



Statement of the

Commissioned Officers Association of the U.S. Public Health
Service (COA)

Regarding

Implementation of the Post-9/11 GI Bill

For the hearing record

Committee On Veterans Affairs, United States Senate

Presented by

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Request to Senate Committee on Veterans Affairs:

Extend GI Bill Transferability to USPHS Commissioned Corps

Introduction

My name is Gerard Farrell. I am a retired Navy Captain and the Executive Director of the Commissioned Officers Association of the U.S. Public Health Service (COA). I represent the views of this Association's 7,000 members, all of whom are active-duty or retired officers of the Commissioned Corps of the U.S. Public Health Service (USPHS).

I am limiting my comments to one element of the Post-9/11 GI Bill. It is the provision that permits eligible service members to transfer their unused GI Bill educational benefits to their dependent family members. I respectfully ask this Committee to extend this popular entitlement and powerful recruiting and retention tool to the USPHS Commissioned Corps and the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA). The USPHS Commissioned Corps has an active-duty force of 6,500. The NOAA Corps has an active-duty force of only 300.

Summary

As a matter of law and precedent, USPHS and NOAA Corps officers have been included in all GI Bill programs for the past 60 years. USPHS and NOAA officers are veterans under both Title 10 and Title 42 of the U.S. Code. Section 213(d) of Title 42 states clearly that USPHS officers are entitled to "all" programs administered by the Veterans Administration.

USPHS and NOAA officers are entitled to Post-9/11 GI Bill benefits, with one exception: transferability. At present, they cannot transfer their own, unused educational benefits to dependent family members. This is because the statute gives transferability authority to the Secretaries of Defense, Army, Navy, Air Force, and Homeland Security. But it does not mention the Secretary of the Department of Health and Human Services, which is the home of the USPHS Commissioned Corps, or the Secretary of Commerce, which is the parent agency of the NOAA Corps. A powerful recruitment and retention tool is thus inaccessible to the nation's two smallest uniformed services.

The transferability option was designed as a tool to retain mid-career service members with critical skills. There is no area of federal service more desperately in need of such important retention tools as the Public Health Service. The critical condition of the nation's public health workforce is well-documented.

Because both uniformed services are so small, the cost to the U.S. Treasury of extending transferability to USPHS and NOAA officers would be minimal relative to the overall cost of the Post-9/11 GI Bill. I want to emphasize this point because I am told that cost

has, in fact, recently been raised as an obstacle. No other reason for excluding USPHS and NOAA has ever been advanced over the 19 months we have urged members of Congress and the Administration to find a way to extend transferability to these two services.

Transferability is a potentially powerful aid not only to USPHS recruiting, but also, indirectly, to the Department of Defense. That is because DoD relies increasingly on mental health specialists from the USPHS to treat traumatized and brain-injured service members returning from Iraq and Afghanistan.

Background

In the original Post-9/11 GI Bill, approved by Congress and signed by the President in June of 2008, USPHS and NOAA were left out entirely. The reason is not clear. Our assumption always has been that it was an unintentional oversight, given the fact that both services had been included in the Montgomery GI Bill.

The Association first brought this matter to the attention of this Committee on July 11, 2008, with letters to all Committee members and their key staff people. Senator Webb's staff kindly facilitated a meeting with the Committee's professional staff on July 24. In addition, I had the great pleasure of meeting personally with the Chairman on September 23. I left that meeting much encouraged.

The Veterans Administration partially corrected the original oversight when it developed implementing regulations last year. Its final rule was published on March 31, 2009. The agency cited 42 U.S.C. 213, with regard to USPHS, and 33 U.S.C. 3002 and 3072, with regard to NOAA. The agency said its own General Counsel interpreted these statutory provisions as expanding the definition of 'Armed Forces' in 38 U.S.C.101(10) to also include USPHS and NOAA for purposes of benefits administered by VA. The agency concluded that service as a commissioned officer of USPHS or NOAA meets the 'active duty in the Armed Forces' service requirement in section 3311 of Title 38, U.S. C. It said, "We agree that commissioned officers of PHS and NOAA are eligible for benefits under the Post-9/11 GI Bill."

Well, not entirely. The agency went on to explain that "while VA is responsible for administering payment of transferred benefits, the Department of Defense is responsible for determining eligibility for transfer of the entitlement to dependents. Specifically, the statute provides that the Secretary of Defense may authorize the Secretary of the Army, Secretary of the Navy, Secretary of the Air Force, and the Secretary of Homeland Security...to determine if individuals serving in the Armed Forces in their respective departments are eligible to transfer their entitlement to dependents." In short, the agency decided it had no authority to determine eligibility for transferring educational benefits under the Post-9/11 GI Bill. It would defer to the Defense Department.

In a courtesy call shortly before the final rule was published, the agency's educational affairs director explained to COA why the agency did not see a way to include USPHS and NOAA officers in transferability.

Since the VA ruling last year, this Association has appealed to Congress and to the Administration. We continue to seek support for corrective action that would fix the rest of the problem by extending transferability to USPHS and NOAA.

In September, I was pleased to see the introduction in the House of H.R. 3657, which would accomplish that. It is under review by the House Veterans Affairs Committee's Subcommittee on Economic Opportunity. There is no Senate companion.

This Association has written to the President and to the Secretary of Health and Human Services. I have met personally with the Assistant Secretary for Health and the Surgeon General on several occasions. In all oral and written communications, the Association has emphasized the importance of asking Congress for transferability authority. To date, no such departmental request has been made, and we do not know why.

Why transferability is needed

The Department of Health and Human Services currently faces serious challenges in recruiting and retaining qualified health professionals, particularly physicians and dentists. This is especially true of the Indian Health Service. In just one region of one sparsely populated state, for example, there are more than 200 vacancies. In hard-to-fill positions, vacancies are likely to remain for two years.

For the first time in many years, the number of physicians in the USPHS Commissioned Corps has dropped below 1,000. There is also an acute shortage of dentists.

It is unclear to this Association whether existing incentive programs do not work or have not been seriously pursued. In any event, we understand that HHS recently awarded a contract to a major consulting firm, directing it to develop a recruiting program to fill 500 vacancies for physicians, dentists, and nurses.

The HHS Department's own need for scarce health care professionals reflects, in part, an increasing need on the part of the Defense Department. DoD relies to a significant degree on the USPHS to provide mental health care to traumatized and brain-injured soldiers and marines who are returning from Iraq and Afghanistan. In 2008, for example, HHS agreed to detail 200 USPHS mental health experts to the Defense Department in order to deliver improved clinical care to these service members.

The Military Coalition, a consortium of 34 military and veterans' organizations, wrote to this Committee in September and emphasized this fact. The letter (attached) requested a technical change that would authorize HHS and Commerce to use transferability as a career incentive for USPHS and NOAA Corps officers. The letter pointed out that "HHS

is experiencing critical medical and other specialty expertise shortages in the USPHS at a time when the Service is providing unique capabilities to the nation.”

The Military Coalition’s letter referred not only to the need for better treatment of wounded warriors, but also to new USPHS responsibilities in the areas of emergency preparedness and disaster response. This includes stepped-up training of first-responders to protect the public’s health in case of a natural disaster or terrorist attack.

Why transferability is so popular

Transferability is the GI Bill benefit that matters most to active-duty USPHS officers, all of whom are credentialed health professionals – doctors, dentists, nurses, engineers, mental health specialists, and others. When they receive their commissions, they already hold college degrees. In many (if not most) cases, they also hold advanced or terminal degrees in their fields. While some USPHS officers choose to use their GI Bill benefits to pursue doctorates in nursing, psychology, environmental health, or other health-related disciplines, the vast majority would prefer to transfer their own unused benefits to their children. That is why transferability represents potentially powerful recruiting tool. It is also why transferability is the top legislative priority of COA and its members.

From the perspective of HHS, there would appear to be no downside to asking for transferability authority from Congress. The HHS Secretary could use this tool as selectively as she might wish; she could use it a lot or not at all. As a recruiting and retention aid, transferability might work where other incentives apparently have failed. One thing is certain, however: seeking transferability would demonstrate to active-duty USPHS officers that their HHS leaders support them. From the Association’s perspective, a greater boost to morale is difficult to imagine.

Conclusion

According to federal law and agency regulations, USPHS and NOAA officers are – at least theoretically – entitled to all benefits administered by the Veterans Administration. As a practical matter, however, they are excluded from the Post-9/11 Bill benefit that means the most to them. This is the option of transferring their own unused educational benefits to dependent family members. This inequity can be remedied by this Committee. No plausible and substantive reason for *not* remedying it has been expressed by anyone.

On behalf of dedicated USPHS and NOAA officers stationed here and around the world, I respectfully ask the chairman and members of the Committee on Veterans Affairs to extend GI Bill transferability to these two federal uniformed services.

Thank you for your attention and consideration.

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