

## Calendar No. 686

105TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 105-362

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### PERSIAN GULF WAR VETERANS ACT OF 1998

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OCTOBER 2, 1998.—Ordered to be printed

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Mr. SPECTER, from the Committee on Veterans' Affairs,  
submitted the following

### REPORT

[To accompany S. 2358]

The Committee on Veterans' Affairs, to which was referred the bill (S. 2358) to provide for the establishment of a service connection for illnesses associated with service in the Persian Gulf War, to extend and enhance certain health care authorities relating to such service, and for other purposes, having considered the same, reports favorably thereon with amendments, and recommends that the bill, as amended, do pass.

#### COMMITTEE AMENDMENTS

The amendments are as follows:

In the Table of Contents, strike "TITLE I—SERVICE CONNECTION FOR GULF WAR ILLNESSES" and insert in lieu thereof "TITLE I—SERVICE CONNECTION FOR PERSIAN GULF WAR ILLNESSES".

In the Table of Contents, strike "TITLE II—EXTENSION AND ENHANCEMENT OF GULF WAR HEALTH CARE AUTHORITIES" and insert in lieu thereof "TITLE II—EXTENSION AND ENHANCEMENT OF PERSIAN GULF WAR HEALTH CARE AUTHORITIES".

On page 3, line 2, insert "PERSIAN" after "FOR".

On page 10, lines 10 and 11, strike out "sections 103(a)(6) and 104(d)" and insert in lieu thereof "section 103(a)(6)".

On page 13, line 2, strike out clause (vi).

On page 13, line 3, strike out "ionizing" and insert in lieu thereof "sources of".

On page 26, line 2, insert "PERSIAN" after "OF".

Thus, the text of the bill (strike out the material in brackets and insert the material in *italic*) as reported is as follows:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Persian Gulf War Veterans Act of 1998”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:  
Sec. 1. Short title; table of contents.

**TITLE I—SERVICE CONNECTION FOR *PERSIAN GULF WAR* ILLNESSES**

- Sec. 101. Presumption of service connection for illnesses associated with service in the Persian Gulf during the Persian Gulf War.  
Sec. 102. Agreement with National Academy of Sciences.  
Sec. 103. Monitoring of health status and health care of Persian Gulf War veterans.  
Sec. 104. Reports on recommendations for additional scientific research.  
Sec. 105. Outreach.  
Sec. 106. Definitions.

**TITLE II—EXTENSION AND ENHANCEMENT OF *PERSIAN GULF WAR* HEALTH CARE AUTHORITIES**

- Sec. 201. Extension of authority to provide health care for Persian Gulf War veterans.  
Sec. 202. Extension and improvement of evaluation of health status of spouses and children of Persian Gulf War veterans.

**TITLE III—MISCELLANEOUS**

- Sec. 301. Assessment of establishment of independent entity to evaluate post-conflict illnesses among members of the Armed Forces and health care provided by DoD and VA before and after deployment of such members.

**TITLE I—SERVICE CONNECTION FOR *PERSIAN GULF WAR* ILLNESSES**

**SEC. 101. PRESUMPTION OF SERVICE CONNECTION FOR ILLNESSES ASSOCIATED WITH SERVICE IN THE PERSIAN GULF DURING THE PERSIAN GULF WAR.**

(a) **IN GENERAL.**—(1) Subchapter II of chapter 11 of title 38, United States Code, is amended by adding at the end the following:

**“§ 1118. Presumptions of service connection for illnesses associated with service in the Persian Gulf during the Persian Gulf War**

“(a)(1) For purposes of section 1110 of this title, and subject to section 1113 of this title, each illness, if any, described in paragraph (2) shall be considered to have been incurred in or aggravated by service referred to in that paragraph, notwithstanding that there is no record of evidence of such illness during the period of such service.

“(2) An illness referred to in paragraph (1) is any diagnosed or undiagnosed illness that—

“(A) the Secretary determines in regulations prescribed under this section to warrant a presumption of service connection by reason of having a positive association with exposure to a biological, chemical, or other toxic agent, environmental or wartime hazard, or preventive medicine or vaccine known or presumed to be associated with service in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War; and

“(B) becomes manifest within the period, if any, prescribed in such regulations in a veteran who served on active duty in that theater of operations during that war and by reason of such service was exposed to such agent, hazard, or medicine or vaccine.

“(3) For purposes of this subsection, a veteran who served on active duty in the Southwest Asia theater of operations during the Persian Gulf War and has an illness described in paragraph (2) shall be presumed to have been exposed by reason of such service to the agent, hazard, or medicine or vaccine associated with the illness in the regulations prescribed under this section unless there is conclusive evidence to establish that the veteran was not exposed to the agent, hazard, or medicine or vaccine by reason of such service.

“(b)(1)(A) Whenever the Secretary makes a determination described in subparagraph (B), the Secretary shall prescribe regulations providing that a presumption of service connection is warranted for the illness covered by that determination for purposes of this section.

“(B) A determination referred to in subparagraph (A) is a determination based on sound medical and scientific evidence that a positive association exists between—

“(i) the exposure of humans or animals to a biological, chemical, or other toxic agent, environmental or wartime hazard, or preventive medicine or vaccine

known or presumed to be associated with service in the Southwest Asia theater of operations during the Persian Gulf War; and

“(ii) the occurrence of a diagnosed or undiagnosed illness in humans or animals.

“(2)(A) In making determinations for purposes of paragraph (1), the Secretary shall take into account—

“(i) the reports submitted to the Secretary by the National Academy of Sciences under section 102 of the Persian Gulf War Veterans Act of 1998; and

“(ii) all other sound medical and scientific information and analyses available to the Secretary.

“(B) In evaluating any report, information, or analysis for purposes of making such determinations, the Secretary shall take into consideration whether the results are statistically significant, are capable of replication, and withstand peer review.

“(3) An association between the occurrence of an illness in humans or animals and exposure to an agent, hazard, or medicine or vaccine shall be considered to be positive for purposes of this subsection if the credible evidence for the association is equal to or outweighs the credible evidence against the association.

“(c)(1) Not later than 60 days after the date on which the Secretary receives a report from the National Academy of Sciences under section 102 of the Persian Gulf War Veterans Act of 1998, the Secretary shall determine whether or not a presumption of service connection is warranted for each illness, if any, covered by the report.

“(2) If the Secretary determines under this subsection that a presumption of service connection is warranted, the Secretary shall, not later than 60 days after making the determination, issue proposed regulations setting forth the Secretary's determination.

“(3)(A) If the Secretary determines under this subsection that a presumption of service connection is not warranted, the Secretary shall, not later than 60 days after making the determination, publish in the Federal Register a notice of the determination. The notice shall include an explanation of the scientific basis for the determination.

“(B) If an illness already presumed to be service connected under this section is subject to a determination under subparagraph (A), the Secretary shall, not later than 60 days after publication of the notice under that subparagraph, issue proposed regulations removing the presumption of service connection for the illness.

“(4) Not later than 90 days after the date on which the Secretary issues any proposed regulations under this subsection, the Secretary shall issue final regulations. Such regulations shall be effective on the date of issuance.

“(d) Whenever the presumption of service connection for an illness under this section is removed under subsection (c)—

“(1) a veteran who was awarded compensation for the illness on the basis of the presumption before the effective date of the removal of the presumption shall continue to be entitled to receive compensation on that basis; and

“(2) a survivor of a veteran who was awarded dependency and indemnity compensation for the death of a veteran resulting from the illness on the basis of the presumption before that date shall continue to be entitled to receive dependency and indemnity compensation on that basis.

“(e) Subsections (b) through (d) shall cease to be effective 10 years after the first day of the fiscal year in which the National Academy of Sciences submits to the Secretary the first report under section 102 of the Persian Gulf War Veterans Act of 1998.”

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1117 the following new item:

“1118. Presumptions of service connection for illnesses associated with service in the Persian Gulf during the Persian Gulf War.”

(b) CONFORMING AMENDMENTS.—Section 1113 of title 38, United States Code, is amended—

(1) by striking out “or 1117” each place it appears and inserting in lieu thereof “1117, or 1118”; and

(2) in subsection (a), by striking out “or 1116” and inserting in lieu thereof “, 1116, or 1118”.

(c) COMPENSATION FOR UNDIAGNOSED GULF WAR ILLNESSES.—Section 1117 of title 38, United States Code, is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively; and

(2) by inserting after subsection (b) the following new subsection (c):

“(c)(1) Whenever the Secretary determines under section 1118(c) of this title that a presumption of service connection for an undiagnosed illness (or combination of

undiagnosed illnesses) previously established under this section is no longer warranted—

“(A) a veteran who was awarded compensation under this section for such illness (or combination of illnesses) on the basis of the presumption shall continue to be entitled to receive compensation under this section on that basis; and

“(B) a survivor of a veteran who was awarded dependency and indemnity compensation for the death of a veteran resulting from the disease on the basis of the presumption before that date shall continue to be entitled to receive dependency and indemnity compensation on that basis.

“(2) This subsection shall cease to be effective 10 years after the first day of the fiscal year in which the National Academy of Sciences submits to the Secretary the first report under section 102 of the Persian Gulf War Veterans Act of 1998.”

**SEC. 102. AGREEMENT WITH NATIONAL ACADEMY OF SCIENCES.**

(a) **PURPOSE.**—The purpose of this section is to provide for the National Academy of Sciences, an independent nonprofit scientific organization with appropriate expertise, to review and evaluate the available scientific evidence regarding associations between illnesses and exposure to toxic agents, environmental or wartime hazards, or preventive medicines or vaccines associated with Gulf War service.

(b) **AGREEMENT.**—The Secretary of Veterans Affairs shall seek to enter into an agreement with the National Academy of Sciences for the Academy to perform the activities covered by this section and [sections 103(a)(6) and 104(d)] *section 103(a)(6)*. The Secretary shall seek to enter into the agreement not later than two months after the date of enactment of this Act.

(c) **IDENTIFICATION OF AGENTS AND ILLNESSES.**—(1) Under the agreement under subsection (b), the National Academy of Sciences shall—

(A) identify the biological, chemical, or other toxic agents, environmental or wartime hazards, or preventive medicines or vaccines to which members of the Armed Forces who served in the Southwest Asia theater of operations during the Persian Gulf War may have been exposed by reason of such service; and

(B) identify the illnesses (including diagnosed illnesses and undiagnosed illnesses) that are manifest in such members.

(2) In identifying illnesses under paragraph (1)(B), the Academy shall review and summarize the relevant scientific evidence regarding illnesses among the members described in paragraph (1)(A) and among other appropriate populations of individuals, including mortality, symptoms, and adverse reproductive health outcomes among such members and individuals.

(d) **INITIAL CONSIDERATION OF SPECIFIC AGENTS.**—(1) In identifying under subsection (c) the agents, hazards, or preventive medicines or vaccines to which members of the Armed Forces may have been exposed for purposes of the first report under subsection (i), the National Academy of Sciences shall consider, within the first six months after the date of enactment of this Act, the following:

(A) The following organophosphorous pesticides:

- (i) Chlorpyrifos.
- (ii) Diazinon.
- (iii) Dichlorvos.
- (iv) Malathion.

(B) The following carbamate pesticides:

- (i) Proxpur.
- (ii) Carbaryl.
- (iii) Methomyl.

(C) The carbamate pyridostigmine bromide used as nerve agent prophylaxis.

(D) The following chlorinated hydrocarbon and other pesticides and repellents:

- (i) Lindane.
- (ii) Pyrethrins.
- (iii) Permethrins.
- (iv) Rodenticides (bait).
- (v) Repellent (DEET).

(E) The following low-level nerve agents and precursor compounds at exposure levels below those which produce immediately apparent incapacitating symptoms:

- (i) Sarin.
- (ii) Tabun.

(F) The following synthetic chemical compounds:

- (i) Mustard agents at levels below those which cause immediate blistering.
- (ii) Volatile organic compounds.
- (iii) Hydrazine.

- (iv) Red fuming nitric acid.
  - (v) Solvents.
  - [(vi) Uranium.]
  - (G) The following [ionizing] sources of radiation:
    - (i) Depleted uranium.
    - (ii) Microwave radiation.
    - (iii) Radio frequency radiation.
  - (H) The following environmental particulates and pollutants:
    - (i) Hydrogen sulfide.
    - (ii) Oil fire byproducts.
    - (iii) Diesel heater fumes.
    - (iv) Sand micro-particles.
  - (I) Diseases endemic to the region (including the following):
    - (i) Leishmaniasis.
    - (ii) Sandfly fever.
    - (iii) Pathogenic escherechia coli.
    - (iv) Shigellosis.
  - (J) Time compressed administration of multiple live, “attenuated”, and toxoid vaccines.
- (2) The consideration of agents, hazards, and medicines and vaccines under paragraph (1) shall not preclude the Academy from identifying other agents, hazards, or medicines or vaccines to which members of the Armed Forces may have been exposed for purposes of any report under subsection (i).
- (3) Not later than six months after the date of enactment of this Act, the National Academy of Science shall submit to the designated congressional committees a report specifying the agents, hazards, and medicines and vaccines considered under paragraph (1).
- (e) DETERMINATIONS OF ASSOCIATIONS BETWEEN AGENTS AND ILLNESSES.—(1) For each agent, hazard, or medicine or vaccine and illness identified under subsection (c), the National Academy of Sciences shall determine, to the extent that available scientific data permit meaningful determinations—
- (A) whether a statistical association exists between exposure to the agent, hazard, or medicine or vaccine and the illness, taking into account the strength of the scientific evidence and the appropriateness of the scientific methodology used to detect the association;
  - (B) the increased risk of the illness among human or animal populations exposed to the agent, hazard, or medicine or vaccine; and
  - (C) whether a plausible biological mechanism or other evidence of a causal relationship exists between exposure to the agent, hazard, or medicine or vaccine and the illness.
- (2) The Academy shall include in its reports under subsection (i) a full discussion of the scientific evidence and reasoning that led to its conclusions under this subsection.
- (f) REVIEW OF POTENTIAL TREATMENT MODELS FOR CERTAIN ILLNESSES.—Under the agreement under subsection (b), the National Academy of Sciences shall separately review, for each chronic undiagnosed illness identified under subsection (c)(1)(B) and for any other chronic illness that the Academy determines to warrant such review, the available scientific data in order to identify empirically valid models of treatment for such illnesses which employ successful treatment modalities for populations with similar symptoms.
- (g) RECOMMENDATIONS FOR ADDITIONAL SCIENTIFIC STUDIES.—(1) Under the agreement under subsection (b), the National Academy of Sciences shall make any recommendations that it considers appropriate for additional scientific studies (including studies relating to treatment models) to resolve areas of continuing scientific uncertainty relating to the health consequences of exposure to toxic agents, environmental or wartime hazards, or preventive medicines or vaccines associated with Gulf War service.
- (2) In making recommendations for additional studies, the Academy shall consider the available scientific data, the value and relevance of the information that could result from such studies, and the cost and feasibility of carrying out such studies.
- (h) SUBSEQUENT REVIEWS.—(1) Under the agreement under subsection (b), the National Academy of Sciences shall conduct on a periodic and ongoing basis additional reviews of the evidence and data relating to its activities under this section.
- (2) As part of each review under this subsection, the Academy shall—
- (A) conduct as comprehensive a review as is practicable of the evidence referred to in subsection (c) and the data referred to in subsections (e), (f), and (g) that became available since the last review of such evidence and data under this section; and

(B) make determinations under the subsections referred to in subparagraph (A) on the basis of the results of such review and all other reviews previously conducted for purposes of this section.

(i) **REPORTS.**—(1) Under the agreement under subsection (b), the National Academy of Sciences shall submit to the committees and officials referred to in paragraph (5) periodic written reports regarding the Academy's activities under the agreement.

(2) The first report under paragraph (1) shall be submitted not later than 18 months after the date of enactment of this Act. That report shall include—

- (A) the determinations and discussion referred to in subsection (e);
- (B) the results of the review of models of treatment under subsection (f); and
- (C) any recommendations of the Academy under subsection (g).

(3) Reports shall be submitted under this subsection at least once every two years, as measured from the date of the report under paragraph (2).

(4) In any report under this subsection (other than the report under paragraph (2)), the Academy may specify an absence of meaningful developments in the scientific or medical community with respect to the activities of the Academy under this section during the 2-year period ending on the date of such report.

(5) Reports under this subsection shall be submitted to the following:

- (A) The designated congressional committees.
- (B) The Secretary of Veterans Affairs.
- (C) The Secretary of Defense.

(j) **SUNSET.**—This section shall cease to be effective 10 years after the last day of the fiscal year in which the National Academy of Sciences submits the first report under subsection (i).

(k) **ALTERNATIVE CONTRACT SCIENTIFIC ORGANIZATION.**—(1) If the Secretary is unable within the time period set forth in subsection (b) to enter into an agreement with the National Academy of Sciences for the purposes of this section on terms acceptable to the Secretary, the Secretary shall seek to enter into an agreement for purposes of this section with another appropriate scientific organization that is not part of the Government, operates as a not-for-profit entity, and has expertise and objectivity comparable to that of the National Academy of Sciences.

(2) If the Secretary enters into an agreement with another organization under this subsection, any reference in this section, sections 103 and 104, and section 1118 of title 38, United States Code (as added by section 101), to the National Academy of Sciences shall be treated as a reference to such other organization.

**SEC. 103. MONITORING OF HEALTH STATUS AND HEALTH CARE OF PERSIAN GULF WAR VETERANS.**

(a) **INFORMATION DATA BASE.**—(1) The Secretary of Veterans Affairs shall, in consultation with the Secretary of Defense, develop a plan for the establishment and operation of a single computerized information data base for the collection, storage, and analysis of information on—

(A) the diagnosed illnesses and undiagnosed illnesses suffered by current and former members of the Armed Forces who served in the Southwest Asia theater of operations during the Persian Gulf War; and

(B) the health care utilization patterns of such members with—

- (i) any chronic undiagnosed illnesses; and
- (ii) any chronic illnesses for which the National Academy of Sciences has identified a valid model of treatment pursuant to its review under section 102(f).

(2) The plan shall provide for the commencement of the operation of the data base not later than 18 months after the date of enactment of this Act.

(3) The Secretary shall ensure in the plan that the data base provides the capability of monitoring and analyzing information on—

- (A) the illnesses covered by paragraph (1)(A);
- (B) the health care utilization patterns referred to in paragraph (1)(B); and
- (C) the changes in health status of veterans covered by paragraph (1).

(4) In order to meet the requirement under paragraph (3), the plan shall ensure that the data base includes the following:

(A) Information in the Persian Gulf War Veterans Health Registry established under section 702 of the Persian Gulf War Veterans' Health Status Act (title VII of Public Law 102–585; 38 U.S.C. 527 note).

(B) Information in the Comprehensive Clinical Evaluation Program for Veterans established under section 734 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (10 U.S.C. 1074 note).

(C) Information derived from other examinations and treatment provided by Department of Veterans Affairs health care facilities to veterans who served in the Southwest Asia theater of operations during the Persian Gulf War.

(D) Information derived from other examinations and treatment provided by military health care facilities to current members of the Armed Forces (including members of the active components and members of the reserve components) who served in that theater of operations during that war.

(E) Such other information as the Secretary of Veterans Affairs and the Secretary of Defense consider appropriate.

(5) Not later than one year after the date of enactment of this Act, the Secretary shall submit the plan developed under paragraph (1) to the following:

(A) The designated congressional committees.

(B) The Secretary of Veterans Affairs.

(C) The Secretary of Defense.

(D) The National Academy of Sciences.

(6)(A) The agreement under section 102 shall require the evaluation of the plan developed under paragraph (1) by the National Academy of Sciences. The Academy shall complete the evaluation of the plan not later than 90 days after the date of its submittal to the Academy under paragraph (5).

(B) Upon completion of the evaluation, the Academy shall submit a report on the evaluation to the committees and individuals referred to in paragraph (5).

(7) Not later than 90 days after receipt of the report under paragraph (6), the Secretary shall—

(A) modify the plan in light of the evaluation of the Academy in the report; and

(B) commence implementation of the plan as so modified.

(b) ANNUAL REPORT.—Not later than April 1 each year after the year in which operation of the data base under subsection (a) commences, the Secretary of Veterans Affairs and the Secretary of Defense shall jointly submit to the designated congressional committees a report containing—

(1) with respect to the data compiled under this section during the preceding year—

(A) an analysis of the data;

(B) a discussion of the types, incidences, and prevalence of the illnesses identified through such data;

(C) an explanation for the incidence and prevalence of such illnesses; and

(D) other reasonable explanations for the incidence and prevalence of such illnesses; and

(2) with respect to the most current information received under section 102(i) regarding treatment models reviewed under section 102(f)—

(A) an analysis of the information;

(B) the results of any consultation between such Secretaries regarding the implementation of such treatment models in the health care systems of the Department of Veterans Affairs and the Department of Defense; and

(C) in the event either such Secretary determines not to implement such treatment models, an explanation for such determination.

#### SEC. 104. REPORTS ON RECOMMENDATIONS FOR ADDITIONAL SCIENTIFIC RESEARCH.

(a) REPORTS.—Not later than 90 days after the date on which the Secretary of Veterans Affairs receives any recommendations from the National Academy of Sciences for additional scientific studies under section 102(g), the Secretary of Veterans Affairs, Secretary of Defense, and Secretary of Health and Human Services shall jointly submit to the designated congressional committees a report on such recommendations, including whether or not the Secretaries intend to carry out any recommended studies.

(b) ELEMENTS.—In each report under subsection (a), the Secretaries shall—

(1) set forth a plan for each study, if any, that the Secretaries intend to carry out; or

(2) in case of each study that the Secretaries intend not to carry out, set forth a justification for the intention not to carry out such study.

#### SEC. 105. OUTREACH.

(a) OUTREACH BY SECRETARY OF VETERANS AFFAIRS.—The Secretary of Veterans Affairs shall, in consultation with the Secretary of Defense and the Secretary of Health and Human Services, carry out an ongoing program to provide veterans who served in the Southwest Asia theater of operations during the Persian Gulf War the information described in subsection (c).

(b) OUTREACH BY SECRETARY OF DEFENSE.—The Secretary of Defense shall, in consultation with the Secretary of Veterans Affairs and the Secretary of Health and

Human Services, carry out an ongoing program to provide current members of the Armed Forces (including members of the active components and members of the reserve components) who served in that theater of operations during that war the information described in subsection (c).

(c) COVERED INFORMATION.—Information under this subsection is information relating to—

- (1) the health risks, if any, resulting from exposure to toxic agents, environmental or wartime hazards, or preventive medicines or vaccines associated with Gulf War service; and
- (2) any services or benefits available with respect to such health risks.

**SEC. 106. DEFINITIONS.**

In this title:

(1) The term “toxic agent, environmental or wartime hazard, or preventive medicine or vaccine associated with Gulf War service” means a biological, chemical, or other toxic agent, environmental or wartime hazard, or preventive medicine or vaccine that is known or presumed to be associated with service in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War, whether such association arises as a result of single, repeated, or sustained exposure and whether such association arises through exposure singularly or in combination.

(2) The term “designated congressional committees” means the following:

(A) The Committees on Veterans’ Affairs and Armed Services of the Senate.

(B) The Committees on Veterans’ Affairs and National Security of the House of Representatives.

(3) The term “Persian Gulf War” has the meaning given that term in section 101(33) of title 38, United States Code.

**TITLE II—EXTENSION AND ENHANCEMENT OF PERSIAN GULF WAR HEALTH CARE AUTHORITIES**

**SEC. 201. EXTENSION OF AUTHORITY TO PROVIDE HEALTH CARE FOR PERSIAN GULF WAR VETERANS.**

Section 1710(e)(3)(B) of title 38, United States Code, is amended by striking out “December 31, 1998” and inserting in lieu thereof “December 31, 2001”.

**SEC. 202. EXTENSION AND IMPROVEMENT OF EVALUATION OF HEALTH STATUS OF SPOUSES AND CHILDREN OF PERSIAN GULF WAR VETERANS.**

(a) EXTENSION.—Subsection (b) of section 107 of the Persian Gulf War Veterans’ Benefits Act (title I of Public Law 103—446; 38 U.S.C. 1117 note) is amended by striking out “ending on December 31, 1998.” and inserting in lieu thereof “ending on the earlier of—

- “(1) the date of the completion of expenditure of funds available for the program under subsection (c); or
- “(2) December 31, 2001.”.

(b) TERMINATION OF CERTAIN TESTING AND EVALUATION REQUIREMENTS.—Subsection (a) of that section is amended by striking out the flush matter following paragraph (3).

(c) OUTREACH.—Subsection (g) of that section is amended—

(1) by inserting “(1)” before “The Secretary”;

(2) by redesignating paragraphs (1) and (2) of paragraph (1), as designated by paragraph (1) of this subsection, as subparagraphs (A) and (B) of that paragraph; and

(3) by adding at the end the following new paragraphs:

“(2) In addition to the outreach activities under paragraph (1), the Secretary shall also provide outreach with respect to the following:

“(A) The existence of the program under this section.

“(B) The purpose of the program.

“(C) The availability under the program of medical examinations and tests, and not medical treatment.

“(D) The findings of any published, peer-reviewed research with respect to any associations (or lack thereof) between the service of veterans in the Southwest Asia theater of operations and particular illnesses or disorders of their spouses or children.

“(3) Outreach under this subsection shall be provided any veteran who served as a member of the Armed Forces in the Southwest Asia theater of operations and who—



- “(A) seeks health care or services at medical facilities of the Department of Veterans Affairs; or  
 “(B) is or seeks to be listed in the Persian Gulf War Veterans Registry.”.
- (d) ENHANCED FLEXIBILITY IN EXAMINATIONS.—That section is further amended—  
 (1) by redesignating subsections (i) and (j) as subsections (k) and (l), respectively; and  
 (2) by inserting after subsection (h) the following new subsection (i):  
 “(i) ENHANCED FLEXIBILITY IN EXAMINATIONS.—In order to increase the number of diagnostic tests and medical examinations under the program under this section, the Secretary may—  
 “(1) reimburse the primary physicians of spouses and children covered by that subsection for the costs of conducting such tests or examinations, with such rates of reimbursement not to exceed the rates paid contract entities under subsection (d) for conducting tests or examinations under the program;  
 “(2) conduct such tests or examinations of spouses covered by that subsection in medical facilities of the Department; and  
 “(3) in the event travel is required in order to facilitate such tests or examinations by contract entities referred to in paragraph (1), reimburse the spouses and children concerned for the costs of such travel and of related lodging.”.
- (e) ENHANCED MONITORING OF PROGRAM.—That section is further amended by inserting after subsection (i), as amended by subsection (d) of this section, the following new subsection (j):  
 “(j) ENHANCED MONITORING OF PROGRAM.—In order to enhance monitoring of the program under this section, the Secretary shall provide for monthly reports to the Central Office of the Department on activities with respect to the program by elements of the Department and contract entities under subsection (d).”.

### TITLE III—MISCELLANEOUS

#### SEC. 301. ASSESSMENT OF ESTABLISHMENT OF INDEPENDENT ENTITY TO EVALUATE POST-CONFLICT ILLNESSES AMONG MEMBERS OF THE ARMED FORCES AND HEALTH CARE PROVIDED BY DOD AND VA BEFORE AND AFTER DEPLOYMENT OF SUCH MEMBERS.

- (a) AGREEMENT FOR ASSESSMENT.—The Secretary of Veterans Affairs shall seek to enter into an agreement with the National Academy of Sciences, or other appropriate independent organization, under which agreement the Academy shall carry out the assessment referred to in subsection (b).
- (b) ASSESSMENT.—(1) Under the agreement, the Academy shall assess the need for and feasibility of establishing an independent entity to—  
 (A) evaluate and monitor interagency coordination on issues relating to the post-deployment health concerns of members of the Armed Forces, including coordination relating to outreach and risk communication, recordkeeping, research, utilization of new technologies, international cooperation and research, health surveillance, and other health-related activities;  
 (B) evaluate the health care (including preventive care and responsive care) provided to members of the Armed Forces both before and after their deployment on military operations;  
 (C) monitor and direct government efforts to evaluate the health of members of the Armed Forces upon their return from deployment on military operations for purposes of ensuring the rapid identification of any trends in diseases or injuries among such members as a result of such operations;  
 (D) provide and direct the provision of ongoing training of health care personnel of the Department of Defense and the Department of Veterans Affairs in the evaluation and treatment of post-deployment diseases and health conditions, including nonspecific and unexplained illnesses; and  
 (E) make recommendations to the Department of Defense and the Department of Veterans Affairs regarding improvements in the provision of health care referred to in subparagraph (B), including improvements in the monitoring and treatment of members referred to in that subparagraph.
- (2) The assessment shall cover the health care provided by the Department of Defense and, where applicable, by the Department of Veterans Affairs.
- (c) REPORT.—(1) The agreement shall require the Academy to submit to the committees referred to in paragraph (3) a report on the results of the assessment under this section not later than one year after the date of enactment of this Act.  
 (2) The report shall include the following:  
 (A) The recommendation of the Academy as to the need for and feasibility of establishing an independent entity as described in subsection (b) and a justification of such recommendation.

(B) If the Academy recommends that an entity be established, the recommendations of the Academy as to—

- (i) the organizational placement of the entity;
- (ii) the personnel and other resources to be allocated to the entity;
- (iii) the scope and nature of the activities and responsibilities of the entity; and
- (iv) mechanisms for ensuring that any recommendations of the entity are carried out by the Department of Defense and the Department of Veterans Affairs.

(3) The report shall be submitted to the following:

(A) The Committee on Veterans' Affairs and the Committee on Armed Services of the Senate.

(B) The Committee on Veterans' Affairs and the Committee on National Security of the House of Representatives.

Amend the title so as to read: "A Bill to provide for the establishment of a presumption of service-connection for illnesses associated with service in the Persian Gulf War, to extend and enhance certain health care authorities relating to such service, and for other purposes."

Amend the title so as to read: "To provide for the establishment of a presumption of service connection for illnesses associated with service in the Persian Gulf War, to extend and enhance certain health care authorities relating to such service, and for other purposes."

#### INTRODUCTION

On January 9, 1997, the Committee held the first of a series of three oversight hearings on Persian Gulf War issues. At the January 9, 1997, hearing, the Committee received the testimony of the Honorable Jesse Brown, Secretary of Veterans Affairs; Mr. George J. Tenet, then-Acting Director, Central Intelligence Agency; and Joyce C. Lashof, M.D., Chairperson, Presidential Advisory Committee on Persian Gulf War Veterans' Illnesses. In addition, the Committee accepted statements and correspondence for the record from the Honorable John C. White, Deputy Secretary of Defense, and The American Legion, the Veterans of Foreign Wars, and the Disabled American Veterans.

On January 29, 1997, the Committee held a second oversight hearing on Persian Gulf War issues, and received the testimony of General H. Norman Schwarzkopf, U.S. Army (Retired), and the Honorable Bernard D. Rostker, Special Assistant to the Deputy Secretary of Defense for Gulf War Illnesses. In addition, the Committee accepted a statement for the record from the Non Commissioned Officers Association of the United States of America.

On April 17, 1997, the Committee held a third oversight hearing on Persian Gulf War issues, and received the testimony of General Colin L. Powell, U.S. Army (Retired), former Chairman, Joint Chiefs of Staff.

On October 24, 1997, the Ranking Minority Member of the Committee, Senator John D. Rockefeller IV, introduced S. 1320, the "Persian Gulf War Veterans Act of 1997," with the cosponsorship of Senator Tom Daschle, Committee Member Daniel K. Akaka, Committee Member Paul Wellstone, and Committee Member Patty Murray. As introduced, S. 1320 would have provided for the establishment of a scientific basis for VA to assess the nature of the association between illnesses and exposure to toxic agents and environmental or other wartime hazards as a result of service in the Persian Gulf during the Persian Gulf War.

On March 17, 1998, the Committee held an additional oversight hearing on Persian Gulf War issues, and received the testimony of Mark E. Gebicke, Director, Military Affairs and Operations, National Security and International Affairs Division, General Accounting Office; the Honorable Bernard D. Rostker, Special Assistant to the Deputy Secretary of Defense for Gulf War Illnesses; the Honorable Gary Christopherson, Acting Assistant Secretary of Defense, Health Affairs; Rear Admiral Michael L. Cowan, Deputy Director for Medical Readiness, Joint Chiefs of Staff, J-4 (Logistics), U.S. Department of Defense; Randolph F. Wycoff, M.D., M.P.H., Associate Commissioner for Operations, Food and Drug Administration; and Melissa A. McDiarmid, M.D., Associate Professor of Medicine, University of Maryland School of Medicine. That hearing focused on shortcomings in chemical and biological warfare medical preparedness during the Persian Gulf War, and on Department of Defense strategies for future deployments.

In addition to the above-noted hearings, the Committee held field hearings on Persian Gulf War issues at the following sites on the dates noted: Pittsburgh, Pennsylvania, January 27, 1997; Philadelphia, Pennsylvania, February 3, 1997; Wormleysburg, Pennsylvania, February 7, 1997; Huntington, West Virginia, April 2, 1997; Wheeling, West Virginia, April 3, 1997; Kent, Washington, August 5, 1997; and Pittsburgh, Pennsylvania, November 20, 1997. At those hearings, testimony was received from Persian Gulf War veterans and their families and other interested persons.

Finally, the Committee has otherwise conducted extensive oversight and investigative activities on Persian Gulf War issues during the 105th Congress. In the spring of 1997, the Committee established a bipartisan Special Investigation Unit (SIU) on Gulf War Illnesses which undertook, over a period exceeding 1 year, a thorough investigation and analysis of all issues related to Persian Gulf War veterans' illnesses and health problems. See Report of the Special Investigation Unit on Gulf War Illnesses, S. Prt. 105-39, September 1, 1998. In connection with this investigation, the SIU conducted numerous staff briefings, site visits, and personal interviews, as summarized in the SIU's report.

On July 27, 1998, Senator Rockefeller introduced S. 2358, the "Persian Gulf War Veterans Act of 1998," with the cosponsorship of the Chairman of the Committee, Senator Arlen Specter, Senator Robert C. Byrd, Senator Daschle, Senator Max Cleland, Senator Kent Conrad, Senator Murray, Senator John F. Kerry, Senator Christopher J. Dodd, Senator Herb Kohl, Senator Barbara A. Mikulski, Committee Member Y. Tim Hutchinson, Senator Wendell H. Ford, Committee Member Strom Thurmond, Committee Member Ben Nighthorse Campbell, and Committee Member James M. Jeffords. As introduced, S. 2358 would have provided for the establishment of a service connection for illnesses associated with service in the Persian Gulf War and would have extended and enhanced certain health care authorities relating to such service.

#### COMMITTEE MEETING

After carefully reviewing the testimony from the foregoing hearings and the preliminary findings of the Special Investigation Unit on Gulf War Illnesses, the Committee met in open session on July

28, 1998, and voted unanimously to report S. 2358, with technical amendments as itemized above.

SUMMARY OF S. 2358 AS REPORTED

S. 2358 as reported (hereinafter referred to as the “Committee bill”) contains freestanding provisions and amendments to title 38, United States Code, that would:

1. Authorize VA to determine by regulation that illnesses specified by regulation shall be considered to have been incurred in or aggravated by service in the Persian Gulf during the Persian Gulf War, and to determine by regulation the period or periods of time after service during which such illnesses must have become manifest in order to be considered to have been incurred in or aggravated by service in the Persian Gulf during the Persian Gulf War (section 101).

2. Require that such determinations be based on sound medical and scientific evidence that a positive association exists between an exposure to biological, chemical, or other toxic agent, environmental or wartime hazard, or preventive medicine or vaccine known or presumed to be associated with Persian Gulf War service and the occurrence of a diagnosed or undiagnosed illness (section 101).

3. Require VA to seek to enter into an agreement with the National Academy of Sciences (NAS) (or an alternate scientific organization) to provide a medical and scientific basis for making such determinations of associations (section 102(b)).

4. Require that NAS (or the alternate contractor) identify biological, chemical, or other toxic agents, environmental or wartime hazards, or preventive medicines or vaccines to which Persian Gulf War veterans may have been exposed (sections 102(c) and (d)).

5. Require that NAS (or the alternate contractor) identify the chronic illnesses, including diagnosed and undiagnosed illnesses, that are manifest in Persian Gulf War veterans (section 102(c)).

6. Require that NAS (or the alternate contractor) make determinations, as possible, concerning (1) whether associations exist between illness and exposures to biological, chemical, or other toxic agents, environmental or wartime hazards, or preventive medicines or vaccines; (2) increased risks of illnesses; and (3) whether there is a plausible biological mechanism or evidence exists of a causal relationship between the exposures and the illnesses (section 102(e)).

7. Require that NAS (or the alternate contractor) assess potential treatment models for chronic undiagnosed illnesses that have affected Persian Gulf War veterans (section 102(f)).

8. Require that NAS (or the alternate contractor) provide recommendations to VA for additional research to resolve areas of scientific uncertainty, and require that, thereafter, VA, the Department of Defense (DOD), and the Department of Health and Human Services (HHS) jointly submit to Congress a report on their plans, if any, to carry out the recommended research (sections 102(g) and 104).

9. Require that VA, in consultation with DOD, establish and operate a computerized information database to collect, store and analyze information on Persian Gulf War veterans' chronic diagnosed and undiagnosed illnesses, and their health care utilization patterns, and to report to the Congress annually with respect to that data (section 103).

10. Require that VA, in consultation with DOD and HHS, conduct ongoing outreach programs to provide information regarding health risks, health care, and related benefits to Persian Gulf War veterans (section 105).

11. Extend VA's authority to provide health care to Gulf War veterans through December 31, 2001 (section 201).

12. Extend and improve VA's program for the health examination and evaluation of the spouses and children of Persian Gulf veterans (section 202).

13. Require that VA enter into an agreement with NAS (or an alternate contractor) to carry out an assessment of the need for, and feasibility of, establishing an independent entity to evaluate and monitor interagency coordination on issues relating to post-deployment health concerns of members of the Armed Forces (section 301).

## DISCUSSION

### TITLE I: SERVICE CONNECTION FOR PERSIAN GULF WAR VETERANS

#### *Section 101. Presumption of service connection for illnesses associated with service in the Persian Gulf during the Persian Gulf War*

##### *Background*

Veterans who sustain service-connected disabilities are entitled to benefits administered by VA including, among other benefits, compensation and priority access to health care services. Generally, veterans may gain eligibility for such benefits by demonstrating a link between their disability and their active military, naval, or air service. To establish such a link, the veteran must show, generally, that his or her disability results from an injury or disease that was incurred coincident with service.

Certain diagnosed diseases are presumed, as a matter of law, to be service-connected if they manifest under conditions specified by statute. For example, chronic diseases specified in 38 U.S.C. § 1101(3) will be presumed to be incurred in service, and they will give rise to a designation of service connection, if they manifest within 1 year of the veteran's separation from service. Other diagnosed diseases, e.g., tuberculosis, multiple sclerosis, etc., will be presumed service connected if they manifest within other periods of time. See 38 U.S.C. § 1112. Underlying these statutory presumptions is a requirement that the veteran be diagnosed with the disease which is the subject of the statutory presumption in question.

Many Gulf War veterans have experienced disabilities resulting from symptoms which elude traditional diagnostic categories. Such veterans had been at significant disadvantage when they sought a designation of service connection under standards that require an underlying diagnosis. As a consequence, VA is authorized by stat-

ute to provide compensation to Persian Gulf War veterans who suffer chronic disabilities resulting from *undiagnosed illnesses* that manifest within the time period specified by VA regulation. 38 U.S.C. § 1117. Similarly, Persian Gulf War veterans are eligible for VA health care services on a priority basis if VA finds, as it has, that Persian Gulf War veterans may have been exposed to toxic substances or environmental hazards. This rule applies even though the veteran might be not be able to establish that the disability in question is associated with toxic or environmental exposures in the Persian Gulf theater of operations. 38 U.S.C. § 1710 (e)(1)(C).

*Committee bill*

Section 101 of the Committee bill would codify VA authority to presume that a diagnosed or undiagnosed illness was incurred in service during the Persian Gulf War, despite the absence of evidence that the illness manifested during service, if the illness becomes manifest within the time period, if any, after service in the Gulf specified by VA regulation and if the illness is one that VA determines, by regulation, is associated with exposure to a biological, chemical, or other toxic agent, environmental or wartime hazard, or preventive medicine or vaccine known to be, or presumed to be, associated with service in the Persian Gulf War. VA would be required to determine such associations, if any, by reference to sound medical and scientific evidence as identified by the National Academy of Sciences (or an alternative scientific organization), as outlined below.

*Section 102. Agreement with National Academy of Sciences*

*Background*

As noted above, many Persian Gulf War veterans have experienced serious, unexplained health problems that many suspect are related to service in the Gulf. Servicemembers were, most assuredly, exposed to many agents that may have adversely affected their health. That said, there does not appear to be any single “Gulf War syndrome.” Rather, Persian Gulf War veterans contend with many symptoms and illnesses, the causes of which are unexplained at this time.

The fact that the symptoms and illnesses of many Persian Gulf War veterans are unexplained is not due to a lack of effort. In 1991, Public Law 102–190 mandated that a registry be maintained of servicemembers exposed to fumes from burning oil wells in Kuwait. That statute also required that medical examinations be provided, on request, to any servicemember on the registry. Finally, Public Law 102–190 required, in addition, that DOD report to the Congress the results of all ongoing studies to determine the health consequences of such exposures, and that it make recommendations for additional studies.

Subsequently, it became evident that exposure to fumes from burning oil wells in Kuwait was not the only potential environmental health hazard to which Persian Gulf War veterans had been exposed. As a consequence, Congress expanded, in the Veterans Health Care Act of 1992 (Public Law 102–585), the Persian

Gulf War Veterans Health Registry, and authorized health examinations, blood and urine testing, and x-rays for all Persian Gulf veterans who requested such services. In addition, the statute required that VA and DOD contract with NAS' Medical Follow-Up Agency (MFUA) to secure a review of existing medical, scientific and other information on the health consequences of service in the Gulf, and to determine whether epidemiological studies ought to be commended by VA and/or DOD.

In April 1994, the National Institutes of Health held a workshop on the health effects of service in the Gulf War. Participants concluded that they were unable to obtain sufficient information to draw conclusions with respect to the causes of illnesses experienced by Gulf War veterans.

On May 26, 1995, the President established the Presidential Advisory Committee on Gulf War Veterans' Illnesses (PAC). The PAC conducted a review of all Governmental activities related to Gulf War illness issues, including the conducting and financing of research, medical treatment activities, and outreach efforts, and issued reports in December 1996 and October 1997 that made several recommendations focused on the need to better understand—and, in the future, prevent—veterans' post-conflict health concerns.

In 1997, the Committee assembled a Special Investigation Unit (SIU) on Gulf War Illnesses which conducted a year-long investigation on issues relating to Persian Gulf War illnesses. The *Report of the Special Investigation Unit on Gulf War Illnesses*, S. Prt. 105-39, found, among other things, that there was insufficient evidence, as of September 1998, to prove or disprove that Gulf War veterans were exposed to chemical weapon nerve agents, or that the health effects which some Gulf War veterans are experiencing were caused by such an exposure. The SIU did find, however, that there is reliable evidence that chemical weapons were present at least one site, Khamisiyah, and that previously unknown information continues to surface on Iraq's chemical weapons capabilities during the Persian Gulf War.

Many Persian Gulf War veterans who are suffering from disabilities that appear to be related to service are still not being compensated. There is a great need to monitor these veterans—and those who still may exhibit disabilities in the future—to define more clearly the long-term health effects of Gulf War service. More importantly, there is a great need to treat these veterans, and to determine whether treatments provided are resulting in positive outcomes. The Committee's Special Investigation Unit found that progress in this regard has not been satisfactory, given the time and money expended on research.

#### *Committee bill*

Section 102 of the Committee bill would require VA to contract with NAS (or another independent scientific organization if VA is unable to reach an agreement with NAS) to provide a scientific basis for determining the association between illnesses and exposures to environmental or wartime hazards as a result of service in the Gulf War. NAS would be directed to identify biological, chemical, or other toxic agents, environmental or wartime hazards, or other preventive medicines or vaccines to which members of the

Armed Forces who served in the Southwest Asia theater of operations during the Gulf War may have been exposed by reason of such service. NAS would be directed, further, to identify the chronic illnesses, including diagnosed and undiagnosed illnesses, that are manifest in Persian Gulf War veterans. In identifying such illnesses, NAS would be required to review and summarize the relevant scientific evidence regarding chronic illnesses among service members and other appropriate populations, and in making determinations of associations between agents and illnesses, NAS would be required to assess statistical associations between exposures and illnesses and to identify plausible biological mechanisms or other evidence of causal relationships between agents and illnesses.

NAS would be directed to begin its analysis by reviewing initially a list of potential agents to which Persian Gulf War veterans may have been exposed. The Committee's purpose in specifying this list is not to limit NAS' consideration of potential causation factors; rather, it is intended to provide an initial blueprint to speed up the process of providing compensation and health care to veterans. In addition, NAS would be directed to assess potential treatment models for chronic undiagnosed illnesses that have affected Persian Gulf War veterans, and to make recommendations for additional research.

*Section 103. Monitoring of health status and health care of Persian Gulf War veterans*

*Background*

The United States military failed, during the Persian Gulf War, to collect or preserve health and operations data which, in retrospect, would have been highly useful in advancing our understanding of the health problems faced by Gulf War veterans. The inability to retrieve such documents greatly hinders VA, DOD, and independent researchers' efforts to establish links between conditions in the Gulf and Gulf War veterans' symptoms and, thus, greatly hinders efforts to discover, and deliver, effective medical treatment to Gulf War veterans. It also impedes VA's timely processing of compensation claims.

*Committee bill*

Section 103 of the Committee bill would require VA, in consultation with DOD, to develop a plan for the creation of a single computerized database to collect, store, and analyze information regarding the health status of current and former members of the Armed Forces who served in the Southwest Asia theater of operations during Persian Gulf War. First, the information database would collect information on chronic diagnosed and undiagnosed illness suffered by Persian Gulf War veterans. Second, it would collect information on the health care utilization patterns of such veterans so that the health status of such veterans could be continuously and uniformly monitored. VA and DOD would be required to report annually to the Congress with respect to that data collected.



*Section 104. Reports on recommendations for additional scientific research*

*Background*

As outlined above, the legislative and executive branches have attempted to address the needs of Persian Gulf War veterans. The common activities of all groups participating in that effort—VA, DOD, NAS' Medical Follow-Up Agency, NIH, the Presidential Advisory Committee on Gulf War Veterans' Illnesses, and the Committee's SIU—have been to study reports of undiagnosed and diagnosed illnesses among Gulf War veterans, to examine the environmental exposures that were present in the Gulf, to evaluate the biological plausibility of various illnesses, and to review the information available on the incidence and prevalence of these health problems.

*Committee bill*

As outlined above, section 102 of the Committee bill would set into motion an NAS analysis of, among other things, scientific research needs and priorities. Section 104 of the Committee bill would require VA, DOD, and HHS to submit a jointly prepared report in response to NAS recommendations concerning such issues. The Committee believes that veterans would be better served if all executive branch officials having an interest in Persian Gulf War veterans' issues would work in a coordinated fashion toward a common end.

*Section 105. Outreach*

Section 105 of the Committee bill would require VA and DOD to consult with each other, and to consult with HHS, in developing coordinated, and ongoing, outreach programs to Persian Gulf War veterans, including active duty service members and members of the Reserve components. Such outreach programs would emphasize health risks resulting from the exposure to toxic agents, environmental or wartime hazards, or preventive medicines or vaccines associated with Persian Gulf War service, and services and benefits available to Persian Gulf War veterans. The Committee believes that evolving information about the diagnosis and treatment of Gulf War illnesses, research issues, and expanding services and benefits for Gulf War veterans, must be readily available to concerned veterans. As is the case with respect to research, a coordinated effort toward a common end by all concerned executive branch agencies would, in the Committee's view, advance the interests of Persian Gulf War veterans.

TITLE II: EXTENSION AND ENHANCEMENT OF PERSIAN GULF WAR  
HEALTH CARE AUTHORITIES

Title II of the Committee bill contains an amendment to title 38, United States Code, and a freestanding provision to extend and improve certain authorities, as outlined below.

*Section 201. Extension of authority to provide health care for Persian Gulf War veterans*

*Background*

As described in some detail above, immediately after the Persian Gulf War—and even to this date—many of the health problems that affect Persian Gulf War veterans are not well understood. Nonetheless, it is the Committee’s judgement that Persian Gulf War veterans should not be denied access to VA health care services on a priority basis pending the evolution of scientific understanding of the ills that affect many Persian Gulf War veterans. Accordingly, under the terms of Public Law 103–446, veterans who may have been exposed to toxic substances or environmental hazards in the Southwest Asia theater of operations during the Persian Gulf War are eligible for VA health care services on a priority basis. VA authority to provide access to care on that basis expires on December 31, 1998. *See* 38 U.S.C. § 1710(e)(3)(B).

*Committee bill*

Section 201 of the Committee bill would extend VA’s authority to provide access to health care services on a priority basis to veterans who may have been exposed to toxic substances or environmental hazards in the Southwest Asia theater of operations during the Persian Gulf War through December 31, 2001.

*Section 202. Extension and improvement of evaluation of health status of spouses and children of Persian Gulf War veterans*

*Background*

Generally, VA provides health care services to eligible veterans, not to eligible veterans’ family members. Nonetheless, VA is authorized to evaluate the health status of Persian Gulf War veterans’ spouses and children—though VA is not authorized to provide health care services to such persons—so that veterans’ families may address concerns they may have regarding health problems associated with the veteran’s service in the Gulf War. This authority, which included a statutory directive that VA evaluate the health status of Persian Gulf War veterans’ spouses and children and which authorized \$2 million to fund such evaluations, is scheduled to expire on December 31, 1998.

In March 1998, the General Accounting Office (GAO) issued a report, *VA Health Care: Persian Gulf Dependents’ Medical Exam Program Ineffectively Carried Out*, which was critical of VA’s implementation of the above-summarized statutory directive. Among other things, GAO recommended: (1) that VA simplify the process for requesting and scheduling evaluations; (2) that VA offer examinations at additional locations; (3) that VA seek authority to reimburse participants for travel expenses; and (4) that VA increase its capacity to monitor the implementation of the program.

*Committee bill*

Section 202 of the Committee bill would extend VA’s authority to evaluate the health status of Persian Gulf War veterans’ spouses and children, and extend the statutory directive that VA evaluate

the health status of Persian Gulf War veterans' spouses and children until the expenditure of funds authorized for the study or until December 31, 2001. Further, it would mandate improved outreach activities and facilitate enhanced monitoring of program activities. Finally, it would authorize VA to reimburse the primary physicians of Persian Gulf War veterans' spouses and children for conducting tests and evaluations in furtherance of the mandate that VA evaluate the health status of Persian Gulf War veterans' spouses and children, and authorize the reimbursement of such spouses' and children's travel and lodging expenses in order to facilitate the medical testing and evaluation of such persons. The Committee is determined that the statutory directive of section 107 of Public Law 103-446 will be carried out.

#### TITLE III: MISCELLANEOUS

Title III of the Committee bill contains a freestanding provision requiring VA to contract for a study to determine the need for, and the feasibility of, establishing an independent entity to evaluate post-conflict illnesses among veterans and health care services provided to such persons by VA and DOD, as outlined below.

*Section 301. Assessment of establishment of independent entity to evaluate post-conflict illnesses among members of the armed forces and health care provided by DOD and VA before and after deployment of such members*

##### *Background*

In observing many of the health problems of Persian Gulf War veterans, many are reminded of past difficulties in understanding the post-conflict health problems of veterans of other military deployments. For example, for many years following the end of the conflict in Vietnam—and, to a certain extent, even to this day—there has been controversy relating to illnesses suffered by Vietnam veterans which are deemed to be related to exposures to certain herbicide agents in Vietnam. See 38 U.S.C. § 1116.

The primary mission of the Department of Defense is to the defense of the Nation. VA's mission is to care for veterans once they have left service. Most assuredly, both agencies have an abiding interest in minimizing avoidable environmental risks and investigating post-deployment illnesses. Neither agency, however, is charged with such activities as its primary mission.

##### *Committee bill*

Section 301 of the Committee bill would require VA to secure a study from NAS (or other appropriate independent organization) to assess the need (if any) for, and the feasibility of, the establishment of an independent entity to do the following: evaluate and monitor interagency coordination of issues relating to post-deployment health concerns of members the Armed Forces (including agencies' risk communications and outreach efforts to deployed personnel, and their recordkeeping, research, and health surveillance activities); evaluate health care services provided to members of the Armed Forces, both before and after deployment; monitor and direct post-deployment health evaluations; and provide and direct

training to DOD and VA health care providers to assist in the evaluation and treatment of post-deployment maladies. NAS would be charged, further, with providing recommendations with respect to the organization, placement, and responsibilities of such an entity—if it were to recommend the establishment of such an independent entity at all.

#### COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the Congressional Budget Office (CBO), estimates that the costs resulting from the enactment of the Committee bill, as compared to costs under current law and as scored against the current CBO baseline for the first 5 years following enactment, would be as follows: direct spending would not increase in fiscal year 1999, but would increase by \$40 million in fiscal years 1999–2003. The bill would not affect the budgets of State, local, or tribal governments.

The cost estimate provided by CBO, setting forth a detailed breakdown of costs, follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 31, 1998.*

Hon. ARLEN SPECTER,  
*Chairman, Committee on Veterans' Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2358, the Persian Gulf War Veterans Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Charles Riemann.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

#### *S. 2358.—Persian Gulf War Veterans Act of 1998*

Summary: S. 2358 would provide a mechanism for establishing a service connection for illnesses associated with service in the Persian Gulf War and would extend and enhance certain health care authorities related to such service. CBO estimates that enacting the bill would increase direct spending by about \$41 million over the 1999–2003 period; in addition, it would increase discretionary spending by \$69 million in 1999 and by \$342 million over the five-year period, assuming appropriation of the necessary amounts. Because the bill would raise direct spending, pay-as-you-go procedures would apply.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not have a significant effect on the budgets of state, local, or tribal governments.

*Estimated cost to the Federal Government:* The estimated budgetary impact of S. 2358 is shown in the following table. Direct spending costs would stem from payments for disability compensa-

tion and dependency and indemnity compensation (DIC). Discretionary spending would increase due to the provision of medical care services, assuming appropriation of the necessary amounts. The costs of this bill would fall within budget function 700 (veterans' affairs).

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003
<b>DISABILITY COMPENSATION</b>						
Spending under current law:						
Estimated budget authority .....	17,115	18,271	19,296	20,784	22,193	23,587
Estimated outlays .....	17,039	18,164	19,252	20,741	22,158	23,554
Proposed changes:						
Estimated budget authority .....	0	0	0	0	10	30
Estimated outlays .....	0	0	0	0	10	30
Spending under S. 2358:						
Estimated budget authority .....	17,115	18,271	19,296	20,784	22,203	23,617
Estimated Outlays .....	17,039	18,164	19,252	20,741	22,168	23,584
<b>EVALUATION OF DEPENDENTS OF GULF WAR VETERANS</b>						
Proposed changes:						
Estimated budget authority .....	0	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	0	0
Estimated outlays .....	0	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	0	0
<b>VETERANS' MEDICAL CARE</b>						
Spending under current law:						
Estimated authorization level <sup>2</sup> .....	17,739	17,739	17,739	17,739	17,739	17,739
Estimated outlays .....	17,615	18,122	17,763	17,739	17,739	17,739
Proposed changes:						
Estimated authorization level .....	0	77	107	109	35	16
Estimated outlays .....	0	69	104	108	42	19
Spending under S. 2358:						
Estimated authorization level <sup>2</sup> .....	17,739	17,816	17,846	17,848	17,773	17,755
Estimated outlays .....	17,615	18,191	17,867	17,847	17,781	17,758
<b>TOTAL PROPOSED CHANGES</b>						
Direct spending:						
Estimated budget authority .....	0	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	10	30
Estimated outlays .....	0	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	10	30
Spending subject to appropriation:						
Estimated authorization level .....	0	77	107	109	35	16
Estimated Outlays .....	0	69	104	108	42	19

<sup>1</sup> Less than \$500,000.

<sup>2</sup> The 1998 level is the amount appropriated for that year. The current law amounts for 1999–2003 assume that appropriations remain at the 1998 level. If they are adjusted for inflation, the base amounts would rise by about \$600 million a year, but the estimated changes would remain as shown.

**Disability compensation:** Veterans of the Persian Gulf War are entitled to disability compensation under the same conditions as other veterans, but in addition, current law allows VA to award benefits to Gulf War veterans suffering from undiagnosed illnesses. In general, a veteran is eligible for disability compensation if a diagnosed illness becomes manifest during military service or during the one-year period following discharge—the so-called presumptive period. Gulf War veterans are also eligible for the benefit if they have an undiagnosed illness, but in those cases the presumptive period lasts, under current regulations, until 2001 for illnesses that have chronic symptoms. Based on those criteria and others, VA pays disability compensation to approximately 80,000 Gulf War veterans out of the approximately 697,000 U.S. troops deployed to the Persian Gulf region during Operations Desert Shield and Desert Storm.

S. 2358 would set up a mechanism for VA to establish a list of illnesses that would be presumed to have a connection to military service for Gulf War veterans. S. 2358 would establish a presumption, unless there is conclusive evidence to the contrary, that ailing Gulf War veterans were exposed to approximately 30 different agents, hazards, and vaccines listed in the bill if VA regulations associate exposure with the illness. The bill would provide that whenever VA determines that sound medical and scientific evidence points to a positive association between those exposures and diagnosed or undiagnosed diseases, VA shall prescribe regulations presuming that the illness is connected to military service if it occurs in a veteran during a time period to be also set by regulations. In making those determinations, VA would be required to consider several factors including reports by the National Academy of Science (NAS) that the bill would require. It would also allow VA to remove existing presumptions for illnesses that VA determines are not warranted based on a NAS report. (Individuals receiving benefits based on the existing presumption would continue to receive them.)

S. 2358 would require that NAS determine whether exposure to an item on the list has statistical association with an illness, the increased risk of illness due to exposure, and the plausibility of a biological mechanism or other evidence of a causal relationship. Within 18 months of the bill's enactment, NAS would be required to identify the hazards faced by individuals who served in the theater of operations during the war and the illnesses that are manifest in such members. In addition, NAS would review potential treatment models for certain illnesses and make recommendations for additional scientific studies. NAS would also be required to conduct ongoing reviews of the evidence and data on exposures and illnesses associated with service during the Persian Gulf War.

The bill would raise spending for disability compensation because it would increase VA's authority to determine what diseases are service connected for Gulf War veterans and when the disease must become manifest before it would pay benefits. The potential costs are increased by provisions that would define the standards that VA would use and that, under certain conditions, would grant a broad presumption of exposure to the agents, hazards, and vaccines. The statistical standard under the bill could lead to benefits for veterans whose exposure falls short of that which might be found to cause disease. It is also possible that veterans could suffer those diseases from causes apart from their service in the Gulf War—for example, hazards experienced in their subsequent civilian employment—yet be eligible for compensation under the presumed linkages that could be established under the bill. Much would depend on medical research and the length of the presumptive periods determined by VA.

The budgetary impact can vary widely depending on what NAS and other researchers find and how VA would use its discretion. CBO has no basis for estimating what medical research will uncover regarding the health effects of the agents, hazards, and vaccines listed in the bill. Under current law, roughly 80,000 veterans who do not qualify based on income or diagnosed disabilities come to VA for medical care because of conditions related to service dur-

ing the Gulf War. This population provides some indication of how many veterans might benefit from the bill—at least for illnesses that occur within 10 years. Some of these veterans might not qualify under the bill for disability compensation, on the other hand others who do not come to VA for medical care might qualify—especially veterans whose ailments might occur many years from now. Thus, based on the average benefit currently paid to other Gulf War veterans—about \$3,500 annually—the annual costs of S. 2358 could be \$300 million dollars a year or more, depending on the number of ailing veterans who seek medical care from VA. Because of the time it would take for the medical research, deliberations within VA, and manifestation of some diseases, the full budgetary impact of the bill might not be felt for 10 to 20 years. CBO estimates that these provisions of the bill would raise direct spending by about \$40 million over the 1999–2003 period.

Evaluation of health status of dependents of Gulf War veterans: Section 202 would extend the Persian Gulf Spouse and Children Examination Program until December 31, 2001. This program, which expires on December 31, 1998, requires VA to provide diagnostic testing and health examinations, but not treatment, to dependents of Gulf War veterans who volunteer for testing in order to study the association between illnesses of veterans and illnesses of their family members. In addition, this bill would require VA to conduct specific outreach activities to promote the program, reimburse private-sector physicians who provide health examinations in accordance with the program, and reimburse dependents for the costs of travel.

A recent audit by the General Accounting Office found that VA has spent only \$150,000 of the \$2 million appropriated for the program in the 18 months that it has been operational. This spending covered the costs of 871 exams.

CBO expects that VA's spending will accelerate over the three-year extension period but still be less than \$500,000 annually. VA currently has another 800 exams pending or in process. CBO expects that demand for such exams would increase as a result of the changes in reimbursement policies and outreach activities specified in this bill.

Veterans' medical care: As shown in the following table, the bill contains several provisions that would raise spending for veterans' medical care, assuming appropriation of the necessary amounts.

	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATIONS					
Proposed changes					
Special eligibility for priority care (section 201):					
Estimated authorization level .....	74	101	105	27	0
Estimated outlays .....	66	98	104	35	4
Care for new compensation recipients (section 101):					
Estimated authorization level .....	0	0	0	4	12
Estimated outlays .....	0	0	0	3	11
Scientific evaluations by the National Academy of Sciences (section 102):					
Estimated authorization level .....	1	1	1	1	1
Estimated outlays .....	1	1	1	1	1
Database development (section 103):					
Estimated authorization level .....	1	5	3	3	3
Estimated outlays .....	1	5	3	3	3

	1999	2000	2001	2002	2003
Study of independent entity (section 301):					
Estimated authorization level .....	1	0	0	0	0
Estimated outlays .....	1	0	0	0	0
Total:					
Estimated authorization level .....	77	107	109	35	16
Estimated outlays .....	69	104	108	42	19

*Special eligibility for priority care.*—Under current law, veterans with compensable service-connected disabilities or income below a certain threshold have priority access to VA medical care. In addition, current law grants all veterans who served in the Southwest Asia theater during the Gulf War priority for VA care until December 31, 1998. Section 201 would extend eligibility for priority care to these veterans until December 31, 2001. (Eligibility based on disability and income would remain part of permanent law.)

CBO estimates that the cost of extending priority care under this bill would be \$66 million in 1999 and \$306 million over the three-year extension, assuming appropriation of the necessary amounts. CBO estimates that about 136,000 veterans would seek priority medical care annually under this bill. This estimate is based on the number of Gulf War veterans who received outpatient care from the VA through April 30, 1998, according to an analysis of VA's Patient Treatment File. But many of these veterans would already be eligible for priority-level care based on service-connected disabilities or income. CBO assumes that 40 percent would qualify for priority care for those reasons, based on the proportion of Gulf War veterans that VA treated in 1996 who met those conditions. We estimate that the other 60 percent—roughly 80,000 veterans per year—would receive additional care costing about \$1,300 per person each year.

*Care for new compensation recipients.*—Veterans awarded disability compensation under S. 2358 would thereby become eligible for priority medical care from VA. Such eligibility would not begin until 2002, when compensation benefits under this bill are first expected to be awarded. CBO estimates that discretionary medical spending would increase by \$3 million in 2002 and \$11 million in 2003 based on assumptions similar to those described above for the extension of special eligibility of Gulf War veterans.

*Other provisions.*—Section 102 would require VA to contract with NAS for a review and evaluation of the available scientific evidence regarding associations between illnesses and exposures among Gulf War veterans, a review of potential treatment models, and additional reviews on an ongoing basis. CBO estimates that implementing these provisions would result in outlays of about \$1 million a year over the 1999–2003 period.

Section 103 would require VA, in consultation with the Department of Defense (DoD), to develop a plan for the creation of a computerized database to collect, store, and analyze information on the health status and health care of Gulf War veterans. The plan would be reviewed by NAS within one year of the bill's enactment and implemented by VA thereafter. Based on costs of similar databases, CBO estimates that this provision would result in outlays of about \$1 million in 1999 and about \$15 million over the 1999–2003 period.



Section 301 would require VA to contract with NAS for recommendations on the establishment of an independent entity that would evaluate and monitor post-conflict illnesses of members of the armed forces. CBO estimates that this provision would result in \$1 million in outlays in 1999, based on costs of NAS studies that are similar in scope.

Section 105 would require VA and DoD to carry out ongoing outreach programs to provide Gulf War veterans with information about the health risks associated with service and any services or benefits available to them. CBO estimates that this provision would have no significant budgetary impact because VA is undertaking similar activities under current law.

Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Changes in outlays .....	0	0	0	0	10	30	50	70	90	110	130
Changes in receipts .....	(1) <sup>1</sup>	(1) <sup>1</sup>	(1) <sup>1</sup>	(1) <sup>1</sup>	(1) <sup>1</sup>	(1) <sup>1</sup>	(1) <sup>1</sup>	(1) <sup>1</sup>	(1) <sup>1</sup>	(1) <sup>1</sup>	(1) <sup>1</sup>

<sup>1</sup> Not applicable.

Intergovernmental and private-sector impact: The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not have a significant effect on the budgets of state, local, or tribal governments.

Previous CBO estimate: On July 6, 1998, CBO prepared a cost estimate for H.R. 3980 as ordered reported by the House Committee on Veterans' Affairs. Section 2 of that bill is similar to section 201 of S. 2358 because both sections would extend VA's authority to provide medical care to certain Gulf War veterans. The cost estimates for that provision are the same. H.R. 3980 would extend similar authority to VA for veterans of future wars or conflicts, but CBO is unable to estimate those costs.

Estimate prepared by: Federal costs: Charles Riemann (compensation) and Shawn Bishop (health care); impact on State, local, and tribal governments: Marc Nicole; and impact on the private sector: Rachel Schmidt.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs has made an evaluation of the regulatory impact which would be incurred in carrying out the Committee bill. The Committee finds that the Committee bill would not entail any significant regulation of individuals or businesses or result in any significant impact on the per-

sonal privacy of any individuals, and that the paperwork resulting from enactment would be minimal.

#### TABULATION OF VOTES CAST IN COMMITTEE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by members of the Committee on Veterans' Affairs at its July 28, 1998, meeting. On that date, the Committee, by unanimous voice vote, ordered S. 2358, as amended, reported favorably to the Senate.

#### AGENCY REPORT

LETTER FROM HON. DONNA E. SHALALA, SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO HON. ARLEN SPECTER, CHAIRMAN, U.S. SENATE COMMITTEE ON VETERANS' AFFAIRS

DEPARTMENT OF HEALTH AND HUMAN SERVICES,  
OFFICE OF THE SECRETARY,  
*Washington, DC, September 23, 1998.*

Hon. ARLEN SPECTER,  
*Chairman, Committee on Veterans' Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: We take this opportunity to inform you of the views of the Department of Health and Human Services (HHS) on S. 2358, a bill entitled the "Persian Gulf War Veterans Act of 1998".

In summary, HHS has concerns about the bill's mechanism for reviewing and evaluating the available scientific evidence regarding associations between exposures and illnesses among Gulf War veterans and its ability to produce a scientifically credible assessment in the time frame allowed. HHS also has concerns about the feasibility of implementing the single computerized information database in the time frame allowed and cautions that a number of issues, including privacy issues, need to be carefully considered.

The bill would create a mechanism for determining presumption of service connection for illnesses among Gulf War veterans. Illnesses found to have a positive association with exposures encountered during the Gulf War would be considered to have been incurred in or aggravated by Gulf War service even absent evidence that the illness occurred during the period of service. An illness would be deemed to be positively associated with exposures even where the evidence for the association was merely equal to, and not greater than, the evidence against the association. The bill would require the Department of Veterans Affairs (VA) to enter into a contract with the National Academy of Sciences to review and evaluate the available scientific evidence regarding associations between exposures and illnesses. The Academy's first report regarding the determination of associations would be issued within 18 months after enactment of the bill.

HHS is concerned that the bill would establish a process entailing a review of extremely complex questions, with fragmentary data, in a short time, and yielding results that may give the appearance of scientific conclusions where no such conclusions would

be valid. The scientific determination of the association between exposure to environmental, infectious, chemical, and other toxic agents and adverse health effects is extremely complex. The health impact of such exposures depends on many factors including the specific agent(s), dose and duration of exposure, and the health of those exposed. Genetic variability may also increase or decrease susceptibility to environmental exposures. Associations determined through animal research may not apply to human exposures. It is also our understanding that there are only fragmentary data about which service personnel were exposed to which agents, in what concentrations, and over what period of time.

Given this complexity, we believe it would be very difficult for the Academy to produce meaningful conclusions on all of the issues specified by the bill regarding the health impact of military service in the Gulf War, especially within the time frame provided in the bill. Also, we are concerned that the process would result in determinations that would give the appearance of scientific conclusions, even though the data would not support a conclusion with the degree of certainty that science normally requires.

S. 2358 would also require the VA and the Department of Defense (DoD) to create a unified computerized information data base, within 18 months after the date of enactment of the Act, to document the health status of Gulf War veterans and their health care utilization patterns. Merger of such large data bases raises substantial privacy concerns. Persons who have access to the data base (whether properly or improperly) would learn much more information than they would with access to only one of the original data bases. It would be appropriate to consider who will maintain the data base, who will have access to the data, what uses of the data will be permitted, how the validity of the data will be ensured, and how the privacy of the data base will be protected. However, the bill makes no provision for such concerns.

The bill would also require the Secretary of HHS to consult with the Secretaries of Veterans Affairs and Defense in their outreach to Gulf War veterans. HHS supports such outreach efforts and agrees that there is a need to improve health risk communication efforts for all military personnel. Current outreach efforts which are already coordinated among the three Departments are broad and comprehensive, and fulfill the intent of this provision of the bill. HHS has already been consulting with VA and DoD on health risk communication through the activities of the Persian Gulf Veterans Coordinating Board. Interagency planning for future military deployments, as documented in the Presidential Review Directive-5 ("A National Obligation: Planning for Health Preparedness for and Readjustment of the Military, Veterans, and Their Families after Future Deployments") has given improved health risk communication a central role.

In summary, HHS has some concerns regarding some of the specific components of S. 2359, and we defer to the judgment of VA (as expressed in VA's September 3, 1998, report to you) regarding the bill.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

DONNA E. SHALALA, *Secretary.*

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LETTER FROM THE DEPARTMENT OF DEFENSE TO HON. ARLEN SPECTER, CHAIRMAN, U.S. SENATE COMMITTEE ON VETERANS' AFFAIRS

DEPARTMENT OF DEFENSE,  
GENERAL COUNSEL OFFICE,  
*Washington, DC, September 16, 1998.*

Hon. ARLEN SPECTER,  
*Chairman, Committee on Veterans' Affairs*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: We are pleased to provide the Committee with the views of the Department of Defense on S. 2358, 105th Congress, a bill "To provide for the establishment of a service-connection for illnesses associated with service in the Persian Gulf War, to extend and enhance certain health care authorities relating to such service, and for other purposes."

The Department of Defense supports the measure in part. In particular, the Department welcomes any recommendations the National Academy of Sciences may have on additional scientific studies to resolve areas of continuing scientific uncertainty regarding the health consequences of Gulf War service.

The Department of Defense has considerable concerns about several other elements of S. 2358. In particular, the Department opposes section 301 which would undermine the authority and responsibility of the Secretary of Defense to support the health and safety of service men and women, following and during current and future force deployments. Our concerns about this element and our other concerns are contained in the attachment.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

JUDITH A. MILLER.

Attachment.

*Department of Defense Comments on Provisions of S. 2358 Persian Gulf War Veterans Act of 1998*

Sections 101 and 102 of the bill would call for presumption of service connection for any veteran from the Gulf War with any diagnosed or undiagnosed illness which could be in any way associated with or deemed caused by exposure to any of a list of materials which includes organophosphorous, carbamate, chlorinated hydrocarbon, and other pesticides and repellents, PB, Sarin, Tabun, low-level mustard agents, VOCs, solvents, Uranium ionizing and non-ionizing radiation, oil fire byproducts, sand, etc. as determined by a scientific panel. Given the comprehensive nature of the current ongoing efforts supporting the establishment of an ob-

jective basis for making the determinations regarding service connection of illnesses suffered by Gulf War veterans, the Department of Defense considers the enactment of sections 101 and 102 of S. 2358 as being unnecessary and without regard for current scientific standards of association.

The establishment of only a “positive association” for a particular outcome does not take into account current scientific standards of association and cause and effect relationships in determining the etiology of disease, may require determinations based on very limited evidence, and fails to consider the dose-response relationship. A dose-response relationship is critical if one were to consider disease outcome based on presumed exposure to the list of agents contained in the bill. This presumption would limit the ability to conduct scientific research to determine if actual exposures during the Gulf War resulted in adverse health outcomes and development of preventive measures to negate such exposures during future conflicts. The legislation also implies the existence of deleterious health effects (without scientific basis) from the use of health-preserving vaccines.

The overuse of animal studies in making a determination of “positive association” of disease outcome in humans is inappropriate. Although animal studies can be used to determine biological plausibility that a certain health outcome has the potential to occur in human populations, such studies cannot be used to make a presumption of such an association in humans. The Department of Veterans Affairs has stated that human epidemiologic studies are often ineffective in establishing a “cause and effect” determination and principles of bio-ethics prohibit exposing human research subjects to harmful toxins. Thus, it is only possible to establish “association” in epidemiologic studies. In addition, references throughout the section refer to a concept of undiagnosed illnesses in animal models, a concept currently not accepted by the scientific community.

The Department of Defense defers to the judgment of the Department of Veterans Affairs regarding the proper scientific standard to be used in determining service connection of the illnesses suffered by Gulf War veterans.

The Department of Defense supports the involvement of the National Academy of Sciences to evaluate scientific and medical evidence regarding health outcomes among Gulf War veterans. However, we do not support the inclusion for evaluation by the NAS of the list of specific agents contained in section 102 of S. 2358 and suggest that the entire list be deleted and that the NAS be directed to determine which exposures are relevant for evaluation/study. This list is inconsistent and inaccurate. Some agents are omitted while others are listed twice or inappropriately categorized; the designation of uranium as a “synthetic chemical compound” is incorrect and the category of ionizing radiation is in error as it includes non-ionizing types of radiation.

The Department of Defense is committed to an aggressive, coordinated, well-focused, but broadly scoped and strong Gulf War veterans’ illnesses research program that does the following: furthers the fundamental understanding of the illnesses; provides enhanced diagnostic capabilities and efficacious treatment modalities

for veterans; and supports the establishment of policies and preventive measures that minimize the risk of such illnesses during future military operations.

We also are committed to ensuring that our research program is of the highest quality. We use competition and independent review for scientific merit to secure the very best research performers, hypotheses, and experimental designs, from all possible sources, including the Federal, civilian, national and international communities. This commitment follows an appreciation at all levels within the Department of Defense of our responsibility to achieve an optimal investment of taxpayer dollars, to assist our Gulf War veterans in securing diagnoses and treatments for their disabilities and illnesses, and to prevent such disabilities and illnesses as a consequence of future deployments.

Our research program and findings on Gulf War veterans illnesses are coordinated and integrated with those of the Department of Veterans Affairs and Health and Human Services through the Research Working Group of the Persian Gulf Veterans' Coordinating Board.

Section 103 of S. 2358 would require the development of a plan for a single computerized information database to amass and analyze information on diagnosed and undiagnosed illnesses among Gulf War veterans and submit an annual report to Congress on the data and the findings and analysis relating to such data. The Department of Defense strongly opposes these requirements. Such a database would duplicate ongoing efforts established under section 734 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (10 U.S.C. 1074). Collecting data on illnesses among Gulf War veterans seeking care outside the Department of Defense and the Department of Veterans Affairs medical departments, i.e. private sector, is neither feasible nor desirable. Capturing medical data from the private sector on health outcomes and treatment efficacy for Gulf War veterans and their families would require the establishment of a national computerized medical record or a laborious review of dispersed medical records from hospitals and doctor's offices around the world. Even if a comprehensive medical database were established, it may not yield the desired information on health outcomes and treatment efficacy. The costs associated with such a requirement would be prohibitive.

The Department of Defense in collaboration with the Department of Veterans Affairs has an ongoing contract with the National Academy of Sciences, Institute of Medicine, on how to best measure the health and treatment outcomes of Gulf War veterans. The Department of Defense looks forward to the recommendations from the National Academy of Sciences, Institute of Medicine, and feels any efforts that might circumvent the Academy's ongoing efforts are both premature and inappropriate.

Section 104 of S. 2358 would require the Departments of Defense, Veterans Affairs, and Health and Human Services to jointly submit a report addressing in detail the recommendations of the National Academy of Sciences concerning the need for additional scientific studies and the Departments' responses to those recommendations. The Department of Defense welcomes any recommendations the National Academy of Sciences may have on ad-

ditional scientific studies to resolve areas of continuing scientific uncertainty regarding the health consequences of Gulf War service.

Section 105 of S. 2358 would require continuation of ongoing outreach for Gulf War veterans. We support this provision, however any intent to increase and enhance current efforts would require that the Department of Defense dedicate staff above current levels.

Section 201 of S. 2358 would end existing authority for the Department of Veterans Affairs to provide health care for Gulf War veterans. The Department of Defense supports efforts extending special authority to provide care for Gulf War veterans for any disability possibly related to their service in the theater of operations, rather than requiring evidence of particular exposures. Using data from the Comprehensive Clinical Evaluation Program is inappropriate from a research standpoint in that it is derived from a self-selected population and excludes the majority of Gulf War veterans.

Section 301 of S. 2358 would require the Department of Veterans Affairs to assess establishment of an agreement with the National Academy of Sciences to evaluate the need for, and feasibility of establishing, an independent entity to evaluate and monitor inter-agency coordination on issues relating to the post-deployment health concerns of members of the Armed Forces; evaluate the health care provided to members of the Armed Forces both before and after their deployment on military operations; monitor and direct governmental efforts to evaluate the health of members of the Armed Forces upon their return from deployment on military operations for purposes of ensuring rapid identification of any trend in diseases or injuries among them as a result of such operations; provide and direct other provision of ongoing training of health care personnel of the Department of Defense and Department of Veterans Affairs; and make recommendations to the Department of Defense and Department of Veterans Affairs regarding improvements in providing health care, including improved monitoring and treatment of military members.

The Department of Defense strongly opposes section 301 of the bill. The proposed action would seriously undermine the authority and responsibility of the Secretary of Defense to support the health and safety of service men and women, following and during current and future force deployments. It is entirely inappropriate for the National Academy of Sciences to be directed to make what is essentially a Federal government policy decision. The National Academy of Sciences consistently has supported the Department of Defense's response to Gulf War health issues, and the National Academy of Sciences' recommendations for program enhancements have been implemented as appropriate.

#### CHANGES IN EXISTING LAW MADE BY S. 2358 AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Committee bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**TITLE 38, UNITED STATES CODE**

\* \* \* \* \*

**PART II—GENERAL BENEFITS**

**CHAPTER 11—COMPENSATION FOR SERVICE-CONNECTED DISABILITY OR DEATH**

\* \* \* \* \*

**Subchapter II—Wartime Disability Compensation**

1110. \* \* \*

\* \* \* \* \*

1118. *Presumptions of service connection for illnesses associated with service in the Persian Gulf during the Persian Gulf War.*

\* \* \* \* \*

**Subchapter II—Wartime Disability Compensation**

\* \* \* \* \*

**§ 1113. Presumptions rebuttable**

(a) Where there is affirmative evidence to the contrary, or evidence to establish that an intercurrent injury or disease which is a recognized cause of any of the diseases or disabilities within the purview of section 1112, 1116, [or 1117] 1117, or 1118 of this title, has been suffered between the date of separation from service and the onset of any such diseases or disabilities, or the disability is due to the veteran's own willful misconduct, service-connection pursuant to section 1112 [or 1116], 1116, or 1118 of this title, or payments of compensation pursuant to section 1117 of this title, will not be in order.

(b) Nothing in section 1112, 1116, [or 1117] 1117, or 1118 of this title, subsection (a) of this section, or section 5 of Public Law 98-542 (38 U.S.C. 1154 note) shall be construed to prevent the granting of service-connection for any disease or disorder otherwise shown by sound judgment to have been incurred in or aggravated by active military, naval, or air service.

\* \* \* \* \*

**§ 1117. Compensation for disabilities occurring in Persian Gulf War veterans**

(a) \* \* \*

\* \* \* \* \*

(c)(1) *Whenever the Secretary determines under section 1118(c) of this title that a presumption of service connection for an undiagnosed illness (or combination of undiagnosed illnesses) previously established under this section is no longer warranted—*

*(A) a veteran who was awarded compensation under this section for such illness (or combination of illnesses) on the basis of the presumption shall continue to be entitled to receive compensation under this section on that basis; and*



*(B) a survivor of a veteran who was awarded dependency and indemnity compensation for the death of a veteran resulting from the disease on the basis of the presumption before that date shall continue to be entitled to receive dependency and indemnity compensation on that basis.*

*(2) This subsection shall cease to be effective 10 years after the first day of the fiscal year in which the National Academy of Sciences submits to the Secretary the first report under section 102 of the Persian Gulf War Veterans Act of 1998.*

**[(c)](d)(1)** The Secretary shall prescribe regulations to carry out this section.

(2) Those regulations shall include the following:

(A) A description of the period and geographical area or areas of military service in connection with which compensation under this section may be paid.

(B) A description of the illnesses for which compensation under this section may be paid.

(C) A description of any relevant medical characteristic (such as a latency period) associated with each such illness.

**[(d)] (e)** A disability for which compensation under this subchapter is payable shall be considered to be service connected for purposes of all other laws of the United States.

**[(e)] (f)** For purposes of this section, the term “Persian Gulf veteran” means a veteran who served on active duty in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War.

**§ 1118. Presumptions of service connection for illnesses associated with service in the Persian Gulf during the Persian Gulf War**

*(a)(1) For purposes of section 1110 of this title, and subject to section 1113 of this title, each illness, if any, described in paragraph (2) shall be considered to have been incurred in or aggravated by service referred to in that paragraph, notwithstanding that there is no record of evidence of such illness during the period of such service.*

*(2) An illness referred to in paragraph (1) is any diagnosed or undiagnosed illness that—*

*(A) the Secretary determines in regulations prescribed under this section to warrant a presumption of service connection by reason of having a positive association with exposure to a biological, chemical, or other toxic agent, environmental or wartime hazard, or preventive medicine or vaccine known or presumed to be associated with service in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War; and*

*(B) becomes manifest within the period, if any, prescribed in such regulations in a veteran who served on active duty in that theater of operations during that war and by reason of such service was exposed to such agent, hazard, or medicine or vaccine.*

*(3) For purposes of this subsection, a veteran who served on active duty in the Southwest Asia theater of operations during the Persian Gulf War and has an illness described in paragraph (2) shall be*

*presumed to have been exposed by reason of such service to the agent, hazard, or medicine or vaccine associated with the illness in the regulations prescribed under this section unless there is conclusive evidence to establish that the veteran was not exposed to the agent, hazard, or medicine or vaccine by reason of such service.*

*(b)(1)(A) Whenever the Secretary makes a determination described in subparagraph (B), the Secretary shall prescribe regulations providing that a presumption of service connection is warranted for the illness covered by that determination for purposes of this section.*

*(B) A determination referred to in subparagraph (A) is a determination based on sound medical and scientific evidence that a positive association exists between—*

*(i) the exposure of humans or animals to a biological, chemical, or other toxic agent, environmental or wartime hazard, or preventive medicine or vaccine known or presumed to be associated with service in the Southwest Asia theater of operations during the Persian Gulf War; and*

*(ii) the occurrence of a diagnosed or undiagnosed illness in humans or animals.*

*(2)(A) In making determinations for purposes of paragraph (1), the Secretary shall take into account—*

*(i) the reports submitted to the Secretary by the National Academy of Sciences under section 102 of the Persian Gulf War Veterans Act of 1998; and*

*(ii) all other sound medical and scientific information and analyses available to the Secretary.*

*(B) In evaluating any report, information, or analysis for purposes of making such determinations, the Secretary shall take into consideration whether the results are statistically significant, are capable of replication, and withstand peer review.*

*(3) An association between the occurrence of an illness in humans or animals and exposure to an agent, hazard, or medicine or vaccine shall be considered to be positive for purposes of this subsection if the credible evidence for the association is equal to or outweighs the credible evidence against the association.*

*(c)(1) Not later than 60 days after the date on which the Secretary receives a report from the National Academy of Sciences under section 102 of the Persian Gulf War Veterans Act of 1998, the Secretary shall determine whether or not a presumption of service connection is warranted for each illness, if any, covered by the report.*

*(2) If the Secretary determines under this subsection that a presumption of service connection is warranted, the Secretary shall, not later than 60 days after making the determination, issue proposed regulations setting forth the Secretary's determination.*

*(3)(A) If the Secretary determines under this subsection that a presumption of service connection is not warranted, the Secretary shall, not later than 60 days after making the determination, publish in the Federal Register a notice of the determination. The notice shall include an explanation of the scientific basis for the determination.*

*(B) If an illness already presumed to be service connected under this section is subject to a determination under subparagraph (A), the Secretary shall, not later than 60 days after publication of the*

notice under that subparagraph, issue proposed regulations removing the presumption of service connection for the illness.

(4) Not later than 90 days after the date on which the Secretary issues any proposed regulations under this subsection, the Secretary shall issue final regulations. Such regulations shall be effective on the date of issuance.

(d) Whenever the presumption of service connection for an illness under this section is removed under subsection (c)

(1) a veteran who was awarded compensation for the illness on the basis of the presumption before the effective date of the removal of the presumption shall continue to be entitled to receive compensation on that basis; and

(2) a survivor of a veteran who was awarded dependency and indemnity compensation for the death of a veteran resulting from the illness on the basis of the presumption before that date shall continue to be entitled to receive dependency and indemnity compensation on that basis.

(e) Subsections (b) through (d) shall cease to be effective 10 years after the first day of the fiscal year in which the National Academy of Sciences submits to the Secretary the first report under section 102 of the Persian Gulf War Veterans Act of 1998.

\* \* \* \* \*

**CHAPTER 17—HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE**

\* \* \* \* \*

**Subchapter II—Hospital, Nursing Home, or Domiciliary Care and Medical Treatment**

**§ 710. Eligibility for hospital, nursing home, and domiciliary care**

(a) \* \* \*

\* \* \* \* \*

(e)(1)(A) \* \* \*

\* \* \* \* \*

(3) Hospital care, medical services, and nursing home care may not be provided under or by virtue of subsection (a)(2)(F)—

(A) \* \* \*

(B) in the case of care for a veteran described in paragraph (1)(C), after [December 31, 1998] *December 31, 2001*.

\* \* \* \* \*

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**VETERANS' BENEFITS IMPROVEMENTS ACT OF 1994**

**TITLE I—PERSIAN GULF WAR VETERANS**

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**SEC. 107. EVALUATION OF HEALTH STATUS OF SPOUSES AND CHILDREN OF PERSIAN GULF WAR VETERANS.**

(a) \* \* \*

(1) \* \* \*

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(3) \* \* \*

【Such testing and examinations shall be carried out so as to gather such medical data as the Secretary considers relevant and appropriate in order to determine the nature and extent of the association, if any, between illness or disorder of the spouse or child and the illness of the veteran.】

(b) Duration of Program. The program shall be carried out during the period beginning on November 1, 1994, and 【ending on December 31, 1998.】 *ending on the earlier of—*

- (1) *the date of the completion of expenditure of funds available for the program under subsection (c); or*  
 (2) *December 31, 2001.*

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(g) OUTREACH.—(1) The Secretary shall conduct such outreach activities as the Secretary determines necessary to ensure that implementation of this section results in sufficient information to enable the Secretary—

【(1)】 (A) to analyze the health status of large numbers of spouses and children of Persian Gulf veterans; and

【(2)】 (B) to formulate research hypotheses regarding possible association between illnesses or disorders suffered by Persian Gulf veterans and illnesses or disorders (including birth defects, miscarriages, and stillbirths) suffered by their spouses and children.

(2) *In addition to the outreach activities under paragraph (1), the Secretary shall also provide outreach with respect to the following:*

(A) *The existence of the program under this section.*

(B) *The purpose of the program.*

(C) *The availability under the program of medical examinations and tests, and not medical treatment.*

(D) *The findings of any published, peer-reviewed research with respect to any associations (or lack thereof) between the service of veterans in the Southwest Asia theater of operations and particular illnesses or disorders of their spouses or children.*

(3) *Outreach under this subsection shall be provided any veteran who served as a member of the Armed Forces in the Southwest Asia theater of operations and who—*

(A) *seeks health care or services at medical facilities of the Department of Veterans Affairs; or*

(B) *is or seeks to be listed in the Persian Gulf War Veterans Registry.*

(h) \* \* \*

(i) ENHANCED FLEXIBILITY IN EXAMINATIONS.—*In order to increase the number of diagnostic tests and medical examinations under the program under this section, the Secretary may—*

(1) *reimburse the primary physicians of spouses and children covered by that subsection for the costs of conducting such tests*

*or examinations, with such rates of reimbursement not to exceed the rates paid contract entities under subsection (d) for conducting tests or examinations under the program;*

*(2) conduct such tests or examinations of spouses covered by that subsection in medical facilities of the Department; and*

*(3) in the event travel is required in order to facilitate such tests or examinations by contract entities referred to in paragraph (1), reimburse the spouses and children concerned for the costs of such travel and of related lodging.*

**(j) ENHANCED MONITORING OF PROGRAM.**—*In order to enhance monitoring of the program under this section, the Secretary shall provide for monthly reports to the Central Office of the Department on activities with respect to the program by elements of the Department and contract entities under subsection (d).*

**[(i)] (k) REPORTS TO CONGRESS.**—(1) The Secretary shall submit to Congress no later than October 31, 1995, a report on the Secretary's implementation of this section.

(2) The Secretary shall analyze the data entered into the registry under this section and shall submit to Congress, not later than March 1, 1997, a report on that analysis and on the Secretary's recommendation for any further legislation or studies regarding the health status of spouses and children of Persian Gulf War veterans.

**[(j)] (l) Definitions.**—For purposes of this section, the terms "child" and "spouse" have the meanings given those terms in paragraphs (4) and (31), respectively, of section 101 of title 38, United States Code.

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