



# Washington Update

Check out the [PVAAction Force](#) page to view our latest alerts and a list of key legislation and its status. Also, read our latest blog post, "[Taking Action During the August Congress Recess.](#)"

## PACT ACT NOW LAW

On August 2, the Sgt. First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act passed the Senate and the bill was signed into law by the President on August 10 at a White House ceremony. The PACT Act is the most comprehensive toxic exposure bill for veterans in history. Ultimately, the PACT Act will expand VA health care and benefits for veterans exposed to burn pits and other toxic substances.

The PACT Act impacts both the Veterans Benefits Administration and the Veterans Health Administration. It adds more than 20 new presumptive conditions related to burn pits and broadens coverage for Vietnam-era veterans exposed to Agent Orange, radiation exposure, and other toxins. Presumptive conditions are medical conditions that VA presumes to be related to military service. Some of the new presumptive conditions under the PACT Act are brain cancer, glioblastoma, gastrointestinal, lymphatic cancer, as well as several respiratory cancers. Illnesses such as chronic bronchitis, chronic rhinitis, constrictive bronchiolitis, and pulmonary fibrosis have also been added to the list. You can go to this [website](#) to determine if you have a condition that is now considered to be related to military service. Additionally, the PACT Act requires VA to provide toxic exposure screening to every veteran enrolled in VA health care.

For veterans who have not enrolled in VA health care that separated from the military before October 1, 2013, VA is offering a special enrollment period from October 1, 2022, until October 1, 2023. To be eligible for this enrollment period you must have served in a theater of combat operations on active-duty after the Persian Gulf War or during a period of hostilities after November 11, 1998, and were discharged or released between September 11, 2002, and October 1, 2012.

If you have a claim pending with VA that concerns a condition that is now considered to be a presumptive, you do not have to do any additional paperwork but you should receive a letter from VA recognizing the presumptive status of your claim. If you need help filing a VA claim or have questions about a presumptive condition, reach out to a PVA national service officer (NSO) to assist you. You can go [here](#) to find a PVA NSO in your area.

Other provisions within the PACT Act will help VA bolster its workforce and enable the department to treat newly eligible veterans. These include requiring the VA to establish standard qualifications and performance metrics for HR positions as well as developing a plan to improve hiring for those positions; expedite the hiring of recent college graduates for certain positions; enhance or create a number of special pay, incentive, bonus, award, and student loan repayment authorities department-wide; and raise pay caps on certain medical



positions. Others require training for VA and civilian providers to better understand or treat veterans' exposure concerns and authorize 31 new, major medical health clinics and research facilities in 19 states.

In the coming weeks, VA will be hiring health professionals, including physicians, nurse practitioners, and physician assistants who will specialize in conducting patient assessments regarding the health effects of military exposures. Also, by January 2023, the department expects to have a fully operational call center and network of experts to help veterans concerned about environmental exposure and provide consultative services to veterans in primary care clinics.

#### **LEGISLATION INTRODUCED IN THE SENATE TO IMPROVE HISA**

In early August, Senator Catherine Cortez Masto (D-NV) introduced legislation which aims to make much needed updates to VA's Home Improvements and Structural Alterations (HISA) grant program. The HISA grant provides financial assistance to veterans and servicemembers to allow them to make medically necessary improvements and structural alterations to their primary residences. Updating this important grant program is a top legislative priority for PVA because its outdated rates are failing to provide veterans the level of financial assistance needed to modify their homes.

S. 4721, the Autonomy for Disabled Veterans Act, would increase the amount available under the HISA program from the current ceiling of \$6,800 to \$10,000 for veterans with service-connected conditions and \$5,000 for those with conditions unrelated to military service. It also ties these amounts to a formulation so future rates remain current. The new bill is the companion measure to H.R. 5819 which Representative Al Lawson (D-FL) introduced last November. This is one of several issues that may receive attention by Congress in the fall. Please [send this updated letter](#) to your members of Congress urging them to increase HISA grant rates.

#### **AAPD ISSUES PROGRESS REPORT ON AUTOMOBILE ACCESSIBILITY SCORECARD**

At the end of July, the American Association of People with Disabilities (AAPD) issued its [third progress report](#)

on its Automobile Accessibility Scorecard. The scorecard tracks progress by auto manufacturing companies toward the design and production of an accessible vehicle that can accommodate people with a wide range of disabilities, including power wheelchair users. Currently, no manufacturer offers a fully accessible vehicle that does not require expensive aftermarket modifications for wheelchair users. Although autonomous vehicles' (AV) potential to remove barriers is frequently touted, as automakers pave the way with new concepts for these vehicles, it is crucial that people with disabilities are not left behind.

The report highlights significant progress on new vehicle design and development. It also shows disclosures by automakers that next-generation vehicles will include a wide range of accessibility features, including wheelchair securement. It further notes the development of new partnerships to provide Americans with Disabilities Act-compliant accessible vehicle options in AV company fleets.

#### **UBER WINS CASE DESPITE FAILURE TO PROVIDE WAV SERVICES IN NEW ORLEANS AND JACKSON, MS**

On July 25, a California federal judge [ruled](#) that Uber is not required to provide wheelchair accessible vehicles (WAVs) in New Orleans, LA, and Jackson, MS. In the consolidated case of [Crawford v. Uber](#) and [Namisnak v. Uber](#), three power wheelchair users sued Uber alleging that the company violated the Americans with Disabilities Act (ADA) by failing to provide WAV services in their home cities and for effectively banning WAVs under their vehicle eligibility criteria. Although Uber offers [WAV services](#) in 11 other cities, it does not have WAVs in New Orleans or Jackson.

The judge held that offering WAV services in these cities would be unreasonable and, thus, not required under the ADA. Under the ADA, companies must make reasonable modifications to their policies, practices, or procedures when necessary to provide services to individuals with disabilities, unless it would fundamentally alter the service. The judge determined that although WAVs do not fundamentally alter Uber's rideshare service, the cost and inability to provide the

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service at all hours would require an unreasonable modification.

In addition, Uber has vehicle eligibility criteria for drivers, including a ban on aftermarket seating modifications. The judge found that although the ban did effectively screen out WAVs, the policy alone did not screen out all power wheelchair users since Uber could not guarantee that a WAV would even be available for the plaintiff's rides. The judge did clarify that just because a reasonable modification may result in more than a minimal cost, it was not necessarily unreasonable, and that complying with the ADA was not a punishment to companies, but rather, the law. Furthermore, the opinion explained that this ruling does not mean that all lawsuits against rideshare companies demanding WAV services would never succeed.

#### **CIRCUIT COURT DISMISSES MARRIOTT CASE FINDING HOTEL MET ADA REQUIREMENTS FOR DESCRIBING ACCESSIBILITY FEATURES**

In [Love v. Marriott Hotel Services](#), the Ninth Circuit affirmed the dismissal of a case against Marriot. The plaintiff alleged that the hotel failed to provide sufficient accessibility details on its website. The Americans with Disabilities Act (ADA) requires places of lodging, such as hotels, motels, and inns, to identify and describe accessibility features in enough detail for an individual to decide if the facility will meet their needs.

The plaintiff, Samuel Love, has paraplegia and uses a wheelchair for mobility. He alleged that when he tried to book a room at the San Francisco Marriot Marquis, the website lacked sufficient information about the hotel's accessibility features. The website did list accessible features in some guestrooms, including the type of room, size and number of beds, type of accessible bathing facility, accessible communication features, and more. In addition, the website had a phone number for prospective guests to call. Love argued that the information was insufficient for him to determine whether the hotel would meet his accessibility needs. He argued that more detailed descriptions would be appropriate. The Northern District of California District Court [dismissed](#) the case finding that the hotel listed

details beyond what the ADA required. Love appealed the case to the Ninth Circuit.

The Ninth Circuit looked to the Department of Justice's guidance for interpretation of the ADA's requirements. The guidance states that older hotels can simply say, "features do not comply with the 1991 Standards." Newer hotels only need to specify that the hotel is accessible, and describe the type of room (e.g., deluxe suite), size and number of beds (e.g., two queen beds), type of accessible bathing facility (e.g., roll-in shower), and the accessible communication features. The hotel should also train staff to answer questions about accessibility features and provide more detailed information. Finding that the hotel met these requirements, the Ninth Circuit affirmed dismissal of the case.

#### **BIPARTISAN INFRASTRUCTURE LAW IMPROVING ACCESS FOR PEOPLE WITH DISABILITIES**

The Bipartisan Infrastructure Law (BIL) passed late last year allocates funding for a variety of grant programs that will improve transportation access for people with disabilities. For example, between fiscal years (FY) 2022 and 2026, a total of \$5 billion will be available to provide competitive grants for airport terminal development projects that address the aging infrastructure of the nation's airports. In early July, the Federal Aviation Administration [announced](#) grant awards of \$1 billion for FY 2022. Of the grants awarded, 73 include projects that will improve airport access for people with disabilities.

The BIL also includes funding from the Federal Transit Administration (FTA) for the PVA-supported All Stations Accessibility Program (ASAP). On July 26, FTA [announced](#) the opportunity to apply for approximately \$343 million in ASAP grants that will be available for FY 2022.

The main purpose of the program is to provide funding to states, territories, the District of Columbia, and local governmental authorities to help finance capital projects to upgrade the accessibility of legacy rail fixed guideway public transportation systems (e.g., subway, commuter rail, light rail) for persons with disabilities, including those who use wheelchairs, by increasing the number of existing stations or facilities, such as outdoor light-rail boarding and alighting areas, that are fully accessible.





## INFLATION REDUCTION ACT PASSES CONGRESS

On August 12, Congress finalized passage of the Inflation Reduction Act (IRA) – a significantly reduced version of the Build Back Better bill that had been promoted as one of the signature domestic initiatives of the Biden Administration. The President signed the legislation on August 16. Although it did not include a number of measures prioritized by the disability community, it nevertheless contains several provisions that will aid people with disabilities and older Americans. Overall, the legislation raises approximately \$472 billion for clean energy and climate investments, improvements to Medicare and Affordable Care Act health coverage, and addresses deficit reduction by closing several tax loopholes targeted at large corporations and very high-income individuals. The non-partisan Joint Committee on Taxation determined that taxes on families making less than \$400,000 a year could actually be reduced under the IRA.

Energy efficiencies for low income communities - The legislation contains \$60 billion in grants, tax credits, and other subsidies to help lower-income families by increasing the energy efficiency of their homes, cars, and communities. The bill would also specifically address air pollution, greenhouse gas emissions, and other long-standing pollution issues that have disproportionately impacted low-income communities, tribes, and territories, including Puerto Rico.

Accessible, affordable transportation - In addition, the IRA's \$3.2 billion investment in a Neighborhood Access and Grant Equity Program provides necessary support for accessible, affordable and safe transportation. Funding can be used towards accessible sidewalk improvements, curb ramps, audible pedestrian signals, safety improvements for vulnerable road users, assessing transportation equity and expanding public participation in transportation planning by individuals and organizations in disadvantaged or underserved communities.

Health care provisions - The IRA extends for three years the American Rescue Plan's temporary enhancements to premium tax credits under the Affordable Care Act (ACA). Without the extension, an estimated 3.1 million

people could have lost their ACA coverage due to a predicted spike in their insurance premiums. The agreement also takes steps to lower the cost of prescription drugs for both the federal government and consumers, including a \$35-per-month cap on the out-of-pocket cost of insulin.

For those on Medicare, the IRA allows the Secretary of Health and Human Services to begin negotiating on the price of certain prescription drugs beginning in 2023. This is expected to result in savings for many who depend on Part D for critical pharmaceuticals. Starting in 2025, it will also cap Medicare patients' out of pocket costs at \$2,000 per year, with the option to break that amount into more affordable monthly payments. The proposal holds annual premium growth to existing levels to keep insurers and manufacturers from passing the costs of any new financial responsibilities on to beneficiaries. Finally, it makes all COVID vaccines free in Medicare, whose population was the only one required to pay for such vaccines.

The IRA also expands premium and co-pay assistance on prescription drugs for low-income individuals. Currently, the low-income subsidy program under Medicare Part D is fully available to all seniors earning less than 135 percent of the federal poverty level, and partially available to seniors earning less than 150 percent of the federal policy level. The IRA eliminates the partial subsidy status, giving those seniors the full low-income subsidy under Medicare Part D.

Finally, the IRA includes language addressing a key disability concern about the use of Quality Adjusted Life Years (QALYs). It would ban the use of evidence or findings from comparative effectiveness research that treats extending the life of a person with a disability as of lower value than extending the life of an individual without a disability.

## VETERANS EDUCATION PROVISION HEADED TO THE PRESIDENT

The Ensuring the Best Schools for Veterans Act of 2022 (S. 5548) passed the House last week by unanimous consent. The bill will improve access to high-quality educational programs for student veterans using the

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Post 9/11 GI Bill. It previously passed the Senate and will be headed to the President's desk for signature.

After the creation of the Montgomery GI Bill, the VA discovered several educational facilities that were filling their classes with veterans receiving educational benefits, but not providing a quality education. The 85/15 rule was established to require that for a school to collect VA education benefits, the student body could not be comprised of more than 85 percent of student veterans receiving education benefits.

The Johnny Isakson and David P. Roe, M.D. Veterans' Health Care and Benefits Improvement Act of 2020 updated scrutiny of the 85/15 rule and several institutions of higher learning were running into certification issues, many based on smaller programs offered within larger campus structures. The Ensuring the Best Schools for Veterans Act of 2022 will address some reporting barriers, allow college campuses to apply for a waiver for programs with smaller enrollment numbers, and hopefully ensure a smooth enrollment period for student veterans in the upcoming academic year.

## NEWS OF NOTE

### Korean War Memorial Rededication

The Korean War Veterans Memorial on the National Mall in Washington was first dedicated on July 27, 1995. Construction on a long-planned addition to the Memorial began in March of last year and the new extension was officially unveiled recently. Added to the Memorial is a Wall of Remembrance listing the names of 36,000 service members and 7,174 Korean augmentees to the U.S. Army (KATUSA) who lost their lives defending South Korea from the North. The names are arranged in order of rank and branch of service to demonstrate how the toll fell unevenly across the military. Military.com has coverage of the rededication ceremony [here](#).

### GI Bill Comparison Tool Updated

As part of the Digital GI Bill modernization, the VA is simplifying and modernizing the GI Bill education benefits experience. With the latest enhancements to

the [GI Bill Comparison Tool](#), you can now compare schools side-by-side, search by location using a map feature, and even search on the go with a mobile-friendly design.

### Should Veterans Sign Up for Medicare Part D?

Do veterans who have VA health care, TRICARE, and other forms of health care coverage need to sign-up for Medicare Part D? In this episode of [theSITREP](#), learn about Medicare Part D policy and who to reach out to for help.

### DOJ Announces Intent to Start Rulemaking Process for State and Local Government Website Accessibility

The Department of Justice has announced its [intent to begin the rulemaking process](#) to establish accessibility regulations for state and local government websites. Title II of the Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities by state and local government programs, activities, and services. However, many of these public entities fail to incorporate accessibility features in their online content. Currently, there are no enforceable technical standards on Title II website accessibility. The rulemaking, which is expected to be released in April 2023, will provide technical standards to assist state and local governments in complying with ADA anti-discrimination requirements and making their websites accessible.

## HEARINGS, WEBINARS, & EVENTS

### Now Available: PVA's Webinar on Vacationing and the ADA: Increasing Access for Wheelchair Users

On July 25, PVA held a webinar in honor of the anniversary of the Americans with Disabilities Act (ADA) on Vacationing and the ADA. To view the webinar recording and presentation, click [here](#).

### Upcoming Access Board Webinar: Common Sources of Confusion in the ADA and ABA Standards

Certain provisions in the Americans with Disabilities Act (ADA) and the Architectural Barriers Act (ABA)

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Accessibility Standards are prone to misinterpretation. The next webinar in the Access Board's free monthly series will take place September 1 from 2:30 – 4:00 p.m. ET and will review and clarify common sources of confusion in the standards, including application of the standards in new construction and alterations, electric vehicle charging stations, toilet rooms, signs, accessible routes and ground surfaces, and other areas and elements. Visit Great Lakes ADA Center's Common Sources of Confusion webinar [webpage](#) for more information or to register.

### **Patient Rights Action Fund Hosts Webinar on Disability Perspectives on Assisted Suicide**

On September 9 at 4:00 p.m. ET, the Patient Rights Action Fund (PRAF) will sponsor a webinar focusing on assisted suicide from the viewpoint of the disability community. Featured presenters include Lydia X. Z. Brown, Esq. with the Autistic Women and Non-Binary Network, John Kelly from Not Dead Yet, Vincenzo Piscopo with United Spinal Association, and Ian McIntosh with PRAF. To register, click [here](#).

### **VA Caregiver Monthly Education Call**

The VA is inviting veterans' caregivers to join the August Caregiver Support Line (CSL) call, "Good Grief: Finding Hope in the Necessary Losses of Being a Caregiver," on August 17 at 3:00 p.m. ET. Caregivers must register to join the call by calling 1-855-260-3274. Caregivers that are unable to attend these calls can access presentations on the [CSL's](#) webpage.

### **Upcoming Veterans' Affairs Committee Action**

Please visit the House Veterans' Affairs Committee [webpage](#) and the Senate Veterans' Affairs Committee [webpage](#) for information on upcoming hearings and markups.