STATEMENT OF

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BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

WITH RESPECT TO

Pending Legislation

WASHINGTON, D.C. March 15, 2016

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 eligibly 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.