



WOUNDED WARRIOR PROJECT
STATEMENT FOR THE RECORD

ON

OVERSIGHT HEARING:
“A TIME FOR CHANGE: ASSESSING THE NEED TO MODERNIZE
VETERAN ELIGIBILITY FOR CARE”

December 2, 2020

Chairman Takano, Ranking Member Roe and distinguished members of the House Committee on Veterans’ Affairs (HVAC) – thank you for inviting Wounded Warrior Project (WWP) to submit the following statement for the record regarding today’s oversight hearing. This important hearing looks to address questions related to a veteran’s eligibility for the U.S. Department of Veterans Affairs’ (VA) healthcare system and whether it is time to modernize the current system. Of importance to WWP, is the Committee’s consideration of how well that system serves the current generation of Service members and veterans, including those who were exposed to toxic substances during their military service. WWP shares the same dedication to serving veterans and those exposed to toxic substances while in service.

What began in 2003 as a small group of volunteers filling backpacks with comfort items for wounded warriors has grown into what WWP is today: a robust organization of over 700 employees who deliver more than a dozen free direct programs to post-9/11 veterans across the nation. We meet our mission to honor and empower wounded, ill, and injured veterans by providing mental health support and clinical treatment, employment counseling, physical health and wellness coaching, guidance to secure benefits, peer connection, and community engagement opportunities to the veterans, family members, caregivers, and survivors we serve. WWP views itself as a partner to both the VA and the U.S. Department of Defense (DoD), filling gaps that remain in an already robust and extensive VA and DoD offering of programs and services for those who served, their families, and caregivers.

WWP’s programs, services, and connection points contribute to our organizational impact and inform our statement for the Committee. While we primarily assist post-9/11 wounded, ill, and injured warriors, their families, and caregivers, the issues of VA eligibility affect all generations of veterans.

DUTY ★ HONOR ★ COURAGE ★ COMMITMENT ★ INTEGRITY ★ COUNTRY ★ SERVICE



H.R. 7469 – A Review of Veteran Eligibility for Care

H.R. 7469, the *Modernizing Veterans' Healthcare Eligibility Act*, which is based on a recommendation from the bipartisan Commission on Care, proposes to bring together veterans and healthcare industry experts to conduct a thorough examination of veteran eligibility for VA care and recommended changes. H.R. 7469 would not only incorporate the Commission on Care's recommendation for an advisory body to examine necessary changes to VA healthcare, but it would go one step further by providing executive authority to the President of the United States to direct VA and other "relevant departments and agencies" to enact the Commission on Eligibility's recommendations without conferring with Congress, as long as the recommendation does not require legislative action.

For most veterans, VA health care and benefits are among the most valuable and tangible aspects of their service. VA provides health care, education, and even enables home ownership for millions of veterans. For others, VA benefits provide a dignified burial, financial compensation for injuries and illnesses, and caregiver support. While most who enter service will never attain a military retirement from 20 or more years of service, the vast majority who serve will receive VA benefits' eligibility of some type.

The overwhelming majority of veterans complete one or more periods of active duty service, serve in the Reserves or National Guard, and then fully transition into life as a full-time civilian. The significance of VA benefits, then, is obvious. The impact on veterans' quality of life is substantial. For those whose eligibility also includes health care, the impact can be lifesaving as well as financially meaningful. Health care benefits are increasingly important to an aging veteran population that contains a large number of veterans recently wounded in the conflicts of the Global War on Terror (GWOT). Noteworthy, aging Gulf War veterans make up the largest segment of the population served by VA, while Vietnam veterans are the second largest cohort in VA. However, in the general population, Vietnam veterans are the largest group followed by peacetime veterans.¹ These facts neatly illustrate the changing nature of the veteran population eligible for VA benefits versus the population that is actually using benefits.

The current VA health care eligibility system, which is almost 25 years old, went through a comprehensive review in 1996, when the current eight priority groups were established. Since then, the United States has been involved in the GWOT which has altered the composition of veterans seeking care from VA and the services they seek. The GWOT population includes a large number of combat injured veterans for the first time since the Vietnam War which ended in 1975, 21 years before the last review.

Health care eligibility is also inextricably linked to two other processes: (1) the military discharge process that results in a characterization of service from DoD and (2) VA's own benefits claims process for disability compensation or pension benefits. The latter process gives a veteran a disability rating which translates into eligibility for healthcare benefits based on the eight healthcare priority groups. Based on a 2017 VA survey of veterans utilizing VA for healthcare, Priority Groups 1 to 3 remain the largest proportion of enrollees at 48 percent².

¹ <https://www.census.gov/content/dam/Census/library/publications/2020/demo/acs-43.pdf>

² https://www.va.gov/healthpolicyplanning/soe2017/va_enrollees_report_data_findings_report2.pdf

Further, VA conducts a characterization of service review to determine if those former Service members without honorable discharges are eligible for VA benefits. According to statute, there is a specific legal definition for “veteran” which limits those eligible for VA benefits. Roughly speaking, “veterans” have a period of active duty service or deployment. Because of this definition, many members of the National Guard, for example, are not eligible for VA benefits.

The oversight of VA health care eligibility criteria and modernization is clearly within the purview of Congress. Eligibility has been addressed many times over the last 24 years, although perhaps not comprehensively. Health care eligibility has been granted to veterans exposed to Agent Orange during Vietnam; to veterans and their families who were stationed at Marine Corps Base Camp Lejeune over several decades; and others. WWP is actively pursuing the recognition of toxic exposures illnesses in the GWOT population, and open access to healthcare within VA Priority Group 6, without the need of a VA disability rating.

The criteria for expertise laid out in Section 2(a)(2) are important. The changing dynamics of healthcare in terms of provision of care, access to care, and models of care requires voices within VA that understand the capabilities and limitations of the VA system (including obligations and processes mandated by law) as well as those outside of VA who can address the latest models to efficiently deliver care, including other federal government programs such as Medicare. Veteran service organizations (VSO), as advocates for America’s veterans, should speak to the needs and experiences of memberships that represent the population which VA serves. VA must consider all resources at its disposal and consider the impact changes to eligibility may have on the availability of care directly through VA or through other avenues, such as community care.

In this context, WWP believes that the congressional model for gathering information and addressing concerns is secondary to Congress initiating the process. Over the last two decades both the veteran population entering VA and VA’s model of delivering care has changed substantially. Two decades of conflict and the passage of signature legislation such as the *VA MISSION Act of 2018* (P.L. 115-182) and the *Commander John Scott Hannon Veterans Mental Health Care Improvement Act of 2019* (P.L. 116-171) suggest the demographics of veterans and the resources available to VA have changed. WWP believes VA must adapt to meet changing needs and limitations, as well as take advantage of fresh opportunities to deliver high-quality service and care to veterans. The well-being of veterans should always be the primary factor considered and the litmus test for success of all actions. To that extent, consideration should be given to addressing eligibility based on toxic exposures and flexibility built into eligibility criteria to expand care as necessary based on new scientific evidence and links to service. Recognition of toxic exposures, military sexual trauma (MST), traumatic brain injury (TBI), and other injuries often previously derided as psychosomatic or “manufactured” illness must be an integral part of evaluation for health care eligibility.

WWP agrees with the intent of H.R. 7469, but believes Congress, through oversight and in conjunction with input from key stakeholders, can recommend – and legislate when appropriate – modified eligibility requirements without overhauling an entire system.

Extending VA Healthcare to Individuals Discharged Under Conditions Less Than Honorable

Eligibility for VA health care is dependent on meeting the statutory definition of a “veteran” and going through VA’s benefits claims process for disability compensation or pension benefits which determines an individual priority group. This leads to two questions: (1) should characterization of service make a difference in eligibility for benefits, including healthcare and (2) what benefits, if any, should former Service members receive with a characterization of discharge that is not honorable?

WWP believes that providing VA-funded health care for individuals without veteran status will divert VA resources away from veterans who currently struggle to have their needs met by VA. Wounded Warrior Project believes that cost-free health care in VA facilities or through VA’s Community Care Network (CCN) should generally be reserved those deemed fully eligible for health care benefits and we remain committed to extending services to those who received Other Than Honorable (OTH) discharges likely due to symptoms of undiagnosed mental illness related to combat or MST³. Although VA’s budget has grown considerably over the last 20 years, providing resource-intensive emergent mental health care or primary care to anyone who has served in the military, regardless of discharge, would jeopardize VA’s ability to deliver services to those already owed the care and support that was promised for their service.

Americans who present to medical facilities during a life-threatening health crisis deserve immediate care and support. Non-VA emergency facilities are sufficiently authorized to provide cost-free emergent health care under the *Emergency Medical Treatment and Labor Act* (42 U.S.C. § 1395dd). VA is similarly able to provide emergent mental health care under 38 U.S.C. § 1784; however, a question remains over whether that care should be provided at no cost to those who have not achieved veteran status under 38 U.S.C. § 101(2), including those who have been dishonorably discharged or discharged by court martial from the military service.

Additionally, there is concern that limits on eligibility for emergent suicide care through VA or a community-based provider established under section 201 of H.R. 8247, *the Veterans COMPACT Act of 2020*, may place VA in a position to deny paying for care provided to those who were (1) dishonorably discharged, (2) discharged by court-martial, or (3) OTH veterans who were not deployed to a combat theater or the victim of sexual assault or harassment in service. As written, the provision to extend cost-free emergent suicide care extended to those with veteran status and the limited class of OTH veterans that were granted access to mental and behavioral health care under a 2018 law through VA’s CCN omits safeguards to prevent veterans not otherwise eligible under 38 U.S.C. § 1720I from thinking their OTH status is sufficient enough to utilize VA’s CCN. This would lead to the denial of payment for care rendered and place an even heavier burden of debt on an already fragile individual. When signed into law, WWP recommends that there is an extensive effort to educate the public, communities, and CCN providers to minimize the undue burden of cost associate with care for those not eligible.

³ 38 U.S.C. § 1720I

Discharge Review

While DoD processes are outside the scope of this committee, the need for comprehensive action that begins at the point of separation from military service cannot be overstated. This issue has been recognized and formal direction promulgated at least as far back as 2014 when then-Secretary of Defense Chuck Hagel issued a memo to Service secretaries directing that they give “liberal consideration” to petitions for discharge upgrades.⁴

A recent settlement affecting former members of the Army seeking to upgrade their discharges showcases the need for continued work on this front.⁵ The proper consideration of mitigating factors to conduct that could result in a non-honorable discharge should be done *before* separation rather than *after* the fact, which in some cases is decades after separation. WWP urges the members of this committee, particularly those who also sit on the House Committee on Armed Services, to prioritize changes that would make the proper determination of character of service at the time of separation – with consideration for mitigating factors such as MST, PTSD, or TBI – from the military a top priority. This may include reconsideration of the use of the administrative separation and “chapter” processes of the various services to separate Service members punitively in lieu of court-martial proceedings. The administrative separation and chapter processes have been used frequently for separations due to personality disorders, the abuse of which was campaigned against by now-Governor Tim Walz of Minnesota, a former chairman of this committee.⁶

DoD or VA, as applicable, should inform former Service members who could benefit from the discharge upgrade review process that they are eligible to apply. For the purposes of this discussion, VA should share information with an applicant for benefits who has been denied the remedies available to him or her through the discharge upgrade process and whether the that former Service member meets any criteria for enhanced consideration based on information contained in the application (e.g., a claim for PTSD or potential exposure to Agent Orange).

Characterization of service makes a difference. The military is built upon good order and discipline and the concepts of fidelity, honor, and devotion to duty are part of the oaths of enlistment and office for all military services.⁷ It is reasonable to expect that Service members will become veterans with the highest characterization of service (honorable) only if they have performed to a level of service commensurate with the execution of the oath they have sworn. It is the responsibility of the services to appropriately characterize service and appropriately justify any characterization that is less than honorable.

Understanding that the above statements represent an ideal, achieved by the majority of those who serve, there are instances which may require further review after discharge. There are Service members who have received a less than fair adjudication and they should have a process

⁴ <https://www.secnv.navy.mil/mra/bcnr/Documents/HagelMemo.pdf>

⁵ <https://www.militarytimes.com/news/pentagon-congress/2020/11/18/settlement-will-ease-process-for-army-veterans-looking-to-upgrade-less-than-honorable-discharges/>

⁶ https://www.mankatofreepress.com/news/local_news/walz-wants-thousands-of-personality-disorder-discharges-reviewed/article_386590f4-5385-5944-959c-c253c426c909.html

⁷ <https://history.army.mil/html/faq/oaths.html>

for being made whole, which may include the receipt of benefits from the VA, including health care. Veterans who incur a service-connected disability *are* eligible for care for that service-connected condition regardless of characterization of service, except in the case of a dishonorable discharge.⁸ Dishonorable discharges are extremely rare, however. Dishonorable discharges are given only following a court-martial and often after time served in a military prison. Any former Service member with a discharge other than dishonorable can receive care from the VA by the current policies in place.

With that said, WWP encourages VA to utilize the most liberal possible standard for application going through VA's character of service review process to ensure veterans going through the process are not improperly denied treatment for which they should be eligible, while still maintaining the integrity of the process. Recent changes to the law and to how VA applies the review process has yielded some improvement and alternate avenues for former Service members to pursue benefits, particularly in mental health care.⁹ The availability of mental health care for those with PTSD, MST, or combat related trauma through Vet Centers is an example. If VA is using the character of service process to exclude classes of veterans by default, then the process needs to be clarified to ensure that fair consideration with clear criteria and processes is given to those who apply for a review.

For these reasons, WWP believes Congress should not circumvent VA's ability to maintain authority to evaluate all veteran discharges, with the exception of dishonorable discharge, and grant eligibility based on individual circumstances after a thorough review. This will also keep in place the ability for recipients of OTH discharges to continue to receive mental healthcare in VA facilities if they have deployed to combat or suffered MST. Additionally, WWP:

- Supports a review of discharges by DoD.
- Supports an expedited / automatic review of OTH eligibility triggered during Service members' discharge.
- Supports VA suspending charges for care until a formal review can be completed.

Extending VA Healthcare to Veterans Exposed to Toxic Substances

With the legacy of over a decades-long endeavor to provide care and benefits for those who have suffered — or continue to suffer— from the effects of Agent Orange, we strive to ensure that today's veterans struggling to receive health care are not fighting for treatment years from now. Therefore, WWP has focused on gaining access to treatment for Service members and veterans before they become critically ill through early screening and identification of health conditions, and by investing in research that can be used to develop new forms of treatment. Accordingly, in 2018, WWP brought together a group of VSOs, military service organizations (MSOs), and specialists in the field of toxic exposure to help guide the community in the development and advocacy behind a single expansive toxic exposure piece of legislation. This

⁸ See 38 C.F.R. §3.12

⁹ https://www.va.gov/HEALTHBENEFITS/resources/publications/IB10-448_other_than_honorable_discharges5_17.pdf

group is known as the Toxic Exposure in the American Military (TEAM) Coalition and is comprised of over 30 VSO, MSO, and medical specialists.

We have found that a significant number of post-9/11 Service members and veterans (like their Vietnam era counterparts) seem to be suffering from uncommon illnesses or unusually early onset of more familiar diseases like liver cancer, skin cancer, brain cancer, respiratory illnesses, and chronic multisymptom illness.^{10 11} It appears that exposure to contaminants such as burn pits, toxic fragments, or other hazards typically seen on overseas deployments, are emerging as common threads among veterans who are sick, dying, or already deceased. We believe there is a causal relationship between the deployments of the last 19 years and illnesses noted above. While we are currently focused on deployment exposures, we are also aware of the challenges Service members face regarding possible exposures stateside.

Debates in scientific and medical communities have not reached consensus on the relationships between certain toxic exposures and presumed health outcomes which is why the issue must be further researched. Unfortunately, we have allowed this debate, in large part, to become a considerable barrier in addressing evidentiary requirements during the disability claims process which is the entry point into VA healthcare. WWP will be testifying on December 9, 2020 before HVAC Disability and Memorial Affairs Subcommittee to address the needs of veterans dealing with health illnesses as a result of exposure to toxicants while in service and the challenges associated with filing for disability compensation and look forward to discussing the claims process in more detail before the full Committee. In this testimony, we would like to focus on eligibility and access to health care.

It is also our position that Congress and VA should act now to grant health care to veterans who served in areas of known toxic exposures and create mechanisms for the enrollment of veterans who may be exposed to toxic substances in the future. Our recommendations are informed by daily interactions with the young veterans we serve, a diverse and robust knowledge base among our veterans service officers, work with our partners from the TEAM coalition, and from data captured using WWP Annual Warrior Survey (AWS), which is the largest and longest survey of the post-9/11 veteran population with over 28,000 respondents and in its eleventh iteration.

WWP DATA

To better understand the relationship between the post-9/11 generation and access to VA healthcare, WWP has invested substantial resources to understand the depth and scope of medical care within our alumni population. WWP utilizes our AWS to capture data regarding our alumni and possible toxicants they were exposed to. Notable findings include:

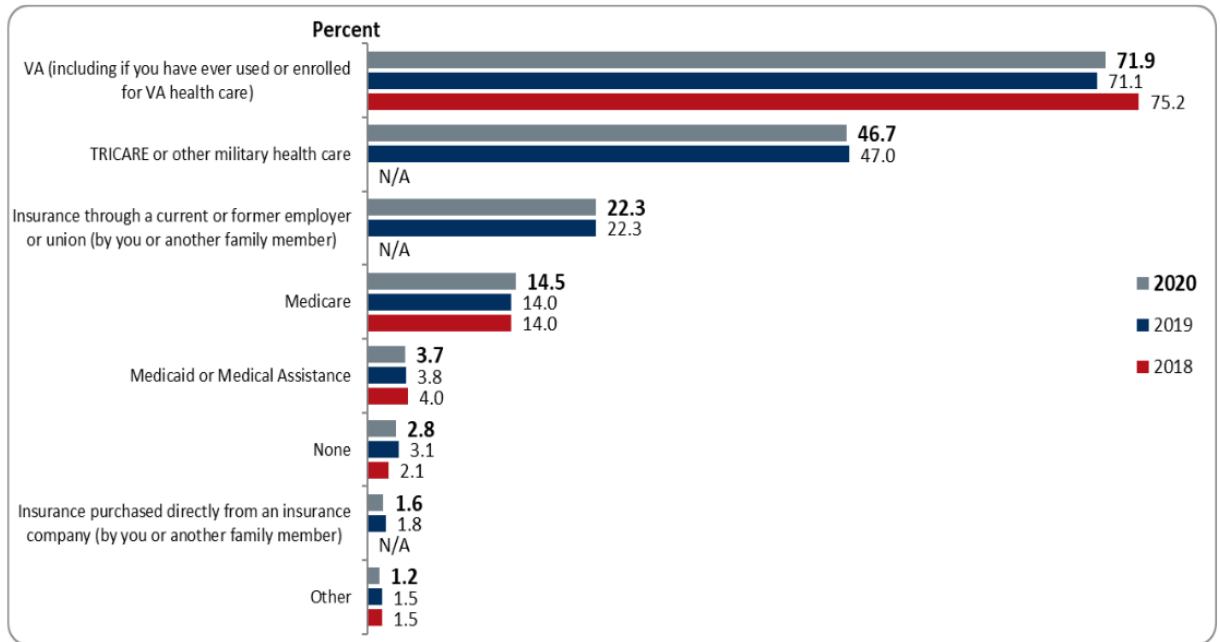
The percentage of warriors with VA health care coverage is roughly the same as last year (71.9% in 2020, compared with 71.1% in 2019 and 75.2% in 2018 (**Figure 1**)). The next most common types of health insurance among warriors are TRICARE or other military health care

¹⁰ <https://pubmed.ncbi.nlm.nih.gov/28045798/>

¹¹ <https://www.mcclatchydc.com/article236421513.html>

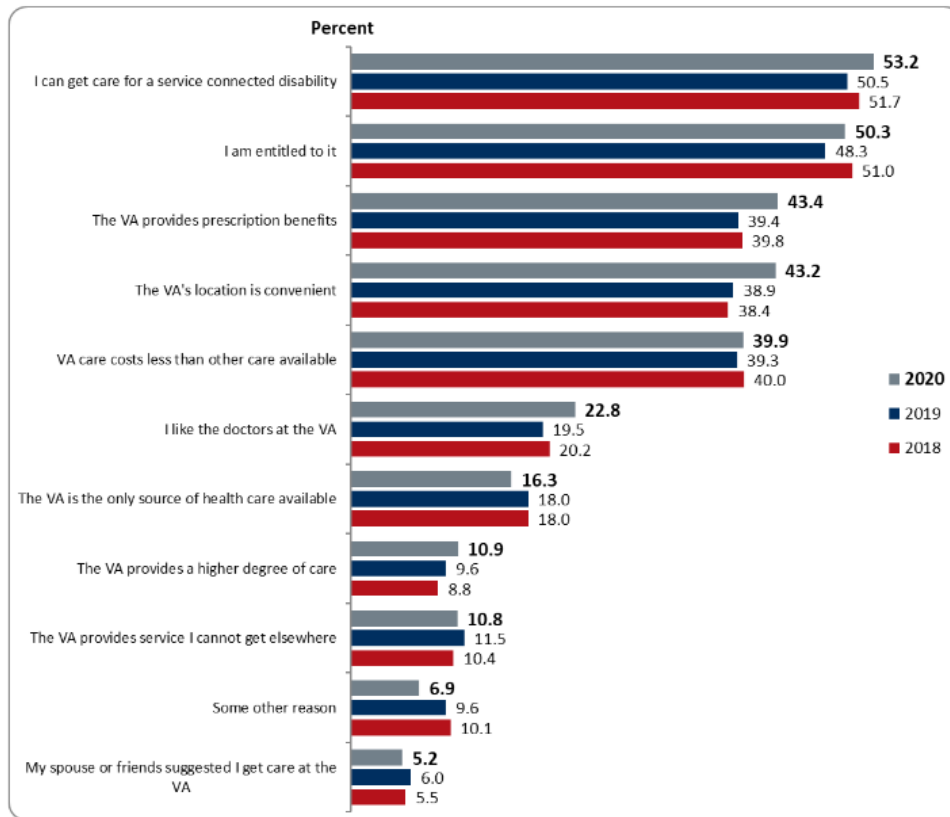
(46.7%). About 3% of warriors (2.8%) have no health insurance. More than half of warriors with health care coverage have two or more types of health insurance (51.5%, compared with 51.3% in 2019 and 51.7% in 2018).

Figure 1: Current Types of Health Care Coverage



More than 7 in 10 warriors who have VA and another type of health coverage use VA as their primary health care provider (74.0%). The survey asked warriors who reported using the VA as their primary health care provider why they chose to do so (Figure 2). The most common reasons were that warriors can get care for a service-connected disability (53.2%), because they feel they are entitled to VA health care (50.3%), and the prescription benefits VA provides (43.4%).

Figure 2: Reasons Warriors Use VA as Their Primary Health Care Provider

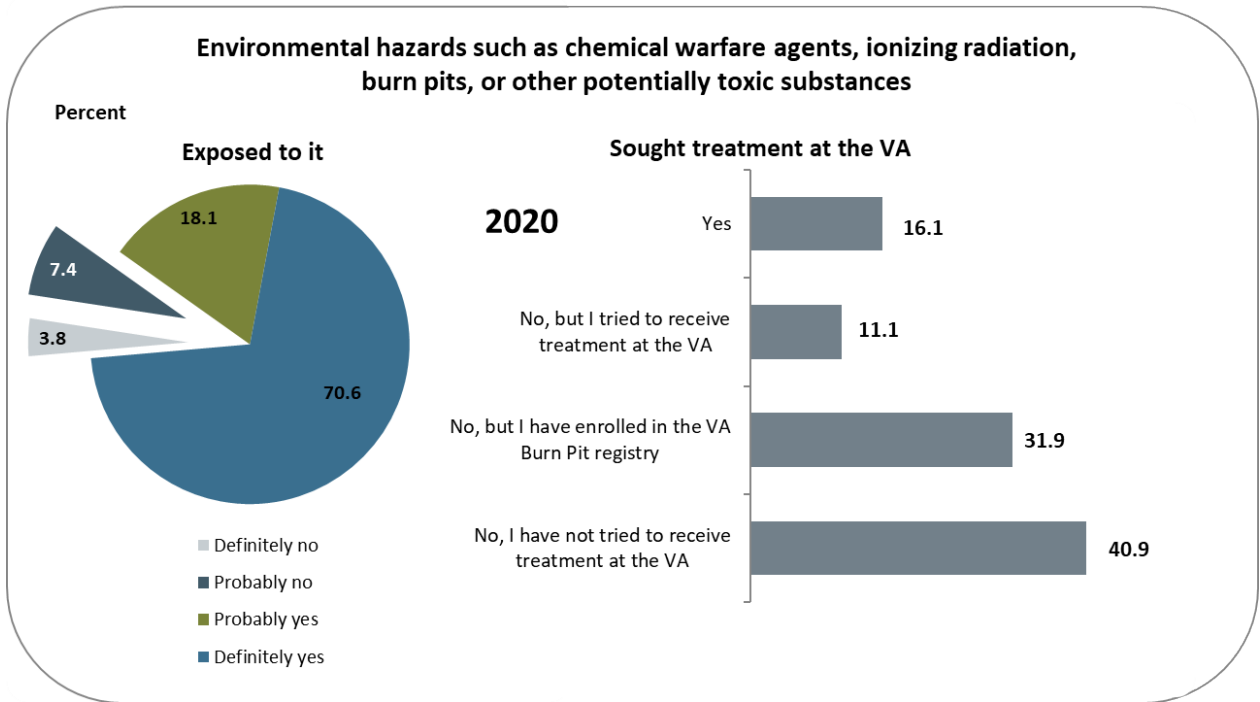


Warriors utilize various resources and tools to help address their mental health issues. The top three resources used for addressing their mental health concerns were:

- VA Medical Center – 66.6%
- Talking with another OEF/OIF/OND veteran – 36.9%
- Prescription medication – 36.3%

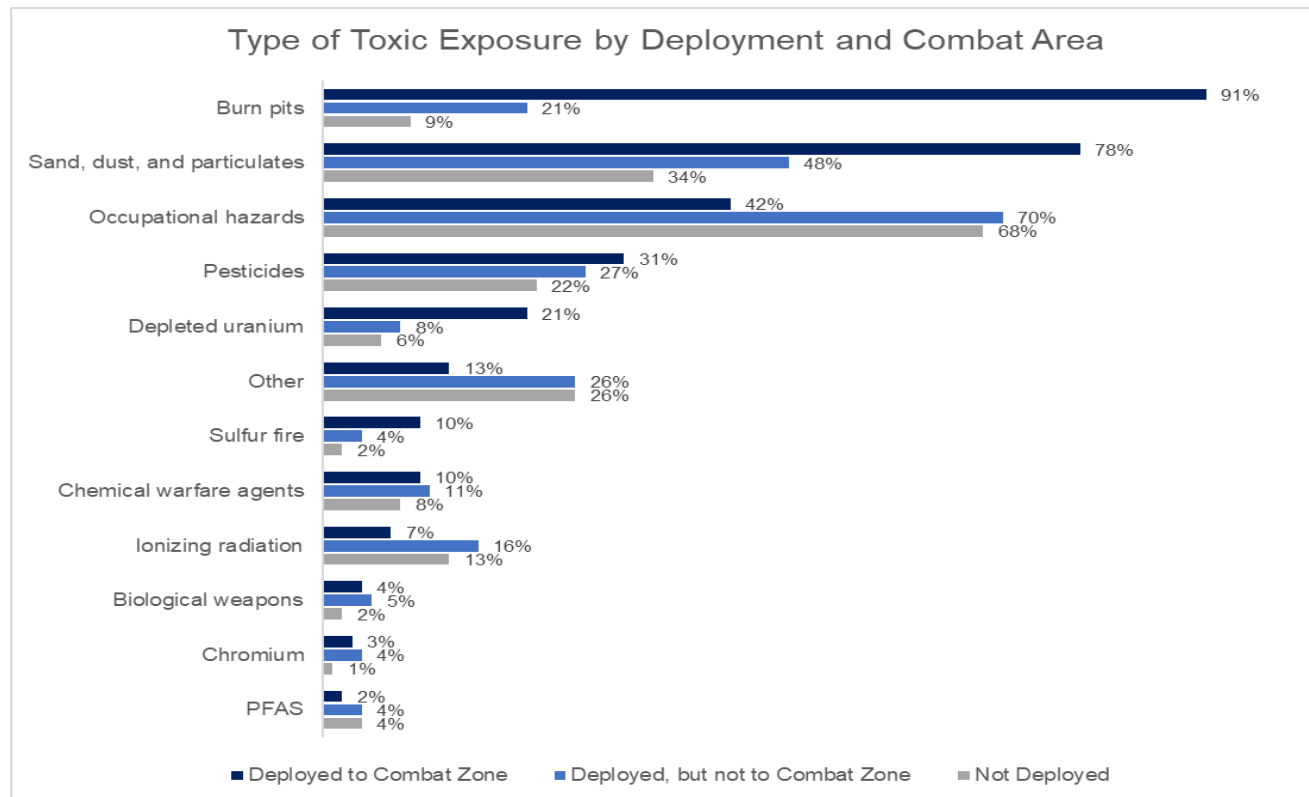
Alumni were asked if they were exposed to environmental hazards such as chemical warfare agents, ionizing radiation, burn pits, or other potentially toxic substances during their military service. A majority (70.6%) of warriors who responded reported they had definitely been exposed to hazardous chemicals, and an additional 18 percent reported they probably have been exposed. However, only 16.1 percent of those warriors said they had received treatment for their exposure at VA. An increase from 2019 data where 9 percent of warriors indicated they had received care through VA [Figure 3].

Figure 3: Environmental Hazards Exposure and Treatment



Among warriors who definitely or probably experienced exposure to toxic substances, the majority indicated they were exposed to burn pits (85.7%) or sand, dust, and particulates (75.5%). Additionally, we were able to separate types of exposures from those who deployed from those who had not. Warriors who have not deployed, or deployed but not to a combat area, most commonly reported being exposed to occupational hazards (such as industrial solvents, asbestos). The majority of warriors who deployed to a combat area reported being exposed to burn pits (91%) followed by sand, dust, and particulates (78%) [Figure 4].

Figure 4: Sources of Environmental Hazards Exposure Among Warriors Indicating Toxic Exposure



Toxic Exposure Legislation

New legislation and strong community cohesion developed over the course of the 116th Congress has queued up fresh attention and hope for success in one of the largest issue areas affecting post-9/11 veterans and Service members. To better serve this population, WWP is supporting legislative efforts to address several key issues surrounding toxic exposure. As it relates to this hearing, eligibility and access to VA health care remains our primary focus. Through TEAM Coalition efforts, in working with Congress, WWP was successful in getting S. 4393, the *Toxic Exposure in the American Military (TEAM) Act of 2020*, unanimously passed by the Senate Committee on Veterans’ Affairs. Of importance for today’s discussion is section 101 under Title I, which expands health care eligibility for certain individuals exposed to open burn pits and other toxic substances.¹²

- **Access to Care:** As the scientific evidence for presumptive service connection continues to build, correlations surrounding unit histories and illnesses currently support action and intervention to help veterans who served in areas of known toxic exposure. Creating access to VA care through the Veterans Health Administration for these individuals should be a priority. This approach can and will save lives, particularly if broader solutions will take years to realize like they did for Vietnam-era veterans exposed to Agent Orange.

¹² <https://www.veterans.senate.gov/imo/media/doc/S.%204393%20ANS%20CAN20721.pdf>

The current process for obtaining VA disability compensation for disabilities stemming from exposures to toxicants is: (1) providing evidence that an exposure occurred during service and (2) proving a nexus between an individual's current diagnosed disability and their service. If a veteran can prove they were exposed to a toxicant but cannot prove that their illness is associated with that exposure, then their disability claim will likely be denied. Similarly, if individuals can prove that a toxicant is the reason they are currently ill, but cannot verify exposure occurred during their service, their claim will also likely be denied. Proving nexus and exposure during service is essential to establishing service-connection for a veteran's toxic exposure-related illness.

For these reasons, WWP strongly supports access to health care now for those exposed to toxicants while in service.

CONCLUSION

Wounded Warrior Project's mission is to honor and empower wounded, ill, and injured veterans, Service members, and their families. Over the last two decades both the veteran population entering VA and VA's model of delivering care has changed substantially. Additionally, we have seen increased health complications for a young population that should be generally healthy. We cannot ignore the obvious correlation between certain toxic exposures and illnesses with no reasonable explanation for onset. During these last few months, where COVID-19 has stressed the medical community at large and the demand for VA health care services has seen enormous increases in services such as mental health needs, the issues raised in this hearing are not easy but necessary.

Addressing them requires a balance of compassion for those who enter military service with a recognition that duty and honor, the core values and foundational principles of military service, count. Addressing these issues of health care eligibility requires making decision that balance the needs of veterans and address issues of equity, resources, and compassion.

Wounded Warrior Project thanks the House Committee on Veterans' Affairs, its distinguished members, and all who have contributed to the discussions surrounding today's hearing. We share a sacred obligation to serve our nation's veterans, and WWP appreciates the Committee's efforts to identify and address the issues that challenge our ability to carry out that obligation as effectively as possible. We are grateful for the invitation to submit this statement for the record and stand ready to assist when needed on these issues and any others that may arise.