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STATEMENT BY
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AFGE NATIONAL SECRETARY-TREASURER
ON BEHALF OF
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO
AND
THE AFGE NATIONAL VA COUNCIL
BEFORE THE
SENATE COMMITTEE ON VETERANS' AFFAIRS,
CONCERNING
PENDING HEALTH-RELATED LEGISLATION
JUNE 11, 2011

Chairman Murray, Ranking Member Burr and Members of the Committee:

The American Federation of Government Employees (AFGE) and the AFGE National VA Council (NVAC) (hereinafter "AFGE") appreciate the opportunity to testify today on S. 572.

AFGE represents over 200,000 employees in the Department of Veterans Affairs (VA), more than two-thirds of whom are Veterans Health Administration (VHA) employees who are on the front lines at VA hospitals, clinics and nursing homes caring for our nation's veterans.

S. 572 does not create new bargaining rights. Rather, this bill restores equal bargaining rights over routine compensation matters that were previously afforded to the following medical professionals covered by the VA's Title 38 personnel system: registered nurses (RN), physicians, dentists, physician assistants, optometrists, podiatrists, chiropractors and expanded-duty dental auxiliaries.

Until 2003, VA's Title 38 medical professionals had the same compensation bargaining rights as VHA employees covered by Title 5 bargaining rights and medical professionals at military hospitals and other federal facilities. Over the past eight years, the VA has interpreted the Title 38 bargaining rights law -- Section 7422 -- to single out Title 38 medical professionals and deprive them of basic rights to grieve and negotiate over routine pay matters such as nurse overtime pay and physician incentive pay. The VA has also used Section 7422 to block complaints arising out of violations of rights under other federal laws.

How can anyone oppose making the VA abide by its own pay rules? Last year, Secretary Shinseki acknowledged the widespread abuse of VA's pay rules at many VA medical facilities. In fact, he determined that this problem was significant enough to pull back the Undersecretary of Health's authority to determine when Section 7422 prohibits bargaining. Now, all 7422 disputes must be decided by the Secretary.

Contrary to the VA's past assertions, S. 572 will not interfere with the role of Congress and the

Secretary in setting rates of pay. The bill specifically excludes from bargaining the "establishment, determination, or adjustment of rates of basic pay". In contrast, VA medical professionals – like other federal employees – must have the right to bargain over whether a pay rule is applied fairly and accurately.

The VA has argued that this bill will give VA medical professionals more rights than other federal employees. This assertion is also completely untrue. The plain language of S. 572 is unambiguous: it would only restore the same rights to bargain over routine pay matters as those afforded to federal employees covered by Title 5. We also note that the VA has never offered this Committee a single example of a VA's employee's attempt to bargain over a pay scale.

VA's 7422 policy seems especially arbitrary because it singles out one group of VHA employees while affording full compensation bargaining rights to others working in the same hospitals and clinics. For example, a VA registered nurse cannot grieve over overtime pay while a VA licensed practical nurse can. Similarly, a VA psychiatrist cannot grieve over the loss of incentive pay while a VA psychologist can. It seems equally arbitrary for a DOD physician treating active duty personnel to have greater bargaining rights than a VA physician treating veterans. This disparate treatment also harms the VA's ability to attract and retain medical professionals.

S. 572 is consistent with the clear intent of Congress to provide VA medical professionals with equal bargaining rights. Congress enacted Section 7422 shortly after a federal appeals court held that the VA did not have to bargain with a group of Colorado nurses. In addition, the plain language of the 1991 law makes clear that bargaining is only prohibited in matters involving the "establishment, determination, or adjustment of employee compensation". Surely, Congress did not contemplate that the VA would invoke Section 7422 to block complaints about the application of nurse premium pay rules, access to wage survey data, pay discrimination or denial of workers compensation-- but that is exactly what the VA did in past 7422 Undersecretary determinations.

VA's current interpretation of the law also directly contradicts its own position in the VHA labor management agreement in place from 1995 to 2002 that stated: "Left within the scope of bargaining and arbitration are such matters as: procedures for analyzing data used in determining scales, alleged failure to pay in accordance with the applicable scale, rules for earning overtime and for earning and using compensatory…"

S. 572 provides a commonsense solution for reducing costly, demoralizing disputes between VHA managers and employees. The number of "7422" compensation cases increased significantly after the 1995 labor management agreement was nullified.

VA's wasteful and counterproductive policies on compensation bargaining are best illustrated by the case involving operating room nurses at the Asheville, North Carolina VA Medical Center. AFGE waged an unsuccessful seven year fight to secure premium pay for nurses working night and weekend shifts. The dispute arose out of a basic pay rule in place at virtually every public and private sector hospital: nurses earn a higher hourly rate when they work evenings and weekends. When the arbitrator ruled in favor of the nurses, and ordered back pay, the VA invoked the 7422 compensation exclusion to refuse to pay. The VA continued to assert the 7422

loophole to for the next six years to refuse to provide back pay, and get the case dismissed for lack of jurisdiction. The D.C. Circuit court stated that while the VA's ability to invoke Section 7422 to get a case dismissed "may be inconsiderate or even unfair", the VA's interpretation of the law was permissible as currently written.

Therefore, to ensure basic fairness and equal treatment for VA's medical professionals, and restore Congressional intent, the law must be changed. We urge the Committee to support the small fix in S. 572 to clarify the scope of the law and hold the VA accountable for its own pay rules.

Thank you.