

**STATEMENT OF THE HONORABLE ROBERT A. MCDONALD
SECRETARY OF VETERANS AFFAIRS**

**FOR PRESENTATION BEFORE THE
SENATE COMMITTEE ON VETERANS' AFFAIRS
PENDING LEGISLATIVE PRIORITIES IN THE
SECOND SESSION OF THE 114TH CONGRESS**

MARCH 15, 2016

Good afternoon, Chairman Isakson, Ranking Member Blumenthal, and Distinguished Members of the Senate Veterans' Affairs Committee. Accompanying me today are Dr. Baligh Yehia, Assistant Deputy Under Secretary for Community Care, Veterans Health Administration, Ms. Laura Eskenazi, Executive-in-Charge and Vice Chairman, Board of Veterans Appeals, and Ms. Meghan Flanz, Deputy General Counsel, Legal Operations and Accountability, Office of General Counsel.

Thank you for the opportunity to come before you today to discuss the Department's legislative priorities. I know the Committee is working to move an "omnibus" measure which will address many of the immediate needs of the Department of Veterans Affairs in serving Veterans.

Our pressing needs are items that we have outlined in letters to the committee, in previous testimony, and in countless meetings with the committee and Members staffs, which support the MyVA Breakthrough Priorities. Some of these critical needs are addressed in bills you are considering in today's hearing, but we'd like to work with you on the particular language to ensure that, as enacted, the language will have the desired effect of helping the Department best serve Veterans.

I believe it is critical for Veterans that we all work together and gain consensus on a way forward for these legislative proposals that will provide VA with the tools necessary to deliver care and benefits at the level expected by Congress, the American public, and deserved by Veterans.

Improve Care in the Community

We need your help, as discussed on many occasions, to overhaul our Care in the Community programs. Our Plan to Consolidate Programs of Department of Veterans Affairs to Improve Access to Care (the Plan) as required by Title IV of Public Law 114-41, the VA Budget and Choice Improvement Act, was delivered on October 30, 2015.

Determining the details of a program that could replace the current and temporary Veterans Choice program enacted in August 2014 will require close study and collaboration with Veterans, Veterans Service Organizations (VSO), the Congress and other stakeholders and experts.

That is why VA staff and subject matter experts have communicated regularly with Committee and Member staffs to further discuss concepts and specific concerns. While we know further discussions are required to get us to a fully streamlined program, we have identified components of the plan that could be enacted now and would improve Veterans experiences' with, and VA's performance under, the existing Veterans Choice Program.

We believe that together we can accomplish the necessary legislative changes to streamline the overwhelming number of varying Care in the Community programs before the end of this session of Congress. Many of the concepts are addressed in some way by two of the bills on your agenda today – S. 2646, the Veterans Choice Improvement Act of 2016, and S. 2633, the Improving Veterans Access to Care in the Community Act.

Provider Agreements

Both bills encompass aspects of VA's most urgent legislative priority, addressing deficiencies in VA's general non-VA care authorities outside of the Veterans Choice program. VA's May 1, 2015, proposed Department of Veterans Affairs Purchased Health Care Streamlining and Modernization Act, would most ideally clarify VA's ability to form agreements with providers in the community on an individual basis that are not subject to certain provisions of law governing federal contracts, so that providers are treated similarly to providers in the Medicare program. Put simply, this would allow VA to contract with providers on an individual basis in the community, without pulling in all of the requirements usually attached to federal procurement.

VA's proposal accomplishes this through "Veterans Care Agreements," or VCAs. VCAs would be used only when care directly from VA or from a non-VA provider with a FAR-based agreement in place is not feasibly available. Already, we have seen certain nursing homes not renew their contracts with VA because of the excessive compliance burdens, and as a result, Veterans are forced to find new nursing home facilities for residence. VA sent proposed legislation to Congress to address this issue more than 10 months ago, and the problems, I assure you, are not getting better with time. We again urge Congress to come together on legislation to address deficiencies in VA's basic purchasing authorities outside of the Veterans Choice Program.

VA believes the omnibus legislation the committee moves forward with should reflect the approach to Veterans Care Agreements in S. 2633, due to its application of employment nondiscrimination and equal employment laws to VCAs and its

inclusion of corresponding reforms for State Veterans Homes, which were requested in VA's May 1, 2015 legislative proposal. We have concerns about whether Veterans Care Agreements would be subject to the more restrictive criteria and rates that would be applicable to care furnished under the Choice program in S. 2646.

VA also supports and strongly recommends inclusion in any omnibus bill, the following other elements of S. 2633:

- Allowing use of the Veterans Choice Fund for all non-VA care programs, allowing VA to use the funding as was intended without strict limitations;
- Increasing the accuracy of funding by recording Community Care obligations at payment;
- Streamlining Community Care funding by adapting the current model used for funding VA's Consolidated Mail Outpatient Pharmacies and applying it to payment for community care;
- Aligning with best practices on the collection of health insurance information;
- Promoting timely payments to non-VA providers by formalizing alignment with current industry guidelines established by States;
- Allowing VA to serve as primary payer for care, subject to resourcing concerns, under the current Veterans Choice program, which will result in a less cumbersome billing process which has been a source of frustration for Veterans and a barrier to effective implementation of Veterans Choice;
- Making Veterans currently enrolled in ARCH eligible for Choice, ensuring that these Veterans have minimum disruption in care during the necessary process to streamline overlapping and duplicative programs; and,
- Requiring VA to be treated as a "participating provider" for reimbursement for non-service connected outpatient care.

VA has significant concerns on the following provisions within S. 2646, and urges the committee to exclude them from any omnibus legislation designed to help VA serve Veterans:

- Imposing severe limitations on tiered networks are a serious concern, as that concept is a central element in the Plan. Tiered networks are essential to enhance VA's coordination of care, allow better oversight of providers, help ensure Veteran satisfaction, as well as ensure VA's teaching and training mission that is a key part of training for the Nation's health care system as a whole is maintained;
- Extension of the pilot program known as Project ARCH for three years, until August 7, 2019, is inconsistent with the fundamental aim of the Plan, especially when the bill also deems Veterans enrolled in project ARCH as eligible for Veterans Choice. While providers prefer ARCH due to a higher reimbursement rate than other care in the Community programs, VA has an obligation to be responsible with taxpayer dollars. This can be done by enrolling ARCH eligible Veterans in the Choice program;

- Limiting flexibility on rates, restricting VA's ability to pay rate differentials when necessary in certain markets; and,
- Imposing a 90-day timeframe between the date VA establishes a presumption and then provides compensation for certain illnesses and conditions is an unachievable timeline. VA would not be able to identify all entitled individuals within the first 90 days following establishment of the presumptive. Even with the establishment of a presumptive condition, many claims still require additional development, including verification of the requisite conditions of service and medical examinations to determine the level of disability.

Overhaul the Claims Appeals Process

In any omnibus legislation that may move forward, Veterans need legislation that sets out structural reforms at VA that will allow the Veterans Benefits Administration (VBA) and the Board of Veterans Appeals to provide Veterans with the timely, fair, and quality appeals decisions they deserve, thereby addressing the growing inventory of appeals. In the Committee's hearing on VA's Fiscal Year 2017 Budget, I noted we had already begun preliminary informal discussions on VA proposals with the Committee and Members and their staffs, as well as VSOs. Those conversations have continued, and we invited the Committee's staff to join us and the VSOs for a working meeting last week. Those collaborations need to continue until we can identify what is best for Veterans and taxpayers.

The 2017 Budget proposes a Simplified Appeals Process—legislation and resources (i.e., people, process, and technology) that would provide Veterans with a simple, fair, and streamlined appeals process in which the vast majority would receive a final decision on their appeal within one year from filing the appeal by FY 2021.

For this hearing, the Committee has identified a bill, S. 2473, the Express Appeals Act, which would establish a pilot program for what are called Fully Developed Appeals (FDA), which would limit new evidence filed after the point of appeal through a voluntary program. VA has supported the FDA pilot in the past, but at this point, we believe the growing appeals challenge requires much more widespread reform that will address all future appeals, not just the voluntary participants that may elect the FDA pilot.

S. 2473 will not reduce the pending appeals inventory and will not significantly address the future appeals inventory. As a pilot for voluntary participants, we believe it does too little to streamline the VA appeals process for all veterans, or to provide an improved experience for all Veterans. The current VA appeals process is lengthy, complex, confusing, and frustrating for Veterans. All Veterans, not just those who elect to participate in an optional FDA pilot program, deserve an efficient, transparent, and streamlined appeals experience. The FDA pilot program in its current form is not

enough to change the current broken VA appeals system. True comprehensive legislative reform that is as ambitious as that presented in the President's 2017 Budget is required.

Without legislative change, VA will face a soaring appeals inventory, and Veterans will wait even longer for a decision on their appeal. Last week VA led an encouraging and intensive three-day appeals summit with VSOs and veterans advocacy groups on the topic of appeals reform, looking at the entire system, including the period prior to filing an appeal. The group is committed to continuing the momentum from those intensive discussions to further refine a new appeals framework. We were very pleased that Committee staff joined the group near the end of the session to gain first-hand observations from Veteran advocates and VA representatives as to the progress made in those three days. We would like to collaborate with the Committee as those discussions progress. We do know if the *status quo* remains, Congress would need to provide resources for VA to more than double its appeals FTE. The prospect of such a dramatic increase, while ignoring the need for structural reform, is not a good result for Veterans or taxpayers.

Accountability for VA senior executive leaders

VA understands the desire for an omnibus bill to contain language enhancing provisions to hold senior executives accountable. We remain supportive of continued dialogue with the Committee on how best to accomplish this, but believe that the discussions should include the full description of accountability, rather than just its use in shorthand as “firing people.”

If we define “accountability” only in the narrower way—in terms of the number of employees we remove from their jobs serving Veterans—then success on the accountability front means failure in our core mission, service to Veterans. Overemphasis on punitive measures prevents us from recruiting and retaining the best and brightest employees to serve Veterans. I am not interested in a definition of success that requires us to decimate our workforce, rob the VA of the senior executive talent it needs to serve Veterans, and, ultimately, to close our doors.

We continue to approach employee discipline with a commitment to do what is right and necessary to rebuild Veterans' trust in VA programs and services. Through the MyVA initiative, we are transforming the Department, and in turn, we need to be able to treat VA career executives more like their private-sector counterparts. We need to have the ability to compete for top talent—through flexibility in hiring authorities, compensation, and other tools—and not drive them away through a focus on firing people.

The draft language submitted to you was not the Department's, nor the Administration's, proposal. It was an idea brought up due to internal collaborative discussions, which are fostered as part of the MyVA culture, and was sent to the committee for discussion purposes.

However, it is important to consider the second and third order effects of this and other proposals, and how they could impact the long-term health of the Department. In considering these consequences, and our overall goal of providing the tools needed for VA to transform the Department into a Veteran-centric organization, we have identified a series of new provisions that we recommend. These new provisions were the subject of a joint briefing to your committee staffs at the end of last week.

Under the revised construct, we would expand the Title 38 hiring authority that currently exists for physicians and dentists to VHA Senior Executive level Medical Center Directors, VISN Directors, and other health care executive leadership positions. Under this system, employees in these senior healthcare positions would be hired more quickly, have flexible salary ranges to compete with the private sector, and be subject to disciplinary processes comparable to those now applicable to VA physicians and dentists, where appeals on disciplinary actions are adjudicated by the VA Secretary as opposed to the Merit Systems Protection Board (MSPB).

For those remaining Senior Executives elsewhere in the VA who are not hired under Title 38, we would propose changes which we believe will better align the MSPB appeal process with VA's ongoing transformational efforts. These changes include requiring MSPB to apply an evidentiary standard that affords greater deference to the VA Secretary's decisions to remove or demote VA Senior Executives based on misconduct or poor performance. Changes discussed would also authorize the Presidentially-appointed MSPB board members, rather than lower-level administrative judges, to decide VA executives' appeals. In addition, VA would take a number of actions under its existing authorities to drive strong performance management and accountability practices.

To be clear – accountability alone will not solve all VA's problems, nor will it enhance our ability to serve Veterans. Reforms to VA's personnel system must come alongside similar legislative reforms, discussed here, which provide VA with the necessary authority to operate in a way that best serves Veterans.

Leasing

Another priority that needs to be included in any legislation moving forward is authorization of 18 major medical leases: in Florida (actually three leases), Michigan, Alabama, Colorado, Virginia, Massachusetts, Montana, California, Georgia, Maine, South Carolina and North Carolina. We ask Congress to act soon on construction and leasing authorization legislation, which will make a big difference in expanding access to care for Veterans in those States.

Special Legislation for VA's West Los Angeles Campus

Any omnibus package moving forward needs to incorporate requested legislation to provide the enhanced use leasing authority necessary to implement the Master Plan for our West Los Angeles Campus. That plan represents a significant and positive step for Veterans in the Greater West Los Angeles area, especially those who are most in need. We appreciate the Committee's hearing in December 2015, on legislation to implement that Master Plan, and urge your support for expedited consideration of this bill to secure enactment of it in this session of Congress. Enactment of the legislation will allow us to move forward and get positive results for the area's Veterans after years of debate in the community and court action. The bill proposed would reflect the settlement of that litigation, and truly be a win-win for Veterans and the community. The Master Plan increases the campus utilization by 1,200 beds, but we can't start work until the EUL legislation is passed. I believe this is a game-changing piece of legislation as it highlights the opportunities that are possible when VA works in partnership with the community.

Improvement of VHA Personnel Authorities

VA has also presented its own proposals that can help make VA more competitive in attracting top-tier clinical and health care management professionals. As I continue to get letters from Members of this Committee and your colleagues urging us to hire a facility or VISN director overseeing their district more quickly, you are aware that recruitment continues to be a challenge. Given that ongoing challenge, we have requested special pay authority for VA Medical Center and Veterans Integrated Service Network (VISN) Directors to help VA recruit and retain the best talent possible in hospital system management. We appreciate the Committee's inclusion of this provision in S. 425, the Veterans Homeless Programs, Caregiver Services, and Other Improvements Act of 2015, and urge its inclusion in any omnibus proposal. As one technical note, VA would request the language in section 412 of S. 425 include "is not less than" in place of "does not exceed."

The 2016 Budget included a proposal to end an 80-hour biweekly work period requirement that is simply not appropriate nor efficient for many medical professionals, and out of step with health care in the private sector. Enactment will both improve the efficiency of hospital operations and improve VA's ability to recruit and retain critical professionals. We appreciate SVAC's inclusion of this provision in S. 425. Again, we urge you to include this provision in any legislative vehicle moving forward.

Mr. Chairman, I appreciate your dedication to serving our Nation's Veterans, as well as that of the Ranking Member, and all the Members of the Committee. I believe with continued collaboration and partnership we can deliver the improvements that Veterans deserve.

And as I have said before, there are things Congress can include now in legislation that will significantly impact the way VA serves Veterans:

- Provider Agreement Authority as written in VA drafted legislation or S 2633,
- Elimination of 80-hour work period requirement
- Flexibility around compensation for Medical Center and VISN directors
- Enhanced Use Authority for West LA Campus
- Fundamental reform of the Appeals process as set in statute
- Streamlining of care in the community, including provisions outlined above from S. 2633, which will help us achieve the goal of streamlining various overlapping programs to make things clearer for employees, for Veterans, and for their families.

Thank you for the opportunity to appear before you today and for your continued steadfast support of Veterans. We look forward to your questions.