

FINANCIAL MEANS AS A REQUISITE TO OBTAINING BENEFITS: ROUTINE SERVICE DOG EXPENSES AS A DISABILITY BENEFIT FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES

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INTRODUCTION

United States Marine Corps Officer Andrew Einstein survived a grenade attack that caused a serious brain injury.¹ The brain injury left him feeling

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1. Dann Cuellar, *‘He Gave Me a Purpose’: N.J. Veteran Says Service Dog Saved His Life*, 6ABC (Feb.

as though he was “[b]etter off dead than suffering alive”² Einstein seriously considered suicide by overdose before Gunner, a service dog, entered his life.³ Einstein recovered with Gunner’s help.⁴ Kevin Doncaster returned from Iraq depressed and “[o]n the verge of suicide”⁵ He describes his service dog—Lacey—as a “game changer that possibly saved his life.”⁶ His experience inspired him to found a non-profit to help other veterans with the costs of obtaining a service dog.⁷ These stories are not unusual,⁸ as new evidence shows the value of pairing service dogs⁹ with veterans.¹⁰ Unfortunately, this value comes at a high price and the cost of maintaining a service dog can present a barrier to some veterans. In a comment posted to the Federal Register, Operation Iraqi Freedom Veteran Kevin Widner pointed out that service dogs are held to high standards of cleanliness during public access work.¹¹ Meanwhile, Karen D. Jeffries, a retired Commander of the United States Navy and Executive Director of Veterans Moving Forward, expressed concern over a veteran with a

20, 2019), <https://6abc.com/pets-animals/nj-veteran-says-service-dog-saved-his-life/> 5146267.

2. *Id.*

3. *Id.*

4. *See id.* (stating Gunner “forced [him] to get better, and as the weeks and months went by, [he] got better and now, years later, [he is] thriving”).

5. Travis Guillory, *Bartlesville Veteran Says Service Dog Helped Save His Life*, KJRH (Feb. 8, 2019, 7:41 AM), <https://www.kjrh.com/news/local-news/organizations-working-to- curb-veteran-suicides>.

6. *Id.*

7. *Id.*

8. See Adelina Lancianese, *Service Dog Registries to Streamline Travel for Veterans with ‘Invisible Injuries’*, NPR (July 28, 2018, 5:00 AM), <https://www.npr.org/2018/07/28/633076559/service-dog-registries-to-streamline-travel-for-veterans-with-invisible-injuries> [hereinafter *Service Dog Registries*] (stating that “many” veterans rely on psychiatric service dogs to assist with their lives).

9. The U.S. Department of Veterans Affairs (VA) defines service dogs as “guide or service dogs prescribed for a disabled veteran under [§ 17.148].” 38 C.F.R. § 17.148(a) (2018). This definition expressly differs from the Department of Justice regulatory definition of a service dog. *See infra* Part I. Service dogs are not to be confused with emotional support animals (ESAs), a type of animal that provides companionship but does not directly mitigate a disability. *Id.*

10. *See* Kevin Doerr, *Study Shows Physiological and Behavioral Benefits May Be Experienced By Veterans with PTSD Who Have Service Dogs*, PURDUE UNIV. (June 12, 2018), <https://www.purdue.edu/newsroom/releases/2018/Q2/study-shows-physiological-and-behavioral-benefits-may-be-experienced-by-veterans-with-ptsd-who-have-service-dogs.html> (introducing the first published research study that used a “[p]hysiological marker to define the biobehavioral effects of service dogs on veterans with PTSD”).

11. Kevin Widner, Comment Letter on Proposed Rule on Guide and Service Dogs 1, 5 (Aug. 16, 2011), <https://www.regulations.gov/contentStreamer?documentId=VA-2011-VHA-0017-0087&attachmentNumber=1&contentType=pdf>.

physical disability attempting to trim his or her dog's nails, a service not afforded by the U.S. Department of Veterans Affairs (VA).¹²

As a country that strives to create new ways to help its veterans,¹³ it is no surprise that the United States offers a wide variety of benefits to help support service members as they settle back into civilian life.¹⁴ These benefits include education, health care, housing, pension, and disability compensation.¹⁵ The purpose of offering these benefits is to “. . . serv[e] and hono[r] the men and women who are America's veterans.”¹⁶ Each benefit has unique eligibility requirements and specific application procedures.¹⁷ The requisites of each particular benefit vary and depend on factors such as a veteran's symptomology, ability to function, and need for specialized equipment.¹⁸ While eligibility for the VA's service dog benefit depends in part on these factors, it also requires access to adequate financial means.¹⁹ Although the service dog benefit covers some expenses,²⁰ veterans are required to pay for several expenses out of pocket.²¹

12. Karen D. Jeffries, Commander, U.S. Navy, Retired, Executive Director of Veterans Moving Forward, Comment Letter on Proposed Rule on Guide and Service Dogs 1, 2 (Aug. 15, 2011), <https://www.regulations.gov/contentStreamer?documentId=VA-2011-VHA-0017-0095&attachmentNumber=1&contentType=pdf>.

13. *See About the Office of Research & Development*, U.S. DEP'T OF VETERANS AFFAIRS, <https://www.research.va.gov/about/default.cfm> (last updated Aug. 24, 2018) (stating that the VA Research and Development team works to “[i]mprove the lives of Veterans . . . through health care discovery and innovation”).

14. *See Explore VA*, U.S. DEP'T OF VETERANS AFFAIRS, <https://www.va.gov/?from=explore.va.gov> (listing the types of benefits that are offered to veterans) (last visited Nov. 10, 2019).

15. *Id.*

16. *About VA*, U.S. DEP'T OF VETERANS AFFAIRS, https://www.va.gov/ABOUT_VA/index.asp (last updated June 21, 2019).

17. *See Federal Benefits for Veterans, Dependents and Survivors*, U.S. DEP'T OF VETERANS AFFAIRS iii (2018), https://www.va.gov/opa/publications/benefits_book/2018_Federal_Benefits_for_Veterans.pdf (outlining the different eligibility requirements for each benefit available to veterans, dependents, and survivors).

18. *See generally* 38 U.S.C. §§ 1101–1163 (2012) (Veterans' Benefits Compensation for Service Connected Disability or Death statute).

19. *See* 38 C.F.R. § 17.148(d)(4) (2018) (“[The] VA will not pay for items such as license tags, nonprescription food, grooming, insurance for personal injury . . . , or other goods and services not covered by the policy.”); *see also Service Dog Veterinary Benefits Rules*, U.S. DEP'T OF VETERANS AFFAIRS REHABILITATION & PROSTHETIC SERVS. 1, 2 (Aug. 2019), <https://www.prosthetics.va.gov/factsheet/PSAS-FactSheet-ServiceDogs.pdf> [hereinafter *Service Dog Veterinary Benefits Rules*] (stating that eligibility is determined in part by the veteran's means to provide care to the service dog).

20. 38 C.F.R. § 17.148(d)(1)–(3).

21. *See* 38 C.F.R. § 17.148(d)(4) (listing items, such as grooming, over-the-counter medication, and personal injury insurance, for which the VA will not assume the costs).

Veterans' use of service dogs has risen in prominence, particularly for those with mental health issues.²² Accordingly, it is understandable that the VA is working to find ways to utilize this important tool to assist veterans.²³ However, if a veteran wishes to obtain service dog benefits through the VA, the individual must show adequate financial means to otherwise care for the dog.²⁴ Part I of this Comment discusses the history of service dog use by veterans and the regulatory background of the VA's service dog benefit. Part II explores the possibility of providing monthly benefits to service members who require a dog to mitigate service-connected conditions and analyzes the avenues the VA could take to implement this benefit. Part III argues that special monthly compensation (SMC) is the superior means of providing this benefit to veterans while examining counterarguments. Part IV concludes by exploring the policy and budgetary implications of providing this common-sense benefit.

I. SERVICE DOG USE BY VETERANS

The U.S. Department of Justice—the agency responsible for issuing regulations related to the Americans with Disabilities Act (ADA)—and the VA have different definitions of service dogs and service animals.²⁵ The ADA provides that service animals are entitled to accompany their handlers in all public places,²⁶ unless the dog is out of control or the dog is not housebroken.²⁷ Staff may not question a handler about his or her disability.²⁸ However, they may ask whether the dog is required for a disability and what task or tasks the dog is trained to perform.²⁹

22. See *VA Restarting Study on Service Dogs and PTSD*, U.S. DEP'T OF VETERANS AFF. OFF. OF RES. & DEV. (Mar. 24, 2015), <https://www.research.va.gov/currents/spring2015/spring2015-2.cfm> [hereinafter *VA Restarting Study*] (discussing that providing veterans living with mental health issues with service dogs is highly-debated through congressionally-mandated studies and significant exploration).

23. See *id.* (describing a new study to determine whether veterans can use service dogs or emotional support dogs to mitigate PTSD).

24. 38 C.F.R. § 17.148(d)(4).

25. Compare 38 C.F.R. § 17.148(a) (defining service dogs as “guide or service dogs prescribed for a disabled veteran under [§ 17.148]”), with 28 C.F.R. § 36.104 (2018) (defining service animal as “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability”).

26. See *VA Restarting Study*, *supra* note 22 (noting that service dogs are allowed in all public places where the general public is permitted).

27. See *Frequently Asked Questions about Service Animals and the ADA*, U.S. DEP'T OF JUST. CIV. RTS. DIV. DISABILITY RTS. SECTION 1, 5 (July 20, 2015), https://www.ada.gov/regs2010/service_animal_qa.pdf (clarifying when service animals can be excluded).

28. *Id.* at 2.

29. *Id.*

The VA's exploration into the possible benefits of dogs for veterans is not limited just to service dogs; the Department is also studying possible benefits of emotional support animals for veterans.³⁰ As emotional support animals (ESAs) are untrained, they do not meet the standard to be considered service dogs.³¹ With the dramatic increase in ESAs,³² issues have arisen in differentiating between untrained ESAs and highly trained psychiatric service dogs.³³ As a result, the U.S. Department of Transportation (DOT) sought comment in the Federal Register on public opinion about whether the Air Carrier Access Act (ACAA) should continue to include ESAs in its definition of service dog.³⁴ ESAs are not required to receive special training³⁵ and are not considered service dogs under the ADA.³⁶ While ESAs may provide value to veterans,³⁷ they are not eligible for any form of benefit from the VA.³⁸ The difference is in place because ESAs are little more than pets,³⁹ and only have rights in housing and on airplanes.⁴⁰

30. See *VA Restarting Study*, *supra* note 22 (informing that the study will compare service and emotional support dogs).

31. See Benjamin Zhang, *Emotional-Support Animals Are Becoming a Big Problem on Planes, and Airlines Want Them to Go Away*, BUS. INSIDER (June 29, 2018), <https://www.businessinsider.com/emotional-support-animals-big-problem-airlines-want-to-stop-them-2018-6> (stating that ESAs are untrained and may threaten aircraft passengers).

32. See *id.* (citing a 74% rise in ESAs on planes between 2016 to 2017).

33. See *id.* (noting that airlines wish to only allow psychiatric service dogs and seek permission to ban ESAs).

34. *Traveling by Air with Service Animals*, 83 Fed. Reg. 23,832, 23,839 (proposed May 23, 2018) (to be codified at 14 C.F.R. pt. 382).

35. See *Frequently Asked Questions about Service Animals and the ADA*, U.S. DEP'T OF JUST. CIV. RTS. DIV. DISABILITY RTS. SECTION 1, 2 (July 20, 2015), https://www.ada.gov/regs2010/service_animal_qa.pdf (discussing that ESAs assist from their presence and are not task-trained).

36. *Id.*

37. See *VA Restarting Study*, *supra* note 22 (discussing the need to study whether ESAs can sufficiently meet the needs of veterans).

38. See 38 C.F.R. § 17.148(c) (2018) (stating that the VA will only pay benefits to service dogs).

39. An animal may be considered an emotional support animal if a licensed mental health professional determines the animal is necessary for the patient's mental health. See Stephanie Gibeault, *Everything You Need to Know About Emotional Support Animals*, AM. KENNEL CLUB (Oct. 3, 2019), <https://www.akc.org/expert-advice/lifestyle/everything-about-emotional-support-animals> (describing ESAs as pets and noting their lack of special training to perform a task).

40. See *id.* (explaining that ESAs only have rights under the Fair Housing Act and the Air Carrier Access Act). Although air carriers are required to permit animals that are used for emotional support, they may require passengers to provide current documentation of their disability. 14 C.F.R. § 382.117(e) (2016).

A. Scope of VA Authority

The VA is authorized by statute to promulgate regulations that are “necessary or appropriate to carry out the laws administered by the [VA] and are consistent with those laws”⁴¹ Specifically, the Secretary is permitted to enact regulations regarding the methods and extent of the evidence needed to prove the right to benefits.⁴² Any regulations issued “pursuant to the authority granted by this section or any other provision of this title shall contain citations to the particular section or sections of *statutory law* or other legal authority upon which such issuance is based.”⁴³ The Administrative Procedure Act (APA) generally provides that notice-and-comment rulemaking is required, but specifically exempts matters relating to “public property, loans, grants, benefits, or contracts.”⁴⁴ Although Section 553(a)(2) of the APA exempts matters relating to benefits,⁴⁵ Congress provides a specific exception to this provision.⁴⁶ As the VA is a benefit-granting agency,⁴⁷ any regulatory expansion must be published in the Federal Register and allow time for public comment.⁴⁸

B. Regulatory Background

Although the VA provides certain service dog benefits,⁴⁹ there are limited circumstances where they are awarded. Specifically, the regulation provides that veterans are entitled to the service dog benefit only if:

- (1) The veteran is diagnosed as having a visual, hearing, or substantial mobility impairment; and
- (2) The VA clinical team that is treating the veteran for such impairment determines based upon medical judgment that it is optimal for the veteran to manage the

41. 38 U.S.C. § 501(a) (2012).

42. § 501(a)(1).

43. § 501(b) (emphasis added).

44. 5 U.S.C. § 553(a)(2) (2012).

45. *See id.* (asserting that the section does not apply to agency matters involving benefits).

46. *See* 38 U.S.C. § 501(d) (stating that § 553 applies to VA benefits because it applies without the exception in subsection (a)(2)); *see also* *Quigley v. West*, No. 96-1284, 1999 U.S. App. Vet. Claims LEXIS 142, at *23 (Mar. 30, 1999) (citing 38 U.S.C. § 501(d)) (explaining the applicability of notice-and-comment rulemaking to VA benefits).

47. *See Compensation*, U.S. DEP’T OF VETERANS AFF. VETERANS BENEFITS ADMIN., <https://www.benefits.va.gov/COMPENSATION/types-compensation.asp> (last updated Jan. 19, 2018) (listing the types of benefits available through VA).

48. 5 U.S.C. § 553(a)(2)–(b).

49. *See* 38 C.F.R. § 17.148(b) (2012) (listing the circumstances upon which the VA will award service dog benefits).

impairment and live independently through the assistance of a trained service dog. . . .⁵⁰

The regulation expressly defines “substantial mobility impairment” to mean a “spinal cord injury or dysfunction or other chronic impairment that substantially limits mobility.”⁵¹ The regulation notes that “chronic impairment” can also include brain injuries or seizure disorders.⁵² The VA mandates that both the dog and the veteran complete a program through an Assistance Dogs International (ADI)⁵³ or International Guide Dog Federation (IGDF)⁵⁴ accredited organization.⁵⁵ The only exception to this rule is if the service dog was acquired prior to September 5, 2012, and the team completed a training program no later than September 5, 2013.⁵⁶ Even in this circumstance, the veteran must furnish a certificate of completion.⁵⁷

Traditionally, the VA considered only physical disabilities when determining eligibility for the VA service dog benefit,⁵⁸ thus, this restriction excluded

50. § 17.148(b)(1)–(2).

51. § 17.148(b)(3).

52. *See id.* (stating that traumatic brain injuries and seizure disorders can be considered as substantial mobility impairments under the regulation if they cause the veteran difficulty in making “appropriate decisions based on environmental cues” or if they cause the veteran to become immobile).

53. Assistance Dogs International (ADI) is an organization that works to evaluate and accredit assistance dog programs based on several factors, including humane care of the dogs and legal compliance. *See What is Accreditation*, ASSISTANCE DOGS INT’L, <https://assistance-dogsinternational.org/members/accreditation> (last visited Nov. 10, 2019) [hereinafter *Accreditation*] (discussing the lengthy accreditation process, which includes an assessor spending multiple days at each facility).

54. International Guide Dog Federation (IGDF) is a federation that oversees member organizations across the world to train and place guide dogs. *About Us*, INT’L GUIDE DOG FED’N, <https://www.igdf.org.uk/about-us> (last visited Nov. 10, 2019).

55. *See* 38 C.F.R. § 17.148(c)(1) (2018) (requiring that both the dog and veteran provide a certificate that indicates completion of an ADI- or IGDF-accredited program).

56. *See* § 17.148(c)(2) (stating that “[d]ogs obtained before September 5, 2012 will be recognized if a guide or service dog training organization in existence before September 5, 2012 certifies that the veteran and dog, as a team, successfully completed, no later than September 5, 2013, a training program offered by that training organization”).

57. *See id.* (noting that the veteran is required to provide a certificate to the VA showing completion by the program).

58. *See* Karin Brulliard, *For Military Veterans Suffering from PTSD, Are Service Dogs Good Therapy?*, WASH. POST (Mar. 27, 2018), https://www.washingtonpost.com/national/health-science/for-military-veterans-suffering-from-ptsd-are-service-dogs-good-therapy/2018/03/27/23616190-2ec1-11e8-b0b0-f706877db618_story.html?noredirect=on&utm_term=.cc684e62069b (noting that the VA has provided veterinary care for veterans with physical disabilities for over fifteen years).

veterans with posttraumatic stress disorder (PTSD).⁵⁹ However, in recent years, the VA has attempted to remedy this exclusion⁶⁰ through pilot programs.⁶¹ After the pilot programs were discontinued,⁶² the VA began a new three-year study in 2015 to determine whether service dogs or emotional support dogs could be used as beneficial treatment for veterans with PTSD.⁶³ The Department intended the study to be extensive,⁶⁴ focusing on the differences between service dogs and ESAs.⁶⁵ In 2016, the VA announced they would provide benefits to veterans who utilize service dogs for mental health conditions.⁶⁶ Although the benefit has been extended to mental health sufferers,⁶⁷ the VA still requires the veteran have a mobility impairment as outlined in the regulation.⁶⁸ This requirement means that veterans whose mental health conditions do not affect mobility are excluded from coverage.⁶⁹ The VA does not require that the mobility impairment or disability be service-connected.⁷⁰ However, if the disability is not service-connected, the veteran must otherwise qualify for enrollment in VA healthcare.⁷¹

59. *See id.* (discussing the VA's refusal to extend the benefit to individuals with PTSD due to limited evidence regarding therapeutic value).

60. *See* Alma Nunley, Note, *Service Dogs for (Some) Veterans: Inequality in the Treatment of Disabilities by the Department of Veterans Affairs*, 17 QUINNIPIAC HEALTH L.J. 261, 274 (2014) (discussing the controversy surrounding the exclusion of psychiatric service dogs from receiving VA benefits).

61. *See VA Restarting Study*, *supra* note 22 (discussing the VA's attempted pilot study, which was halted after children were bitten by the service dogs).

62. *See id.* (noting that two pilot programs were suspended between 2010 and 2012 due to issues with "health and training" of some of the service dogs).

63. *See id.* (discussing the three-year study that was commenced in 2015 that aimed to enroll 230 veterans with PTSD in order to explore service dogs as a treatment option).

64. *See id.* (stating that the study will have tighter standards for the dogs, as compared to the previous study and will involve oversight by the VA's Cooperative Studies Program).

65. *See id.* (noting that half of the study participants will be provided with service dogs and the remainder with emotional support dogs).

66. *VA Provides Service Dog Benefits to Veterans with Mental Health Disorders*, U.S. DEP'T OF VETERANS AFF. (Aug. 18, 2016, 12:09 PM), <https://www.blogs.va.gov/VAntage/30207/va-provides-service-dog-benefits-to-veterans-with-mental-health-disorders> [hereinafter *VA Blog Post*].

67. *See id.* (explaining that the VA would be extending the service dog benefit to veterans with a "chronic impairment that substantially limits mobility associated with mental health disorders").

68. *Id.*

69. *Id.*

70. *See* 1 VETERANS BENEFITS MANUAL § 10.13.5 (2018) ("There is no requirement that the . . . disability that causes limited mobility be service connected . . .").

71. *See id.* (noting that veterans with non-service-connected conditions must qualify for enrollment under an enumerated category); *see also* 38 U.S.C. § 1705 (2012 & Supp. 2018) (listing the statutory requirements for enrollment in VA health care).

C. Current Benefit Structure

The VA's service dog benefit exists on a small scale, with less than 1,000 veterans receiving benefits for their service dogs as of 2016.⁷² The pilot program aimed to extend the benefit to up to one hundred additional veterans whose mobility has been “substantially limit[ed]” by a chronic mental health disorder.⁷³ If a veteran wishes to receive a service dog benefit through the VA, he or she must register online or in person at a VA Medical Center.⁷⁴ That veteran will then receive an evaluation⁷⁵ using the following criteria: “Means to care for the dog currently and in the future, [g]oals that are accomplished through the use of the dog, [and] goals that are to be accomplished through other assistive technology or therapy[.]”⁷⁶

While the VA does not provide service dogs,⁷⁷ it does provide referrals to ADI-accredited agencies,⁷⁸ which provide service dogs to veterans free of charge.⁷⁹ The VA's current benefit structure allows for veterans to receive veterinary care, equipment, and covered travel expenses to obtain the dog and attend training.⁸⁰ To cover both preventative and emergency care, the VA provides benefits through a “contracted insurance policy,”⁸¹ that also may cover dental cleanings or medication.⁸² Any coverage for chronic

72. See *VA Blog Post*, *supra* note 66 (listing the current number of veterans receiving the service dog benefit as 652 as of 2016).

73. *Id.*

74. *Service Dog Veterinary Benefits Rules*, *supra* note 19, at 2.

75. See *id.* (mandating that a specialist will make the determination as to whether the veteran requires a service dog).

76. *Id.*

77. See Jim Absher, *VA Program Provides Service Dogs to Veterans with Mental Health Issues*, MILITARY.COM, <https://www.military.com/benefits/2017/05/19/va-service-dogs-mental-health.html> (last visited Nov. 10, 2019) (stating that the VA neither breeds nor provides service dogs to veterans).

78. *Service Dog Veterinary Benefits Rules*, *supra* note 19, at 2.

79. The VA will not pay any costs associated with the purchase of a service dog even if the organization does not cover the entire cost, though veterans are not typically required to pay costs associated with obtaining a service dog. See *Service Dogs*, 77 Fed. Reg. 54,368, 54,373–75 (Sept. 5, 2012) (to be codified at 38 C.F.R. pt. 17) (acknowledging concerns from commenters who expressed unease with the high costs of obtaining service dogs for veterans); see, e.g., *FAQ's*, AMERICA'S VETDOGS, https://www.vetdogs.org/AV/About/FrequentlyAskedQuestions/AV/About_Us/frequently_asked_questions.aspx?hkey=3e82de0b-bc7f-421c-8ca9-70c9b94cfe9f#Cost (last visited Nov. 10, 2019) (noting veterans are provided service dogs, transportation, and training at no charge).

80. *Service Dog Veterinary Benefits Rules*, *supra* note 19, at 2.

81. *Id.* at 1.

82. See *id.* at 2 (stating that only prescription medications and one sedated dental

illnesses is contingent on the dog continuing to fully perform its trained tasks.⁸³ The insurance policy also covers equipment the dog may need to do its job, such as a guide dog harness.⁸⁴ Finally, location sometimes factors into the service dog program.⁸⁵ Accordingly, the VA covers travel expenses for a veteran to attend training at an accredited program prior to taking their dog home.⁸⁶ At present, the VA does not provide any routine care expenses for service dogs, such as food or grooming.⁸⁷

According to ADI-accredited organization Service Dogs of Virginia, it costs approximately \$2,100 annually to keep and care for a service dog.⁸⁸ While this figure is inclusive of veterinary care,⁸⁹ owners face other significant costs such as food and heartworm medication.⁹⁰ Additionally, if the veteran cannot afford the tens of thousands⁹¹ of dollars it costs to obtain a service dog, he or she will likely wait a long time to be matched.⁹² For a person living with

procedure will be covered annually).

83. *Id.* at 1.

84. SERVICE DOG VETERINARY HEALTH BENEFIT, U.S. DEP'T OF VETERANS AFF. REHABILITATION & PROSTHETIC SERVS., <https://www.prosthetics.va.gov/ServiceAndGuideDogs.asp> (last updated Sept. 19, 2019) [hereinafter SERVICE DOG VETERINARY HEALTH BENEFIT].

85. *See* Service Dogs, 77 Fed. Reg. 54,368, 54,372 (Sept. 5, 2012) (to be codified at 38 C.F.R. pt. 17) (summarizing the commenters' concerns regarding the lack of accredited programs in certain states).

86. *See id.* (clarifying that, while veterans may be required to travel to receive service dogs, the VA will pay for the travel expenses under the program).

87. *See Service Dog Veterinary Benefits Rules, supra* note 19, at 2 (noting that routine expenses are not covered even if the veteran is eligible for service dog benefits through the VA).

88. *Estimate of Expenses*, SERV. DOGS OF VA., https://www.servicedogsva.org/apply/estimate_of_expenses (last visited Nov. 10, 2019).

89. *Id.*

90. *Id.*

91. The sticker price of many service animals can range from \$15,000 to \$50,000. Waleria Konrad, *An Aide for the Disabled, a Companion, and Nice and Furry*, N.Y. TIMES (Aug. 21, 2009), <https://nyti.ms/2orm2Pz> [hereinafter Konrad, *An Aide for the Disabled*]. However, most veterans will not have to pay this price due to the generosity of several nonprofit organizations. *See, e.g., FAQs*, AMERICA'S VETDOGS, https://www.vetdogs.org/AV/About/FrequentlyAskedQuestions/AV/About_Us/frequently_asked_questions.aspx?hkey=3e82de0b-bc7f-421c-8ca9-70c9b94cfe9f#Cost (last visited Nov. 10, 2019) (noting veterans are provided service dogs, transportation, and training at no charge); *Our Mission*, PATRIOT PAWS SERV. DOGS, <https://patriotpaws.org> (last visited Nov. 10, 2019) (describing their mission as providing service dogs to veterans at no cost).

92. The wait time to receive a service dog depends on a variety of factors including program size and the type of dog sought. *See, e.g., FAQ*, SEEING EYE, <https://www.seeingeye.org/admissions/school-faq.html> (last visited Nov. 10, 2019) (listing the wait time to receive

a disability, this amount of money can be significant and cost prohibitive,⁹³ particularly since health insurance policies do not cover these expenses.⁹⁴ The VA's decision to refuse coverage for all costs associated with caring for a service dog has not gone unnoticed, with many veterans arguing that the VA should pay all expenses associated with caring for a service dog.⁹⁵ The VA implemented no coverage changes in response to these concerns, noting that the Department will not cover expenses required for dogs generally and instead will cover only the expenses directly related to the dog's job.⁹⁶ The VA's reasoning compared service dogs to any other form of assistive device, arguing that veterans are required to generally maintain any prescribed devices.⁹⁷

II. SMC AS A SERVICE DOG BENEFIT

A. *Special Monthly Compensation*

The VA is statutorily mandated to provide disability compensation to veterans who incurred a disability during their service.⁹⁸ Compensation rates, including SMC, are set by statute.⁹⁹ Based on the severity of the service-connected health condition, the VA assigns veterans a number between 10 to 100% disabled (100% being totally disabled).¹⁰⁰ The rate adjustments veterans receive depend on the cost-of-living adjustments (COLA) of the Social Security Administration (SSA).¹⁰¹ Veterans receive SMC, a type of

a dog as four months); *Canines for Veterans*, CANINES FOR SERV., <https://www.caninesforservice.org/canines-for-veterans> (last visited Nov. 10, 2019) (listing the wait time as approximately one year from the time the application is approved).

93. See Konrad, *An Aide for the Disabled*, *supra* note 91 (noting that individuals with disabilities are “not a wealthy group” and that 70% are unemployed).

94. See *id.* (stating that health insurance companies do not cover care expenses).

95. See *Service Dogs*, 77 Fed. Reg. 54,368, 54,376 (Sept. 5, 2012) (to be codified in 38 C.F.R. pt. 17) (discussing several comments that argued that expenses to cover the dog's necessities are necessary for the dog to carry out its job).

96. The VA argued that certain expenses, such as grooming, nail-trimming, and routine medications, are necessary for any dog regardless of whether that dog provides a service. *Id.* The Department's rationale for these limitations is to prevent VA benefits from being used in a way other than one that “directly relat[es]” to the dog's service tasks. *Id.*

97. See *id.* (comparing service dogs to a wheelchair and asserting that a veteran provided with a wheelchair would maintain that piece of equipment).

98. 38 U.S.C. § 1110 (1994 & Supp. 1998).

99. See 38 U.S.C. § 1114 (Supp. 2010) (listing the rates a veteran will be paid for each percentile and for special monthly compensation (SMC)); see also *Compensation*, *supra* note 47.

100. *Id.*

101. See *Benefit Rates*, U.S. DEP'T OF VETERANS AFF., <https://www.benefits.va.gov/compensation/rates-index.asp> (last updated Oct. 2, 2019) (noting that, under federal law, the VA

compensation designed to compensate veterans for non-economic losses, in addition to their normal monthly compensation¹⁰² and economic losses.¹⁰³ Veterans are paid SMC in addition to their normal rate of compensation.¹⁰⁴ The VA defines SMC as a “higher rate of compensation paid due to special circumstances”¹⁰⁵ Veterans may receive SMC for other reasons including being housebound, loss of use of a limb or creative organ, or loss of a sense (blindness, deafness, etc.).¹⁰⁶ The VA pays SMC rates out in accordance with federal statute¹⁰⁷ with each SMC rate having a unique set of requirements.¹⁰⁸

B. Comparative Analysis and State-level Solutions

Although the VA does not pay monthly expenses for service dogs,¹⁰⁹ veterans and other individuals with disabilities have found alternative ways to pay their service dog expenses.¹¹⁰ Some individuals may use flexible spending benefits to assist with the costs of maintaining a service dog.¹¹¹ California even adopted the Assistance Dog Special Allowance (ADSA) program in

and the Social Security Administration (SSA) have the same rate for cost-of-living adjustments (COLA) increases).

102. 38 U.S.C. § 1114(k)–(t) (2012); 38 C.F.R. § 3.350 (2018).

103. Cajun Comeau, *Eligibility for Special Monthly Compensation*, AM. LEGION (Feb. 3, 2015), <https://www.legion.org/serviceofficers/225932/eligibility-special-monthly-compensation>. Factors include “personal inconvenience, social inadaptability, or the profound nature of the disability.” 1 VETERANS BENEFITS MANUAL § 5.7 (2018).

104. 1 VETERANS BENEFITS MANUAL § 5.7.

105. *Compensation*, *supra* note 47.

106. *See* 38 C.F.R. § 3.350 (2018) (listing the circumstances upon which a veteran may be entitled to special monthly compensation in addition to his or her regular rate of compensation).

107. Compensation amounts, including SMC, are set by Congress in 38 U.S.C. § 1114 (2012). The categories are divided based upon the reason the veteran requires SMC. § 1114(k). When a veteran receives a particular level of compensation, he or she is said to be paid at the rate corresponding with the letter in the statute (e.g., “k-rate” for a veteran receiving compensation under § 1114(k)). *Special Monthly Compensation (SMC) Rate Table*, U.S. DEPT OF VETERANS AFF. (effective Dec. 1, 2018), https://www.benefits.va.gov/COMPENSA TION/resources_comp02.asp (last updated July 16, 2019).

108. *See* 1 VETERANS BENEFITS MANUAL § 5.7 (discussing the requirements to receive compensation for each type of SMC).

109. *Service Dog Veterinary Benefits Rules*, *supra* note 19, at 1–2.

110. *See* Konrad, *An Aide for the Disabled*, *supra* note 91 (discussing the ways individuals with disabilities afford service dogs, including tax breaks, funded veterinary care, and programs that pay some or all of the costs).

111. *See id.* (telling the story of a woman whose flexible spending account rejected costs associated with her service dog after her employer switched insurance administrators).

order to allow individuals with disabilities to affordably keep a service dog.¹¹² The ADSA provides \$50 per month to eligible handlers.¹¹³ The Maryland Department of Veterans Affairs adopted a benefit program in 2017¹¹⁴ with the intent of reimbursing the costs private programs accumulate when training service dogs for military veterans.¹¹⁵ The program relies on private donors for funding.¹¹⁶ Maryland's program assists only with reimbursing the existing programs their costs of operation, and it does not provide financial support to veterans who have already been placed with dogs.¹¹⁷

Comparatively, the German government has a long history, dating back to World War I, of supporting their veterans through the use of service dogs.¹¹⁸ The United States later followed suit, opening the country's first guide dog school.¹¹⁹ The German government covered maintenance expenses for guide dogs as a monthly benefit.¹²⁰ Although Germany's program initially inspired the United States' programs,¹²¹ the United States chose not to provide for the ongoing maintenance costs of caring for the service dogs.¹²²

III. RECOMMENDATIONS

Congress should statutorily create a new type of special monthly compensation to cover routine service dog care when the dog's training mitigates a veteran's service-connected disability. The VA would then have the

112. *Assistance Dog Special Allowance Program*, CAL. DEP'T OF SOC. SERVS., <https://www.cdss.ca.gov/Assistance-Dogs> (last visited Nov. 10, 2019).

113. *Id.*

114. *Maryland Veterans Service Animal Program and Fund*, MD. DEP'T OF VETERANS AFF., <https://veterans.maryland.gov/maryland-veterans-service-animal-program-and-fund> (last visited Nov. 10, 2019).

115. *Id.*

116. *See id.* (showing a list of donors who have funded Maryland's program).

117. *Id.*

118. Germany began the "guide dog movement" after World War I to care for World War I veterans who were blinded in war. *See* Mark Ostermeier, *History of Guide Dog Use by Veterans*, 175 MIL. MED. 587, 587 (2010) (noting that a substantial portion of soldiers returning from war incurred eye injuries).

119. *See id.* at 587–89 (telling the story of George and Dorothy Eustis, two dog trainers who opened the first guide dog school in the United States after discovering their value in leading blind World War I veterans in Germany).

120. *See* A. MacGregor Ayer, *Rehabilitation of Disabled Veterans in Germany*, SOC. SEC. BULL., Aug. 1943, at 22, 24 (showing a chart of benefits, which includes a monthly amount for guide dog maintenance).

121. *See Ostermeier, supra* note 118, at 587.

122. *See id.* at 592 (stating that veterans will continue to have costs even after they receive the dog, such as food and licensing costs).

authority to amend its existing regulation to add an additional category for service dog maintenance payments. The regulation would allow service dog maintenance payments for both physical and mental disabilities. This compensation should be sufficient to completely cover routine expenses associated with owning and caring for the service dog,¹²³ and should be paid with the veteran's normal monthly disability payment.

A. SMC as a Superior Option

The possibility of extending the benefits provided by § 17.148, the regulation that governs the VA service dog benefit, to include mental health has been substantially explored in recent years.¹²⁴ This extension would be beneficial by allowing more veterans to take advantage of this program.¹²⁵ At present, § 17.148 provides benefits in extremely limited circumstances.¹²⁶ While other proposals would increase the number of individuals entitled to service dogs under the regulation,¹²⁷ maintenance payments for service dogs ensure veterans receive thorough compensation for a service-connected expense.

Congress should create legislation amending federal law to add a statutory SMC category providing funding for routine service dog expenses. Subsequently, the VA would be authorized to amend federal regulation. The regulatory change should take into account all necessary routine expenses for a typical service dog, including food, over-the-counter medication, supplies, and grooming.¹²⁸ The VA could utilize guidance from ADI and IGDF-accredited organizations regarding the amount necessary to fully cover these expenses.¹²⁹ The VA should also seek public comments from veterans who

123. See, e.g., *infra* note 152 and accompanying text (noting the current amount of monthly service dog compensation provided by the state of California).

124. See *VA Restarting Study*, *supra* note 22 (discussing the VA's extensive Congressionally-mandated 2015 study, which posed the question of whether service dogs and emotional support dogs could assist veterans with mental health issues with the goal of evaluating whether the VA should provide service dogs to assist veterans with PTSD); see also Nunley, *supra* note 60, at 281–83 (examining the controversy surrounding the VA's exclusion of mental health conditions from service dog entitlement).

125. See Nunley, *supra* note 60, at 281–83.

126. See *Service Dog Veterinary Benefits Rules*, *supra* note 19, 1–2 (outlining the rigid requirements to obtain a service dog from the VA).

127. Nunley, *supra* note 60, at 281–83.

128. See *Service Dogs*, 77 Fed. Reg. 54,368, 54,376 (Sept. 5, 2012) (to be codified at 38 C.F.R. pt. 17) (listing expenses that commenters argued should be covered by the VA, such as nail trimming, non-sedated teeth cleaning, and food).

129. At present, the VA places value on ADI and IGDF accreditation and these organizations would thus be in the best position to provide guidance. See *id.* at 54,372 (noting that ADI and IGDF accreditation allows the VA to ensure the organization is using proper criteria

currently utilize different types of service dogs. This process would allow feedback from affected parties and the public while still maintaining efficiency.

Rather than simply extending existing benefits provided through Rehabilitation and Prosthetic Services, SMC is a superior solution because it ensures that veterans receive appropriate compensation for all aspects of their service-connected conditions.¹³⁰ Providing a modest monthly stipend allows veterans to be conveniently compensated in the same manner as their monthly disability benefits.¹³¹ This proposal is neither intended to replace the benefits provided in § 17.148, nor is it suggested as an alternative to the existing proposed expansion to include PTSD and other mental health issues. It instead asserts that service-connected veterans should receive monthly benefits to cover the cost of service dog maintenance. Maintenance fees would not replace health insurance for the service dog, and thus benefits under § 17.148 would still be necessary.¹³²

B. Policy Arguments

One of the criteria used to determine eligibility for a service dog is whether the veteran has the “[m]eans to care for the dog currently and in the future[.]”¹³³ This requirement is true even if the animal is being used to mitigate a service-connected condition.¹³⁴ The VA categorizes service dogs as a “surrogate for another assistive device”¹³⁵ The Department already provides adaptive equipment and vehicle grants for veterans living with service-connected conditions.¹³⁶ Accordingly, the VA currently uses a veteran’s ability to

for training and placing a dog).

130. Although extending benefits through Rehabilitation and Prosthetic Services would increase the amount of people who may be entitled to service dogs, veterans would still not be provided with routine care costs under the current system. See *VA Blog Post*, *supra* note 66 (stating that extending service dog benefits to mental health sufferers would increase the total amount of veterans receiving benefits). Extending the benefit would not provide routine care, meaning veterans would still be responsible for this cost. *Id.*

131. The VA uses direct deposit to pay compensation. See U.S. DEP’T OF VETERANS AFF., DIRECT DEPOSIT ENROLLMENT VA FORM 24-0296 1 (2018).

132. This Comment proposes a new type of SMC under 38 C.F.R. § 3.350 to provide monthly maintenance for service dogs. It does not propose replacing any part of 38 C.F.R. § 17.148.

133. *Service Dog Veterinary Benefits Rules*, *supra* note 19, at 2.

134. See *generally id.* (discussing how specialists clinically determine service dog eligibility).

135. Service Dogs, 77 Fed. Reg. 54,368, 54,375 (Sept. 5, 2012) (to be codified at 38 C.F.R. pt. 17).

136. See *VA Automobile Allowance and Adaptive Equipment*, U.S. DEP’T OF VETERANS AFF., <https://www.va.gov/disability/eligibility/special-claims/automobile-allowance-adaptive-equipment/> (last visited Nov. 10, 2019) (noting that adaptive equipment related to a service-connected condition is eligible for coverage).

pay as a factor in determining entitlement to receive a certain type of medical equipment.¹³⁷ Veterans should not have to pay for medical equipment that is necessary to mitigate a service-connected condition because the veteran would not require it in the absence of an in-service injury.¹³⁸ This principle is especially true if the veteran is permanently and totally disabled.

According to the National Center for Veterans Analysis and Statistics, the poverty rate for disabled veterans is higher than disabled non-veterans.¹³⁹ The same study noted that veterans receiving service-connected benefits had lower rates of poverty than those who were not receiving these benefits.¹⁴⁰ Specifically, the study noted that the lower poverty rate “appears to show the importance of [service-connected] benefits in helping [v]eterans avoid poverty.”¹⁴¹ Failing to cover expenses related to service-connected conditions is contrary to the very principles of providing VA disability compensation. Compensation is intended to compensate individuals *fully* for the disabilities they received in service.¹⁴²

C. Examining potential counterarguments

This proposal is unexplored and thus no specific counterarguments exist for this particular issue. Critics may say it is more cost efficient to purchase assistive technology or therapy instead of maintaining a service dog throughout the duration of its working life.¹⁴³ It is possible that some veterans may have their needs met by other means.¹⁴⁴ In circumstances where it is already determined that a service dog is appropriate, the veteran should be fully compensated if the dog will mitigate a service-connected condition. The determination of whether a service dog is appropriate for a service-connected disability could be

137. See *Service Dog Veterinary Benefits Rules*, *supra* note 19, at 2 (reminding that ability to financially support a service dog is a factor in determining eligibility).

138. See 1 VETERANS BENEFITS MANUAL § 3.1.1 (2018) (noting that veterans are entitled to disability compensation if “their disease or injury was incurred or aggravated in the line of duty”).

139. NAT'L CTR. FOR VETERANS ANALYSIS & STAT., *Veteran Poverty Trends*, U.S. DEP'T OF VETERANS AFF. 5 (May 2015), https://www.va.gov/vetdata/docs/specialreports/veteran_poverty_trends.pdf.

140. *Id.* at 7.

141. *Id.*

142. See 1 VETERANS BENEFITS MANUAL §§ 3.1, 3.1.1.1, 3.1.1.3 (noting that income is not a factor in determining entitlement to disability compensation and that compensation is to be given when a connection is found between an in-service event and a current disability).

143. See SERVICE DOG VETERINARY HEALTH BENEFIT, *supra* note 79 (listing evaluation criteria for eligibility as “[g]oals that are to be accomplished through other assistive technology or therapy”).

144. *Id.*

determined at the existing evaluations mandated under § 17.148, or they could be a question for compensation and pension examiners when the veteran applies for SMC.¹⁴⁵

Critics may also point to the potentially large budget for this expanded coverage.¹⁴⁶ While veterans already receive compensation for their service-connected conditions,¹⁴⁷ the VA provides benefits to veterans requiring separate expenses.¹⁴⁸ At present, the VA benefit program exists on a very small scale¹⁴⁹ and a \$50 per month benefit, matching California's program,¹⁵⁰ only equates to a \$600 per year increased benefit for each veteran. In relying on the small scale, the VA should account for the possibility that the number of veterans receiving service dogs has the potential to exponentially increase if benefits are extended to those with PTSD.¹⁵¹ Federal legislation would prove budgetarily beneficial because the VA could then provide a lower rate of SMC to veterans receiving service dogs.¹⁵² As service dogs are intended to increase independence for the individual with a disability,¹⁵³ an increase in service dogs could mean lower costs to the VA.

Critics may also argue that the federal government should not fund a benefit if veterans can receive free assistance through state governments or non-profit groups. This argument is contrary to the idea that benefits should be based on entitlement and not off of other factors, such as alternative means.¹⁵⁴ Few

145. Compensation and pension exams are sometimes scheduled during the VA claims process to determine whether a veteran has a disability and whether it is service-connected. *VA Claim Exam Frequently Asked Questions (FAQs)*, U.S. DEP'T OF VETERANS AFF., <https://www.benefits.va.gov/COMPENSATION/docs/claimexam-faq.pdf> (last visited Nov. 10, 2019). The examinations allow the VA to determine an appropriate rating if the disability is connected to service. *Id.*

146. See *Service Dogs*, 77 Fed. Reg. 54,368, 54,381 (Sept. 5, 2012) (to be codified at 38 C.F.R. pt. 17) (discussing the budgetary considerations of any regulatory change).

147. *Compensation*, *supra* note 47.

148. One similar example is the VA providing a clothing allowance to veterans whose service-connected condition results in clothing damage. 38 C.F.R. § 3.810 (2012).

149. *VA Blog Post*, *supra* note 66.

150. See *Assistance Dog Special Allowance Program*, *supra* note 112.

151. *VA Restarting Study*, *supra* note 22.

152. *Compare Special Monthly Compensation (SMC) Rate Table*, *supra* note 107 (noting the lowest rate of SMC was \$108.57, as of December 1, 2018), with *Assistance Dog Special Allowance Program*, *supra* note 112 (California provides \$50 monthly stipend for service dog maintenance).

153. See *Service Dogs*, CANINE COMPANIONS FOR INDEP., <http://www.cci.org/assistance-dogs/Our-Dogs/Service-Dogs.html> (last visited Nov. 10, 2019) (noting that a dog can assist with many tasks and "increase independence by reducing reliance on other people").

154. See 1 VETERANS BENEFITS MANUAL §§ 3.1, 3.1.1.1, 3.1.1.3 (2018) (stating that income is not a factor when reviewing entitlement to compensation).

states provide this benefit¹⁵⁵ and not all veterans can secure the benefit from a non-profit with limited funds.¹⁵⁶ Simply because a veteran could obtain equivalent funds in another way does not mean the VA should not provide the benefit for the purposes of access and uniformity. The principle of relying on other means to avoid government cost has been struck down by the D.C. Circuit.¹⁵⁷ *American Council of the Blind v. Paulson*¹⁵⁸ considered the question of whether banknotes lacking tactile features, thus making them difficult or impossible to use by the blind, violated § 504 of the Rehabilitation Act.¹⁵⁹ The D.C. Circuit concluded that the plausible accommodations posed an undue burden on the blind.¹⁶⁰ This principle should be instructive here because, while veterans may be able to find alternative resources, it is the VA's duty to properly care for the country's veterans.

CONCLUSION

With service dog use¹⁶¹ in the United States on the rise, veterans are eager to utilize well-trained service dogs to mitigate their conditions.¹⁶² As veterans with disabilities often require financial assistance,¹⁶³ the VA covering all expenses associated with maintaining a service dog will enable veterans to get the help they need to recover from the sacrifices made for the country.¹⁶⁴ This recommendation would not only ensure that veterans are not denied access to service dogs because they lack the means, but it would hold true to President Lincoln's promise "[t]o care for him who shall have borne the battle"¹⁶⁵

155. See *Assistance Dog Special Allowance Program*, *supra* note 112; *Maryland Veterans Service Animal Program and Fund*, *supra* note 114.

156. See Konrad, *An Aide for the Disabled*, *supra* note 91 (discussing the difficulties in affording a service dog).

157. See *Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1269 (D.C. Cir. 2008) (striking down the argument that a person with a disability should have to rely on "the kindness of strangers" because of financial burden to the government).

158. 525 F.3d 1256 (D.C. Cir. 2008).

159. *Id.* at 1259, 1261.

160. *Id.*

161. See Lancianese, *supra* note 8; Karen Nikos-Rose, *Service Dogs Increasingly Used for Mental Health*, U.C. DAVIS (May 1, 2017), <https://www.ucdavis.edu/news/service-dogs-increasingly-used-mental-health> (noting that service dogs are capable of a variety of tasks and are increasingly being utilized to assist with mental health conditions).

162. See *supra* Part I.

163. See sources cited *supra* note 152 and accompanying text.

164. See Konrad, *An Aide for the Disabled*, *supra* note 91 (noting that veterans are not always able to afford service dogs).

165. *About VA*, U.S. DEP'T OF VETERANS AFF., https://www.va.gov/ABOUT_VA/index.asp (last updated June 21, 2019).