

> RAO Bulletin
> 15 August 2008

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> MOBILIZED RESERVE 13 AUG 08: The Army, Air Force and Marine Corps announced the current number of reservists on active duty as of 13 AUG 08 in support of the partial mobilization. The net collective result is 1,106 fewer reservists mobilized than last reported in the Bulletin for 1 AUG 08. At any given time, services may mobilize some units and individuals while demobilizing others, making it possible for these figures to either increase or decrease. The total number currently on active duty in support of the partial mobilization of the Army National Guard and Army Reserve is 80,778; Navy Reserve, 5,799; Air National Guard and Air Force Reserve, 11,491; Marine Corps Reserve, 8096; and the Coast Guard Reserve, 740. This brings the total National Guard and Reserve personnel who have been mobilized to

106,904 including both units and individual augmentees. A cumulative roster of all National Guard and Reserve personnel, who are currently mobilized, can be found at <http://www.defenselink.mil/news/Aug2008//d20080813ngr.pdf> . [Source: DoD News Release 691-08 13 Aug 08 ++]

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> WILL UPDATE 02: If not planned carefully a will (even if recently updated) could have undesired consequences. Following are five flaws that could reshape your intended inheritances:

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> 1. Not coordinating your will with other documents. Certain assets such as retirement accounts and life insurance proceeds are not controlled by your will and go, at your death, to the beneficiaries you named either when you opened the account or when you last updated the beneficiary forms.

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> 2. Not planning for the worst. What would happen if the people you have named in your will die at the same time or shortly after you? By not making alternate plans, your estate could end up in the hands of people you didn't anticipate.

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> 3. Leaving too much to your spouse. If you have an estate worth more than \$2 million in 2008, your estate may pay more in estate taxes if you leave everything to your spouse. Take advantage of a tax-saving tool-the bypass trust-which protects up to \$2 million from being taxed twice, leaving more inheritance for your heirs.

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> 4. Not leaving enough to a spouse. Most states will not allow you to disinherit a spouse. In fact, typically he or she is entitled to one-fourth to one-half of your estate, depending on your state's laws. Check with your estate planning attorney to make sure your spouse is adequately cared for.

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> 5. Trying to control inheritance after you're gone. In some instances, trying to motivate heirs by placing their inheritance in "family incentive trusts" may backfire. The trust language needs to be flexible enough to accommodate emergencies or changes in circumstances, avoiding possible expensive legal recourse.

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> For more information on the above contact shelleym@moaa.org. To learn more about creating a will that meets your needs, consult an estate planning attorney. [Source: MOAA News Exchange CAPT Shelley Marshall article 13 Aug 08 ++]

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> TRICARE DEDUCTIBLE UPDATE 01: Families of some active-duty Reserve and National Guard members will get a break on paying annual deductibles

associated with the military's health care system, according to a final rule (<http://edocket.access.gpo.gov/2008/E8-18597.htm>) published 12 AUG in the Federal Register. The rule, which was proposed in AUG 06 and took effect on 12 AUG makes permanent the Defense Department's authority to waive the annual TRICARE deductibles for eligible dependents of reservists and Guard members who are called to active duty for more than 30 days. It applies to those who choose to participate in TRICARE Standard or Extra, rather than TRICARE Prime. By law, the TRICARE Standard (or Extra) deductible for active-duty family members is \$150 per individual and \$300 per family each fiscal year. For those at the E-4 level and below, the deductibles are \$50 per individual and \$100 per family. Dependents are defined as spouses and children. In addition, the final regulation increases the amount that can be billed to out-of-network health care providers. "This helps reserve and Guard family members to be able to continue to see civilian providers with whom they have established relations and promotes access and clinically appropriate continuity of care," the notice stated. The rule makes permanent authority exercised by Defense through the extension of a demonstration project. The fiscal 2005 National Defense Authorization Act gave the department that authority and waived certain TRICARE deductibles for active-duty members of reserve components. The Federal Register notice stated that an independent government estimate concluded that the annual cost for implementing the rule would be less than \$30 million. [Source: GovExec.com Today 13 Aug 08 ++]

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> MEDICARE PART "D" UPDATE 22: A new report from the House Committee on

Oversight and Government Reform found that people who get coverage from both

Medicare and Medicaid (a group sometimes called "dual eligible"), pay 30% more for prescription drugs under the Medicare prescription drug benefit (Part D) than they would if Medicaid paid the bill. According to the study released 25 JUL, this discrepancy in pricing accounted for \$3.7 billion in revenue for drug manufacturers during the first two years of the Part D program. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003, which established the drug benefit, required that Medicare Part D, not Medicaid, cover the cost of drugs for people with both Medicare and Medicaid. Many nursing-home residents fall into this category. Democrats in the House say this overpayment is an unjustified burden on the taxpayer, and they seek to correct the problem through new legislation. But House Republicans have countered that the new report overlooks important aspects and benefits to dual eligibles contained in the Part D program. Under Part D, for example, dual eligibles have access to a greater variety of prescription drugs. [Source: Medicare Rights Center 12 Aug 08 ++]

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> **MEDICARE AMBULANCE COVERAGE:** If it is an emergency Medicare will generally cover ambulance services, as long as an ambulance is the only safe way to transport you (medically necessary); and you are transported to and from certain locations. If covered, Medicare will pay for 80% of its approved amount for the ambulance service. You or your supplemental insurance policy will be responsible for the remaining 20%. All ambulance providers must accept Medicare assignment, meaning they must accept the Medicare-approved amount as payment in full. If it is not an emergency, Medicare coverage of ambulance services is very limited. An emergency is when your health is in serious danger and every second counts to prevent your health from getting worse. If the trip is scheduled as a way to transport you from one location to another when your health is not in immediate danger, it is not considered an emergency. Medicare will never pay for ambulance services (i.e. use of specially equipped motor vehicles for transporting convalescing or handicapped people). Also, lack of access to alternative transportation alone will not justify Medicare coverage. Medicare may cover non-emergency ambulance services if:

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> You are confined to your bed (unable to get up from bed without help, unable to walk, and unable to sit in a chair or wheelchair); or

> You need vital medical services during your trip that are only available in an ambulance, such as administration of medications or monitoring of vital functions; or

> The hospital where you are receiving treatment is local, or is the closest facility that can provide the treatment you need; or

> The cost of bringing treatment to your home is less than the cost of transporting you to the hospital and back by ambulance (for frequent trips, Medicare may require proof that the regular ambulance trips are more appropriate than hospitalization); or

> The ambulance meets Medicare requirements.

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> For Medicare to cover transportation by ambulance the service must be provided within your service area and be medically necessary. If your service area does not have a facility that is adequately equipped or capable of treating you, transport to the closest appropriate facility will be covered. The service area is the geographical region around a facility that contains most of the patients whom the facility serves. For example, if you live in a town with a small community hospital and there is a larger urban hospital 20 miles away, the larger hospital would be part of your service area if it regularly serves people who live in your town. To find out what facilities are in your service area, contact your Medicare Part B carrier by calling 800-MEDICARE. Medicare will cover ambulance services to and from the following locations within your service area:

> From your home, or any other place where the need arose to the closest appropriate hospital or skilled nursing facility (SNF).

> From a hospital or SNF to your home if the facility is the closest appropriate one in relation to your home.

> From a SNF to the nearest medical provider, if the SNF cannot provide you necessary treatment and the cost of transport is less then bringing the treatment to you, and back.

> From your home to the nearest appropriate renal dialysis facility, and back.

> [Source: Medicare Rights Center 12 Aug 08 ++]

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> ECONOMIC STIMULUS PACKAGE UPDATE 07: The Internal Revenue Service wants retirees and veterans to know that it is not too late to file for an economic stimulus payment. The IRS plans to send a second set of information packets to 5.2 million people who may be eligible but who have not yet filed for their stimulus payment. The packages will contain everything needed by a person who normally does not file a tax return but who must file this year in order to receive a payment of up to \$300 - \$600 for those married and filing jointly. The deadline for filing for the payment is 15 OCT. For more information call the rebate hot line at (866) 234-2942 or check the IRS Web site at www.irs.gov/newsroom/ [Source: Veterans Journal article 11 Aug 08 ++]

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> DISABLED VETERANS MEMORIAL UPDATE 02: Congress approved legislation which the president signed into law requiring the U.S. Mint to issue 350,000 silver coins to raise money for a memorial near the U.S. Capitol honoring disabled veterans. Across Independence Avenue from the U.S. Botanic Garden are two acres dedicated to the American Veterans Disabled for Life Memorial, but raising the \$86 million for design, construction, maintenance and outreach has been a campaign for supporters. A \$3 million pledge from H. Ross Perot earlier this year put the total collected near \$70 million. The House and Senate authorized the minting of 350,000 \$1 coins, which will be sold with a \$10 surcharge. The proceeds of the surcharge will be paid directly to the Disabled Veterans' LIFE Memorial Foundation. The foundation was incorporated in 1998, but fundraising did not begin in earnest until 2002. The memorial will honor 3 million veterans currently living with a disability as a result of their military service. The design, approved by the Commission of Fine Arts in 2004, features a star-shaped reflecting pool, an everlasting flame and grove of trees. The memorial is designed "not just to show all of the veterans how much we care about them and honor them but also to remind future Congresses that freedom is not free, that a price is very high when the president calls on our armed forces to deliver, and when they do, we honor them and will always remember their memory," Rep. Mark Steven Kirk, R-Ill., said recently on the House floor. The coins will be

issued in 2010, weigh 26.73 grams, be 1.5 inches in diameter and contain 90% silver and 10% copper. For more information refer to <http://www.avdlm.org>.
[Source: EANGUS Minuteman Update 7 Aug 08 ++]

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> USERRA UPDATE 06: Senators Robert Casey (D-PA), Edward Kennedy (D-MA) and Barack Obama (D-IL) and have sponsored S.3432, the Servicemembers' Access to

Justice Act, with a House companion bill expected soon, which would eliminate state sovereign immunity and make states subject to USERRA claims if they receive any federal financial assistance for any program or activity. The bill would also provide enhanced USERRA remedies against state, federal and/or private employers for violating USERRA, including damages plus interest for lost wages or actual monetary losses where wages have not been denied; liquidated damages equal to the wages or other monetary loss or \$10,000, whichever is greater. Members with claims against state and private employers would be entitled to a jury trial and to punitive damages in the case of an employer of 25 or more employees whose violation was done with malice or reckless indifference to the rights of the servicemember. Successful claimants would mandatorily be awarded attorney fees acquired in fighting for their USERRA rights.

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> The Uniformed Services Employment and Re-employment Rights Act protects family and medical leave rights of reservists and guardsmen. Under the Act any person called up for military service has certain rights in the civilian workplace. Every employer, from the biggest of corporations to small businesses, must comply. The act covers people who've been absent from work because of:

> Active duty.

> Active duty for training.

> Inactive duty training.

> Full-time National Guard duty.

> An examination to determine fitness for any of the types of duty mentioned above.

> Funeral honors duty performed by National Guard or reservists.

> Employers must extend USERRA provisions to anyone in the Army, Navy, Marine Corps, Air Force or Coast Guard; Reserves and National Guard; Commissioned Corps of the Public Health Service; or any other group of people designated by the president. For more information on the USERRA refer to www.dol.gov/vets. [Source: NGAUS Leg Up 8 AUG 08]

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> DEATH GRATUITY UPDATE 04: Death gratuity checks worth \$100,000 can now be deposited electronically. The new measure, which took effect 4 AUG, makes

the funds available to grieving family members within 24 hours. Service personnel designate who they want to receive the funds on their Page 2 information. "We want to make those funds available," said Lt. Karen Eifert, a Navy spokeswoman at the Pentagon. Previously, the death gratuity checks were only available in paper form, often delivered during a visit from a casualty assistance calls officer. Eifert said it could take days or weeks for the funds to clear, resulting, according to recent news reports, in families not having money available for funeral services while banks held up the funds. In one case, a man was jailed over a dispute with his son's check. "That's what sprang us into action, to make things easier for families that are grieving," she said. "We recommend they take the electronic funds transfer." The \$100,000 death gratuity is wholly separate from group life insurance available to military members, she noted. The Navy follows the Army, Air Force and Marine Corps in offering the electronic check to its members. Paper checks will still be available should sailors choose that option. [Source: NavyTimes article posted 7 Aug 08 ++]

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> VA USE OF RELIGION LAWSUIT: An appeals court has ruled taxpayers cannot

sue the U.S. Department of Veterans Affairs for incorporating religion into its health care programs for the nation's veterans. The Chicago-based 7th Circuit Court of Appeals ruled 5 AUG that the Madison-based Freedom From Religion Foundation (FFRF) and three of its members have no legal standing to bring the case. The group was trying to end the agency's practice of asking patients about their religion in "spiritual assessments," its use of chaplains to treat patients, and drug and alcohol treatment programs that incorporate religion. It claimed those practices violated the separation of church and state. But the court ruled that federal taxpayers cannot challenge those expenditures. It cited a U.S. Supreme Court decision from last year in which the same group was not allowed to sue over President Bush's faith-based initiative. In that case, the court ruled 5-4 that taxpayers cannot sue the executive branch for expenses that allegedly promote religion. Cases can only be brought when the questionable expenditures are explicitly authorized in a Congressional spending bill, the court ruled. Congress never authorized spending on the chaplain services, pastoral care and other programs challenged, the 7th Circuit ruled.

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> Annie Laurie Gaylor, the group's co-president, criticized the ruling but said an appeal to the Supreme Court was unlikely. She said the group would look for VA patients who object to their treatment to be potential plaintiffs but said such a case would still be difficult to win. "The courts are moving to the position where government can fund religious activities and endorse religion without restraint," she said. "It's really very disturbing." The appeals court decision is the latest in a string of similar rulings since the Supreme Court decision, George Washington University law

professor Ira Lupu said. Federal courts have dismissed cases challenging legislative prayer in Indiana and the placement of children in religious foster homes in Kentucky and North Dakota, he said. "There's quite a powerful trend here in the courts to take the Supreme Court's decision and really run with it," he said. "I have not yet seen one case where people have brought up this standing issue where the government has lost and the taxpayers have won. Every single one has been thrown out. This is really quite significant."

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> Veterans Affairs lawyers did not challenge the group's ability to sue before the Supreme Court decision, and U.S. District Judge John Shabaz dismissed the case on its merits last year. He ruled the VA's programs integrate religion and spirituality but are legal because they are voluntary and serve valid secular purposes such as helping patients. The foundation appealed, and government lawyers challenged its ability to sue after the Supreme Court decision came down. The veterans agency, which treated 5.3 million people at its facilities in 2005, says it believes spirituality should be integrated into care, but it allows patients to decide whether that involves religion. Its spiritual assessments ask patients a series of questions about their faith, such as how often they attend church and how important religion is in their lives. Agency officials say the assessments help them determine patients' needs. [Source: Chicago Tribune AP Ryan J. Foley article 6 Aug 08 ++]

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> MILITARY COMPENSATION REVIEW UPDATE 01: The 10th Quadrennial Review of

Military Compensation has suggested a new way of measuring military pay, proposed that more money be spent on special and incentive pays, and recommended restructuring the basic allowance for housing. Retired Air Force Brig. Gen. Jan D. "Denny" Eakle -- former deputy director of the Defense Finance and Accounting Service -- chaired the commission and briefed the media on the recommendations 12 MAR. This was just the first release of the review, Eakle explained. A second volume, covering retirement and quality-of-life aspects of compensation, will be released in the summer. Eakle said that whenever a QRMC convenes, the first question it examines always is whether military pay is comparable to pay in the private sector. The second is whether military pay is adequate to maintain the force, she said. The 9th QRMC, released in 2002, concluded that for pay to be comparable, it had to be at or above the 70th percentile of the age- and education-matched civilian population, Eakle said. Military pay followed this guidance through 2006, and targeted pay raises in 2007 and 2008 ensure DoD exceeds the 70th percentile for enlisted personnel. Officer pay exceeded this goal in 2006 and has kept pace since then, she said.

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> Eakle said the current review studied whether the comparability

formula is adequate. "Basically, what we wanted to do is create something which would give military members a better means of assessing how their pay stacked up in comparison to civilians," she said. Regular military compensation was the measure used in previous QRMCs. This included basic pay, subsistence, housing and a measure of savings on federal income tax. "But there's a lot more to military compensation," she said. The new system begins with regular military compensation and adds state and FICA tax advantages. Military personnel also do not pay out-of-pocket health care costs, such as co-pays, she explained, and all these folded into the panel's calculations. The new measurement is called military annual compensation, and it sets the 80th percentile as the standard for military compensation comparability with the private sector. Pay for enlisted personnel and officers meets this standard, Eakle said. Congress revamped the special incentive pay categories from more than 60 to eight, Eakle said. "That, in fact, was a recommendation of this QRMC, and it was enacted before the publication of this document, Eakle said. "And so now it's up to the department to begin the process of drafting out the instructions to adopt this." The review recommended increasing the size of the special and incentive pay budget. "Today we have an S&I budget that, quite frankly, is rather small in comparison to the size of the other pay accounts," she said. "And because of that, it doesn't give the service as much flexibility for arranging pay."

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> The review examined the basic allowance for housing and a previous recommendation to do away with the without-dependent housing rate. The review also proposed changes to the partial-BAH program. Because some single servicemembers are making as little as 52% of the pay their peers who have families receive, the QRMC recommends raising that floor to no less than 75% at first, and to 95% over time. But the gap between married and single BAH should not disappear, Eakle said. The review did recommend changes for singles living on post or aboard ships. The proposal is a new variable, partial BAH based on the value of the quarters the servicemembers occupy. The DoD standard is a one-plus-one dormitory -- meaning each individual having a bedroom and a shared cooking facility and bathroom. For those living with three roommates, the review believes they are overpaying for their accommodations by forfeiting their entire housing allowance, and "we would recommend that they get a rebate on their BAH." "The range we are talking about is going from zero for people in the one-plus-one dormitories, up to a 25% rebate for those who are living in ships with hot-bunk arrangements," she said. "So you'd be able to give people something in recognition of the fact that housing is not at the DoD standard."

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> The review also recommended staying with time-in-service pay tables. A previous commission, the Defense Advisory Committee on Military Compensation, recommended replacing the time-in-service pay table with a time-in-grade pay table. This would reward pay for performance, the

commission members believed. "We looked very seriously at this recommendation, but we've chosen not to accept it and are not going to endorse the change," Eakle said. She said it would exacerbate pay differentials, adding: "We don't think that's in keeping with our spirit of being fair and equitable to all members." [Source: AFPS Jim Garamone article 13 Mar 08 ++]

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> MILITARY COMPENSATION REVIEW UPDATE 02: A panel looking at military compensation has recommended dramatic changes in the military retirement system. The recommendations are part of the second volume put out by the 10th Quadrennial Review of Military Compensation. The first volume -- released in March -- looked at cash compensation. Retired Air Force Brig. Gen. Jan D. "Denny" Eakle was director of the panel, and she briefed the press during a Pentagon news conference 5 AUG. Eakle said critics of the current military retirement system say it is not equitable, it is not flexible, and it is not efficient. "There is a perception that the system we have today is inequitable because only 15% of all enlisted personnel and less than half of officers will ever receive anything in the system," she said. Reserve-component personnel also believe the current system discriminates against them, especially at a time when reserve forces are being called on more, she said.

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> The retirement proposal would offer a defined benefit, defined contributions, "gate" pays and separation pays. The defined benefit would be 2.5% of the average basic pay for the highest 36 months of the individual's career multiplied by the number of years of service, with servicemembers vested at 10 years of service. Payments to retirees would begin at age 60 for those with less than 20 years of service and at age 57 for those with 20 years of service or more. Servicemembers could opt for an immediate annuity, but the payout would follow the Federal Employee Retirement System methodology -- a 5% penalty per year for early withdrawal. The defined contribution portion would be an automatic government-funded Thrift Savings Plan. Servicemembers would not have to match any government payment. The government would not put any money in for the first year, but would put in 2% of base pay for two years of service, 3% for three and four years of service, and 5% for five and more years of service. Again, this would be vested after 10 years of service.

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> The military also would make "gate pays" to servicemembers who reach specific years of service. These would vary by years of service and skills, Eakle said. "This is a payment made for achieving a particular year of service," she explained. "And within the services, they would have the flexibility to vary this by year of service as well as by skill. That way, they could begin to shape the skills by dragging people further into their career by offering them an incentive." Finally, the system would include

separation pays to servicemembers that would also vary by years of service and skills. "The separation payments would be made available by the service to members that they wished to entice to leave," Eakle said. This would be a permanent tool services would have available, she added.

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> The panel used a Rand Corporation computer model to test the recommendations, but Eakle said the panel members would like a large-scale test in the Defense Department. "Therefore, the recommendation of this QRMC is that the Department of Defense conducts a multi-year test of this system. The way the test would work is this: All four services would be asked to identify some skills that have different types of retention patterns -- some that stay not very long, some that stay longer periods of time -- and ones they wish to influence. The test would offer people in those skills in the first eight years of service an opportunity to volunteer. If someone was selected for the test, they would be paid all of the TSP that they should have earned up until that point, and it will be put in their TSP account for them. The program's vesting rules would in fact apply to all those individuals. So should they achieve 10 years of service while they are in the test, they would fully own it. At the end of the test period, people who are in the new system who wish to revert to the original retirement system would be allowed to do so." she said. Any change in the retirement system would require action by Congress. DoD officials said they will carefully examine the panel's recommendations and then decide if they should move forward. The study will take at least six to 12 months, so any decision would be made by the next administration, DoD officials added. [Source: AFPS Jim Garamone article 5 Aug 08 ++]

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> MILITARY COMPENSATION REVIEW UPDATE 03: The Quadrennial Review of

Military Compensation has recommended fee changes to Tricare, the military's health care system. The recommendations would mostly affect retirees and will not affect active-duty servicemembers or their dependents, retired Air Force Brig. Gen. Jan D. "Denny" Eakle, the director of the study, said in a Pentagon briefing today. "Retiree fees ought to relate to how much the plan is worth. The ... higher-value plans should have higher premiums associated with them. The panel believes fees need to be fair to all retired military members. They ought to reflect how much income an individual has, so that if they make more money and are therefore better able to pay for a system, they should do so," she said. One problem is the fee structure for Tricare has not changed in 13 years. In 1995, servicemembers paid 27% of their health care cost. Today that share is less than 12%. Over-65 military retirees -- those using the "Tricare for Life" program -- have been paying the Medicare Part B program fee of 25%, but this is due to rise. "Essentially what this says to you is that we are asking our older retirees, who are in fact the least likely to hold jobs and therefore have the lowest incomes, to pay the

most for their system," Eakle said.

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> But Tricare for Life is a much more generous program than Tricare Prime. Eakle said, "We believe we need to get some parity between our older and our younger retirees. The panel wants to redress some of this imbalance. We believe that the under-65 retirees should begin paying 40% of the Medicare Part B premium using the same fee structure that is laid on by the Medicare system, adding that this should bring the system into a semblance of parity. In addition, we believe that the under-65 retirees ... who elect to use Tricare Standard and Extra need to pay a small fee for that. And we would suggest to the department that that fee be set at 15% of the Medicare Part B. We think the family rate should be set at double the individual rate and that the premium increase needs to be phased in over four years." Other recommendations include using the Medicare deductible rate -- \$135 per person in 2008 -- for Tricare. The panel also recommended to the department that all co-pays and co-insurance for any preventative service be provided at no cost to all members and retirees who have access to Tricare. The final panel recommendation to DoD is to establish an open enrollment period for Tricare, Eakle said. [Source: AFPS Jim Garamone article 5 Aug 08 ++]

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> FORECLOSURE UPDATE 03: "The Housing and Economic Recovery Act of 2008",

H.R.3221 was recently signed into law (PL 110-289). To review the full law, go to: <http://thomas.loc.gov/> and type HR 3221 into the search field. This legislation is designed to help homeowners keep their existing homes and provide first-time buyers access to affordable housing. Military families should know that there are several provisions within the Act that uniquely impact service members and veterans. The law will:

> Exclude military housing allowances from counting as income when service members try to qualify for low-income housing;

> Expand the foreclosure protection for service members returning from deployment. Previously, service members had 90 days of protection from foreclosure, now they have nine months. This temporary protection expires on December 31, 2010;

> Provide a temporary increase until the end of the year for the maximum loan guaranteed by the Department of Veteran Affairs (VA). The cap can be as high as \$720,750 and as low as \$417,000 depending on the median housing prices for the area;

> Require the Secretary of Defense to develop a program to provide financial counseling to returning service members, including credit and home mortgage counseling;

> Provide a moving benefit to service members who are forced to move out of rental housing if the owner of the housing is foreclosed on;

> Increase grants for severely disabled veterans from \$50,000 to \$60,000;

> Make totally disabled service members held on active duty for medical

reasons eligible for VA grants for home alternations before their discharge;
> Extend grants for specially adapted housing and assistance to veterans with severe burns and veterans residing outside the United States; and
> Allow veteran benefits received as a lump sum to be treated as monthly benefits for the purposes of eligibility for Section 8 Housing assistance.

> [Source: NMFA Government and You E-News 12 Aug 08 ++]

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> USFSPA & DIVORCE UPDATE 02: The USFSPA Litigation Support Group (ULSG)

closely monitors cases filed in state courts where former servicemembers, who are receiving military retirement pay, are locked in disputes with former spouses when that pay is converted, by election, to military disability pay under applicable VA benefits. This is a common move by former servicemembers who receive a VA disability rating because of the tax advantages of receiving disability pay over retired pay. Former spouses usually dispute such an election and demand that foregone share of military retired pay be rendered to them, even though the former servicemember's only (or major) source of income is now disability pay. Usually, former servicemembers (and their lawyers) rely solely on the provisions of the Uniformed Services Former Spouses Protection Act (USFSPA) which prevents the

treatment of military disability pay as disposable pay for purposes of payments to former spouses. See USFSPA, 10 U.S.C. § 1408(a)(4)(B). But state courts continue to ignore that provision and rule against the interests of former servicemembers.

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> It is vital, therefore, that ULSG members and constituents also rely on the relevant provisions of the Veterans' Benefits Act, 38 U.S.C. § 5301, which provides that payments of benefits due or to become due under any law administered by the Secretary [of Veterans Affairs] shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be . exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Congress recently amended the VBA and this applicable provision Id. § 5301(a)(1). , to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit by payment of such compensation, pension or dependency and indemnity compensation, as the case may be . such agreement shall be deemed to be an assignment and is prohibited. Veterans Benefits Act of 2003, Pub. L. No. 108-183, § 702, 117 Stat. 2651, Dec. 16, 2003, codified at § 5301(a)(3)(A).

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> ULSG members finding themselves in litigation on questions related to this advisory should instruct their lawyers to brief and argue - from the very beginning of the case, and at every opportunity thereafter - the Veterans Benefits Act (VBA) issue, in support of their position. While ULSG, LLC cannot provide individualized legal advice to its members and constituents, or answer individual queries, ULSG leadership believes that this is a prudent course to follow in cases such as this. ULSG would appreciate hearing reports on this issue from those concerned. They can be reached at Leadership@ulsg.org or by mail to ULSG, LLC, 20770 US Hwy 281, Ste 108-12, San Antonio, Texas 78258-7500. [Source: ULSG Advisory 5 Aug 08 ++]

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> AO & PROSTRATE CANCER UPDATE 01: Veterans exposed to the herbicide Agent

Orange are twice as likely to get prostate cancer as other veterans, UC Davis researchers found in a study published online by the journal Cancer. Prostate cancer in those men also comes on earlier and is more aggressive, said Dr. Karim Chaime, chief resident in urology at UC Davis and the study's lead author. The findings are a clear signal that men who worked with Agent Orange should be cared for differently, getting earlier biopsies and more aggressive treatment, he said. "This is a high-risk group." Chaime described the study of more than 13,000 Northern California veterans over eight years as "the biggest study ever done" on Agent Orange effects. It will be published in the 15 SEP print edition of Cancer, after online publication last week, and Chaime hopes it soon could lead to new Department of Veterans' Affairs treatment standards.

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> For Vietnam vet James McKasson, who participated in the study, the findings are a reminder that no one exposed to Agent Orange should delay prostate-cancer testing. McKasson, 62, a retired auto mechanic, said he's doing well after being diagnosed with prostate cancer last year - 40 years after he helped load Agent Orange onto planes in the 1960s. He worked with both liquid and powdered forms of the chemical, and "this stuff would slop around; it would drip on you," he recalled. "You'd walk through it and get it on your shoes, on your clothes, on your hands. . They didn't give us any protective clothing at all." For decades, McKasson didn't worry much about studies that linked exposure to diseases ranging from diabetes to soft-tissue cancer to birth defects in veterans' children. "I'm an advocate now," he said, telling his "stubborn" friends to have regular checks for prostate cancer.

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> The chemical was used widely during the Vietnam War to defoliate jungle areas where U.S. forces believed enemies were hiding. It also was used around U.S. military facilities at home and abroad as early as the 1950s, according to the Department of Veterans Affairs. About 375,000 men

nationwide are on the military's Agent Orange registry of those exposed, and roughly one-third can be expected to develop prostate cancer, Chaime said. "This has huge implications for men, especially in the VA," but also for those treated by private insurance, whose primary care doctors and urologists may not have seen the latest data, he added. Of the 13,000 men followed by the study, just under half had been exposed to Agent Orange. Among the 6,214 exposed, 239 were diagnosed with prostate cancer over eight years, compared with 124 of 6,930 unexposed veterans. [Source: The Sacramento Bee Carrie Peyton Dahlberg article 5 Aug 08 ++]

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> VA MILEAGE REIMBURSEMENT UPDATE 05: The House overwhelmingly approved a bill that-among other things-would increase the mileage compensation paid by the Department of Veterans Affairs (VA) by nearly 50% to help vets who have to drive long distances to receive medical care. The increase in mileage compensation-to 41.5 cents per mile-was included in the Fiscal Year 2009 Military Construction and Veterans Affairs Appropriations Act, which must still be considered by the Senate and approved by President Bush, said House Appropriations Committee Chairman Dave Obey (D-WI). The spending bill-which passed 409 to 4-would provide \$336 million above Bush's FY 2009 budget request for servicemember quality-of-life projects to improve living conditions and health care delivery. Projects include the modernization of training facilities, as well as the building of child care centers, barracks and housing, Obey said. The bill also would address the backlog in maintenance at VA medical facilities; improve access to health care for vets in areas where VA does not offer services; increase availability of new generation prosthetics; substantially increase funding for research into trauma, mental health and other critical areas; and provide additional case workers and medical services for homeless vets. [Source: Rep. Dave Obey press release 1 Aug 08 ++]

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> PROSTATE PROBLEMS UPDATE 06: In a move that could lead to significant changes in medical care for older men, a national task force in the United States recommended that doctors stop screening men ages 75 and older for prostate cancer because the search for the disease in this group is causing more harm than good. The new guidelines, issued 4 AUG by the U.S. Preventive Services Task Force, represent an abrupt policy change by an influential panel that had withheld any advice regarding screening for prostate cancer, citing a lack of reliable evidence. Though the task force still has not taken a stand on the value of screening in younger men, the shift is certain to re-ignite the debate about the appropriateness of prostate cancer screening at any age. Screening for prostate cancer is typically performed with a blood test measuring prostate-specific antigen, or PSA, levels. Because it is not clear precisely what PSA level signals the presence of

cancer, many men experience stressful false alarms that lead to unnecessary surgical biopsies to make a definitive diagnosis, which can be painful and in rare cases can cause serious complications. Widespread PSA testing has led to high rates of prostate cancer detection. Last year, more than 218,000 men in the United States were found to have the disease. About 28,000 die of it, making it the most common cancer and second-leading cancer killer among men.

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> Various studies suggest the disease is "over-diagnosed" - that is, detected at a point when the disease probably would not affect life expectancy - in 29 to 44% of cases. Prostate cancer often progresses very slowly, and a large number of these cancers discovered through screening probably will never cause symptoms during the patient's lifetime, particularly if that patient is older. At the same time, aggressive treatment of prostate cancer can greatly reduce a patient's quality of life, resulting in complications like impotence and incontinence. Past task force guidelines noted that there was no benefit to prostate cancer screening in men with less than 10 years left to live. Since it can be difficult to assess life expectancy, it was an informal recommendation that had limited impact on screening practices. The new guidelines take a more definitive stand; however, stating that the age of 75 is clearly the point at which screening is no longer appropriate. The task force was created by Congress to analyze current medical research and to make recommendations about preventive care for healthy people. Its guidelines are viewed as highly credible and often are relied on by practicing physicians in making decisions about patient care. It is estimated that one out of every three American men 75 and older is now screened for prostate cancer. [Source: International Herald Tribune Tara Parker-Pope article 5 Aug 08 ++]

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> PTSD UPDATE 23: In response to the growing number of veterans denied the mental health treatment needed to address their post traumatic stress who end up in legal trouble after self-medicating to suppress their anxieties, Sens. John Kerry (D-MA) and Lisa Murkowski (R-AK) on 1 AUG introduced the Services, Education, and Rehabilitation for Veterans (SERV) Act to create veteran drug treatment courts to support veterans combat the cycle of alcohol or drug addiction. A similar program is operational in Buffalo, NY and has already seen great success. The SERV Act would authorize funds to go to the Office of National Drug Control Policy for the development and implementation of veteran's treatment courts or to enhance operational drug courts to serve veterans. The grants would be administered by the Department of Justice in consultation with the Department of Veterans Affairs. To be eligible for funding the veteran's treatment court or drug court serving veterans must effectively integrate substance abuse treatment, mental health treatment, mandatory drug testing, sanctions and incentives, and transitional services in a judicially supervised court setting with

jurisdiction over nonviolent, substance-abusing offenders that have served in the United States military. Also included is the authorization for the National Drug Court Institute (NDCI). The NDCI is a bipartisan supported organization that conducts national, comprehensive training programs for State and local communities for the purpose of improving the professional skills of drug court practitioners and enhancing the ability of State and local communities to expand drug courts to reach all addicted citizens in need

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> "These treatment courts will address the specific challenges with drugs and alcohol too many veterans face when returning home from their honorable service overseas," said Senator John Kerry. "For those who have given so much for our country, we should address the serious issues of drug and alcohol addiction in an appropriate forum that recognizes that some veterans fall victim to substance abuse as a way to handle post-traumatic stress. It's well past time we offered our veterans services worthy of their sacrifice." Sen. Murkowski said, "Some of the brave men and women who have served our country fall victim to alcohol and drug addiction and end up in our criminal justice system. Drug courts are an effective way to break this cycle of abuse and help these veterans re-enter society. The Alaska Court System already has successful drug courts in Anchorage, Fairbanks, Bethel, Juneau and Ketchikan, and there is a Veterans Court in Anchorage. This bill would provide additional funding for some of Alaska's existing therapeutic court programs and would allow more nonviolent-offender programs to be developed across the state. The SERV Act is particularly important for Alaska, which has one of the highest veterans' per capita rates in the nation." [Source: Military.com AP article 1 Aug 08 ++]

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> VA COLA 2009: S.2617, the Veterans Compensation Cost-of-Living Adjustment Act of 2008 introduced by Senator Akaka, was passed by unanimous consent in the Senate 30 JUL. If passed in the House, it will adjust veterans' compensation rates to keep pace with inflation effective 1 DEC 08. According to recent data provided by the Department of Veteran Affairs this increase will go to 2.8 million veterans and over 300,000 surviving spouses receiving dependency and indemnity compensation. The bill now moves to the House of Representatives for their consideration. While this year's cost-of-living increase has yet to be determined, the congressional Budget Office has projected a 2.8% increase. Last year's increase was 2.3% [source: Sen. Akaka press release 21 Jun 08 +]

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> HAVE YOU HEARD: Ways to Simulate Being in The Navy if you are a Retired Destroyer Sailor:

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> Lock all friends and family outside. Your only means of communication

should be with letters that your neighbors have held for at least three weeks, discarding two of five.

- > Surround yourself with 200 people that you don't really know or like: people who smoke, snore like Mack trucks going uphill, and use foul language like a child uses sugar on cereal.
- > Unplug all radios and TVs to completely cut you off from the outside world. Have a neighbor bring you a Time, Newsweek, or Proceedings from five years ago to keep you abreast of current events.
- > Monitor all home appliances hourly, recording all vital information (ie: plugged in, lights come on when doors open, etc).
- > Do not flush the toilet for five days to simulate the smell of 40 people using the same commode.
- > Lock the bathroom twice a day for a four hour period.
- > Wear only military uniforms. Even though nobody cares, clean and press one dress uniform and wear it for 20 minutes.
- > Cut your hair weekly, making it shorter each time, until you look bald or look like you lost a fight with a demented sheep.
- > Work in 19-hour cycles, sleeping only four hours at a time, to ensure that your body does not know or even care if it is day or night.
- > Listen to your favorite CD 6 times a day for two weeks, then play music that causes acute nausea until you are glad to get back to your favorite CD.
- > Cut a twin mattress in half and enclose three sides of your bed. Add a roof that prevents you from sitting up (about 10 inches is a good distance) then place it on a platform that is four feet off the floor. Place a small dead animal under the bed to simulate the smell of your bunkmate's socks.
- > Set your alarm to go off at 10 minute intervals for the first hour of sleep to simulate the various times the watchstanders and night crew bump around and wake you up. Place your bed on a rocking table to ensure you are tossed around the remaining three hours. Make use of a custom clock that randomly simulates fire alarms, police sirens, helicopter crash alarms, and a new-wave rock band.
- > Have week old fruit and vegetables delivered to your garage and wait two weeks before eating them.
- > Prepare all meals blindfolded using all the spices you can grope for, or none at all. Remove the blindfold and eat everything in three minutes.
- > Periodically, shut off all power at the main circuit breaker and run around shouting "fire, fire, fire" and then restore power.
- > At least once a month, force the commode to overflow to simulate a 'black water system' boo-boo.
- > Buy a gas mask and smear it with rancid animal fat. Scrub the face shield with steel wool until you can no longer see out of it. Wear this for two hours every fifth day especially when you are in the bathroom.
- > Study the owner's manual for all household appliances. Routinely take an appliance apart and put it back together.
- > Remove all plants, pictures and decorations. Paint everything gray, white, or the shade of hospital smocks.

- > Buy 50 cases of toilet paper and lock up all but two rolls. Ensure one of these two rolls is wet all the time.
- > Smash your forehead or shins with a hammer every two days to simulate collision injuries sustained onboard Navy ships.
- > When making sandwiches, leave the bread out for six days, or until it is hard and stale.
- > Every 10 weeks, simulate a visit to another port. Go directly to the city slums wearing your best clothes. Find the worst looking place, and ask for the most expensive beer that they carry. Drink as many as you can in four hours. Take a cab home taking the longest possible route. Tip the cabby after he charges you double because you dress funny and don't speak right.
- > Use fresh milk for only two days after each port visit.
- > Keep the bedroom thermostat at 2 deg C and use only a thin blanket for warmth.
- > Ensure that the water heater is connected to a device that provides water at a flow rate that varies from a fast drip to a weak trickle, with the temperature alternating rapidly from -2 to 95 deg C.
- > Use only spoons which hold a minimum of ½ cup at a time.
- > Repaint the interior of your home every month, whether it needs it or not.
- > Remind yourself every day: "It's not just a job, it's an adventure!"
- > Mix kerosene with your water supply to simulate the de-sal plant on the ship picking up jp5 in the intake-if a lit match thrown into your coffee pot doesn't ignite it, add more kerosene.
- > Stand outside at attention at dawn and have the poorest reader you know read the morning paper out loud. Be sure to have him skip over anything pertinent.
- > Every four hours, check the fluid level in your car's radiator. Check the tire pressure and replace air lost from excessive pressure checks. Be sure to place red tag on ignition stating "DANGER: DO NOT OPERATE" while you perform these checks. Inform your neighbor as to the results of these checks, have him tell you to repeat the checks because he did not see you perform them.
- > Paint your house gray (exterior) include windows except for rooms you do not frequent, paint your car gray, paint your driveway a different shade of gray.
- > Wait outside your dining area as a family member eats a meal, then have that person serve you a meal prepared several hours earlier.
- > Shut all blinds and doors at sunset.
- > Clean your house 'till there's absolutely not a speck of dust anywhere.
- > Call on a stranger to come inspect your house. Ensure stranger sees dust that has collected in the time it took to find him. Stranger cannot leave until he finds irrational fault with your house/belongings.
- > Hang Christmas lights in June. When the neighbors ask, say, "deceptive lighting."
- > Hang white lights when relatives visit. When neighbors ask, say, "friendship lights."

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> VETERAN LEGISLATION STATUS 13 AUG 08: Congress is in recess 6 AUG to 4

SEP. Refer to the Bulletin's House & Senate attachments for or a listing of Congressional bills of interest to the veteran community that have been introduced in the 110th Congress. Support of these bills through cosponsorship by other legislators is critical if they are ever going to move through the legislative process for a floor vote to become law. A good indication on that likelihood is the number of cosponsors who have signed onto the bill. A cosponsor is a member of Congress who has joined one or more other members in his/her chamber (i.e. House or Senate) to sponsor a bill or amendment. The member who introduces the bill is considered the sponsor. Members subsequently signing on are called cosponsors. Any number of members may cosponsor a bill in the House or Senate. At <http://thomas.loc.gov> you can also review a copy of each bill's content, determine its current status, the committee it has been assigned to, and if your legislator is a sponsor or cosponsor of it. To determine what bills, amendments your representative has sponsored, cosponsored, or dropped sponsorship on refer to <http://thomas.loc.gov/bss/d110/sponlst.html>. The key to increasing cosponsorship on veteran related bills and subsequent passage into law is letting our representatives know of veteran's feelings on issues. At the end of some listed bills is a web link that can be used to do that. You can also reach his/her Washington via the Capital Operator direct at (866) 272-6622, (800) 828-0498, or (866) 340-9281 to express your views. Otherwise, you can locate on <http://thomas.loc.gov> who your representative is and his/her phone number, mailing address, or email/website to communicate with a message or letter of your own making. Refer to http://www.thecapitol.net/FAQ/cong_schedule.html for future times that you can access your representatives on their home turf. [Source: RAO Bulletin Attachment 13 Jul 08 ++]

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