



**American Orthotic &
Prosthetic Association**

Protecting a Veteran's Right to Choose Their Provider: Injured and Amputee Veterans Bill of Rights (H.R. 2322) and the Proposed VA Rule

The Injured and Amputee Veterans Bill of Rights (H.R. 2322) is legislation that empowers Veterans with injuries and amputations to obtain appropriate and timely prosthetic limb and orthotic brace care.

H.R. 2322 would require the Department of Veterans Affairs (VA) to post a written list of "rights" that apply to every Veteran in need of prosthetic and orthotic (O&P) care. The list would be written into the statute and the VA would be required to post the list in every VA O&P clinic across the country as well as on the VA website. The VA would be required to follow up and resolve any complaints by Veterans who believe the VA is not meeting their O&P needs.

The list of rights includes the right to:

- Access appropriate O&P technology to meet individual Veterans' needs;
- Receive care from a private O&P practitioner of choice
- A second opinion from VA medical personnel as to O&P care options, and;
- Have a functional spare prosthesis or orthosis.

Veterans currently have these rights but there is wide variation and inconsistency across the country in how these rights are implemented. The bill simply educates Veterans of their rights and expectations for VA O&P care. It empowers Veterans to advocate for themselves to get the best care that meets their needs. Appropriate orthotic and prosthetic care can make all the difference in the lives of Veterans with disabling conditions.

Challenges to Veterans Right to Choose

Top Department of Veterans Affairs (VA) officials have repeatedly reinforced the longstanding VA policy that has allowed flexibility and opportunity of Veterans to work with providers of their choice who can best meet their clinical needs. On October 24, 2017, in testimony before the House Veterans Affairs Committee, Secretary Shulkin said: "Veterans should get more choice in the way of their care. Nobody should feel trapped in the VA system."

However, on October 16, 2017 the Department of Veterans Affairs released a proposed rule, “Prosthetic and Rehabilitative Items and Services”, that intends to “reorganize and update the current regulations related to prosthetic and rehabilitative items, primarily to clarify eligibility for prosthetic and other rehabilitative items and services, and to define the types of items and services available to eligible veterans.” The proposed rule stated:

“VA will determine whether VA or a VA-authorized vendor will furnish authorized items and services under § 17.3230 to eligible veterans. When VA has the capacity or inventory, VA directly provides items and services to veterans. However, VA also may use, on a case-by case basis, VA authorized vendors to provide greater access, lower cost, and/or a wider range of items and services. We would clarify in regulation that this administrative business decision is made solely by VA to eliminate any possible confusion as to whether a veteran has a right to request items or services generally, or to request specific items or services from a provider other than VA, and to clarify for the benefit of VA-authorized vendors that VA retains this discretion as part of our duty to administer this program in a legally sufficient, fiscally responsible manner.”

The VA proposal incorrectly asserts that it is simply a ‘clarification’ of the rules that it has applied in the past. In fact, this language appears to directly contradict the longstanding policy of the VA regarding a Veteran’s right to receive prosthetic services through the VA directly or through a VA contracted provider as well as the provisions of the Veterans Access, Choice and Accountability Act of 2014. While there have been some variations in other areas, as to prosthetics the following has been the consistent ‘bright line.’

- a. Vets who sustained service-related injuries resulting in amputation have always enjoyed the right to choose whether they receive their care from a VA employee-practitioner, or from a private sector provider.
- b. Vets who have previously received a prosthesis as the patient of a private sector contractor have the right to maintain continuity of care from that contractor, and the right to receive any future prosthesis/prosthetic care from and within the framework of the patient-health care provider relationship with that same private sector provider.

The proposed rule would completely disregard the respect for a Veteran’s right, like other Americans, to participate in the choice of who they entrust with delivering key components of their health care. The relationship between a Veteran and their orthotic and prosthetic provider is often a long standing, personal relationship that extends beyond the simple distribution of a medical device, and is as valuable as the care provided.

The proposed rule would also completely disregard the long history of cooperation between the VA and its contracted prosthetic and orthotic providers, as well as the clinical needs of the individual Veteran, by proposing regulations that authorizes the VA to exercise sole discretion as to how prosthetic and orthotic care is delivered to Veterans. The delivery of appropriate prosthetic and orthotic care is not an administrative issue, it is

a clinical issue; one that should be made based on the clinical needs of the individual Veteran, not the administrative needs of a government agency.

Recommendation

The VA's proposed rule was inaccurately characterized as providing clarification to a Veteran's right to choose, however it would abolish the long-standing policy where Veterans have enjoyed a measure of choice, including whether they secure their prosthesis from a private sector provider, replacing it with a new policy, which places sole responsibility for the selection of the prosthetic care provider with the VA.

The elimination of the Veteran's right to choose to receive prosthetic and orthotic services directly through the VA or through a longstanding relationship with a contracted provider is in nobody's best interest, and it is certainly not an "administrative" decision. It is a deeply personal decision that must involve input from all involved parties but especially from the Veteran. Publication and enactment of any final rule or legislation without affirming the rights of the Veteran would be a true disservice to those who have dedicated their lives to serving their country.

We ask you to ensure that the VA revises the language contained in section 17.3240 of their proposed rule ("Prosthetic and Rehabilitative Items and Services") to bring it in line with the VA's longstanding position of assuring Veteran choice of where and from who they receive their orthotic/prosthetic care.

We also urge you to support the Injured & Amputee Veterans Bill of Rights (H.R. 2322) to ensure that a Veteran's right to choose, and other valuable rights, are protected and made known to all Veterans; allowing them to become the best advocate for their care.

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