows:

"The Federal Government should provide full funding to ensure that enrolled veterans in Priority Groups 1 through 7 (new) are provided the current comprehensive benefit in accordance with VA's established access standards. Full funding should occur through modifications to the current budget and appropriations process, by using a mandatory funding mechanism, or by some other changes in the process that achieve the final goal." (PTF - Recommendation 5.1).

I do not believe it is a landmark recommendation because it fails to address the funding needs of an entire class of eligible veterans -- Priority Group 8 veterans.

The majority will tell you otherwise. However, in examining their recommendation on Priority Group 8 veterans, I think you will find it does not rise to the level of a recommendation, but is merely a statement, as follows:

"The present uncertain access status and funding of Priority Group 8 veterans is unacceptable. Individual veterans have not known from year to year if they will be granted access to VA care. The President and Congress should work together to solve the problem." (PTF - Recommendation 5.3)

Yes, the present status is unacceptable. The statement is a discovery of the obvious.

Is the PTF majority saying, "Priority Group 8 veterans, you're really not enough of a concern for us to make a concrete recommendation concerning your health care?" Is this the subliminal message they are sending to the President, Congress and to the veterans of this Nation?

Are they suggesting the repeal of Title 1 of the Veterans' Health Care Eligibility Reform Act of 1996 as it amended section 1710 of Title 38, United States Code, establishing the eligibility of Priority Group 8 veterans for health care?

Certainly, the PTF majority making this recommendation were familiar with the Veterans Health Care Eligibility Reform Act of 1996.

They were certainly aware of Title 38, USC, which, by the adoption of the Health Care Act, established the eligibility of Priority Group 8 veterans for VA health care.

The PTF majority was further aware that there are Priority Group 8 veterans who served two combat tours in Vietnam or may have flown thirty combat missions in World War II, but by the grace of God, do not qualify as Priority Group 1-7 veterans.

The PTF majority was certainly aware that the Priority Group 8 veterans currently enrolled in the VA make payments for their health care under third party reimbursement authority, when treated at VA medical facilities. They were certainly aware that these veterans pay the required co-payments and their insurance is billed.

And they were aware that the cost of VA medical care for Priority Group 8 veterans is not borne entirely by the Federal government.

However, the PTF majority continued to cite the so-called "core mission" of the VA, when discussing the issue of funding Priority Group 8 veterans.

There are PTF commissioners who are on record as defining these so called "core mission" veterans as only those who are service connected or have incomes below the established thresholds. On more than one occasion, they referenced this myth as the "historical mission" of the VA.

Even when confronted with the indisputable fact that no such "core mission" exists in Title 38, USC now, or before 1996, they remained steadfast in their view and remained unpersuaded.

Three PTF Commissioners -- Harry Walters, former Administrator, Veterans Administration; Mack Fleming, former staff director and general counsel to this committee, and I -- filed and circulated a dissent that offered an alternative to the PTF majority opinion on the funding for Priority Group 8 veterans. This recommendation would expand and strengthen third party reimbursement authority.

The alternative to the majority opinion on funding Priority Group 8 veterans submitted is:

"Title 38, USC, defines a veteran as 'a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.'"

Eligibility for veterans' health care is defined in the Veterans' Health Care Eligibility Reform Act of 1996 (Public Law 104-262). Veterans eligible and enrolled are currently placed in one of 8 categories although only seven existed at the time of the passage of PL 104-262.

The PTF reached consensus on a strong recommendation for Priority 1-7 (new), but failed to do so for Priority Group 8 veterans.

The VA enrolled Priority Group 8 veterans until January 17, 2003, when the Secretary of VA suspended new enrollments based on an insufficient budget.

Therefore, those of us who dissented with the majority recommended that the following funding mechanism be enacted:

- All enrolled Priority Group 8 veterans would be required to identify their public/private insurance.
- VA would be authorized as a Medicare provider for Priority Group 8 veterans and be permitted to bill, collect and retain all or some defined portion of third party reimbursements from CMS for the treatment of non-service connected medical conditions.

- VA should be authorized to offer a premium-based health insurance policy to any enrolled Priority Group 8 veteran with no public/private health insurance.
- All enrolled Priority Group 8 veterans would be required to make co-payments for treatment of non-service connected medical conditions and prescriptions.
- All enrolled Priority Group 8 veterans with no public/private health insurance would agree to make co-payments and pay reasonable charges for treatment of non-service connected medical conditions.

Why not a "pay as you go system" for Priority Group 8 veterans? Medicare subvention is under active consideration by the VA and HHS. VA is seeking the authority to require "proof of insurance." VA, like other federal agencies, could offer a health insurance plan. VA has had collection authority since 1986.

If the dissent seems brief, it is. Dissents were limited to no more than 300 words by a ruling of the PTF co-chairs.

Our dissent (alternative) appears only in the PTF final report. It does not appear in "A Brief Guide to the Final Report."

I have written the co-chairs concerning this omission, since I believe the "Brief Guide," which represents only the majority PTF opinion on Priority Group 8 veteran funding, is an unfair representation of the fact that this was not a consensus recommendation.

Our dissent simply expands third party collection authority for Priority Group 8 veterans by opening new and existing revenue streams.

We believe that this funding mechanism is essential not only to the survival of the VA Health Care System, but also should be enacted out of fairness to the vast majority of veterans who are currently locked out of the VA system. To reiterate, its provisions would include:

- Priority Group 8 veterans who are Medicare eligible be allowed to use their Medicare for medical treatment at the VA, if they chose VA, just as they would at their local hospital or doctor's office.
- Medicare fee for service. Allow VA by law to become a Medicare provider, the same as the Indian Health Service, another federal health service provider.
- Priority Group 8 veterans who have public/private health insurance must show "proof of insurance," so VA can bill for treatment of non-service connected medical conditions.
- Allow VA to offer Priority Group 8 veterans who are not Medicare eligible and have no public/private health insurance a premium-based health insurance policy, similar to Tri-Care.
- Finally to those Priority Group 8 veterans' who are not Medicare eligible, do not have public/private insurance, and do not purchase the VA premium-based health insurance

policy, would pay the reasonable and customary charges as they would at any other health care provider.

I wish to thank you, Mr. Chairman, and the Committee for allowing me the privilege of appearing before you today. In one of the final Commission meetings, Harry, Mack, and I were warned by a colleague not to wear veterans' advocacy on our sleeves. Mr. Chairman, I will readily admit to this committee that I am proud to be a veterans' advocate and I consider fighting for the rights of every American veteran, a badge of honor.

That concludes my testimony and I would welcome your questions.