

MEMO TO: National Officers
National Service Officers
Department Commanders and Adjutants
National Interim Legislative Committee
DAVA National Adjutant

FROM: Barry A. Jesinoski, Executive Director, Washington Headquarters

SUBJ: **Supreme Court Decision on the Patient Protection and Affordable Care Act (ACA)**

DATE: July 3, 2012

In the wake of the Supreme Court's decision of June 28, 2012 on the Constitutionality of the ACA, some DAV members and others have again asked how these laws (Public Law 111-148, Public Law 111-152) might affect veterans who are Department of Veterans Affairs (VA) patients or military health care (TRICARE) beneficiaries. We are happy to provide this clarification and reassurance.

As many of you know, in general the ACA requires that the vast majority of U.S. citizens and legal residents must obtain private health coverage by 2014 or they (or their employers in some cases) will face payment of a federal tax penalty. The majority opinion of the Court upheld this taxing policy as Constitutional, but with minority reservations. The ACA also requires all state Medicaid programs to expand coverage to larger populations of the poor, when their incomes do not exceed 133 percent of the federal poverty rate. The Court expressed minority dissent on the Medicaid feature, noting that it was "economic dragooning" of the states. It is unclear how or if Congress, the states, or the Administration will deal with the Medicaid mandate. The Court determined the remainder of the ACA to be Constitutional; thus, the major thrust of the laws will stand unless Congress repeals them in a future act.

All veterans enrolled in Department of Veterans Affairs (VA) health care and their dependents and survivors enrolled in CHAMPVA; and, all military families, military retirees, military and retiree dependents; and survivors who are enrolled in military health care, TRICARE, and TRICARE for Life, are deemed by the Secretary of Health and Human Services to possess the minimum essential coverage that satisfies the individual mandate. As such, veterans and military families *are not* required to buy private coverage in addition to their government-provided health services.

Furthermore, in 2014 under the ACA, veterans and their family dependents, like all other Americans, gain the option to buy private health plans through their employers or the state-run

insurance exchanges being established. Based on income limitations, they may also be eligible for federal subsidies to enable them to purchase private insurance or exchange coverage.

On May 23, 2012, the Internal Revenue Service (IRS) issued final regulations that provide an individual is eligible for “minimum essential coverage” under the VA health care programs authorized under chapters 17 and 18 of Title 38, United States Code. This rule provides that veterans enrolled in VA health care and survivors, spouses, and dependents enrolled in the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), as well as the Spina Bifida Health Care Program for children of Vietnam veterans, meet the minimum essential coverage requirement under ACA.

One of the most popular features of the ACA guarantees that if health insurance plans provide for coverage of dependent children at all, they must continue to extend that coverage to young adult dependent children of insured families until those dependents achieve the age of 26 years. Within Title 38, United States Code, the authorizing statute for the VA’s CHAMPVA program does not conform to this ACA requirement. Under current law CHAMPVA coverage for dependents ends at age 18, or is extended to age 23 if the dependent child is enrolled in a course of accredited full-time education or training following high school.

Legislation was introduced in the House and Senate to establish parity between CHAMPVA and ACA policies on coverage of young adult dependents, but that bill has not been advanced in either legislative body. DAV continues to seek legislative equity to extend dependent coverage to age 26 under CHAMPVA, on par with the ACA.

The ACA includes several other provisions related to VA. One provision requires the VA to report to Congress on any effects on VA health care that might accrue from the annual fee ACA imposed on certain manufacturers and importers of brand name prescription drugs, and from application of a new excise tax on the sale of certain medical devices by manufacturers, producers and importers. This completed report is currently under internal review within VA. We have been assured DAV will gain access to this report.

DAV intends to continue protecting the VA health care system upon which so many of our members must rely as a vital service. We will monitor the implementation of the ACA to ensure that it will not adversely impact wartime disabled veterans, their families, dependents and survivors.



A handwritten signature in black ink, appearing to read "Barry A. Jesimoski", is positioned above the printed name.

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