

**STATEMENT OF THE HONORABLE DAVID J. SHULKIN, M.D.
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**FOR PRESENTATION BEFORE THE
SENATE COMMITTEE ON VETERANS' AFFAIRS**

**THE STATE OF VA: A PROGRESS REPORT ON IMPLEMENTING 2017 VA
REFORM LEGISLATION**

JANUARY 17, 2018

Good afternoon, Chairman Isakson, Ranking Member Tester, and Distinguished Members of the Senate Committee on Veterans' Affairs. Thank you for the opportunity to testify today about the successes the VA team is achieving for the Nation's Veterans, their families, and advocates with the valuable legislative tools you provided to us in 2017.

Accountability

The Department of Veterans Affairs took expedient action to implement the Secretary's new authority to hold employees accountable provided for in the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017. Within weeks of the enactment of the law, the Secretary developed and effected guidance to ensure both VA managers and employees are held to the highest standards of performance, integrity, and conduct.

The Department developed four Human Resources Management Letters as guidance to managers and Human Resources personnel on how to implement several of the disciplinary provisions. Training was provided to managers, HR personnel, and the Office of General Counsel on the provisions of the Act, and how it would be implemented.

Additionally, the Department developed several resources to assist HR personnel in understanding and applying disciplinary provisions of the Act, such as flow charts outlining the requirements of the accountability authorities available to the Department, comparison guides between requirements under the Act and VA bargaining unit obligations, and frequently asked question guides. The Department continues to modify guidance and update Human Resources Letters as needed and as adverse action cases are heard before the Merit Systems Protection Board.

The VA's Office of Accountability and Whistleblower Protection (OAWP) was established and the head of the OAWP was appointed on May 12, 2017 under the authority of the President's Executive Order. OAWP is currently being led by an SES executive director who reports to the Secretary.

The executive director provides clarification and advice related to accountability, whistleblower disclosures and retaliation issues to the Secretary and other leadership throughout VA. OAWP sends a senior team to raise awareness of accountability and whistleblower issues to executive leadership councils and other leadership meetings at VA facilities across the country.

On June 12, 2017, OAWP began receiving whistleblower disclosures from employees into the Central Whistleblower Office authorized under The Patient Protection Act of 2016 (PL 114-223). After enactment of the Department of Veteran Affairs Accountability and Whistleblower Protection Act of 2017 (PL 115-41), the OAWP enhanced its whistleblower capabilities, developing a new Whistleblower Disclosure Form (VA Form 10177) to streamline the process and integrate disclosure intake into the Office's new Triage Division. OAWP developed a triage, tracking, and referral process to ensure all disclosures are managed and resolved centrally. When appropriate, OAWP engages with the Office of Special Counsel (OSC) and the Office of Inspector General to refer disclosures and accept referrals for action. As of January 8, 2018 OAWP has received and validated 1,029 disclosures since June 2017.

OAWP is protecting whistleblowers by utilizing its authority to place a temporary hold on personnel actions in cases where whistleblower retaliation is alleged or a disclosure is unresolved. Working with the OSC, OAWP ensures that the ability to seek corrective action is preserved. As of January 8, 2018 OAWP has held 72 actions.

On December 14, 2017, OAWP began discussions with the Department's Executive Secretary to begin providing oversight of OSC's referred disclosures. OAWP is working on value-added processes and procedures to ensure all OSC disclosures are investigated and resolved appropriately. OAWP is also working closely with OSC to ensure whistleblower retaliation cases are investigated and employees are protected.

OAWP is evaluating methods, procedures, and information technology solutions for the systematic recording, tracking, reviewing, and confirming implementation of recommendations from audits and investigations carried out by the Office of Inspector General, Medical Inspector, Special Counsel, and the Comptroller General of the United States. Also being evaluated are the technological requirements for analyzing data produced by OAWP and the Office of Inspector General's telephone hotlines and whistleblower disclosures in order to identify trends and reports to the Secretary.

Since establishment, OAWP has been receiving, reviewing, and investigating allegations of misconduct brought against senior executives; employees in a confidential, policy-determining or policy-advocating position; and supervisors; when the allegation involves whistleblower retaliation. As of January 8, 2018 OAWP has completed 77 investigations involving 149 persons of interest. OAWP's current inventory is 139 investigations involving 228 persons of interest.

Appeals Reform

The Veterans Appeals Improvement and Modernization Act of 2017, enacted on August 23, 2017, is the most significant statutory change in decades affecting VA claims in the appeals process. It provided much needed reform for Veterans, and VA is committed to the law's full implementation.

VA developed an implementation plan, which was collaboratively prepared by the Board of Veterans' Appeals (Board) and the Veterans Benefits Administration (VBA) with input from other components of VA involved in the implementation of the Veterans Appeals Improvement and Modernization Act. VA initiated this plan immediately after the law's enactment, and fully expects to implement the new claims and appeals process by February 2019. VA is utilizing the 18-month period to promulgate regulations, establish procedures, hire and train personnel, implement information technology system changes, conduct outreach in order to train stakeholders on implementation of the new law, and gather data for trends analyses and metrics reporting. Due to the magnitude and scope of the statutory changes, VA is using a governance structure to oversee and document appeals modernization implementation and using dedicated project management experts to institute key project management tools and deliverables. To track implementation progress, the plan includes timelines, interim goals and milestones, risk mitigation strategies, reporting requirements, and deadlines that were established to ensure timely execution.

VA has also undertaken enterprise-wide efforts to modernize the appeals process through improvements in technology. As part of this effort, information technology funds were used to develop and optimize paperless functionality in VA appeals processing. With Fiscal Year (FY) 2017 IT funding, VA began a multi-phase process of enhancing appeals functionality in the paperless environment. Initial key appeals-specific functionality in the paperless environment will focus on seamless integration of systems, and key accountability and work efficiency features. Digital Service at the VA (DSVA) launched Reader at the Board in November 2017, is working with the Board to launch enhanced appeals on Vets.gov appeals by March of 2018, and will begin testing Caseflow at the Board in the second quarter of 2018 with subsequent BVA-related enhancements and additional user groups.

The Board is currently on pace to produce over 81,000 decisions during FY 2018 which would represent a historic level of production. In FY 2018, the Board will also gain efficiencies by issuing a new decision template in February 2018, exploring new case review techniques throughout the spring and summer of 2018 and allowing delivery of decisions in close proximity to a Veteran's hearing beginning in February 2018. The Board will begin to train all staff on the new appeals process in April 2018, and outreach training with Veterans Service Organizations in the summer of 2018.

The Veterans Appeals Improvement and Modernization Act will also permit VA to test assumptions in the implementation of a new claims appeals system. Accordingly, VA has decided to carry out a pilot program during the implementation period, the Rapid

Appeals Modernization Program (RAMP). The program, which was launched on November 1, 2017, allows eligible participants with pending disability compensation appeals in VBA the voluntary option to have their decisions reviewed in the higher-level or supplemental claim review lanes outlined in the new law. RAMP provides Veterans early access to the benefits of the new system, while also allowing VA to better position itself for full implementation in February 2019. Since disability compensation-related appeals account for the vast majority of all pending appeals, the program allows most Veterans with pending compensation benefit appeals to participate.

VA will use the data collected during RAMP to create a capacity model based upon actual data. During this program, VA will gather data and conduct trends analyses on aspects of Veterans' behavior, to include their decision to opt - in to the new system, employee productivity, processing timeliness, and inventory measures. VA will use that data to assist in developing future resource requirements as part of the annual budget process. VA intends to update the model when actual data can be used to replace projected data, when assumptions are shown to be no longer accurate, or based on any change in resources resulting from annual budget appropriations.

With RAMP, VA has already made great strides toward implementing the new process; for instance, DSVSA was able to support VA to design the Caseflow Intake application as a solution for managing Veterans' elections to participate in the RAMP process using agile development technology. In addition, after garnering input from Veterans Service Organizations, VA deployed and is in the process of refining a more detailed decision notice for compensation appeals, as well as the RAMP election notice. Furthermore, with the implementation of RAMP, VA is documenting enhancements to VBMS that allow higher-level adjudicators to capture duty to assist error data.

Forever GI Bill

VA has taken significant steps in the five months since the Colmery Act was enacted to implement thirteen provisions that were effective immediately, so that Veterans and beneficiaries could take advantage of their expanded benefits. In early November, VA notified nearly 8,000 beneficiaries that they may be potentially eligible for restoration of entitlement under a Special Application provision. To date (as of January 5, 2018), VA has received and processed close to 600 applications and restored over 3,500 months of entitlement to students, granting them the opportunity to continue to pursue their academic and education goals. VA is sending an explanatory letter and choice of election form to almost 3,200 individuals who lost their eligibility to the Reserve Educational Assistance Program (REAP), but now, because of the Colmery Act, can elect to have their qualifying active duty service periods credited towards establishing eligibility under the Post-9/11 GI Bill Program.

The most notable and recognized change to the GI Bill benefit by the Colmery Act is the removal of the 15-year time limitation for Veterans who transitioned out of the military after January 1, 2013, and eligible dependents, to use their Post-9/11 GI Bill benefits. As of December 20, 2017, all newly issued GI Bill Certificates of Eligibility and

manually processed award letters are updated to notify eligible beneficiaries that they no longer have an expiration date to use their GI Bill benefit. By the end of January 2018, VA will have sent an email notification to over half a million Post-9/11 GI Bill beneficiaries informing them that they can now use their remaining entitlement when the time is right for them and their families.

An extensive outreach and promotional campaign is well underway to ensure that all Veterans and beneficiaries are aware of the Colmery Act's enhancements to the GI Bill. VA's Facebook posts on the Colmery Act including those related to the permanent authorization of the work-study allowance have reached almost half a million individuals, a Twitter Town Hall received 173,000 views and 1,800 engagements, and VA has sent multiple mass emails to over 1 million recipients to amplify its communications platform for the Colmery Act. During the December 12, 2017, Forever GI Bill hearing by the House Committee on Veterans' Affairs, Subcommittee on Economic Opportunity, VA live-tweeted pertinent information to be transparent and share news in real time. In late November 2017, VBA's Deputy Under Secretary for Economic Opportunity conducted interviews with 23 radio and TV stations reaching an audience of over 3.5 million. Additionally, VA has briefed stakeholders ranging from School Certifying Officials to Veterans Service Organizations to encourage their involvement and support in getting the word out about the Forever GI Bill.

VA is working closely with State Approving Agencies (SAAs) on changes that impact them because of the Colmery Act and has notified SAAs that they may now authorize independent study programs at certain educational institutions, like career and technical education schools. SAAs and VA are collaborating to redesign compliance reviews for oversight purposes, and VA has allocated increased SAA funding for FY 2018.

VA will deliver by March 1, 2018 to Congress an implementation plan outlining IT system improvements to maximize the automation of educational claims processing, and VA's Digital Services team has partnered with Education Service to collect priority enrollment information from schools for display on the GI Bill Comparison Tool.

A few provisions of the Colmery Act already aligned with policies and procedures in effect. Examples include codification of the VetSuccess on Campus program, allowing Veterans participating in the Vocational Rehabilitation and Employment program to extend eligibility if called to active duty in certain cases, and providing School Certifying Officials additional flexibility when a course start date does not align with that of an academic term.

A great deal of work remains to be done with 18 provisions slated to go in effect on August 1, 2018, including sections 107 and 501. These sections change the way VA pays monthly housing stipends by aligning payment to the location where students physically attend the majority of their classes and removing the exemption to the Department of Defense's one percent reduction to housing allowance. While VA's Office of Information and Technology has committed to implementing an IT solution for

these two critical sections, it is resource challenged in balancing efforts related to the remaining 20 Colmery Act provisions with IT needs and the overall goal to decommission the antiquated Benefits Delivery Network, which is the system that currently handles much of Education claims processing and payments. With this consideration in mind, VA is optimistic that all 22 provisions with an IT requirement will have an IT solution in place by the end of FY 2019. To mitigate any impact to Veterans and beneficiaries using their education benefits, by May 2018, VBA will have hired 200 temporary field employees, and reallocated senior staff and experienced claims processors to specialized teams to account for increased workload and new programs related to the Colmery Act. VA will continue to regularly assess workload demands and resource needs, and adjust its staffing levels in order to properly deliver education benefits to Veterans and beneficiaries.

In the coming months, VA will continue planning and working towards finding IT solutions and revising and developing sensible policies and procedures for implementation. VA will stay committed to its ambitious outreach campaign to include targeted messaging and engagement to thousands of Purple Heart recipients, who starting August 1, 2018 will be entitled to Post-9/11 GI Bill benefits at the 100-percent benefit level for up to 36 months, regardless of their time in service. Additionally, VA will communicate to Reservists and National Guard members their expanded access to GI Bill benefits as these individuals will now be able to use time spent on authorized medical care and certain orders as creditable towards GI Bill entitlement. VA remains steadfast in its effort to raise awareness of the Colmery Act's broad impact to Veterans and beneficiaries so they are given the opportunity to take advantage of their expanded and enhanced benefits.

Workforce Improvements

VA is making progress in implementing the provisions of Title II (Personnel Matters) of the VA Choice and Quality Employment Act of 2017 to improve hiring authorities of the Department. Two of the most critical focal points of this title are: 1) Section 210 – Plan to hire directors of medical centers; and 2) Section 213 - Expansion of direct-hiring authority. We have developed and implemented a plan for hiring highly qualified directors for each of our medical centers. As a result, we continue to make progress in staffing these positions. During calendar year 2017, we reduced the time to hire Medical Center Directors (MCDs) by about 23%. Currently, 125 of 140 MCD positions are filled. Of the remaining 15 positions under recruitment, 10 have a potential hire identified and are either going through the OPM approval process or have an established entrance on duty date.

Consistent with Section 213 of the Act, we are collaborating with the Office of Personnel Management (OPM) to expand direct-hire authority (DHA). We have submitted a formal request to OPM to receive DHA for 15 occupations because of our urgent critical hiring need to meet mission requirements. This need is in direct support of the Administration's charge to improve the quality of and access to care for our

nation's Veterans and their dependents. We must use options such as DHA to assist in meeting the unique recruitment challenges that we face over the next few years.

Community Care and Funding for Choice

Demand for community care remains high, with over 32.7 million outpatient medical care appointments completed in FY 2017. In FY 2017, VA community care appointments for outpatient medical care were approximately 36% of all such appointments provided through VA, a 4 percentage point increase from FY 2016.

Over 1.1 million Veterans utilized the Veterans Choice Program in FY 2017, an increase of about 35,000 Veterans from FY 2016. Outpatient appointments for VA medical care in the Choice Program comprised approximately 50% of all such VA community care completed appointments in FY 2017.

In August 2017, with Choice Program poised to run out of funding and no successor program yet in place, Congress appropriated \$2.1 billion in emergency funding to continue the Choice Program. In December 2017, Congress included an additional \$2.1 billion for the Choice Program in the continuing resolution package while discussions continue regarding the future of VA community care.

Although more still can be done, VA continues to make progress towards business process improvements to streamline the delivery of community care for Veterans. We have implemented tools to share health information, when permitted by law, with community providers via encrypted email, through a web-based application, as well as through industry standard health information exchanges. We have introduced tools for our staff to ensure standardized authorizations for community care, including specification of the services to be provided. We continue to work towards awarding new community care network contracts to purchase community care.

Earlier this month, VA announced a series of immediate actions to improve the timeliness of payments to community providers. The actions will address the issue of delayed payments head-on and produce sustainable fixes that solve ongoing payment issues that affect Veterans, community providers and other VA partners.

On January 9, 2018, VA published a rulemaking that allows it to process claims for reimbursement of the reasonable costs of emergency treatment for non-service connected conditions when only a portion of those costs were paid by a Veteran's other health insurance. These regulations will authorize VA to reimburse emergency treatment costs in more instances.

In October and November 2017, VA submitted the Veteran Coordinated Access & Rewarding Experiences (CARE) Bill to Congress. Veteran CARE is Veteran-centric and focuses on Veteran clinical needs. VA appreciates that Congress has developed legislation which includes many of the provisions included in CARE. We need Congress to pass legislation to give Veterans a system that works and that meets or

exceeds the best the private sector has to offer. This is about building a VA that Veterans choose for their care—we want Veterans to Choose VA. The Administration's bill included \$4 billion in spending authority, fully offset, to ensure a smooth transition to the new, consolidated community care program when implemented in FY 2019. We continue to urge the inclusion of offsets against any new mandatory spending to promote fiscally responsible stewardship of the taxpayer dollar.

Consistent with the Administration's proposal, VA believes that the future of community care should include the following tenets:

- Improve Veterans' choice of community providers in meeting their healthcare needs.
- Simplify Veteran eligibility with a focus on Veterans' clinical needs.
- Pave the way for consolidation of all community care programs.
- Add convenient care benefits.
- Set timely payment standards.
- Include provider agreements with flexible payment rates that streamline how we pay for care, including care in State Veterans Homes.
- Permit medical records sharing in the network when needed for Veteran care.
- And address clinical staffing shortages through expansion of graduate medical education and by improving VA hiring and retention of staff.

Disability Compensation Claims Backlog

VA is committed to providing Veterans with the care and services they have earned and deserve. For the eighth consecutive year, VBA has completed over a million disability claims and anticipates completing a record number of claims in FY 2018.

The VBA's disability claims backlog continues to fluctuate at a relatively steady state between approximately 70,000 and 85,000 claims. VBA ended the calendar year with just over 80,000 backlog claims pending and is committed to reducing the backlog further. In the past, VBA focused claims processing resources on significant investments in staffing and overtime, as our claims volume far exceeded the relative timelines of claims actionability. However, as VBA has reduced the pending claims inventory, we remain focused on continuous deployment of incremental process improvements and technology initiatives to identify actionable inventory which will help further reduce our backlog and increase the timeliness of claims processing.

VBA's primary intent within backlog reduction is three-fold: ensuring the current system works efficiently by evaluating throughput metrics, ensuring efficient staff utilization by confirming appropriate actions are completed, and identifying additional actionable workload through process reviews. Our throughput metrics make sure our workloads, especially backlog claims, are processed timely and efficiently. Additionally, VBA has initiated focused quality reviews to detect human errors, found potential system-wide and employee-level improvements in initial claim actions, and identified

procedural improvements. We also continue to proactively deploy effective workload management practices and explore other process enhancements.

VBA is similarly looking to reduce backlog via the expansion of VBA's contracted medical exam authority. Beginning in FY 2017, Congress granted VA the discretion to expand the Contract Medical Disability Examination (MDE) program from 15 regional offices to as many as the Secretary considers appropriate. The main purpose of this expanded contract Compensation and Pension (C&P) exam authority is to provide timely exams for Veterans residing in both the US and abroad. Contract exam expansion enables VBA to supplement Veterans Health Administration's (VHA's) internal C&P exam capacity to deliver faster claims decisions to Veterans and reduce the number of claims pending over 125 days.

Decision Ready Claims

As part of VA's continued efforts to improve Veterans' experience with the disability claims process, VA has developed the Decision Ready Claims (DRC) initiative – an extension of Fully Developed Claims. DRCs are claims for disability compensation submitted with the help of accredited VSOs, who certify that all supporting evidence (e.g. medical exam, military service records, etc.) is included with the claim at the time of submission to VA. Veterans who choose to submit their claim under DRC can expect to receive a decision within 30 days from the time VA receives the formal claim. DRC enables VBA to focus resources on reducing claims pending over 125 days as well as improving timeliness.

In addition to claims for increased disability compensation (commonly known as claims for increase), as of December 2017, DRC was expanded to certain claims for direct service connection, presumptive service connection, secondary service connection, and Dependency and Indemnity Compensation. Transitioning service members can use the DRC process to file pre-discharge claims less than 90 days from leaving the military.

Infrastructure-28 Leases

VA is pleased to report that the 28 leases authorized in the 2017 Choice Act are moving forward expeditiously. VA is utilizing a streamlined set of contract documents that more closely align with General Services Administration (GSA's) model in procuring these leases. VA is also adjusting its physical security, sustainability, and construction standards to more closely align with other federal agencies, as well as private-sector healthcare, to increase speed to market, and cost-savings. Finally, VA is leveraging an enhanced partnership with GSA to procure 7 of the 28 leases.

The following seven (7) leases are being procured through the VA-GSA partnership: Pittsburgh, PA; Hampton Roads, VA; Tampa-Lakeland FL; Tampa, FL; Corpus Christi, TX, Denver, CO, and Rapid City, SD. GSA is reviewing the

requirements packages and is in the process of assigning staff for execution of these projects.

The remaining 21 leases are being procured by VA through its Office of Construction & Facilities Management, Office of Real Property, using a delegation of GSA's leasing authority. All of these projects have started in earnest. All advertisements for the Choice Act leases under procurement by VA are slated for release by the end of Spring 2018, with issuance of the VA Request for Lease Proposals in the Summer/Fall 2018, and award slated for Spring/Summer 2019.

Electronic Health Record

On December 13, 2017, a strategic pause was announced in the Electronic Health Record (EHR) acquisition process; the purpose of the pause is to conduct an additional and external assessment of national interoperability language contained in the Request for Proposal that would ultimately support an EHR contract award.

MITRE Corporation was selected to coordinate and lead an independent assessment of the aforementioned contract language. The independent review was held on January 5, 2018, and consisted of a diverse, distinguished and highly respected group of Clinicians, Chief Information Officers and Executives, well-versed in national interoperability challenges/issues, from across the healthcare industry.

MITRE is in the process of capturing the recommendations and comments provided during the January 5, 2018 interoperability forum and will submit a final report to the VA Secretary and other stakeholders for review by the end of January 2018.

Thank you for the opportunity to appear before you today to provide you with VA's progress on implementing the legislation in these important areas. This concludes my testimony, and I welcome any questions that you or other Members of the Committee may have.