

# Statement for the Record



**Submitted By**

**By**

**Richard Weidman, Executive Director  
For Policy and Government Affairs**

**Before the  
Senate Veterans Affairs Committee**

**Regarding**

**S, 2633, S. 2646, S.2473 and Draft legislation on Title 38 US  
Code on appointment, compensation, performance,  
management and accountability**

**March 15, 2016**

Mr. Chairman, Ranking Member Blumenthal and other distinguish members of the Senate Veterans Affairs Committee, thank you for giving Vietnam Veterans of America (VVA) the opportunity to present our statement for the record regarding pending legislation before this committee.

**S. 2633, the Improving Veterans Access to Care in the Community Act:**

Responding to a crisis about access to VA health care, Congress enacted what is commonly referred to as the Choice Act in 2014. Expectations for this legislation were high, by members of Congress, most VSOs, and veterans disgruntled with their treatment in VA medical centers and CBOCs.

As with any start-up, there were start-up difficulties, that ought to have been anticipated, but weren't, beginning with the unrealistic demand that VA send out an initial mailing to all nine million or so veterans who use the VA for their health care needs. The essence of the new law was admirable: it was designed to fix a situation to provide timely and accessible care in communities where care could not be provided by a VAMC or CBOC in a timely manner. Ostensibly, a secondary benefit was to give the VA a handle on healthcare dollars expended outside of Veterans Health Administration facilities.

However, there was also an unrealistic expectation in Congress of the demand for "choice" by the veterans this legislation was supposed to benefit; after all, the Choice Act responded to complaints of veterans in different parts of the country. In addition, at the time, there was inflexibility as to how the VA could spend a \$10 billion pool of funds (which loosened only when VA Secretary Bob McDonald threatened to shutter or cut back operations of some VA hospitals because there were not enough funds on hand to meet demand for services in last quarter of FY15).

The "Improving Veterans Access to Care in the Community Act, introduced by Senator Jon Tester and colleagues Senators Blumenthal and Brown, seeks to further remedy situations when a VA healthcare facility is unable to furnish hospital care and medical services to eligible veterans for a variety of reasons.

VVA endorses S. 2633 except for the provision in Title 1, 1703A (2) (F) that a veteran may be “assigned a primary care provider . . . that is not a health care provider of the Department.” Primary care, including a determination that a veteran may need mental health care, must be a direct function of the VA – to establish a viable electronic health record and to coordinate the best possible care for a veteran.

Nowhere in this legislation is any requirement that the VA must refer management of non-VA care to a third party, e.g., HealthNet, TriWest. In fact, we see no real need to spend hundreds of millions of healthcare dollars to any outside entity to manage Choice. There is no reason why, with proper training and assistance of a traveling “tiger team” from VACO, each VAMC cannot establish arrangements and come to agreements with a network of healthcare providers in its area. Going through an outside entity to do this work is not an efficient and effective expenditure of limited healthcare dollars.

The “tweaks” to Choice in S. 2633 are viable and valuable, and VVA endorses enactment of this legislation with the exception noted above.

**S. 2646, the Veterans Choice Improvement Act of 2016:** This bill is, in essence, competing legislation with S. 2633 as this bill has been introduced by Senator Richard Burr and cosponsors Senators Tillis, Boozman and Moran. In addition, whereas S. 2633 sunsets on 31 December 2017, S. 2646 includes no deadline for Choice.

Obviously, many in Congress – from both sides of the aisle – are less than enthusiastic at the present about the management capabilities of the VA, particularly the Veterans Health Administration. Still, an amalgam of the “best” provisions in S. 2646 and S. 2633 can be achieved, and will be of benefit to those veterans who will be best served by accessing health care in their community or within a more reasonable distance than a VA healthcare facility).

The need for rationalizing purchased care outside of VHA is real. Congress, however, must note that the majority of veterans eligible for VA health care, are content and, in many cases, enthusiastic, about their treatment in a

VAMC or CBOC. They appreciate the “one-stop shopping” at a VAMC. And those with special, or unique, needs – veterans with spinal cord injury, with amputations from combat or necessitated by disease, with blindness – can find superior health care at a VA facility, even if it means they have to travel more than an arbitrary 40 miles or have to wait more than 30 days for an appointment. In fact, Congress should note that making appointments for non-VA health care sometimes takes more than 30 days, as many veterans are finding out.

Choice is, and must be, an adjunct to health care provided at a VAMC or CBOC. In fact, the VHA was purchasing more than \$5 Billion in outside care before the Choice Act. Overall, the VA healthcare system, despite its well-publicized mis-steps, is the largest, and finest, integrated system in the country. Inasmuch as both S. 2646 and 2633 attempt to improve healthcare delivery to eligible veterans – without supplanting the VA as primary healthcare provider – they are worthy of enactment into black-letter law. VVA can support this legislation as written.

**S. 2473, the Express Appeals Act of 2016:** Understandably, many veterans appealing the decision of a Veterans Benefits Administration (VBA) adjudicator are frustrated by how long it takes for the Board of Veterans Appeals (BVA) to render its decision. S. 2473, introduced by Senator Dan Sullivan, a Republican, with two Democrats and one Republican original cosponsors, is an attempt to break any logjam before it reaches crisis proportions (which some would argue already exists, with more than 450,000 appeals to be adjudicated).

S. 2473, dubbed the “Express Appeals Act of 2016,” places the burden of filing a substantially developed appeal on the appealing veteran – in an attempt to rectify the VA’s own folly in robbing resources from appeals to adjudicate claims to reduce a backlog that had been approaching 1 million. Sure, the VA, in responding to pressure from Congress and the VSO community, was able to eliminate this backlog. Nevertheless, as the VA gradually got a handle on processing claims, which now are down to a reasonable number, appeals have exploded. Lesson: the VA cannot continue to rob peter to pay paul.

The major stakeholders in appeals of veterans' claims met for three full days last week to hammer out a framework that will speed veterans' appeals without compromising a veterans' right to due process under the law. Staff members from both sides of the aisle joined us on Thursday afternoon to see what had come of these intensive discussions thus far. The same group will re-convene on this coming Thursday to begin the effort to more fully develop agreement on the elements that need to be incorporated into this structure.

VVA opposes S. 2473 in its current form, and urges the committee to wait until we see whether all sides can come to agreement on a framework that will work from everyone's point of view. When such a tentative a document is reached, with input from your staff, we hope that the distinguished Senators on the Committee will consider the proposal(S), and move forward with any needed statutory changes.

**Discussion Draft, Title 38 Appointment, Compensation, Performance Management, and Accountability System for Senior Executive Leaders in the Department of Veterans Affairs:**

This potential bill is inspired, obviously, by the recent embarrassing mess when two senior VBA employees engineered transfers of two VA Regional Office directors so that they could then fill these positions themselves. Once this untoward and unethical affair was revealed, however, VA leadership stepped all over themselves as the current bureaucracy of appeals in effect rewarded rather than punished these two executives for their flagrant acts that benefitted only themselves and not the veterans they are supposed to there to serve.

This draft bill would, as it states up front, "establish a comprehensive employment system under Title 38 for VA's Senior Executive level leadership positions." In addition, let us acknowledge what is known within the VA and in Congress: that serious flaw in VA leadership positions do exist, to the detriment of veterans.

This goal of this potential bill is "to ensure that VA can operate as a values-based high performance organization rather than a compliance-focused

underperforming bureaucracy.” It is obvious that this contemplated legislation is the product of business-oriented VA leadership starting at the top with a Secretary whose career has been primarily in corporate America. It would, in effect, give the VA Secretary the authority, as conceived in the Choice Act, to “move quickly and decisively to remove or demote those VA executives whose misconduct or poor performance undermine veterans’ trust in VA care and services.” However, it also would add a degree of rationality in determining the compensation for senior executives based on “the complexity of the position held; an analysis of the local labor market for similar positions in private and other federal sector organizations; and the individual executive’s experience and performance in the position and/or in other VA assignments.” Ideally, enactment of the basic elements of this proposed legislation would upgrade leadership in critical positions of authority within the VA.

If the intent is to attract and retain gifted individuals, compensation is, of course, a significant factor. Nevertheless, the language herein fails to acknowledge that many individuals join federal service because of generous, and guaranteed, pensions, even if their rate of pay is not up to par with colleagues in private employ.

Now, there are many reasons (see above) that such a significant change in how senior executives are recruited and retained is attractive. However, there are dangers inherent in any attempt to give a Secretary far more discretion in demoting or removing top executives from their positions, e.g., if an executive’s decision on a particular issue are rational, logical, and necessary, a Secretary might cave to political opposition to silence such an executive.

Another danger is inherent in the actual operation of good intentions. In the background of this bill is this: “. . . VA must revamp its systems for assessing and rewarding performance to ensure executive-level leaders’ performance ratings accurately reflect the performance of the enterprise. This requires both that we set meaningfully outcome-oriented performance goals and that we discipline ourselves in *assigning ratings so that only the most outstanding and transformational leaders receive the highest marks*”

(italics added). Because if the current system for awarding bonuses to senior executives is any indication, it is too easy to give just about everyone a bonus, even if they are failing in achieving positive results in the programs they oversee.

This potential bill certainly is worthy of consideration by the SVAC and HVAC. On the other hand, a “roundtable” hosted by the Committee may be useful. Perhaps such discussions will lead to improvements in the bill, and strong support by VSOs and other stakeholders.

**VIETNAM VETERANS OF AMERICA  
Funding Statement  
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The national organization Vietnam Veterans of America (VVA) is a non-profit veteran's membership organization registered as a 501(c) (19) with the Internal Revenue Service. VVA is also appropriately registered with the Secretary of the Senate and the Clerk of the Senate of Representatives in compliance with the Lobbying Disclosure Act of 1995.

VVA is not currently in receipt of any federal grant or contract, other than the routine allocation of office space and associated resources in VA Regional Offices for outreach and direct services through its Veterans Benefits Program (Service Representatives). This is also true of the previous two fiscal years.

For Further Information, Contact:

Executive Director for Policy and Government Affairs  
Vietnam Veterans of America.  
(301) 585-4000, extension 127

## **Richard F. Weidman**

Richard F. “Rick” Weidman is Executive Director for Policy and Government Affairs on the National Staff of Vietnam Veterans of America. As such, he is the primary spokesperson for VVA in Washington. He served as a 1-A-O Army Medical Corpsman during the Vietnam War, including service with Company C, 23rd Med, AMERICAL Division, located in I Corps of Vietnam in 1969.

Mr. Weidman was part of the staff of VVA from 1979 to 1987, serving variously as Membership Service Director, Agency Liaison, and Director of Government Relations. He left VVA to serve in the Administration of Governor Mario M. Cuomo as statewide director of veterans’ employment & training (State Veterans Programs Administrator) for the New York State Department of Labor.

He has served as Consultant on Legislative Affairs to the National Coalition for Homeless Veterans (NCHV), and served at various times on the VA Readjustment Advisory Committee, the Secretary of Labor’s Advisory Committee on Veterans Employment & Training, the President’s Committee on Employment of Persons with Disabilities - Subcommittee on Disabled Veterans, Advisory Committee on Veterans’ Entrepreneurship at the Small Business Administration, and numerous other advocacy posts. He currently serves as Chairman of the Task Force for Veterans’ Entrepreneurship, which has become the principal collective voice for veteran and disabled veteran small-business owners.

Mr. Weidman was an instructor and administrator at Johnson State College (Vermont) in the 1970s, where he was also active in community and veterans affairs. He attended Colgate University (B.A., 1967), and did graduate study at the University of Vermont.

He is married and has four children.