STATEMENT OF
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THE AMERICAN LEGION
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"ASSESSING THE PROMISE AND PROGRESS OF THE CHOICE PROGRAM"

May 13, 2015

Chairman Miller, Ranking Member Brown, and distinguished members of the committee, On behalf of our National Commander, Michael Helm, and the 2.3 million members of The American Legion, we thank you for this opportunity to testify regarding The American Legion's views of the progress of the Department of Veterans Affairs veterans choice program.

Background

The American Legion supported the passage of H.R. 3320, the *"Veterans Access, Choice, and Accountability Act (VACAA) of 2014"* that was signed into law on August 7, 2014 as Public Law (PL) 113-146; as a means of addressing emerging problems within the Department of Veterans Affairs (VA). VA's wait time for outpatient medical care had reached an unacceptable level nationwide and veterans were struggling to receive access to care within the VA healthcare system. It was clear that swift changes were needed to ensure veterans could access health care in a timely manner. Congress implemented this law to ensure when VA could not provide access to timely, high-quality health care inside the VA health care system; eligible veterans could elect to receive needed health care outside the VA health care system as a temporary measure until VA corrected its wait-time problem. The law authorizes veterans who were enrolled as of August 1, 2014, current eligible, or recently discharged combat veterans, the ability to be seen outside the VA by an approved non-VA health care provider if they are unable to schedule an appointment within 30 days of their preferred date, clinically appropriate date, or live more than 40 miles from a VA medical facility. [1]

Assessment of the Choice program to date

On November 5, 2014, The Department of Veterans Affairs Veterans Health Administration (VHA) started the Veterans Choice program in three stages of implementation. The initial step VHA took was to mail 320,000 choice cards to enrolled veterans who reside more than 40 miles from any type of VA medical facility. On November 17, 2014, VHA initiated the second stage by mailing the choice card to those veterans who were currently waiting for an appointment

[1] Public Law 113-146- August 7, 2014: Veterans Access, Choice, and Accountability Act of 2014: http://www.gpo.gov/fdsys/pkg/PLAW-113publ146/pdf/PLAW-113publ146.pdf

longer than 30 days from their preferred date or the date determined to be medically necessary by their physician. The third and final stage was to mail choice cards and letters to the remainder of all veterans enrolled in the VA health care who may be eligible for the Choice Program in the future. The card mailings included a letter explaining how to verify eligibility and use the choice card. As of February 2, 2015, according to the latest Daily Choice Metrics obtained from VA Health Net, one of the third-party administrators (TPAs) authorized 16,644 veterans to be seen outside the VA healthcare system under the Choice Program, of which 13,733 appointments were scheduled. Similarly, TriWest, another TPA issued 34,909 authorizations, and scheduled 34,909 appointments. Based on this information, the authorizations totaled 50,936 and appointments scheduled totaled 48,642. When you compare the number of authorizations and appointments scheduled to the 8,671,993 Veterans Choice Cards issued, one can easily arrive at a conclusion that the program is off to a slow start. However, The American Legion is optimistic that the recent changes used to calculate the distance between a veteran's residence and the nearest VA medical facility, moving from a straight-line distance to actual driving distance, will allow more veterans access to care under the Veterans Choice program.

Recently, The American Legion learned that the portion of VHA's Veterans Choice contract with Health Net and TriWest, which requires the TPA's to report Daily Choice metrics, has expired and the TPA's will no longer be reporting this information to VA. The American Legion is concerned that if the TPA's are no longer required to provide this type of information the number can be easily manipulated and may become an issue in the future. The American Legion calls upon Congress to require VHA to continue reporting these daily metrics throughout the duration of the contract, or explain how they will continue to track this information. One of the critical functions of the original legislation was to provide metrics on how and where the program was being used as a bellwether to indicate where VA needed to improve capacity in their system or efficiency of care delivery. By examining where the Choice program is used most heavily, stakeholders should be able to determine where improvements are needed in VA's overall care network.

Actions needed to eliminate impediments to greater veteran and physician participation

On February 25, 2015, American Legion National Commander Michael D. Helm stated during his congressional testimony 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.

On November 5, 2014, VA published a regulation which defines a "VA medical facility" as a VA hospital, a VA community-based outpatient clinic (CBOC), or a VA health care center. VA further stated that they "…included these types of VA facilities because they provide medical care or hospital services that may be provided as part of the program". [2] However, there is no consideration as to whether the VA medical facility can provide veterans the needed medical services. In many cases, veterans are being referred from a CBOC to the parent VA medical

[2] Federal Register, 79 FR 65571: https://www.federalregister.gov/articles/2014/11/05/2014-26316/expanded-access-to-non-va-care-through-the-veterans-choice-program

center which can be over 150 miles further away without taking into account travel times and road conditions. This can significantly impact veterans' ability to maintain their appointments, which directly impact VA's appointment cancellation and no-show rates.

During The American Legion's Commander's testimony, Senator Moran (KS) emphasized the importance of providing non-VA health care to veterans. Senator Moran calculated the distance from Helm's home in Norcatur, Kansas to the nearest VA medical facilities. *"It's 267 miles to Denver, 287 miles to Wichita, 287 miles to Omaha, and 100 miles to the nearest Community Based Outpatient Center (CBOC). I appreciate the perspective that this commander will bring about caring for all veterans regardless of where they live in the United States."*[3]

On March 27, 2015, American Legion National Commander Mike D. Helm praised the Senate for unanimously passing an amendment to remind the Department of Veterans Affairs that they have the obligation to provide non-VA care when it cannot offer that same treatment at one of its own facilities that is within 40-miles driving distance from a veteran's home. According to Commander Helm, the call to VA to clarify its stance was embodied in an amendment, offered by Senator Jerry Moran, R-Kansas, to Senate's budget Resolution 11.[4]

"*This bill simply calls on VA to do what it already had the authority to do," National Commander Michael D. Helm said. "Intent is everything. When Congress passed the Veterans Access, Choice and Accountability Act last year, it once again gave VA this authority. I say 'once again' because VA had this authority on a fee-basis long before the Choice act. Despite this authority, VA was trying to find loopholes by denying people who were near VA clinics that did not offer the needed services the right to use an alternative provider".*

"We applaud Senator Jerry Moran for writing this amendment, even though it's a shame that such a common sense measure needs to be spelled out repeatedly for VA. We call on the House to pass this measure quickly and send an unmistakable message to VA."

Efforts to ensure adequate training of VA staff regarding the Choice program

The American Legion is concerned that due to improper training, some VA medical centers are not offering Choice access to their veterans at all. On a recent visit last month to examine the healthcare system in Puerto Rico, The American Legion discovered VHA staff had been mistakenly telling veterans that no one on the island is eligible because there is no medical facility that is further than 40 miles from anywhere on the island. The American Legion also heard scattered reports of similarly confusing directives about the program from some other medical facilities, in contradiction to what was being expressed by VA Central Office directives.

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[3] Commander to Congress: We face 'historic opportunities'-February 26, 2015: http://www.legion.org/washingtonconference/226220/commander-congress-we-face-%E2%80%98historic-opportunities%E2%80%99

[4]Congress.gov: https://www.congress.gov/bill/114th-congress/senate-concurrent-resolution/11

This can only occur when employees are not adequately trained, which can result in miscommunication. Better understanding of programs and communication between VA and the veterans they serve is essential to the success of any VA program.

In a recent Senate Veterans Affairs hearing, Debra Draper Director of Health Care Issues Government Accountability Office (GAO) stated:

> *"the veterans health care system was added to the high-risk list due to ambiguous policies and inconsistent processes; inadequate oversight and accountability; information technology challenges (such as outdated systems that lack interoperability); inadequate training for VA staff; and unclear resource needs and allocation priorities."*[5]

Since the implementation of the Veterans Choice Program, The American Legion has seen and heard from veterans nation-wide, that there was a complete lack of training and knowledgeable staff regarding the program requirements, rules and regulations. The American Legion is concerned when the Veterans Choice program was rolled out, VA did not issue an official national policy to its health care facilities outlining VA's policy, procedures and program requirements. However, VHA Directive 6330, "Directives Management System" (DMS), states:

> *"It is VHA policy that VHA Central Office, VHA Veterans Integrated Service Networks (VISNs) and their field facilities establish and maintain a DMS, in accordance with this VHA Directive and corresponding Handbooks, regarding "directive" and "non-directive" media. Directive documents contain mandatory policies, procedures, and, as indicated, oversight monitoring requirements".*

This directive establishes mandatory VHA policies for VHA Programs.[6] According to VHA Directive 6330, VHA can issue two types of policy Directives, a VHA DMS Directive or a VHA Temporary Directive.

A VHA DMS directive establishes mandatory VHA policies for VHA Programs. These Directives must be recertified every 5 years. A VHA Temporary Directive defines policy that has a limited time span or new program policies that will be incorporated in DMS Handbooks at a later date. A Temporary Directive carries an expiration date and is not issued for longer than 5 years. If the policies prescribe short-term requests for reports, data collection or implement special short-term programs, they are issued as temporary directives with a 5-year (or less) expiration date specified.

The lack of VHA policies and procedures outlining the Veteran Choice program requirements and procedural guidance for VHA field facilities staff to follow has significantly undermined VA's ability to educate and provide appropriate guidance to its employees. These policies and

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[5]GAO Testimony: Veterans Affairs Health Care, Addition to GAO's High Risk List and Actions Needed for Removal, GAO-15-580T http://www.gao.gov/assets/670/669927.pdf

[6] Department of Veterans Affairs VHA Directive 6330- December 15, 2008: http://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=1814

procedures when implemented are often used by VA staff to properly train employees throughout the health care system.

The American Legion believes when a new law is passed implementing new program requirements or changes, VHA should be required to provide Veterans Service Organizations and Congress a detail communication plan outlining it plans to implement the changes required by the law to include plans for staff training. In additional to this information, VHA should include the time frame for issuing any VHA Directives and Handbooks.

Increasing access to care by streamlining VA's multiple Non-VA care programs into a single integrated purchased care model

VA spent over $5.5 billion on Non-VA care in Fiscal Year 2014. Many of VA's non-VA purchase care programs are managed by different program offices within VHA, and purchases for Contract Nursing Home, VA's State Home, Home Health, Dental and Bowel and Bladder services are handled outside of VA's Fee-Basis Claims Processing System. VA needs to streamline its current purchase care model to incorporate all of VA's non-VA care programs into a single integrated purchase care model.

Congress should also look into streamlining VA's non-VA care statutory authorities. Currently, there are eight statutory authorities, including the new Choice Act. Once Congress gets a better sense of how the Choice Program will play out over the next couple of years, the eight statutory authorities should be consolidated and rationalized incorporating lessons learned from the Choice Program.

Conclusion

As always, The American Legion thanks this subcommittee for the opportunity to explain the position of the 2.3 million veteran members of this organization.

For additional information regarding this testimony, please contact Mr. Warren J. Goldstein at The American Legion's Legislative Division at (202) 861-2700 or wgoldstein@legion.org.