

HEARING ON PENDING LEGISLATION

HEARING BEFORE THE COMMITTEE ON VETERANS' AFFAIRS UNITED STATES SENATE ONE HUNDRED FOURTEENTH CONGRESS FIRST SESSION

MARCH 15, 2016

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HEARING ON PENDING LEGISLATION

TUESDAY, MARCH 15, 2016

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:16 p.m., in room 418, Russell Senate Office Building, Hon. Johnny Isakson presiding.

Present: Senators Isakson, Boozman, Heller, Cassidy, Rounds, Tillis, Sullivan, Blumenthal, Brown, Tester, Hirono, and Manchin. Also present: Senator Burr.

HON. JOHNNY ISAKSON, CHAIRMAN, U.S. SENATOR FROM GEORGIA

Chairman ISAKSON. I will call this meeting of the Senate Veterans' Affairs Committee to order, and at the outset I want to thank all the members who are here and the ones that are coming for their participation. This is a very important hearing, and I want everybody to be here for as much of it as they possibly can be. I want to thank the Secretary for rearranging his schedule so he can be here for the complete hearing and for his testimony as well.

We are going to go a little bit out of order. I am going to recognize Senator Burr in just a second because he is our Chairman of the Intelligence Committee. He is doing some important intelligence work, and he needs to get back. I am going to let him make a few comments on his legislation that he has worked on with Senator Tester.

Afterward, I will make an opening statement, then Senator Blumenthal will make an opening statement, then we will go to Senator Sullivan and Senator Tester to make brief opening statements before Secretary McDonald. That way, everybody who has legislation that is to be discussed today will have their say and we will all have had a chance to hear it.

Without further ado, I introduce Senator Burr from North Carolina. Welcome.

STATEMENT OF HON. RICHARD BURR, U.S. SENATOR FROM NORTH CAROLINA

Senator BURR. Thank you, Mr. Chairman, Ranking Member Blumenthal, and to my colleagues on the Committee. I thank you for holding this hearing and for providing me the opportunity to testify about the Veterans Choice Improvement Act.

I introduced this legislation with Senator Ayotte, Boozman, Crapo, Daines, Hoeven, Moran, and Tillis. It is my understanding, Mr. Chairman, as of right now, we have a bipartisan agreement, and that means hopefully there is an opportunity for this to be marked-up in the context of your next markup legislation. It would be helpful if those who really are not focused on veterans health care would stand down and let us focus on substance in this bill that really does focus on the quality of care delivered and the efforts that the VA continues to make to provide that care for our veterans.

In 2014, when I was the Ranking Member of this Committee, Congress passed the Veterans Access, Choice, and Accountability Act, which created the Veterans Choice Program, to make sure our veterans get the health care they need and that they get it expeditiously. This legislation was in response to a systemic problem throughout the VA health care system that had been uncovered in early 2014. We recognized at the time that the only way to make certain that veterans got the care they needed was to enable them to go to the doctor outside the VA if, in fact, they were on a wait list or lived a certain distance from a VA facility. I was proud to help author the Veterans Choice Program, and I know that program has helped many veterans get health care without having to wait or to drive far.

However, nearly 2 years later, veterans are still experiencing serious frustrations and delays in getting health care. Just this October a CNN reporter found that appointment wait times at the VA were not getting better even after billions of dollars flowed into the agency.

I know every Senator here today is hearing about these problems from veterans living in their own States. I certainly do, and let me give you an example.

As recently as last month, Charlotte WBTV reported that a veteran named Jim Bancroft had waited more than a year to receive a referral from the VA to see a spine specialist. Mr. Bancroft was finally given a referral and allowed to see an outside specialist. When Mr. Bancroft called to make the second appointment, he was told he could not see the doctor because the doctor was no longer accepting veterans under the Choice Act. Why? Because the VA had continually failed to pay the doctor for seeing veterans.

This is just one example of thousands and why I introduced the Veterans Choice Improvement Act. We must fix this, and we must get it right for our veterans.

The first problem that the Veterans Choice Improvement Act seeks to fix is the confusing nature of receiving care outside of the VA. Currently, the VA offers care to veterans outside of the VA through a number of different programs and contracts. The laws and regulations that govern these programs differ in substantial ways, and this is confusing to the veteran, confusing to the doctor, the hospitals, and oftentimes it is confusing to the VA itself.

That is why the Veterans Choice Improvement Act consolidates all of these programs into one permanent program, the Veterans Choice Program. This program will be the one program for veterans to receive care in their community. It is designed to be easily

understandable by the veterans so that they will know when they are eligible to go outside of the VA for care.

The Veterans Choice Improvement Act will also make significant reforms to the VA medical claims and reimbursement process to make sure that medical providers get paid for the services they provide to our Nation's veterans. This, in turn, will ensure veterans will be able to get the timely, quality health care they have earned.

In North Carolina, we have already seen hospitals stop seeing veterans under the current Veterans Choice Program because the VA consistently failed to pay reimbursements for hospital services. I know this is a problem in other States as well, and that is why we reformed the claims process in this bill.

We have set a standard for how long the VA has to reimburse a claim, and if they fail to meet the standard, interest begins to accrue on the claim. We require the Secretary to notify medical providers of what information a claim must contain for a quick reimbursement and also notify providers if that information requires changes. We also mandate that the VA establish an electronic system to receive medical claims from outside providers, but we give the VA until 2019 to put that in place. That is more than sufficient time to get it right, even for the Federal Government.

As the Members of this Committee know, the VA has had a significant accounting problem as more and more veterans have been allowed to receive care outside the VA. In May 2015, the VA came to Congress and told us that they may have a funding problem but that they were not really sure, so they hired outside accounting firms to help them understand what was happening.

Then in late July 2015, the VA came back and informed us that they were nearly \$3 billion short in their medical services account for the fiscal year. The VA also told us that unless Congress allowed a reprogramming of funds out of the Veterans Choice Act the VA would be forced to close hospitals. Congress, of course, allowed for the reprogramming in order to keep the VA medical facilities open, but to say that such incidences are unacceptable is a gross understatement.

In the Veterans Choice Improvement Act, we make an effort to fix these accounting issues so that the incidences like the one I just described do not happen again. The Veterans Choice Program will be funded through a single appropriation account, and that funding will be provided a year in advance. This should help clear up some of the accounting issues and provide more transparency for congressional, and for public, oversight.

Last, Mr. Chairman, I would like to thank Senators Hoeven and Manchin for their legislation on provider agreements, which is part of this bill. I believe that this will make a real difference for veterans who live in rural America. These provider agreements will allow the VA to have a standing agreement with local doctors and hospitals to provide certain medical services to our Nation's veterans. This will alleviate the burden on veterans who currently have to travel distances for minor medical issues that can easily be addressed closer to home.

There is simply no reason that veterans are driving four and 5 hours each way to get a new pair of eyeglasses. I give a great deal of credit to Senator Crapo for passionately advocating for veterans

in Idaho and telling me the story of how veterans there were driving three and 4 hours to Salt Lake City to get fitted for hearing aids when there is a private hospital just down the road that could easily do the same thing.

We can do better for our veterans, and that is why I also give the VA credit for requesting this ability and acknowledging that this is necessary and will help our Nation's veterans.

I will close by saying this, that the Veterans Choice Improvement Act will help veterans across America get the best health care we have to offer, and they get it without having to wait long or to drive far, regardless of whether they live in an urban area or a rural town. This bill will help all.

Mr. Chairman, I also want to thank Senator Tester. We have worked aggressively over the last week to put together a bipartisan bill, and I was told before I walked in the door that we are there. I am sure he will have an opportunity to speak, and he can confirm that.

Our effort is simply this: through the VA and through this wonderful medical infrastructure that we have in this country, to make sure that veterans receive the highest quality of care. This is not an attempt to eliminate or to bypass, it is to put together the best health care system that we can provide for those who have given of themselves for this country.

I thank the Chair. I thank the Ranking Member. I thank my colleagues.

[The prepared statement of Senator Burr follows:]

PREPARED STATEMENT OF SENATOR RICHARD BURR (R-NC)

Chairman Isakson and Ranking Member Blumenthal, thank you for holding this hearing and for providing me with the opportunity to testify about the Veterans Choice Improvement Act, which I introduced with Senators Ayotte, Boozman, Crapo, Daines, Hoeven, Moran, and Tillis. I'd also like to thank Senator Tester for his work on this issue as well.

In 2014, when I was the Ranking Member of this Committee, Congress passed the Veterans Access, Choice and Accountability Act, which created the Veterans Choice Program to make sure our veterans could get the health care they need when they needed it. This legislation was in response to the systemic problems throughout the VA health care system that had been uncovered in early 2014. We recognized at the time that the only way to make certain that veterans got the care they needed was to enable them to go to a doctor outside the VA if they were on a waitlist or lived far from a VA facility. I was proud to help author the Veterans Choice Program, and I know that program has helped many veterans get health care without having to wait long or drive far.

However, nearly two years later, veterans are still experiencing serious frustrations and delays in getting health care. Just this October, a CNN reporter found that appointment wait times at the VA were not getting better, even after billions of dollars flowed into the agency. I know every Senator here today is hearing about these problems from veterans living in their state. I certainly do. Let me give you an example:

As recently as last month, Charlotte's WBTV reported that a veteran named Jim Bancroft had waited more than a year to receive a referral from the VA to see a spine specialist. Mr. Bancroft was finally given a referral and allowed to see an outside specialist, but when Mr. Bancroft called to make a second appointment, he was told he could not see the doctor because the doctor was no longer accepting veterans under the Choice Act. Why? Because the VA had continually failed to pay the doctor for seeing veterans.

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The first problem that the Veterans Choice Improvement Act seeks to fix is the confusing nature of receiving care outside of the VA. Currently, the VA offers care to veterans outside of the VA through a number of different programs and contracts. The laws and regulations that govern these programs differ in substantial ways, and this is confusing to the veteran, confusing to doctors and hospitals, and often-times, confusing to the VA itself. That is why the Veterans Choice Improvement Act consolidates all of these programs into one permanent program, the Veterans Choice Program. This program will be the one program for veterans to receive care in their community. It is designed to be easily understandable by the veteran so that they will know when they are eligible to go outside the VA for care.

The Veterans Choice Improvement Act will also make significant reforms to the VA's medical claims and reimbursement process to make sure medical providers get paid for the services they provide to our veterans. This, in turn, will ensure veterans will be able to get the timely, quality health care they've earned.

In North Carolina, we have already seen hospitals stop seeing veterans under the current Veterans Choice program because the VA has consistently failed to reimburse the hospitals for services rendered. I know this is a problem in other states as well, and that is why we reform the claims reimbursement process in this bill. We have set a standard for how long the VA has to reimburse a claim, and if they fail to meet that standard, interest begins to accrue on the claim. We require the Secretary to notify medical providers of what information a claim must contain for quick reimbursement and also notify providers if that information requires changes. We also mandate that the VA establish an electronic system to receive medical claims from outside providers, but we give the VA until 2019 to put it into place. That is more than sufficient time to get it right, even for the Federal Government.

As the Members of this Committee know, the VA has had significant accounting problems as more and more veterans have been allowed to receive care outside the VA. In May 2015, VA came to Congress and told us that they may have a funding problem, but that they were not really sure, and so they had hired outside accounting firms to help them understand what was happening. Then, in late July 2015, the VA came back to Congress and informed us that they were nearly \$3 billion short in their medical services account for that fiscal year. The VA also told us that unless Congress allowed for a reprogramming of funds out of the Veterans Choice Fund, the VA would be forced to close hospitals. Congress, of course, allowed for the reprogramming in order to keep VA medical facilities open, but to say that such incidents are unacceptable is a gross understatement.

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These provider agreements will allow the VA to have a standing agreement with local doctors and hospitals to provide certain medical services to veterans. This will alleviate the burden on veterans who currently have to travel long distances for minor medical issues that can easily be addressed closer to home. There is simply no reason that veterans are driving four and five hours each way just to get a new pair of eyeglasses. I give a great deal of credit to Senator Crapo for passionately advocating for veterans in Idaho and telling me the story of how veterans there are driving three and four hours to Salt Lake City to get fitted for hearing aids when there is a private hospital just down the road that could easily do the same thing. We can do better for our veterans, and that is why I also give the VA credit for requesting this ability and acknowledging that this is necessary and will help veterans.

I will close by saying that the Veterans Choice Improvement Act will help veterans across America get the best health care we have to offer, and get it without having to wait long or drive far. Regardless of whether they live in an urban center or a rural town, this bill will help them. Thank you again for allowing me to testify today.

Chairman ISAKSON. Senator Burr, I know you have to go back to the Intelligence Committee, but could you let me amend my introduction a little bit? I want to go to Senator Tester.

Before you got here, Senator Tester, I was going to give you and Senator Sullivan a chance to make opening statements as well, though following me and Senator Blumenthal. But, since you are now here, Senator Blumenthal can wait 5 minutes I believe, especially since you all worked so hard on this agreement.

I want to tell everybody this is exemplary of the best in the U.S. Senate. Ten days ago we had an impasse. I sat down with Senator Tester, personally and I sat down with Senator Burr. I said, will you all do me a favor? Will you put your heads together and see if you can find common ground and make this happen? For the record, I want to compliment both of you today on doing exactly that.

With the Ranking Member's indulgence, we will go ahead and let Senator Tester make his remarks now.

Senator Tester.

**STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA**

Senator TESTER. I will be very brief, Mr. Chairman.

First of all, I want to thank you and I want thank the Ranking Member, but particularly you, Mr. Chairman. That is leadership, and I appreciate it. You allowed Senator Burr and myself the space to be able to get something done. You just did not say no. You said, go talk, get it done.

I think Senator Burr's staff and my staff have worked hard.

I think you know the problem here and we all know it, sitting around this dais; Senator Burr knows this. Choice is broken. We have to figure out how to make it work. Our veterans are suffering because of it, which is unacceptable. We need to make sure that things are done right with the VA not only because our veterans deserve it but because we should be talking about something else. That program should be done and working; we should be talking about the next challenge.

I want to thank Senator Burr, in particular, for his good work and look forward to finding a path to get this across the finish line and on to the President's desk, so we can really make some things happen.

HON. THOM TILLIS, U.S. SENATOR FROM NORTH CAROLINA

Senator TILLIS. Mr. Chairman?

Chairman ISAKSON. Yes.

Senator TILLIS. May I just thank the senior Senator from North Carolina for coming up here and fighting for veterans? He is actually in a contested primary today. Votes are going on, and he is up here, which I appreciate.

Chairman ISAKSON. We all appreciate the job both you and Senator Tester have done. Thank you for your commitment. Now, go back to the Committee on Intelligence and keep us safe.

Senator BURR. Thank you, Mr. Chairman.

Chairman ISAKSON. Now, I am going to make my opening remarks. Then I am going to turn it over to Senator Blumenthal. Then, Senator Sullivan, you will be recognized to make yours. I think you knew that was coming.

Senator SULLIVAN. Yes, sir, Mr. Chairman. Thank you.

**OPENING STATEMENT OF HON. JOHNNY ISAKSON, CHAIRMAN,
U.S. SENATOR FROM GEORGIA**

Chairman ISAKSON. Secretary McDonald, thank you again for being here and changing your schedule so you could go through this.

I want to thank the Ranking Member. Over the last month we have had three conversations by phone as things have progressed in our effort to try to find a way to do accountability in the Veterans Administration, to do caregivers in the Veterans Administration, to fix the Choice Program in the Veterans Administration, and to speed up the consideration of claims and appeals in the Veterans Administration.

We have all had lots of different ideas, and we have had places where we could find an impasse. But, we have tried through communication to find ways to find common ground, and we are on the cusp—we are not there yet, but we are on the cusp—of being able to bring to the floor of the U.S. Senate a major comprehensive omnibus veterans bill, get it passed through the Senate, get it to the House, find out where, if any place, we are going to have disagreements, and then get it to the President's desk for signature.

I have had the privilege of knowing Denis McDonough since he became Chief of Staff, and I have taken the liberty of including him in discussions over the past 3 or 4 weeks and talked to him as late as this morning about where we were.

Our goal is to have an omnibus bill that this Committee, Democrat and Republican alike, agrees to, and to get it to the leaders so they can get a Rule 14 to the floor of the Senate. Then, we can have action on the floor of the Senate before we get too far in the year, certainly so we can, by Memorial Day, have a signing ceremony somewhere to let our veterans know we do want accountability in the VA. Do want Choice to work, we want caregivers providing care to those injured prior to 9/11/2001 to have the same benefits as those afterwards, and all other things that we have worked upon. We are close to getting there.

I want to thank every Member of the Committee for their help and their input.

Now we will not get everything in the omnibus bill, but we will get a lot of things we never thought we could have. We will include a lot of the things Secretary McDonald has asked for, which he knows because we have been meeting on a private basis—Senator Blumenthal, myself, the Ranking Member in the House, and the Chairman in the House—to see to it we come up with a good bill.

We have our differences still, but patently we want to make sure that we send the signal to the American people and the American media that accountability at the VA is now something that is meaningful.

Every morning when I wake up and I turn on my television in my condominium or at home, and the first story is about a veteran who did not get an appointment or a veteran who passed away or a mental health patient who got an answering machine rather than a person on the hotline. It grieves my heart because I know every day of the 314,000 employees in veterans health care 99.9 percent of them are doing a terrific job and those stories are not representative. Because they are sensational, because they can make the

news, they continue to perpetuate an image that is not true of the VA.

I think if we have an accountability provision which we are going to talk about today and I know the Secretary is going to talk about it in his remarks, we can send the signal to the American people that we are giving the Secretary the ability to hire and the ability to terminate and the ability to appeal but in the way you would want to have an accountable organization.

I believe that all the SES employees should be under Title 38 and should have the right to be hired by the Secretary, and the Secretary should have the right to discipline them, and if he disciplines them or fires them they should have the right of an appeal, but it ought to be to the Secretary.

The Merit Systems Protection Board has its place, and there are lots of places I think it works well, but I think one of the things we have tried to do is see to it when it comes to SES employees and Title 38 that we have the Secretary have the ability to hire and the Secretary the ability to fire.

Now I am not one that likes to fire people. I want to go on the record as saying, I ran a company for 30 years; the hardest thing I ever did was terminate people, but from time to time you have to.

But, oftentimes, the fact that termination is a possibility if you do not perform, you set an atmosphere in an organization where everybody works hard and pulls together. I know that is what Bob McDonald wants in the VA, and I know that is what he is going to deliver.

I am proud that Senator Patty Murray has worked so hard with me. I am sorry she is not here for me to brag about her to her face, but she has brought this caregivers bill to the point where we now can incorporate it.

We have a lot of things on veterans appeals that we want to incorporate. Senator Blumenthal, Senator Moran, and other Senators on the Committee have done lots of things that will be included in the omnibus bill.

With the good Lord willing and the creek don't rise, by the time we return in the first of April, we will have an omnibus bill ready for everybody to sign off on; we will begin to move it forward to the Senate floor in process. Then, we will be able to go home to our communities on Memorial Day and say that we brought about accountability in the Veterans Administration. Employees that should shine are shining and those that need more inspiration will have that inspiration, and Bob McDonald will have the authority to run the agency as the Secretary should have.

That is our goal today. I am very proud of what we have today, and I hope I do not—knock on wood—spoil our progress so far.

I thank the Ranking Member again for his cooperation, his leadership, and his advice on how we get from where we were to where we want to be.

Now I will introduce Senator Blumenthal.

**STATEMENT OF HON. RICHARD BLUMENTHAL, RANKING
MEMBER, U.S. SENATOR FROM CONNECTICUT**

Senator BLUMENTHAL. Thank you, Mr. Chairman, and thank you for your kind words but, most importantly, for your leadership, your vision, and your determination to reach this breakthrough moment. It really is a breakthrough moment for the Veterans Choice Program and for health care provided by the VA.

It is a moment. It is a good step, a very positive way forward, a path that ought to be pursued. There will be a lot more after today to be done, and we are near the finish line. I hope that we can cross it.

In the meantime I want to thank you for your very collaborative and bipartisan leadership, which has emphasized the importance of good ideas regardless of who has them.

It is the same spirit that our military men and women have when they go into serve and sacrifice for our country. It is the same attitude that they have when they seek health care. They do not care about party labels or partisanship.

It is the same attitude that the dedicated doctors and other health care providers in the VA have when they meet those health care needs. What we need to do is partly enable and empower them, and partly get out of their way, but at the same time hold them accountable. We are absolutely unified in the view that accountability has to be improved, and we are simply seeking the best way to do it consistently with fairness and due process.

I am indebted to everyone on this Committee for their role. Every Member of this Committee has played a role in reaching this point. Everyone seated here today has been a participant in the efforts to consolidate all of the community programs that include the Veterans Choice Program, in seeking to speed and improve the appeals of disability claims, in enforcing accountability, and raising the standards and performance of the caregivers' aid to families and others who provide care to our veterans.

I am hopeful that we will meet that timetable. I believe we can.

I continue to look forward to working together. I know we will. Again, I want to thank you for your leadership.

Chairman ISAKSON. Thank you very much, Senator Blumenthal.

Senator Sullivan, you are recognized for up to 5 minutes, but not more.

**OPENING STATEMENT OF HON. DAN SULLIVAN,
U.S. SENATOR FROM ALASKA**

Senator SULLIVAN. Thank you, Mr. Chairman. I will try and keep it within that timeframe.

I want to thank you and Ranking Member Blumenthal and fellow Members of the Committee for the opportunity to discuss my bill, Senate Bill 2473, the Express Appeals Act of 2016.

Mr. Chairman, Secretary McDonald, we have all heard the statistics. The Veterans Benefits Administration will have 11 to 12 percent of the claims decisions that they make will be generally appealed, and that is not surprising.

What is surprising I believe to many of us, and also unacceptable, is the wait time that we have seen for the VA to resolve an

appeal. On average, nearly 1,000 days, almost 3 years. I think creating a less bureaucratic system is something that we all agree on.

What Senate Bill 2473 does is it directs the VA to carry out a 5-year pilot program that will provide an option for veterans to use an express appeal procedure referred to as the Fully Developed Appeal Process. It is completely voluntary. It empowers veterans to make their own case to obtain an expedited result to their appeal. Importantly, what we think we should be looking for is that it should be a fast lane not to know but a fast lane to fix our appeals process.

I want to thank my colleagues, in particular those on the Committee—Senators Tester, Heller, Moran, plus Senator Casey, and Co-Chairs of the Senate VA Backlog Working Group—and some of the service organizations that are supportive of my bill like Disabled American Veterans, for their staunch support and advocacy.

Mr. Secretary, we do want to work together. As you know, I have raised this issue a number of times. We are getting a little bit of mixed signals. I think there was support from the VBA on the House version of this bill. My understanding your testimony now is there might not be support because it does not go far enough.

Well, trust me, I am all ears on suggestions from the VA to go further so we can get your support, but I think all of us agree that having the option of a Fully Developed Express Appeals is something that we should be working on together.

I am very interested in working with you and working with the Committee to make sure that this is something the VA does support. I am a little confused on whether you do or do not support it at this juncture and if there are suggestions from the VA experts to make this go further in terms of express appeals. I believe the Committee and my staff are all ears.

Thank you again, Mr. Chairman.

Chairman ISAKSON. Thank you very much.

It is now my privilege to introduce Secretary McDonald, who is accompanied by Ms. Meghan Flanz; Dr. Baligh Yehia, we are glad to have you back again; and Ms. Laura Eskenazi?

Secretary McDONALD. It is Eskenazi.

Chairman ISAKSON. I did pretty well.

Secretary McDONALD. You did very well.

Ms. ESKENAZI. Not bad.

Chairman ISAKSON. Mr. Secretary, the microphone is yours, and you can take as much time as you want to consume.

STATEMENT OF HON. ROBERT A. MCDONALD, SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY LAURA ESKENAZI, EXECUTIVE IN CHARGE AND VICE CHAIRMAN, BOARD OF VETERANS' APPEALS; DR. BALIGH YEHIA, ASSISTANT DEPUTY SECRETARY FOR COMMUNITY CARE, VETERANS HEALTH ADMINISTRATION; AND MEGHAN FLANZ, DEPUTY GENERAL COUNSEL, LEGAL OPERATIONS AND ACCOUNTABILITY, OFFICE OF GENERAL COUNSEL

Secretary McDONALD. Thank you, Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee. Thanks for this time to discuss VA's legislative priorities for veterans.

I ask that my written statement be submitted for the record.

Chairman ISAKSON. Without objection.

Secretary McDONALD. Thank you, sir.

Over these three decades in the private sector, I learned firsthand what it takes to make a high performance organization. Our team of talented business and health care professionals are well equipped with the advanced business skills necessary to build the high performance organization veterans deserve and taxpayers also expect.

That is what our five MyVA transformation strategies are about: modernizing the VA; improving the veteran experience; improving the employee experience; improving internal support services; establishing a culture of continuous improvement, and expanding strategic partnerships. That is also what our 12 Breakthrough Priorities for 2016 are about.

We appreciate your time in January, helping us shape these priorities. That goal is within our reach, we believe, and we are as committed to giving veterans a high performing organization as we are convinced that we can get there with your help.

But, as I have testified, important priorities for transformational changes require congressional action, and our window of opportunity will not be open indefinitely. More than 100 legislative proposals in the President's 2017 budget and 2018 advance appropriations request for VA require congressional action. Over 40 of these are new this year, and some are absolutely critical to maintaining our ability to purchase non-VA care.

I would like to focus on seven priorities for veterans.

One, modernizing VA's purchase care authorities. We need your help to modernize and clarify VA's purchase care authorities, and we appreciate the legislation introduced to address this issue. Above all else I address today, this needs to get done; and it can be done in this Congress, to ensure a strong foundation for veterans access to Community Care.

We need to be able to contract with providers on an individual basis in communities where veterans are served without forcing those who want to serve veterans to meet excessive and unnecessary bureaucratic standards. This proposal is about maintaining veterans access to timely Community Care everywhere in the country. We provided detailed legislation addressing this change 10 months ago, and I have been consistent and vocal in identifying it as a top priority.

Number 2, streamlining Care in the Community. To best serve veterans, we need your help streamlining VA's Care in the Community systems and programs. Last October we submitted our plan to consolidate and simplify the overwhelming number of varying programs and improve access to Care in the Community.

My written statement sets out a number of ways to improve those programs right now. I will highlight three:

First, make VA the primary payer to give providers faster and more accurate payments.

Second, allow VA to obligate funding at the time of payment. This small change can make a huge difference in efficiently using the resources Congress provides.

Third, provide funding flexibility so all Care in the Community comes from one single account.

Now we do have some significant concerns with the Veterans Choice Improvement Act of 2016 as currently written. I address these concerns in detail in my written submission, but four are particular troublesome. I think we may have already worked through those four. I have to catch up with Senator Tester and Senator Burr because these are fast-breaking changes.

Here were our four concerns of the original act:

First, the proposed limitations on networks compromised the great potential for veterans that the network model represents. We have discussed this with Senator Tester and Senator Burr. We think they understand this. We think the changes are being made, but we have not seen their next round of work.

Second, the proposed extension to Project ARCH until August 2019 is both unnecessary and financially unsound.

Third, the legislation does not afford the rate flexibility necessary to respond to local market conditions.

Fourth, the proposed 90-day timeline between establishing presumptions and providing compensation is an unrealistic expectation that will not serve veterans well.

These discussions are ongoing, as I said. I am sure we are making progress as we go forward and coming to a consensus point of view. We look forward to helping ensure the legislation is exactly right for veterans.

Number 3, the appeals reform. The statutory appeals process is archaic. It is not serving veterans well. Last year the board was still adjudicating an appeal that originated 25 years ago and had been decided more than 27 times. It is simply inappropriate that only 2 percent of veteran claimants are creating 45 percent of the appeals.

Let me say that again. Only 2 percent of veteran claimants are creating 45 percent of the appeals.

What we all learned in the military was you put the needs of the organization above yourself. This is not happening.

Nearly 74 percent of appeals are from veterans who are already receiving VA disability. In fact, 12 percent of veterans with a pending appeal are already receiving benefits at the 100 percent disability rate.

The proposed express appeals act is a good start. It is a good start, but as written it does not achieve the fundamental reform we need to achieve in order to fix this broken process that is over 80 years old and to improve the veteran experience.

The fiscal year 2017 budget proposes a simplified, streamlined, and fair appeals process. In 5 years, veterans could have appeals resolved within 1 year of filing.

Last week we spent three solid days working hard with Veterans Service Organizations, members of the VA, members of your staffs, shaping a genuine reform. I want to thank our Veterans Service Organizations, the National Association of State Directors of Veterans Affairs, the National Association of County Veteran Service Officers, for rolling up their sleeves with us. We have another meeting beginning later this week on Thursday, and we are going to continue to drive toward a consensus point of view.

We welcome the Committee staff also who have come to hear about this and participate with us firsthand.

It is a work in process. We are keeping at it. Why do we need to keep at it? Because failure to take full advantage of this rare opportunity for sweeping change in the appeals process fails veterans.

Number 4, VHA personnel authorities. We compete with the private sector for talent, especially in health care. We are proposing flexibility on the 80-hour pay period maximum for certain medical professionals and compensation reforms for network and hospital directors. The 80-hour restriction does not give VA the industry standard 12-hour shifts that can improve hospital operations and attract the best staff who prefer flexible schedules. That is one reason that when Sloan Gibson came on board, then I came on board, we found VA had so many outsourced emergency room departments.

Likewise, we need to treat health care career executives more like their private sector counterparts. We would like to expand the Title 38 hiring authority to VHA senior executive-level medical center directors, VISN directors, and other health care executive leadership positions. These employees could be hired more quickly with flexible salary ranges competitive with the private sector, and they would operate under accountability policies comparable to those of the physicians and dentists that they lead.

Number 5, budget flexibility. We have to be more responsive to veterans emerging needs. We are asking for measured flexibility to overcome artificial funding restrictions on veterans care and benefits. The budget proposes a general transfer authority for up to 2 percent of discretionary funding across accounts, including medical care.

Number 6, West Los Angeles legislation. To get positive results for homeless veterans in great need, we are asking Congress to pass special legislation for our West Los Angeles Campus where years of debate and court action have been unproductive. We now have a community-agreed master plan for the campus to build housing for about 1,200 homeless and vulnerable veterans. Developers are ready to put spades in the ground and begin construction. We are waiting on the legislation.

Number 7, construction and leasing. Finally, I will reiterate priorities for leases and construction. We need congressional authorization for 18 leases submitted in VA's 2015 and 2016 budget requests. These will make a big difference in expanding access to care for veterans in Florida, Alabama, Georgia, South Carolina, North Carolina, Virginia, Massachusetts, Maine, Michigan, Colorado, Montana, and California. We need authorization for eight major construction projects included in VA's 2016 request and the six additional replacement major medical facility leases in the 2017 budget.

These are only a few of the many opportunities for transformational change. This Congress, with today's VA leadership team, can make these changes and more for veterans. Then we can all look back on this year and look at this year as a turnaround for the Department of Veterans Affairs.

On behalf of veterans and VA employees serving them every single day, I would like to thank this Committee and the Chairman

and Ranking Member for their bipartisan leadership in getting this done.

I look forward to your questions, sir.

[The prepared statement of Secretary McDonald follows:]

PREPARED STATEMENT OF HON. ROBERT A. McDONALD, SECRETARY,
U.S. DEPARTMENT OF VETERANS AFFAIRS

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 dialog 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.

Chairman ISAKSON. Thank you very much, Mr. Secretary.

I want to start, if I can, on the accountability issue, which is the linchpin of everything we want to try to do and a lot of the things you just mentioned in your seven priorities are, in part or in whole, being dealt with if I am not mistaken. In fact, I think after you meet with Senator Burr and Senator Tester, most of the things that you mentioned you wanted to be sure were included are, in fact, included that you wanted.

Secretary McDONALD. Yes, sir, and we stand ready to work with your staff to go over and make sure everything is included.

Chairman ISAKSON. West Los Angeles, I think without exception, is supported by the Committee in terms of getting that done.

Secretary McDONALD. Yes, sir.

Chairman ISAKSON. Senator Feinstein has been a trooper on that, and I appreciate the effort that you have made.

The accountability piece is kind of the linchpin for me, and I have harped on it the most, and you know that from the meetings that we talked about. I had some prepared remarks in my opening statements, where I was going to quote you and you could quote me, about some of the things we have said leading up to this hearing about accountability, but I did not do that because we are at a point where I really think we can move forward.

I know Ms. Flanz is here, and you were in the meeting we had last time with the Secretary at his office, if I am not mistaken.

Ms. FLANZ. Yes, sir.

Chairman ISAKSON. Legal counsel has been involved as well.

I believe the American people expect, and I believe that the veterans of America expect, there to be an accountability mechanization that they understand. What happened in Philadelphia and what happened with the Merit Systems Protection Board overturning your action in those two situations sent a terrible signal across the country and misrepresented, in my judgment, what really goes on at the VA. Nonetheless, it was the story that was undeniable, that they had been overturned and that you did not have the ability to really discipline as you should and hold them accountable.

On the same token, you need and deserve the flexibility that you asked for in terms of VHA personnel flexibility, the 80-hour rule,

the emergency room problems, finding the right help that you need to give our veterans health care, and that goes hand in hand with accountability. We need to be accountable to you to give you the tools you need to bring in the right people.

You need to be accountable to us and, more importantly, to the veterans of the United States of America. If we have a bad egg in the senior executive leadership of the Veterans Administration, we are going to correct that egg and get a good egg in that place. They are going to get a fair hearing; they are going to get a right to appeal. It is going to fall back to you, and they are going to know that the buck stops at your desk, which is where it should, and any future Secretary as it should.

That was not a question; that was a statement. But, that is my hope, that you will work with us in trying to make the language work in terms of accountability so that all the other things we want to do can come along and follow along behind it.

Secretary McDONALD. I think we are very close, Mr. Chairman, and if you like, I can describe where I think we are.

Chairman ISAKSON. I would like to hear from you.

Secretary McDONALD. Sure. I think we are very close. I think we have achieved alignment that all of the individuals in the medical professional in the VA should be under Title 38. That was the intent of the Title 38 law. Today, we have medical center directors that you know are not Title 38, and as a result they are paid less than half what they would be in the private sector.

Title 38 gives us the ability to hire directly, which will speed up the hiring process and make us competitive with the private sector. We have had a number of instances where we have tried to hire someone, but because of the length of time it took us to clear all of the red tape necessary they were scarfed away by some other for-profit medical system.

Also, Title 38 will allow us to pay more competitively and recruit more competitively.

Then, separately, what we have talked about is taking the Title 5 individuals who are not part of the health care system and changing the methodology of the process for disciplinary action and appeals, recognizing that in our opinion the Merit Systems Protection Board did not understand or did not get to execute the intention of Congress in the Choice Act. The way I look at this is, how do we improve the Choice Act?

I will ask Meghan, if I may, to comment on that.

Ms. FLANZ. Thank you.

What we are contemplating is amending the Choice Act Expedited SES Appeal Process to give the Merit Systems Protection Board the clarity in terms of what its obligations are to carry out the Secretary's accountability actions under that Act. We believe that there was perhaps greater adherence to Merit Systems Protection Board (MSPB) precedent less appropriate deference to the Secretary's actions in the cases that we have had so far. What we are contemplating is greater clarity around the rules that apply to the non-health care executives at the Department.

Chairman ISAKSON. There was no deference in the Philadelphia case to the Secretary's authority in terms of what I saw, and that is what really magnified this particular issue. I know your proposal

is to kind of bifurcate the SES employees from the medical employees to the other, I think you called them, Title 5. Is that right?

Secretary MCDONALD. Yes, sir.

Chairman ISAKSON. We will talk about that, but in the meantime that bone of contention we have got to work out because I want you to have the ability to hire and bring in the people that you need and also hold them accountable in a fashion that is fair but not so deliberate that you end up being neutered in your ability to lead and discipline the Department.

Secretary MCDONALD. I want that as well, Mr. Chairman. The issue that we face is because of the restrictions in the Choice Act. The judges in the MSPB, I think if they were here to defend themselves, they would say the 21-day limit and the fact that they could not provide any remediated punishment. As a result, we think the changes that we will make will add greater clarity and give more weight to the Secretary's interest in the process.

Chairman ISAKSON. I am not going to take any more time because I have talked already too much today except to say I think ultimate accountability to you as the best authority, as the leader. Those SES employees, I think there are 434 of them in the Agency if I am not mistaken.

Secretary MCDONALD. Yes, sir.

Chairman ISAKSON. That is the heart and soul of the discipline and the attitude and the MyVA program that you put together, which I do not want compromised in any way whatsoever.

Senator BLUMENTHAL.

Senator BLUMENTHAL. Thank you, Mr. Chairman.

I want to focus on the appeals process. Assuming there is the reform that we are contemplating and the budget envisions, how quickly would it be implemented?

Secretary MCDONALD. I will maybe ask Laura to comment on the details, but because of the difficulty and the changes required, we have put forward a plan where we would actually use extra people right now to brute-force some action on the appeals while putting in place the structure of the new plan, which would take a number of years to put in place.

Ms. ESKENAZI. Certainly. Thank you.

Yes. Whether it is the Express Appeal Act or another form such as we have been discussing with the VSOs recently, what we are talking about is kind of a twofold process. We have the current inventory in the Department of approximately 445,000 appeals, and we do not intend on changing the laws in which they were filed. That will require resources.

For new appeals, though, we are hoping to not have them be prisoners of that current dense process and to put something in place that will, over time, lead to a sustainable, efficient process for all veterans.

Senator BLUMENTHAL. In Connecticut, as you know, just to take one example, appeals are currently on hold because of the shift of resources to the initial filings of disability claims. Now what I hear you saying is that you would move resources back to consider those appeals immediately. Is that correct?

Ms. ESKENAZI. In the local field offices I know that VBA this year is putting a great deal of effort on appeals, and they are working

on some reallocations in the 2016 budget to really address those pending appeals. That is ongoing now.

What we know is that to really address the large inventory across the Department we do have a need for increased resources, as reflected in the President's budget. We are also looking for a system of laws, a legal framework that is not so costly but yet provides something that is efficient, timely, and fair and transparent for veterans.

Senator BLUMENTHAL. My question goes not only to the reforms that have to be achieved. We are all in agreement that there needs to be streamlining and resources over the long term. But, what will be done right now and immediately, considering that those appeals are pending?

The Secretary may be correct that some of them are receiving disability benefits right now, but they do not receive, potentially, all they deserve. So, what can we do immediately?

Secretary McDONALD. In our 2017 budget proposal and in the 2016 budget proposal, we had put in place some requests for more headcount, for more people. We need those people. Unfortunately, given the system the way it is, the law the way it is, we need people. It is people, and if we can get those people, we can start to drive it down.

We would be irresponsible if we did not tell you that adding more people is not the answer. With this law, we are going to have over two million appeals in a very short period of time, and that is just unacceptable. We have got to change the law.

Senator BLUMENTHAL. What you are saying is that in the short term more resources and more people will help stem the rising tide, but over the long haul there have to be changes in the law and the process.

Secretary McDONALD. Yes, sir, and the sooner the better. That is why we are trying to drive this working group to a consensus or at least a majority within the next couple of weeks so we can meet your and the Chairman's deadline.

Senator BLUMENTHAL. Are you satisfied, and can you commit to us that this plan will not just shift back to the initial claims process that huge backlog because of lack of resources there?

Secretary McDONALD. Yes, I am happy to commit to that. Laura?

Ms. ESKENAZI. What I can tell is one of the features of the current inventory and the inability to work it down in a timely fashion is we have a situation where the claims process is very entangled with the appeals process. We are looking at new ideas where we can segment claims from appeals, allow those appeals to move forward to a timely decision that preserves fairness, and also get those claims' new material handled in the claims stream.

Senator BLUMENTHAL. I appreciate those commitments. I think they are tremendously important because I think the credibility and faith in the VA really hinge on addressing this issue effectively. Even as health care is addressed through legislation, through accountability, and consolidating Community Care programs, this disability claims process is a—I am tempted to say—festering wound that really needs to be not just Band-aided but solved.

Secretary McDONALD. We could not agree with you more. This has been the elephant in the room for a long time. We have joined arms, and we have said, no longer. It cannot go on like this. It is not fair. It is not fair to veterans.

Senator BLUMENTHAL. It is not fair to veterans, and it is not fair to a lot of the dedicated men and women who work at the VA because their reputations are tarnished by a system that simply is not working.

It has been, I agree, the elephant in the room, more like the tiger in the room that is dangerous to not only veterans, who cannot get the justice—it really is a matter of simple justice that they deserve and need—but also to the VA itself.

Thank you.

Chairman ISAKSON. I want to thank Senator Blumenthal for raising that question, and I am going to fudge a little bit and just ask an amplification if I can.

Senator Sullivan, your proposal on appeals is a pilot program. Is that not correct?

Senator SULLIVAN. That is correct, Mr. Chairman.

Chairman ISAKSON. It is predicated on concessions the veteran makes in order to expedite the appeal. Is that correct?

Senator SULLIVAN. That is correct and eliminates a number of standard elements that are normally in the appeal to bring down the timeline of the appeal.

Chairman ISAKSON. Mr. Secretary, the Agency's adversity to that recommendation is that it is not a total fix. Is that correct?

Secretary McDONALD. Mr. Chairman, I would not even use the word that we are against it because we worked very hard with the Disabled American Veterans and others on that program when we thought that that was all we could get. I now think we can get more if we are willing to take a more aggressive stance than the pilot program would allow.

The pilot program, in and of itself, is a good idea. I thought it was a good idea at the time. But, we are talking about an effect that is a relatively small effect relative to the 440,000 appeals that we have.

What we would like to come up with is a law which would have a greater impact on those 440,000, but I am not opposed to that bill. I just think we can get more, and I think the time is right for us to get more.

Chairman ISAKSON. I want to enforce the Tester-Burr Rule, and that is where there are differences there can be common ground. If you work with Senator Sullivan as we expedite the consideration of what we can do, maybe you can come up with that before we have the legislation done.

Secretary McDONALD. No question, we can do that.

Chairman ISAKSON. If not, I see no problem at all in putting in what Senator Sullivan has talked about and you replacing it somewhere else down the line. I think we have got such a good template, what Senator Tester and Senator Burr have done, and this is such a big, big problem that it is important for us to do that.

This is a humorous interlude, and I apologize for the time. My staff has been participating in some of those meetings you all have had over at the Agency, discussing appeals. I know you have had

some of these charts on the wall, where you have been discussing different ways to solve the problem. On each one of these charts, there was an elephant being shot by somebody. [Laughter.]

I was so afraid that was a partisan statement, but it is not. It is the elephant in——

Secretary McDONALD. Sir, I am sorry. We have to learn to strike that from our vocabulary, but in business we often say “the elephant in the room” or “the elephant on the table,” and it is a business term. It has nothing to do with political parties.

Senator BLUMENTHAL. I think it is unfair to the elephants. [Laughter.]

Chairman ISAKSON. I am sure we can work with Senator Sullivan on this.

Senator BLUMENTHAL. I would join, or offer to join, Senator Sullivan in working on this issue because I understand your position that a more streamlined, fair, efficient process is necessary for all veterans as soon as possible. Senator Sullivan’s approach may make sense for a large body of those veterans, and maybe we can combine the two approaches.

Chairman ISAKSON. My apologies for the interlude, but I think that was an important exchange.

Secretary McDONALD. You were just demonstrating how we in the VA now are applying tried and true business processes to the business of government.

Chairman ISAKSON. Absolutely.

Secretary McDONALD. That is what you showed. That is process-mapping. That is what we are teaching. Lean Six Sigma, human-centered design is what we are teaching people in the VA.

Chairman ISAKSON. It is the road to a solution; there is no question about it.

Senator Cassidy.

HON. BILL CASSIDY, U.S. SENATOR FROM LOUISIANA

Senator CASSIDY. Apropos of that what you just said, Secretary, there are going to be some amendments being advanced further about accountability. On page five of your testimony you speak about, implicitly, that you do not want to fire people, if we define accountability only in the narrow way, in terms of the number of employees removed from their jobs, et cetera.

I am just curious. How many employees does the VA have?

Secretary McDONALD. If you include part-time employees, we have over 350,000.

Senator CASSIDY. How many have been fired in the last year?

Secretary McDONALD. Since I have been Secretary, we have had over 2,600 terminations.

Senator CASSIDY. That percent would be?

Secretary McDONALD. I did not include in that retirements, which would be another over 700.

Senator CASSIDY. One of the things that concerns us is, for example, I think the woman who headed the scandal at the Phoenix VA was allowed to retire with her bonus and two of the others who were collaborators have been still on the payroll, still working. We have seen the people who, frankly, acted out of venality in Phila-

delphia—I do not remember quite the details except it is just reprehensible what they did, and they are still on the payroll.

I cannot believe in the private sector there would be such a reluctance to hold those who were venal and incompetent accountable to the degree that they would be let go.

I have to dispute a little bit. You say decimate. By definition, that means 1 out of 10 is killed. It is hard for me to think that of those 300,000 employees, 30,000 would be venal and incompetent. I have to think it is a very small minority.

Please explain to me. If it is really a small minority—we are frustrated. We have people who clearly are venal, who are allowed to stay employed, who are rude to veterans when they show up, who are allowed to stay employed.

We are interested in accountability, and I am not sure I would characterize the ability to let go some as going to intimidate the rest. That implies that the rest are similarly ill-suited for employment. It has been my experience that it is about 1 percent that are bad and the 99 percent that are good and are tainted by those who are bad.

Just kind of elaborate on that, please.

Secretary McDONALD. As I said, since I have been Secretary, we have terminated over 2,600 people. That does not include roughly 700-plus that have retired or done something else. As you know, in several instances where we have proposed disciplinary action, the individual has chosen to retire.

You can try to pass a law to claw back a retirement benefit from someone, but my experience in the private sector is that will be unconstitutional and that will be decided, and that is what the case law says.

I think the important point here is that the changes we are talking about in the new Title 38/Title 5 changes approach would end up with a different result, in my opinion, for Sharon Helman, the lady at Phoenix that you are describing. What happened in that case was the MSPB thought our evidence and our case for her mismanagement was not strong enough, and as a result she was terminated for accepting money from someone else. Let's use that as a test and see.

Let me ask our attorney. Under the changes that we are proposing for Title 5, wouldn't the evidentiary standard be different and wouldn't the MSPB arrive at a different decision?

Ms. FLANZ. The evidentiary standard that we are proposing would, in fact, be more deferential to the Secretary's action, and it would be our hope that in that case we would have been able to sustain all of the charges. I will point out that with the case itself we did prevail and she was, in fact, terminated based on other misconduct.

Senator CASSIDY. And her two collaborators?

Secretary McDONALD. They are still employed, but we are very close to taking action with respect to them.

Senator CASSIDY. What about the folks in Philly who manipulated things so they were getting moving expenses and others—you know the details better than I.

Ms. FLANZ. Sure. That individual was returned to her position as a result of the judge finding that the charges were sustained, the

action taken was based on sufficient evidence, but that under the circumstances, according to the judge, the penalty was unreasonable.

Another part of our proposal is to provide greater clarity to judges around their authority to impose their own judgment with respect to a penalty. What we would propose is that the judge is to defer to the agency action unless the penalty imposed is beyond the tolerable bounds of reasonableness. That is a term of art that judges understand means that they are to defer to the agency penalty unless there is something simply untenable about it, it was imposed for improper reasons, or what have you.

Senator CASSIDY. Bottom line, would she have been able to be terminated?

Ms. FLANZ. We are talking about the Philadelphia individual?

Senator CASSIDY. Philly.

Ms. FLANZ. Well, the Secretary's proposal in that respect was actually not to terminate her. Based on the facts of the case and the evidence of that case, the proposal or the action taken was to demote rather than remove, and we did sustain the charges. To answer your question directly, the penalty, we would hope, would have been deferred to in that case.

Senator CASSIDY. OK.

Secretary McDONALD. What we are trying to do is take the Choice Act that had these provisions that the judges have found constraining and modify it just like we are in the Community Care discussion. Modify it so we can deal with what has happened, what we have learned from this MSPB action.

Senator CASSIDY. It may only be tangentially related, and I do not know the details well enough to pursue it further. But, as I recall, the person in Philadelphia actually lied and manipulated circumstances so that she could be reimbursed to her own advantage but to the disadvantage of the system.

I guess my other question is: Why wouldn't she be terminated if that is how I remember?

Secretary McDONALD. What you remember is some of the reporting in the media. Sloan Gibson, the Deputy Secretary, who was the deciding authority on the punishment, he went through all the case file, and it was his opinion—and I obviously trust his opinion—that she should be demoted rather than terminated, that he did not find where she actually broke the law. But, what he did find is poor judgment, poor management judgment, and he thought demotion was more appropriate, and that is what the judge sustained.

Senator CASSIDY. I yield back. Thank you.

Chairman ISAKSON. Senator Tester.

Senator TESTER. Thank you, Mr. Chairman.

Thank you for being here, Mr. Secretary, and your team.

When I spoke previously, there were a lot of people to thank, and there is somebody that I forgot to thank, and I think it is important that I do, and that is the Ranking Member. Senator Blumenthal has been great in the negotiations. His staff has been incredibly helpful, especially on the provider agreement stuff.

We want to give you the due you deserve and thank you for that.

Mr. Secretary, I want to talk about provider agreements and spending flexibility because I think a failure to act on those things

in a timely manner would ensure that the changes you need to make to the Choice program would not be implemented. I want you to either confirm or deny that.

Secretary MCDONALD. That is true, sir.

Senator TESTER. For those who believe that we are simply working to make the Choice Act permanently, could you explain how the "Jon-Richard" Bill would actually allow us to move well beyond Choice and to put in a framework that actually will work for our veterans?

Secretary MCDONALD. I think as I understand the bill—and, of course, we have not caught up with the most recent version—

Senator TESTER. Yes, right.

Secretary MCDONALD [continuing]. That you and Senator Burr have been working. We know from the work that you have done on your bill that this idea of setting up this optimal network of medical providers for veterans will ensure our veterans get the very best care possible.

Having one set of standards for payment will allow us to compete equally across the thing versus what we have today. Whereas, you and I know some of our programs are richer for providers and some are actually less fulfilling for providers, and cause the provider to propose one program versus another.

Third, being able to be the primary payer allows us the ability to pay our bills more on time, allows us the ability to account for those payments more on time. It means the bills will be paid within 30 days as we have committed to do by the end of the year.

Baligh, is there anything else you want to add to my explanation?

Dr. YEHIA. No. I think that is great.

Senator, you had it right; there are some things that we need today to make the Choice program work today, this year, and then build the foundation for the future. I think the way that we are having this discussion of what has to occur this session and then how do we lay the foundation is the right framework.

Senator TESTER. OK. Thank you.

Mr. Secretary, you were in front of Appropriations last week. You heard Senator Murkowski and others talk about consolidation of Community Care. Their skepticism was the same as mine initially, by the way, because frontier States like Alaska, like Montana, and others need flexibility to deliver that care.

Just explain to me how consolidating Community Care would actually give States, frontier States like mine and Alaska, the flexibility that we need and that we had before Choice to ensure that veterans receive the care that they need?

Secretary MCDONALD. We would work hard to make sure that we got into the network that I talked about the Alaska Native Health System, for example, where there are very outstanding providers. In fact, the Southern Foundation we are working on and trying to get more residencies in Alaska.

In Montana, we would make sure we had the very best providers in the network so it would be very easy and very quick for a veteran to go to them.

Dr. YEHIA. I think there are two provisions in there specifically: The provider agreements which will allow us to work with indi-

vidual providers that may not be part of a large national contracted network, that is critical. And, the ability to, as best as possible, try to link to Medicare but understanding in the frontier States that we might have to pay a different rate in order to get providers to work with us or for some specialties. So, building in the consistency as best as possible while allowing for flexibility in those locales.

Senator TESTER. OK. Thank you.

Montana is one of the few States, I think Maine is another one, that serves veterans under Project ARCH. Project ARCH, for the most part, has been pretty well accepted. Can you tell me why we should not indefinitely just extend the life of that program and why it makes more sense to incorporate that program into consolidated Community Care?

Secretary McDONALD. We have also learned a lot about ARCH. If we were to simply extend ARCH, none of us would like the cost or the scoring because ARCH, while it was a good program, does not necessarily differentiate between the urban and the rural areas in the way the reimbursement costs go, and as a result the cost could be astronomical.

I think what you have done in your legislation and what we have tried to advise is to put the best components of ARCH in the legislation but leave those that would raise the cost to an astronomical figure out.

Senator TESTER. OK. One last thing and then I will shut it down, Mr. Chairman, and that is every once in a while you get to feel good about stuff we do in this body. This is one of those moments where my staff, Burr's staff, the Secretary's staff, both of your staffs have helped us, get to a point where we have got something that we think is acceptable.

To be honest with you, we have not accomplished one thing yet. Hopefully, with the leadership of the two people to my left we can get this thing done and over. Then, hopefully, get the House's concurrence or some manner—if they do some work over there, if they are ever in—and get it to the President's desk.

I say that because, you know, we have got a lot of veterans who are sitting in the audience today that represent a ton of veterans across this country, and we all know that Choice is not doing it. We are all getting the letters. We are all getting the e-mails. We are all getting the phone calls. We are all getting stopped on the street. The quicker we can get this fixed the better it is going to be for the country.

Thank you, Mr. Chairman.

Chairman ISAKSON. Let me just say—and Richard can answer too—the Ranking Member and I are committed to seeing that we bring this home, and we would like to bring it home heavy, not light. We are not going to let a difference of opinion on one issue thwart us from the overall goal, which is to include the big things that we have talked about. I appreciate your comments, and I remain committed to doing exactly that. Our veterans, on Memorial Day, deserve a new VA set of standards and the hope of accountability that is meaningful and real.

Senator BLUMENTHAL. I agree with the Chairman completely. Compromise is not a four-letter word, and we ought to be ready to move forward with your incredibly important leadership.

Thank you, Senator Tester.

We will strike from the record the words "if they are ever in," referring to the House of Representatives. [Laughter.]

Secretary McDONALD. Ranking Member Blumenthal, in defense of Chairman Miller, I have spoken with him. I called him the day he announced his retirement, and we all agreed that this is the moment in time that we need to get something big done. So, I can tell you that Chairman Miller and Ranking Member Brown are on board as well.

Senator BLUMENTHAL. Thank you.

Chairman ISAKSON. We have one example already, the Denver hospital. I mean, they said we could not get that done a year ago. We brought it home and got it done, and the House came along, too. We can do it twice in one Congress, I am convinced.

Senator Sullivan.

Senator SULLIVAN. Thank you, Mr. Chairman.

I appreciate your comments, Mr. Secretary, Ranking Member Blumenthal, on the whole idea of getting together soon and really hashing out some of the issues that relate to appeals. I think there is widespread agreement that this is a big issue, an important issue. We do not want it to be the next problematic issue. We want to be able to preempt it.

Mr. Secretary, I will take you up on your offer. Senator Blumenthal, I will certainly take you up on that offer and look forward to working with all of you.

In terms of kind of trying to look at the parameters that we are talking about, you mentioned the bill that I and a number of Members on the Committee have introduced, that it is a good start; it does not go far enough. I am fine with that, especially if you guys want to be more ambitious, and more creative and effective in terms of the problem we are trying to solve.

Let me ask a basic threshold question. Is your concern that because it is a pilot program, it is going to only impact a certain number of veterans; therefore, it is not really covering the broader category of all veterans? Or, is it the substance itself, that it is not creating enough efficiencies, enough reforms in the process?

Those are two different things, right? It is either not covering enough. Because it is a pilot program, by definition, it is not covering. Sometimes we do that here, though, because we want to see if something works. Or, is it that the reforms are not ambitious enough? Or, a combination of both.

Secretary McDONALD. Again, I do not want to disparage the bill or the work that you have done with the Disabled American Veterans and others because I do think it is outstanding work and it has led to this new approach, which may be considered more aggressive.

I would add one more thing to it. It is voluntary.

Senator SULLIVAN. Right.

Secretary McDONALD. Which, the two things you mentioned add to it: it is voluntary; and it will take some time to do.

I think there is an opportunity to do even more, faster, but again, I think that program is the basis of what we have done.

Laura, do you want to make any more specific comments?

Ms. ESKENAZI. Certainly. Thank you.

We started working with the VSOs on this concept 2 years ago.
 Senator SULLIVAN. Yeah.

Ms. ESKENAZI. Certainly one of the limitations is that it is voluntary, and we always knew that. We always knew that it was not going to be the silver bullet, but it would sort of show—it would sort of model out perhaps other changes that could be taken.

One of the things that has happened in the past year, working under our Secretary and our Deputy Secretary, is we were charged this year when we were putting together our budget request to kind of come up with a requirement for appeals. One of the things that appeals has never had is any sort of timeframe.

Senator SULLIVAN. Yeah.

Ms. ESKENAZI. Not that it is all about time. Fairness is certainly paramount. But in doing so, that is when we saw the stark picture that the Secretary has presented in other hearings, that if we continue on this path we are not going to be sitting on 450,000 appeals.

Senator SULLIVAN. Right.

Ms. ESKENAZI. We will be sitting on over two million.

Senator SULLIVAN. No. It is the bulge, right? I mean, it is a real—

Ms. ESKENAZI. That was sort of the shock factor.

Senator SULLIVAN. Yeah.

Ms. ESKENAZI. Which caused us to take a different look not just at amending what we currently have but sort of putting it aside, focusing on the attributes that veterans are looking for—timeliness, fairness, transparency—and looking to design a new type of an appeals process.

Senator SULLIVAN. Good. Well, again, we look forward to working with you and the service organizations because I know they have been very, very involved in this as well.

You know, Mr. Chairman, we are talking about accountability.

Mr. Secretary, I want to go back to a topic that I know you are very focused on, we have all been very focused on, and you see it manifest itself in different ways. The issue I have raised a number of times is with payments to the providers. That is a problem.

That has been a problem, as we have talked about, where the veteran himself or herself gets stuck with the bill because the VA goes after them—or the provider goes after them because they are not getting paid. It is also a huge issue for the providers.

I was just informed of an Alaska group, outstanding health care group. Actually, it is a consortium with some of the groups you were just talking about, South Central and others, where they are now experiencing up to 180 days of nonpayment. I was just informed of this a couple days ago—half a million dollars of nonpayment. I would like to actually provide you and others specifically with their case so you can address that.

More broadly, you are saying 30 days. I think that is music to everybody's ears. Making sure that the veteran does not get caught in the middle, as we have talked about, and get, perhaps, his credit ruined and things like that.

How do we get there when I already have constituents informing me that it sounds like it is getting worse on provider payment, not better?

If this is going to be an accountability bill, do we need to take legislative action in conjunction with you so you can make that commitment about 30-day payments to our providers?

I think we start addressing a lot of the problems out there if we can really strongly not only commit to that but make it happen. How do we do that?

Secretary McDONALD. There are a number of things that we have done in the short term. Number 1, we no longer require the paperwork before we make the payment. We have gone to the best practice of the private sector, where we now will pay when the service is done, at least a good portion of it. We did that about a week ago. I think it was about a week ago we made that change. Already you are going to start seeing the backlog of bills dropping as the payments are made.

Senator SULLIVAN. OK.

Secretary McDONALD. Second, we instituted a crisis credit hotline for veterans—

Senator SULLIVAN. Right.

Secretary McDONALD [continuing]. So that no veteran's credit could be affected by this.

Again, these steps are steps we can take. We are taking them quickly to try to get this alleviated.

The important thing is we built this bill so that we eliminate this issue altogether. We become the primary provider, the primary payer.

Why don't you go ahead and describe the details?

Dr. YEHIA. Sure. Thank you, Senator. We would love to get those names.

We actually have a team that goes out and works with those. When we sit down with providers we hear all of them want to serve veterans. That is without question. I mean, we always hear that.

One of the things that we learn is that they have a lot of things on their books that we will never pay because we are not allowed to pay by law, and that is the whole idea of getting to one way of paying care. For example, in emergency room care, in some circumstances we are the primary payer; in other circumstances we are the payer of last resort, and we only pay a certain portion, but they think we are going to pay 100 percent of the bill. Getting to one system that makes sense will make sure that folks know exactly what they get to pay.

Then the next piece is: How do we pay timely and accurately? There are, in both versions of the Choice consolidation bill, good things in there that I think will help us get to a system where we can pay timely and accurately.

I would divide them into two things. One is, we have to make the system less complex, become the primary payer, and the other one is to get the technology and the system in place so we can pay timely and accurately.

Senator SULLIVAN. OK. Thank you, Mr. Chairman.

Chairman ISAKSON. Thank you, Senator Sullivan.

Senator Rounds.

HON. MIKE ROUNDS, U.S. SENATOR FROM SOUTH DAKOTA

Senator ROUNDS. Thank you, Mr. Chairman. Let me just begin by saying thank you to you and the Ranking Member for the work that you are doing. I think it always makes all of us feel good when we are working on a bill which is not partisan in nature, and I think we have a lot better chance of getting something done when it is done on a bipartisan fashion.

Secretary McDonald, there seems to me to be a lot of confusion about the differences between the terms "co-pay" and "deductibles" when referencing out-of-pocket payments made by veterans under the Choice program. The way I read the current law private providers are only allowed to charge veterans co-pays equal to what the VA would charge at one of your facilities, which is a good thing.

This is not true for deductibles, however, and as a result veterans under the Choice are being charged deductibles by providers in accordance with their private insurance policies when seeking care for nonservice-connected disabilities. These deductibles could be in terms of thousands of dollars.

Section 1729 of Title 38, meanwhile, forbids the VA from collecting deductibles for nonservice-connected disability care at VA facilities.

Last week, I introduced a bill to eliminate this discrepancy. It makes the VA the primary payer under the Choice, as you suggested, and I am very pleased to hear that, and it directs the VA to pay for deductibles just like it would if the veteran received the care at a VA facility.

Can you comment on how the VA would treat deductibles for veterans with private insurance under these bills currently before us today?

Dr. YEHIA. Thank you for that question, Senator.

The way that the Choice law currently is, is that we are the secondary payer for nonservice-connected care and if they have another form of health insurance they have to first bill outside health insurance, then bill VA. As a result, some veterans will have to pay two co-payments—one to the VA and one to their outside health insurance. We do not want that, and we agree with you of helping us become the primary payer.

I think our goal, too, is to make sure that there is parity between internal VA care and external VA care. When it comes to hospital care or medical services, if a veteran has to pay a co-payment in the VA, it should be the same outside. If they do not have to pay a co-payment in the VA, it should be the same outside. What we are hoping to do is to create an even playing field so if this is how they behave when they see a VA doctor it should be the same way in the community.

Senator ROUNDS. OK. Let me just clarify this because there are two parts. There is co-pay, and there are deductibles. Are you excluding co-pay from your discussion, or are you including co-pay as being something which the VA should pick up?

Dr. YEHIA. First of all, only a small segment of the population has a co-payment. Usually, it is a set—

Senator ROUNDS. Co-pay or deductible?

Dr. YEHIA. Co-payment. Co-pay. Category seven and eight. So, if you are getting seen for an—

Secretary McDONALD. Category 7.

Dr. YEHIA. Category 7 and 8.

Senator ROUNDS. OK.

Dr. YEHIA. Thank you.

Secretary McDONALD. Category 7s and 8s.

Dr. YEHIA. If you are getting seen for an outpatient visit, you might have—I do not know what the exact number is, but you will have a certain amount that you have to pay. If you go in the community, we want it to be exactly the same, not higher, not lower, not different.

If you do not have a co-payment at all, in the community it should be the same. You should not be required to pay anything.

This is actually how traditional VA care worked before Choice.

Senator ROUNDS. Now I want you to use the term “deductible” if you mean deductible because there is a difference between deductible and co-pay. Someone outside of the VA receiving services outside of the VA will have a deductible, and then they will have a co-pay under their insurance company. OK?

What we are finding right now is that even if you go in as the primary provider, and if they are at a VA facility today, there is no deductible for the services being provided. But, if they are outside of a VA facility, before a co-pay starts, there is a deductible under an insurance policy plan. First dollar, or it could be thousands of dollars.

Dr. YEHIA. Yeah.

Senator ROUNDS. If you want it equal to the services being provided inside of a VA facility versus outside of a VA facility, what I am proposing under our proposed legislation is that the deductible will also become the responsibility of the primary provider, which is the VA.

Are you in agreement that the deductible should be paid by the VA rather than the veteran?

Dr. YEHIA. When we become the primary payer, the whole idea of a deductible, I think, is less of an issue. I do not think it really becomes more of an issue.

It is an issue in the secondary payer situation, where you have to pay. If you do have a deductible, you have to pay it and the co-payment.

But, when we become the primary payer as it is in fee care, that is less of a concern. There is not a deductible.

Senator ROUNDS. There is not a deductible.

Dr. YEHIA. Right.

Senator ROUNDS. Very good.

Secretary McDONALD. There is no deductible.

Senator ROUNDS. That is what I wanted to get at—under the proposals, if we make you the primary payer, the deductible is eliminated for these veterans that right now are in some cases paying thousands of dollars.

Dr. YEHIA. Yeah, the deductible to the outside health insurance will be eliminated.

Senator ROUNDS. There we go. Thank you.

Thank you, Mr. Chairman.

Chairman ISAKSON. Thank you, Senator Rounds.

Senator Boozman.

HON. JOHN BOOZMAN, U.S. SENATOR FROM ARKANSAS

Senator BOOZMAN. Thank you, Mr. Chairman. I apologize to you and the Ranking Member for being late, and I have to sneak out again. I have got another hearing that is going on.

I want to thank you, Secretary McDonald, for your willingness to come and testify before Congress. I think I have probably been with you five or six times in the last 2 or 3 weeks between the appropriations, this process, and others, and that really is very important.

The comment and question that I would like to make is that it seems like in the last few weeks, as the Choice Program is starting to kick in, that the comments I hear from—I am an optometrist by training. My brother was an ophthalmologist.

As I talk to my friends, their concern is that they feel like, as providers—and these are folks that realize that we are at war now—they want to do the right thing, and they want to participate. You know, I can shame them into doing the right thing.

The problem is that they almost feel like you want them to go to work for the VA. They deal with Medicare. They deal with Medicaid, programs for the elderly, programs for the poor. They deal with all kinds of private insurance.

But there is something going on right now with the structure that we have that makes it more difficult, and I do not know exactly what that is.

I would really encourage you to—and we are talking about small and medium practices. These are not the clinics that are large, you know, that do a great job. We are talking about small clinics and medium clinics because these are in the communities where veterans do not have access.

So, I would really encourage you to get out and send some of your folks to literally camp out there for a week or so and see what is going on because it is just hard.

We have growing pains and all of that. I realize that. That is just the way it is. I am afraid we are in a situation now where we are having, in some cases, really bad experiences.

The payment issue we have talked a lot about. I think you are doing a better job of that. I know you are working hard on that, but there are other things.

It is the key staffer that spends a lot of time on the phone dealing with problems that they feel like are fairly insignificant compared to these other insurance programs. It really is a problem.

Secretary McDONALD. Senator Boozman, we agree entirely. We think that the changes we have proposed to the law, which I know Senator Burr and Senator Tester have been working on, will address a lot of this and, I hope, will solve it.

We, frankly, have been disappointed with the performance of one of our third-party providers, Health Net. I have met with their CEO, but we are still disappointed. Regarding the law, the way the Choice Act is structured today, does not permit us to take back the responsibility from the third-party provider because it is written into law.

This new bill would allow us to take that back and would allow us to own the customer service. We are in a customer service business. Our vision is to be the best customer service organization in

the government. We cannot outsource our customer service, so I am hoping we will see lots of changes.

I notice—I think you meant it euphemistically—that we are trying to make them VA employees. I am out there recruiting. I, unashamedly, am out there recruiting. As you know, I have been to over two dozen medical schools. So, if there are people who would like to join the VA, we would love to hire them.

Senator BOOZMAN. I understand. No, these are people that, like you say, they want to provide service, but they do not want the same restrictions.

Secretary McDONALD. Yes, sir.

Senator BOOZMAN. The same, you know, all that goes through with the people that are working very hard at the VA as providers.

Again, it does seem to be unique, and it is enough—there is enough smoke that there is some fire there.

Dr. YEHIA. Senator, if I may.

Senator BOOZMAN. Sure.

Dr. YEHIA. That is exactly what we are doing. I was in Orlando, FL, a couple weeks ago, where we hosted a roundtable with those small- and medium-size practices just to hear directly from them what is going on.

Our intention with the plan and where we hope to go is we do not want VA to be so different than everyone else. So, we are trying to figure out what the best practices in industry and as best as possible conform to those because if you are a small practitioner and you have to deal with multiple different insurance plans, each operating in a different way or a similar way except for the VA—

Senator BOOZMAN. Right.

Dr. YEHIA [continuing]. Why do you want to work with us? I think we want to figure out how we can be good partners to community providers.

Senator BOOZMAN. Right. Well, thank you very much. I appreciate it.

Thank you, sir.

Chairman ISAKSON. Mr. Secretary, I hope that the next time that we meet we will be discussing our mutual joy and success at coming up with significant legislation for the Veterans Administration that addresses the needs of our veterans, assures the American public there is accountability within the VA administration, deals with the caregivers, deals with all the things that Senator Burr and Senator Tester have done and, in particular, Choice.

I appreciate your changing your schedule to be with us for the entire hearing this afternoon. We are very grateful to you and appreciate all your staff for being here as well.

Senator BLUMENTHAL. Could I please ask one last question, Mr. Chairman?

Chairman ISAKSON. Certainly.

Senator BLUMENTHAL. Thank you.

Looking at the budget for this year and the question of how to pay for additional Care in the Community after the emergency Choice Act funding expires, could you explain how you will cover that expense? Because the budget submission that you have made seems to have a shortfall of \$9 billion in the fiscal year 2018. Am I correct?

Secretary McDONALD. In 2017, I think it was, we put in \$12 million. In 2018, we do have a shortfall there, and the shortfall is because we were not sure what legislation would come out of the Committee and we did not want to put a number in there that would be wrong. As soon as we work together and figure out this legislation and get it done, we will put a number in that hole and talk about that because we will have a better idea what it will be. There are several options in the legislation, and those options each have a different cost with them.

Senator BLUMENTHAL. But, you can assure us that you will cover that cost without cannibalizing other VA services.

Secretary McDONALD. We will deal with it when we get back to the second bite, so to speak, because it will be part of the budget.

Senator BLUMENTHAL. Thank you.

Secretary McDONALD. Yes, sir.

Chairman ISAKSON. Secretary, I thank you and your staff very much.

Secretary McDONALD. Thank you, Mr. Chairman.

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. BILL CASSIDY TO
HON. ROBERT McDONALD, SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS

Secretary McDonald, during the March 15th hearing you testified that 2,600 VA employees have been terminated since your appointment. This statistic seemed to represent the total number of adverse actions taken, not the total number of terminations. The September 1, 2015, Assessment L, which was part of the Independent Assessment of the Health Care Delivery Systems and Management Processes of the Department of Veteran Affairs, specifically criticizes the VA on the topic of terminating Senior Executive Service (SES) employees. The March 3, 2016 weekly report on adverse actions initiated since June 3, 2014 shows that only 96 employees were subject to removal. This is in stark contrast to the 2,600 you referred to during your testimony, and still significantly different from the "Removal" totals on the FY 2015 Adverse Actions Totals that were provided to Congress.

Question 1. What is the accurate number of terminations since your appointment on July 30, 2014 (including and excluding resigned and retired in lieu of)?

Response. VA's Office of Accountability Review maintains a database to track disciplinary actions, including but not limited to removals, throughout the Department. The data is input by human resources officers at VA medical centers, regional offices, and other facilities and program offices across the VA system. That database reflects that, as of April 11, 2016, a total of 3,144 VA employees have been removed or terminated during their probationary period since July 30, 2014. An additional 874 employees have resigned or retired in lieu of involuntary separation.

Question 2. Since that time, how many of those terminations have been SES employees?

Response. Within the population described in the response to question 1, nine Senior Executive Service (SES) employees have been removed or retired or resigned in lieu of involuntary separation.

Question 3. Why is there such variation in the statistics provided during testimony, those provided in writing to Congress and the Department's weekly report?

Response. The numbers are different because they are responding to very different questions.

As stated on the cover sheet VA provides with each weekly report, the information provided in that report responds to a June 3, 2014, oversight request from the House Veterans' Affairs Committee (HVAC) requesting information about disciplinary actions proposed or taken on the basis of specified types of misconduct: patient scheduling, record manipulation, appointment delays, and/or patient deaths. That report does not reflect disciplinary actions based on other types of misconduct because the June 3, 2014, HVAC oversight request did not ask for information about actions proposed or taken on other bases.

The Secretary's count of all employee removals includes actions taken on any basis, not just the specific types of misconduct covered by the June 3, 2014, HVAC request or the responsive weekly report.

Question 4. Why does the VA, the agency with the most scandals, have on average a termination rate for SES employees that is 10 times lower than other agencies?

Response. It is not clear from the Question for the Record where the figures supporting the underlying assertion arose. You can review the Office of Personnel Management's Fiscal Year (FY) 2015 data reporting online at www.fedscope.opm.gov. This website shows provides information for all agencies (as defined in FedScope).

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. SHERROD BROWN TO
HON. ROBERT McDONALD, SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS

On December 15, 2015, President Obama issued an Executive Order, "Strengthening The Senior Executive Service," to "periodically explore and promote new selection methods that effectively and efficiently identify the most capable and talented candidate for executive leadership."

Question 5. What steps has the VA taken, in conjunction with OPM, to respond to the following requirements delineated in the Executive Order?

(ii) The heads of agencies with SES positions that supervise General Schedule (GS) employees shall implement policies, as permitted by and consistent with applicable law and regulation, for initial pay setting and pay adjustments, as appropriate, for career SES appointees to result in compensation exceeding the rates of pay, including locality pay, of their subordinate GS employees. Similar policies shall be implemented by heads of agencies for Senior Professional (i.e., SL or ST) employees that supervise GS employees. Such policies and practices support, recognize, and reward agency executives, especially top performers, in a manner commensurate with their roles, responsibilities, and contributions, and may increase the competitiveness of SES positions with comparable positions outside of Government.

(iv) Within 120 days of OPM issuing the guidance described in section 3(a)(iii) of this order, the heads of agencies with SES positions shall examine the agency's career SES hiring process and make changes to the process to make it more efficient, effective, and less burdensome for all participants. Agencies shall simplify the initial application requirements for SES positions consistent with the guidance issued in section 3(a)(iii) of this order, and should only request critically necessary technical qualifications, with the goal of minimizing requirements that may deter qualified applicants from applying. Agencies shall also monitor time to hire of SES positions, and identify appropriate process improvements or other changes that can help reduce time to hire while ensuring high quality of hires.

Response. With respect to section (ii), VA drafted a pay setting and pay adjustment policy based on an overarching compensation philosophy for its SES and equivalent positions.

The philosophy is based largely on the use of tiers for VA executive positions, which align to criteria by which VA differentiates among and categorizes SES positions. The tiers represent different levels of responsibility and complexity/scope of work yet are based on established criteria, which allows for transparency and consistency when setting pay. It also recognizes there are additional flexibilities through pay-for-performance, which the VA will begin to consider more broadly. This includes opportunities for larger percentages used for performance-based increases and awards. We note that these VA policies must be consistent with performance-basis mandated by law and pay differentiation based upon performance required for certification of appraisal systems

When setting pay, many factors are considered to include the tier of the position; the candidate's experience, pay history and qualifications; rate of pay, which is fair and equitable amongst similarly situated employees; the pay of subordinate GS employees; and the potential room for growth for the candidate for performance-based increases within the pay band.

With respect to section (iv), VA has initiated several Rapid Process Improvement Working groups to consider the agency's career SES hiring process and ways to make it less burdensome for applicants, especially for those applying to our Medical Center Director positions, as these positions have a high vacancy rate, are crucial to carrying out the VA's mission, and historically have been difficult to fill. The VA also continues to monitor and now reports monthly the time-to-hire of SES positions to the Deputy Secretary.

Question 6. Please describe how things would change if the executives are moved from Title 5 to Title 38?

Response. The Administration supports legislation to appoint, pay, appraise, and discipline, under Title 38, senior executives holding positions as Medical Center Director, Veterans Integrated Service Network Director, and any other critical senior health care executive position within VA's Veterans Health Administration (VHA).

VHA Medical Center and VISN Directors are in a unique position to help lead and shape the way VA provides world-class health care to our Nation's Veterans. Typically, these individuals are compensated at a much higher rate in the private sector. For example, most VA Medical Center Directors have their salary capped at \$185,100. Whereas, according to the 2015 Hay Group Integrated Health Systems Report survey, the average annual base salary of a similar position in the private sector is \$345,100. Likewise, most VA Medical Center Director positions take an average of 230 days to fill. Whereas, a similar position the private sector takes around 60 to 120 days to fill.

Under the Administration's proposal, VA Medical Center Director, VISN Director, and any other critical senior health care executive would be treated in a similar fashion as their private sector counterparts and Title 38 health care provider peers. Indeed, the Administration's proposal is based on the appointment, compensation, and disciplinary statutory authorities that exist for Title 38 health care providers, including doctors and dentists. Under the Administration's proposal, VHA Medical Center and VISN Directors would be appointed based on the qualifications that VA sets; be evaluated according to the agency's priorities and goals; have their pay set based on relevant market factors and on their achievement of identified performance goals; and be disciplined in a fashion that respects the employee's rights while also being reasonable given the importance of the individual's work to the agency's mission.

As the Secretary has stated, organizational change cannot only be accomplished through employee terminations and discipline. Instead, success requires the use of a broad spectrum of resources to drive organizational performance and improvement through hiring, training, compensating, evaluating, and rewarding exceptional employees. The Administration's proposal would give VA similar tools and incentives as the private sector, which would allow VA to better perform its mission.

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. MAZIE K. HIRONO TO
HON. ROBERT McDONALD, SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS

Question 7. Secretary McDonald, last September I raised the issue of a catch-22 of sorts in one of our committee hearings. Current law imposes a requirement that veterans must have received VA care within the preceding 24 months in order to be eligible for emergency treatment reimbursement from the VA. This means that recently enrolled veterans who would otherwise be eligible for emergency treatment, but have not received VA care or services due to wait times associated with their initial appointment are not eligible for non-VA emergency treatment. Furthermore I have introduced the VA's proposal (S. 1693) to exempt newly enrolled veterans from this requirement. Would VA support including S. 1693 in comprehensive legislation related to non-VA care?

Response. Please see the excerpt below from VA's testimony before the Senate Veterans' Affairs Committee on September 16, 2015. In that testimony, we expressed support for S. 1693 but asked the Committee to forbear consideration of the bill to allow for further discussion in the context of VA's comprehensive review of its Care in the Community programs. The Plan to Consolidate Community Care Programs was provided to the Committee on October 30, 2015, and we appreciate the opportunities to discuss the Plan with the Committee, including a December 2, 2015, hearing on Consolidating Non-VA Care programs. That testimony included discussion of expanded access to emergency treatment and care. VA supports measures to improve access to emergency care for Veterans, contingent on the provision of the additional resources, and would be happy to further discuss emergency care reforms, including in discussion of the Committee's pending omnibus bill. VA supports S. 1693, as expressed in our September 16, 2015, testimony.

Excerpt from VA testimony before the Senate Veterans' Affairs Committee on September 16, 2015:

VA supports S. 1693 but, as discussed below, requests that no further action be taken at this time. We recognize that some Veterans have been enrolled in VA's health care system but unable to become actual users of the system because they have not been able to receive their "new patient examination" due to waiting periods (in appointment scheduling) for care in VA. As a result, although enrolled, they fail to meet the full statutory definition

of an “active Department health-care participant” for purposes of being able to receive reimbursement under section 1725. The bill would provide a fair remedy for those whose section 1725 claims are denied solely because VA scheduling procedures and wait times prevented them from receiving VA care within the 24-month period preceding their receipt of non-VA emergency treatment.

While the goal of this bill is well-intentioned, we believe it premature for Congress to take any action on this measure until VA has completed its comprehensive review of the Department's Care in the Community programs, which includes a review of the monetary benefits available under section 1725. For that reason, we respectfully request that the Committee forbear consideration of S. 1693 (and any similar measure) until VA has an opportunity to complete its review and share the results, including recommendations, with the Committee.

Question 8. Secretary McDonald, would you be able to comment on how the VA would implement the reforms outlined in S. 2633 related to access to emergency care, and do you have any indication as to what extent this would reduce out-of-pocket costs for enrolled Veterans?

Response. The implementation of this bill, S. 2633, Section 102: *Expansion of reimbursement of veterans for emergency treatment and urgent care* would remove certain eligibility requirements, expand benefits, and establish VA as the primary payer for Veterans to access emergency treatment, urgent care, and emergency transportation in the community. The impact of this provision would reduce enrolled Veterans' out-of-pocket costs by not holding them personally liable for the payment of emergent treatment, urgent care, and emergency transportation. S. 2633 should work to reduce administrative barriers for obtaining such health care in the community. In order to implement this legislation, VA would need to develop supporting regulations, processes, and procedures. VA would also require system redesign and solution enhancements to care coordination, customer service, claims processing, and payment systems. Finally, a comprehensive communications strategy would be required for conducting appropriate outreach to affected Veterans, providers, and stakeholders, and VA would need significant additional resources, estimated at \$2.4 billion in FY 2017 and \$14 billion over five years for this expanded benefit, including urgent care, emergency care, and treatment.

Question 9. S. 2633 contains provisions seeking to address the problem of the Department of Veterans Affairs not being reimbursed by insurance companies in instances in which the VA treats enrolled veterans for non-service-connected treatments, as they were not classified by these particular companies as “in network” or as a participant provider. Secretary McDonald, could you comment on the importance of addressing this issue, the approximate amount of recovered revenue and the benefit that it would bring to VA and veterans that seek these kinds of treatments through the VA?

Response. Currently, if an agreement is not in place with a third party payer, VA is seen as an out-of-network provider and therefore, benefits are either limited or non-existent. This proposal would prevent a health insurer or third party payer from denying or reducing payment, absent an existing agreement between VA and any health maintenance organization, competitive medical plan, health care prepayment plan, preferred provider organization, or other similar plan, based on the grounds that VA is not a participating provider. Providing this authority would increase collections from third party payers. The increased revenue to individual VA medical centers could then be used to continue improving the Veteran experience.

Chairman ISAKSON. Our second panel is welcome to come forward. [Pause.]

Chairman ISAKSON. I would like to welcome our VSOs for our second panel today. First, we will hear from Louis Celli, the Director of Veterans Affairs and Rehabilitation at The American Legion.

Carlos Fuentes, Senior Legislative Associate at Veterans of Foreign Wars.

And, Adrian Atizado, Assistant National Legislative Director for Disabled American Veterans.

We are so glad to have you here today. Welcome to all of you.

We would ask you to try to hold your testimony to 5 minutes. All preprinted statements will be put in the record automatically.

Mr. Celli, you are recognized.

**STATEMENT OF LOUIS CELLI, DIRECTOR OF VETERANS
AFFAIRS AND REHABILITATION, THE AMERICAN LEGION**

Mr. CELLI. It is an exciting time right now as we work toward bettering the resources and services that veterans in this country have earned.

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee, on behalf of National Commander Dale Barnett and the over two million veterans that make up The American Legion, we welcome this opportunity to comment on bills and discuss VA oversight, access to health care, and the structure of claims and appeals management.

Lately, this has been a fast-moving train. In the last 2 weeks alone, we have furthered efforts to make improvements and advancements for veterans that seek access to high quality health care as well as help define necessary improvements that need to be made in the area of veterans disability claims and appeals.

The bills presented today underscore a commitment and dedication that this Committee has shown to ensure that veterans receive care and attention that they have earned, and The American Legion is proud to be working closely with our Congress as well as the Department of Veterans Affairs in order to streamline many of the services that have not been updated in close to 50 years.

In our written testimony, we look at Senate Bill 2633 and 2646, and we highlight the portions of each The American Legion believes will make the greatest impact on veterans who use and enjoy VA health care. In our testimony, you will see that we reviewed eligibility, network structure, prompt payment requirements, and emergency and urgent care reimbursement. We also acknowledge that both bills provide the necessary funding in order to support the programs.

One major point of discussion has been the concept of the tiered network. Some are concerned that VA lacks the infrastructure or expertise to support building a provider network organically while others criticize the existing TPA model as dysfunctional.

This is a complicated proposal, and The American Legion cannot attest to VA's capabilities one way or the other that would support or deny success, but we can say that if VA is capable of building such a network as they propose it will be more cost effective and support VA's mission to be in a better position to provide better and more seamless health care experiences for veterans. Based on our experience with ARCH and PC3 and community-contracted care, in many ways, they are already doing it.

Last week, The American Legion agreed to be sequestered away in a room with no windows over at the Board of Veterans' Appeals for three solid days to help propose streamlining the appeals process. It was painful. A good portion of the initial time was spent developing trust, not only from the VSOs' and advocates' standpoint, but also from the VA.

While we did not cure the ills of the world in 3 days, what we were able to accomplish was everyone's ability to just get it all out

onto the table and deal with what was there. By the end of the 3-day session, the group was able to agree on a path to move forward, a basic framework for what an improved program might look like, and a fundamental understanding that there is no better opportunity for positive change to take place than for the betterment of veterans in the claims appeals process than now.

Some of the participants have continued to work together to this end and are meeting to discuss this framework tomorrow, and the group as a whole has agreed to meet again on Thursday.

Again, it is an exciting time right now as we all work together to improve the programs that serve and support our veterans. This Committee has shown that we have your support. The House Veterans' Affairs Committee has pledged their support for change. The Veterans Service Organizations have committed to working with Congress and VA to improve our programs. And, VA has committed to Congress and the VSOs to work comprehensively together to design and support change. And, the President of the United States has charged us all with making it happen.

Senators, The American Legion is actively supported by 10 percent of all living American veterans, and that does not take into account our family members, the Auxiliary, and the Sons of The American Legion. As clearly stated by National Commander Dale Barnett just last month during our congressional presentation, the word of the day is "accountability."

Finally, on the proposal that would allow VA to convert certain senior executive positions to another hiring authority within the U.S. Code, specifically Title 38, The American Legion supports any measure that will allow greater hiring flexibility, greater oversight and authority, and simultaneously empower VA to be more competitive in the areas of the country that are difficult to recruit in.

We caution that any program changes of this magnitude need to be clear on issues of oversight, authority, and accountability, and specifically review and tailor things like the appellate authority and timeliness to take into consideration VA's unique mission and honored customer base before making any final decisions.

That is all I have, and thank you.

[The prepared statement of Mr. Celli follows:]

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

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

BURR—S. 2646: VETERANS CHOICE IMPROVEMENT ACT OF 2016

To amend title 38, United States Code, to establish the Veterans Choice Program of the Department of Veterans Affairs to improve health care provided to veterans by the Department, and for other purposes.

TESTER—S. 2633: IMPROVING VETERANS ACCESS TO CARE IN THE COMMUNITY ACT

To improve the ability of the Secretary of Veterans Affairs to provide health care to veterans through non-Department health care providers.

BACKGROUND

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. However, even in the best of circumstances there are situations where the system cannot keep up with the health care 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, an add-on to the existing system, The American Legion has called for 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 as well as their travel and distance into account."¹

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.

BURR/TESTER BILLS

The American Legion commends Senators' Burr and Tester for sponsoring legislation to fix the Choice program and codify the New VCP and we commend the Committee for expeditiously considering these bills. Both bills address deficiencies in current law, as well as provide a comprehensive framework and foundation for consolidating the purchase of care in the community in those circumstances where it is not readily available from VA through contracts or existing sharing agreements.

There is a great degree of overlap and a lot to like in these bills. We look forward to a final compromise bill which incorporates the best of both. Where there are differences, The American Legion will highlight below what we would like to see in the final legislative package.

¹ Resolution No. 46 (2012): Department of Veterans Affairs (VA) Non-VA Care Programs

Veteran Eligibility

Eligibility requirements are almost the same in both bills. However, the Tester bill has an additional requirement that should be kept, i.e., The veteran has a primary care provider under section 1705A that is not a health care provider of VA.

Network Structure

The American Legion supports Tester's language allowing VA to set up tiered networks. As we understand it, this structure is meant to empower veterans to make informed choices, provide access to the highest possible quality care by identifying the best performing providers in the community, and enabling better coordination of care for better outcomes. However, it does not dictate how veterans will use the network.

The American Legion wants to make clear, though, that we do not support a wholesale option to circumvent the VA infrastructure or healthcare system entirely.

Prompt Pay

From the Burr bill, we support the provision mandating that all claims be made electronically by January 1, 2019. From the Tester bill, an eligible provider should submit claims to Secretary within 180 days of furnishing care or services.

Episode of Care

We support the Burr provision ensuring that an eligible veteran receives such care and services through the completion of the episode of care, including all specialty and ancillary services deemed necessary as part of the treatment recommended in the course of such care and services.

Funding for Program

The American Legion is pleased to see that both bills call for advanced appropriations for VA's Care in the Community beginning in Fiscal Year 17.²

Emergency / Urgent Treatment

The American Legion supports the inclusion of the Tester provision requiring VA to reimburse veterans for the reasonable value of emergency treatment or urgent care furnished in a non-Department facility in a final bill.³

Conclusion

Ensuring veterans have access to appropriate, timely, high-quality care is critical. VA needs to overhaul its outside care reimbursement programs, consolidating them into a more efficient bureaucracy able to dynamically interact with the network of Federal, public, and private providers that are to supplement VA direct provided care.

The American Legion believes that together we can accomplish legislative changes to streamline Care in the Community programs before the end of this session of Congress. We can't let another year slip away. Our veterans deserve the same sense of urgency now that Congress has shown numerous times since the VA scandal first erupted in 2014.

S. 2473: EXPRESS APPEALS ACT OF 2016

To direct the Secretary of Veterans Affairs to carry out a pilot program to provide veterans the option of using an alternative appeals process to more quickly determine claims for disability compensation.

This act, while well-intentioned, may ultimately have a negative impact upon veterans. Under the current proposal, veterans will have the option to elect to pursue a claim in a "fully developed appeal (FDA)" format. Through electing to have a claim adjudicated via FDA, a veteran opts to not submit any additional evidence for the record following the submission of the Notice of Disagreement (NOD).

The Express Appeals Act is designed to expedite the appellate process within VA. With a growing inventory of claims, VA and veterans service organizations (VSOs) have been working to discover a program that reduces the amount of time that veterans wait to have an appealed claim adjudicated.

In order for a veteran to receive benefits for a service connection condition, the following criteria must be met:

- A current diagnosis (exception: Gulf War Illness)
- An incident in service

²Resolution No. 16: Assured Funding for VA Medical Care

³Resolution No. 100: Non-Department of Veterans Affairs Emergency Care

- A nexus statement linking the current condition to either service or a previously service-connected condition

Unfortunately, VA adjudication letters are often incomplete and unclear to veterans. They are uncertain why they were denied benefits; more importantly, they often do not know what information is needed to successfully overturn the previous decision by the VA regional office. Through passage of H.R. 732, VA will be compelled to find the most expeditious means to adjudicate an appealed claim. The American Legion strongly supports increased transparency in the adjudication of claims.⁴

The current bill could allow the following to occur:

- Veteran receives decision denying the benefit with little explanation regarding how VA arrived at its denial
- Veteran elects to appeal via FDA
- Veteran is denied the benefit sought at the BVA due to not knowing what information to submit

While decisions at the VA regional offices are lacking regarding how a claim is decided, Board of Veterans Appeal (BVA) decisions are lengthy and filled with language common in the legal profession, however, it is confusing to veterans who have no legal background. Ultimately, a veteran could file a claim, have it denied at a VA regional office, utilize the appellate process and have a claim adjudicated at BVA meanwhile having little or no understanding of why the claim was denied.

The American Legion believes the FDA program is a program that with some adjustments could hold value. Discussions between The American Legion and VA have occurred regarding the adequacy of the adjudication notification letters. VA Secretary Robert McDonald has agreed to formulate a group of concerned veteran's service organizations to draft a letter to create an adjudication notification that properly advises veterans of the information needed to gain service connection for the condition.

The American Legion is working closely with VA and other VSOs to develop an appeals process that is expeditious meanwhile not shortcutting veterans' due process rights. The American Legion could support this legislation provided the working group makes helpful and productive changes to the notification letter process.

The American Legion could support this legislation, provided it follows the caveats mentioned above.

DISCUSSION DRAFT

On title 38, United States Code, appointment, compensation, performance management, and accountability system for senior executive leaders in the Department of Veterans Affairs.

The American Legion supports any mechanism that ensures added accountability while providing VA the freedom to hire the best qualified medical and administrative staff. While we are excited and intrigued about VA's recommendation to convert the Senior Executive Service positions to an alternate hiring authority contained within the United States Code, we remain apprehensive until we are able to fully evaluate how the new program would be implemented in this special circumstance. The ability to convert positions, promote, demote, expedited hiring, as well as removal from government service capabilities need to be clearly outlined, to include an appellate process that is fair and equitable to the government employee, the veteran seeking quality services, and the American taxpayer. The American Legion looks forward to working closely with this Committee and VA to review this proposed plan.

CONCLUSION

As always, The American Legion thanks this Committee 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. Warren J. Goldstein at The American Legion's Legislative Division at (202) 861-2700 or wgoldstein@legion.org.

Chairman ISAKSON. Thank you very much, Mr. Celli, and thanks for all the input. I held up the poster that you all did when you were referring to the meetings at the VA before. They were graphi-

⁴Resolution No. 128: Increase the Transparency of the Veterans Benefits Administration's Claims Processing

cally very pretty, but they also obviously showed a road map we need to follow to get to a solution on disability claims. I appreciate The Legion's willingness and ability to do that.

Mr. Fuentes.

**STATEMENT OF CARLOS FUENTES, SENIOR LEGISLATIVE
ASSOCIATE, VETERANS OF FOREIGN WARS**

Mr. FUENTES. Mr. Chairman, on behalf of the men and women of the VFW and our auxiliaries, I would like to thank you for the opportunity to present our views on today's legislation. I would also like to thank you for considering legislation that would supplement, not supplant, the excellent health care veterans receive from the VA.

We are pleased to see that the Improving Veterans Access to Care in the Community Act consolidates the best aspects of the Choice Program and other Community Care programs. This would ensure VA employees, private sector providers, and veterans are able to understand and easily navigate VA Community Care.

The VFW has also heard from too many veterans who live more than 40 miles from a VA primary care provider but are required to travel further for Choice Program care than they would for VA care. That is why the VFW supports Section 302, which would improve how the 40-mile rule is applied.

Instead of measuring 40 miles from a VA medical facility, this legislation would make veterans the center of the 40-mile rule. Doing so would require VA to properly size its networks to ensure veterans have primary care providers within 40 miles of their home.

The VFW continues to hear from veterans that VA refuses to pay the cost of their emergency room visits. This is why the VFW strongly supports expansion of emergency and urgent care. However, this legislation would require veterans to be active users of VA care. This barrier to access could cause an undue hardship for veterans who are enrolled in VA health care but have been denied access due to wait times.

VA is aware of this problem and has requested authority to make an exemption to the 24-month rule for veterans who find themselves in this situation. The VFW agrees with the VA, and this barrier must be eliminated for veterans who are not able to receive VA health care because of long appointment wait times.

The VFW supports many of the modifications that the Veterans Choice Improvement Act of 2016 would make to VA Community Care, such as ensuring a veteran is able to receive follow-up care to complete an episode of care without having to cut through bureaucratic red tape. However, this legislation would retain the Choice Program's 40-mile standard for determining when veterans access Community Care. The VFW recommends this Committee adopt Section 302 of Senator Tester's bill in lieu of the current 40-mile standard to ensure the 40-mile rule is veteran-centric rather than VA-centric.

Another lesson learned from the Choice Program is that VA provides health care specialties that do not have Medicare rates, such as gynecological care. That is why we recommend the Committee

authorize VA to establish a fee schedule for services it provides that are not covered under Medicare.

Section 301 would expedite the process for adjudicating disability claims for veterans exposed to contaminated water at Camp Lejeune. VA recently announced that it will classify eight medical afflictions as presumptive disabilities for these veterans.

However, it is unacceptable that VA would require Camp Lejeune veterans to wait an entire year before being able to submit claims. The VFW recommends this Committee require VA to issue interim final regulations within 90 days of establishing a presumptive for service connection and start accepting claims the day the interim final regulations are published.

The VFW is pleased to see the Express Appeals Act includes reporting requirements on the efforts of the Secretary to provide more clear rating decisions and improve disability rating notification letters. However, the VFW cannot fully support the fully developed appeals initiative until veterans have sufficient information to understand why VA denied their claims. Simply put, without adequate notice, there can be no knowledgeable waiver.

The VFW strongly supports the hiring retention provisions of the discussion draft proposal regarding VA SES employees. The VFW strongly believes that employee accountability is critical to correct the past problems at VA and restoring veterans' trust and confidence.

However, the VFW does not believe that a panel of SES employees would effectively determine the veracity of adverse actions being considered against their peers, especially if the Secretary is the final arbiter of that decision. While the VFW has full faith and confidence that Secretary McDonald will strengthen rather than erode VA's SES Core, the VFW does not want future political appointees to politicize VA's career civil servants.

Mr. Chairman, this concludes my testimony. I am happy to answer any questions you or the Members of the Committee may have.

[The prepared statement of Mr. Fuentes follows:]

PREPARED STATEMENT OF CARLOS FUENTES, SENIOR LEGISLATIVE ASSOCIATE, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Chairman Isakson, Ranking Member Blumenthal and Members of the Committee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliaries, I would like to thank you for the opportunity to testify on today's pending legislation.

The VFW strongly believes that veterans have earned and deserve timely access to high quality, comprehensive, and veteran-centric health care. In most instances VA care is the best and preferred option, but we acknowledge that VA cannot provide timely access to all services to all veterans in all locations at all times; that is why VA must leverage private sector providers and other public health care systems to expand viable health care options for veterans.

Before discussing the individual bills being considered by the Committee, I would like to first thank the Members of this Committee, specifically Senators Tester, Moran, Blumenthal, Boozman, Brown, and Tillis for sponsoring or cosponsoring legislation being considered today that would improve how veterans access community care options and ensure the private sector supplements, not supplants, the excellent health care veterans receive from VA health care professionals. The VFW truly believes these proposals would lead to better health care outcomes and would build on VA's holistic approach to medicine. The VFW is also pleased both community

care bills being considered today are closely aligned with recommendations the VFW has made to improve VA community care.

S. 2633, IMPROVING VETERANS ACCESS TO CARE IN COMMUNITY ACT

This legislation would, among other things, consolidate VA's community care authorities, expand VA's authority to provide emergency room and urgent care, and improve VA community care. The VFW supports this legislation and would like to offer suggestions to strengthen it.

The Veterans Choice Program has faced a number of challenges since it was implemented in November 2014. The VFW has made a concerted effort to evaluate what aspects of the Veterans Choice Program have worked and identify common sense solutions to aspects of the program that have not worked as intended. That is why we are pleased to see that this legislation would incorporate many of the lessons learned from the Veterans Choice Program and other community care programs, such as consolidating all of VA's community care authorities to ensure veterans, VA employees and private sector providers understand how to navigate VA's community care program.

Similar to the consolidation plan VA was required to submit to Congress, this legislation would move away from federally mandated standards to determine how long a veteran must wait for care before being offered community care options. This legislation would ensure veterans receive community care options when clinically necessary, regardless of whether the care is delivered by VA or community care providers.

The VFW has heard from too many veterans who live more than 40 miles from a VA primary care provider, but are required to travel farther for community care than they would for VA care, because the Choice network does not have viable options within 40 miles. That is why the VFW supports section 302 of this legislation, which would improve how the 40-mile rule is applied.

Instead of placing a 40-mile bubble around VA medical facilities, this legislation would make veterans the center of the 40-mile rule. Doing so would require VA to ensure a veteran who lives more than 40 miles from a VA primary care provider is assigned to a community primary care provider that is within 40 miles of his or her home. To avoid confusion on how the 40-mile rule is applied and when veterans are eligible for the Veterans Choice Program, the VFW recommends that the Committee amend this legislation by striking the original 40-mile rule in favor of section 301. The VFW does not believe that this change would impact how many veterans are eligible for the Veterans Choice Program. However, VA would be required to ensure a veteran who is eligible for community care is offered viable community primary care options within 40-miles of the veteran's home.

In 2010, VA implemented its Patient Aligned Care Team initiative to improve VA primary care. This holistic, patient-centered and integrated approach to delivering health care ensures that a veteran's primary care team is able to track the progress and evaluate the outcomes of all the care the veteran receives. As a result, the quality of care veterans receive from VA has improved. To ensure the benefits of VA's patient-centered medical home model are not eroded, the VFW strongly believes that VA must remain the coordinator and guarantor of care veterans receive through VA, regardless of where that care is delivered. That is why the VFW supports the establishment of procedures for VA to coordinate the care veterans receive from community care providers and ensure VA receives the health records from these episodes of care.

The VFW continues to hear from veterans that VA refuses to pay the cost of their emergency room visits which may have saved their lives or was their only option for receiving the urgent care they needed. That is why the VFW supports this legislation's expansion of emergency and urgent community care. Specifically, the VFW is pleased to see that this legislation would ensure copayments associated with emergency and urgent community care would be equal to the copayments paid by veterans at VA medical facilities. This would ensure veterans are not punished for using community care.

However, this legislation would require veterans to have received VA care with the past 24-months in order to be eligible to receive reimbursement for the cost of community emergency and urgent care, which is similar to the eligibility requirements under VA's current emergency care reimbursement program. This barrier to access has caused undue hardship on veterans who enroll in VA health care, but have been denied access due to wait times, and subsequently require emergency services. VA is aware of this problem and has requested the authority to make an exemption to the 24-month requirement for veterans who find themselves in this situation. The VFW recommends that the Committee amend this legislation to ensure veterans

who face long appointment wait times are not precluded from seeking the emergent and urgent care they need.

The VFW is also glad to see that this legislation would expand VA's authority to quickly provide community care options by establishing veterans care agreements. These agreements are a necessary tool to allow VA to meet the wide-ranging and unique health care needs of veterans. However, it is important that these contracts be used as last resort. Doing so would ensure veteran care agreements do not impede the success of this legislation's consolidated community care program. That is why the VFW supports this legislation's requirement that VA exhaust all other avenues of furnishing community care before using veteran care agreements.

S. 2646, VETERANS CHOICE IMPROVEMENT ACT OF 2016

This legislation would, among other things, expand the Veterans Choice Program, improve how VA reimburses emergency medical transportation costs and expedite Camp Lejeune disability compensation claims. The VFW supports sections 102 through 205. The VFW supports the intent of sections 101 and 301 and would like to offer suggestions to improve them.

Section 101 would make a number of improvements to the Veterans Choice program, to include ensuring a veteran's continuation of care is not interrupted by bureaucratic rules. This legislation would allow veterans who receive authorized care from a community care provider to continue to see their community care provider or another community care provider to complete an episode of care, or enter into follow-up treatment without the need to request additional authorization.

The VFW has heard from too many veterans that the community care provider they choose to use through the Veterans Choice Program has billed them for the cost of their care. The most common billing complaint occurs when a veteran is authorized to use the Veterans Choice Program for an episode of care that requires follow-up care that is outside of the scope of the original authorization. In these cases, the veteran's doctor is required to submit a request for additional services, and the program's contractors must work with VA to get the additional services authorized before the care can be delivered. This is where the program often fails veterans.

When the care is not authorized before a veteran arrives at his or her follow-up appointment, the veteran is required to either reschedule, assume liability for the care, or all too often, the provider and the veteran are unaware of this requirement, so the veteran is left with the bill. This legislation would remove this barrier by authorizing veterans to complete their episode of care or follow-on care without specific authorization.

This legislation would also require veterans to provide VA with their health insurance information when receiving VA health care. The VFW thanks Senator Burr for ensuring VA does not withhold care from veterans who may not know their insurance status has changed or are unable to disclose health insurance information. To ensure VA medical collections are maximized, the VFW urges VA to improve its medical billing process. The VFW also recommends that the Committee consider authorizing VA to verify whether a veteran has health insurance coverage by entering into a data sharing agreement with the Internal Revenue Service (IRS), who receives veterans' health insurance information through annual IRS health coverage exemptions.

As discussed above, the VFW has made a concerted effort to evaluate the Veterans Choice Program and determine whether eligibility requirements are aligned with veterans' options, perceptions and expectations when receiving VA health care. In conducting site visits to VA medical facilities around the country, the VFW found that VA community care staff were unable to authorize veterans to use the Veterans Choice Program when their VA medical facility was unable to provide the service veterans need. Thus, veterans who were not eligible for the Veterans Choice Program under the 40-mile rule were unable to receive Choice care because the facility was unable to schedule an appointment that would trigger wait-time eligibility. To correct this, VA has requested the authority to offer veterans the opportunity to use the program when a VA medical facility is unable to provide the service they need. The VFW recommends the Committee amend this legislation to include this change.

The VFW is glad to see that this legislation includes improvements to the eligibility criteria for the Veterans Choice Program, such as the Secretary's authority to determine that there is a compelling reason for a veteran to use community care in lieu of VA care. However, the VFW does not agree with the legislation's 40-mile standard to determine when veterans are afforded the opportunity to access community care. The VFW believes that the distance a veteran is required to travel for health care should be determined by the veteran in consultation with his or her

health care provider. However, if the Committee intends to continue to use 40 miles as a standard to measure geographic accessibility, the VFW recommends the Committee adopt section 302 of S. 2633 to ensure the 40-mile rule is veteran-centric rather than VA-centric. Doing so would ensure VA affords veterans the opportunity to receive veteran-centric and coordinated community care within 40-mile of their home.

Another lesson learned from the Veterans Choice Program is that VA provides health specialties that do not have a Medicare rate, including obstetrics and gynecological care. While the VFW understands the need to set limits on the amount VA is authorized to reimburse community care providers, the VFW believes that a consolidated community care program should authorize VA to provide community care options for every health care specialty it delivers. That is why we recommend the Committee amend this legislation authorizing VA to establish a fee schedule for services it provides that do not have a Medicare rate.

Section 301 would require VA to begin processing disability claims within 90 days of establishing a condition as being presumptive to Camp Lejeune toxic water exposure. VA recently announced that it will classify eight medical afflictions as presumptive disabilities for purposes of adjudicating compensation benefits for veterans who were exposed to contaminated water at Camp Lejeune between 1953 and 1987.

However, VA estimates that veterans will have to wait a year from when VA announced its decision before VA regional offices can begin adjudicating these claims. While the VFW agrees that a year is too long, we do not believe 90 days gives VA enough time to process regulations and start compensating veterans for such conditions. The VFW recommends that the Committee amend this bill to require VA to issue interim final regulations within 90 days of establishing a presumption of service connection and start accepting presumptive claims the day the interim final regulations are published.

S. 2473, EXPRESS APPEALS ACT OF 2016

This legislation would direct VA to carry out a five-year pilot program to provide veterans with the option to appeal claims for disability compensation through an expedited process. Appeals filed under this program would be known as Fully Developed Appeals (FDA). While the VFW supports the concept of the FDA initiative, we remain concerned that notification letters currently issued by the Veterans Benefits Administration (VBA) contain insufficient information to allow veterans to make educated decisions on whether to participate in the pilot or file through the traditional appeals process.

Under the Express Appeals Act, the FDA initiative would give the claimant the choice to waive receipt of a Statement of the Case, Decision Review Officer review, a hearing before a Board of Veterans Appeals (BVA) panel and other developmental and review opportunities currently existing in the VA appeals process. The claimant, at the Notice of Disagreement stage, would have a one-time opportunity to submit additional evidence and argument. In exchange for this waiver, the appeal would bypass all regional office activity and move directly to the BVA, where it would be placed on a separate docket to be considered in the order it was received. This approach has the advantage of bypassing nearly three years of delay at the regional office.

However, it must be recognized that a speedy decision by the BVA may not be advantageous to all claimants. During that three-year wait at the regional office, claimants have an unlimited opportunity to submit additional evidence, undergo new treatment and examinations, produce fresh argument and in other ways help perfect the record prior to BVA review. Under law favorable to veterans, the record remains open and subject to amendment almost up to the point of decision by the BVA. In addition, the BVA has unrestricted authority to remand appeals to correct deficiencies in development by VA and to acquire new evidence.

To be successful, the FDA initiative must be an avenue for veterans who truly do not need to submit additional evidence, and not simply an expedited path to denial for those who do. The VFW strongly believes that improving the current notification letter is the lynchpin to ensure this happens. Veterans and other claimants must have sufficient information to understand what VA decided, what specific evidence was used, how it was weighed and the reasons (not just conclusions) for the decision. Simply put, without adequate notice, there can be no knowledgeable waiver.

While the VFW is pleased to see that S. 2473 includes reporting requirements on “the efforts of the Secretary to provide clear rating decisions and improve disability rating notification letters * * *” we are still concerned that VA has not done enough to improve the notification letters.

In recent years, VBA has significantly restricted the amount of information it provides in decision letters to claimants. Starting with the Simplified Notification Letter initiative by VBA in 2012, VA worked to reduce most notice letters to pattern words and phrases instead of original claims specific content. In testimony before the House Veterans' Affairs Committee at the time, the VFW protested this move in strong terms. While VA made cosmetic changes, the Simplified Notification Letter and its progeny remain largely in place.

The VFW continues to believe that most current notice letters are deficient and certainly inadequate for the purposes of the FDA initiative. In a Simplified Notification Letter, the "summary of evidence" is simply a list of documents, such as treatment records. The "reasons for decision" in the notice letters are almost always simple conclusions that lack an adequate explanation of the evidence considered, how it was weighed and reasons for the decision. VA must improve them in order to provide information which allows claimants and their representatives to understand the evidence used in making the decision, an explanation of the analysis, and reasons and bases for the decision. Without this information, a claimant does not have the tools necessary to decide what evidence was used, how it was analyzed and why VA made its decision, and therefore cannot knowledgeably waive his or her rights.

With an improved disability rating notification letter, the VFW believes that the FDA initiative would be an effective tool to help reduce the backlog of 444,500 pending appeals in a timely and accurate manner, while protecting the due process rights of veterans and other claimants.

DISCUSSION DRAFT ON TITLE 38, UNITED STATES CODE, APPOINTMENT, COMPENSATION, PERFORMANCE MANAGEMENT, AND ACCOUNTABILITY SYSTEM FOR SENIOR EXECUTIVE LEADERS IN THE DEPARTMENT OF VETERANS AFFAIRS

This discussion draft would move VA's Senior Executive Service (SES) corps from title 5, United States Code (U.S.C.) to title 38, U.S.C., and expand VA hiring, compensation and accountability authorities. The VFW supports the discussion draft's intent and has a suggestion to improve it.

The VFW agrees that the current hiring and compensation structure for SES employees puts VA at a disadvantage when recruiting and retaining the best and brightest executives. That is why the VFW strongly supports expanding VA's authorities to hire SES employees and pay them salaries that are more competitive to their private-sector counterparts.

The VFW strongly believes that employee accountability is critical to correcting past problems at VA and restoring the trust of the veterans they serve. This includes authorizing the Secretary of Veterans Affairs to properly discipline VA executives who deliberately delay or withhold care from a veteran. While the overwhelming majority of VA executives are excellent leaders who deserve to be praised for their tireless work to improve the lives of our Nation's veterans, those who commit malfeasance should be held accountable for their actions.

This discussion draft proposes establishing disciplinary appeals boards, made up of SES employees, to review disciplinary actions against VA SES employees. While these types of boards are relatively effective in determining the professional conduct or competence of VA health care professionals, which this proposal is modeled after, the VFW does not believe a panel of SES employees would effectively determine whether adverse actions being considered against their peers would effectively determine the veracity of such adverse actions—especially if the Secretary is the final arbiter of the decision.

According to a Congressional Research Service report entitled "The Senior Executive Service: Background and Options for Reform" the SES corps was established to serve as "a link between political appointees who run agencies and the career government workers in the agencies." To the VFW, this means that SES employees were not intended to be politicized. The VFW believes that the establishment of peer-review boards for SES employees without having an independent third party entity serve as the final arbitrator of adverse actions would result in SES employees serving at the whims of political appointees. While the VFW has full faith and confidence that Secretary McDonald would strengthen rather than erode VA's SES corps, the VFW would not want future political appointees to be able to politicize VA's career civil servants.

However, the VFW acknowledges that the Merit System Protection Board may not be the best arbiter of adverse actions under title 38 authority. That is why the VFW urges the Committee to consider establishing a new independent agency to review appeals of major adverse actions against title 38 employees.

Mr. Chairman, this concludes my testimony and I will be happy to answer any questions you or the Committee members may have.

Chairman ISAKSON. Thank you, Mr. Fuentes.
Mr. Atizado.

**STATEMENT OF ADRIAN ATIZADO, ASSISTANT NATIONAL
LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS**

Mr. ATIZADO. Thank you, Mr. Chairman. First of all, I would like to thank you for inviting DAV to testify at this legislative hearing.

As you know, DAV believes that by putting their lives on the line in defense of this country and our freedom that veterans have earned and deserve timely access to effective benefits and services, which these bills under consideration today do intend to facilitate.

DAV thanks the sponsors and cosponsors of the three bills under consideration, particularly Senator Burr, Senators Tester and Sullivan, and their staff, and of course, your leadership, Mr. Chairman, and your dedicated committee staff, to working with us on these measures.

It is well documented in numerous studies of the VA health care system and the quality of care it delivers to millions of veterans. While VA has many challenges, some of them quite serious, it somehow continues to outperform the U.S. health care sector on nearly every metric of quality. This unique accomplishment in the face of the access crisis, we believe, must not be compromised.

We are pleased to support both S. 2646 and provisions of S. 2633 which both contain some of our recommendations to reform the VA health care system while preserving and strengthening the VA for the future. For the sake of brevity, I will only speak to a few key items out of several that DAV believes the Committee should include in the omnibus measure it is working to move.

We believe the health care network contemplated in S. 2633 would most likely yield a tailored network that optimizes the strength of all health care resources, seamlessly integrate Community Care into the VA health care system, and allow VA to best meet the expectations of veteran patients at the most local level.

However, we also believe that 2646 offers an important provision that prohibits VA from requiring veterans to receive care from a specific entity in a specific tier. This, we believe, is necessary because we are strongly urging this Committee to ensure that the current arrangement under the Choice program, which has effectively dismantled care coordination in many places, does not become a permanent fixture in the future.

See, this disconnect to getting Care in the Community is the single greatest source of complaints and frustration among veterans. VA must be made the coordinator and principal provider of care, and that responsibility must not be given to VA lightly.

Now in addition to the authority to reform how veterans access Care in the Community, DAV urges the Committee to ensure any omnibus measure includes the authority for VA to use provider agreements. There is no doubt that as we discuss the future of VA health care today veterans are being denied the care they have chosen in the community and are being displaced. We must act, and we urge the Committee to consider our recommendations in this provision and move it without further delay.

DAV also applauds the sponsors and cosponsors of 2633 for including our recommendations to make urgent care part of VA's

medical benefits package and to better integrate emergency and urgent care within the health care delivery system.

We are pleased that legislation would limit the imposition of co-payments for this care because our organization, frankly, is opposed to co-payments. We believe it should be reduced or altogether eliminated. But, nonetheless, we strongly oppose the provision that would force veterans to pay co-payments while allowing VA to collect on their health insurance.

Finally, Mr. Chairman, because of the year-long collaborative effort put into this proposal by Veterans Service Organizations and VA, I would like to spend a few precious moments on S. 2473, the Express Appeals Act of 2016.

Now it is worthy to note this Committee's House counterpart and, indeed, the full House believe in the merits of this measure by approving identical provisions in H.R. 677. This bill would establish a fully developed appeal program modeled after the successful fully developed claim program in which veterans voluntarily agree to develop private evidence to substantiate their claim in exchange for expedited processing. With broad bipartisan support, we urge this Committee to approve this important legislation.

Mr. Chairman, I have to note, though, I understand that this is a pilot program. I understand it is small right now. But, just like the fully developed claims process, which also is voluntary, the initial host for the program was maybe 10 percent of the total claims being submitted. It has now grown to over 50 percent and has done tremendous impact on the claims backlog. We hope that great things come in small packages and this is going to be one of those things.

Mr. Chairman, this concludes my statement. I would be happy to answer any questions you have.

[The prepared statement of Mr. Atizado follows:]

PREPARED STATEMENT OF ADRIAN ATIZADO, DEPUTY NATIONAL LEGISLATIVE
DIRECTOR, DISABLED AMERICAN VETERANS

Mr. Chairman and Members of the Committee: Thank you for inviting DAV (Disabled American Veterans) to testify at this legislative hearing, and to present our views on the bills under consideration. DAV is a congressionally chartered national veteran's service organization of 1.3 million wartime veterans, all of whom were injured or made ill while serving on behalf of this Nation, and dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

We believe ill and injured veterans earned and deserve timely access to high-quality, comprehensive and veteran-centric health care designed to meet their unique circumstances and needs. Because numerous studies on the quality of care the VA health care system delivers as well as the studies mandated by Public Law 113-146, "the Veterans Access, Choice, and Accountability Act of 2014," show that while the VA has a numerous challenges and problems, it continues to outperform the rest of the U.S. health care sector on nearly every metric of quality. This unique accomplishment in the face of the access crisis must not be compromised.

S. 2646, THE VETERANS CHOICE IMPROVEMENT ACT OF 2016, AND
S. 2633, THE IMPROVING VETERANS ACCESS TO CARE IN THE COMMUNITY ACT

DAV deeply appreciates the commitment and work of the members and staff of this Committee and the Senators for sponsoring the two bills being considered in today's hearing. Both bills seek to improve veterans access to community care by, among other things, consolidating some of VA's purchased care authorities, ensure coordination of care and health information sharing, and improving emergency care. DAV is pleased both bills contain some of our recommendations to reform the VA health care system while preserving and strengthening it so that DAV members and

all eligible veterans may continue to enjoy the unique benefits and vital services VA provides well into the future.

Over the past year, DAV and our Independent Budget (*IB*) partners developed a comprehensive framework to reform VA health care based on the principle that it is the responsibility of the Federal Government to ensure that disabled veterans have proper access to the full array of benefits, services and supports promised to them by a grateful Nation. In order to achieve this goal, our comprehensive framework has four pillars—Restructure, Redesign, Realign, and Reform. We offer our views on specific provisions of S. 2633 and S. 2646 that we believe fit within this framework and recommend it be part of the final legislation this Committee passes to reform VA health care.

- I. Restructure our Nation's system for delivering health care to veterans, relying not just on a Federal VA and a separate private sector, but instead creating local Veterans-Centered Integrated Health Care Networks that optimize the strengths of all health care resources to seamlessly integrate community care into the VA system to provide a full continuum of care for veterans.*

Veterans-Centered Integrated Health Care Networks

To this end, we believe the health care network contemplated in S. 2633 would most likely yield the local Veterans-Centered Integrated Health Care Networks. Like private sector health care plans and larger provider systems that offer health coverage, the proposed Subsection 1730A(c)(3) of this measure will allow VA to create a tiered network that would best meet the expectations of veteran patients at that local level.

This kind of integrated network should provide veterans information they would need to make an informed decision. For example, information about the quality of the community providers in this network will give veterans the ability to discern between those community providers that are more knowledgeable about the veteran experience and unique needs, information about the satisfaction rating from other veterans who have seen that provider, and whether there is a good working relationship with the VA that facilitates care coordination.

This integrated network would create and preserve the kind of community-VA provider partnership that mirrors the care our members value most in the VA health care system. However, we believe S. 2646 offers an important provision that would prohibit VA from requiring veterans to receive care or services from an entity in a specific tier.¹

To ensure formation of the local Veterans-Centered Integrated Health Care Networks allows for the function of a high performing network, our framework places VA as the coordinator and principal provider of care, which we discuss immediately below. VA's primary care (medical home) model with integrated mental health care, is more likely to prevent and treat conditions unique to or more prevalent among veterans, particularly those with disabilities or chronic conditions.

- II. Redesign the systems and procedures by which veterans access their health care with the goal of expanding actual, high-quality, timely options; rather than just giving them hollow choices:*

Care Coordination

We strongly urge the Committee to preserve the organizational model required in Section 106 of the Veterans Access, Choice, and Accountability Act of 2014 (Public Law 113–146; 38 U.S.C. 1701 note) in any future consolidation of VA's purchased care authorities. Section 106 effectively created a "wall" that separated the financial and clinical operations of the current Choice program, which better insulated front-line clinicians, such as VA Community Health Nurse Coordinators, social workers, or other VA health care professionals against the fiscal pressures that have been known to sway clinical decisions and delay or deny community care to veterans.

DAV also strongly urges the Committee to discontinue the current arrangement under the Choice program that has effectively removed a critical part of the care coordination responsibility away from VA front-line clinicians. VA Community Health Nurse Coordinators are the veteran's case manager and coordinators of care who work with the veteran's health care team to provide for the veteran patient's medical, nursing, emotional, social and rehabilitative needs as close to and/or in the veterans home.

While VA Community Health Nurse Coordinators are now better able to exercise their clinical authority due to the Section 106 reorganization, they are frustrated having lost their ability under the current Choice program to act as a liaison be-

¹ § 1703A(n)(2) as proposed in S. 2646.

tween community providers and VA and as an advocate for their veteran patients—who themselves have unsuccessfully tried to exercise their Choice option and asked for assistance from their VA nurse coordinator—to get the care they need in the community.

We strongly recommend the Committee ensure VA remains the coordinator of veterans care especially if that care is provided in the community and paid for by the Department.

Community Care Eligibility

For veteran patients, waiting for a health service begins when the veteran and the appropriate clinician agree to a service, and when the veteran is ready and available to receive it. We believe it is time to move toward a health care delivery system that keeps clinical decisions about when and where to receive care between a veteran and his or her doctor—without bureaucrats, regulations or legislation getting in the way.

As both S. 2633 and S. 2646 proposes an additional hurdle for veterans to receive clinically necessary in the community, we stand ready to work with the Committee to ensure veterans, and especially service-connected veterans are not any more encumbered in receiving care in a reformed VA health care system. We applaud the veteran-centric approach in using a geographic distance around the veteran as described in Section 302 of S. 2633. Moreover, if clinical access to a primary care provider is to be used, we recommend language employed in S. 2633 of a full-time primary care “provider” rather than “physician.” This would ensure uniformity with the private sector practice of using non-physician providers in primary care settings.

We also support the provisions in both S. 2633 and S. 2645 to make eligible to receive care in the community those veterans enrolled in Project ARCH so they do not experience a disruption in the care they have been receiving when the authority for the program is consolidated.

Veterans Care Agreements

Section 201 of both S. 2633 and S. 2644 would authorize the establishment of “Veterans Care Agreements,” and would prescribe the types of providers eligible for participation. We support the establishment of such agreements, but we are concerned that VA would be required to first exhaust other acquisition strategies before being allowed to pursue such agreements under S. 2646. In addition, different terms are used for paragraph (4) in both bills. We recommend the term “provider” be used rather than “health care provider” for consistency and ease of implementation of this section by the Department.

We agree with VA’s assessment regarding the need for this authority to be enacted into law without delay and applaud this Committee’s work to include similar language in S. 425; however, there are limitations in that measure that we believe will work against the consolidation of VA’s purchased care authorities as contemplated in the two bills under consideration today.

Mr. Chairman, there is one other note of concern as you consider legislation restructuring VA’s relationship with non-VA community providers. Both S. 2633 and S. 2646 have provisions authorizing provider agreements with community providers, but there is a provision in S. 2633 (Sec. 202) addressing State Veteran Home provider agreements which does not have a corresponding provision in S. 2646. When this Committee approved S. 425 on December 9, 2015, in addition to authorizing new provider agreement authority for VA, it also included a conforming amendment to protect existing provider agreements that VA has with all State Veterans Homes for the provision of skilled nursing care to severely disabled veterans rated 70 percent or higher. As you know, it took several years, two public laws (P.L. 109–461 & Public Law 112–154) and an Interim Final Rule (RIN 2900–AO57) to achieve Congress’ original intent of offering the most severely disabled veterans the option to receive extended care at State Veterans Homes. As the Committee and the Senate move forward, it is important to ensure that any legislation that addresses VA’s provider agreement authority with community providers does not modify, diminish, endanger or eliminate State Veterans Homes existing provider agreements authorizing them to provide these critical long term care services to thousands of severely injured and ill veterans.

Emergency and Urgent Care

DAV applauds the sponsors and cosponsors of S. 2633 for including our recommendations to make urgent care part of VA’s medical benefits package and to better integrate emergency and urgent care with the overall health care delivery system. DAV believes a health care benefit package is incomplete without provision for both urgent and emergency care.

We support the proposal in both bills to address the eligibility and payment issues that veterans and community providers face. This Committee is aware of our organization's long standing position opposing any and all copayments imposed on veterans and support legislation reducing the copay amount. In light of the latter, we are pleased the legislation would limit the imposition of emergency and urgent care copayments had veterans sought this type of care at VA medical facilities.

However, DAV opposes the provision that would force veterans to pay copayments while their health insurance reimburses VA for emergency or urgent care. VA should be applauded and allowed to continue its current practice of offsetting a veteran's copayment debt with monies VA receives from billing the veteran's health insurance plan.

We also oppose the provision in S. 2633 that would require veterans to have received VA care within the last 24-months prior to receiving emergency care to be eligible for the emergency and urgent care benefit. This requirement unduly discriminates against otherwise healthy veterans who need not seek care at least once every 24 months, yet is required to make an otherwise unnecessary medical appointment in order to be eligible for payment or reimbursement for non-VA emergency treatment. We urge the Committee provide greater flexibility by including an exemption authority to the 24-month requirement for this and other unforeseen circumstances.

Emergency Care Defined

Carrying out the multiple and complex authorities² for VA to pay or reimburse emergency care under title 38 are a source of continuous complaints and can drive ill and injured veterans and their families to financial ruin.

According to VA, "In FY 2014, approximately 30 percent of the 2.9 million emergency treatment claims filed with VA were denied, amounting to \$2.6 billion in billed charges that reverted to Veterans and their [Other Health Insurance]. Many of these denials are the result of inconsistent application of the "prudent layperson" standard from claim to claim and confusion among Veterans about when they are eligible to receive emergency treatment through community care."

One of the by-products of Emergency Medical Treatment and Labor Act (EMTALA) was the prudent layperson standard in response to a critical payer issue of the day—payment denials for the lack of prior authorization. To address the inconsistent application of the prudent layperson standard, DAV recommended the "emergency condition" be defined using EMTALA, with a minor amendment to include behavioral conditions, so that the definition of an emergency condition for VA purposes would be:

"A medical [or behavioral] condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the individual's health [or the health of an unborn child] in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of bodily organs. With respect to a pregnant woman who is having contractions that there is inadequate time to effect a safe transfer to another hospital before delivery, or that transfer may pose a threat to the health or safety of the woman or the unborn child."

Claims Processing and VA as Primary Payer

In addition, VA's processing of claims has been a significant weakness to the Department's community care programs resulting in costlier care, inappropriate billing of veterans and strained partnerships with community providers. Government Accountability Office reports throughout the years have consistently highlighted disturbing limitations in the Department's claims processing system as having unnecessary manual operations rather than automatically applying relevant information and criteria to determine whether claims are eligible for payment and notifying veterans and community providers about the results of the determination, payment, and appeal procedures.

Many veterans worry about claims that are not paid promptly or are left unpaid, and they are left in a difficult position of trying to get claims paid or be put into collections. These delays or denials create an environment where community providers are hesitant to partner with VA for fear they will not be paid for services provided. Hospitals and community providers have also expressed concern that prompt payment laws do not apply to care that is provided to veterans if they do not have a contract with VA. We have also heard complaints from veterans regarding section 101(e) of the current Choice program, which places on them greater fi-

² 38 U.S.C. §§ 1703, 1725 and 1728

nancial burden and emotional stress while trying to recover from injuries and illnesses. We believe the responsibility of the government as first-payer and prompt payer for care and services should be reaffirmed.

Thus, DAV supports the required claims processing system in Section 103 of S. 2646, which would apply the prompt payment act to all services under the new Veterans Choice Program, govern claims management and payments to providers under the Choice Program, and would set a firm date after which VA would not accept claims in other than electronic form. This section would mandate the establishment of an electronic interface to enable private providers to submit electronic claims as required by the section. To further strengthen this proposal, we recommend adding certain provisions in S. 2633 requiring VA be primarily responsible for payment of services, an eligible provider to submit claims to VA within 180 days of furnishing care or services and how paper claims will be treated in the interim. These factors are critical elements in high performing Veterans-Centered Integrated Health Care Networks.

III. Realign the provision and allocation of VA's resources so that they fully meet our national and sacred obligation to make whole those who have served.

We support the provisions in both S. 2633 and S. 2646 which would require the Administration to submit in its annual budget requests for advance appropriations for the Veterans Health Administration, Care in the Community program to begin in fiscal year 2017.

IV. Reform VA's culture to ensure that there is sufficient transparency and accountability to the veterans this system is intended to serve.

In line with our recommendation to maintain the financial and clinical reorganization under Section 106 of the Veterans Access, Choice, and Accountability Act of 2014 (Public Law 113–146; 38 U.S.C. 1701 note), we believe it is beneficial to require, rather than make discretionary, the transfer of funds and payment of services to the Chief Business Office of the Veterans Health Administration. This would help ensure transparency and accountability to a single entity when conducting oversight.

S. 2473, EXPRESS APPEALS ACT OF 2016

S. 2473, the Express Appeals Act of 2016, introduced by Senators Dan Sullivan (AK), Robert Casey (PA), Dean Heller (NV) and Jon Tester (MT) would establish a new pilot program to allow veterans to file “fully developed appeals” (FDA) which would receive expedited processing by the Veterans Benefits Administration (VBA) and the Board of Veterans Appeals (Board). An identical House bill (H.R. 800) was incorporated into an omnibus bill (H.R. 677) approved by the full House on February 9, 2016.

The FDA program was developed through a year-long collaborative effort among stakeholders that included DAV, VFW, The American Legion and other major veterans organizations, as well as leaders of both VBA and the Board. The FDA is modeled on the successful Fully Developed Claims (FDC) program in which veterans agree to undertake the development of private evidence necessary to substantiate their claims in exchange for expedited processing. Similarly, to participate in the FDA program, appellants would agree to develop and submit any private evidence necessary for the Board to make its decision, thus relieving both VBA and the Board of that development workload. The appellant would be required to submit all such new evidence, as well as any argument and other required certifications, at the time they submit their FDA.

In addition, the appellant would agree to an expedited process at VBA that eliminates the Statement of the Case (SOC), Form 9, any hearing before the VBA or the Board and the Form 8 certification process. The elimination of these processing steps alone could save some veterans up to 1,000 days or more waiting for their appeals to be transferred from VBA to the Board.

During stakeholder negotiations over the FDA it was agreed that the Board would retain its “duty to assist” in the development of any necessary Federal records. If new Federal records are obtained, or new exams or independent medical opinions ordered, the appellant would not only be given copies of all such evidence, but would have 90 days to review it and submit additional argument and evidence in response, including private evidence.

A key attribute of the FDA program is that it is a voluntary program with the appellant retaining the absolute right to withdraw from the FDA program and revert their appeal back to the standard appeal processing model at any time prior to disposition by the Board. Such a reversion would then allow the appellant to sub-

mit any additional evidence, have their appeal heard by a Decision Review Officer (DRO) or request a hearing by the Board.

In accordance with DAV Resolution No. 091 to improve the claims and appeals process, DAV strongly supports the creation of a “fully developed appeals” pilot program through enactment of H.R. 2473. This innovative and pragmatic legislation would alleviate workload at the Board and VBA, provide some veterans with a new option to expedite their appeals by up to 1,000 days, while fully protecting the due process rights of veterans so that they can receive all the benefits they have earned through their service. H.R. 2473 has broad and bipartisan support and we urge the Committee to approve important legislation to improve the appeals process.

DISCUSSION DRAFT ON TITLE 38, UNITED STATES CODE, APPOINTMENT, COMPENSATION, PERFORMANCE MANAGEMENT, AND ACCOUNTABILITY SYSTEM FOR SENIOR EXECUTIVE LEADERS IN THE DEPARTMENT OF VETERANS AFFAIRS.

Delegates to our most recent national convention passed two resolutions that may be relevant to this informal “discussion” proposal. DAV Resolution No. 126 calls for modernization of VA human resources management system to enable VA to compete for, recruit and retain the types and quality of VA employees needed to provide comprehensive health care services to sick and disabled veterans. DAV Resolution No. 214 calls for meaningful accountability measures, but with due process, for employees of the Department of Veterans Affairs—by requiring that any legislation changing the existing employment protections in VA must strike a balance between holding civil servants accountable for their performance, while maintaining VA as an employer of choice for the best and brightest.

The discussion draft would apply personnel laws for Senior Executive Service (SES) members now working under title 5, United States Code, which covers most civil servants, to title 38, which allows greater pay flexibility to provide more competitive wages. Hiring under title 38 would also give the Secretary more authority to expedite hiring. These are key issues when competing against other Federal agencies and the private sector for top talent. DAV supports the intent of these provisions.

However, there may be some issues when hiring individuals under title 38, which is generally reserved for personnel in health related fields, and applying those standards to those who would lead the Veterans Benefits Administration, National Cemetery Administration, and VA staff offices. In addition, while the proposed reform would allow expedited SES hiring, DAV asks the Committee to carefully consider whether the proposed executive compensation, which would still lag far behind that of chief executives in private sector health care, is nearly sufficient to offset the new risks being created by other parts of this proposal.

In the final analysis, these individuals would serve at the pleasure of the VA Secretary with little protection that is now available under current law to guarantee their status under title 5 to appropriately protect their due process rights and provide them retreat rights to lower-level assignments and to insulate them from politically motivated decisions—all hallmarks of the origins of the SES as envisioned in the Civil Service Reform Act of 1978. That act established the SES, the Merit Systems Protection Board, and created an array of procedures and requirements that govern the entirety of the SES program and many other aspects of Federal personnel law.

Mr. Chairman, DAV and our members urge serious reform of the VA health care system to address access problems while preserving the strengths of the system and its unique model of care. We appreciate this Committee’s hard work and are pleased that many of our recommendations have been incorporated into the measures under consideration today so that veterans will have more options to receive timely, high-quality care closer to home.

Thank you for inviting DAV to submit this testimony. We would be pleased to further discuss any of the issues raised by this statement, to provide the Committee additional views, or to respond to specific questions from you or other Members.

Chairman ISAKSON. Thanks to all three of you for your testimony and for your patience, and we appreciate your being here today and your input. Thank you for the input you give us on a daily basis as we deliberate.

Each one of you referred to the inclusion that either the Department or the Committee or both have done with your organizations as we develop many of these platforms and many of these changes

in the law for the Veterans Administration. We appreciate that acknowledgement, and we could not do it if not for your help.

Mr. Fuentes, let me ask you a question. You made a reference to Camp Lejeune and the eight presumptions the Secretary approved for coverage about a year ago or about 6 months ago, but you made a reference to you wanted them to be able to allow them to file claims and they were not allowed to file claims for another year. Is that correct?

Mr. FUENTES. That is correct, Mr. Chairman. I may be wrong, but I think it was a couple weeks ago that the Secretary decided to consider eight conditions as presumptive and being caused by the contaminated water in Camp Lejeune. What this does is it expedites or reduces the burden of proof that veterans have to present when applying for disability claims. However, because of the regulatory process, it is estimated to take about a year until veterans can actually start applying, which we feel is unacceptable.

Chairman ISAKSON. Mr. Secretary, I know you are in the audience and not testifying. But, can you address that for a second?

Secretary McDONALD. I can, Mr. Chairman. There is something called an interim—

Chairman ISAKSON. I got him on his knees already. That is a good sign. [Laughter.]

Secretary McDONALD. Mr. Chairman, I am always on my knees for you.

There is something called an interim final rule, and like we did with C-123 for Agent Orange, I would like to do an interim final rule so that veterans can apply as quickly as possible.

Mr. Fuentes is right. It does take a period of time to run these regulations and rules through the government structure, but if we do the interim final rule we can speed up that process, and that is what we want to do, obviously.

Chairman ISAKSON. Thank you very much.

Secretary McDONALD. Yes, sir.

Chairman ISAKSON. Each one of you made a positive reference, in particular Mr. Celli and Mr. Fuentes, to the accountability portion of what we are trying to do in the omnibus bill and made statements making sure that we did not have a negative effective on career Civil Service employees within the Veterans Administration. There is no intention of this Committee to have any negative impact on career civil servants of the Veterans Administration.

It is clearly our goal to see to it that there is a mechanism for the Secretary to, first of all, hire the professionals he needs to be able to run the Veterans Administration and perform the medical services within the Veterans Administration under Title 38, and that where in SES employees there is a problem the Secretary has the ability for discipline and the ability for future employment depending on the merits of the case that he determines, not determined by some third party.

There are a lot of people that always feel when you talk about firing somebody that it is something that just gives somebody a big thrill to say "I am going to go fire a few people today." That is not what we are looking for at all.

But, what we are looking for is an explanation, for which there is none to this moment, for some of the egregious things that have

happened over the last few years—prior to Secretary McDonald's service, I might add—because we end up dealing with these things 2 and 3 and 4 years after the time they take place.

I appreciate your testimony and your support for the accountability piece, which will be the linchpin that will allow us to do caregivers, will allow us to do West L.A., will allow us to do the fully expedited claims, will allow us to improve disability claims and improve the processing of those, which is exactly what we want to do.

I want to thank you for being here today and thank you for your testimony. The record will remain open for five days if you have any additional testimony you want to add or any additional things that need to be said.

We appreciate your service to the United States of America and your testimony today. God bless you and thank you.

[Whereupon, at approximately 4:02 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. STEVE DAINES, U.S. SENATOR FROM MONTANA

Chairman Isakson, Ranking member Blumenthal and Members of the Committee; Thank you for allowing me to submit testimony on the importance of the Veterans Choice Improvement Act of 2016, S. 2646, introduced last week by Senator Burr, myself, and five other Senators. Issues with the Choice Act are the top concerns I hear from veterans in my home state of Montana and I am extremely pleased to see that our legislation designed to fix it has been brought before the Committee today.

Our legislation seeks to improve the Choice Act passed in 2014 by creating one easy to understand program that allows veterans to get care outside the VA. It was clear that the redundant and bureaucratic layers of programs previously provided to our veterans was failing them, and failing local medical providers throughout the country.

In Montana, we started seeing providers pull out of the Choice Act because they were not being paid back. This created a chain reaction of more problems for veterans, who found themselves traveling past multiple qualified doctors to get to one that was accepting the VA's horrific track record of reimbursements. Furthermore, veterans started seeing their own credit history being impacted due to failed payments. By holding the VA accountable for reimbursements and setting strict time standards, our bill fixes this. S. 2646 ensures providers outside the VA want to enter into these partnerships and blocks them from the painful regulations that come with being labeled a Federal contractor.

Additionally, one of the key parts to the Veterans Choice Improvement Act is that it is the best suited for veterans in rural areas. Montana is home to one of the original pilot programs for veterans' healthcare in rural communities, the Access Received Closer to Home (ARCH) program—which is now incorporated and made permanent with S. 2646. ARCH works to find healthcare in small local communities for veterans, and is a program that could be negatively impacted if the VA is allowed to enter into the “tiered network.” A tiered network would restrict a veteran's ability to choose among providers, and is something our legislation strictly prohibits.

Ensuring veterans can get the best care possible, close to home and without delay is of the utmost importance as we see our servicemembers return home. In Montana, where we are home to the second most veterans per capita, it is a top priority. The Veterans Choice Improvement Act takes drastic steps to ensure our veterans are getting the top care possible, and I am proud to submit this testimony today in support of it.

PREPARED STATEMENT OF AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee, Thank you for the opportunity to present the views of the American Federation of Government Employees, AFL-CIO and its National Veterans Affairs Council (AFGE) regarding pending legislation. AFGE represents over nearly 700,000 Federal employees, including nearly 230,000 employees of the Department of Veterans Affairs. AFGE's representation of non-management, front line employees working in virtually every non-management VA position allows us to share a unique perspective with the Committee.

S. 2646

It appears that S. 2646 would immediately repeal the current pilot program established by Section 101 of the Veterans Choice, Access and Accountability Act of 2014

(Choice Act), and replace it with a permanent Veterans Choice Program. AFGE strongly believes that it is premature to establish a permanent Choice program at this time. AFGE urges the Committee to defer any action that would make what reports suggest is a flawed temporary program permanent less than halfway through its authorization period. Instead, Congress should conduct immediate oversight of the many serious problems that veterans are experiencing in trying to access non-VA care under the current pilot program.

Congress established the current Choice program as a temporary fix to what was perceived to be severe access problems. The current Choice program does not expire until the end of FY 2017. It is too early to determine whether the current pilot program has been a success or failure or whether its high price tag and adverse impact on VA's own capacity justifies its continuation.

The Choice Act also provided additional funding to address chronic staffing shortages. Since enactment of the Choice Act, the Department has made significant progress toward its goal of hiring more front-line clinicians and support personnel who provide veterans with the exemplary health care services that they rate highly and strongly prefer. In addition, five months ago, the VA rolled out its Congressionally-mandated plan to consolidate non-VA care programs, and Chairman Isakson called its implementation a top priority for 2016.

Veterans deserve great care and strong accountability from VA and non-VA providers alike. Therefore, we strongly recommend that the Committee take adequate time to address the many troubling reports regarding the Choice Act that have been made by veterans and the VA health care personnel trying to assist them. These include the pilot program's alleged failure to provide community clinics with consults containing diagnoses and physician instructions, or alert veterans that their evaluations have been scheduled, or notify the VA that a non-VA appointment has been made. This last item has resulted in many wasted in-house appointment slots.

Veterans have reported that they are being harassed by bill collectors in connection with Choice Act care. In addition, as a consequence of the Choice pilot program, veterans are facing longer waits for in-house VA care because the VA employees assisting them often have to spend hours on the phone trying to deal with HealthNet and TriWest. Similarly, short staffing at VA's own primary clinics has worsened because staff have to be diverted to the time-consuming Choice referral process.

OFCCP Jurisdiction: Section 201 of this bill would exclude VA-provider contracts from Office of Federal Contract Compliance Program (OFCCP) jurisdiction. AFGE strongly opposes the elimination of anti-discrimination protections for veterans and other covered employees who work for VA health care contractors.

OFCCP plays a critical role in protecting veterans who work for Federal contractors. This office enforces the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA) that requires Federal contractors to take steps to recruit, hire and promote protected veterans. Veterans protected under VEVRAA include: disabled veterans, veterans who served on active during a war, recently separated veterans, and veterans who received an Armed Forces service medal.

Many veterans transition from having been medics and corpsmen, saving lives on the battlefield, to civilian health care jobs. Those veterans who will work for contractors receiving millions and millions of VA dollars deserve to be protected against discrimination that may occur simply because of their veteran status. OFFCP ensures that veterans are protected throughout the employment process, including hiring, firing, pay, benefits, job assignments, promotions, layoffs, training and other employment related activities. OFFCP also enforces laws prohibiting discrimination on the basis of race, sex, disability and national origin.

How ironic it would be to enact a law that is specifically designed to protect veterans from job discrimination that would carve out the Department of Veterans Affairs' own health care agreements.

S. 2633

It appears that S. 2633 would establish a new Veterans Choice program after termination of the current pilot program. While AFGE supports bill provisions that would improve veterans' access to care, including authorization for tiered, integrated health care networks that enable veterans to make informed choices, we believe that establishing a new program at this time is premature. As already stated, veterans are experiencing serious problems accessing appropriate, timely care under the current pilot program. We urge the Committee to instead conduct extensive oversight during the remaining 18 months of the pilot in order to properly evaluate its strengths and weaknesses.

DISCUSSION DRAFT ON TITLE 38 APPOINTMENT, COMPENSATION, PERFORMANCE
MANAGEMENT, AND ACCOUNTABILITY FOR VA SENIOR EXECUTIVES

AFGE strongly opposes the Administration's proposal to move all VA senior executives (SES) from the Title 5 personnel system to the Title 38 personnel system. Title 5 provides adequate flexibility to provide market pay to senior executives under Title 5. Section 5377 of Title 5 authorizes agencies to increase SES pay up to Level I of the SES scale if a position "requires expertise of an extremely high level in a scientific, technical, professional, or administrative field" or "is critical to the Agency's successful accomplishment of an important mission."

Conversion of VA SES positions to Title 38 would result in the elimination of all rights to appeal to the Merit Systems Protection Board (MSPB). AFGE strongly opposes the reduction of MSPB rights or other due process rights for any VA employees. The Choice Act provided the Secretary with an expedited process for removing and disciplining SES personnel (that only allows the MSPB administrative judge to accept or reject the discipline imposed by the Department). Alternatively, the Secretary can still use the process provided by 5 U.S.C. 7543(b) that allows the MSPB to lower the penalty as appropriate instead of completely reinstating the SES employee if it finds that the penalty was too severe.

AFGE urges the Committee to reject further attempts to eliminate VA employee rights, and instead, enact management improvement provisions included in H.R. 2999.

LETTER FROM CLIFTON J. PORTER II, SENIOR VICE PRESIDENT OF GOVERNMENT
RELATIONS, AMERICAN HEALTH CARE ASSOCIATION (AHCA)



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Chairman Johnny Isakson
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Chairman Isakson:

I serve as the Senior Vice President of Government Relations at the American Health Care Association (AHCA), the nation's largest association of long term and post-acute care providers. The association advocates for quality care and services for the frail, elderly, and individuals with disabilities. Our members provide essential care to millions of individuals in more than 13,000 not for profit and for profit member facilities.

AHCA, its affiliates, and member providers advocate for the continuing vitality of the long term care provider community. We are committed to developing and advocating for public policies which balance economic and regulatory principles to support quality of care and quality of life. Therefore, I appreciate the opportunity today to submit a statement on behalf of AHCA for the hearing record in strong support of the Veterans Choice Improvement Act of 2016 (S. 2646), which would grant the U.S. Department of Veterans Affairs (VA) the legislative authority to enter into Provider Agreements for extended care services. Furthermore, and very importantly, it ensures that our centers are able to care for veterans in their communities. Our facilities already meet very strict compliance guidelines under the Medicare and Medicaid programs. Adding additional regulations on top of this is simply inefficient, redundant and takes staff time away from these veterans at the bedside.

As you know, the VA released a proposed rule, RIN 2900-A015, on Provider Agreements in February of 2013. This important rule, among other things, increases the opportunity for veterans to obtain non-VA extended care services from local providers that furnish vital and often life-sustaining medical services. This rule is an example of how government and the private sector can effectively work together for the benefit of veterans who depend on long term and post-acute care. Last Congress, close to half of the U.S. Senate chamber and 109 U.S. House members signed onto a letter to the VA encouraging the release of the final VA provider agreement rule. It was determined that the VA needs the legislative authority to enter into these agreements, which the Veterans Choice Improvement Act provides.

The American Health Care Association and National Center for Assisted Living (AHCA/NCAL) represent more than 12,000 non-profit and proprietary skilled nursing centers, assisted living communities, sub-acute centers and homes for individuals with intellectual and developmental disabilities. By delivering solutions for quality care, AHCA/NCAL aims to improve the lives of the millions of frail, elderly and individuals with disabilities who receive long term or post-acute care in our member facilities each day.

It is long-standing policy that Medicare (Parts A and B) or Medicaid providers are not considered to be federal contractors. However, if a provider currently has VA patients, they are considered to be a federal contractor and under the Service Contract Act. The Office of Federal Contracting Compliance Programs (OFCCP) has administered onerous reporting requirements and regulations, which have dissuaded long term care facilities from admitting VA patients. This limits the care available to veterans needing long term care in their local communities. Our veterans should not have to choose between obtaining the long term care services they need and remaining near loved ones in their community. Conversely, the same facilities contracting with the Centers for Medicare and Medicaid Services (CMS) are not subject to the OFCCP regulations. This legislation would make the VA requirements for providers the same as they are for CMS. It's also important to note that the Veterans Access, Choice and Accountability Act of 2014 waived the OFCCP federal contracting requirements. S. 2646 includes the same OFCCP exemption for VA provider agreements.

The use of Provider Agreements for extended care services would facilitate services from providers who are closer to veterans' homes and community support structures. Once providers can enter into Provider Agreements, the number of providers serving veterans will increase in most markets, expanding the options among veterans for nursing center care and home and community-based services.

AHCA endorses S. 2646, and applauds Senators Richard Burr (R-NC), Kelly Ayotte (R-NH), Steve Daines (R-MT), John Hoeven (R-ND), Thom Tillis (R-NC), John Boozman (R-AR) and Jerry Moran (R-KS) for introducing this important legislation that will ensure that those veterans who have served our nation so bravely have access to quality health care. Thank you again for the opportunity to comment on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Clifton J. Porter II", with a stylized flourish at the end.

Clifton J. Porter II
Senior Vice President of Government Relations

cc: The Honorable Richard Blumenthal



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For Immediate Release
March 9, 2016

Contact: AHCAPressOffice@ahca.org
(202) 898-3165

AHCA Commends Veterans Choice Improvement Act

Washington, D.C. — Clifton J. Porter II, Senior Vice President of Government Relations at the American Health Care Association (AHCA), made the following statement regarding S. 2646, the *Veterans Choice Improvement Act of 2016*, introduced by Senators Richard Burr (R-NC), Kelly Ayotte (R-NH), Steve Daines (R-MT), John Hoeven (R-ND), Thom Tillis (R-NC), John Boozman (R-AR) and Jerry Moran (R-KS).

“The American Health Care Association strongly supports the *Veterans Choice Improvement Act*. The legislation includes a provision that allows the VA to enter into provider agreements with local providers. Furthermore, it ensures that extended care providers are only subject to the same rules and regulations as Medicare and Medicaid providers.

“Currently, the Office of Federal Contracting Compliance Programs (OFCCP) has administered onerous reporting requirements and regulations, which have dissuaded long term care facilities from admitting VA patients. This limits the care available to veterans needing long term care in their local communities. Our veterans should not have to choose between obtaining the long term care services they need and remaining near loved ones in their community.

“Conversely, the same facilities contracting with the Centers for Medicare and Medicaid Services (CMS) are not subject to the OFCCP regulations. This legislation would make the VA requirements for providers the same as they are for CMS.”

AHCA will be providing written testimony for the Senate Committee on Veterans’ Affairs Hearing that will be discussing this legislation on March 15, 2016 at 2:30 PM.

-30-

PREPARED STATEMENT OF THE AMERICAN MEDICAL ASSOCIATION

S. 2646, VETERANS CHOICE IMPROVEMENT ACT OF 2016 AND
S. 2633, IMPROVING VETERANS ACCESS TO CARE IN THE COMMUNITY ACT

The American Medical Association (AMA) appreciates the opportunity to submit this statement for the record with regard to the Senate Committee on Veterans' Affairs' hearing today on draft legislation, S. 2646, the "Veterans Choice Improvement Act of 2016," which was introduced by Senators Burr, Tillis, Boozman, and Moran, and S. 2633, the "Improving Veterans Access to Care in the Community Act," which was introduced by Senators Tester, Blumenthal, and Brown. The AMA is strongly committed to helping Congress and the Department of Veterans Affairs (VA) ensure the comprehensive delivery of, and timely access to, primary and specialty health care for our Nation's veterans. The AMA was an early supporter of the Veterans Access, Choice, and Accountability Act of 2014 (VA Choice Act), which created the Veterans Choice Program (VCP), and we applaud the Committee's ongoing efforts to reform and improve our Nation's veterans' access to quality health care, as well as enhance the ability of non-VA physicians and other providers to deliver such care.

CONSOLIDATION OF PROGRAMS

We agree with the VA and the Committee that the VCP has not been working as intended, and we strongly support provisions in both S. 2646 and S. 2633 to consolidate the VCP and all existing community care programs into one streamlined program. While the VA has the legal authority to send veterans outside of the VA for care, there are multiple programs, contracts, laws, and regulations. We think that the poor response to the existing VCP has in part been due to confusion by veterans and physicians between the VCP and the other existing community care programs, such as the Patient-Centered Community Care (PC3) Program. Streamlining and consolidating the different programs would improve care by creating efficiencies and eliminating duplication and costs in administering the new VCP, especially with regard to billing, the reimbursement process, eligibility criteria, and clinical and administrative systems.

VETERANS' ACCESS TO SPECIALTY CARE

Veterans have had longstanding issues with access to specialty care outside VA facilities. The VA Choice Act, S. 2646, and S. 2633 include the same problematic provisions with respect to veterans' eligibility for specialty care—the requirement that the veteran must live more than 40 miles driving distance from a VA medical facility, including "community-based outpatient clinic." This has been interpreted by the VA in some instances as preventing a veteran from going to a facility or physician further away for specialty care, because a VA community-based outpatient clinic is within 40 miles, even if it does not provide the specialty care needed. While S. 2646 includes new language acknowledging that such facilities must have a full-time primary care physician, we recommend that the language also include a reference to necessary specialists.

AGREEMENTS/CONTRACTS WITH PROVIDERS

In order to be effective, the VA's partnerships with private physicians in the community need to be simple and easy to navigate for physicians. We believe that the most straightforward way to authorize care and services by non-VA physicians is through provider agreements, similar to those used in the Medicare program, as recognized by the provisions in the VA Choice Act that created the VCP. Section 101(d)(3) authorizes the VA Secretary to enter into an agreement with non-VA providers using the procedures, including those procedures related to reimbursement, available for entering into provider agreements under the Social Security Act.

It is also extremely important that, under such agreements, physicians and other providers are only subject to the same rules and regulations as Medicare and Medicaid providers. Generally, Federal contractors delivering supplies or services of \$10,000 or more to a Federal entity have affirmative action obligations as prime contractors pursuant to Executive Order 11246, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, and section 503 of the Rehabilitation Act of 1973. Each government contractor with 50 or more employees and \$50,000 or more in Federal contracts is required to develop a written affirmative action plan, which must be updated annually. In addition to complying with multiple layers of affirmative action regulations, Federal contractors must comply with and prepare for the prospect of audits conducted by the Office of Federal Contract Compliance Programs

(OFCCP). Medicare and Medicaid providers are not considered to be Federal contractors subject to these rules and procedures. Moreover, the VA Choice Act waived the OFCCP Federal contracting requirements for physicians and other providers entering into contracts and agreements to provide care and services, and we believe that any legislation to improve the VA Choice Program should do so as well. Without such protection, physicians in small private practices could be discouraged from entering into agreements to care for veterans. Accordingly, we support the provision in S. 2646 providing that any contract entered into with non-VA providers for the care of veterans “may not be treated as a Federal contract for the acquisition of goods or services and is not subject to any provision of law governing Federal contracts for the acquisition of goods or services” (Section 101(d)(1)(C)).

BILLING AND REIMBURSEMENT

With respect to reforming the VCP’s billing and reimbursement processes, we generally support the provisions in S. 2646, except as noted below. According to the VA, “The current VA claims infrastructure and claims process are complex and inefficient due to highly manual procedures, and VA lacks a centralized data repository to support auto adjudication” (U.S. Department of Veterans Affairs, Plan to Consolidate Programs of Department of Veterans Affairs to Improve Access to Care,” October 30, 2015, at page 49). The VA has more than 70 centers processing claims across 30 different claims systems, and limited automation with paper-based processes that result in late and incorrect payments. Improving the VA’s reimbursement processes would alleviate some of the complaints that physicians and other providers have had tied to the VCP, e.g., administrative hassles and delays in payment. Some of these problems have arisen with Health Net, one of the VCP managers, particularly with respect to billing and reimbursement delays in the New England region. Moving toward auto-adjudication and away from requiring medical records for reimbursement—a current VA requirement—should help to improve claims processing accuracy and predictability and allow claims to be paid promptly, thereby providing an incentive for physicians to join and remain in the provider network.

We appreciate that both S. 2646 and S. 2633 include provisions requiring prompt processing and payment of claims. While we prefer the timeframes for processing and payment of claims in S. 2646, which are shorter than in S. 2633, we would note that with respect to clean claims submitted electronically, it should not take 30 days to reimburse a physician. Accordingly, we urge that this provision be changed to 14 days. Further, clean paper claims should be paid within 30 days.

In addition, while the AMA encourages the use of electronic claims, we do not support mandates on physicians or timetables for submitting all claims with no exceptions, and therefore we cannot support section 103(b) of S. 2646. We note that although most Medicare claims are electronically submitted, there are certain exceptions allowed under Medicare, such as for claims from small providers (e.g., defined as providers with less than 25 full-time equivalent employees (FTEs) that are required to bill a Medicare intermediary, or physicians with fewer than 10 FTEs that are required to bill a Medicare Administrative Contractor), and for claims from providers that submit fewer than 10 claims per month on average during a calendar year. Accordingly, we urge that the mandate provision in S. 2646 be deleted; at the very least, exceptions similar to those recognized by Medicare for small providers should be considered.

Both S. 2646 and S. 2633 would standardize provider reimbursement rates to Medicare rates. While we think that this is moving in the right direction in terms of basing payment to providers on Medicare rates, the AMA supports the Medicare rate as a floor, not a ceiling, especially in areas where there are significant needs for service and limited available specialists. We appreciate that S. 2646 allows some regional variation, for veterans in highly rural areas, in Alaska, and in a state with an all-payer model agreement, but would urge more flexibility be allowed where needed, recognizing the varying expense of clinical practice in different geographic regions of the country.

TIERED NETWORKS

We are very concerned with the language allowing tiered networks in S. 2633, and therefore support the language in S. 2646 banning such networks for veterans receiving care from non-VA physicians. In its proposal for reform of the VCP, the VA indicated that they intended to provide veterans access to a tiered, “high-performing network,” which would reward providers for delivering “high-quality care” while promoting veteran choice and access. The VA indicated that it would apply industry-leading health plan practices for the tiered network design and that providers in the Preferred tier, versus the Standard tier, must “demonstrate high-value care” in

order to be considered in the Preferred tier and to receive higher payment. It is unclear, however, how “high-value care” would be determined or demonstrated. Given some of the access issues that have arisen with the narrow networks offered in the exchanges under the Affordable Care Act and outside the exchanges, we believe that both the VA and the Committee need to proceed carefully in moving toward tiered networks. We are concerned that any tiering or narrowing of the networks in a reformed VCP will further exacerbate or create access problems. This is already occurring in certain states, in exchange plans and Medicare Advantage plans, with patients unable to find physicians in the top tiers in their areas or able to receive necessary specialized services because the tiering is specialty and not service or subspecialty specific. With many veterans requiring specialized services, such as mental and behavioral health care and orthopedics, which are already very limited in many places throughout the country, further tiering seems incompatible and actually in conflict with the direction of a reformed VCP program to provide greater and faster access to specialty care services in the community. Narrowing or tiering will do little to demonstrate confidence in the program and could deter participation by physicians in the community. If a prime goal of reforming the VCP is to increase participation and encourage “high-value” or “high-quality” physicians to participate in the program, this tiering will likely have the opposite effect.

USING VALUE-BASED REIMBURSEMENT MODELS

We are strongly opposed to any use of a value-based payment model (VBM) “to promote the quality of care,” as S. 2633 proposes for incorporation into agreements to provide care by non-VA providers. The VBM is currently incapable of accurately and equitably measuring and comparing the cost and quality of services provided by physicians. A number of the cost and outcome measures that are being used were created for hospitals and are inappropriate for use in physicians’ offices with smaller and less heterogeneous patient populations. Several reports done for the Centers for Medicare & Medicaid Services suggest that practices with the sickest patients fare poorly under the VBM. There are problems with many aspects of the methodology, including risk adjustment attribution and communication of rules and results to physicians. We believe that more analysis and evaluation of the VBM and its underlying physician feedback reports is needed, and oppose its extension to other programs, such as the VCP.

CONCLUSION

The AMA, on behalf of our physician and medical student members, is committed to helping ensure that our Nation’s veterans receive comprehensive, timely, high-quality care. We applaud the Committee for its dedication to our Nation’s veterans, and look forward to working with you to advance proposals to improve the Veterans Care Program and the care delivery experience for our veterans.

LETTER FROM NATIONAL ASSOCIATION OF STATE DIRECTORS OF VETERANS AFFAIRS



March 14, 2016

The Honorable Johnny Isakson
Chairman
The United States Senate Committee on Veterans' Affairs
Russell Senate Building, Room 412
Washington, D.C. 20510-6050

RE: VA Appeals Modernization/Reform Hearing -- March 15, 2016

Dear Chairman Isakson:

On behalf of the National Association of State Directors of Veterans Affairs (NASDVA), we respectfully submit and request the following text be included in the official record in support testimony to be delivered by VA Secretary Robert McDonald on March 15, 2016 (RE: Appeals):

The current appeals process is failing our Veterans with an inventory of almost 450,000 appeals and at current rates, with no change in process, it is projected the inventory could grow to over two (2) million appeals over the next decade. NASDVA strongly advocates reforming the VA administrative appeals process to streamline Veterans Benefit Administration (VBA) appeal procedures and decisions to allow for seamless transition to and enable decisions in the Board of Veterans Appeals (BVA). By placing significant focus on the process within VBA (Regional Offices) prior to appeals being sent to BVA, due diligence and due process (in favor of the veteran) can be maintained while creating an environment where appeals requiring VBA or BVA adjudication can be decided on the merits of the original claim; in a timely manner. In addition, before transforming to a streamlined appeal process which is more efficient and less costly for taxpayers, VA will require (and NASDVA supports) a short-term funding increase to be able to resolve the inventory of appeals that are pending in the current system. As the "front line" providers of veterans' claims service and representation, NASDVA is ideally positioned to work with VBA and BVA to assist in reforming and transforming the appeals process. NASDVA has been and continues to work with VA and Veterans Service Organizations to improve the appeals process for our veterans. We are committed to continuing our work on this important issue and helping effect meaningful and lasting change.

Thank you for the important work of The Senate Committee on Veterans' Affairs and for the continued support of our Nation's Veterans. I am

Sincerely,

Randy Reeves
Senior Vice President

President	Senior Vice President	Junior Vice President	Executive Director
David Brasuell, Idaho	Randy Reeves, Mississippi	Verdie Bowen, Alaska	Les Beavers, Kentucky

NASDVA, Inc., 107 S. West Street, #570, Alexandria, VA 22314

PREPARED STATEMENT OF NURSES ORGANIZATION OF VETERANS AFFAIRS (NOVA)



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March 14, 2016

The Honorable Johnny Isakson
Chairman
Senate Committee on Veterans' Affairs
412 Russell Senate Office Building
Washington D.C., 20510

Dear Chairman Isakson:

On behalf of the nearly 3,000 members of the Nurses Organization of Veterans Affairs (NOVA), we would like to offer our thoughts regarding the bills - S. 2646, Veterans Choice Improvement Act of 2016, and S. 2633, Improving Access to Care in the Community Act - before your Committee today.

NOVA believes that making Choice permanent at this time would be a mistake and that further review and oversight of the many issues occurring in the field is needed. We also believe that the veteran should be at the forefront as you consider all forms of non-VA/fee-based care.

Many of our members have called attention to the Choice Program and the myriad of problems that remain a part of its implementation. Confusion as to who is eligible, prolonged wait periods to even speak to a staff member to schedule an appointment, multiple referrals being made in the wrong specialty, and the time it takes to review requests for critically ill patients are just some of the concerns voiced by our members. The contractors must be held accountable and measures put in place for performance and timeliness of care and services.

NOVA nurses have spoken of being on the phone for hours trying to help veterans who have been denied a service or are being turned over to bill collectors because providers have not been paid. Authorizations and consults being returned or not scheduled for no reason leads to processing the veteran for said authorization all over again.

These are just a few examples of a program that may have been intended to fill gaps in service, but has in fact provided much more uncertainty for veterans seeking care at VA. We believe that Congress must focus its efforts on evaluating the program before moving forward. A thoughtful process involving all stakeholders must be done to close the gaps in service and realign care so that veterans are provided the services they have so richly earned.

Sincerely,

Sharon Johnson, MSN, RN-BC, President
Nurses Organization of Veterans Affairs (NOVA)

PREPARED STATEMENT OF MR. KERRY METOXEN, MANAGER,
ONEIDA NATION VETERANS DEPARTMENT

The Oneida Nation Veterans Dept. fully endorses an initiative to simplify the Appeals Process and supports VA's efforts to reform the Appeals Process to one that will better serve Veterans and tax payers. The current process is more than 80 years old and was implemented after WWI. Each appeal takes approximately 3-5 years to complete.

The current process is failing Veterans, tax payers, and the American public.

PREPARED STATEMENT OF MAX STIER, PRESIDENT AND CEO,
PARTNERSHIP FOR PUBLIC SERVICE

Chairman Isakson, Ranking Member Blumenthal, members of the Senate Committee on Veterans' Affairs, thank you for the opportunity to share the Partnership for Public Service's views on the proposal of the Secretary of Veterans Affairs to establish a comprehensive employment system under Title 38 for VA's Senior Executive level leadership positions. The Partnership is a nonpartisan, nonprofit organization that works to revitalize our federal government by helping it attract mission-critical talent, engage employees, modernize its management systems, build coalitions of support for a high-performing and accountable government, and develop effective leaders.

Partnership's Commitment to Effective Leadership

The Partnership places special emphasis on developing strong leaders who are prepared to deliver results by building effective teams, driving innovation and working across boundaries. Leadership is the most important factor influencing federal employee satisfaction, commitment, and, ultimately, government performance. This is borne out by the *Best Places to Work in the Federal Government Rankings*, published by the Partnership for Public Service and Deloitte, which year after year find that effective leadership is the single biggest driver of employee satisfaction with, and commitment to, their organizations. It is as simple as this: agencies with good leaders perform better than agencies that struggle with leadership.

Through our leadership development programs, executive onboarding, coaching, thought leadership and advocacy, the Partnership works to ensure our government has a strong executive corps that is prepared to lead. The Partnership is currently engaged in a new research effort with McKinsey and Company to identify agency best practices with respect to attracting, developing and retaining high-performing senior executives. The report, to be released later this spring, will also determine how agencies are measuring the success of those activities. We hope this work will inform and support government-wide efforts to strengthen senior leadership, including the implementation of the President's Executive Order on Strengthening the Senior Executive Service issued last December.

VA Senior Executive Corps Faces Major Challenges

The Partnership is committed to an efficient, effective, engaged and accountable senior executive corps, government-wide and at the VA. But the Department's senior executives face major headwinds. The 2015 *Best Places to Work in the Federal Government Rankings*, based on data from the Office of Personnel Management's *Federal Employee Viewpoint Survey* (FEVS), finds that VA's executives rank last among large agencies in overall satisfaction (18 out of 18), and their satisfaction score dropped 7.6 points from 2014.¹ An analysis of the FEVS finds that, while nearly 95% of VA senior executives believe the work they do is important, and two-thirds would recommend their agency as a good place to work, barely a third believe they have sufficient resources to do their job (34.6%) and fewer than half believe they have a reasonable workload (42.7%). Perhaps most troubling is the fact that just 42.5% of VA executives believe that the results of the FEVS will be used to make the agency a better place to work – a worrying result that suggests a possible lack of confidence in leaders' responsiveness to employee concerns. The Department ranks second-to-last in the workplace category of Effective Leadership, which measures the extent to which employees believe leadership at all levels of the organization generates motivation and

¹ "Department of Veterans Affairs." *Best Places to Work in the Federal Government*. Partnership for Public Service, 15 Dec. 2015. Web. 10 Mar. 2016.

commitment, encourages integrity and manages people fairly, while also promoting the professional development, creativity and empowerment of employees.

Data released by VA and others, as well as anecdotal evidence, seem to indicate that low and declining satisfaction among the Department's senior executives is having a real and measurable impact on the ability of the Department to bring in the executive-level talent that it needs to achieve its mission. The Secretary's proposal cites figures showing that nearly 30% of VA's SES allocations are unfilled, while almost 70% of VA's current executives are currently or within one year of being retirement eligible.² The Department has also seen a drastic decline in applications for executive management positions over the last year, and has had to repost several SES positions multiple times due to lack of quality candidates. Exacerbating this problem is the significant pay gap between senior executives in some of VA's most important and high-profile positions, such as hospital administration, and their private sector counterparts.

VA's Proposal to Establish a Comprehensive Employment System Under Title 38 for Senior Executive positions: Partnership View

The Secretary has offered a comprehensive and transformative set of ideas for reforming VA's leadership, including a proposal to establish a new personnel system for senior executives under Title 38. We commend the Committee for making a serious effort to critically examine the proposals offered by the Department, and we offer the Partnership's perspectives below.

Market-Sensitive Compensation is a Good Step Forward

We agree with the Secretary's assessment that federal sector pay is "dramatically below what the private sector offers for comparable positions."³ The Partnership's 2014 report with Booz Allen Hamilton, *Building the Enterprise: A New Civil Service Framework*, noted that federal pay "undermines the ability of the government to attract and retain high-quality, white-collar talent because it treats the workforce as a unified mass, and it bears little relationship to the compensation rates paid for similar work in the broader labor market."⁴ Data from the Partnership's analysis of the OPM *Federal Employee Viewpoint Survey* reinforce this idea: just 43.3% of Veterans Health Administration senior executives report that they are satisfied with their pay. Across the Department, a small majority (54.2%) are satisfied, though the number climbs significantly at the Veterans Benefits Administration (81%). Understanding how the labor market values jobs, internally within an organization and across the market, is an accepted best practice and the way in which virtually every private sector entity sets compensation. The federal government's decades-old General Schedule system reflects a time when federal employees did not perform the complex and highly specialized range of jobs that they do today.

In our view, the proposal's expansion of market pay to skilled and highly sought-after executives, particularly those in the Veterans Health Administration, who serve in the majority of VA's executive positions, is necessary to attract and retain the talent needed to make VA's transformation successful. Yet many senior executives also serve in critical mission support

² United States of America. Department of Veterans Affairs. *Title 38 Appointment, Compensation, Performance Management, and Accountability System for Senior Executive Leaders in the Department of Veterans Affairs (VA)*. Washington, D.C., 2016. Page 2.

³ Ibid. 3.

⁴ *Building the Enterprise: A New Civil Service Framework*. Rep. Washington, D.C.: Partnership for Public Service and Booz Allen Hamilton, 2014. Print.

functions like human resources, information technology, and financial management. Thus, it is important that any compensation proposal account for the impact it will have on all executives of the Department.

The new compensation system as currently proposed will add an additional pay band, classified as “1A”, with higher compensation than in the current system. This bears a resemblance to the fourth-tier SES proposed in *Building the Enterprise*, in which executives at the top of the band are expected to perform as government’s most expert problem-solvers who deploy as needed to address difficult challenges across government. We appreciate VA’s recognition of the need to more generously compensate those executives engaged in what the Secretary’s proposal describes as “the most complex executive leadership roles.”⁵ We believe that this aspect of the proposal will serve the Department’s executive recruitment and retention efforts well and, if implemented properly, could serve as a model for the rest of government.

It will be important, however, to thoughtfully consider how market-based compensation will be implemented. A thorough market examination may find that some employees are paid above-market. In our *Building the Enterprise* report, we recommended that when introducing market-based compensation, those individuals who are paid at above-market rates should not lose pay, but should have their pay frozen until it reaches the market level. Another option for the Committee to consider would be phasing in the proposal in such a way as to grandfather in current employees and applying market compensation to future hires.

VA Should Be Able To Determine Executive Qualifications with Proper Oversight

Under Secretary McDonald’s proposal, the VA Secretary would have much greater flexibility to determine the qualifications required for an executive leadership position and would be able to appoint senior executives without needing Office of Personnel Management (OPM) certification. The Partnership’s *Building the Enterprise* report recommended that OPM delegate to agencies the authority to certify their own executives, rather than going through the Qualifications Review Board (QRB) process. While the QRB can add value by ensuring that new executives are evaluated as government-wide assets and that there is a meaningful check on agencies, it can also increase the time to hire. Ultimately, we believe that agencies like VA know the talent and specialized skills they need (e.g., hospital administration) and are best positioned to make a hiring decision. The Partnership believes that this authority, combined with a periodic OPM audit and oversight, can offer the VA a way to bring in executive talent more quickly.

One aspect of this proposal which will require significant attention from both the Department and the Committee is the authority to transfer executives to other agencies. VA will set its own qualification standards, and department executives will be operating under a different system than their peers across government. This could make it more difficult for executives to move in and out of VA which is counter to the original vision of the SES as a mobile corps of leaders. While the Secretary’s proposal notes that the Department would enter into an interchange agreement with OPM “to allow certified permanent career VA senior executives to transfer to career SES appointments in other Federal agencies on the same basis as permanent career Senior Executives

⁵ United States of America. Department of Veterans Affairs. *Title 38 Appointment, Compensation, Performance Management, and Accountability System for Senior Executive Leaders in the Department of Veterans Affairs (VA)*. Washington, D.C., 2016. Page 6.

appointed under Title 5 authorities,”⁶ we urge the Committee to give its sustained attention to the negotiation and execution of any such agreement, should the proposal move forward.

Committee Should Consider Alternate Approaches to Increasing Accountability

Accountability is not just the structure of the discipline and appeals process; effective performance management and strong, empowered leaders are both critical. As I noted in my statement before this Committee last September, “[r]ather than simply finding ways to fire federal employees faster, the focus of legislative reform must be on how we can serve our veterans better.”⁷

The Partnership has been pleased to work with this Committee, as well as your counterparts in the House, to develop ideas to improve the quality of performance management and leadership at VA. For example, this Committee has already acted in a bipartisan manner in reporting S.290, the *Increasing the Department of Veterans Affairs Accountability to Veterans Act of 2015*, which, among other provisions, would hold VA senior leaders accountable for engaging and motivating employees, and would hold managers accountable for dealing with poor performers. This legislation also strengthens the probationary period to ensure that it is being used as a continuation of the hiring and assessment process; by requiring managers to make an affirmative decision to keep an individual on the job past the conclusion of their probationary period, the legislation helps ensure that poor performers will not be converted to permanent employment. These changes would not only lead to a more accountable Department, but would actually serve veterans better by removing poor performers before they have a chance to do harm.

With respect to the disciplinary process, Secretary McDonald's proposal indicates a belief that current authorities relating to senior executive accountability under Title 5 are not consistent with the Department's ability to achieve its mission. To quote the Secretary, “True accountability is challenged when the available authorities require unduly lengthy pre- or post-decisional procedures, or when third party appellate processes rely too heavily on unsuitable precedent... extending the Title 38 disciplinary and appellate procedures to VA's career executives would strike a better balance between executives' due process rights and the Secretary's need to effectively manage his executive workforce.”⁸

The Partnership does not agree that the current Merit Systems Protection Board (MSPB) appellate process is inconsistent with the Department's ability to hold executives accountable. The MSPB, which adjudicates appeals for federal employees under Title 5, actually upholds agency decisions more often than not. Seventy-eight percent of appeals from across government made to MSPB in 2014 upheld the agency's original decision or action.⁹ In 2015, the corresponding percentage was 80%.¹⁰

⁶ *Ibid.* 1.

⁷ Written Statement of Max Stier, President and CEO, Partnership for Public Service: Hearing on Pending Legislation, 114th Cong., 5 (2015) (testimony of Max Stier). Print.

⁸ *Ibid.* 4.

⁹ Yoder, Eric. “Agencies Strike Out Too Much on Employee Appeals? Any Ballplayer Would Love Management's Batting Average.” *Washington Post*. 18 Feb. 2016. Web. 10 Mar. 2016.

¹⁰ United States of America. Merit Systems Protection Board. *Annual Report for FY 2015*. Washington, D.C.: Merit Systems Protection Board, 2016. Print. Page. 20.

There are good reasons why recent decisions issued by the Merit Systems Protection Board have not gone the Department's way. As the Board itself has noted, the Veterans Access, Choice, and Accountability Act of 2014, which created the expedited appeals process for senior executives at the Department of Veterans Affairs, did not change the standard of proof or evidentiary requirements for an administrative judge to make a decision. The authority created by the Act also does not allow the judge reviewing the case to mitigate penalties. In the case of Linda Weiss, who the VA fired due to what it considered to be a failure to perform the duties of her position in dealing with a problem employee, Administrative Judge Arthur Joseph upheld the bulk of the Department's charges but found that the penalty was "unreasonable under the circumstances" and that "the newly enacted legislation [the Choice Act] under which the Board exercises jurisdiction over this appeal narrowly circumscribes the Board's authority regarding review of the agency's penalty." Judge Arthur continues, saying that "mitigation of the penalty by the administrative judge is not authorized."¹¹

Before considering such a significant change to the Department's workforce, we encourage the Committee to work with your Senate colleagues to pass the thoughtful and comprehensive legislation reported in December, and provide the oversight necessary to ensure that the Department is using its existing performance management tools effectively. We further encourage the Committee to look at ways to refine the Choice Act to give greater flexibility to Administrative Judges in administering adverse actions, for example by authorizing judges to mitigate penalties, or by allowing appeals to be brought before the full Merit Systems Protection Board for adjudication. This second refinement of the Choice Act would provide an additional layer of oversight for executives and could be established with a set amount of time available for review to ensure an efficient process. These reforms would actually enhance accountability at the Department by upholding disciplinary actions against an employee even in cases where the agency may have acted too harshly, or not harshly enough, and by ensuring that VA managers and supervisors are trained and empowered to take action against poorly performing employees.

Rigorous Evaluation Processes are Critical

The scandal that erupted within the Phoenix VA Health Care System in April 2014 brought to light serious wrongdoing and troubling practices within certain Veterans Health Administration facilities, and demanded a response from Congress. That response, the Veterans Access, Choice, and Accountability Act of 2014, made significant reforms to how VHA staffs and provides care at its hundreds of facilities. It also made major changes in the authorities of VA to discipline its executives.

It is critically important that in considering further changes to the disciplinary process, the Committee takes care that reforms are made with serious deliberation and recognition of their potential impact. As I have noted above, the authorities provided by the Choice Act, meant to improve the Department's ability to hold its executives accountable for wrongdoing, has not been able to deliver the results originally hoped, namely a better-managed and more engaged VA, and match Congress' intent.

¹¹ Linda Weiss v. Department of Veterans Affairs. 29. Merit Systems Protection Board New York Field Office. 16 Feb. 2016. Print. Page 21.

Should the Committee and VA decide to move forward with legislation implementing the Secretary's proposal being discussed today, I strongly urge the addition of a rigorous and comprehensive evaluation component. Congress, the department, our veterans and the public need the means to assess whether the personnel system designed by VA is leading to meaningful transformation and the talented, professional and engaged workforce necessary to serve our veterans at the highest level of quality and service. While there are dozens of critical questions that the Committee should be asking before, during and after implementation of this proposal, the three stated below will be most critical to evaluating its effectiveness:

- Is VA successful in recruiting, hiring and retaining top quality senior executives with the unique skills necessary to accomplish its mission?
- Are VA executives satisfied with and engaged in their work?
- Are VA executives successful in meeting the agencies objectives, and is the Department successful in achieving its mission?

If requested, we would be pleased to share with this Committee suggested legislative language for an evaluation component.

Conclusion

Effective leadership is at the core of the Partnership's mission, and we welcome the dialogue on how best to position VA's executives to meet their complex and critically important mission. The Secretary's proposal to move the Department's executives to a personnel system under Title 38 offers what we believe are meaningful benefits, notably more market-sensitive pay and greater flexibility in hiring and certifying executives. However, we are troubled by the proposed change to take the Department's executives out of the jurisdiction of the Title 5 disciplinary system, which includes review of appeals by the independent Merit Systems Protection Board. We believe there are intermediate steps, from reforming the Veterans Access, Choice, and Accountability Act authorities to legislative proposals already in motion to strengthen performance management tools, which can address the challenges cited by the Secretary in completing the Department's transformation. We urge the Committee to examine this proposal with the utmost care, and act with caution when considering major changes to the structure of the Department's workforce. Building a Department of Veterans Affairs that serves veterans with the care and respect they have earned will require engaged, accountable and high-performing executives who are fully invested in the Department's transformation. The Committee should proceed with this as its foremost goal.

Thank you for the opportunity to submit this statement for the record. I look forward to continuing to work with the Committee on this and other matters impacting the workforce of the Department.

PREPARED STATEMENT OF PARALYZED VETERANS OF AMERICA

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to submit our views on legislation pending before the Committee. The magnitude of the impact that veterans health care reform will have on present and future generations of veterans cannot be overstated, and we are proud to be part of this important discussion.

S. 2633, THE IMPROVING VETERANS ACCESS TO CARE IN THE COMMUNITY ACT, AND
S. 2646, THE VETERANS CHOICE IMPROVEMENT ACT OF 2015

PVA's historical experience and extensive interaction with veterans around the country leads us to confidently conclude that veterans prefer to receive their care from the Department of Veterans Affairs (VA). We recognize, however, that while for most enrolled veterans VA remains the best and preferred option, VA cannot provide all services in all locations at all times. Care in the community must remain a viable option. As VA seeks to take the next major step in improving access to quality care for veterans, we appreciate the Committee's significant efforts in this matter and the Senators for sponsoring the legislation being considered during today's hearing. Both bills provide thoughtful approaches to incorporating community care and other health care resources in a consolidated and effective manner.

As we consider legislation designed to reform VA health care, it is important to recognize that VA's specialized services, particularly spinal cord injury care, cannot be adequately duplicated in the private sector. Many advocates for greater access to care in the community also minimize, or ignore altogether, the devastating impact that pushing more veterans into the community would have on the larger VA health care system, and by extension the specialized health services that rely upon the larger system. Broad expansion of community care could lead to a significant decline in the critical mass of patients needed to keep all services viable. We cannot emphasize enough that all tertiary care services are critical to the broader specialized care programs provided to veterans. If these services decline, then specialized care is also diminished. The bottom line is that the SCI system of care, and the other specialized services in VA, do not operate in a vacuum. Veterans with catastrophic disabilities rely almost exclusively upon the VA's specialized services, as well as the wide array of tertiary care services provided at VA medical centers.

Specialized services, such as spinal cord injury care, are part of the core mission and responsibility of the VA. As the VA continues the trend toward greater utilization of community care, Congress and the Administration must be cognizant of the impact those decisions will have on veterans who need the VA the most.

PVA, along with our Independent Budget (IB) partners, Disabled American Veterans (DAV) and Veterans of Foreign Wars (VFW), developed and previously presented to this Committee a framework for VA health care reform. It includes a comprehensive set of policy ideas that will make an immediate impact on the delivery of care, while laying out a long-term vision for a sustainable, high-quality, veteran-centered health care system. Our framework stands on four pillars: 1) restructuring the veterans health care system; 2) redesigning the systems and procedures that facilitate access to health care; 3) realigning the provision and allocation of VA's resources to reflect the mission; and 4) reforming VA's culture with workforce innovations and real accountability. With this perspective, we offer our views on specific aspects of both S. 2633 and S. 2646, as well as the discussion draft legislation that would reform the Senior Executive Service (SES).

1. Restructuring the system in a way that establishes integrated health care networks designed to leverage the capabilities and strengths of existing local resources in order to provide more efficient, higher quality and better coordinated care.

PVA strongly supports the concept of developing high-performing networks that would seamlessly combine the capabilities of the VA health care system with both public and private health care providers in the community. The network structure proposed in S. 2633 is best suited to setting VA up for success in achieving this goal.

By encouraging VA to develop a tiered network of eligible providers, the focus remains on providing not only increased access and choice, but the quality of care veterans earned and deserve. High-quality health care for veterans requires more than expanding options. Establishing a tiered network where VA is able to capture and synthesize information related to specific providers enables veterans to make informed decisions related to their care. This ultimately leads to better results. Consistent with this idea, a specific provision in S. 2646 alleviates situations where the "best option," as indicated in VA's tiered network, might not be the best fit for the veteran due to his or her particular circumstances. The proposed language prevents VA from requiring a veteran to receive care or services from an entity in a higher tier than any other entity or provider network. We recommend this provision be incorporated in the final legislation this Committee passes.

A tiered system also permits VA to identify culturally competent community providers who understand the unique needs of the veterans they serve. VA academic affiliates and the corresponding workforce training programs have long provided clinicians their first extensive exposure to the unique needs of the veteran patient community. As integrated networks are developed, it is important to recognize the value of having primary care providers in the community who have passed through the VA academic affiliate programs. It also gives VA a baseline for identifying community health care providers who have at least some level of cultural competency. Despite these long-standing partnerships, academic affiliates are conspicuously absent from the explicit list of eligible providers in S. 2646.

Critical to such a restructuring is the ability to bring community care providers into the fold. S. 2633 and S. 2646 each address VA's request for authority to enter into non-Federal acquisition regulation (FAR) provider agreements. The current requirement that providers enter into agreements with VA governed by the FAR System have suffocated VA's attempts to expand access to care in a timely manner. Smaller health care provider organizations otherwise disposed to serve the veteran population are especially resistant to engaging in the laborious FAR process. And yet they remain a critical piece to filling the gaps in health care services in certain

areas. PVA is concerned, however, that the implied directive in S. 2646 is for VA to exhaust FAR based acquisitions before turning to “Veterans Care Agreements.” To facilitate the efficient development of high-performing networks, we support the unambiguous language in S. 2633 which permits VA to utilize such agreements as it sees fit.

II. Redesigning the systems and procedures that facilitate access to care in a way that provides informed and meaningful choices.

PVA firmly believes that eligibility and access to care should be a clinically based decision made between a veteran and his or her doctor or health care professional. Once the clinical parameters are determined, veterans should be able to choose among the options developed within the high-performing network and schedule appointments that are most convenient for them. Access decisions dictated by arbitrary wait times and geographic distances have no comparable industry practices in the private sector. While both pieces of legislation contain the current 30-day wait time and 40-mile distance eligibility standards for care in the community, we highlight a subtle, but significant, shift in S. 2633’s proposal to use the veteran’s residence as the center of origin as opposed to the nearest VA facility. S. 2646 offers another enhancement by ensuring that any follow-up care, including specialty and ancillary services deemed necessary as part of the original treatment, is conducted by the same provider and considered one episode of care. This ensures that veterans are not shuttled back and forth between different providers, including VA, for ancillary services based on piece-meal eligibility determinations conducted on the basis of separate episodes of care.

Effective care coordination is essential to producing high-value health care outcomes for veterans served by the proposed high-performing networks. Both bills propose measures aimed at streamlining the authorization process, payments to providers and the exchange of medical records. Modernizing these processes through automation and improved technology features will relieve stress on the current system and the veterans who fall victim to the financial distress inadvertently caused by lapses in the authorization and/or payment processes.

Rather than employing the current Non-VA Care Coordination Program as proposed in S. 2646, VA should be permitted to modernize its care coordination efforts. VA’s Choice Consolidation Plan spells out levels of care coordination administered based on the intensity of coordination needed. VA will directly manage care coordination for patients receiving care within its facilities and those eligible for care in the community based on wait times.

For those veterans who are distance eligible for care in the community, a third-party administrator will be responsible for “Basic” care coordination. As a distance eligible patient’s needs escalate, VA care coordination is available for “Care/Disease Management” and a more intensive level of oversight, “Case Management.” In light of VA’s current proposals, we support the provision in S. 2633 which permits VA to establish procedures it considers appropriate to facilitating care coordination. The method proposed by VA offers the functionality and flexibility needed to ensure that patients with complex cases receive adequate attention and resources. It also allows VA to provide a level of care coordination that corresponds to each individual patient’s complexity and needs, regardless of whether the veteran receives care in VA facilities or in the community.

PVA applauds the sponsors and co-sponsors of S. 2633 for incorporating our proposals to expand access to emergency and urgent care. We have long opposed co-payments for veterans who are otherwise exempt, and we are glad to see this reflected in legislation.

We do, however, continue our opposition to any requirement that a veteran have received VA care within the preceding 24 months in order to qualify for emergency and urgent care benefits. The strict 24-month requirement is problematic for newly enrolled veterans, many of whom have not been afforded the opportunity to receive a VA appointment due to appointment wait times, despite their timely, good-faith efforts to procure one. This barrier has caused undue hardship on veterans and has resulted in some receiving unnecessarily large medical bills through no fault of their own. Additionally, this provision discriminates against healthier veterans who otherwise do not need as much health care as other veterans and may go more than two years without being seen.

III. Realigning the provision and allocation of VA’s resources to reflect the mission.

PVA supports the provisions in both bills which would require advance appropriations for the Veterans Health Administration, Care in the Community program to begin in fiscal year 2017. Not reflected in either piece of legislation is a plan for addressing VA’s inability to take the long view toward strategic resource allocation

and planning. Under the framework presented by PVA and our *IB* partners, we call for the implementation of a Quadrennial Veterans Review, similar to the Quadrennial Defense Review.

Additionally, while much of the focus in this legislation is keyed to addressing smooth integration of community care, we would reiterate that the access issues plaguing VA have been exacerbated by staffing shortages within the VA health care system which impacts VA's ability to provide direct care. Evaluating VA's capacity to care for veterans requires a comprehensive analysis of veterans health care demand and utilization measured against VA's staffing, funding, and infrastructure. However, VA's capacity metrics are based on deflated utilization numbers that fail to properly account for the true demand on its system.

For example, a shortage of nurses within the Spinal Cord Injury and Disease (SCI/D) system of care has precluded SCI/D centers from fully utilizing available bed space and has forced SCI/D centers to reduce the amount of veterans they admit. This has caused a decrease in the daily average census at some SCI/D centers and implies that there is a lack of demand on the system, when in reality veterans who want to access SCI/D care are turned away because those centers lack the staff to man available beds.

DISCUSSION DRAFT ON TITLE 38, UNITED STATES CODE REVISIONS FOR SENIOR
EXECUTIVE SERVICE

IV. Reforming VA's culture with workforce innovations and real accountability.

PVA believes workforce innovation and accountability are critical to evolving the VA health care system into a truly dynamic system best suited to meet the demands of veterans. We applaud Secretary McDonald for acknowledging that employee experience is vital to its transformation efforts as a part of the *MyVA* initiative. The *MyVA* taskforce has developed a number of programs and initiatives to engage and empower VA employees. However, Federal hiring still reflects a mismatch between the skills desired and the compensation provided for many of the professionals VA recruits. If Congress is focused on bolstering VA's ability to fire poor-performing employees, Congress must also give VA the leverage to hire employees quickly and offer compensation commensurate with their skill level.

With this in mind, we believe thoughtful consideration should be given to the draft proposal before the Committee, as put forward by the Secretary, which begins to address the question of workforce innovation and accountability, at least at the Senior Executive Service (SES) level. We do remain skeptical as to whether or not this draft legislation will produce meaningful accountability across the VA system, but we are convinced that the current system does not work. Additionally, while not contemplated by any of the bills on today's hearing agenda, workforce innovation and accountability are critical at all levels within the management structure of the VA. As VA is generally at a competitive disadvantage to hire and retain the best professionals in the health care field, the Committee should consider what additional incentives and tools the VA needs in order to enhance its ability to attract the best employees at every level, from the SES down to the bedside nurse.

Last, as we have stated in previous testimony, we have consistently heard from veterans that their patient advocates are ineffective or seek to protect the medical facility's leadership instead of addressing their concerns. PVA believes that patient advocates cannot effectively meet their obligations to veterans if their chain of command includes VA medical facility staff that is responsible for the actions and policies they are required to address. If accountability is going to be a key tenet of reform, then PVA, along with our *IB* partners, recommend strengthening the Veterans Experience Office by combining its capabilities with the patient advocate program. Veterans experience officers would advocate for the needs of individual veterans who encounter problems obtaining VA benefits and services. They would also be responsible for ensuring the health care protections afforded under title 38, United States Code (U.S.C.), a veteran's right to seek redress through clinical appeals, claims under section 1151 of title 38, U.S.C., the Federal Tort Claims Act, and the right to free representation by accredited veteran service organizations are fully applied and complied with by all providers who participate in Veterans-Centered Integrated Health Care Networks, both in the public and private sector.

S. 2473, THE EXPRESS APPEALS ACT OF 2016

PVA is pleased with the introduction of the Express Appeals Act in the Senate. This bill mirrors legislation recently passed in the House on February 9, 2016 (H.R. 800) as part of an omnibus bill (H.R. 677). We are glad to see that many of the recommendations we submitted in previous testimony were incorporated into the lan-

guage prior to House approval, and those same recommendations are reflected in the Senate version presented here.

This legislation is a good beginning and a framework for critical changes to the appeals process that may help veterans receive benefits they have earned more rapidly. While we understand there may be concerns about the fairness of allowing only new appeals, we strongly believe that limiting the participants to those entering the pilot at the initial Notice of Disagreement (NOD) stage will produce a much more accurate picture of the effectiveness of the process being tested.

We also want to emphasize the importance of maintaining substantial veteran service organization (VSO) representative involvement throughout this process. Notifying VSO representatives who are working under a Power of Attorney of any actions or updates on their client's appeal is critical to ensuring veterans who opt in to this program do not miss out on the expertise VSO representatives bring to bear on their behalf.

One of the strongest ways to impact the appeals process is to mandate that VA provide thorough notice of the basis for decisions on disability ratings. One cannot make an educated decision on whether to appeal a claims decision without knowing why it was denied. We support the provision in subsection (e)(2), which contemplates a review conducted in conjunction with VSOs as to the efforts of the Secretary to improve this aspect of the claims process.

Finally, we maintain our position that a shift of employees from the Appeals Management Center (AMC) to the Board for purposes of developing claims should be done with strict oversight from this Committee. While it can be expected that reducing resources or manpower will have an impact on AMC's processing rate, we fear this may become an excuse by the Veterans Benefits Administration for why they are unable to complete traditional appeals.

PREPARED STATEMENT OF SENIOR EXECUTIVES ASSOCIATION



the voice of career federal executives since 1980

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Chairman Isakson, Ranking Member Blumenthal, and members of the Senate Committee on Veterans' Affairs:

Thank you for the opportunity to share the Senior Executives Association's (SEA) views on Department of Veterans Affairs (VA) Secretary Robert McDonald's proposal to move VA career executives from Title 5 to Title 38.

SEA represents the interests of career federal executives in the Senior Executive Service (SES), and those in Senior Level (SL), Scientific and Professional (ST), and equivalent positions. Our submission today includes:

- 1) SEA's formal position paper on the Secretary's proposal to shift all career executives from Title 5 into Title 38
- 2) A survey of 236 current and former VA career executives regarding the proposal

I appreciate the opportunity to provide the Association's perspective on this legislative proposal.

For additional information, or if we can be of further assistance, please reach out to SEA's Sr. Legislative and Media Coordinator, Nikki Cannon (ncannon@shawbransford.com; 202-463-8400).

Sincerely,

JASON BRIEFEL
Interim President
Senior Executives Association



POSITION PAPER SEA

Reclassification of the Department of Veterans Affairs Title 5 Senior Executive Service Members under the Title 38 Appointment, Compensation, Performance Management, and Accountability System

- i.) **Business-oriented employment authorities**
- ii.) **Competition with private sector for talent**
- iii.) **Outcome-based rewards and appraisals**
- iv.) **Current accountability authorities**

SEA has significant concerns and strongly opposes the VA's proposal to move all VA career Senior Executive Service (SES) employees from Title 5 to Title 38. SEA arrived at this position because of the thinly veiled primary purpose of this proposal as a politically driven attempt to achieve the ease of firing career civil servants by making VA Senior Executives a separate class of civil servants and de facto political appointees.

Ultimately, this proposal will not improve delivery of services and benefits to our nation's veterans, nor will it allow the VA to attract and retain the exemplary career executive leadership necessary to advance the agency.

Neither SEA nor our members at the VA believe this proposal is about compensating VA Senior Executives appropriately. In the past, SEA worked with Congress and the VA to shift some executives within Veterans Health Administration (VHA) between Title 5 and Title 38 to ensure the agency was able to retain that talent and compete with the private sector, where compensation is significantly higher than what the VA pays its SES, particularly those serving as Medical Center and Network Directors. The shared goal behind those past proposals was to ensure the VA was equipped with the tools it needed to compensate and support its career executive leaders, knowing that in doing so care and services for veterans would benefit.

Yet in this case, the compensation element appears to be merely window dressing for a proposal that is really just about "accountability." It makes no sense to move non-medical VHA executives, and even less to move executives at the Veterans Benefits Administration (VBA) or National Cemetery Administration (NCA), to Title 38, a section of the U.S. Code designed for medical professionals, besides depriving executives of their Title 5 rights and making it easier to terminate or discipline them.

The denial of meaningful due process and management by fear will not garner the intended result of accountability for driving mission results and providing care and services to our veterans.

If approved, SEA believes this proposal will only serve to exacerbate the VA's career leadership challenges, as the VA will become an employer of last resort for talented government executives. It also does nothing to put the agency on even footing with industry in the war for top executive talent.

SEA urges policymakers to move beyond the talking point policy on "accountability," attempt to publicly acknowledge the real problems at the agency, and work with stakeholders to craft meaningful solutions to VA's complex, multifaceted issues. As Deputy Secretary Gibson told the House Veterans' Affairs Committee on December 9, 2015, "You can't fire your way to excellence."

I. VA needs business-oriented employment authorities

As the proposal begins with a justification using agency statistics to quantify the reality of a leadership vacuum, it is evident the VA has been derelict in meeting the congressional mandate to “develop a comprehensive management succession program, based on the agency's workforce succession plans, to fill agency supervisory and managerial positions” pursuant to 5 CFR 412.201-202.

While the VA is requesting new authorities to restructure its workforce, it appears to have made little progress meeting the government-wide succession planning standards set by Congress to prevent the exact recruitment and retention problems the agency has experienced in recent years. Instead of focusing exclusively on the 350-400 SES employees, far greater consideration and attention should be devoted to how the agency plans to develop and strengthen not only its SES corps, but its leadership talent pipeline, including considering whether this proposed executive system would be attractive to rising GS-14 and -15 employees at the agency and across government.

SEA is also concerned about balkanization of the SES via creation of a VA specific executive system, which will likely be a disincentive for talented executives from other agencies to consider employment at the VA. Making the timing of this proposal especially confusing is the fact that VA was scheduled to be on phase 1 of implementation of the President's recent [Executive Order on the SES](#).

Lastly, in attempting to lead a “radical transformation” of the VA by altering the employment authorities of the agency only as to its very small SES career corps, the Secretary and Deputy Secretary have with this proposal succeeded in alienating the career executives that work for them - the very people expected to lead the transformation. Below are a few reactions from SEA members who work at the VA about the proposal:

"Demoralizing." "Betrayed." "Just bad policy." "Happy I am retirement eligible." "Obviously little here to the benefit of the executive." "Morale lowest I've seen in 33 years at the V.A." "There is no interest in buy-in from employees."

II. VA must compete with private sector employers for top leadership talent

The VA has lauded this proposal as an effort to better attract and retain qualified candidates and employees by expanding the VA's ability to more competitively compensate executives as compared to their private sector counterparts. However, the proposal cites the 2013 Healthcare Compensation Survey conducted by the Hay Group where individuals holding the position of Chief Executive Officer (CEO) in private sector health care systems received on average \$731,800 annually in cash compensation and CEOs of a single facility within a system received an average of \$393,100 in annual cash compensation.

If the impetus of this proposal is to allow the VA to compete on a level playing field with top healthcare systems in the country for executive talent, the newly recommended pay bands with a high of \$235,000, and a total compensation cap of \$400,000 – a cap that would be reached by a mere handful of executives – falls drastically short as compared to the market value of comparable healthcare executive positions. Additionally, the highest band, Pay Band 1A, would only allow for that specific base pay for 20 executives.

The realities of this proposed reform demonstrate this: the VA's proposal to move its career executives out of Title 5 into Title 38 is really just a ruse to avoid the merit system principles of Title 5 and not really about creating a business structure comparable to the private sector.

Senior executives at the VA understand they will not earn the same compensation as their counterparts in private industry, and they accept that because of their dedication to the VA's mission of serving veterans.

However, as the imbalance has continued to grow, the VA has witnessed incredible challenges filling its executive positions.

Despite the government's clearly demonstrated disadvantage in terms of competing with the private sector over executive compensation, it is hard to imagine that deserving VA executives truly will see increased compensation for their efforts. Actions by the Administration, VA leadership, and Congress in recent years to use executives as political pawns and to curtail or eliminate performance based awards for VA's senior executives have exacerbated the agency's recruitment and retention challenges. In SEA's view these actions have directly contributed to the alarming statistics the proposal highlights:

- 30% vacancy rate for the agency's SES allocations
- VHA losing 22.3% of Medical Center Directors in one fiscal year
- VHA losing 22.9% of Network Directors in one fiscal year, and
- The agency having to re-announce 37 recruitment actions because no qualified applicants were attracted by the VA

SEA also takes issue with the proposal's citing of "cumbersome administrative requirements" as one of the challenges to attracting qualified candidates. What is alluded to, but not directly named, is the Qualifications Review Board (QRB), wherein the agency submits a candidate's application package to the OPM-administered QRB for certification of executive core qualifications and to ensure the merits of the candidate. The QRB process is a key barrier to politicization of the government's career executive corps, and this proposal would eliminate QRBs for VA SES. Data, however, show the QRB process only adds two weeks to an application, and it is in fact likely internal dysfunction within the agency hiring practices that cause delays beyond that in the executive hiring process.

III. Appraise and reward executives based on outcomes

The VA's proposal is too vague and does not specify any details about the intended performance appraisal system except by saying the agency will establish such a system by regulation. The use of false and unattainable performance metrics in the past has masked the lack of substantive leadership by the VA, and it is unclear how an undefined appraisal system will address the agency's challenges.

Under existing Title 5 authority, the VA Secretary already has ultimate authority to sign-off on all SES performance appraisals. Complaints or reports from various oversight bodies are already taken into account in assessments of executive performance. Inspectors general are already consulted prior to issuance of performance awards.

The VA has recently put in place new performance appraisal policies.

[VA Directive 5013/15](#) was issued less than a year ago on March 27, 2015, and established performance appraisal policy for both Title 5 and Title 38 employees at the agency. [VA Directive and Handbook 5027](#), issued November 4, 2014 revised procedures for the agency's SES performance management system. Questions should be asked to determine if these directives are meeting their intended goals.

IV. Current executive accountability authorities do not support transformation

Senior Executives are already the easiest type of career federal employees to terminate or discipline, and failure of agencies to do so reflects a failure on behalf of agency leadership to understand and employ tools already established in law (or an agency practice of using those tools for improper motives), and which have been

determined to be fair and constitutional. Title 5 is not broken, but there are failures in implementing its authorities.

Regarding the Choice Act authority for VA SES, codified at 38 U.S.C. § 713, those provisions are currently subject to a constitutional challenge at the United States Court of Appeals for the Federal Circuit in *Helman v. Dept. of Veterans Affairs*, Case No. 15-3086 (Fed. Cir. 2015). Additionally, when Congress attempted to apply that same authority to the entire VA workforce with H.R. 1994, the President's advisors at the Office of Management and Budget (OMB) issued a strongly worded Statement of Administration Policy, saying the legislation "could have a significant impact on VA's ability to retain and recruit qualified professionals and may result in a loss of qualified and capable staff to other government agencies or the private sector." SEA believes the Choice Act provisions already have done so for the VA's SES.

It is clear recent outcomes from MSPB decisions made public by the VA in cases the agency utilized the Choice Act's expedited termination/demotion authority are the real reason for this proposal, which cites "third party appellate processes [that] rely too heavily on unsuitable precedent" as a challenge to "true accountability."

The MSPB was created to provide government employees an independent forum that protects them from a politically controlled system where civil servants could be battered about by political appointees who could change with the political winds. A return to the era in which the government's workforce came and went with the winning party of political elections threatens to politicize the delivery of services and benefits to the American people, and in this case, Veterans and their families.

By moving VA executives from Title 5 into Title 38, VA Senior Executives would not be afforded the current - albeit truncated - administrative review before the MSPB provided for by the Choice Act. Instead, they would be subjected to the disciplinary procedures Title 38 medical staff undergo - procedures modeled after private sector hospitals where a peer panel reviews accusations of professional misconduct or incompetence.

It makes absolutely no policy sense to move NCA or VBA executives into Title 38, other than because it gives the Secretary more power to fire them. Title 38 is for medical professionals.

The Title 38 alternative to MSPB review for major actions is it to appeal to the Federal Circuit Court - where MSPB case law and precedent would still apply. Within SEA, as it should for all, various concerns have been raised about the ramifications this will have on the third branch of government:

- Why does the VA believe the federal courts should be saddled with reviewing Federal personnel decisions when the MSPB, an independent agency skilled and dedicated to that function, already exists?
- Has the VA considered the impact on the federal judiciary to send personnel matters into its jurisdiction, particularly if this proposal for just the VA executives is expanded to the entire VA and beyond?
- What will be the cost to federal judiciary to adjudicate these appeals, and how does this compare to the costs in having the MSPB fulfill this function?
- Which arm of government will defend these appeals in the federal courts – the VA counsel which would handle MSPB appeals or the Justice Department?

Cost Benefit Analysis

After laying out on page 2 and 3 of the proposal the challenges the agency is having filling executive roles and demonstrating the disparity between private sector and VA executive pay, the proposal to only add one level to the agency's executive pay banding system (1A) that brings just 20 executives into the \$205-235,000 salary range, with a pay cap for all executives at the President's salary of \$400,000 that appears to fall far short of allowing the agency to compete on an equal playing field with the private sector.

Executive compensation has long been a challenge at the VA, with VHA executives working, via SEA, with the Administration and Congress many times in the past to shift between Title 5 and Title 38 to ensure an equitable system in which the agency could compete for talent and fairly compensate its executives. However, in those instances, there was mutual agreement that it was bad policy and ultimately detrimental to veterans to undercompensate the VA's SES cadre. This current situation is obviously different and SEA believes there is little intention to actually strengthen VA executive compensation, and the entire conversation around pay adjustment is a ruse to help sell the "accountability" provisions.

The agency also makes bold predictions that this new policy will reduce executive turnover and attrition, but history suggests otherwise. SEA simply does not believe, as the agency appears to, that this entire proposal "would motivate highly experienced, seasoned executives to take on leadership roles in VA most demanding positions."

SEA posits that a large part of the reason the agency has had such challenges filling its SES positions is the toxic "gotcha" atmosphere of Capitol Hill and the media, coupled with inadequate investment in the development and compensation of executives, and lack of recognition of executive accomplishments, in recent years. It is unclear how this proposal addresses those issues.

Conclusion

It is baffling that the Secretary and Deputy Secretary feel this proposal would lead the transformation they are envisioning, especially when it comes at the expense and alienation of their entire senior leadership corps. Treating the agency's problems as solely a function of less than 400 individuals, rather than examining the structural and cultural troubles plaguing the VA is a disservice to our Veterans and the American public.

It is a shame that so much taxpayer time, effort, and energy was put into a proposal that purports to help the agency address its shortcomings, but makes little effort to substantiate its recommendations. There may be a need for improvement at VA, but hastily constructed and politically motivated solutions will not help this already troubled organization.

The Senior Executives Association (SEA) represents the interests of career federal executives in the Senior Executive Service (SES), and those in Senior Level (SL), Scientific and Professional (ST), and equivalent positions.

SENIOR EXECUTIVES AT THE DEPARTMENT OF VETERANS AFFAIRS



A Survey of VA Leaders on the Proposal to Move
Career Executives from Title 5 to Title 38

March 2016



Senior Executives Association

SEA is a non-profit, non-partisan professional association that has served as the voice of the career federal executive corps since 1980. SEA's mission is to improve the efficiency, effectiveness, and productivity of the federal government; and to enhance public recognition of their accomplishments. For additional information about SEA, visit www.seniorexecs.org.

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EXECUTIVE SUMMARY

Following the start of the Great Recession in 2007, and growing since 2010, Senior Executive Service (SES) members and equivalents across the federal government have come under enormous scrutiny. As slow-boiling issues involving access to care at the Department of Veterans Affairs (VA) exploded onto the national scene in 2014, Senior Executives within the agency became the target of widespread ire, proceeded by a slew of legislative proposals aimed at quelling public outrage by promising accountability for those deemed to be the root of the agency's problems.

In 2014, Congress passed a law to address access to care issues and expedite the appeals process for career executives, effectively making it easier for the VA Secretary to fire or demote SES employees. In January and February of 2016, the VA lost three successive personnel decisions under this new authority, leading the VA Secretary to propose shifting the employment jurisdiction governing all VA SES from Title 5 to Title 38 of the United States Code.

“...it is the politicians who are using and will use these new lots as political cover for events not of their liking. How can one reasonably be expected to lead in a competent fashion in that environment?”

In response to this proposal, the Senior Executives Association (SEA) conducted a survey of current and former VA SES and equivalent employees to determine their views on the Secretary's proposal and elements it purported to address, including how the agency appoints, compensates, appraises, and holds accountable career SES employees.

Approximately 400 career SES are currently employed at the VA. Our survey garnered responses

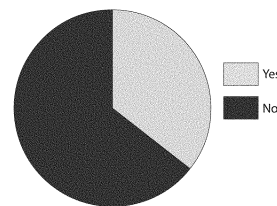
from 236 current and former VA career executives, answering a multitude of questions regarding their perception of the impact this proposal would have, as well as the current climate within the Department.

“I cannot support a proposal that would remove the few job protections we currently have with essentially only a promise of more \$\$\$. Most of us are not in this business because of the \$\$ - we do what we do for the sake of the mission - specifically for the Veterans and the employees we serve.”

Key findings include:

- 69% said they do not believe the Secretary's proposal would improve service to veterans
- 64% do not support the proposed move to Title 38, even with the opportunity for an increase in salary
- 59% of respondents said they do not think the proposal would help the VA retain quality senior executives

Do you support the Department of Veterans Affairs' proposal to move all SES positions from Title 5 into Title 38, enabling executives to be paid up to a maximum salary of \$235,000 (and up to \$400,000 in salary and bonuses) but resulting in fewer job protections?



Of the respondents who opposed the Secretary's proposal, the reasons for doing so fell largely into two categories:

- A deep fear of politicization of their jobs, the SES, the federal civil service, and the distribution of services and benefits to veterans
- Skepticism that the touted benefits, such as improved salary and overall compensation, were merely a veneer; yielding few tangible benefits for employees in exchange for much greater personal and professional risk; and skepticism that the proposal would improve service to veterans

Respondents who support the Secretary's proposal did so with the caveats that the proposal be applied in a targeted manner, for appropriate medical center and VISN directors at VHA, and as

long as full Title 38 due process rights came with the proposal.

Additionally, survey respondents were asked a range of questions about whether they thought the proposal would help the agency recruit and retain high caliber VA SES talent. A majority of respondents (50%) do not believe that enactment of the proposal will help the agency attract talented external candidates, and a larger majority (67%) of respondents said they do not think it would help attract high quality executive talent from inside the VA's workforce.

Unfortunately, the survey revealed many career executives feel that neither VA nor Congressional leaders are approaching the challenges at within the agency with the nuance and thoughtfulness necessary to find solutions that would help not only the agency and its employees, but the veterans the agency serves.

INTRODUCTION

On December 9, 2015 during a hearing before the House Veterans' Affairs Committee (HVAC), Deputy Secretary Sloan Gibson, the senior accountable official at the Department of Veterans Affairs (VA), told the committee members, "You can't fire your way to excellence." Shortly thereafter, the VA lost three successive executive accountability cases heard by three separate administrative judges at the independent Merit Systems Protection Board (MSPB). On February 10, 2016 – just two days after the third decision was rendered – VA Secretary Robert McDonald testified before HVAC that he intended to propose shifting all VA SES employees from Title 5 to Title 38 in order to change how the agency appoints, compensates, appraises, and holds accountable career SES employees.

In 2014, spurred by revelations that the VA was having issues with patient wait times and access to care – issues that were well documented dating back to 1999 – Congress passed the Veterans Access, Choice and Accountability Act of 2014. This new law amended Title 38 by creating Section 713, which provides an alternative expedited removal or demotion process for career Senior Executive Service (SES) positions at the VA when allegations of poor performance or misconduct are brought forth. Since its passage, the VA has opted to utilize this new authority in every appeals case to date, and Deputy Secretary Gibson has asserted it is his policy to forego previously accepted Title 5 accountability provisions and to exclusively employ the Title 38 Choice Act process.

"...I think that the legislation that limited our appeal rights before MSPB had a significant negative impact and I feel that the proposed Title 38 legislation would have an even greater negative impact. Simply put; why would anyone apply for a senior executive position in VA versus other agencies as VA executives essentially have a target painted on their back. There is no psychological safety in VA and I do not believe that this exists at other agencies in the federal government."

THE PROPOSAL

In an effort to lead a “radical transformation,” the VA Secretary has proposed the development of a new Title 38 based appointment, compensation, performance management, and accountability system for career senior executives at the VA.

This proposal indicates the need for “business-oriented employment authorities to recruit and retain leaders who can transform VA’s business practices to better serve veterans.” In addition to these new authorities, the proposal expresses the need to better position the VA to compete for top talent – particularly for medical center and network executives – with private sector employers who can offer more generous compensation packages.

The Secretary’s initial proposal cited the 2013 Healthcare Compensation Survey conducted by the Hay Group, where individuals holding the position of Chief Executive Officer (CEO) in

private sector health care systems received on average \$731,800 annually in cash compensation, and CEOs of a single facility within a system received an average of \$393,100 in annual cash compensation.

Under this new initiative, the VA would be allowed an increase in the cap of executive base pay up to \$235,000 and total overall compensation up to \$400,000.

The initial proposal also stated that the “VA needs to appraise and reward executives’ performance based on organization outcomes, as businesses do.”

Finally, the Secretary has asserted that “current VA executive accountabilities do not support transformation.” Additionally, his proposal argues that Title 38 disciplinary and appellate procedures are a better fit for executive leaders at a Department undergoing such transformations.

VA'S NEW PROPOSAL WON'T HAVE THE IMPACT THE AGENCY IS LOOKING FOR

SEA's survey received responses from 236 current and former VA SES. Respondents reflected executives with a range of career experience, with 41% of respondents having no plans to retire in the foreseeable future, 22% planning to retire in the next 4-5 years, 24% planning to retire in the next 2-3 years, and 13% planning to retire within the next year. Approximately 35% of respondents work at the Veterans Health Administration (VHA), 23% of respondents at other parts of VA, 17% at the Veterans Benefits Administration (VBA). Seventeen percent (17%) of respondents were former VA SES.

A strong majority of respondents, 69%, said they do not believe the Secretary's proposal would improve service to veterans. Sixty-four percent (64%) said they do not support a move to Title 38, even if it would provide an opportunity to increase compensation. Additionally, 59% said they do not think the proposal would help the

agency retain quality career senior executives.

Recruitment & Retention

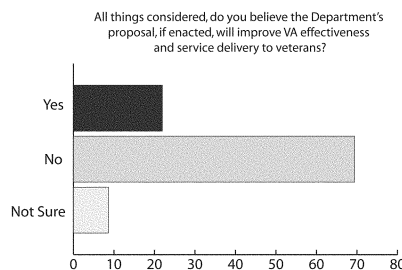
In addition to providing information on their own career plans and experiences with VA executive recruitment and retention efforts, respondents also provided their perspective on whether they felt enactment of the proposal would change their current career trajectory.

Twenty-seven percent (27%) said if the proposal was implemented, they would likely retire from the agency sooner than planned, and 51% said they were not likely to stay at the agency longer should the proposal be enacted. Additionally, if the VA proposal were to pass, 45% said they would likely not apply for a Title 38 SES job at VA.

Respondents also expressed little belief that the proposal would change many of the issues facing the VA today. Fifty percent (50%) said the proposal would not improve the recruitment of high quality external candidates, with 67% saying they were doubtful that it would improve recruitment for internal candidates.

Morale & Performance

When it comes to improving morale among career senior executives at the VA, nearly three in four (72%) do not believe this proposal would aid in that objective, nor would it create a high performance culture (71%).



"...The real issue for recruitment and retention has less to do with compensation, in my opinion, than culture. The public shaming, blaming, trashing of one's reputation without full consideration of facts and context is just one disgruntled employee call away for any VA executive at this time. There is no support for us..."

Politicization vs. Accountability

SEA has consistently expressed deep concerns that the agency's proposal to turn its career executive leaders into de facto political appointees is being driven not by the policy decisions necessary to address VA's challenges, but by politics.

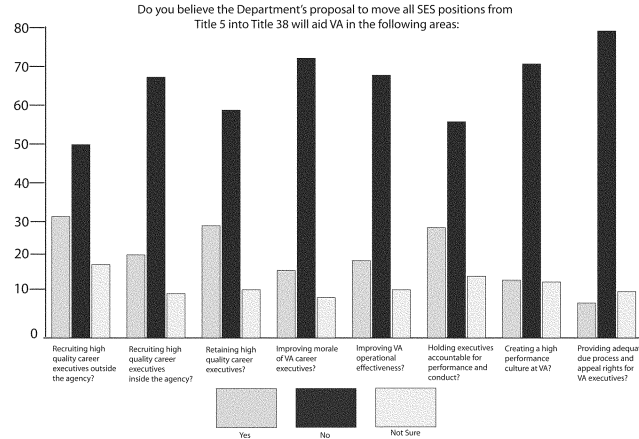
The basis of many Title 5 authorities, including core values of a merit based civil service free from political influence, have been in place in the United States since the passage of the Pendleton Act of 1883. Prior to that, employment by the federal government was dictated by one's relationship with the political party in power, a process known as the "spoils system." Passage of the Civil Service Reform Act (CSRA) of 1978, which created the career SES as a keystone professional leadership cadre and barrier between political appointees and the federal workforce, was spurred by politically motivated actions of the Watergate era. A report

by the MSPB released in May 2015 entitled "[What is Due Process in Federal Civil Service Employment?](#)" outlines how and why the current framework for career SES accountability, among many other factors, exists as it does.

The findings from this survey suggest that many career senior executives at the VA also are concerned that the Secretary's Title 38 proposal is politically and optically driven and does not clearly or adequately address many of the fundamental factors contributing to the agency's challenges in staffing its career executive ranks with high caliber senior executives.

As for improving accountability, more than half (56%) do not believe this proposal will accomplish that objective, though nearly eight in ten (79%) fear this will not provide adequate due process and appeals rights for career senior executives.

"This is a sham; the purpose is to be able to fire at will. Only a small handful of the ~400 SES in VA will receive higher pay. This is another step closer to the spoils system, which Civil Service was established to end. SES have few rights now and fewer rights pending. This is a nightmare and little more than pandering to Congress."



BEYOND THE PROPOSAL

Larger systemic issues were also highlighted as driving factors for current VA SES to consider leaving federal service or service at the VA. Furthermore, an environment characterized as “toxic,” one of “fear,” and “mistrust” is exacerbating agency leadership challenges, causing dedicated long-term employees to seek employment in other agencies or outside of government, or to downgrade out of an SES job. Respondents noted that lack of leadership support and absence of a “psychological safety” net made it difficult to do their jobs.

Congress and the Media Aren’t Helping

Respondents were also asked which circumstances were contributing to their considerations of leaving federal service. Topping the list of factors that would cause executives to leave the government, a moderate to great extent of frustration with Congress (71%), fear of unfair media or Congressional scrutiny (70%), and frustration with VA political leadership (60%).

Obstructions in the Pipeline

Survey respondents reported that high quality GS-14 and GS-15 candidates had very low (34%), low (36%), and moderate (22%) interest in SES jobs at the VA.

Respondents were equally as split on whether they encouraged highly qualified employees to apply for SES positions. Nearly half (49%) said they did not, while 39% said they did and 13% were not sure if they would encourage current qualified GS employees to apply for vacant SES positions. However, respondents did note that they attempted to counsel those who aspired to enter the SES, and that doing so at VA brought a unique set of risks which should be known.

When encouraged to become an SES at VA,

“The relentless media and congressional oversight is generally biased, usually inaccurate, and negative which is detrimental to the health of the organization making VA an increasingly unattractive agency to work in.”

respondents said that high quality SES aspirants responded half the time (51%) with interest, and rarely with interest about a quarter of a time (28%). Respondents also noted that the risk-reward imbalance was insufficient to induce talented GS-14 and GS-15 employees to become SES at the VA. The fact that, despite the challenging environment, SES aspirants were sometimes interested in becoming a VA executive suggests that improvements to the environment is crucial in addressing this particular challenge the agency faces.

Additionally, while survey respondents said that the agency had a good talent pipeline, 60% of respondents expressed hesitancy that those in the pipeline were not “ready and able” to fill SES positions. Nearly nine in ten respondents (88%) rated the level of difficulty in filling executive roles at the VA as being either somewhat or very difficult, with nearly 60% saying doing so was very difficult. Ninety-seven percent (97%) of VA executives said they were concerned – to a great extent (59%), to a moderate extent (26%), somewhat (12%) – about the ability of the agency to fill SES vacancies with highly qualified candidates.

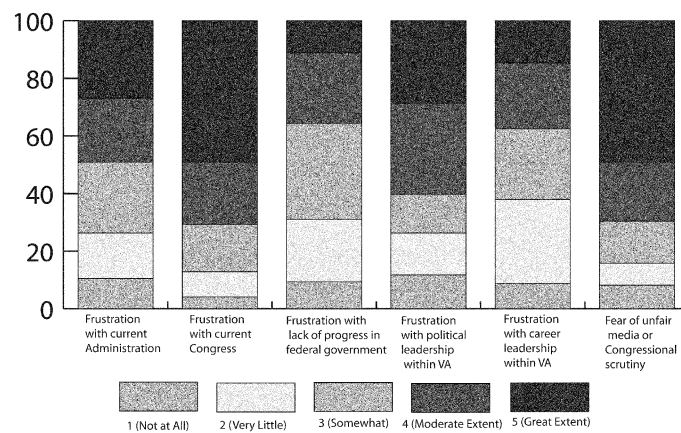
“HR Process is Broken” at VA

In written comments, several respondents voiced their concerns about VA’s human resources (HR)

processes, noting that challenges with HR made filling vacancies at the agency - particularly at the executive level - difficult.

"The HR process, particularly for senior staff, is absolutely broken in VA and no one is holding them accountable (the AS for HR [Assistant Secretary, Office of Human Resources and Administration] is a political appointee)."

On a scale of 1 (Not at All)-5 (Great Extent), how much will each of these reasons impact or contribute to your decision to separate from federal service?



"Obtaining a highly qualified pool has never been a problem. The problem has been, and continues to be the slow nomination / selection / on-boarding processes. Good candidates won't wait around for months to hear back from HR."

"HR is a joke in VA."

RECOMMENDATIONS

Addressing broader, systemic issues, as well as fundamental issues such as ensuring VA has a competent human resources apparatus is seen as being a stronger driver of VA improvement than is the Secretary's proposal – the ambiguous details of which and the manner by which the details were shared left many executives feeling alienated.

Many respondents also noted that the VA is not currently utilizing Title 5 authorities to address compensation, performance, or misconduct, and therefore questioned why passage of new authorities would change the equation. SEA too, encourages Congress to conduct vigorous oversight of VA leadership, and prior to approving new authorities, better understand why the VA seems unable or unwilling to use existing authorities. Previous research by SEA demonstrated that political appointees often do not meet their obligations or use the authorities or flexibilities available to them for rewarding or holding executives accountable.

Such authorities include critical pay authority (5 U.S.C. 5377 and 5 CFR part 535), Title 5 authorities to better compensate qualified medical professionals, and recruitment, retention, and relocation incentives (3Rs), to name a few. Respondents also noted lack of support from

“The current leadership has created an atmosphere of fear and intimidation. One mistake of omission and they fire you. This hurts Veterans and forces employees to be rules based rather than values based in their actions.”

“When Congress politicizes one agency, forcing its Secretary to back down on supporting every executive there, it makes us feel we don’t have leadership support. Then caving in on bonuses, raises, and workplace protections synchronously as congress increasingly singles out VA employees makes VA a singularly unpleasant place to work.”

the agency for home sales and relocation when the VA geographically reassigns executives to fill critical leadership gaps contributed to the agency's difficulty in filling those vacancies. Some respondents accused agency leadership of violating statutory authority (Chapter 43 of Title 5, USC) by artificially lowering SES performance appraisal ratings through a “forced distribution of ratings.”

Lastly, members of the career SES in the federal government are governed by Title 5 of the U.S. Code, and VA executives voiced skepticism that talented executives from other agencies would not seek employment at the VA under the terms of the Secretary's proposal. Careful consideration of whether the Secretary's new proposed VA SES system will truly help the agency attract the quality and caliber of leaders is warranted in assessing the Secretary's proposal.

CONCLUSION

As one of the largest federal agencies, VA is a complex entity with complex issues. Yet, many respondents expressed the desire to serve our nations veterans as a key motivation for continued employment at the VA. Sixty-six percent (66%) said that the ambition to pursue a position in a sector other than the private sector, such as the non-profit sector, or the private sector (57%) would not contribute to their consideration for leaving federal service.

Taken together, the quantitative and qualitative data collected in this survey demonstrates an agency career executive corps that is deeply committed to the VA mission, VA employees, and veterans. It highlights a group of individuals that is generally not driven by an excessive desire for increased compensation, but rather a desire to be adequately compensated and appropriately recognized for their contributions. Yet there is a feeling of being under near-constant siege, lacking support from Congress, agency political leaders or the White House, and suffering from a debilitating culture of fear.

This survey finds an agency already experiencing a significant leadership crisis. However, the proposal by the VA Secretary, and how it may be taken up and amended by Congress, left few respondents with positive feelings that the proposal will help the agency better recruit,

hire, retain, compensate, appraise, or hold accountable career executive leaders.

Respondents largely confirmed that the VA's toxic environment is contributing to the difficulty the agency is having filling key executive leadership roles – such difficulty intended by those who seek to profit from the VA's troubles.

The environment is causing talented VA SES to leave the agency, or to seek non-executive positions at the VA, and is turning away talented GS-14 and GS-15 employees at VA and other agencies from pursuing VA SES opportunities. The current lack of support for career SES is driving employees towards bureaucratically-driven rules adherence instead of taking actions and making decisions in the best interest of the agency and the veterans it serves.

Changes related to the VA's career SES corps should be taken with great care and consideration for how those policy decisions made today will affect the quality and character of those willing to take on VA's career SES roles, and ultimately how veterans who receive services and benefits from the agency will be affected. It would be a terrible and tragic mistake to make hasty decisions now in the name of "accountability" only to have those decisions backfire on veterans in the future.

"I still encourage highly qualified GS-15 employees to apply for SES positions as I care about the agency and want competent leaders to help our organization excel. However, most of the GS-15 employees that I talk with state that they do not want to become an SES in VA due to the recent legislative initiatives."

APPENDIX I: METHODOLOGY

Between March 2 and 8, 2016, SEA conducted a survey of current and former VA SES and equivalents. The survey was sent to 791 individuals, 236 of whom responded. Three fourths (178) of the survey respondents are current VA SES. There are approximately 400 career SES employed at the VA right now. Nearly one-third (35%) of survey respondents worked for the Veterans Health Administration (VHA), 23% at other parts of VA, 17% at the Veterans Benefits Administration (VBA), and 17% were former VA SES. Both quantitative and qualitative data was collected, with comments offered by respondents.

APPENDIX II: SURVEY INSTRUMENT

Survey of Current and Former Senior Executives at the Department of Veterans Affairs

As you may well know, the Secretary of Veterans Affairs has proposed – and is in active discussion with Members of Congress regarding – moving all VA Senior Executive positions out of Title 5 and into a new Title 38-based executive system. VA leadership has touted the proposed new “business-oriented employment authorities” as a solution necessary to support agency “transformation” by changing how the agency appoints, hires, pays, and appraises executives. The proposal raises the salary cap for VA career SES to \$235,000 and enables increased salaries and bonuses, reaching a total compensation cap of \$400,000, while executives would lose their employment protections and rights under Title 5, including the ability to appeal disciplinary actions against them, such as removal, to the independent Merit Systems Protection Board (MSPB). Appeals would be handled internally at the VA, with limited judicial review for major personnel actions. The proposal also calls for a new, undefined, performance management and appraisal system established by the Secretary via regulation.

As the Senior Executives Association (SEA) works on Capitol Hill to educate Members regarding the impact of these proposals, we would like your input, specifically, on your 1) career plans, 2) experience with regard to filling SES vacancies, and 3) views of the Department’s proposals.

SEA urges your participation in this very important survey. The survey should take no more than 10 minutes to complete and your responses will be anonymous and confidential. Thank you in advance for your timely participation!

1. Are you currently a member of the Senior Executives Association?

- Yes
- No
- Not, but I was previously
- No – never

2. Are you currently employed as a Senior Executive (or equivalent) in the Department of Veterans Affairs?

- Yes - Veterans Health Administration
- Yes - Veterans Benefits Administration
- Yes - National Cemeteries Administration
- Yes – Other
- No, but I am a former VA SES
- No

3. Are you planning to retire or resign in the foreseeable future?

- Yes, within the next year
- Yes, within the next two to three years
- Yes, within the next four to five years
- No plans to retire or resign in the foreseeable future

4. On a scale of 1 (not at all)-5 (great extent), how much will each of these reasons impact or contribute to your decision to separate from federal service? (Not At All, Very Little, Somewhat, Moderate Extent, Great Extent)

- Frustration with current Administration
- Frustration with current Congress
- Frustration with lack of progress within the federal government as a whole
- Frustration with political leadership within VA
- Frustration with career leadership within VA
- Fear of unfair media or Congressional scrutiny
- Diminished or complete inability to receive/be considered for performance bonuses or other merit-based awards
- Diminished or complete inability to receive/be considered for pay increases
- Desire to pursue a position in the private sector
- Desire to pursue a position in a sector other than the private sector (e.g., non-profit)
- Desire for more leisure/vacation time
- Desire to spend more time with family/friends
- Need to care for a family member/friend

Please provide comments:

5. Please think about SES, SL and/or ST job applicants over the past two years for which you are familiar. How would you rate the quality of these applicants – both internal (i.e., from within your agency or another federal agency) and external (from outside the federal government)? (Very Low, Low, Moderate, High, Very High, Not Sure)

- Internal Applicants
- External Applicants

6. To what extent, if at all, has the overall quality of internal and external candidates for career SES, SL and/or ST job vacancies in your agency changed in the past two years? (Much Lower Quality Now, Slightly Lower Quality Now, About the Same, Slightly Higher Quality Now, Much Higher Quality Now, Not Sure)

- Internal Applicants
- External Applicants

7. Thinking specifically about job vacancies within the past two years, how would you rate the level of ease or difficulty that your agency has experienced in attracting high quality personnel to apply for career SES, SL and ST positions?

- Very Easy
- Somewhat Easy
- Neither Easy Nor Difficult
- Somewhat Difficult
- Very Difficult
- Not Sure

Please provide comments:

8. To what extent, if at all, are you concerned about the ability of your agency to fill career SES, SL and/or ST vacancies with highly qualified candidates?

- Great Extent
- Moderate Extent
- Somewhat
- Very Little
- Not At All
- Not Sure

9. How would you rate the level of interest that high quality GS-14 and GS-15 (or equivalent) employees have in applying for career SES, SL and/or ST positions in your agency?

- Very High
- High
- Moderate
- Low
- Very Low
- Not Sure

10. Given conditions in your agency, do you encourage highly qualified GS-15s (or equivalent) employees to apply for SES, SL and/or ST positions?

- Yes
- No
- Not Sure

Please provide comments:

11. When you encourage highly qualified GS-15s (or equivalent) personnel to apply for SES, SL and/or ST positions, how is your encouragement received? (choose best answer):

- Never Met With Interest
- Rarely Met With Interest
- Sometimes Met With Interest
- Often Met With Interest
- Always Met With Interest
- Not Sure

Please provide comments:

12. Generally speaking, do you believe your agency has a good pipeline of highly qualified GS-15 (or equivalent) employees who are ready and able to fill future SES, SL and/or ST positions?

- Yes
- No
- Not Sure
- Other (please specify with comments)

13. Do you support the Department of Veterans Affairs' proposal to move all SES positions from Title 5 into Title 38, enabling executives to be paid up to a maximum salary of \$235,000 (and up to \$400,000 in salary and bonuses) but resulting in fewer job protections?

- Yes
- No
- Other (please specify with comments):

If this proposal were to be enacted, would you be likely to:

14. Retire sooner than planned?

- Yes
- No
- Not Sure
- N/A

15. Stay on longer than planned?

- Yes
- No
- Not Sure
- N/A

16. Apply for one of the new positions?

- Yes
- No
- Not Sure
- N/A

Do you believe the Department's proposal to move all SES positions from Title 5 into Title 38 will aid VA in the following areas:

17. Recruiting high quality career executives from outside the agency?

- Yes
- No
- Not sure

18. Recruiting high quality career executives from inside the agency?

- Yes
- No
- Not sure

19. Retaining high quality career executives?

- Yes
- No
- Not sure

20. Improving morale of VA career executives?

- Yes
- No
- Not sure

21. Improving VA operational effectiveness?

- Yes
- No
- Not sure

22. Holding executives accountable for their performance and conduct?

-Yes
 -No
 -Not sure

23. Creating a high performance culture at VA?

-Yes
 -No
 -Not sure

24. Providing adequate due process and appeal rights for VA executives?

-Yes
 -No
 -Not sure

25. All things considered, do you believe the Department's proposal, if enacted, will improve VA effectiveness and service delivery to veterans?

-Yes
 -No
 -Not Sure

26. In your own words, please provide any comments, reactions and/or concerns you have regarding the Department's proposal to create a new personnel system for career SES under VA's Title 38:

16

PREPARED STATEMENT OF RICHARD WEIDMAN, EXECUTIVE DIRECTOR FOR POLICY AND
 GOVERNMENT AFFAIRS, VIETNAM VETERANS OF AMERICA

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 startup, there were startup 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 benefited 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.