

United States Senate

COMMITTEE ON VETERANS' AFFAIRS
WASHINGTON, DC 20510

June 27, 2024

The Honorable Denis R. McDonough
Secretary of Veterans Affairs
810 Vermont Ave. NW
Washington, DC 20420

Dear Secretary McDonough,

I write today to express my concern about how faulty foreign-made medical supplies made its way into the Department of Veterans Affairs' (VA) inventory. As the largest integrated health care system in the United States serving more than nine million of America's veterans, VA needs to ensure the supplies it uses to deliver health care to veterans are safe and reliable. To best serve our veterans, VA's health care system needs to be using American-made materials that bolster American jobs whenever possible. Our veterans deserve the best health care possible and that starts with reducing our reliance on foreign adversaries for medical supplies.

In April, VA internally recalled Chinese-made syringes after the Food and Drug Administration (FDA) Center for Devices and Radiological Health issued a communication that these supplies were potentially defective. This communication advised health care providers and facilities to immediately transition away from using plastic syringes manufactured by two Chinese companies selling unauthorized and potentially faulty syringes to Americans through US distributors. And of April 30, 39 VA medical facilities reported identifying these faulty Chinese products in inventory and are in the process of removing them.

While I commend VA's steps to recall these syringes and protect veterans, I am concerned about how the faulty syringes made it into VA's inventory in the first place. According to VA, it removed the Chinese made syringes from the list of products included in the Medical Surgical Prime Vendor (MSPV) contract in May of 2023 after discovering the product was manufactured in China in violation of the Buy American Act of 1933 (BAA) and the Trade Agreements Act of 1979 (TAA). However, faulty syringes still ended up in at least 39 VA medical facilities after removal from the MSPV contract because the syringes were likely purchased directly from the supplier using a Government Purchase Card (GPC), which can be used for purchases of goods and services not included in the MSPV contract if the total amount is under the \$10,000 micro-purchase threshold.

Due to VA's reliance GPCs for many necessary purchases, VA facilities are procuring medical supplies outside of the blanket purchase agreement under the MSPV contract and thereby circumventing requirements under the BAA and the TAA. These laws exist to ensure the safety and quality of medical supplies, support American job creation, and economic stability for our veterans, and to enhance national security by reducing the reliance on foreign supply chains.

I was recently made aware of VA medical facilities spending more than \$11.5 million on Chinese Single Patient Use (Disposable) ECG leadwires using GPCs in a 12-month period outside of the MSPV contract, which included an available functionally equivalent product manufactured by a Service-Disabled Veteran Owned Small Business. This is counter to VHA Directive 1761, which prohibits clinical departments from using GPCs to purchase medical supplies. Purchasing Chinese medical supplies with a GPC violates VA policy and evades TAA and BAA compliance to the detriment of our veterans.

VA must be vigilant in its efforts to keep faulty medical supplies out of its medical centers because certain foreign manufacturers have attempted to bypass US health, safety and import laws before. For instance, during the height of the COVID-19 pandemic, the U.S. Department of Justice charged a Chinese manufacturer for knowingly producing and exporting nearly half a million defective masks that were falsely represented to be N95 respirators. These defective products had the potential to put thousands of U.S. health care workers and first responders at risk.

Our veterans deserve and earned quality health care, which includes safe medical supplies. In an effort to prevent this type of event from happening in the future and to protect our veterans, I request VA's response to the following questions:

- 1) What oversight mechanisms does VA have in place to ensure compliance with VHA directive 1761, which bars clinical departments from purchasing medical supplies with a GPC? Are GPC holders provided training on VHA Directive 1761?
- 2) Is VA aware that VA medical facility GPC holders are using GPCs to purchase medical supplies in violation of VHA Directive 1761?
- 3) If there are extenuating circumstances where medical supplies are purchased with a GPC, what steps does the card holder need to take to justify that purchase?
- 4) Has a GPC holder successfully justified a medical supplies purchase that is not in compliance with BAA or TAA?
- 5) What steps is VA taking to ensure that VA medical facilities are not buying faulty medical supplies from China or other foreign adversaries using a GPC?

I look forward to working with you to close this loophole and thank you for your continued support of veterans.

Sincerely,



Jon Tester