STATEMENT OF
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THE AMERICAN LEGION
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
ON
"EXAMINING THE VETERANS CHOICE PROGRAM AND THE FUTURE OF CARE IN THE COMMUNITY"

JUNE 7, 2017

The American Legion believes in a strong, robust veterans' healthcare system that is designed to treat the unique needs of those men and women who have served their country. However, even in the best of circumstances, there are situations where the system cannot keep up with the health care needs of the growing veteran population requiring VA services, and the veteran must seek care in the community. Rather than treating this situation as an afterthought, or an add-on to the existing system, The American Legion has called for the Veterans Health Administration (VHA) to "develop a well-defined and consistent non-VA care coordination program, policy and procedure that includes a patient-centered care strategy which takes veterans' unique medical injuries and illnesses as well as their travel and distance into account."[1]

Chairman Isakson, Ranking Member Tester, and Members of the Committee; On behalf of National Commander Charles E. Schmidt and the over two million members of The American Legion, we welcome this opportunity to comment on the veterans choice program and the future of care in the community.

Make no mistake about The American Legion's position – we insist on a robust program that will support the sustainability of the VHA model of coordinated care, and we do not support degrading VHA's organic services. In fact, American Legion resolution number 372, passed at our National Convention in Ohio last year sums it up nicely:

"now, therefore, be it

RESOLVED, By The American Legion in National Convention assembled in Cincinnati, Ohio, August 30, 31, September 1, 2016, That The American Legion opposes any legislation or effort to close or privatize the Department of Veterans Affairs (VA) health-care system; and, be it further

RESOLVED, That Congress enact legislation that provides the VA the authority to consolidate its multiple non-VA community care programs; and, be it further

RESOLVED, That Congress enact legislation that would allow veterans to use their Medicare health care coverage, or private health care coverage, when receiving medical care or services in a VHA health-care facility, and Medicare be authorized to reimburse VA for such medical care and services; and, be it finally

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

RESOLVED, That The American Legion remain open to further discussion on the possibility of expanding and improving VA's health-care services."[2]

This is the voice of more than 3 million voters who comprise The American Legion family.

As Congress is now discovering and as The American Legion has previously testified, costs are skyrocketing beyond all budget predictions as the quest to provide "choice" has overtaken common sense governing. False narratives instigated by political interests trashed the department in 2015 and 2016 and continued to feed the media's insatiable appetite for scandal by spotlighting as many isolated incidents of malfeasance as they could find. Transparency is important and exposing criminal behavior is essential to good governance, but taken out of context this biased coverage fails to tell the more accurate story of an agency that serves millions of veterans every day with expert care. Hundreds of thousands of caring, well trained, and highly competitive professionals stream through the doors of VA medical centers throughout this nation day in and day out for one purpose, and one purpose only – to care for those who have borne the battle – and overall, they do an excellent job.

According to an initial report published in the Journal of the American Medical Association published online April 17, 2017:

> ***Initial Public Reporting of Quality at Veterans Affairs vs. Non–Veterans Affairs Hospitals***
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> *Recently, the Centers for Medicare and Medicaid (CMS) announced the inclusion of Veterans Affairs (VA) hospital performance data on its Hospital Compare website. Prior to this release, comparisons of quality at VA vs non-VA hospitals were inconclusive and had methodological limitations. Given longstanding concerns about care at VA hospitals, our objective was to compare available outcome, patient experience, and behavioral health measures between VA and non-VA hospitals.*
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> *Results | Veterans Affairs hospitals had better outcomes than non-VA hospitals for 6 of 9 PSIs. There were no significant differences for the other 3 PSIs. In addition, VA hospitals had better outcomes for all the mortality and readmissions metrics. However, on the patient experience measures, non-VA hospitals scored better overall than VA hospitals for nursing and physician communication, responsiveness, quietness, pain management, and on whether the patient would recommend the hospital to others. For behavioral health measures, non-VA hospitals did better on 4 of 9 measures, while VA hospitals did better on 1 of 9 measures.*

Following the Phoenix scandal, Congress appropriated $10 billion to help VA address any and all veterans who ended up on off-the-books waitlists[3] that schedulers had developed, in an attempt to juggle the overwhelming requests they were receiving for VA care. This behavior was inexcusable and resulted in managers being improperly enriched with bonuses and incentives for

[2] Resolution No. 372 (2016): Oppose Closing or Privatization of Department of Veterans Affairs Health Care System
[3] April 2010 Schoenhard memo addressing gaming the system

a standard they had little control over meeting. The waitlist debacle began because schedulers were forbidden from using the official VA scheduling system once wait times started to exceed 14 days. Medical center executives' performance ratings were being directly tied to ensuring veterans were being seen within the, then Secretary of Veterans Affairs (SECVA) Eric Shinseki's directive of 14 days. This unrealistic goal soon became an example of the antithesis of performance management[4] which led to the next SECVA focusing heavily on customer satisfaction and organizational management.

Secretary McDonald instituted veteran-centric principles and programs while attempting to reprogram staff and midlevel leadership with his iconic I CARE[5] core values; Integrity, Care, Advocacy, Respect, and Excellence. At the same time, Secretary McDonald was struggling to integrate the Choice directives into the VA's community care model despite the spending restrictions imposed by Congress on how the money was to be spent. The Choice program is a textbook example of how well intended overregulating can turn into troublesome unintended consequences.

By committing $10 billion to this new procurement vehicle, Congress ignored all of the established contracting control measures used in VA's other community care programs. Choice instituted third party administrators, additional eligibility criteria, higher and inconsistent reimbursement rates, and a disconnected billing authority. In addition, the Choice Act mandated VA to issue paper Choice cards to every enrolled veteran that were essentially worthless, wasting millions and millions of dollars on designing, procuring, and mailing millions of these cards in 90 days or less.

As part of the Choice legislation, Congress called for comprehensive studies into the VA's wait time issues. The VA found that the widespread assumption that these problems are worse in the VA than elsewhere is simply untrue. Based on a study by the independent RAND Corporation at the end of 2015, they found that "wait times at the VA for new patient primary and specialty care are shorter than wait times reported in focused studies of the private sector." Overall, the report concluded that VA wait times "do not seem to be substantially worse than non-VA waits."[6]

The one thing the Choice Act effectively did was expose VA's practice of managing to budget as opposed to managing to need. While the Choice Act set a restrictive access boundary of 30 days of wait time, and 40 driving distance miles by presenting it as increasing access, the truth is, VA already had the authority to contract patients out to community care. They just rarely used the authority because their budget could serve twice as many veterans if redirected toward organic campus care or already negotiated and established community care contracts.

Every year VA would send their budget request to the Office of Management and Budget (OMB) as calculated by the number of veterans they projected would require medical care from VA in the upcoming fiscal year, and every year OMB would recommend less money than VA had

[4] Performance Mismanagement: How an Unrealistic Goal Fueled VA Scandal
[5] https://www.va.gov/icare/
[6] A Product of the CMS Alliance to Modernize Healthcare Federally Funded Research and Development Center Centers for Medicare & Medicaid Services (CMS) At the Request of: Veterans Access, Choice, and Accountability Act of 2014 Section 201

requested for the president's annual budget request. To Congress' credit, each year Congress would fund VA at an amount greater than what the president would request, but still lower than what VA had predicted their needs being. This budgetary tug-of-war continued for years while returning injured veterans became new patients of the VA, aging Vietnam and Korean War veterans consumed more medical services, and Congress opened free access to all returning combat vets regardless of whether or not they had a service-connected disability. Additionally, the Affordable Healthcare Act pushed veterans into VA who were eligible for VA care but never used the VA because they had access to private care, but who's private care didn't qualify for Obamacare. It was this combination of events in tandem with the national shortage of primary care doctors that was the foundation of the backlog of patients that finally erupted in 2014.

Over the years, VA has implemented a number of non-VA care programs to manage veterans' health care when such care is not available at a VA facility, could not be provided promptly, or is more cost effective through contracting vehicles. Programs such as Fee-Basis, Project Access Received Closer to Home (ARCH), Patient-Centered Community Care (PC3), and the Veterans Choice Program (VCP) were enacted by Congress to ensure eligible veterans could be referred outside the VA for needed, and timely, health care services.

On October 30, 2015, VA delivered to Congress the department's Plan to Consolidate Community Care Programs, its vision for the future outlining improvements for how VA will deliver health care to veterans. The plan sought to consolidate and streamline existing community care programs into an integrated care delivery system and enhance the way VA partners with other federal health care providers, academic affiliates, and community providers. It promised to simplify community care and gives more veterans access to the best care anywhere through a high performing network that keeps veterans at the center of care. That legislation was never enacted.

The American Legion commends this committee for recognizing the need to fix the Choice program. The American Legion supported passage of the *Veterans Access, Choice, and Accountability Act of 2014* as **a temporary fix** to help veterans get the health care they need, regardless of distance from VA facilities or appointment scheduling pressure. As Congress now recognizes a long-term solution requires consolidating all of VA's authorities for outside care, including Choice, PC3, Project ARCH and others, under one authority to help veterans only when and where VA cannot meet demand. The American Legion supports a strong VA that relies on outside care as little as possible and only when medically necessary, rather than a move toward vouchers and privatization.

While many veterans initially clamored for "more Choice" as a solution to scheduling problems within the VA healthcare system, once this program was implemented, most have not found it to be a solution. Instead, they have found it to create as many problems as it solves. The American Legion operates our System Worth Saving program, which travels the nation annually examining the delivery of healthcare to veterans. What we have found over the past decade, directly interacting with veterans, is that many of the problems veterans encountered with scheduling appointments in VA are mirrored in the civilian community outside VA. The solutions in many areas may not be out in the private sector, and opening unfettered access to that civilian health care system may create more problems than it solves. National Public Radio recently noted,

"Thousands of veterans referred to the Choice program are returning to VA for care – sometimes because the program couldn't find a doctor for them" or "because the private doctor they were told to see was too far away."[7]

As predicted by The American Legion, sending patients off VA campuses to community providers absent of well-crafted contracts, such as those used for Project ARCH and PC3, has led to inadequate compliance by local physicians. Their inability to return treatment records to VA following care provided by Choice led to uncoordinated care and putting veterans at serious risk for medical complications. When the Choice legislation was being developed, The American Legion insisted that any doctor treating a referred veteran have access to the veteran's medical records so that doctors would have a complete history of the veteran's medical history and be able to provide a diagnosis based on a holistic understanding of the patient's medical profile. This is important for a litany of reasons, not the least of which includes the risk of harmful drug interaction, possible overmedication, and a better understanding of the patient's previous military history – all important factors in wellness.

Also, The American Legion was adamant that any treating physician contracted through Choice have a responsibility to return treatment records promptly to be included in the patients' VA medical file so that VA could maintain a complete and up-to-date medical record on their patients. We believed then, as we do now, that safeguarding of the veterans' medical records was so important, that we helped craft a provision that was included in the language that prevented VA from paying physicians until they turned over the treatment records to VA. Sadly The American Legion was forced to acquiesce our position in favor of paying doctors whether they turned over the medical records or not, because doctors weren't sending the records – it just wasn't that important to them – and when VA refused to pay based on the failure of docs to turn their medical records over to VA, the doctors blamed VA for not paying them in a timely manner, ultimately billing the veterans directly, and refusing to see any more VA-referred patients until they got paid. Since it was more important that veterans had access to sufficient medical care and not have their credit damaged, The American Legion supported repealing that provision.

This, among other reasons including unsustainable cost, is why Choice is not the answer. The equation is simple; a dramatic increase in cost is guaranteed to result in an increased financial burden to veterans using VA care that will include higher co-pays, premiums, deductions, and other out-of-pocket expenses currently suffered by non-VA health care programs.

The American Legion has worked with this Committee to ensure veterans receive the care and benefits they have earned, and we look forward to our continued work with this Congress and administration to better this program for veterans as well as taxpayers. We can start by:

1. Open VA to more patients – volume decreases costs per patient and increases access.
2. Make VA more competitive and allow them to accept ALL forms of insurance including Medicare, Medicaid, and etcetera.
3. Make VA a destination employer by offering physicians rotations in research, emergency preparedness, and education areas.

[7] NPR – May 17, 2016

4. Call on VA to stand up a medical school. It fits within their statutory mission, they have the real estate, they have the expertise, they have the reputation, and they have resources. Think Service Academies.
5. Insist VA engage in public-private partnerships with community hospitals across the country by renting wings of existing hospitals.

That said – the first thing that needs to happen is that VA needs to start being treated equitably by congressional leaders and the media. The American Legion calls on Congress and the American people to treat VA with fair and balanced criticism as well as praise. Stop taking cheap shots at our healthcare system. It's hurting veterans, it's hurting morale, and its killing VA's recruiting efforts. If anyone thinks that killing VA will save taxpayer dollars, they are either woefully misinformed, delusional, or lying. Cost shifting to veterans has already begun, and proposals that will require veterans to pay for care to treat service-connected disabilities are already being discussed. This is immoral and unacceptable.

VA can be more competitive if allowed to be, and the only outcry you will hear will be coming from the private hospitals in the country who will accuse the government of unfair competition. Medical care provided organically at VA is the best investment and greatest assurance the United States of America has to give our veteran community guaranteed healthcare sustainability, continuity of care, and ensure that our veterans continue to receive, the best care anywhere.

The American Legion thanks this committee for the opportunity to explain the position of the more than 2 million veteran members of this organization. For additional information regarding this testimony, please contact Mr. Jeff Steele at The American Legion's Legislative Division at (202) 861-2700 or jsteele@legion.org.