Statement of

Darin Selnick,

Former Senior Advisor to the Secretary Department of Veteran Affairs

before the

Senate Veterans Affairs Committee

concerning

Wait times in Veterans Health Administration facilities and in the Community

September 21, 2022

Thank you Chairman Tester, Ranking Member Moran, and Members of the Committee. I appreciate the opportunity to testify at today's hearing on addressing health care wait times at the Department of Veterans Affairs (VA) and in the community. Your leadership on this issue is critical to ensure that health care wait times measurements are accurate and properly reported, as required by the VA MISSION Act and the VA Veterans Community Care Program (VCCP) regulation, so that veterans can be properly notified when they are eligible for community care and truly make an informed choice between VA and community care ensuring them the timely, convenient and quality health care they deserve.

In the interest of full disclosure, I am a Senior Advisor to Concerned Veterans for America (CVA), but my testimony today reflects only my own personal expertise, analysis, and observations. In no way does my testimony reflect, nor are they representative of CVA or any other organization. The views I present here today are entirely my own. My expertise on this subject comes from my years of experience working both at the VA and the White House Domestic Policy Council in helping to create and implement the VA MISSION Act and the VA VCCP regulation, as the former Senior Advisor to both VA Secretaries David Shulkin and Secretary Robert Wilkie, and as Veterans Affairs Advisor at the White House Domestic Policy Council.

Background on VA wait times

So why are VA facility wait times being accurate and consistent important? They are important due to average wait times being a barometer for veterans on how long it might take them to get their health care appointments, and they are what determines eligibility for community care. This is to ensure veterans do not receive delayed care. In a 2020 study published in JAMA, “among those

reporting delayed care, more than half (57%) said they experienced negative health consequences as a result."[1]

VA wait times are part of the bigger VA health care picture of providing timely quality care for veterans. If VA facility wait times are inaccurate and inconsistent it can lead to delayed care for veterans, causing negative health consequences or even death, as happened in the Phoenix VA Medical Center scandal in 2014. In creating the VA MISSION Act in 2018, we were determined that the Phoenix 2014 scandal would never happen again and that through access standards with a wait time trigger, no veteran would ever have to wait too long to access quality care either at VA or through the community. The VA MISSION Act created that promise, but that promise is being broken today as evidenced by the complaints of veterans, FOIA documents, VA OIG and GAO reports.

In September 2020, the VA Inspector General reported nearly 20 million VA appointments cancelled or delayed during the pandemic, denying millions of veterans' access to critical care.[2] Moreover, there is evidence that suggests a potential trend of the VA using improper wait time calculations to limit access to community care under the VA MISSION Act access standards.[3] Documents obtained through a Freedom of Information Act lawsuit filed by the Americans for Prosperity (AFP) Foundation on July 20, 2021 confirm and expand upon concerns outlined by the Government Accountability Office.[4]

The VA announced in October 2021 that they were decommissioning and closing the Office of Community Care as well as shutting down the VA MISSION Act website (missionact.va.gov).[5] This action by the VA came as many veterans are still learning about their health care options and made it harder for veterans to access information regarding their options and eligibility.

In a June 14, 2022, hearing at the Senate Veterans' Affairs Committee, VA Secretary Denis McDonough implied that he wanted to roll back VA access standards. When asked about access standards, McDonough replied that demand for health care "has increased more intensively for care in the community than for care in the direct system and told senators "my hunch is that we

[1] Mary G. Findling, Robert J. Blendon, and John M. Benson, "Delayed Care with Harmful Health Consequences—Reported Experiences from National Surveys During Coronavirus Disease 2019," *JAMA Health Forum*, 1, no. 12 (December 2020). https://jamanetwork.com/journals/jama-health-forum/fullarticle/2774358

[2] Department of Veterans Affairs Office of the Inspector General, *Veterans Health Administration: Appointment Management During the COVID-19 Pandemic*, Report #20-02794-218. Daniel Morris, et. al. September 1, 2020. https://www.va.gov/oig/pubs/VAOIG-20-02794-218.pdf

[3] Walt Buteau, "Critics claim VA 'cooking the books' in calculating veteran wait times," *WFLA.com*, April 28, 2021. https://www.wfla.com/8-on-your-side/critics-claim-va-cooking-the-books-in-calculating-veteran-wait-times/

[4] "Records confirm VA's inaccurate wait time numbers," *Americans for Prosperity Foundation*, October 1, 2021. https://americansforprosperity.org/records-confirm-va-inaccurate-wait-time-numbers/

[5] Department of Veterans Affairs Office of Public and Intergovernmental Affairs, PRESS STATEMENT: VA embarks on process to design new model to deliver seamless integrated care, October 5, 2021. https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5724

should change access standards,".[6] Changing access standards to limit community care would only make wait times longer.

I am often asked, "why would VA want to restrict community care?" The answer came from Acting Deputy Undersecretary for Health Miguel LaPuz in his written testimony to the House Veterans' Affairs Committee on July 14, 2022. LaPuz said, "Operational leaders already note concern for the potential of a "spiral effect" in some areas, where workload and talent are shifting externally and thus threaten to harm VA's training, research, and emergency preparedness missions."[7] He then states "if the balance of care provided in the community continues on its current upward trajectory, we anticipate that certain VA medical facilities, particularly those in rural areas, may not be able to sustain sufficient workload to operate in their current capacity.[8]

In other words, VA is more concerned with maintaining its facilities and staff, rather than ensuring veterans receive timely care, whether inside or outside VA.

VA's problems with providing accurate wait time measurements have been brought to light recently by the AFP Foundation FOIA documents, VA OIG memo and the GAO report. The AFP Foundation FOIA documents revealed how VA is undermining the VA MISSION Act, access standards, wait times and eligibility for community care.[9]

Some of the FOIA key findings which are included in attachment 1:

1. Failing to follow the VA MISSION Act eligibility requirements and denying community care
    - Denying community care referrals based on clinical appropriateness requirement
    - Waiving wait time access standards without veterans' consent
    - Granting administrators, instead of providers and veterans, the final decision-making authority on "Best Medical Interest" eligibility
    - Using "Patient Indicated Date" to misrepresent wait times

[6] "Review of the Fiscal Year 2023 Budget and 2024 Advance Appropriations Requests for the Department of Veterans Affairs," *United States Senate Committee on Veterans Affairs*, June 14, 2022. https://www.veterans.senate.gov/2022/6/review-of-the-fiscal-year-2023-budget-and-2024-advance-appropriations-requests-for-the-department-of-veterans-affairs

[7] "Statement of Miguel Lapuz, M.D., Acting Deputy Undersecretary for Health, Veterans Health Administration, Department of Veterans Affairs," *United States House Committee on Veterans Affairs - Subcommittee on Health*, July 14, 2022. https://docs.house.gov/meetings/VR/VR03/20220714/114988/HHRG-117-VR03-Wstate-LaPuzM-20220714-U1.pdf

[8] Ibid.

[9] "More evidence the VA is improperly delaying or denying community care to eligible veterans," *Americans for Prosperity Foundation*, January 28, 2022. https://americansforprosperity.org/va-denying-delaying-care/; "VA Wait-Time FOIA Requests and Subsequent Lawsuit," *Americans for Prosperity Foundation*, July 2021; https://americansforprosperityfoundation.org/wp-content/uploads/2021/07/AFPF_VA-Wait-Times-FOIA-Suit.pdf "Records confirm VA's inaccurate wait time numbers," *AFPF*.

2. Canceling and rescheduling of appointments without agreement of the veteran or offering community care
3. Inadequate documentation of when veterans opt-out of community care
4. Using cost to determine administration of community care program
5. Neglecting to advise veterans of their options and actively dissuading use of community care

The VA OIG in its April 7, 2022, memo stated, "the start date used to calculate wait times posted on the second website for new patients was not consistent with the method for calculating wait times described in the Federal Register and the VHA scheduling directive. VHA's published wait time data have not always followed VHA policy and may be misleading. The inconsistent use of start dates for calculating wait times can be misleading and may result in inaccurate reporting".[10]

The GAO stated in a June 30, 2022, letter to Secretary McDonough, "Until VHA improves the reliability of its medical appointment wait time measures, VHA is less equipped to identify areas that need improvement and mitigate problems that contribute to longer wait times."[11]

Unfortunately, VA has not learned from its past mistakes and instead of fixing its wait times measurements and reporting has implemented new wait time calculations and reporting that are still flawed and inaccurate.

Evaluation of VA's wait time measurement, including any planned changes

As the AFP Foundation FOIA documents have shown, VA's past and current wait time measurements are flawed, inaccurate, and deceptive.

The problem with VA's past and current calculation of average wait times and reporting is that they do not follow the VA MISSION Act law and the Veterans Community Care Program (VCCP) regulation, which were designed to ensure consistent and accurate wait times, both for reporting and for the purpose of eligibility determinations for community care.

The wait time designated access standards listed in the VCCP regulation are as follows: "VA cannot schedule an appointment for the covered veteran with a VA health care provider for the required care or service… Within 20/28 days of the date of request unless a later date has been agreed to by the veteran in consultation with the VA health care provider."[12] You will notice there is no distinction between new or existing patients.

---

[10] Department of Veterans Affairs Office of the Inspector General, *Concerns with Consistency and Transparency in the Calculation and Disclosure of Patient Wait Time Data*, Memo #21-02761-125. R. James Mitchell, et. al. April 7, 2020. https://www.va.gov/oig/pubs/VAOIG-21-02761-125.pdf

[11] U.S. Comptroller General Gene L. Dodaro to Veterans Affairs Secretary Denis McDonough, "Priority Open Recommendations: Department of Veterans Affairs," *U.S. Government Accountability Office*, June 30, 2022. https://www.gao.gov/assets/gao-22-105630.pdf

[12] "Veterans Community Care Program," Department of Veterans Affairs, *Federal Register*, 84 FR 26278 (2019). https://www.federalregister.gov/documents/2019/06/05/2019-11575/veterans-community-care-program

SEC. 101 of the VA MISSION Act states that VA care is required to be furnished through non-department providers if VA "is not able to furnish such care or services in a manner that complies with designated access standards".[13] Inaccurate wait times measurements deny veterans their eligibility for community care through the designated access standards. It also hinders what is required by SEC 103, "provide veterans…with relevant comparative information that is clear, useful, and timely, so that covered veterans can make informed decisions regarding their health care."[14]

Problems with VA's measurement of wait times

VA has never calculated accurate and consistent wait times. This includes VA's new method for calculating average wait time for new and established patients, which was submitted to the federal register for comment on July 25th, 2022, "Calculation of Average Wait Time for New and Established Patients," and is now published on the VA Access and Quality in VA Healthcare website, www.accesstocare.va.gov.[15] The new way VA is calculating average wait times although better that the previous way, is still incorrect, misleading and artificially makes wait times to appear shorter than they truly are and they should not be used.

First – VA is incorrectly dividing veteran patients into new patient and established patient appointment categories and establishing different types of start dates. There is no reason to calculate wait times differently for new or established patients. All patients should have their wait times calculated the same way to ensure consistent and accurate wait times. That is what we did in the VCCP regulation. To show how wait times are artificially shorted let's look at two examples of state wait times using new versus existing patients in Montana and Kansas.[16]

Montana - Billings

Primary Care Average Wait Time: New Patients - 33 Days, Existing Patients - 4 Days
Mental Health Average Wait Time: New Patients - 76 days, Existing Patients - 10 days

Kansas - Eisenhower VAMC

Primary Care Average Wait Time: New Patients - 42 Days, Existing Patients - 6 Days
Mental Health Average Wait Time: New Patients - 51 days, Existing Patients - 14 days

Second – VA's new listed methods of calculating average wait times from start to end date are not in line with the VCCP regulation, inaccurate, and should not be used. These new methods include:

- Earliest recorded date in the scheduling, to the date the appointment is completed, or the date it is scheduled to occur if it is not yet completed. *This artificially shortens the wait times at the start date and at the end date. There is often a delay in recording the date and a scheduled appointment may be cancelled and rescheduled by the VA.*

---

[13] **38 U.S.C. § 1703**(d)(D)

[14] 38 U.S.C. § 1703B(b)

[15] "Calculation of Average Wait Time for New and Established Patients," Department of Veterans Affairs, *Federal Register*, 87 FR 44192 (2022). https://www.federalregister.gov/documents/2019/06/05/2019-11575/veterans-community-care-program

[16] Data collected from "Average Wait Times at Individual Facilities" at *AccessToCare.VA.gov* as of September 14, 2022.

- Earliest recorded date in the process of receiving care, typically the date a scheduler works with a veteran to coordinate a future appointment, and it ends on the date care is received or the date it is scheduled to occur if not yet completed. *This artificially shortens the wait times at the start date and at the end date. There is often a delay in recording the date and a scheduled appointment may be cancelled and rescheduled by the VA*

- From the date agreed upon between a veteran and provider for future care and ends on the date care is received, or the date that care is scheduled to occur if it has not yet occurred. *This artificially shortens the wait times at the start date and at the end date. Date agreed upon is only to be used for follow up appointments after it is agreed by the veteran that date of request does work. This was a tactic used pre–VA MISSION Act to artificially lower wait times. Scheduled appointment may be cancelled and rescheduled by the VA so they are not accurate as an end date.*

- Third Next Available Appointment (TNAA), which is a measure of appointment availability that displays the number of days between today's date and the date of the third-next appointment available in VA's scheduling system. *This is an improper use of an industry metric, typically used for internal administration, and considerable debate exists on its effectiveness, particularly as a tool for patients.*[17]*. The problem with VA using TNAA is that it is a theoretical appointment, not a real appointment with a start and end date.*

The correct way to calculate VA average wait times
To ensure average wait times are calculated accurately, consistently and in line with the VCCP regulation, do the following: Start with the date of request either veteran or provider, and end with the date the appointment is completed.

Community care wait times
The health care industry and providers in the VA community care network do not measure wait times. There is no need to measure them since private sector patients have full choice of all providers and can change providers if they are not satisfied with their wait times.

Veterans do not have full choice but instead have choice based on wait time eligibility criteria, therefore VA needs to track community care wait times starting from the veteran's date of request and ending with the date the appointment is completed. This needs to be broken down by how long the wait is in the VA process versus how long the wait time is after the community provider receives the authorization.

The current problem with community care wait times is that VA is not following the 2019 policy of processing the community care request in two business days and instead is adding many additional steps through the referral coordination initiative. The solution is to go back to following the 2019 community care policy, which was based on DoD TRICARE Prime. Once the veteran is approved for community care, simply process the authorization within two business days and notify the veteran. VA's accurate tracking of community care process wait

[17] Elizabeth W. Woodcock, "A Commentary on 'Third Next Available' Appointment," *Patient Access Collaborative*, 2019. https://pas.memberclicks.net/assets/docs/CommentaryonTNAA.pdf

times is important so that VA and veterans know where any bottlenecks are and the causes of delays with community care can be addressed.

Recommendations for Improvement

In order for VA to improve its wait times and measurements, it must improve its health care operations: Start seeing more patients per clinician per day, improve its IT systems and training of staff, redo its policies and procedures to follow the VA MISSION Act and VCCP regulation, hold staff accountable, and provide veterans better patient education and easy to understand information. Here are my four recommendations to improve VA wait times, measurements and the information presented to veterans.

First – Pass the Guaranteeing Healthcare Access to Personnel Who Served (GHAPS) Act with the existing access standards included. This will provide veterans with a guarantee and certainty on their ability to choose community care when VA facility wait times are too long. It will also provide other needed updates and improvements to the VA MISSION Act such as an online health care education portal for veterans.

Second – Follow the VA MISSION Act and VCCP regulation as written when calculating wait times between new and existing patients. For average wait times, start at date of request and end on the date care is received. For community care eligibility, within 20/28 days of the date of request unless a later date has been agreed to by the veteran in consultation with the VA health care provider.

This requires both congressional and veteran service organization buy in and support. VA should withdraw its current submission to the Federal Register "Calculation of Average wait times for New and Established Patients.

Third – Improve VA health care operations:

- Update VA's health IT systems within six months to support proper calculation and reporting on wait time averages for both VA facilities and community care
- Be transparent and start reporting and posting on the VA website all of the national and local wait times for both VA facilities and community care
- Educate staff, providers and veterans on the requirements of the VA MISSION Act and the VCCP regulation as required by SEC 121 - Education program on health care options, and SEC 122. -Training program for administration of non-Department of Veterans Affairs health care. Veterans need to know when they are eligible for community care due to long VA wait times that go beyond the access standards.
- Stop illegal local policy practices such as overriding veterans and VA clinicians on community care eligibility for access standards and best medical interest through the improper use of referral coordination teams and the clinically appropriate standard.
- See more patients per clinician per day at VA facilities to reduce wait times and pressure for community care. The goal should be to see as many patients as DoD sees in a day on average. Prior to COVID-19, VA was seeing around 10 patients per day per clinician, which was very low. I have been contacted by several VA clinicians who have told me they are seeing only six patients per day.

Fourth – Improve VA communications and methods in delivering information to veterans. At the national level this can be done by reinstating an updated version of the VA MISSION Act website (missionact.va.gov). This will provide veterans and stakeholders once again a centralized hub on all information related to the VA MISSION Act, including all of the education requirements for veterans and community care providers contained in SEC 121 and SEC 122 of the VA MISSION Act.

At the local level VA needs to follow the letter and full intent of SEC 121 and SEC 122 of the VA MISSION Act. VA should also develop and implement an education and communication plan and a variety of delivery mechanisms to ensure veterans can obtain all of the education and information needed to successfully navigate their health care both at the facility and in the community.

Conclusion

As VA goes forward it must change its culture, become veteran centric, and do what is best for the veteran, not what is best for VA. Only then will veterans have accurate wait times and be provided access to timely care. As General Omar Bradley said, "We are dealing with **veterans**, not procedures; with their problems, not ours."

And as President Theodore Roosevelt said, "A man who is good enough to shed his blood for the country is good enough to be given a square deal afterwards." Through accurate wait times and timely access to quality care, either through VA facilities or the community, let's make sure our veterans get the square deal they deserve on their health care.

I am committed to overcoming any and all obstacles that stand in the way of achieving what is best for veterans. I look forward to working with the chairman, ranking member, and all members of this committee to achieve this shared commitment. I am happy to answer any questions.

.