

Statement of William D. Burns
Before the
Subcommittee on Disability Assistance and Memorial
Affairs
June 8, 2006

Mr. Chairman and Members of the Committee:

Thank you for the opportunity today to bring to your attention a very disturbing situation that requires resolution.

By way of introduction, my name is William D. Burns. I am the President of a firm that specializes in providing insurance, asset protection, financial planning and health crisis management planning services to retirees and seniors. As such, the firm frequently provides services to a family experiencing a health and or a long term care crisis. The firms work with these families often includes – but is not limited to – helping them to apply for and qualify for various government assistance programs that the family member in crisis mode might be eligible for. For the record, I am also a United States Veteran.

I am submitting testimony to your committee in order to bring to light an issue that, in my opinion, should be addressed immediately. The issue at hand is that the Department of Veterans Affairs (VA) will not accept or honor a properly executed Durable Power of Attorney (DPOA) from a Veterans family, not even from the Veterans spouse.

In lieu of accepting a DPOA, the VA has a woefully antiquated and painfully slow program known as the Fiduciary Program. The VA gives no credibility to the fact that the veteran had the fore thought and presence of mind to prepare a DPOA. The DPOA expresses the veteran's wishes – in writing – making it clear for all to see who the veteran intended to grant the legal power to watch over the veteran's affairs in the event of the veteran's inability to do so.

As previously indicated, the Fiduciary Program is woefully antiquated and painfully slow, even if it is the veteran's spouse who has applied to be named as the fiduciary of an incapacitated veteran and even if the VA knows that it is a crisis situation.

Unfortunately, the veteran's spouse must complete the same steps as a non spouse. According to the Regional VA office in St. Petersburg, Florida, the following steps are required in order to apply to be a veteran's fiduciary:

- A) First of all, the applicant must write a letter to the regional VA office requesting that they be named as the veteran's fiduciary and list the reasons as to why the veteran needs a fiduciary. The VA strongly recommends that the applicant submit supporting medical data to aid the VA in its decision making process. This means that the applicant must deal with obtaining the veteran's medical records or a letter from the veteran's doctor. The spouse does so by using the veteran's DPOA.

- B) Secondly, the applicant must mail this letter to a P.O. Box address. In an urgent situation, you can not fax or e-mail the request and you usually can not send overnight mail to a P.O. Box. There is no established procedure for the fiduciary applicant to track the progress of the process or to even confirm that the VA has received the letter.
- C) Upon receipt of the letter, the VA mail room is supposed to send the letter to a Triage Unit, who in turn is supposed to send the letter to the Fiduciary Unit.
- D) The Fiduciary Unit then either requests additional data or approves or rejects the request. This process can take anywhere from three to nine months and averages approximately six months.

Three to nine months with an average of six months. Think about the implications of this timeframe to a family in crisis mode.

In light of the fact that the Veteran's spouse and/or family is already dealing with the emotional trauma of the Veteran's health crisis and frequently the guilt and other related emotions associated with having to place their loved one in a Long Term Care Facility, the VA Fiduciary Program simply adds to the burden of the spouse and/or the family of a Veteran in crisis mode. ***This burden is what the Veteran had intended to prevent their loved ones from having to deal with in the Veteran's time of crisis. This is why the Veteran had the DPOA implement in the first place.***

The VA Fiduciary Program is out of touch with current societal and private sector business norms. The majority of governmental and private sector business entities accept and honor a properly executed DPOA. I have personal knowledge of and experience with the following organizations accepting a properly executed DPOA; Banks, Credit Unions, Brokerage Houses, Mutual Fund Companies, Insurance Companies, Funeral Homes, Automobile Dealerships, Realtors, Nursing Homes, Hospitals, State Government Bureaucracies, County Government Bureaucracies, Medicare and Medicaid, etc. Why not the Veteran's Administration?

In order to illustrate why the VA should be required to accept a properly executed DPOA, I am including as part of this testimony the very case that compelled me to contact Congressman Jeff Miller's office regarding the Fiduciary Program. This case study is an actual client whose application to Medicaid was delayed by two months because of the time it took to have the Veteran's spouse named as the Fiduciary. Yes, it took two months even with the involvement of a United States Congressman's staff aiding in the process. Because of the fact that this Veteran was in crisis mode and had recently been placed in a Long Term Care facility, ***this two month delay cost this family over \$8,000.00.***

This case study is an actual client whose case we are working on now. The events are real the names are fictitious in order to protect the client's privacy. For the purpose of this testimony, we will call them Bob E. Smith and Jane B. Smith. The Smith's were referred to our firm by a local attorney for us to help the family apply for and qualify Mr. Smith for Medicaid Institutional Care Program (Medicaid) benefits in order to help the family pay for Mr. Smith's nursing home bills. Mr. Smith had had the foresight to prepare a DPOA in November of 2003 naming his wife, Jane B. Smith as his Durable

Power of Attorney. This DPOA was properly executed, notarized and filed in the public records at the Okaloosa County Clerk of the Circuit Courts office.

When we first met with Mrs. Smith, Mr. Smith had been recently placed in a Long Term Care Facility as he is suffering from Parkinson's disease and advanced Dementia. Mr. Smith is incapacitated and requires twenty-four hour per day around the clock care. Mrs. Smith was in a very fragile emotional state due to having just placed her husband of fifty plus years in a Long Term Care Facility.

At our first meeting with Mrs. Smith and her daughter, our firm was hired, as stated above, to apply for and qualify Mr. Smith for the Medicaid. We then developed a strategy to qualify Mr. Smith for Medicaid. In implementing our strategy, we successfully used Mr. Smith's DPOA at banks, credit unions, two different Nursing Homes, a Funeral Home, Insurance companies, etc.

Our strategy required that we establish an Income Trust and an Income Trust checking account due to the fact that Mr. Smith's income was over the income cap allowed by Florida's Medicaid rules. Additionally, we needed to divert a significant portion of Mr. Smith's income to Mrs. Smith so she could maintain a minimal standard of living. In order to accomplish the above, Mr. Smith's VA pension check had to be moved from a credit union that would not administer an income trust checking account to a bank that would administer an income trust checking account. This is the very task that the VA would not honor Mr. Smith's DPOA to accomplish.

We were simply asking that Mr. Smith's VA pension check be moved from one account that was in his name at a credit union, to a new account in his name at a bank so that we could establish the income trust account that was required for Medicaid qualification. Once again, EVERY SINGLE other organization that we dealt with honored Mr. Smith's DPOA. Once again, why not the VA?

The two month delay and the subsequent loss of over \$8,000.00 of the Smith's limited life savings was absolutely unfortunate and totally unnecessary. The Smith's did not have a substantial amount of life savings in the first place and as such this \$8,000.00 loss represented approximately 10% of the money available to Mrs. Smith for life support and maintenance during her lifetime.

If this case study in and of itself does not represent sufficient motivation for your committee to require the VA to honor a properly executed DPOA, then I implore you to consider the broader societal implications of the graying of America. Please consider the following:

- A) According to the United States Census Bureau ***there are approximately 250 people per day celebrating their 100th birthday.*** Americans over the age of 100 are one of the fastest growing segments of the US population. The problem with this statistic is that people are living longer, sicker too.
- B) According to the U.S. General Accounting Office in 2002, in an article titled, Long Term Care: Diverse Growing Population Includes Millions of Americans, "75% of people over 65 will need home care services, with the average length of care at 8 years. The average nursing home stay is 2.5 years". ***The study says,***

- 75% of people over the age of 65.** A lot of these people are Veteran's with a properly executed DPOA.
- C) To quote a book titled, "The Coming Generational Storm" by Laurence J. Kotlikoff and Scott Burns, "In the year 2030, as 77 million baby boomer hobble into old age, walkers will outnumber strollers..."

I submit to you that the graying of America is REAL. The current generation of retirees and seniors as well as future generations of retirees and seniors are experiencing long term care crises at an unprecedented level. This reality will continue for generations to come. I implore you, in fact, I beg you to please require the Veteran's Administration to honor a Veteran's properly executed Durable Power of Attorney, especially in a time of crisis.

Finally, I recently met with the director of the Okaloosa County Veteran's Service Office to solicit her input on the Fiduciary Program. When I informed her that your committee was scheduled to conduct an oversight hearing on the Fiduciary Program, she expressed her opinion that the program definitely needed changing. She specifically requested that in this testimony I ask of you, on her behalf, that your committee's oversight hearing result in some form of significant improvement in the application of the Fiduciary Program for veteran's in crisis mode.

She further indicated her support of the initiative that the Veteran's Administration be required to honor a Veteran's properly executed Durable Power of Attorney, but requested that ***at a minimum your committee put the Fiduciary Program, "on speed and with more accountability"***.

In closing, I thank you for the opportunity to present this testimony for your consideration. I want to state that neither my firm nor I have received any Federal grants during the current year or the previous two fiscal years. In fact neither my firm nor I have ever received any Federal grants. All across this great land of ours, the spouses and families of Veterans, who are in crisis mode, need your help. The Fiduciary Program is a draconian process that does not serve the needs of veterans in crisis. ***It truly is time for a change.***