# RAO Bulletin Update
# 1 January 2007

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RAO

Retiree Assistance Office (RAO) Bulletin
Courtesy of The Gamewardens of Vietnam www.TF116.org

**VA PRESIDENT FORD OBSERVANCE:**

Secretary of Veterans Affairs Jim Nicholson announced 29 DEC that as the nation mourns the passing of Navy veteran and President Gerald R. Ford on Tuesday, 2 JAN VA medical centers, outpatient clinics, Vet Centers and national cemeteries will remain open to serve President Ford's fellow veterans. Veterans with scheduled clinic appointments, surgeries or other procedures at one of VA's 155 hospitals or 876 outpatient clinics should report as scheduled, unless otherwise instructed. VA's 207 Vet Centers will also be open to serve the needs of combat veterans in need of readjustment support. Also scheduled to be open are the 124 VA-operated national cemeteries.

Burials, inurnments, visitations and other memorial events scheduled for Tuesday will be conducted, unl ess surviving families request otherwise. VA's administrative offices, including the Department's Washington headquarters and 57 regional benefits offices, will be closed Tuesday in observance of the National Day of Mourning. Secretary Nicholson invited World War II veterans and their families to show their respect to President Ford by attending a ceremony in the President's honor that was held on 30 DEC at the World War II Memorial in Washington. [Source: VA News Release 29 Dec 06 ++]

**VA BUDGET 2007 UPDATE 10:**

Before the 109th Congress recessed it attempted to pass a number of important items during its final hours in session. Unfortunately, those did not include the 11 overdue appropriations bills for FY2007, which began on 1 OCT. One of these was the Military Construction/VA spending measure, which funds the VA medical system. To keep the VA and other government agencies running into the new year, Congress passed a continuing resolution funding government agencies at House-passed, Senate-passed or 2006 funding levels, whichever is the lowest. That continuing resolution will expire on 15 FEB 07, which means next year's Congress will have to act before then to keep the government running. Rumors around Capitol Hill are that the new Congress will simply extend the continuing resolution for the rest of FY2007 so leaders can focus on crafting appropriations for FY2008.

This doesn't affect the Defense Department, since the FY2007 Defense Appropriations Act was one of the two appropriations bills the Congress actually finished. Although that can't be said about VA appropriations, the continuing resolution will let the VA reallocate up to $684 million to fund VA health care needs for the next couple of months. While this provides som e interim relief, there is concern about the VA's ability to provide quality medical care at 2007 prices with a 2006 budget. Along with the continuing resolution, Congress also approved legislation to:

- Avoid the JAN 07 5.1% cut in Medicare and TRICARE payments to doctors by freezing 2007 rates at 2006 levels.

- Avoid imposing a $1,740 annual cap on Medicare payments for outpatient speech and physical therapy that had been scheduled to take effect in January.

- Ban protests at military funerals at any funeral site.

- Authorize the Federal Communications Commission to work with the Pentagon to reduce phone rates for deployed troops.

- Delay any action on a 2007 congressional pay raise at least until 16 FEB 07.

[Source: MOAA Leg Up 15 Dec 06]

**AGENT ORANGE LAWSUI TS UPDATE 08:**

On 16 AUG 06, the U.S. Court of Appeals for Veterans' Clai ms (CAVC) in the case of Haas v. VADC-Nicholson determined that Vietnam veterans who served in the waters off Vietnam and did not set foot in Vietnam are entitled to a presumption of exposure to herbicide agents, to include Agent Orange. This class of veterans is generally known as blue water Navy veterans; but any claim, regardless of branch of service, may be a Haas case. Prior to this decision, VA's interpretation of 38 CFR 3.307(a)(6)(iii) was that a service member had to have actually set foot on Vietnamese soil or served on a craft in its rivers (also known as brown water) in order to be entitled to the presumption of exposure to herbicides. Specifically, the Court held the following:

- The reference to service in ï¿½Vietnamï¿½ as used in the statute was ambiguous because there are many definitions of the territory of a nation.

- VA's regulation defining Vietna m service for purposes of granting the presumption of exposure to herbicides is ambiguous when viewed together with 38 CFR 3.313, which also defines service in Vietnam. The Court pointed to the use of different conjunctions as well as the differing placement of a comma in each regulation to prove the ambiguity and observed that VA had merely replaced legislative ambiguity with regulatory ambiguity.

- Because of its determination that ambiguity was present, the Court looked to a procedural manual (M21-1) provision from 1991 that stated that possession of a Vietnam Service Medal (VSM) would be conceded as proof of Vietnam service in the absence of contradictory evidence. The Court held this to be a substantive rule establishing entitlement to the presumption of exposure to herbicides. It held that VA's attempted rescissions of that M21-1 provision were void because they failed to comply with the notice and comment requirements of the Administrative Procedures Act (APA). The Court also held that within the meaning of VA's manual provisions: (1) proof that a veteran had blue water service without setting foot on mainland Vietnam would not necessarily be contradictory evidence, but (2) proof that a veteran served in a location that reasonably precluded exposure to Agent Orange could be considered contradictory evidence.

VA has appealed the Haas decision to the U.S. Court of Appeals for the Federal Circuit. The VA director subsequently issued a letter that provides interim procedures for controlling claims affected by the CAVC decision. Regional offices have been directed that claims with Haas issues will not be adjudicated until this litigation is resolved but will be acknowledged upon receipt with specific language approved by the Office of General Counsel and controlled as indicated in this letter. Among other things it provides general answers to typical questions VA employees may receive during interviews or when answering telephones. The primary one is, "We have received your claim for (insert the disability) based upon claimed herbicide exposure. Your claim may be affected by recent judicial action by the Court of Appeals for Veterans Claims in Haas v. Nicholson. VA has appealed that action to the Federal Circuit. We must await the outcome of that appeal and receive guidance from the Department of Veterans Affairs General Counsel prior to taking further action on your claim. We will advise you further when we receive guidance."

The Secretary's brief is due to be filed in the Haas appeal on 8 JAN 07. The National Veterans Legal Services (who are representing Hass) brief will be due to be filed 40 days after the Secretary's brief is served on NVLSP. The Secretary then may file a reply brief 14 days after that. Thus, the briefing will likely be completed by early March,

but there is a small possibility that either party may ask for, and be granted, extensions for those filings. The Court will then likely schedule oral argument and, after it hears the argument, issue a decision. The decision will likely be issued several months after the oral argument and will be posted on the NVLSP website www.nvlsp.org. Questions should be submitted to Richard V. Spataro, Staff Attorney, National Veterans Legal Services Program, 1600 K Street, NW, Suite 500, Washington, DC 20006-2833 [Source: www.vawatchdog.org 14 Dec 06 ++]

**VET BONUS MASSACHUSETTS:**

The Commonwealth of Massachusetts is offering cash bonuses to its service members. They are offering $500 for active duty members and $1,000 for veterans who served in Iraq or Afghanistan. There's no catch.

It's called the Welcome Home Bonus and it honors Massachusetts's men and women who have deployed overseas to combat areas. It does take some legwork. Your town of legal residence has to verify your address and put a seal on the document before you can mail it into the Treasurers Office. This can be done via mail or if your relatives still live in the state they can do it at your town hall and mail it back to you. You don't have to be a current resident of Massachusetts to apply. You only have to have been a resident of MA anytime 6 months prior to 11 SEP 01 or later and served on active duty. [Source: NAUS Update 20 Dec 06 ++]

**CRSC UPDATE 35:**

This annual open season election period will be from 1 JAN through 31 JAN 07 and allows the retiree to choose which payment is preferred. Federal law states that you can receive CRDP or CRSC; not both. Beginning in late December, eligible retirees were mailed a CRDP/CRSC Open Season Election Form. The retiree needs to return the form only if making a change from CRDP to CRSC or vice versa. If the retiree prefers to keep things the way they are, they should do nothing. The payments the retiree now receives will continue uninterrupted. To help the retiree make a more informed decision, the form will include a comparison of the CRSC and CRDP entitlement amounts as well as information about the collection actions and taxes to which each type of payment is subject. If the retiree wants to change from CRDP to CRSC, or vice versa, the form must be postmarked by 31 JAN 07. If the form is dated after this date, it will not be processed and the current payments will continue uninterrupted. The change in the payment will be ef fective with the first business day of FEB 07.

Due to a 30-day processing timeframe, the retiree may not receive their first payment until the first business day of March 2007 including a retroactive adjustment for the payment that would have been paid on the first business day of February. The retiree's election will remain in effect unless changed from CRDP to CRSC or vice versa in a subsequent annual open season. [Source: www.dod.mil/dfas/retiredpay/concurrentretirementanddisabilitypay/crdpandcrsc.html Jan 07]

**BREAST CANCER UPDATE 01:**

Col. (Dr.) George Peoples, Brooke Army Medical Center surgeon and principal investigator for a six-year breast cancer vaccination study, released the results of the study 14 DEC at the San Antonio Breast Cancer Symposium. Out of the 186 patients in the study, the recurrence rate as of last month was 16% in the control group and 8% for the vaccinated group—a 50% reduction in recurrence. The vaccine targets HER2/neu, a protein that plays a role in cell growth. In larger amounts, the protein

accelerates tumor growth, which can lead to a poorer prognosis for women with breast cancer. If the Food and Drug Administration agrees with Doctor Peoples, the next step will be Phase 3 testing, which will include multiple sites and a much larger pool of participants. That phase would be conducted by a commercial company called Apthera. [Source: Armed Forces News 29 Dec 06 ++]

**VA CANCER LAWSUIT:**

The federal government agreed to pay $500,000 to settle the first of seven federal lawsuits brought by the widows of veterans who died in a corrupt cancer research program at Stratton VA Medical Center Hospital. The six other widows, who still have lawsuits pending against the U.S. Department of Vete rans Affairs, are finding the government less willing to admit their husbands were used as guinea pigs in the tainted drug studies. The Justice Department has not agreed to settle the remaining cases, in part because it's never been determined or publicly disclosed that more than one veteran died as a result of the corruption. Attorneys in the case said the government's position has been that the men had advanced stages of cancer, so it is impossible to determine what killed them. But in at least one case it was clear, and Justice Department lawyers recently settled with the family of that victim, James J. DiGeorgio, a 71-year-old Air Force veteran from Brunswick who died at Stratton in JUN 01.

The settlement comes a little more than a year after a former hospital researcher, Paul H. Kornak, was sentenced to nearly six years in prison for his role in the scandal. VA officials and federal prosecutors have portrayed Kornak as an out-of-control researcher who forged medical records to push cancer-stricken patients into drug studies that allegedly paid the hospital thousands of dollars. But attorneys for the families and people familiar with the hospital's operation contend the corruption was widespread and Kornak was following orders from oncology doctors. At his sentencing, Kornak said he was a scapegoat. His conviction exposed deep problems at the hospital, where he masqueraded as a doctor despite flunking out of medical school, and was hired despite a felony criminal conviction in Pennsylvania in 1992 for forging a medical license application. The scandal triggered nationwide efforts by Congress to reform the Department of Veterans Affairs' hiring practices and embattled research programs.

Many widows have dismissed the governme nt's assertions that Kornak acted alone. Attorneys for the widows recently obtained permission to depose Kornak at an Ohio prison, giving the public an opportunity to hear Kornak's story, contained in sealed files kept by the Justice Department, which has declined to prosecute anyone else. An assistant U.S. attorney in Massachusetts declined comment on the settlement last week, saying it has not been publicly filed. The criminal investigation was handled by the U.S. attorney's office in Albany. Many of the remaining widows have said the litigation is not about money. They contend it's about getting answers to why their husbands were used as experiments and in making sure it doesn't happen again. Their attorney said the quandary in their cases is convincing the government that it is indefensible to argue the men would have died anyway because they all had advanced cancer.

Kornak admitted forging their medical backgrounds so they could be enrolled in the drug studies, where they were given drugs that may have worsened their conditions and hastened their deaths. Hospital officials have denied a widespread coverup and instead placed blame on Kornak, who pleaded guilty to federal charges of negligent homicide and falsifying medical records.

Kornak posed as a doctor at Stratton, including carrying the title "M.D." on his VA-issued business cards and being introduced

to patients as "doctor" even though he never finished medical school. His supervisors knew about his lack of credentials. In all, Kornak is accused of undermining at least four major research studies involving dozens of veterans and hundreds of thousands of dollars. The hospital earned thousands of dollars for each patient enrolled in the programs, in which pharmaceutical companies tested new drugs on cancer patients to obtain approval for them from the Food and Drug Administration. Over the summer, attorneys for the plaintiffs obtained permission from a federal magistrate to depose Kornak at Elkton Federal Correctional Institution in Ohio.

At his sentencing in NOV 05, Kornak apologized for his crimes but told a judge he was "used" by the hospital's former cancer research director, James A. Holland, who was fried along with Kornak shortly after the scandal broke about four years ago. No one else, including Holland, has been charged in the case.

Holland now works in a cancer research program at a Georgia hospital. A federal review of his research credentials is pending. [Source: Albany Times Union Brendan Lyons article 5 Dec 06 ++]

**GULF WAR PRESUMPTIVE DISEASE UPDATE 01:**

VA officials announced 18 DEC that Veterans of the 1991 Persian Gulf War w ho have disabilities from undiagnosed illnesses will continue to qualify for veterans' benefits and health care until 31 DEC 11. In an item published in the Federal Register, VA officials issued an interim policy expected to be final in 60 days that continues a policy started shortly after the Operation Desert Storm. The current policy of presuming that undiagnosed illnesses are connected to service began in 1994 in the wake of wide complaints about mysterious illnesses that acquired the collective name of Gulf War syndrome. Researchers have not been able to isolate a single illness or disease as a cause, but the VA, under pressure from Congress, has assumed that those who served in the combat theater who have chronic disabilities resulting from undiagnosed illnesses could receive disability benefits and be afforded other veterans' rights. Initially, undiagnosed illnesses were covered for two years. But that time limit was extended several times, with the secretary of veterans' affairs getting discretion to set the period for presumptive coverage. Prior to the VA's 18 DEC announcement, the latest cutoff for undiagnosed illnesses among Gulf War veterans had been 31 DEC 06.

As is standard with government regulations, the VA will be accepting comment on the change until 16 FEB, when a final rule will be prepared. VA officials said in the notice that they are pushing for the extension "to provide consistency in VA adjudication policy and preserve certain rights afforded to Persian Gulf War veterans and ensure fairness for current and future Persian Gulf War veterans." By future veterans, they are referring to people still on active duty who served in the Gulf War, who would be covered by VA benefits after separation. Research into Gulf War syndrome c ontinues, VA officials said, with a project under way to see how deployment-related stress can affect long-term health. An ongoing study is not limited to veterans of the Persian Gulf War deployments of the early 1990s but also includes veterans of current conflicts, such as Operation Iraqi Freedom, occurring in part, within the Southwest Asia theater of operations. [Source: Military Times Rick Maze article 18 Dec 06 ++]

**PERSONALITY DISORDER DISCHARGE:**

During Vietnam the use of the Personality Disorder (PD) discharge was common. Thousands of veterans still have the label "Personality Disorder, Unspecified" on their discharge

papers. For those who received them the military claimed that the soldier brought the PD with them and that it had nothing to do with combat stress. Therefore, a PD was considered non-treatable and non-compensable by the VA since it was a pre-existing condition. Today, a personality disorder is still considered a pre-existing condition with non-compensable disability benefits but VA can provide treatment. A personality disorder assessment allows for quick honorable discharge but tags veterans with a label that is hard to remove. Also, those receiving it must repay part of their re-enlistment bonus based on the portion of time they did not serve. Though accurate for some, experts say, the personality disorder label has been used as a catch-all diagnosis to discharge personnel who may no longer meet military standards, are engaging in problematic behavior or suffer from more serious mental disorders. For returning veterans, the diagnosis can make it harder to obtain adequate mental health treatment if they must first show they have another problem, such as post-traumatic stress disorder (PTSD). VA disability b enefits can cover as much as $2,000 a month for a veteran found to be disabled by PTSD.

Military records show that since 2003, 4,092 Army soldiers and another 11,296 men and women in other branches of the armed services have been discharged after being diagnosed with the disorder. A government worker at Fort Carson in Colorado who has access to personnel records and who spoke on condition on anonymity for fear of losing his job said Army psychologists there have diagnosed some soldiers with a personality disorder after a single evaluation lasting 10 minutes to 20 minutes. Several soldiers at Fort Carson interviewed by Cox Newspapers said they have been given or offered the diagnosis in a handful of meetings lasting less than an hour. The timing of many of the discharges, in some cases within months after soldiers have returned, appears to violate the military's rules , which say a personality disorder diagnosis should not be made if a soldier is experiencing combat exhaustion or other acute situational maladjustments. Dr. William Winkenwerder Jr., assistant secretary of defense for health affairs, said he is unaware of any related discharges within three months of a deployment and has "full confidence in DoD's medical personnel in their decision-making." Nonetheless, he has asked the Army surgeon general to review complaints of inadequate mental health care at Fort Carson. He said it was begun before Senators Barbara Boxer (D-CA), Barack Obama (D-IL) and Republican Sen. Kit Bond (R-MO) wrote a letter asking him to investigate such concerns after they were raised in a broadcast on National Public Radio.

A personality order is defined as a deeply ingrained, abnormal behavior pattern that appears during childhood or adolescence. Critics say that many returning soldiers are tagged with that label actually have PTSD stemming from their combat experiences. Some of the anti-social traits of PTSD, such as anger and occasionally strong emotions, could be mistaken for a personality disorder. Recommending a discharge on the basis of a personality disorder is a faster process than discharging someone for mental health problems of another nature. It requires only one military psychologist's finding, and the paperwork usually takes only a couple of days. A diagnosis of post-traumatic stress disorder, on the other hand, must be handled by a medical review board, which must confirm that the condition stems from combat, a process that usually takes several months. Dr. Joseph Bobrow, a former chief psychologist at Kaiser Hospital in San Francisco, said a personality disorder is one of the most difficult diagnoses to confirm, particularly when there is cumulative trauma. If a soldier complains of mental problems after returning from combat, a personality disorder is supposed to be ruled out for an unspecified amount of time because some of its characteristics, such as problems interacting with others and substance abuse, overlap with some of the hallmarks of post-traumatic stress disorder.

Determination of personality disorder in each services medical guidelines is as follows:

- Army: Requires a psychologist's findings.

- Navy: Vague language; not clear that determination must come from a mental health professional or command.

- Marines: Similar to Army rules but two forms of documents required. Same doctor must render findings on a Marine's impairment and on written nonmedical evidence to show examples of inability to function in the corps.

- Air Force: Alone in requiring oversig ht where commanders fail to act on appropriate findings. Commander must have decision reviewed by discharge authority.

[Source: WASHINGTON BUREAU Anne Usher article & http://vawatchdog.org 24 Dec 06++]

**IMMIGRANT RECRUITMENT:**

According to Pentagon officials the armed forces, already struggling to meet recruiting goals, are considering:

- Expanding the number of non-citizens in the ranks.

- Disputed proposals to open recruiting stations overseas.

- Putting more immigrants on a faster track to US citizenship if they volunteer.

Foreign citizens serving in the US military is a highly charged issue, which could expose the Pentagon to criticism that it is essentially using mercenaries to defend the country. Other analysts voice concern that a large contingent of non-citizens under arms could jeopardize national security or reflect badly on Americans' willingness to serve in uniform. The idea of signing up foreigners who are seeking US citizenship is gaining traction as a way to address a critical need for the Pentagon, while fully absorbing some of the roughly one million immigrants that enter the United States legally each year. The proposal to induct more non-citizens, which is still largely on the drawing board, has to clear a number of hurdles. So far, the Pentagon has been quiet about specifics—including who would be eligible to join, where the recruiting stations would be, and what the minimum standards might involve, including English proficiency.

In the meantime, the Pentagon and immigration authorities have expanded a program that accelerates citizenship for legal residents who volunteer for the military. According to a military affairs analyst, with severe manpower strains because of the wars in Iraq and Afghanistan and a mandate to expand the overall size of the military the Pentagon is under pressure to consider a variety of proposals involving foreign recruits. Already, the Army and the Immigration and Customs Enforcement division of the Department of Homeland Security have made it easier for green-card holders who do enlist to get their citizenship. According to military statistics, since 911 the number of immigrants in uniform who have become US citizens has increased from 750 in 2001 to almost 4,600 last year.

Other Army officials, who asked not to be identified, said personnel officials are working with Congress and other parts of the government to test the feasibility of going beyond US borders to recruit soldiers and Marines. Present Pentagon policy stipulates that only immigrants legally residing in the United States are eligible to enlist. There are currently about 30,000 non-citizens who serve in the US armed forces,

making up about 2% of the active-duty force, according to statistics from the military and the Council on Foreign Relations. A recent change in US law gives the Pentagon authority to bring immigrants to the United States if it determines it is vital to national security. So far, the Pentagon has not taken advantage of it, but the calls are growing to take use the new authority.

Just 15 years ago, during the Gulf War, the Army had a total of about 730,000 active-duty soldiers, amounting to about one American in 350 who were serving in the active-duty Army. Today, with 300 million Americans and about 500,000 active-duty soldiers, only about one American in 600 is an active-duty soldier. The country has relied before on sizable numbers of non-citizens to serve in the military. In the Revolutionar y War, German and French soldiers served alongside the colonists, and locals were recruited into US ranks to fight insurgents in the Philippines. Other nations have recruited foreign citizens: In France, the famed Foreign Legion relies on about 8,000 non-citizens; Nepalese soldiers called Gurkhas have fought and died with British Army forces for two centuries; and the Swiss Guard, which protects the Vatican, consists of troops who hail from many nations. The number of non-citizens the armed forces have now is relatively small by historical standards. In the 19th century, when the foreign-born population of the United States was much higher, so was the percentage of foreigners serving in the military. During the Civil War, at least 20% of Union soldiers were immigrants, and many of them had just stepped off the boat before donning a blue uniform. There were even entire units, like the 15th Wisconsin Volunteer Infantry [the Scandinavian Regiment] and General Louis Blenker's German Division, where English was hardly spoken. Officially, the military remains confident that it can meet recruiting goals—no matter how large the military is increased—without having to rely on foreigners. [Source: Boston Globe Bryan Bender article 26 Dec 06 ++]

**AF RETIREE COUNCIL UPDATE 01:**

The Air Force Retiree Council meets once a year and can be reached at HQ AFPC/CCU, 550 C Street West, Suite 11, Randolph AFB TX 78150-4713 year round. After each meeting they recommend actions on retiree matters directly to the USAF/CC. Following are two agenda items under review for submission to the next Retiree Council Conference in 2007. Their approval would help alleviate the disparity in Tricare benefits between retiree residing overseas and those residing in the states:

**1. TMOP - Tricare Mail Order Pharmacy (TMOP)** prescriptions are authorized to be shipped via APO/FPO if the prescription is written by a U.S. certified physician (with a DEA license). However, the Philippines/other countries without certified physicians cannot receive this service. TMOP users are able to save 66% on co-payments through TMOP because prescriptions filled by mail order provide a 90 day supply versus 30 days in the retail network. The government saves on each prescription not filled in the retail network because of the discount they are able to negotiate with suppliers for bulk purchases. Thus, use of a Military Treatment Facility (MTF) or TMOP as a source of medications is more cost efficient for both patients and DoD. Japan has MTFs, while the Philippines/Thailand do not have MTF facilities. It is recommended that authorized Tricare providers overseas l isted on the Tricare official web sites be allowed to write prescriptions for Tricare members. This would enable members with APO/FPO services to fully utilize the Tricare Pharmacy. In addition, all refill prescriptions could be filled via the TRICARE Pharmacy on a mandatory basis if the member has APO/ FPO services available or lacks a MTF. If prescription refills via TMOP or MTF facilities were made mandatory it would eliminate the present fraudulent practice of Tricare members obtaining free

pharmaceutical services from local Tricare providers who over bill Tricare for their services. The only exception should be for refrigerated drugs which must be obtained locally. Considering the convenience of mail order through Express-Scripts and the generic drug lower costs this would produce substantial savings.

**2. Tricare for Life (TFL).** Within the United States/Territories all TFL recipients pay $88.50 per month (next year $93.50) for Medicare Part B and Medicare becomes the first payer for medical services received and Tricare the second payer. The result is that all authorized medical services in the United States/Territories are basically free to TFL recipients if specifically covered. When a TFL recipient resides overseas, Tricare becomes the primary payer and their TFL status reverts back to Tricare Standard. Therefore they must pay the deductible plus 25% of all medical care until the cost exceeds the catastrophic cap. Thus, a military retiree living outside the U.S. could expend $3,000.00 more for medical care per year than his fellow retiree in the United States. This removes any benefit of Medicare to the overseas retiree. It has been recommend that when TFL military retirees file Tricare claims overseas their Tricare status revert to paid up catastrophic cap status. This would compensate the expense per family that is being paid for Medicare Part B, which cannot be applied to TFL while overseas. This would also balance the benefits received by TFL retirees in the U.S. to their overseas counterparts.

**3. Tricare Fraud.** Tricare fraud information should receive the widest dissemination to all retiree activity geographical areas with emphasis on what is to be observed and scrutinized. The Code of Federal Regulations (32 CFR, 199.9) provides examples of fraudulent/abusive practices that are prohibited and should be reported. Millions of dollars of tax payer monies have been lost due to these fraudulent practices and raises the question of whether TRICARE will have to raise rates for it's services or discontinue contract services. Retiree Activity Offices throughout the world should report fraudulent/ abusive activities whenever they are recognized overseas.

Retirees are encouraged to submit issues of concern along with corrective action recommendations to their Air Force Retiree Council representatives. These can be located via the Air Force Personnel Center web site http://ask.afpc.randolph.af.mil by clicking on the Retiree/Veteran logo and then "Air Force Retiree Council" in the Retiree Military Services box. There are 15 designated Council Areas. Area XIV covers the Pacific region where contact information can be obtained for the area Council representative and associated Retiree Activities Offices in that area. [Source: AF Retiree Council Issues msg 21 Dec 06 ++]

**SSA COLA:**

The Social Security Cost of Living Adjustment (COLA), intended to help seniors keep up with rising inflation, will be completely eliminated for an estimated 9.9 million seniors due solely t o disproportionately rising increases in Medicare Part B premiums by the year 2012, according to a new study released today by TREA Senior Citizens League (TSCL). As a result, the study finds that as many as 20% of those receiving Social Security today will receive monthly checks that fail to increase year-to-year to help keep pace with inflation, as it has for decades. The study also shows that the effects of Medicare Part B (which pays for doctors' visits, medical tests and outpatient hospital care) on the COLA will disproportionately impact lower income seniors. Women will be more negatively affected than men, since women often receive smaller Social Security checks.

Although lower-income seniors would be affected first, seniors with average benefits today would also be affected by 2016. As an example, the COLA has increased less than 14% over the past 5 years, bu t Medicare Part B premiums have skyrocketed by almost 60% during the same time span. These trends will continue to deteriorate with each passing year, leaving poorer seniors on their own to pay for all other inflationary expenses such as increases in the cost of energy, food, and transportation. Most seniors have Part B premiums deducted from their Social Security checks. If the Medicare premium increase to Part B is higher than the COLA increase, seniors are automatically protected by law from having their checks reduced. However, even though seniors will have their checks remain at the same dollar value year after year, their purchasing power will be significantly diminished by rising costs. A majority of the 48 million Americans aged 65 and over who receive a Social Security check depend on it for at least 50% of their total income, and one in three seniors – roughly 16 million Americans – rely on it for 90% or more of their income. As many as 12% of seniors are already living below the poverty line.

Currently, the government calculates the COLA for seniors based on a consumer price index (CPI) that tracks the spending habits of young, urban workers. This is a relatively slow-rising index. The problem with using the CPI is that younger workers have different spending habits than seniors, who must use a far greater percentage of their income on healthcare and prescription drugs, both of which rise many times faster than overall inflation. TSCL advocates for the use of the Consumer Price Index for Elderly Consumers (CPI-E) vice the CPI in determining the COLA. This index more accurately tracks the buying habits of seniors. Using the CPI-E, a senior who retired in 1984 with average benefits would today be receiving $70 more per month or $843 more this year. More than 100 members of Congress have signed on to H.R. 3601, a piece of legislation intended to use the CPI-E to calculate the COLA. Without legislation the Congressional Budget Office's projects that Medicare Part B premium increases will completely offset SSA COLA by 2012. [Source: The Social Security & Medicare Advisor DEC/JAN 07 issue]

**SOCIAL SECURITY REFORM UPDATE 01:**

Although the public heard little about Social Security reform prior to the elections, some government experts nevertheless, were quietly hard at work. The GAO released a report that examined the implications of using different methods of indexing Social Security. Indexing is used in the calculation of initial retirement benefits, to annually adjust the maximum amount of wages subject to taxation, and in calculating the annual COLA. Many recent Social Security reform propo sals have proposed modifications to the indexing currently used. The proposed modifications would generally cut initial retirement benefits for persons retiring in the future. But some proposals would result in COLAs that grow even more slowly than they do now, thus cutting the benefits of current retirees. Some economists, including retired Federal Reserve Chairman Alan Greenspan, argue that COLAs should be cut. He said the Consumer Price Index that the government uses to calculate COLAs overstates inflation and thus overpays seniors. The overwhelming majority of TREA's Senior Citizen League (TSCL) 1.2 million members and supporters, however, believe the COLA is too low, and does not accurately reflect their health care costs.

Over the past five years for example, Medicare Part B premiums alone grew 60% while COLAs grew just 13.6%. Seniors would receive a more adequ ate COLA if the government were to calculate it using an index that more accurately reflects the portion of income that seniors spend on health care. The federal government has tracked such an index, the Consumer Price Index for the Elderly (CPI-E), for more than 23 years.

In one case, a senior who retired with an average benefit of $460 in 1984 would have received $10,290 more over her retirement had COLAs been calculated using the CPI-E. The higher COLAs are like interest and grow bigger over time. Today, when that retiree is 85 and more likely to have costly health problems, she would be receiving a monthly benefit that's $70 more had the CPI-E been used over the course of her retirement. TSCL continues to lobby and build support for legislation that would provide a more fair and adequate COLA by using the CPI-E to calculate the annual increase. [Source: The Social Securit y & Medicare Advisor DEC/ JAN 07 issue]

**COLA 2008:**

On 15 DEC, the Bureau of Labor Statistics announced the NOV 06 monthly Consumer Price Index (CPI), which is the metric used to calculate the annual cost-of-living adjustment (COLA) for military retired pay, VA disability compensation, survivor annuities, and Social Security. The October downtrend in the Consumer Price Index continued in November, dropping another 0.1 % for a cumulative 1.2% decline for FY2007 - mainly due to lower energy prices. In the event the CPI was to have a net decline for the year the law protects retirees from having a negative COLA.

Most military retirees, SBP annuitants, and disabled veterans received a 3.3% COLA 2007 effective on 1 DEC 06. It will appear in the 2 JAN checks. Servicemembers who retired during calendar year 2006 will receive a somewhat smaller, partial C OLA for the year of their retirement, because they already received a January military pay raise (which also raised their 2007 retired pay). If you retired in 2006, your COLA is calculated as follows:

- Members who entered service before 8 SEP 80, and who retired on or after 1 JAN 06, will receive a 2.8% COLA.

- Members who entered service on or after 8 SEP 80 (whose retired pay is calculated on their highest 36 months' basic pay rather than final basic pay), and retired between 1 JAN 06, and 30 DEP 06, will receive a partial COLA based on the calendar quarter in which they retired. Jan-Mar retirees will receive 2.8%; Apr-Jun retirees, 2.4%; and Jul-Sep retirees 0.6%. Those who retire after 1 OCT 06, (fourth quarter) will see no COLA this year.

- Members retired during 2006 will receive full-year COLAs in future years. [Source: MOAA Legislative Action Center 15 Dec 0 6]

**VA DATA BREACH UPDATE 28:**

Armed with a new number on data breaches, the Cyber Security Industry Alliance (CSIA) is calling on the 110th Congress to enact comprehensive legislation to secure sensitive personal information. The number of Americans whose personal data has been compromised has reached a new milestone —100 million, or more than one-third of the population, according to the Privacy Rights Clearinghouse. In testimony on Capitol Hill during hearings this year the CEO of Vontu, a data-protection company said he did not think the news is that it hit 100 million, but rather why we haven't passed legislation to do something about it. The executive director of CSIA Paul Kurtz said the time is now to establish a single standard for securing citizens' personal information, regardless of whether it is housed within federal, state or local government, pr ivate sector or educational institutions. Kurtz will be leaving CSIA at the end of the month for a private consulting company. Liz Gasster, will become executive director and will be the one to continue the

lobbying effort next year for a comprehensive data-security bill with five key elements:

- It is critical to protect data wherever it sits — whether that is a financial institution or a government agency.

- Security standards goals should prevent data loss in the first place, not just notifying victims after breaches.

- New rules should not result in double regulation for the financial or health industries.

- Any legislated federal law should pre-empt state regulations so places do not face two potentially different laws. And finally, she said,

- Businesses and government agencies should be freed from liability if they do take precautions like encryption.

Gasster commented she is even more disappointed by what she considers a bad data-protection measure that was hastily inserted into an omnibus bill for the Veterans Administration. She said the bill has two big problems — the broad definitions of personal information and data breaches. "It includes any information about an individual, including just the name alone," Gasster said, noting that a telephone book would violate the new law, which just applies to the Veterans Administration. She said it should define personal data based on a combination of information that could be useful to thieves. [Source: GOVEXEC.com Daily Briefing 15 Dec 06 ++]

**FEDERAL CONSOLIDATED AUDIT:**

As anticipated, the federal government flunked its Government Accountability Office (GAO) audit for fiscal 2006, with $797 billion, or 53%, of its reported assets and an additional $790 billion, or %, of net costs, on the balance sheets of five agencies that could not be fully audited. This marks the 10th year in a row in which the government's consolidated audit statement received a judgment of "no comment" from auditors. The Defense, State and Homeland Security departments, as well as NASA, received disclaimers on their 2006 audits. The Energy Department, which was only partially auditable due to a disclaimer in 2005, earned a qualified opinion — a step up from no opinion but still short of a clean bill of health. Contributing to the problems at those agencies is the difficulty of valuing some of the complex, one-of-a-kind systems they own. After new accounting rules for property went into effect in 2003, about $325.1 billion in military equipment appeared on the books for the first time, according to a Treasury Department analysis. In fiscal 2006, the government's total reported assets increased $48.6 billion, to $1.5 trillion.

As it did last year, the GAO cited three major shortcomings: financial management problems at the Defense Department, an inability to account for and to reconcile balances that cross agency lines, and an ineffective process for preparing financial statements. The consolidated report also showed that the Transportation Department and Smithsonian earned qualified opinions on their audits, indicating significant problems. In a letter reporting the audit results, Comptroller General David M. Walker called for the adoption of another report in the annual arsenal — a new statement that would provide "a long-term look at the sustainability of current social insurance and other federal programs." Walker has spent the past 15 months crisscrossing the country in what he has called a "fiscal wake-up tour" to speak about the problems the nation faces with its social insurance programs.

Fiscal 2006 was the first year for which a statement of social insurance, which covers outlays for Social Security, Medicare, railroad retirement and black lung disease benefits, was considered a key financial statement. The statement showed projected outlays for those programs exceeding revenues by about $39 trillion over the next 75 years, Walker said. Combined with other long-term projected expenses, he said, the total government exposure was about $50 trillion at the end of fiscal 2006, up $4 trillion from the previous year and up $20 trillion since 2000. [Source: GOVEXEC.com Daily Briefing 15 Dec 06 ++]

**ARMED SERVICES COMMITTEE:**

The Committee on Armed Services is a standing committee of both the House and Senate of the United States. The Senate empowered with legislative o versight of the nation's military, including the Department of Defense, military research and development, nuclear energy (as pertaining to national security), benefits for members of the military, the Selective Service System and other matters related to defense policy. The House Armed Services Committee is a standing committee of of the lower house of Congress which is responsible for funding and oversight of the Department of Defense (DOD) and the United States armed forces, as well as substantial portions of the Department of Energy. The Armed Services Committee was created as a result of the Legislative Reorganization Act of 1946 following US victory in the Second World War. It merged the responsibilities of the Senate Naval Affairs Committee (established in 1816) and the Senate Military Affairs Committee (also established in 1816.)

House Democrats have named ei ght new members to their armed services committee, including two high-profile veterans who won in the November elections. One is Rep.-elect Joe Sestak of Wallingford, Pa. Sestak who will become the junior Democrat on the armed services committee in January. Sestak will become the highest-ranking retired military officer ever to serve in the House. He is a retired Navy vice admiral whose military service ended in 2005 after he was relieved as deputy chief of naval operations for warfare requirements and programs by Adm. Mike Mullen shortly after Mullen became chief of naval operations. During the Clinton administration, Sestak was assigned as defense policy director on the National Security Council, and he also was the Navy director for the Quadrennial Defense Review. Sestak said he will use his armed services committee post to push for setting a "date certain" for withdrawing U.S. troops from Iraq. The Iraq war "does not have a military solution," he said in a 14 DEC interview. He said he hopes that under Democratic control, the armed services committee will exercise rigorous oversight of President Bush's Iraq policies. The congressional district Sestak represents has no major military bases but is home to two defense contractors. His experience could be a boon to the committee as its new chairman, Rep. Ike Skelton of Missouri, tightens oversight and investigations of current and past Pentagon plans.

Other new committee members are:

• Rep.-elect Patrick Murphy of Bristol Township, Pa., an Iraq war veteran who is still in the Army Reserve, defeated Republican Michael Fitzpatrick. Murphy, a former West Point professor and former military criminal prosecutor, comes from a military family. His father served in the Navy, two of his uncles served in the Army and his brother, J.J., is an Air Force Reserve officer. The incoming congressman deployed to Bosnia in 2002 and Iraq in 2003.

• Rep.-elect Nancy Boyda, a chemist from Roseville, Kan., defeated Republican incumbent Jim Ryun, a five-term lawmaker who has been on the armed services committee. Boyda's congressional district includes Fort Riley and Fort Leavenworth.

• Rep.-elect Brad Ellsworth of Evansville, Ind., a former county sheriff, defeated Republican John Hostettler, a six-term incumbent. Ellsworth's district includes the Crane Naval Surface Weapons Center, which has few military personnel but almost 4,000 federal civilians.

• Rep.-elect Gabrielle Giffords is a businesswoman and former member of the Arizona state legislature from Tucson. She won an open seat caused by the retirement of Republican Rep. Jim Kolbe, who was not on the armed services committee. Her congressional district includes Fort Huachuca and Davis-Monthan Air Force Base.

• Rep.-elect Kirsten Gillibrand of Greenport, N.Y., a former Department of Housing and Urban Development attorney, defeated Republican Rep. John Sweeney to represent a congressional district with no major military bases. Sweeney has been a member of the powerful House Appropriations Committee, his only assignment, but positions on that committee rarely go to freshmen.

• Rep.-elect Hank Johnson of Lithonia, Ga. defeated incumbent Democrat Cynthia McKinney, an armed services committee member, in the primary and went on to win the seat in the November general election. Johnson is a former county judge whose district in the Atlanta suburbs has no major bases or defense contractors.

• Rep.-elect Joe Courtney of Vernon, Conn., defeated three-term Republican incumbent Rob Simmons. Simmons is a retired Army officer, while Courtney, a former lawyer and state legislator, never served. His congressional district includes New London Naval Submarine Base. The Courtney-Simmons race was one of the closest in Congress, with Courtney winning by fewer than 100 votes in a final recount. [Source: NavyTimes.com Rick Maze article 15 Dec 06 ++]

**VA PRESCRIPTION POLICY UPDATE 01:**

The Department of Veterans Affairs is helping some veterans get generic prescriptions for half the VA price. Veterans in health care priority categories 4 through 8 normally must make an $8 co-pay for drugs from the VA that might be available at the $4 rate being offered by Wal-Mart Stores Inc., and Target Corp. VA deputy undersecretary William Feeley has told VA providers they can write prescriptions that can be filled at any private-sector pharmacy. They cannot transfer the veterans' prescriptions directly to a private-sector pharmacy, but they can write new prescriptions if they meet state requirements and cancel existing VA prescriptions. For the $4 drugs available at Wal-Mart, visit http://i.walmart.com/i/if/hmp/fusion/genericdruglist.pdf, and for the Target drugs go to http://sites.target.com/images/pharmacy/pharmacy_4dollar_program_list.pdf. [Source: Armed Forces News 15 Dec 06]

**FTC FUNERAL RULE:**

The Federal Trade Commission has announced the results of enforcement sweeps of more than 100 funeral homes in seven states to assess their compliance with the FTC's Funeral Rule. During the past year, undercover visits in California, Georgia, New York, Ohio, Oklahoma, Oregon and Texas found violations at 12 funeral homes. Faced with the prospect of FTC lawsuits that could lead to a court order and civil penalties, facilities in violation elected to participate in the Funeral Rule Offenders Program (FROP) which is a 5-year monitoring program. The FTC also warned 32 other funeral homes to correct technical violations. In its enforcement sweeps, the FTC has benefited from assistance from AARP and several state Attorneys General. The rule, which was established to counter widespread fraud and deception, took effect in 1984 and was

revised in 1994. Its aim is to help people select what they want and to pay for only what they select. Regulation is needed because survivors of the deceased are emotionally vulnerable and typically have little time to do comparison shopping. Under the rule:

**You have the right to choose the funeral goods and services you want (with some exceptions).

**The funeral provider must provide a General Price List (GPL) that states your right to choose what you want in writing.

**If state or local law requires you to buy any particular good or service, the funeral provider must disclose it on the price list with a reference to the specific law.

**The funeral provider cannot charge a fee or refuse to handle a casket or urn purchased elsewhere.

**Funeral providers who offer cremation must make alternative containers available.

**You can't be charged for embalming that your family didn't authorize, unless it's required by state law.

Since the FROP was established in 1996, the FTC has investigated than 1,850 funeral homes in 33 states and referred about 240 to the FROP. Their new brochure, "Paying Final Respects: Your Rights When Buying Funeral Goods & Services," includes information about the Funeral Rule, consumers' rights, cost considerat ions, resources to help consumers plan funerals for themselves and others, and suggestions for resolving any problems they may have with funeral services they obtain. The brochure is available at http://www.ftc.gov/bcp/edu/pubs/consumer/products/pro26.htm. The FTC also has produced a more comprehensive pamphlet, "Funerals: A Consumer Guide," which is available at http://www.ftc.gov/bcp/conline/pubs/services/funeral.pdf. The FTC works for consumers to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint in English or Spanish (bilingual counselors are available to take complaints), or to get free information on any of 150 consumer topics, 1(877) 382-4357, or use the complaint form at www.ftc.gov. The FTC enters Internet, telemarketing, identity theft, and other raud-related complaints into Consumer Sentinel, a secure, online database available to thousands of civil and criminal law enforcement agencies in the U.S. and abroad. [Source: Consumer Health Digest 12 Dec 06 ++]

**VA COMPENSATION RATES (DIC):**

As required by the Veterans' Compensation Cost-of-Living Adjustment Act of 2007 the DVA has given notice of adjustments in certain benefit rates. These adjustments effective 1 DEC 06 affect the dependency and indemnity compensation (DIC) programs as indicated below:

Veteran's Death Was On or After January 1, 1993: $1067 per month.

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Veteran's Death Was Before January 1, 1993

E-1 through E-6 $1067 (Footnote f. for E1 thru E-6 + Footnote a. for E-3)

E-7 $1,104 : E-8 $1,056 : E-9 $1,165 : E-9 $1,215
(Footnote d. for E-7 thru E-9)

E-9 $1312 (Footnote b.)

W-1 $ 1,128 : W-2 $1,172 : W-3 $1,207 : W-4 $1,276 (Footnote d. for W-7 thru W-4)

0-1 $1,128 : 0-2 $1,165 : 0-3 $1,246 (Footnote d. for O-1 thru O-3)

0-4 $1,319 : 0-5 $1,452 : 0-6 $1,637 : 0-7 $1,768 : 0-8 $1,941 : 0-9 $2,076 : 0-10 $2276
0-10 $2,443 (Footnote c.)

**Footnotes:**

a. Surviving spouse of Aviation Cadet or other service not covered by this table is paid the DIC rate for enlisted E-3 under 34.

b. Veteran who served as Sgt Major of the Army or Marine Corps, Senior Enlisted Advisor of the Navy, Chief Master Sgt of the Air Force, or Master Chief Petty Officer of the Coast Guard.

c. Veteran who served as Chairman, Joint Chiefs of Staff, service Chief of Staff, Chief of Naval Operations or Commandant of the US Marine Corps)

d. Base rate is $1,295 if vet rated totally disabled 8 continuous years prior to death and surviving spouse was married to vet tho se same 8 years.

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DIC payments regardless of when the death occurred:

Add the following additional allowances as applicable:

* $265 when the surviving spouse is entitled to Aid and Attendance

* $126 when the surviving spouse is House Bound

* $265 for each child under age 18 (DIC apportionment rates approved by the Under Secretary for Benefits will be the additional allowance received for each child.)

* $228 if the veteran was rated as totally disabled 8 continuous years prior to death and the surviving spouse was married to the veteran those same 8 years.

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Children's Rates:

1.) If the Surviving Spouse is also entitled the additional separate award for each child over 18 is $225 for school child and $452 for helpless child.

2.) If No Surviving Spouse is entitled the total payment for the number of children indicated is: $453 for one, $649 for two, $846 for three and for each additional child add $162

3.) For each helpless child over 18 add $265

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Parent(s) DIC Rates:

Payments for parents are based on parent's income, marital status, and with whom they are living. The greater their income the smaller their entitlement. Separate tables based on these factors are available on the VA website www.vba.va.gov. [Source: www.vba.va.gov/bln/21/Rates/ Dec 06 ++]

**TRICARE MEETING w/COALITION LEADERS:**

On 7 DEC, leaders from military associations met with Tricare's Deputy Director and Program Executive Officer Major General Elder Granger, USA,. General Granger expressed his intent to establish a quarterly meeting with association representatives to ensure direct feedback for leadership, as well as an opportunity to inform associations of Tricare's efforts to support beneficiaries. Updates from the discussion included:

- Planned expansion of the TRICARE Retiree Dental Program to overseas locations, starting in 2008.

- Implementation of updated coverage for TRICARE For Life beneficiaries whose doctors have opted out of Medicare. (In general, TFL will pay the second-payer amount, as if the doctor accepted Medicare. In certain cases in rural or remote areas where access to medical care is limited, TFL will act as first payer.)

- An expression of appreciation to the associations for helping to publicize the advantages of the TRICARE mail-order pharmacy.

- Plans and progress for special disease management programs to assist beneficiaries with asthma or congestive heart failure.

- Plans for a special task force to examine needs for patients with autism.

- Ongoing outreach efforts to encourage more providers to accept new TRICARE Standard patients. [Source: MOAA Update 12 Dec 06 ++]

**VA FACILITY EXPANSION:**

It was recently announced that the Department of Veterans Affairs has reaffirmed support for inpatient surgery beds at the Muskogee, Oklahoma VA Medical Center and will proceed with expansion of psychiatric services. The announcement ends a more than year-long review of the facility and follows the recommendations of a local advisory panel. The study considered the cost and quality of services available in the local community and at other VA facilities and rejected the idea of transferring patients to other facilities. The study concluded that the Muskogee Medical Center is in good condition and that moving services from Muskogee would result in inefficient use of resources with no improvement in access for veterans. In addition, local options for services from non-VA health care providers did not demonstrate any potential gain in quality. The expansion of psychiatric beds will be undertaken under normal planning processes. Additionally the VA has reaffirmed their commitment to providing inpatient care at its medical center in Poplar Bluff, Missouri. They have also added cardiology services at the facility — which will mean fewer patient referrals to other VA facilities. The decision concludes a more than year-long review of the facility and follows the recommendation of a local advisory panel. The study considered the cost and quality of services available in the local community and rejected the idea of contracting services to local providers. [Source: NAUS Update 20 Dec 06 ++]

**COMMISSARY BAG SELECTION:**

Commissaries are hoping shoppers in the United States will say yes to paper bags for bagging their groceries as part of the Defense Commissary Agency's measures to offset recent major cost differentials between plastic and paper bags. The cost difference amounts to big bucks. DeCA spent about $20 million on bags last year to handle its nearly 100 million customer transactions. The cost of paper bags has increased 34% in the past three years, while plastic bag costs have risen 84 percent. Shipping costs offset the difference for overseas commissaries, so the paper bag emphasis isn't applied there, although double bagging is discouraged DeCA-wide. Commissaries in the United States have targeted usage goals of 70% paper and 30& plastic, and customers will be hearing more, "Is paper okay?" [Source: Armed Forces News 29 Dec 06 ++]

**VA SSOC DEAD LINE:**

The Department of Veterans Affairs (VA) is proposing to amend its regulations to change the response period from 60 days to 30 days as the time limit for filing a response to a Supplemental Statement of the Case (SSOC). Their rationale is to improve efficiency in the appeals process and reduce the time it takes to resolve an appeal, while still providing an appellant with a reasonable period of time to respond to a SSOC. The difficulty for a veteran receiving an SSOC is that he/she may not know whether the various issues of the SSOC are being adjudicated for the first time or not. Many may believe their previously filed Form VA9 (Appeal to the Board of veterans Appeals - BVA) is sufficient to appeal all issues to the BVA. That belief may not be true and their appeal for the issue in question will be denied by the BVA if it is not.

For example:

- Veteran fractur ed a lumbar vertebra on active duty leading to a VA service connected award of 30% following military service. The vet filed a Notice of Disagreement (NOD) that the 30% award was not high enough. The Regional Office (RO) denied the increase and issued a Statement of the Case (SOC). The veteran responded by filing a Form VA9 to appeal all issues to the BVA. The veteran faithfully sent in his continuing medical records about his back to the Regional Office after the SOC was issued. One of these records diagnosed that the veteran's back pain radiated down the right leg to his foot. The RO issued a Supplemental Statement of the Case (SSOC) with two issues:

(1) "Entitlement to increased rating for fracture of the lumbar spine" and

(2) "Entitlement to service connection for increased rating for fracture of lumbar spine causing adiculopathy".

- Issue number (2) is a new issue for which the veteran never gave an NOD. Unless the veteran files an NOD within one year of the SSOC date, he has failed to appeal issue number (2). The BVA need not issue a decision on issue number (2). The better practice when receiving an SSOC is for the veteran to file a new VA9 for all SSOC issues and to file a new NOD for all SSOC issues. In filing the veteran should use a secure means of delivery of his paperwork to the RO. All veteran paperwork sent to any Regional Office should be sent Certified – Return Receipt Requested in case a subsequent denial of receipt is claimed. The VA could lessen the problem of vets meeting deadline dates if they followed the example set by the Social Security Administration (SSA). SSA has a standard time period for appeal at all levels: Sixty days plus five days if the SSA decision was mailed. Ordinary

citizens can understand that timeframe. It is always 65 days. By contrast, the VA has an assortment of complex time periods to appeal a VA decision:

- One year to file an NOD after initial RO decision;

- 60 days to file a VA 9 after an RO SOC (i.e. No response necessary to an SSOC if all issues were adjudicated in the SOC;

- 120 days to appeal to the Court of Appeals for Veterans Claims (CAVC) after a final BVA decision;

- 60 days to appeal to the Court of Appeals for the Federal Circuit from CAVC. Some appeals like overpayment issues must be filed within 30 days. [Source: VAWatchdog.org Larry Scott article 21 Dec 06 ++]

**MOBILIZED RESERVE 27 DEC 06:**

The Army, Navy, Air Force, Marine Corps and Coast Guard announced the current number of reservists on active duty as of 27 DEC 06 in support of the partial mobilization. The net collective result is 7,158 fewer reservists mobilized than last reported for 29 NOV 06. Total number currently on active duty in support of the partial mobilization for the Army National Guard and Army Reserve is 73,159; Navy Reserve 4,921; Air National Guard and Air Force Reserve 5,307; Marine Corps Reserve 5,555; and the Coast Guard Reserve, 364.

This brings the total National Guard and Reserve personnel, who have been mobilized, to 89,306, including both units and individual augmentees. At any given time, services may mobilize some units and individuals while demobilizing others, making it possible for these figures to either increase or decrease. A cumulative roster of all National Guard and Reserve personnel, who are currently mobilized, can be found at http://www.defenselink.mil/news/Dec2006/d20061227ngr.pdf. [Source: DoD News Release 27 Dec 06 ++]

**VA BENEFITS FOR INCARCERATED PERSONS:**

VA Benefits are restricted if a veteran, surviving spouse, child, or dependent parent is convicted of a felony and imprisoned for more than 60 days as follows:

• Disability Compensation. Veterans benefit is limited to the 10% disability rate. For a surviving spouse, child, dependent parent or veteran whose disability rating is 10%, the payment is at the 5% rate. Any amounts not paid may be apportioned to eligible dependents. Payments are not reduced for recipients participating in work release programs, residing in halfway houses, or under community control. Overpayments for failure to notify VA of a veteran's incarceration result in the loss of financial benefits until the overpayment is recovered.

• Pension. The veteran may not receive any VA pension benefits. However, the veteran's dependents may receive a portion of such benefits.

• Burial Benefits. Persons convicted of a federal or state crime and sentence to death or life imprisonment without parole are barred by law from burial or memorialization in a VA national cemetery or in Arlington National Cemetery, or from receiving a government furnished headstone or marker, burial flag, or Presidential Memorial Certificate. Eligible recipients can apply for disability while they are still in prison.

Most VARO's will send someone to a jail to do a Compensation exam of the veteran who is incarcerated, and some service reps will handle the paperwork and advice on the case. Healthcare and Information Technology Act of 2006 Sec. 1002 treats veterans who are incarcerated in privately operated prisons in the same manner as veterans who are incarcerated in Federal or State prisons for the purposes of receipt of veterans' benefits. [Source: Federal Benefits for Veterans & Dependents Handbook 2005 ++]

**ALZHEIMER'S UPDATE 02:**

Neurobiologists have discovered why the aging brain produces progressively fewer new nerve cells in its learning and memory center. The scientists said the finding, made in rodents, refutes current ideas on how long crucial "progenitor" stem cells persist in the aging brain. The finding also suggests the possibility of treating various neurodegenerative disorders, including Alzheimer's disease, dementia and depression, by stimulating the brain's ability to produce new nerve cells. Results of the study appear online in the journal Neurobiology of Aging. The research was funded by the National Institutes of Health and the U.S. Department of Veterans Affairs.

Previous studies had demonstrated that as the brain ages, fewer new nerve cells, or neurons, are born in the hippocampus, the brain's learning and memory center. One showed that the production of new neurons in rats slows down dramatically by middle age—the equivalent of 50 years in humans. But scientists did not know what causes this decline. The common assumption had been that the brain drain was due to a decreasing supply of neural stem cells in the aging hippocampus. Neural stem cells are immature cells that have the ability to give rise to all types of nerve cells in the brain. In the current study, however, the researchers found that the stem cells in aging brains are not reduced in number, but instead they divide less frequently, resulting in dramatic reductions in the addition of new neurons in the hippocampus.

To conduct their census, the researchers attached easy-to-spot fluorescent tags to the neuronal stem cells in the hippocampus in young, middle-aged and old rats. They found that in young rats, the hippocampu s contained 50,000 stem cells—and, significantly, this number did not diminish with aging. This finding, the researchers said, suggested that the decreased production of new neurons in the aged brain was not due to a lack of starting material. The researchers then used another fluorescent molecule to tag all stem cells that were undergoing division in the process of staying "fresh" in case they were recruited to become mature nerve cells. They found that in young rats, approximately 25% of the neural stem cells were actively dividing, but only 8% of the cells in middle-aged rats and 4% in old rats were dividing. This decreased division of stem cells is what causes the decreased neurogenesis, or birth of nerve cells, seen with aging, the scientists said.

This discovery provides a new avenue to pursue in trying to combat the cognitive decline associated with conditions such as Alzheimer's disease and with aging in general. The team now is searching for ways to stimulate the brain to replace its own cells in order to improve learning and memory function in the elderly. One approach being explored is to treat older rats with drugs designed to mimic the action of compounds called neurogenic factors, which encourage stem cells in the brain to divide. The researchers also are grafting neural stem cells grown in culture dishes into the hippocampus, to stimulate those already present. Additional approaches include using behavioral modification techniques, such as physical exercise and exposure to an enriching environment, that are known to stimulate

proliferation of stem cells. [Source: Duke University Press Release 18 Dec 06 ++]

**NEW VA CLINIC:**

The Department of Veterans Affairs (DVA) recently announced that Veterans in eastern Colorado and western Kansas will have improved access to medical care from the DVA thanks to VA's decision to open a new outreach clinic in the Yuma/Burlington/Goodland area of Colorado and Kansas. The new clinic will provide basic primary care and mental health services, including medical evaluations and the diagnosis and treatment of conditions that do not require hospitalization or specialty care. The clinic will be open five half-days a week, with a registered nurse onsite during operating hours. Telemedicine (the use of telecommunications technology to provide health care from distant locations) will link the clinic with additional services at other VA clinics and hospitals. Currently, the 4,000 veterans VA serves in the nine-county area where the new clinic will open are not within an hour's driving distance of a location in which VA health care is provided. Because 44% of the area's population is 65 or older, it is difficult for many area residents to visit a distant VA facility for care, especially during the winter months. VA expects that the clinic will open within the next few months. VA operates two medical centers and 11 community-based outpatient clinics in Colorado. To enroll in VA health care, veterans can call 1-877-222-8387. The VA encourages all veterans to enroll before they need health care. [Source: VA Press Release 22 Dec 06 ++]

**AID & ATTENDANCE UPDATE 01:**

The Department of Veterans Affairs (DVA) is reaching out to inform wartime veterans and surviving spouses of deceased wartime veterans about an under-used, special monthly pension benefit called Aid and Attendance. Although this is not a new program, not everyone is aware of his or her potential eligibility. The Aid and Attendance pension benefit may be available to wartime veterans and surviving spouses who have in-home care or who live in nursing homes or assisted-living facilities. Many elderly veterans and surviving spouses whose incomes are above the congressionally mandated legal limit for a VA pension may still be eligible for the special monthly Aid and Attendance benefit if they have large medical expenses, including nursing home expenses, for which they do not receive reimbursement.

To qualify, claimants must be incapable of self-support and in need of regular personal assistance. The basic criteria for the Aid and Attendance benefit include the inability to feed oneself, to dress and undress without assistance, or to take care of one's own bodily needs. People who are bedridden or need help to adjust special prosthetic or orthopedic devices may also be eligible, as well as those who have a physical or mental injury or illness that requires regular assistance to protect them from hazards or dangers in their daily environment. For a wartime veteran or surviving spouse to qualify for this special monthly pension, the veteran must have served at least 90 days of active military service, one day of which was during a period of war, and be discharged under conditions other than dishonorable. Wartime veterans who entered active duty on or after 8 SEP 80, (16 OCT 81, for officers) must have completed at least 24 continuous months of military service or the period for which they were ordered to active duty.

If all requirements are met, VA determines eligibility for the Aid and Attendance benefit by adjusting for un-reimbursed medical expenses from the veteran's or surviving spouse's total household income. If the remaining income amount falls below the annual income threshold for the Aid and Attendance benefit, VA pays the difference between the claimant's household income and the

Aid and Attendance threshold. The Aid and Attendance income threshold for a veteran without dependents is now $18,234 annually. The threshold increases to $21,615 if a veteran has one dependent, and by $1,866 for each additional dependent. The annual Aid and Attendance threshold for a surviving spouse alone is $11,715. This threshold increases to $13,976 if there is one dependent child, and by $1,866 for each additional child. Additional information and assistance in applying for the Aid and Attendance benefit may be obtained by calling 1(800) 827-1000. Applications may be submitted on-line at www.vabenefits.vba.va.gov/vonapp/main.asp. Information is also available on the Internet at www.va.gov or from any local veterans service organization. [Source: VA News Release 19 Dec 06 ++]

**UNIFIED MEDICAL COMMAND:**

A plan to merge the services' medical command bureaucracies into a single unified command will not go forward. The plan, which was supported by the Army and Navy, faced stiff opposition from the Air Force. While rejecting the creation of a unified medical command, Deputy Defense Secretary Gordon England (former Navy Secretary) approved a less inclusive approach that joins leadership in four key functional areas: medical research, education and training, health care delivery in major military markets starting with Washington, DC, and San Antonio, TX, and shared support services including information technology. It is reported that the Center for Naval Analyses (CNA), a federally funded research group serving the department of the Navy and other defense agencies, estimates that a unified medical command could achieve savings of at least $500 million a year. [Source: NAUS Weekly Update 22 Dec 06 ++]

**CONGRESSIONAL TERMINOLOGY:**

Numerous bills are introduced in Congress each year as well as amendments related to active duty and veteran funding. In reading about these you should be familiar with the meanings of the following:

- Authorization Act - Authorizes a program specifies it general aims, and generally sets a ceiling on the monies that can be used to finance it.

- Appropriation Act - Grants the actual money to be spent, usually after the adoption of an authorization act.

- Supplemental Appropriation Act - Legislation that adds money to an appropriation act previously passed by Congress.

- Direct Spending - Budget Authority provided in an authorization; or entitlement authority (including mandatory spending contained in appropriation acts).

- Discretionary Spending - Spending for programs whose funding levels are determined through the appropriations process.

- Entitlements - Programs that make payments to any person, business, or unit of government that seeks the payments and meets the criteria of law. Congress controls these programs indirectly by defining eligibility and setting the benefit or payment rules. [Source: NGAUS Leg Up 22 Dec 06 ++]

**DOD MENTAL HEALTH TASK FORCE UPDATE 02:**

The DOD Task Force on Mental Health has been on the road since July 2006, visiting installations and talking to government officials, organizations, service members

and their families. This congressionally mandated group of 14 members has been tasked to assess mental health needs vs. current programs for military members and their families and recommend actions for improvement. They are pressing to meet a MAY 07 deadline for their report to the Secretary of Defense. Their 3-day schedule in Washington included briefings from defense and service officials and a large number of organizations as well as military family members. Unlike the situation in previous conflicts, the government is at last making serious efforts to identify and address the debilitating effects of combat stress. The task force was very positive on several recommendations from MOAA's Deputy Director for Government Relations Col Ana Smythe (USMC—Ret). These were:

1.) DOD and VA must establish a joint oversight plan to ensure coordination and cross-feed among the dozen or more ongoing initiatives within those departments and each of the military services.

2.) There must be a consistent framework for gathering, reporting, and evaluating data. At present, a variety of field reports use different measures, which undermines the govern ment's capacity to define the problem and ensure consistency of effort between organizations.

3.) The Services must develop a standardized combat stress education program that begins during entry level training and is reinforced throughout an individual's military career. The goal is to increase awareness and destigmatize the problem. Members and families must better recognize when they need assistance and where to get it, and supervisors and commanders must strongly support the programs. From the most junior troop to the most senior leader, all must recognize that denying or ignoring the serious effects of combat stress inevitably hurts people and undermines readiness in the longer run. [Source: MOAA Leg Up 22 Dec 06 ++]

**TRICARE T-PHARM CONTRACT:**

Due to a recent development in the pharmacy industry, which will significantly impact the way third party payers price pharmaceuticals, Tricare cancelled the T-Pharm contract solicitation. The T-Pharm contract solicitation would have combined the current retail and mail-order pharmacy contracts in the future. The development impacted Tricare's ability to award a contract under existing conditions. The requirement change will not affect current Tricare pharmacy contracts and Tricare beneficiaries will continue to enjoy a convenient and cost-effective pharmacy benefit. Tricare must identify a new process to reimburse retail pharmacies for future pharmacy contracts. To establish the new pricing requirements and set a new benchmark, Tricare will consult with the pharmacy community, pharmacy benefit managers and insurance companies within the next few months. Once a new benchmark is established, Tricare will issue a new T-Pharm contract solicitation. [Source: Tricare News Release 2 2 Dec 06]

**VA TINNITUS COMPENSATION UPDATE 03:**

The Veterans of Foreign Wars of the U.S (VFW) filed an Amicus, or Friend of the Court brief 20 DEC in the U.S. Supreme Court on behalf of veteran Ellis C. Smith. He is seeking to overturn a lower court decision that allowed the Department of Veterans Affairs to rate tinnitus as a single disability, regardless of whether it affects one or both ears. VFW Commander-in-Chief Gary Kurpius, a Vietnam veteran from Anchorage AK said, "The VFW intervened in this court case to protect the rights of all veterans who were denied similar claims." Smith, an Army veteran, suffers from service-connected tinnitus in both ears.

The VA approved his initial claim but as a single disability. Currently, a single tinnitus disability rating is 10%, which is compensated at $112 per month. A dual tinnitus disability rating is 20%, or $218 per month. Smith appealed the decision to the U.S. Court of Appeals for Veterans Claims and won his case on 5 APR 05, on the grounds that the VA's disability rating schedule did not expressly preclude a separate disability rating for tinnitus in each ear.

The VA appealed this ruling to the U.S. Federal Circuit Court of Appeals and won its case on 19 JUN 06. The Federal Court agreed that the VA's regulations were ambiguous, but ruled that the VA was entitled to interpret its own regulations. Prior to that decision, the VA had withheld more than 4,000 VFW-assisted tinnitus claims. Once Smith's favorable decision was overturned, the VA activated those cases and summarily denied them. VFW service officers are now helping those affected veterans preserve their appeals, either within the VA or at the Court of Appeals for Veterans Claims. To date, more than 800 have already appealed their denials to the veterans court. Regardless of how the high court rules, the VA has changed the rating schedule so that all new tinnitus claims will be adjudicated as a single — not dual — disability. The VFW intends to take up this issue with the VA when the new 110th Congress convenes. [Source: VFW News Release 21 DEC 06 ++]

**MOLD & MILDEW:**

Molds and mildews are plants of the fungi family that grow from spores occurring naturally in the air all around us, both indoors and outside. When these spores are exposed to moisture, they begin to grow. Mold is relatively harmless, but it destroys the materials it grows on, causes a musty smell, and can contribute to family members' respiratory allergies. Many illnesses attributed to molds actually are caused by dust mites or bacteria, which also thrive in warm, moist environments. Environmental molds and other fungi in your home can cause illness in three ways: allergies, toxins, and infection. Some people develop allergies to molds and experience the common signs of respiratory allergies — runny nose, itchy red eyes, and wheezing. Rarely, some allergic people develop a skin rash when they touch mold. Mold also can contribute to asthmatic attacks in asthma patients, but there is little evidence that molds actually cause asthma, especially in adults. Some molds create a toxin when they grow. Very large quantities of some airborne mold toxins can cause disease. This is usually an occupational problem, for example when an agricultural worker is exposed to contaminated grain dust so concentrated it makes a dense fog. Sometimes mold has been suspected of causing employee illnesses in buildings, but scientific investigation often has failed to identify a specific cause. There is litt le evidence that mold toxins inhaled indoors cause illness in a healthy person.

Infection can be due to inhaled fungal spores that grow in the lungs when there isn't a strong enough immune response to stop them. This is a special problem for people receiving chemotherapy, transplant patients on anti-rejection drugs, and people with HIV/AIDS. People with diabetes or diseases such as chronic obstructive pulmonary disease are also at higher risk. A few fungi typically found outside and rarely in homes sometimes can cause serious disease in otherwise healthy people. Air duct cleaning can remove dust, but it is not the solution to a mold problem. Mold spores are a natural part of the environment, and it isn't really possible to eliminate them from your house. Spores cause problems when they contact moisture, so try to eliminate sources of moisture. If you have a water lea k problem, repair it and dry up any remaining water as fast as possible. If an area such as a basement is always damp, try to keep the air dry (e.g., with a portable dehumidifier). Remove any materials that have mold. If there is mold in your bathroom, clean it with a commercial anti-mold cleaning product, or make your own with one part chlorine bleach to 10 parts water (read labels, keep products out f your eyes, and use them in a well-ventilated

area, etcetera). Mold growth and the diseases it may cause are generally preventable. For more information see www.epa.gov. [Source: MOAA Ask the Doctor Feb 06]

**BLADDER CANCER:**

Bladder cancer affects approximately 55,000 adults each year in about twice as many men as women, and almost all are over 40 years of age. The bladder is the "holding tank" for urine. The kidneys filter waste products from the blood. These products, dissolved in water, form urine. Urine flows from each kidney through each ureter to the bladder, located in the lower abdomen. It leaves the body through the urethra. Any time you see blood in your urine (i.e., the urine is red or brownish-orange), see your doctor immediately. This could be a sign of a common urinary tract infection, but it also could be a symptom of bladder cancer. Frequent or painful urination also can accompany bladder cancer. If your health practitioner suspects bladder cancer, he or she will take a complete history and do a physical examination, including tests on the urine. You probably will be referred to a urologist for a cystoscopy, which involves inserting a small fiber optic tube into the urethra to see the inside of the bladder. During the cystoscopy, biopsies may be taken so a pathologist can determine whether the cells are cancerous. Your docto r also could order an intravenous pyelogram, which involves injecting a dye into the veins that, on x-rays, will highlight the outline of the urinary tract and help identify any masses. If bladder cancer is diagnosed, other tests might be necessary to determine how advanced and/are what stage it is. The stage is a major factor in determining a treatment plan.

Treatment generally involves surgical removal of the cancer. If it is small and superficial, it can easily be removed, leaving the bladder intact; sometimes all or part of the bladder must be removed. If the entire bladder is removed, the surgeon will create a pouch to hold the urine and a tube through which it can exit the body. Even if the cancer is so advanced it is not possible to surgically remove the entire tumor, additional treatments are available. For some patients, additional treatments are recommended after surgery. Radiation therapy could involve inserting radioactive material directly into the bladder (which must take place in the hospital) or exposing the patient to radiation from a machine similar to an x-ray machine which requires nearly daily out-patient treatments for a month or two. Occasionally, radiation therapy is done before surgery to shrink the tumor. Chemotherapy and biological therapies also are frequently used, with some medications inserted directly into the bladder and others injected intravenously. Surgery, radiation, chemotherapy, and biological therapy often are combined in a treatment plan tailored to an individual patient. Bladder cancer can run in some families. Smoking more than doubles your chances of getting bladder cancer. Exposure to some occupational chemicals or to arsenic also increases your risk. Early Detection Is Always Key. When diagno sed early, bladder cancer is very responsive to treatment. For more information, visit www.cancer.gov. [Source: MOAA Ask the Doctor Apr 06]

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