
**STATEMENT OF**
**LOUIS J. CELLI, JR., DIRECTOR**
**NATIONAL VETERANS AFFAIRS AND REHABILITATION DIVISION**
**THE AMERICAN LEGION**

**BEFORE THE**

**COMMITTEE ON VETERANS' AFFAIRS**
**UNITED STATES SENATE**

**ON**

# "PENDING AND DRAFT LEGISLATION"

**JULY 11, 2017**

**EXECUTIVE SUMMARY OF**
**LOUIS J. CELLI, JR., DIRECTOR**
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| S. 115: The Veterans Transplant Coverage Act | Support |
| S.426: Grow Our Own Directive: Physician Assistant Employment and Education Act of 2017 | Support |
| S.683: Keeping Our Commitment to Disabled Veterans Act of 2017 | Support |
| Draft Bill - To improve the hiring, training, and efficiency of acquisition personnel and organizations of the Department of Veterans Affairs, and for other purposes. | Support |
| S.833: Servicemembers and Veterans Empowerment and Support Act of 2017 | Support |
| S.946: Veterans Treatment Court Improvement Act of 2017 | Support |
| S.1153: Veterans ACCESS Act | Support |
| S.1261: Veterans Emergency Room Relief Act of 2017 | Support |
| S.1266: Enhancing Veteran Care Act | Support |
| S.1279: Veterans Health Administration Reform Act of 2017 | Refer to Choice Program-Community Care Option Section |
| Draft Discussion: Veterans Choice Act of 2017 | Refer to Choice Program-Community Care Option Section |

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| Draft Discussion: Improving Veterans Access to Care in the Community Act of 2017 | Refer to Choice Program-Community Care Option Section |
| S.1325: Better Workforce for Veterans Act of 2017 | Support |
| Discussion Draft: The Department of Veterans Affairs Quality Employment Act of 2017 | Support |

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When The American Legion testified at the June 7, 2017 Senate hearing, we went on record stating The American Legion believes in a strong, robust veterans' healthcare system that is designed to treat the unique needs of those men and women who have served their country. As we testify today, The American Legion's commitment to helping Congress and VA build a strong robust veterans' healthcare system is even stronger.

Chairman Isakson, Ranking Member Tester, and distinguished members of the committee; On behalf of our National Commander, Charles E. Schmidt, and the over 2 million members of The American Legion, we thank you for this opportunity to testify regarding The American Legion's position on pending legislation before this committee. We appreciate the committee focusing on these critical issues that will affect veterans and their families.

## S. 115: The Veterans Transplant Coverage Act

*A bill to amend Title 38, United States Code, to authorize the Secretary of Veterans Affairs to provide for an operation on a live donor for purposes of conducting a transplant procedure for a veteran, and for other purposes.*

The Department of Veterans Affairs (VA) Veterans Health Administration (VHA) has been providing transplant services since 1961 when Dr. Thomas E. Starzl, performed the first-ever transplant of a human liver at the Denver VA hospital on May 5, 1963.

This bill, if enacted into law, would authorize the Secretary of Veterans Affairs to provide organ transplants to veterans from a live donor regardless of whether that donor is a veteran. This bill would allow veterans who are waiting a lengthy amount of time for VA transplant services to receive those services out in the community at VA expense.

In 2015, the VA Office of Inspector General (VAOIG) issued Report No. 15-00187-25, *Alleged Program Inefficiencies and Delayed Care*, VHA's National Transplant Program. VAOIG substantiated that some patients referred for liver transplant evaluations at all VATCs experienced delays. VAOIG estimated that 6.9 percent of emergency referrals were not

responded to in VHA's electronic transplant referral system within 48 hours, as required (95 percent confidence interval (CI): 1.67–24.42). Among stable patient referrals, VAOIG estimated that 9.6 percent of referrals were not responded to in VHA's electronic transplant referral system within 5 business days, as required (95 percent CI: 6.36–14.28). About half of stable patients who were deemed eligible for further evaluation did not receive an initial patient evaluation within 30 days, as required.[1]

According to statistics obtained from the Department of Health and Human Services, as of June 30, 2017, there were 117,636 people needing a lifesaving organ transplant (total waiting list candidates).[2] Of those, 75,958 people are active waiting list candidates. In accordance with VHA Policy Directive 2012-018, Solid Organ and Bone Marrow Transplantation, VA can only accept living donors into VA's transplant program.

Through American Legion Resolutions No. 25, *The American Legion Support of the VA Organ Transplant Program* The American Legion supports a system of organ distribution that will ensure that veteran patients receive equitable consideration when in need of transplants, and No. 46, *Department of Veterans Affairs (VA) Non-VA Care Programs,* that the Department of Veterans Affairs (VA) develop a well-defined and consistent non-VA care coordination program, policy and procedure that includes a patient-centered care strategy which takes veterans' unique medical injuries and illnesses as well as their travel and distance into account.[3,4]

**The American Legion supports S.115.**

## S.426: Grow Our Own Directive: Physician Assistant Employment and Education Act of 2017

*A bill to increase educational assistance provided by the Department of Veterans Affairs for education and training of physician assistants of the Department, to establish pay grades and require competitive pay for physician assistants of the Department, and for other purposes.*

S. 426 will authorize the Grow Our Own Directive (GOOD) Pilot Program for five years to advance training and education opportunities for participants of the Intermediate Care Technician (ICT) program who agree to work in VA facilities in underserved states, and former servicemembers with military health experience. Once these veterans are certified as Physician Assistants, they will be required to work at the VA for at least three years.

Physician Assistants are one of the most in-demand positions at the VA. In 2016, it was reported that there is a 23 percent vacancy rate in the VA for physician assistants. According to the Veterans Affairs Physicians Assistants Association, there are an estimated 30,000 open

[1] VAOIG Report No, 15-00187-25 (Nov 2015): Alleged Program Inefficiencies and Delayed Care, VHA's National Transplant Program
[2] Organ Procurement and Transplantation Network: https://optn.transplant.hrsa.gov/
[3] The American Legion Resolution No. 25 (May 2004): The American Legion Support of the VA Organ Transplant Program
[4] The American Legion Resolution No. 46 (Oct. 2012): Department of Veterans Affairs (VA) Non-VA Care Programs

Physician Assistant positions in the United States, making it difficult for the VA to recruit and retain physician assistants.[5]

Reports from our legionnaires who are involved in VA facilities at the state level suggest that the reason for this is not a lack of quality candidates, but rather process and pipeline barriers. For a Veterans Health Administration (VHA) facility to hire one person for a clinical position it can involve up to 18 steps - from getting approval for the job posting, to running credential checks - and can take from four to eight months to complete. By that time, candidates have often accepted a job elsewhere.

The ICT program is a common sense initiative for the VA to fill these vacancies. Created in 2012, the scope of practice for the role of an ICT is more advanced than a traditional VA EMT. ICTs are configured for the medic and corpsmen skill set and provide a high level clinical support to nurses and physicians. Additionally, the position was designed as an initial entry springboard for qualified veterans to explore further career opportunities in healthcare. Unfortunately, the program continues to suffer from a lack of training opportunities for participants to utilize to advance their careers at the VA.

S. 426 would provide this training by establishing the Grow Our Own Directive (GOOD) Pilot Program for 5 years, which would provide scholarships to cover the cost of obtaining a master's degree in Physician Assistant Studies. This would make good on the promise and potential of the ICT Program in leveraging the skill sets of our medics and corpsmen, as well as help solve long-standing recruitment issues facing VHA.

Through American Legion Resolution 338: *Support Licensure and Certification of Servicemembers, Veterans and Spouses* resolves that The American Legion supports efforts to eliminate employment barriers that impede the timely and successful transfer of military job skills to the civilian labor market.[6]

**The American Legion supports S. 426.**

## S.683: Keeping Our Commitment to Disabled Veterans Act of 2017

*A bill to amend Title 38, United States Code, to extend the requirement to provide nursing home care to certain veterans with service-connected disabilities.*

Public Law 114-228, Section 1710A, Required Nursing Home Care, was signed into law September 29, 2016, and is due to expire December 31, 2017.[7]

The American Legion Resolution No. 377, *Support for Veteran Quality of Life*, supports any legislation and programs within VA that will enhance, promote, restore or preserve benefits for veterans and their dependents, including, but not limited to, the following: timely access to

[5] USA Today (Aug 20, 2015): Half of critical positions open at some VA hospitals
[6] The American Legion Resolution No. 338: (2016): Support Licensure and Certification of Servicemembers, Veterans and Spouses
[7] Public Law 114-228 (114th Congress): https://www.gpo.gov/fdsys/pkg/PLAW-114publ228/html/PLAW-114publ228.htm

quality VA health care; timely decisions on claims and receipt of earned benefits; and final resting places in national shrines and with lasting tributes that commemorates their service.[8]

By extending the date and not allowing this critical authority to expire, the lives of veterans with service-connected disabilities will continue to be enhanced.

**The American Legion supports the passage of S. 683.**

## S.833: Servicemembers and Veterans Empowerment and Support Act of 2017

*A bill to amend Title 38, United States Code, to expand health care and benefits from the Department of Veterans Affairs for military sexual trauma, and for other purposes.*

The American Legion supports safe and dignified service for all servicemember regardless of pay category, period if service, or duty assignment. The Department of Defense has instituted a zero tolerance policy for sexual harassment cases, and The American Legion agrees. Unfortunately, despite existing laws and military regulations, sexual harassment still happens far too much, and when it does servicemembers should be able to receive appropriate counseling and care from the Department of Veterans Affairs to overcome any health-related conditions related to sexual harassment or assault. For this reason, The American Legion passed Resolution No. 67 *Military Sexual Trauma* and Resolution No. 15, *Support Veteran Status for National Guard and Reserve Service members.*[9,10]

**The American Legion supports S. 833.**

## S.946: Veterans Treatment Court Improvement Act of 2017

*A bill to require the Secretary of Veterans Affairs to hire additional veterans justice outreach specialists to provide treatment court services to justice-involved veterans, and for other purposes.*

When veterans return from combat, some turn to drugs or alcohol to cope with mental health issues related to Post Traumatic Stress Disorder (PTSD) and/or Traumatic Brain Injury (TBI). Thus, many returning veterans are entering the criminal justice system to face charges stemming from these issues. In 2008, a judge in Buffalo, NY, created the first Veterans Treatment Court after seeing an increase in veterans' hearings on his dockets. Veteran Treatment Courts are a hybrid of drug and mental health courts. They have evolved out of the growing need for a treatment court model designed specifically for justice-involved veterans to maximize efficiency and economize resources while making use of the distinct military culture consistent among veterans.

[8] The American Legion Resolution No. 377 (Sept. 2016): Support for Veteran Quality of Life
[9] The American Legion Resolution No. 67 (August 26, 2014): Military Sexual Trauma
[10] The American Legion Resolution 15: (August 30, 2016): Support Veteran Status for National Guard and Reserve Servicemembers

In 2016, The American Legion approved Resolution No. 145, *Veteran Treatment Courts* which specifically calls for continuing to fund and expand Veterans Treatment Courts and hire more staff to expand the Veterans Justice Outreach program and policies.[11]

**The American Legion supports S. 946.**

## S.1153: Veterans ACCESS Act

*A bill to prohibit or suspend certain health care providers from providing non-Department of Veterans Affairs health care services to veterans, and for other purposes.*

The American Legion plays a lead role in VA healthcare reform by working with providers, patients, the public and other stakeholders in communities to improve access, quality and accountability.

This bill, as written, would protect veterans seeking care through VA community care programs like the Choice Program, from being treated by doctors who have been terminated or who have been suspended by the VA.

The American Legion System Worth Saving (SWS) facility visits and Regional Office Action Reviews (ROAR) provide unequaled firsthand knowledge of the challenges and opportunities VA faces in the communities it serves. The American Legion's national staff also closely monitors reports from the Government Accountability Office, Congress, VAOIG, media and multiple other sources to identify facilities that are experiencing challenges so solutions can be found together.

There are numerous reasons a physician can lose their license to practice. If a VA physician hired to care for a veteran is terminated by VA for any reasons cited in this bill, The American Legion agrees with Congress, VA should not be permitted to refer veterans outside the department to these non-VA providers. No veteran should be put in a position of being referred to a non-VA physician who was terminated from the VA due to negligence of duties.

The American Legion Resolution No. 3, *Department of Veterans Affairs Accountability*, supports any legislation that provides the Secretary of Veterans Affairs the authority to remove any individual from the Department of Veterans Affairs if the Secretary determines the performance of the individual warrants such removal.[12] Once a VA physician is removed from VA due to performance, The American Legion believes Congress and VA has a sacred duty to ensure that our nation's veterans are protected and receive the best health care available regardless of whether the care is provided by VA or a non-VA physician.

**The American Legion supports S.1153.**

[11] The American Legion Resolution 145 (August 30, 2016): Veteran Treatment Courts
[12] The American Legion Resolution No. 3 (August 2016): Department of Veterans Affairs Accountability

## S.1261: Veterans Emergency Room Relief Act of 2017

*A bill to amend Title 38, United States Code, to require the Secretary of Veterans Affairs to pay the reasonable costs of urgent care provided to certain veterans, to establish cost-sharing amounts for veterans receiving care at an emergency room of the Department of Veterans Affairs, and for other purposes.*

This bill would create a new section, 1725A, Payment of reasonable costs of urgent care.

Through American Legion Resolution No. 46: Department of Veterans Affairs (VA) non-VA care programs, The American Legion calls on the Department of Veterans Affairs (VA) to develop a well-defined and consistent non-VA care coordination program, policy and procedure that includes a patient-centered care strategy which takes veterans' unique medical injuries and illnesses.[13] Additionally, through American Legion Resolution No. 377, Support for Veteran Quality of Life, The American Legion urges Congress and the Department of Veterans Affairs (VA) to enact legislation and programs within the VA that will enhance, promote, restore or preserve benefits for veterans and their dependents.[14] The American Legion believes including urgent care as an option in VA's Community Care program will enhance veterans care.

**The American Legion supports S.1261.**

## S.1266: Enhancing Veteran Care Act

*A bill to authorize the Secretary of Veterans Affairs to enter into contracts with nonprofit organizations to investigate medical centers of the Department of Veterans Affairs.*

Dating as far back as 2003, The American Legion has been involved in conducting System Worth Saving (SWS) site visits to VA Health Care facilities to better understand the challenges veterans face when accessing VA health care. Each year, The American Legion visits anywhere between 12 to 15 VA health care facilities. Prior to each site visit, a town hall meeting is held so veterans can have an opportunity to share firsthand their VA experience. After each visit, a report is written identifying best practices and challenges. Challenges are followed up with recommendations and the report is shared with the medical center to assist them in overcoming their challenges. Prior to The American Legion National Convention, the site visit reports are compiled into an Executive Summary, which is shared with the House and Senate Veterans' Affairs Committees, the VA Secretary, Under Secretary of Health and the President of the United States.

Through American Legion Resolution No. 105, *Reiteration of the System Worth Saving Program*, The American Legion supports visiting and investigating VA Medical Centers for the

[13]The American Legion Resolution No. 46 (October 2012) : Department of Veterans Affairs non-VA care programs
[14] The American Legion Resolution No 377 (August 2016) : Support for Veteran Quality of Life

purpose of identifying gaps in services, best practices, and areas that need improvement.[15] The American Legion would also want to ensure that the nonprofit organizations selected to investigate are certified, qualified, and fair and equitable. They should work closely with VA and Veteran Service Organizations to establish a criteria for investigation with a responsible metric for evaluation and data collection that highlights best practices as well as deficiencies and areas that need improvement.

**The American Legion supports S. 1266.**

## S.1279: Veterans Health Administration Reform Act of 2017

*A bill to amend Title 38, United States Code, to furnish health care from the Department of Veterans Affairs through the use of non-Department health care providers, and for other purposes.*

(See below)

## Draft Discussion: Veterans Choice Act of 2017

*A bill to amend title 38, United States Code, to permit all veterans enrolled in the patient enrollment system of the Department of Veterans Affairs to receive health care from non-Department of Veterans Affairs health care providers, and for other purposes.*

(See below)

## Draft Discussion: Improving Veterans Access to Care in the Community Act of 2017

*A bill to amend Title 38, United States Code, to establish the Veterans Community Care Program of the Department of Veterans Affairs to improve health care provided to veterans by the Department, and for other purposes.*

(See below)

## Choice Program-Community Care Options

Even in the best of circumstances, there are situations where the VA health care system cannot keep up with the healthcare needs of the growing veteran population requiring VA services, and the veteran must seek care in the community. Rather than treating this situation as an afterthought, or an add-on to the existing system, The American Legion has called for the Veterans Health Administration (VHA) to "develop a well-defined and consistent non-VA care coordination program, policy and procedure that includes a patient-centered strategy which takes veterans' unique medical injuries and illnesses as well as their travel and distance into account."

[15] The American Legion Resolution No. 105 (Sept. 2015): Reiteration of the System Worth Saving Program

Over the years, VA has implemented a number of non-VA care programs to manage veterans' health care when such care is not available at a VA facility, could not be provided in a timely manner, or is more cost effective through contracting vehicles. Programs such as Fee-Basis, Project Access Received Closer to Home (ARCH), Patient-Centered Community Care (PC3), and the Veterans Choice Program (VCP) were enacted by Congress to ensure eligible veterans could be referred outside the VA for needed, and timely, health care services.

Congress created the VCP after learning in 2014 that VA facilities were falsifying appointment logs to disguise delays in patient care. However, it quickly became apparent that layering yet another program on top of the numerous existing non-VA care programs, each with their own unique set of requirements, resulted in a complex and confusing landscape for veterans and community providers, as well as the VA employees that serve and support them.

Therefore, Congress passed the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (VA Budget and Choice Improvement Act) in July 2015 after VA sought the opportunity to consolidate its multiple care in the community authorities and programs. This legislation required VA to develop a plan to consolidate existing community care programs.

On October 30, 2015, VA delivered to Congress the department's Plan to Consolidate Community Care Programs, its vision for the future outlining improvements for how VA will deliver health care to veterans. The plan seeks to consolidate and streamline existing community care programs into an integrated care delivery system and enhance the way VA partners with other federal health care providers, academic affiliates and community providers. It promises to simplify community care and gives more veterans access to the best care anywhere through a high performing network that keeps veterans at the center of care.

Generally, The American Legion supports the plan to consolidate VA's multiple and disparate purchased care programs into one New Veterans Choice Program (New VCP). We believe it has the potential to improve and expand veterans' access to health care.

The American Legion has carefully reviewed each of the three bills and we would like comment on a few provisions of the bills. Under Subsection (a) of Senator Tester's bill, the bill would establish section 1703A, Veterans Community Care program, which authorizes the Secretary to furnish an eligible veteran hospital care and medical services through the Veterans Community Care program. To be eligible, a veteran must be enrolled in the VA Health Care System, which is consistent with the requirments in Senator Crapo's and Senator's Isakason's bill. However, The American Legion is concerned that under subsection (d) of Senator Tester's bill, it would require the Secretary to (**Shall**) enter into contracts with eligible providers for furnishing care and services to eligible veterans. The bill defines the term contracts has the meaning given that term in subpart 2.101 of the Federal Acquisition Regulation. Under section 201, it would creat a new section, 1703C, referred to as Veterans Care Agreements. This section would provide the Secretary discretionary **(May)** authority to establish providers agreements. The American Legion believes these two sections may create challenges for VA when deciding what type of

care should fall under the mandatory **(Shall)** authority and what type of care should fall under the discretionary **(May)** authority.

Section 2 of Senator Crapo's bill would amend Title 38 U.S.C. 1703's heading from "Contracts for Hospital Care and Medical Services in Non-Department facilities" to "Care in the Community Program" The American Legion believes the current heading gives a false impression that this is a contracting authority, and by retitling 38 U.S.C. 1703, it would avoid this false impression. Senator Crapo's bill would also authorize reimbursement for urgent care provided at a non-Department facility in accordance with regulations prescribed by the Secretary and would also establish a new section, titled 1703A, which would require **t**he Secretary to enter into purchase agreements with non-Department health care providers to furnish care and services to enrolled veterans. At The American Legion 2016 National Convention, Resolution No. 114, *Department of Veterans Affairs Provider Agreements with Non-VA Providers,* was passed which supports legislation that would allow the Department of Veterans Affairs (VA) to enter into provider agreements with eligible non-VA providers to obtain needed health care services for the care and treatment of eligible veterans.[16]

All three bills includes provisions for repealing obsolete non-VA community care authorities.

The American Legion along with other Veteran Service Organizations have been working diligently with VHA to help with language to streamline their Non-VA purchase care program in order to come up with a replacement for the Choice program. While each bill is somewhat different, when you consider all three bills together, The American Legion believes they have what is needed to address the many challenges VA face in building a robust community care program.

The American Legion would like to direct this Committee's attention to the Draft Veteran Coordinating Access & Rewarding Experiences (CARE) plan, and urges this Committee to develop future legislative proposals with this proposal in mind.

**The American Legion wants to thank Senator's Isakson, Tester, and Crapo for taking the lead in drafting these three bills and call on them to work together, and with The American Legion to deliver a single bill that includes all the great work each senator has contributed in their sponsored bill to make VA's Community Care program successful.**

## S.1325: Better Workforce for Veterans Act of 2017

*A bill to amend Title 38, United States Code, to improve the authorities of the Secretary of Veterans Affairs to hire, recruit, and train employees of the Department of Veterans Affairs, and for other purposes.*

This draft bill will direct VA to expand its workforce, leading to more timely and efficient healthcare for veterans. The American Legion supports legislation that will increase employee capabilities at the VA. We feel that recent graduates and veterans bring much needed new talent

[16] The American Legion Resolution 114 (Aug. 2016): Department of Veterans Affairs Provider Agreements with Non-VA Providers

into the VA and increased hiring will lead to improved employment opportunities for veterans within the VA. The American Legion supports policies that boosts the percentage of veterans hired in all agencies, specifically the VA, to 50 percent or above.[17]

The American Legion believes that an increase in VA workforce will lead to; reduced patient waiting times, improvement in employee vacancy rates, decreased senior VA medical center leadership turnover, helping ensure timely claims processing, help to reduce homelessness, minimize improper burials at VA cemeteries and; provide better assurance and compliance with national policies, rules and laws enacted to assist veterans and their families.

The American Legion has tracked and reported staffing shortages at every VA medical facility across the country since the inception of the System Worth Saving (SWS) program in 2003. The Veterans Health Administration (VHA) is still struggling to achieve the appropriate balance of primary care and medical specialists across the country. If VA continues to struggle with retention and recruitment, the trend of closures (or continued closures) for multiple departments within VA health-care systems nationwide will continue.

Numerous reports cite VA's staffing issues. For example, in January 2015, the VA's Office of Inspector General released its determination of the "Veterans Health Administration's Occupational Staffing Shortages," as required by Section 301 of the "Veterans Access, Choice and Accountability Act of 2014." With this report, the Inspector General determined the five occupations with the largest staffing shortages were medical officers, nurses, physician assistants, physical therapists and psychologists.[18,19]

In another study conducted by Federal HR experts AVUE Technologies, this legislation seeks to make it easier for the Secretary of the VA to manage his workforce, including hiring, retention, and overall talent management. There are many elements of the legislation that will be helpful to the Secretary however, there are elements that, with improvement, would contribute to making a difference in a more substantial way, such as the focus on VA first responders which is long overdue – in particular the VA Police Officers.

The VA Police Officers have been targeted by the VA's Chief Human Capital Officer (CHCO) and the CHCO's subordinates for downgrade VA-wide. The VA has taken the position that VA Police Officers should be no higher graded than GS-5 (they are currently GS-6) and that they do not perform work of law enforcement officers because the VA believes they are primarily engaged in patrols and low level security work instead of higher graded police officer or law enforcement work. In an independent study by Federal HR experts, the experts found this to completely mischaracterize the day-to-day work of the VA's police force. Instead the study found that for Police Officers, the full-performance level should be GS-7 in all locations where the following units are found:

[17] The American Legion Resolution No. 346 (Aug. 2016): Support an Investigation of Hiring Practices in the Federal Government
[18] The American Legion Legislative Agenda (March 1, 2017)
[19] The American Legion Resolution No. 317 (Aug. 2016): Enforcing Veterans' Preference Hiring Practices in Federal Civil Service

- Medical Centers that provide in-house, inpatient acute medical and surgical services and procedures and acute psychiatric services in addition to outpatient services.
- Vet Centers that provide readjustment counseling and outreach services to all veterans who served in any combat zone.
- Domiciliary that provide a variety of care to veterans who suffer from a wide range of medical, psychiatric, vocational, educational, or social problems and illnesses.

The study found no justification to downgrade or cap the grades of these positions on a universal basis. While certain locations like CBOCs may not exceed GS-5, that grade would misclassify other Police Officer positions in other locations. VA police offers were found to perform police patrol work and crime and incident investigation. Contrary to the VA's assertions, the study found that the police officers were engaged in responding to reports of crimes in progress; pursuing and apprehending offenders fleeing a crime scene or attempting to resist arrest; apprehending offenders and making judgments regarding the arrest, citation, or release of suspects/offenders; advising persons of their constitutional rights; advising employees of their Weingarten rights; conducting frisks and searches; responding to duress calls and interceding in physical assaults or other incidents clearly requiring police intervention to minimize the possibility of injury to all involved parties; subduing unruly individuals who pose a threat to the officer and other individuals; and subduing individuals through physical force and/or the use of non-lethal and lethal weapons, as the situation dictates.

Additionally, with regard to crime and incident investigations, the following duties, among others, were identified:

- Conducts investigations in order to: (1) determine if a crime has been committed; (2) identify the perpetrator; (3) apprehend the perpetrator; and (4) provide evidence to support a conviction in court. Conducts initial discovery and response after being dispatched to a crime scene or location of a victim. Completes the initial investigation, including the immediate post-crime activities as the responding police officer arriving on the crime scene. Secures and processes accident, crime, or disaster scenes. Interviews witnesses and questions suspects at the scene. Searches the scene for evidence and collects, preserves, and documents the chain of custody of evidence. Diagrams crime and accident scenes. Estimates values of stolen or recovered goods. Recovers and inventories lost or stolen property. Transports property or evidence.

- Conducts follow-up investigations, as required, over multiple shifts. Investigates accidents, crimes against persons and property, and complaints of drug law violations. Collaborates with internal and external sources to obtain necessary information to further investigations. Reviews information on criminal activity within jurisdictional and surrounding areas. Locates and interviews witnesses to a crime and interrogates and/or question suspects. Conducts surveillance of individuals and/or locations. Checks on status of stolen property, criminal histories, and warrants through computer network. Records and/or reviews records and pictures to aid in investigations.

Furthermore, there was no basis to lower Leader or Supervisory or Managerial positions based on the downgrades of subordinate positions. In fact, in many locations the supervisory structure may warrant a higher grade based on these new full-performance levels. For VA police officers at the locations listed above it was found that the positions not only meet all the requirements to sustain their current GS-6 grade but also, for at least some, the GS-7 level in addition to meeting all of the requirements for 6c coverage. In accordance with OPM regulation Cabinet Level Secretaries may make the determination as to which positions are eligible for 6c coverage and this is fully within the current authorities of the Secretary. Doing so will improve retention in a manner that no other action would and recognition that the work performed by the VA's police officers warrant a higher grade will similarly improve retention.[20]

The bill informs the VA that OPM should be engaged to review the police officer positions. This is problematic for two reasons. One, OPM is chartered with writing all of the classification and qualification standards for the federal government. Even Title 38 positions are classified using Title 5 classification standards issued by OPM. The classification standard for Police Officers was last updated in 1988.

Through American Legion Resolutions No. 20, *Oppose Efforts to Downgrade Low-Level Wage Positions within the VA* that The American Legion vigorously opposes any downgrading of lowest wage positions GS7 and below, and WG-4 and below, No. 317, *Enforcing Veterans' Preference Hiring Practices in Federal Civil Service* that The American Legion seek and support any legislative or administrative proposal that will mandate the use of automated recruitment, hiring and retention system that safeguard against hiring malpractice in the application and the hiring process, and Resolution No. 346, *Support an Investigation of Hiring Practices in the Federal Government* that The American Legion supports remedial legislation, as may be needed, to increase the percentage of veterans hired in all federal agencies; specifically, the Department of Veterans Affairs to 50 percent or above.

**The American Legion supports S. 1325.**

## Discussion Draft: The Department of Veterans Affairs Quality Employment Act of 2017

*To improve the authority of the Secretary of Veterans Affairs to hire and retain physicians and other employees of the Department of Veterans Affairs, and for other purposes.*

This draft bill will direct VA to expand its workforce, leading to more timely and efficient healthcare for veterans. The American Legion supports legislation that will increase employee capabilities at the VA. We feel that recent graduates and veterans bring much needed new talent

[20] The American Legion Resolution No. 20 (Oct. 2016): Oppose Efforts to Downgrade Low-Level Wage Positions within the Department of Veterans Affairs

into the VA and increased hiring will lead to improved employment opportunities for veterans within the VA. The American Legion supports policies that boosts the percentage of veterans hired in all agencies, specifically the VA, to 50 percent or above.

The American Legion believes that an increase in VA workforce will lead to; reduced patient waiting times, improvement in employee vacancy rates, decreased senior VA medical center leadership turnover, helping ensure timely claims processing, help to reduce homelessness, minimize improper burials at VA cemeteries and; provide better assurance and compliance with national policies, rules and laws enacted to assist veterans and their families.

This draft legislation will create more accountability and efficiency within the VA's workforce management, including hiring, retention, and overall talent management. There are many elements of the legislation that will be helpful to the Secretary.[21]

The American Legion has tracked and reported staffing shortages at every VA medical facility across the country since the inception of the SWS program in 2003. As far back as 1998, The American Legion expressed concerns regarding VA physicians and medical specialists staffing shortages within the Veterans Health Administration (VHA). This was accomplished by monitoring the progress in establishing patient centered primary care within each Veterans Integrated Service Network (VISN), including both rural and urban localities as well as ensuring that the model of care features both the quality and efficient combination of medical professionals that are tailored to the needs of the local veteran's population.

As in previous testimony, The American Legion urges the VA to develop an aggressive strategy to recruit, train, and retain medical professionals to meet the inpatient and outpatient health care needs of veterans. The American Legion fully supports such programs, such as the VA's education-assistance programs for APNs, RNs, LPNs, and NA's. We also urged VA to provide equitable and competitive wages for their medical professionals.[22]

VA Medical Centers in rural areas have often faced challenges trying to recruiting and retaining qualified medical and clinical providers due to their inability to compete with medical centers in large metropolitan areas. In The American Legion's 2012 System Worth Savings (SWS) Report on Rural Healthcare, The American Legion found that: "Department of Veteran Affairs Medical Centers (VAMCs) in rural America, recruitment and retention of primary and specialty care providers has been a constant challenge. Some clinicians prefer to practice in more urban settings with more research opportunities and quality of life that urban settings provide."[23]

As an example, at the time of our December 2016 visit to the Pacific Island Health Care System, the director, and chief of human resource position were both vacant. At the time of our January 2017 visit to the Greater Los Angeles VA Health Care System, the medical center director had been in his position for less than a year, and the associate director, chief, and assistant chief, human resource positions were ALL vacant. During a follow-up call last month, the VA Pacific Island Health Care System told us that all their top management positions, except for the

[21] The American Legion Testimony (March 16, 2016)
[22] The American Legion Resolution No. 305: (Aug. 2016): Support the Development of Veterans On-The-Job Training
[23] The American Legion System Worth Saving Report (2012): Rural Healthcare

Director position have now been filled and that the chief of human resources position has been filled with a permanent manager who is highly experienced in human resources.

These staffing shortages are contributing to physician and staff burnout which was reinforced during our Saint Cloud, Minnesota visit. As The American Legion continues to conduct System Worth Saving Site visits across the VA health care system, we see the trend of VA staffing shortages declining rather than improving.

Things that are working well include the significant contribution of the VA's Academic Residency Program. As one of the VA's statutory missions, the VA conducts an education and training program for health profession students and residents to enhance the quality of care provided to veterans within the VHA healthcare system. For almost sixty years, in accordance with VA's 1946 Policy Memorandum No. 2, the VA has worked in partnership with this country's medical and associated health profession schools to provide high quality health care to America's veterans and to train new health professionals to meet the patient health care needs within VA and the nation. This partnership has grown into the most comprehensive academic health system partnership in American history.

While the VA's Academic Residency Program has made significant contributions in training VA health care professionals, upon graduation, many of these health care professionals choose a career outside the VA health care system. With these realities, the VA will never be in a position to compete with the private sector as it is currently set up. To this end, The American Legion feels strongly that VA should begin looking into establishing its own VA Health Professional University and begin training their medical health care professionals to serve as a supplement to VA's current medical residency program. Conceivably, medical students accepted into VA's Health Professional University would have their tuition paid in full by VA and upon graduation, the graduate would be required to accept an appointment at a federal health facility at a starting salary comparable to what a new medical graduate would be paid by VA based on their experience and specialty. Similar to a military service academy, a VA medical school will be highly selective, competitive, and well respected. Applicants can be nominated by their congressional representative, teaching staff can be sourced organically as well as nationally, and real estate is plentiful. This will help ensure the VA will have an adequate number of healthcare professionals to meet the growing number of veterans and their healthcare needs.

In 2014, The American Legion published a SWS report titled "Past, Present, and Future of VA Healthcare", which noted several challenges VA still faced regarding recruiting and retention such as:

- Several VAMCs continue to struggle to fill critical leadership positions across multiple departments.

- These gaps have caused communication breakdowns between medical center leadership and staff that work within these departments.

During our 2013 site visit to the Huntington VA Medical Center in Huntington, West Virginia, we recommended that, "VHA conduct a rural analysis for hard to recruit areas and look into

different options to support VAMCs in getting talent they need to better serve veterans." VHA needs to ensure that veteran health care is consistent across each Veterans Integrated Service Network (VISN).

In 2015, during our SWS site visit to the VA Medical Center in St. Cloud, Minnesota, providers expressed concerns about the number of physician vacancies, and how the additional workload is impacting morale at the medical centers. During the same visit, one veteran expressed concern noting "every time [I] visit the medical center, [I am] assigned a new primary care provider because [my] last provider either quit or transfer to another VA."

There have been numerous reports citing VA's staffing issues, for example in January 2015, the VA's Office of Inspector General (VAOIG) released their determination of the "Veterans Health Administration's Occupational Staffing Shortages," as required by Section 301, of the "Veterans Access, Choice and Accountability Act (VACAA) of 2014". With this report, VAOIG determined that the five occupations with the largest staffing shortages were Medical Officers, Nurses, Physician Assistants, Physical Therapists, and Psychologists. The OIG recommended that the "Interim Under Secretary for Health continue to develop and implement staffing models for critical need occupations." Ultimately, if the VA continues to struggle with retention and recruitment, the trend of closures (or continued closures) for multiple departments within VAMCs nationwide will continue.

As The American Legion continues to conduct System Worth Saving Site visits across the VA health care system, we see VA staffing shortages getting worse rather than improving. One reason VA may sometimes struggle to provide care within the Veterans Health Administration (VHA) is directly related to staffing. One in six positions nationally for some critical jobs remain vacant, and critical needs like psychiatric workers can see vacancy rates of 40-64 percent.[24]

Even when VA is hiring an additional 9 percent of their workforce they are losing a similar amount to attrition. Some of this could be improved with better hiring incentives and more competitive wages, particularly in key fields of need such as psychiatric care, physician's assistants, nurses and physical therapists.[25]

As the Office of the Inspector General recommended, VA also bears additional responsibility in the form of the development of better staffing models and examining the red tape and bureaucratic burdens that stretch hiring out into a process that can take nine months or longer. Additional examination of where VA can better incentivize prospective applicants to decide on a career serving veterans would be helpful. We need to ensure VA has proper funding to get the best and brightest team members on their medical and psychological staffs serving veterans.

The VA can further help improve their staffing, especially in leadership positions, with better succession planning for VA employees to rise to leadership levels within the organization. As an organization of advocates that has worked hand in hand with VA for decades, The American Legion notes the training programs VA had in place during the 1990's were better suited to

[24] USA Today (Aug. 20, 2015): Half of critical positions open at some VA hospitals
[25] VAOIG Report No. 15-03063-511: OIG Determination of Veterans Health Administration's Occupational Staffing Shortages (Sept. 2015)

creating the next generation of leadership than the current programs in place. The VHA training programs of the 1990's were specifically built to prepare administrative employees to assume mid-level management programs at the department level. This could include personnel, fiscal, medical administration, associate director training and other leadership training. The programs were replaced, over time, with VA's current Leadership Development Programs, but feedback The American Legion has garnered from interacting with VHA personnel during visits from our System Worth Saving Task Force has indicated these programs are not providing the tools the employees need to be the next generation leaders of VA and to lead from within.

The American Legion understands that filling highly skilled vacancies at premiere VA hospitals around the country is challenging. We also expect VA to do whatever is legally permissible to ensure that veterans have access to the level of quality healthcare they have come to expect from VA. VA has a variety of creative solutions available to them without the need for additional legislative action. One such idea could involve the creation of a medical school, another would be to aggressively seek out public private partnerships with all local area hospitals. VA could expand both footprint and market penetration by renting space in existing hospitals where they would also be able to leverage existing resources and foster comprehensive partnerships with the community. Finally, VA could research the feasibility of incentivizing recruitment at level 3 hospitals by orchestrating a skills sharing program that might entice physicians to work at level 3 facilities if they were eligible to engage in a program where they could train at a level 1 facility for a year every 5 years while requiring level 1 facility physicians to spend some time at level 3 facilities to share best practices. Currently, medical staff are primarily detailed to temporarily fill vacancies. This practice fails to incentivize the detailed professional to share best practices and teach, merely hold down the position until it can be filled by a permanent hire.

The American Legion through Resolution No. 317, *Enforcing Veterans' Preference Hiring Practice in Federal Civil Service* believes additional consideration to revamping this portion of training, and ensuring this training is properly funded, could be a key component to reducing VA's reliance on the complicated process of hiring from outside VA and ultimately reduce the number of unfilled leadership positions.[26]

**The American Legion supports the Discussion Draft.**

## Conclusion:

As always, The American Legion thanks the Senate Committee on Veterans' Affairs for the opportunity to explain the position of the over 2 million veteran members of this organization. For additional information regarding this testimony, please contact Mr. Derek Fronabarger at The American Legion's Legislative Division at (202) 861-2700 or dfronabarger@legion.org.

[26] The American Legion Resolution No. 317 (Aug. 2016): Enforcing Veterans' Preference Hiring Practices in Federal Civil Service