

**STATEMENT OF ROSCOE BUTLER  
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THE AMERICAN LEGION  
BEFORE THE  
SENATE COMMITTEE ON VETERANS' AFFAIRS  
ON  
"THE VETERANS CHOICE ACT-EXPLORING THE DISTANCE CRITERIA"**

**MARCH 24, 2015**

Chairman Isakson, Ranking Member Blumenthal and distinguished Members of the Committee, on behalf of Commander Helm and the 2.3 million members of The American Legion, we thank you and your colleagues for conducting this hearing and considering possible changes to the distance criteria as well attempting to gain an understanding of the issues veterans are facing first-hand. Ultimately, all of the stakeholders exploring the implementation of the Veterans Access, Choice and Accountability Act want the same thing – for veterans to be able to receive timely care without undue burden. Getting those veterans to the care they need is everyone's focus.

The American Legion supported the passage of the "*Veterans Access, Choice, and Accountability Act (VACAA) of 2014*" bill that was signed into law on August 7, 2014 as Public Law 113-146; as a means of addressing revelations that veterans struggled to receive access to care within the Department of Veterans Affairs (VA) system. The American Legion believes all veterans need to be able to depend on equal access to care<sup>1</sup> and that veterans should not be punished for living in a rural area, or even an area with a high volume of veterans where demands on the healthcare system make timely appointments difficult to schedule.

When The American Legion reached out to veterans recently to determine the level of success the veterans were having accessing the VA Choice Card program, we received the following response from a female veteran in Virginia:

*I am a 90% disabled Air Force veteran. Last November the VA set me up an appointment to see a physiologist at the end of January, but told me to call this 1-800 number and I could get an appointment in my home town within 30 days. I called. I was told someone would call me back. No one did. I called 3 times in December. First they told me that I had permission for physical therapy. I said, "This isn't physical therapy." The lady told me she would get back to me. They never did. I called one last time the first full week in January and spoke to a man named John. He told me he would put a rush on this. The VA called me on February 6th to set me up an appointment. My appointment was January 20th and I had already been seen. I asked to speak to a supervisor. I explained what happened and her response was, "Well, it happens."*

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<sup>1</sup> Resolution No. 160 "Veterans Receive the Same Level of Benefits" – AUG 2014

Secretary of Veterans Affairs Bob McDonald recently noted that the Choice Card program was being underutilized, with only 27,000 veterans having made appointments since the program rolled out in November<sup>2</sup>. At the time, VA stated a desire to be able to “repurpose” portions of the \$10 billion in allocated funds to other programs within VA. The American Legion believes it is premature and short sighted to reallocate those monies so early into the implementation of this program. The Choice Card program was implemented to ensure veterans who struggle to receive care have improved access to care. A better solution would be to examine the current flaws in the implementation of the system, and see if there are ways it could be enhanced to improve access to care.

The American Legion believes improving the implementation of the Choice Card program for rural veterans and veterans not located close to a VA facility requires addressing three critical concerns:

1. Revision of the current “as the crow flies” standard for measuring distance
2. Reevaluating the current policy that does not take into account whether the VA facility within 40 miles offers the treatment the veteran needs
3. Ensuring that the appeals process is clearly communicated to veterans who question whether their denial of eligibility for the Choice Card program is appropriate

### **Revising the “As the Crow Flies” standard:**

Despite the best of intentions, veterans are being denied enrollment into the Veterans Choice Program, due in part to how the bill specified the mileage calculation using “geodesic” or “as-the-crow-flies” to determine if a veteran lives more than 40 miles from VA care. Under VA’s interim final rule<sup>3</sup> VA calculates the distance between a veteran’s residence and the nearest VA medical facility using a straight-line distance, rather than the actual driving distance. The American Legion believes this straight-line calculation is appropriate for calculating the distance for airline travel or as the “crow flies”, but to use this method of calculation for determining the distance for driving from a veteran’s home to a VA medical facility is problematic and does not accurately take into account real driving conditions. As a result, veterans who would otherwise be eligible if real driving distances were considered are being denied enrollment into the Veterans Choice Program.

For many veterans they have to travel across mountains, bridges, highways, and water to access care at a VA medical facility. Veterans who reside on Martha’s Vineyard for an example, have to take a 45 minute boat ride to the mainland followed by a 25 mile drive to the CBOC located in Hyannis, Massachusetts to receive care and if the care needed is not provided veteran’s must drive another 80 miles to the medical center in Providence, Rhode Island<sup>4</sup>.

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<sup>2</sup> Federal Eye “Far fewer veterans use choice card and private health than expected, VA says” *The Washington Post* February 13, 2015

<sup>3</sup> 38 CFR § 17.1510(e)

<sup>4</sup> 2012 System Worth Saving Report on Rural Health Care:

<http://www.legion.org/sites/legion.org/files/legion/publications/sws-rural-healthcare-report-2012-web.pdf>

Veterans living on the Eastern Shore of Virginia live approximately 60 road miles from the Hampton VA facility and a direct line is only 24 miles. However, veterans need to travel over the Chesapeake Bay Bridge and Tunnel which costs veterans \$24 round trip. A member of The American Legion from the Chesapeake region recently expressed their frustration with the situation they face in that region:

*While the Pocomoke CBOC is a well run and professional VA medical facility, the problem that exists for the shore veteran is that the Pocomoke CBOC is under the Baltimore Veterans Administration [sic]. That means any in-depth medical treatment or special testing etc. that a shore veteran requires results in additional travel to Baltimore or Cambridge, MD. Just last week one of our combat veterans at Post 56 was denied a local medical appointment because he lived within this 40 mile radius of the Hampton VA. The fact is that he lives 50.2 miles away from the Hampton VA and he doesn't own a hang glider to make that appointment.*

The 40 mile rule is misleading because of the geographic challenges that veterans who live in rural and/or highly rural areas face regarding accessing VA health care. Approximately 41 percent or 3.4 million veterans live in rural and/or highly rural communities with the majority living in southern or central portions of the country<sup>5</sup>. The American Legion discovered that one of three veterans who are enrolled in the VA resides in a rural and or/highly rural area of the country and that number is expected to rise as more servicemembers transition out of the service. Veterans living in rural areas of the country are faced with many challenges to include the lack of primary and specialty health care services and treatments as well as increased time and distance that veteran's experiences in travelling to VA health care facilities.<sup>6</sup>

Veterans in these rural communities are concerned that the "as the crow flies" standard doesn't recognize the challenges involved in actually traveling the road miles to reach a facility. The American Legion believes the current interpretation of the distance standard should be modified to reflect actual distances traveled, as well as other intervening factors such as the high tolls faced in some regions. This provision was meant to improve access for veterans in rural regions who had difficulties accessing VA care. To be truly within the intent of the legislation, the rule making needs to reflect an attempt to overcome the challenges rural veterans face when trying to access that care.

### **Reevaluating the policy regarding treatments offered at VA facilities:**

The American Legion's National Commander Michael D. Helm stated before the Senate and House Veterans' Affairs Committees that one of the biggest challenges he has seen with the implementation of the Veterans Choice Card Program is the confusion over VA's definition of a VA medical facility. VA regulations defines a "VA medical facility" as a VA hospital, a VA community-based outpatient clinic (CBOC), or a VA health care center, with no consideration as to whether the VA medical facility can provide the health care or services the veteran requires.

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<sup>5</sup> Ibid

<sup>6</sup> Ibid

In many cases, veterans are being referred from a CBOC to the parent VA medical center which can be over 150 miles without taking into account travel times and road conditions. This can significantly impact veterans the ability to maintain their appointments, which directly impacts VA's appointment cancellation and no-show rates.

Commander Helm related stories of veterans in Kansas being sent over 270 miles to a hospital for treatment because they were close to a CBOC, but the CBOC didn't offer the treatment they needed, he called the practice "crazy."

The American Legion queried our network of over 3,000 accredited service officers to hear their accounts of veterans accessing the Choice Card program. As service officers, they are the first line of contact for many veterans when they run into problems at VA, so collecting information from this web of contacts is helpful for determining the pulse of how veterans are really faring when interacting with VA, whether in the claims and benefits system or the healthcare system.

In Washington State many of the local veterans cannot get the service they need at their CBOC so they need to travel over 170 miles to the parent facility in Spokane. One veteran The American Legion spoke to stated "I have an appointment that was scheduled on May 5, 2015, so I called the number on the choice card to see if I can get an appointment sooner and received a call nine days later."

One service officer attended a Town Hall in Yakima, WA and related the following:

*The audience was veterans in their late 80's and early 90's all the questions were about the wait to get appointment to fix their hearing aids. Some said they have been waiting for over 90 days for an appointment and when they got the choice card they were still waiting 90 days for an appointment to get the hearing aide fixed. I know there are other facilities that do hearing tests and give hearing aids beside the contract facility that VA is using in the Walla Walla catchment area. These veterans are driving over two hours one way for hearing aids or appointment which they can get in the community if VA would look into it.*

The purpose of the Choice Card program was to supplement VA care by enabling veterans who were finding obstacles to getting care within the VA system, whether by time or distance, to get care either closer to home or faster than the VA could provide. Denying veterans access to care closer to home because there's a VA facility that doesn't offer the services they need seems to be a problem of following the letter of the law rather than the spirit of the law. If veterans are struggling to gain access to care – get them access to care. Common sense needs to prevail. Right now, these denials are only creating ill will in the veterans' community.

If the Choice Card program is currently underutilized as Secretary McDonald states, then there should be no obstacle to interpreting this law in the veterans' favor. Before VA looks to repurpose those funds elsewhere, they should explore all options to make sure the veterans who struggle to get care are being served.

### **Ensuring veterans have a clear path to appeal denials of eligibility:**

When a veteran is determined to be ineligible for the Choice Card program, there are questions regarding the proper avenue of appeal. The American Legion contacted VA Central Office (VACO) regarding the appeals process and were informed there is an appeals process the veteran is informed of when they are notified of a formal denial of eligibility. A veteran has a right to request that VA reconsider their decision<sup>7</sup>. In accordance with VA's regulation, an individual who disagrees with the initial decision denying the claim in whole or in part may obtain reconsideration by submitting a reconsideration request in writing to the Director of the healthcare facility of jurisdiction within one year of the date of the initial decision. The reconsideration decision will be made by the immediate supervisor of the initial VA decision-maker. The request must state why it is concluded that the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for the dispute will be returned to the sender without further consideration. The request for reconsideration may include a request for a meeting with the immediate supervisor of the initial VA decision-maker, the claimant, and the claimant's representative (if the claimant wishes to have a representative present). Such a meeting shall only be for the purpose of discussing the issues and shall not include formal procedures (e.g., presentation, cross-examination of witnesses, etc.). The meeting will be taped and transcribed by VA if requested by the claimant and a copy of the transcription shall be provided to the claimant. After reviewing the matter, the immediate supervisor of the initial VA decision-maker shall issue a written decision that affirms, reverses, or modifies the initial decision.

In communication with VACO the appeals process was clearly defined. Whether the process is being clearly explained or implemented in the field is still in question.

A service officer in New York explained:

*I have had numerous veterans contact me at my office or speak to me at various meetings regarding their denial of eligibility for using their Choice Card. To the best of my knowledge none of them have been offered an opportunity to appeal the denial. We have 5,253 Veterans in Otsego County, NY. Additionally, I know of no one in our county that has been approved to use their Choice Card.*

A service officer from Alabama responded by stating many of the issues raised by the veterans he spoke to were in regards to the denial of services. In each of those discussions there has been no mention of an appeal process or the ability to appeal.

The information The American Legion has at this time is still anecdotal, and requires additional research to make a more definitive decision as to whether the process is working as intended in the field. Right now, there are too many questions to determine whether VA is, or is not, explaining the process as intended. The American Legion continues to conduct field visits to VA medical facilities across the country, and questions regarding the implementation and effectiveness of the appeals process are now a standard part of the field research conducted by staff of The American Legion.

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<sup>7</sup> 38 C.F.R. 17.133

At this time, there is a process in place, but it is important to ensure implementation of the process is happening consistently and that the process is being clearly explained to veterans in the field. The American Legion is committed to ensuring that this is the case through careful consideration during field research and site visits.

**Conclusion:**

The American Legion still strongly believes the VA is the best method for delivering care to veterans, however we also recognize there are constraints VA must overcome, such as geography and workload that sometimes make this difficult. The Choice Card program, like many authorities extended to VA to address areas where they are falling short of meeting veterans needs, has great potential to ensure veterans get seen in a timely manner, and without undue travel requirements. In time, when we study the implementation of the Choice Card program before its authority expires, data on how the program was used can be helpful in determining where VA must expand to meet veterans' needs, and where there are still gaps in service.

However, the program cannot be implemented by half measures, and with one hand seemingly tied behind its back. To be effective, The American Legion believes the Choice Card program needs to be implemented in a manner consistent with the spirit in which it was passed – as a tool to ensure veterans get the care they need, when and where they need it. To do this, The American Legion urges VA to adopt rule changes that eliminate the straight-line “as the crow flies” rule, to make common sense corrections that interpret “facility” to mean a facility that actually has the treatment the veteran needs available, and to develop a simple but effective means for veterans to resolve their ineligibility questions. If VA cannot or will not make these changes of their own volition to serve the veterans who need these changes, The American Legion urges Congress to amend the laws to make things right.

The American Legion thanks this committee for their diligence and commitment to examining this critical issue facing veterans as they struggle to access care across the country. Questions concerning this testimony can be directed to The American Legion Legislative Division (202) 861-2700, or [wgoldstein@legion.org](mailto:wgoldstein@legion.org)