Department of Veterans Affairs (VA)
Views on S. 10 VA Clinician Appreciation, Recruitment, Education, Expansion, and Retention Support (CAREERS) Act of 2023

We appreciate the close collaboration of Committee staff, addressing some of the concerns the Department of Veterans Affairs (VA) identified with previous versions of this legislation in the prior Congress (S. 4156), and many of the sections are similar or identical to legislative proposals included in VA's FY 2024 budget request As included in the budget, a portion of estimated costs for certain proposals may be paid for from the Cost of War Toxic Exposures Fund, as authorized in The Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (Public Law 117-168; PACT Act), and the remaining portion from discretionary appropriations.. We believe the current version is much improved and is a demonstration of the benefits of VA and Congress working together.

VA position on section 101: VA supports section 101 if amended and subject to the availability of appropriations.

Section 101 requires the VA Secretary to pay the costs of any licensing examinations and certifications required for any current recipient of a covered health professional scholarship from VA. Veterans Health Administration's (VHA) position is Support, if amended to include the following:

(b) (13) The National Physical Therapy Licensing Examination for Physical Therapists

(14) The Board of Registration Examination for Kinesiotherapy (KT) for VHA KT fellowship and internship trainees

It should be, however, noted that this legislation will establish differential treatment for employees who are scholarship recipients and employees who are not. For new hires who are required to have a license before they are hired to qualify for their position, it has been determined that payment of licensing fees by VA is a conflict between the agency's role as employer and employee statutory requirements for appointment. Payment of licensing fees for scholarship recipients would not be a conflict of the employer role but does establish differential treatment for employees who are scholarship recipients and those who are not.

Cost estimates total costs through FY2026 at $7.5 million and through FY31 $22.5 million.

VA position on section 102: VA supports section 102 as written and subject to the availability of appropriations.

Section 102 focuses on improvement of workforce training and team models to meet the needs of older Veterans. Section 102(a) would expand the Rural Interdisciplinary Team Training program to not fewer than one rural site in each VISN and ensure access at such sites to learning opportunities through the Geriatric Scholars Program. Section

102(b) would provide continuing professional education for clinical staff who provide care for Veterans with Alzheimer's disease and dementia. This education is to be implemented in consultation with the Office of Rural Health established under 38 U.S.C. § 7308 to ensure equitable access to learning opportunities for employees in rural and highly rural areas.

Section 102(c) will expand the Geriatrics Patient Aligned Care team model and the geriatric and palliative specialty services to every medical center, any community-based outpatient clinic at which such an expansion is determined by the Secretary to be feasible and needed and provide access to all Veterans that need these services, including through implementing Geriatric and Palliative Specialty Consultative Clinical Resource Hubs to meet the needs of the aging Veteran population. The Secretary may waive the application of the requirement to all VAMC. The Secretary shall conduct a study on the variations in the structure and model consistency of the Geriatric Patient Aligned care team model and delivery and utilization of geriatric and palliative care throughout the Department and how those variations impact quality of care and patient outcomes.

Section 102(d) includes a report to Congress not later than 2 years after the date of the enactment of this Act, and not less frequently than annually thereafter for the following 5 years, submit to Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the implementation of this section. The report will include the identification of any medical center in receipt of waiver under subsection (c) and the reason for the waiver.

For Section 102, the terms rural and highly rural have the meanings given those terms under the Rural-Urban Commuting (RUCA) coding system of the Department of Agriculture.

Section 102(a) Cost estimate through FY28 is $54.2 million and ten year total of $116 million.

Section 102(b) Cost estimate through FY28 is $953K and ten year total through FY33 is $2 million

Section 102(c) Cost estimate through FY28 is $5 million and ten year total through FY33 is $10 million.

VA position on section 103: VA supports section 103 as written and subject to the availability of appropriations.

Section 103(a) requires that not later than 2 years after the enactment of this Act, VA will complete a study on barriers to hiring and retaining staff at VA Community Living Centers (CLC). The study will include best practices for improving recruitment and retention of such staff with an emphasis on nursing staff.

Section 103(b) requires that not later than 180 days after completion of the study a report will be submitted to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives. This report will summarize key findings with respect to barriers to hiring and retaining staff at CLC and best practices for improving recruitment and retention of such staff, including any barriers or best practices specific to rural areas and include recommendations for any administrative action as the Secretary considers appropriate.

VA position on section 104: VA supports section 104, if amended and subject to the availability of appropriations.

Section 104 proposes the following: (1) notification to Congress within 90-days of when a Medical Center Director is detailed out of their position; (2) requirement to appoint someone to act in the Medical Center Director position within 120-days; (3) requirements to submit a report to Congress as frequently as every 30-days when Medical Center Directors are detailed out of their position; (4) time limitations for detailing Medical Center Directors to other positions of not more than 180-days; and (5) requests for waivers for individuals detailed for successive 90-day increments.

VA can notify Congress when a Medical Center Director is detailed out of their position. VHA immediately identifies and appoints a qualified individual to act in a Medical Center Director position as soon as the position becomes vacant. As such, the requirement to detail within 120-days is already being done in the agency.

Submitting updates to Congress every 30-days would be a significant administrative burden to implement. VA proposes an amendment to S.10, section 104 that would reduce this burden by removing the requirement for a 30-day update and replacing it with notification to Congress of any waiver of the 180-day limitation by the Secretary of Veterans Affairs.

VA also proposes to amend S.10, section 104 by removing the 540-day limitation on details and replacing it with the statutory and regulatory limits that govern details in the senior executive service (see 5 C.F.R. § 317.903) not to exceed 240 days.

If unamended S.10, section 104 may impact continuity of operations as well as on-going projects and initiatives that require Medical Center Directors' leadership. Normally, when Medical Center Directors are detailed to other vacant Medical Center Director positions, it is because of their technical and leadership skills needed at the detailed location. VA would like to retain the flexibility regarding details of Medical Center Directors, but keep Congress informed of such details, with VA's proposed amendments to the legislation.

Cost estimates are not yet available.

VA position on section 201: VA supports section 201, subject to the availability of appropriations. This is similar to our FY 2024 legislative proposal, 'Aggregate Pay Limitation for VHA Physicians, Podiatrists, and Dentists.'

Section 201 proposes to eliminate the performance pay, the base and longevity pay components of the physician, podiatrist and dentist pay system, and add optometrists to the pay system. In its place, VHA will have a single market pay component. Section 201 also includes a provision to allow the Secretary to waive the $400,000 cap on market pay in limited cases, but it sunsets five years after enactment. Section 201 does not include a VHA request for legislative relief to retroactively pay physicians deferred earnings that were never paid due to the discontinued practice in December 2017 of paying physicians, podiatrists and dentists deferred earnings each calendar year.

VA supports these changes to the physician, podiatrist and dentist pay system as they will allow VHA to be competitive with local labor markets, meet the increased demand for critical clinical specialties and more effectively and efficiently compensate physicians, podiatrists and dentists based on desired clinical outcomes in a way that is more advantageous to our providers. Without these amendments to the current physician, podiatrist and dentist pay system, VHA risks losing high quality providers in complex clinical specialties to the private sector, impacting VHA's ability to deliver quality care to Veterans. Using only market pay to establish physician pay will allow VHA significant flexibility to more closely match salaries to pay in the local labor markets. The physician, podiatrist and dentist pay system is over 16 years old and significant improvement is greatly needed to keep pace with the increasing economy, demographics, high market rates, rapid advancements in health care and high costs of critical and complex clinical specialties.

The legislative relief for retroactive pay only covers the retroactive period (2006-2017) when earnings were being deferred and paid out the next calendar year when there was no legal authority to do so (the lack of legal authority to defer earnings came to VA's attention in December 2017). However, the most recent text did not include critical language authorizing the payment of deferred earnings for calendar year 2017 that are currently being held in abeyance and were never paid. This legislative relief to pay employees for any excess earnings not paid for 2017 would compensate impacted employees for earnings that they expected to receive, and that VA intended to pay at the beginning of 2018. VA's physicians have operated in good faith in their employment and have provided high quality health care to Veterans. The payment of excess 2017 earnings will help to restore the trust necessary in providing continued quality health care to the Nation's Veterans. Deferred earnings were discontinued in January 2018 and providers only receive pay under title 38 up to the $400K aggregate limit. The cost of paying excess earnings for 2017 to approximately 210 physicians is estimated to be a one-time cost less than $3.5 million. Currently, approximately 210 physicians are impacted, including some who have left VA. These impacted physicians are assigned to

physician and dentist pay table 4 and have earnings at or near the limit in current 38 U.S.C. § 7431(e)(4)(currently $400,000) and maximum rate of pay table 4. VHA lacks the legal authority to defer any compensation that is over the limit, leaving no provision to make the impacted employees whole relative to the deferred earning they expected to receive in January 2018.

VHA understands there has been apprehension about the elimination of performance pay. Pay for performance goals and objectives for the providers will be worked into their overall pay under the new pay system. Performance goals and objectives will still be issued and reviewed annually for completion. As the third component of the current physician pay system performance pay is included in total pay but is not used to address the inability to offer market pay competitive with the local labor market. Providers whose pay is currently near the pay cap are not receiving performance pay because it exceeds the $400,000 pay limit. Including performance in the single market pay component will allow VA to be competitive with local rates and continue to award stellar performance.

VA notes that there are also some technical amendments required to the legislative text. VA welcomes the opportunity to work with the Committee to provide input on necessary technical amendments.

Cost estimate through FY28 is $28 million and ten year cost through FY33 is $116 million.

VA position on section 202: VA supports section 202, subject to the availability of appropriations. This is similar to our FY 2024 legislative proposal, ‘Title 38 Compensation System for Medical Center Directors and Network Directors.’

Section 202 would establish a separate compensation system under title 38 for the VHA occupations of Medical Center Director and Veterans Integrated Services Network (VISN) Director appointed under 38 U.S.C. § 7401(4). Currently, Medical Center Directors and VISN Directors are paid pursuant to 38 U.S.C. § 7404(a) and 5 U.S.C. § 5377. Under this new system, the rates of pay for employees in these positions would be set and periodically adjusted by the Secretary of Veterans Affairs. The designated positions would remain eligible for performance awards in accordance with VA guidance. Pay would be determined based on market pay methodology like the market pay authority currently in place for VHA physicians, dentists, and podiatrists at 38 U.S.C. § 7431.

Annual salary for each Medical Center Director and Network Director would consist of a single, market pay component, thus eliminating a base pay component. Subsequent pay adjustments would be based on performance-based measures and would be developed incorporating salary adjustment features aligned to position performance and other criteria such as the complexity of the assignment, marketplace factors, labor

market features, qualifications and experience and so forth, as determined by the Secretary. This compensation system will have a limit on the annual market rate of basic pay of the President's salary (currently $400,000).

Currently, 38 U.S.C. § 7401(4) provides for the appointment of Medical Center and Network Directors. Pay for these positions is authorized under 38 U.S.C. § 7404(a). If these individuals are appointed under title 38 and they are not a physician, dentist or podiatrist, their basic pay is generally capped at Executive Level (EX) II ($212,100 in 2023). The same is true of those appointed under title 5. These individuals provide critical knowledge of health care operations, and this compensation limitation creates a compensation disparity with physician, dentist and podiatrist peers in the same position as well as limiting the ability of VHA to compete with the private sector in the recruitment and retention of health care executives in these critical roles that directly impact and uphold the standard of high-quality patient care.

VHA continues to face a significant challenge addressing the rapidly evolving and changing health care industry. To be part of this transformation, VHA must have Medical Center and Network Directors with the skill set to provide enterprise solutions for our clients, the Nation's Veterans. Compensation is a primary driver to ensure VHA is successful in recruitment and retention of dedicated health care leadership that can make the tough decisions in delivering sustainable quality health care and continual performance improvement. To recruit top health care executives, the salary structure of VHA senior health care executives in Medical Center and Network Director positions must be addressed. Medical Center and Network Directors have oversight of the Nation's largest integrated health care delivery system within all 50 States, several U.S. territories and the District of Columbia.

Network Directors and Medical Center Directors work collaboratively to ensure VHA remains a highly effective, innovative, data-driven, evidence-based, continuously improving and reliable health care system.

Of note, the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 amended title 38 to explicitly allow VHA executives appointed under 7306, in addition to those under 7401(4), to be eligible for critical pay under section 5377 of title 5. Changes to section 7404(a)(1)(B), as included in the bill, are not needed and may create ambiguity.

Cost estimate through FY27 is $73 million and ten year cost through 2032 is $162 million.

VA position on section 203: VA supports section 203, subject to the availability of appropriations. This is similar to our FY 2024 legislative proposal, 'Increasing Pharmacist Executive Special Pay Limitation from $40,000 to $100,000 (previously $75,000).'

Section 203 modifies the language in 38 U.S.C. § 7410(b) to increase the maximum pharmacy special executive pay. Currently, pharmacist executives are eligible to receive special pay amount up to $40,000 annually. This legislation would increase the special pay amount up to $100,000 annually. VA supports this bill in anticipation of continued difficulty recruiting and retaining pharmacy executives. Special pay is used as an attractive tool which provides VA with a competitive edge. The ability to grant up to $40,000 under the special pay authority has lessened the pay differences found between Federal and non-Federal positions, however a significant gap remains. Increasing the maximum amount of special pay to $100,000 will further bolster recruitment of pharmacist executives and ensure future needs are successfully met in the retention of highly qualified staff.

The increase in special pay will help facility directors remain competitive in pay and aligns the maximum amount to the amount of special pay authorized for nursing executives. VA welcomes the opportunity to provide input on potential edits to ensure this authority can be fully leveraged, consistent with Congressional intent.

Cost estimate proposed through FY28 is $5 million and a ten year cost through FY33 is $13 million.

VA position on section 204: VA supports section 204, subject to the availability of appropriations. This is similar to our FY 2024 legislative proposal, 'Amendment to Expand Coverage for Nurse Executive Special Pay.'

Section 204 modifies the language in 38 U.S.C. § 7452(g) to allow the Under Secretary for Health to define which VHA positions qualify as nurse executives for the purposes of special pay used for recruitment and retention. Currently, the law allows the Secretary to pay special discretionary pay to the nurse executive at each Department health care facility and the Central Office. This legislation will provide the Under Secretary for Health the authority to administratively define which VHA nursing positions will be authorized nurse executive special pay.

VA supports section 204. VHA has a challenge to address the rapidly evolving and changing health care industry. For VHA to be part of this transformation, VHA must have leaders in the nurse executive position with the skill set to provide enterprise solutions for the Nation's Veterans and to serve as a strategic thought partner collaborating with leaders in the Senior Executive Service. Compensation is a primary driver to ensure VHA is successful in recruitment and retention of dedicated nursing leaders who can make appropriate recommendations for tough decisions in delivering sustainable quality health care and continual performance improvement for the Nation's Veterans.

Cost estimate through FY27 is $16 million and ten year cost through FY32 is $35 million.

VA position on section 211: VA has no objection to section 211.

Section 211 would require VA's Office of Inspector General (OIG) to issue a report on VA's use of direct hire authority (DHA), its contributions to filling vacancies and any vulnerabilities or inconsistencies in its use. VA defers to OIG on this section. We do note that a mechanism is already in place to track utilization of DHA. Currently, two authority codes are utilized when documenting personnel actions using DHA. Using these two authority codes allows the U.S. Office of Personnel Management (OPM) to evaluate the use of these authorities without requiring agency reports. Furthermore, VA has the capability to pull reports using these unique codes to evaluate use of DHA and any vulnerabilities or inconsistences in its use.

VA position on section 221: VA opposes section 221.

Section 221 would amend 38 U.S.C. § 7413 to make optometrists eligible for any supervisory position within VHA to the same degree as a physician. The proposed change replicates language from the VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018 (MISSION Act) that provided this level of eligibility to podiatrists.

VA opposes this change. To oversee individuals in the physician community, the supervisor would need to have similar types of credentials and privileges as a physician. Optometrists do not complete the same level of training as physicians or podiatrists, as completion of a residency is not a requirement for optometrists. From a clinical perspective, an optometrist does not hold credentials and privileges that are seen to be equivalent to that of a physician.

Proceeding with this legislative change would potentially create various clinical and quality of care issues throughout VHA, since a supervisor would need to be able to address the clinical competencies of their direct reports, provide clinical guidance and approve clinical privileges. Additionally, when serving in higher level positions such as a Facility Chief of Staff, the incumbent would likely serve as the Chair of the Medical Executive Board overseeing the privileges of all physicians within the Medical Center.

VHA agrees that optometrists may serve in various leadership positions as deemed appropriate by a local facility, VISN or program office. However, for clinical reasons, VHA recommends not changing 38 U.S.C. § 7413 to enforce a statutory requirement for eligibility of optometrists for every supervisory position for which a physician is eligible.

VA position on section 222: VA supports the inclusion of section 222 in the VA CAREERS Act but seeks amendments to subsection (a) and (b) and to address certain administrative matters concerning the use of annual leave and Congressional reporting requirements.

Section 222 would allow VA to consolidate any restored annual leave that covered employees accrued during calendar years 2020, 2021, 2022 and 2023 under 5 U.S.C. §

6304(d)(1)(B) into one annual leave account. Employees would be allowed to utilize the leave through the later date of January 9, 2027, or the time limits prescribed under OPM regulations. Employees would have the option to request a lump sum payout for the restored annual leave but would have to agree to a period of obligated service in exchange.

On March 14, 2023, the Office of Personnel Management (OPM) issued governmentwide regulations dealing with restored leave related to the COVID-19 emergency, therefore VA is recommending edits to subsections (a) and (b) of section 222 to account for the revised timeframes and agency authorities to declare an ongoing and/or extended exigencies of public business.

To ensure that employees are not prevented from exercising the lump sum payment option due to reaching the annual aggregate pay limit, VA seeks to add a provision under paragraph (c) to exclude such lump sum annual leave payments from the aggregate pay limit.

Paragraph (d) requires the development of a plan for utilizing accrued annual leave and requires the plan be submitted to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives within 90 days of enactment. To ensure that the timeframe is adequate for compliance with this provision VA requests a modified timeframe of 180 days instead of 90 days for submission to Congress. In addition, VA requests additional clarification if the reference to annual leave in paragraph (d) is a reference to regular annual leave that accrues to an employee or a reference to all consolidated leave restored under this provision.

VA supports amendment to paragraph (e), which would require VA to submit reports on a semi-annual basis to Congress outlining changes to the implementation plan, the amount of leave remaining in the annual leave accounts disaggregated by duty station and position and the use of the lump sum payment option. VA recommends changing the frequency for reporting to an annual cycle that is consistent with the leave year. Employees utilize higher leave amounts between the timeframe of October to December. The most meaningful data will be captured from the start of the leave year through the end of leave year. VA also recommends edits to the content of the report in (e)(2)(b) based on the diversity of VA job titles and number of VA Medical Centers. As currently structured, the report will exceed 5,000 pages of data. VA recommends utilizing aggregate data grouped by title 5, title 38, Hybrid status and VA Administration.

Cost estimates are not available at this time.

VA position on section 223: VA supports section 223, subject to the availability of appropriations. This is similar to our FY 2024 legislative proposal, 'Reimbursement of Continuing Professional and Medical Education for all full-time Board-Certified Physician Assistants and Advanced Practice Registered Nurses.'

Section 223 proposes to expand reimbursement of continuing professional education expenses to include:

- Physician, dentist, podiatrist, chiropractor, optometrist, registered nurse, or physician assistant appointed under section 7401(1) of this title, not more than $1,000 per year for each such individual; and
- Licensed practical or vocational nurse, medical technologist, pharmacist, pharmacy technician, psychologist, diagnostic radiologic technologist or social worker appointed under section 7401(3) of this title, not more than $1,000 per year for each such individual.

VA supports this bill since it is in the best interest of taking care of the Nation's Veterans. The existing benefit in 38 U.S.C. § 7411 authorizes full-time board-certified physicians and dentists reimbursement for up to $1,000 annually for continuing professional education. This bill removes the board-certification requirement and expands the benefit to other types of VA clinicians, which allows the organization to address its other clinical mission critical shortages that have been identified in its 2020-2021 VHA Workforce and Succession Strategic Plan. As the COVID-19 pandemic has illuminated the importance of the interdisciplinary health care team, no member of the clinical team should be excluded from protected funding for Continuing Professional Education (CPE). Additionally, the availability of CPE is a powerful recruitment and retention tool and the expansion of this bill is in alignment with two of VHA's key priorities to execute improvement to affect system-wide transformative change, which includes:

- Restoring trust in VHA by ensuring Veterans receive top-quality service and highly reliable care that improves their health and prevents harm; and
- Creating a learning organization in which science and informatics, Veteran-clinician partnerships, incentives and culture are aligned to promote and enable continuous and real-time improvement in both the effectiveness and efficiency of care.

Cost estimate through FY27 is $786 million and a ten year cost through FY32 is $1.6 billion.

VA position on section 224: VA supports section 224, subject to the availability of appropriations.

Section 224 modifies the requirements for publication of personnel transparency data as required by section 505 of the MISSION Act in several ways. Referencing the quarterly report (505a), section 224 changes the requirements by 1) requiring that the data reflect the most recently available data (that is, revised each quarter to reflect current data), 2) replacing the requirement for reporting vacancies by occupation to instead report positions currently undergoing a recruitment action by occupation and by stage of recruitment and 3) reporting the number of positions vacated during the quarter for

which the Department has not initiated a recruitment action, including the date the position was vacated by occupation. This proposal also removes any reference to "potential hires" and requires that data be disaggregated by Department, VHA data further disaggregated by medical facility and Veterans Benefit Administration (VBA) data further disaggregated by regional offices. Section 224 also establishes requirements for the annual (505b) report. Section 224 would expand the display of information on the internet of "vacancies by occupation" to "positions currently undergoing recruitment action" and expand that to VHA and VBA positions and requires an annual report to Congress. VA has no objection to the bill as written. VA has no objection to providing this additional information and notes that all but the requirement for the number of vacancies removed, and the reporting of recommendations for legislative and administrative action, are already required by section 505 of the VA MISSION Act of 2018 (P.L. 115-182). Additionally, VA supports section 224 of the CAREERS Act of 2023, Department of Veterans Affairs Personnel Transparency, because these modifications will improve the quality and relevance of the information published.

Cost Estimate: Existing VA department and administration program office staff can support the additional workload for the modified reporting requirements.

VA position on section 225: VA defers on this matter but has no objection to section 225.

Section 225 proposes the U.S. Comptroller General to submit a report in 18 months on VHA Human Resources (HR) Modernization efforts. The report includes the assessment, results and performance of those HR Modernization activities; the usability and effectiveness of human resources information technology systems; metrics, timelines and trends in vacancy, recruitment, and retention data; the use of authorities and waivers for hiring flexibilities; and the training and development of human resources professionals.

VA defers on this matter but has no objection to the Comptroller General—Government Accountability Office's evaluation of VHA's HR Modernization, or otherwise referred to as VHA's HR Standardization and Optimization, efforts. HR Modernization has made a significant positive impact on VHA's ability to deliver HR services in an increasingly competitive market; however, HR Standardization and Optimization is a long-term, ongoing strategy that continues to evolve over time as results are assessed and optimized. Various qualitative and quantitative reports are already produced through VHA's ongoing assessments and can be shared with the Comptroller General.

No cost estimate available at this time.

Department of Veterans Affairs
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