STATEMENT OF
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THE AMERICAN LEGION
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
ON
"FISCAL YEAR 2017 BUDGET FOR VETERANS' PROGRAMS AND FISCAL YEAR 2018 ADVANCE APPROPRIATIONS REQUEST"

FEBRUARY 23, 2016

"What we have done historically is that we have managed to a budget number as opposed to managing to requirements…as a result we've muddled along and not met the needs veterans deserve."

- *VA Acting Secretary Sloan Gibson before the House Committee on Veterans Affairs July 24, 2014*[1]

When now Deputy Secretary of the Department of Veterans Affairs (VA) Sloan Gibson addressed this committee nearly two years ago, he was not advocating the budgetary planning approach he described, but speaking to the problems that long standing approach could cause. Drawing contrasts with the planning models he was familiar with in the private sector, Deputy Secretary Gibson noted the historical approach was about managing to requirements. For VA to succeed and be great, they need to be able to move beyond managing requirements and move towards building planning based on need.

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee:

On behalf of National Commander Dale Barnett and the over two million members of The American Legion, we welcome this opportunity to comment on the federal budget, and programs of the Department of Veterans Affairs (VA).

The American Legion is a resolution based organization; we are directed and driven by the millions of active legionnaires who have dedicated their money, time, and resources to the continued service of veterans and their families. Our positions are guided by nearly 100 years of consistent advocacy and resolutions that originate at the grassroots level of the organization – the local American Legion posts and veterans in every congressional district of America. The Headquarters staff of the Legion works daily on behalf of veterans, military personnel and our communities through roughly 20 national programs, and hundreds of outreach programs led by our posts across the country.

What we present here is an attempt to focus on a few particular issues and projected needs, rather than what has been the historical and problematic approach of presenting a budget based on a

[1] HVAC Hearing "Restoring Trust: The View of the Acting Secretary and the Veterans Community" – July 24, 2014

number. While the budget numbers have gone up for VA, indicative of the commitment that Congress has shown even in tight fiscal times, there has still been the tendency to set a number and manage to that limit, rather than projecting the need and divining numbers from that need.
In terms of future planning, and ensuring that VA's budget meets needs in critical areas, The American Legion directs the committee's focus to three critical areas: the consolidation of outside care, ensuring VA's medical hiring needs are met, and addressing the rising backlog of appeals.

Consolidation of Outside Care:

When the Choice Card program was added as a temporary emergency measure as part of the Veterans Access, Choice and Accountability Act (VACAA) of 2014[2], The American Legion supported the program because we had seen firsthand the need across the country. During 2014 The American Legion set up a dozen Veterans Crisis Command Centers (VCCCs) in affected areas from Phoenix to Fayetteville and spoke to hundreds of veterans personally affected by the scheduling problems within VA. The Choice Card program provided an immediate short term option, but also provided an opportunity to learn how veterans utilized the program. At the time, The American Legion advised gathering as much data as possible from veterans' use of the program to make all of VA's other existing authorities for care in the community[3] better in their ability to serve veterans.

Ultimately that has led to the current transformation in VA's community care programs. As directed by the *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015* (VA Budget and Choice Improvement Act) in July 2015, VA has developed a plan to consolidate all existing programs into a single community care program, the New Veterans Choice Program (New VCP). Generally, The American Legion supports the plan to consolidate VA's multiple and disparate purchased care programs into one New VCP. We believe it has the potential to improve and expand veterans' access to health care. Much depends, however, on the department's success in working with its employees, Congress, VSOs, private providers, academic affiliates, and other stakeholders as the agency moves forward in developing and implementing the plan.

With an eye towards budgetary matters, there are two important considerations revolving around this new transformation that must be implemented in future budgets. 1 – VA must have the ability to spend all community care monies under the new framework, and 2 – the additional funding required to provide for the Choice Card program needs to be factored into future budgets.

During 2015, VA ran into problems with budgetary shortfalls because of the separation in funding between Choice Card care and other community care authorities. Because of the strong push to ensure veterans were seen as quickly as possible, VA quickly exhausted care in the community funding, while emergency funding for the Choice Card program was still available. VA was forced to seek, and was granted, authority to move some of the $10 billion allocated to fund the Choice Card program over the three year pilot to cover care in the community costs.

[2] Public Law P.L. 113-146
[3] Such as Project Access Received Closer to Home (ARCH), the Patient Centered Community Care (PCs) program and others

By now, as the transformation of care in the community moves forward to a plan with a single, overarching authority for this care (New VCP) the distinctions between the VACAA Choice funds and community care funding should be academic. While The American Legion understands there are reasons certain funding and accounts have limitations, and is not advocating for a wholesale removal of barriers for VA to move funding, in this instance is makes sense. Care in the community is care in the community, and VA must have a single stream of funding for this.

It is important to recognize that the need for the extra funding was and is real. The VACAA provided $10 billion for treating veterans in the community through Choice because the need to fund that care was real. Those needs are not going away. As of last month, VA had over 6.1 million appointments scheduled nationwide, and more than 8.5% of those appointments are still waiting over 30 days for treatment.[4] VA has seen their number of completed appointments jump by over 2.6 million last year, and throughout this they still need to authorize millions of appointments for outside care.

The $10 billion from VACAA was provided as emergency funding, but in the future, we must plan for the tremendous demand on the VA system. This is a direct illustration of the managing to numbers versus managing to need contrast mentioned above. For future budgets, we must ensure that VA is receiving funding for care that adequately reflects how they must deliver that care. A robust budget for VA medical care is necessary, but as the past few years have shown, VA has been dependent on care in the community as well to provide timely care to veterans where they are overburdened by scheduling, staffing, or lack of adequate resources. This needs to be reflected in the community care budgets, not as an emergency measure when the problem boils over and out of control.

Ensuring Proper VA Staffing:

One reason VA may sometimes struggle to provide care within the Veterans Health Administration (VHA) is directly related to staffing. The staffing figures can be ugly. One in six positions nationally for some critical jobs remain vacant, and critical needs like psychiatric workers can see vacancy rates of 40-64%.[5]

To be fair, the VACAA already provided funding for 10,000 new healthcare positions, however funding new positions alone may not be the solution and there may be budgetary means to address some of the vacancies. Even when VA is hiring an additional 9% of their workforce they are losing a similar amount to attrition.[6] Some of this could be improved with better hiring incentives and more competitive wages, particularly in key fields of need such as psychiatric care, physician's assistants, nurses and physical therapists.

As the Office of the Inspector General recommended, VA also bears additional responsibility in the form of the development of better staffing models and examining the red tape and bureaucratic

[4] VA Pending Appointments – January 15, 2016
[5] USA Today – September 2015
[6] VA Office of the Inspector General (VAOIG) Report No. 15-03063-511 "OIG Determination of Veterans Health Administration's Occupational Staffing Shortages" - September 2015

burdens that stretch hiring out into a process that can take nine months or longer.[7] Additional examination of where VA can better incentivize prospective applicants to decide on a career serving veterans would be helpful. We need to ensure VA has proper funding to get the best and brightest team members on their medical and psychological staffs serving veterans.

The VA can further help improve their staffing, especially in leadership positions, with better succession planning for VA employees to rise to leadership levels within the organization. As an organization of advocates that has worked hand in hand with VA for decades, The American Legion notes the training programs VA had in place during the 1990's were better suited to creating the next generation of leadership than the current programs in place. The VHA training programs of the 1990's were specifically built to prepare administrative employees to assume mid-level management programs at the department level. This could include personnel, fiscal, medical administration, associate director training and other leadership training. The programs were replaced, over time, with VA's current Leadership Development Programs, but feedback The American Legion has garnered from interacting with VHA personnel during visits from our System Worth Saving Task Force has indicated these programs are not providing the tools the employees need to be the next generation leaders of VA and to lead from within. Additional consideration to revamping this portion of training, and ensuring this training is properly funded, could be a key component to reducing VA's reliance on the complicated process of hiring from outside VA and ultimately reduce the number of unfilled leadership positions.

The Looming Appeals Crisis:

Last year, 2015, was the year VA was supposed to "break the back of the backlog" of veterans' claims for disability benefits. While VA has made substantial progress according to their public figures in reducing the number of initial claims – the "claims backlog" sits at around 77,000 claims today[8] down from a peak of over 600,000 claims in early 2013 – those numbers do not reflect the waiting period for many veterans who have been waiting for three or more years for their appeals to be decided. Over that same period the number of appeals has soared to over 325,000 from their level of 250,000 in 2013.[9] VA defines "backlog" as any case pending over 125 days. Every single appeal represents a veteran who has been waiting for much, much longer than 125 days, but those 325,000 appeals are not counted as part of the "backlog."

Often the fastest way to resolve an appeal is with a Decision Review Officer (DRO) in a Regional Office (VARO). The DROs are among the most experienced employees, and can discern aspects of a claim that a newer employee might miss, furthermore after an initial denial the veteran can be better equipped to provide information the VA noted was lacking in the initial denial. Because everything stays within the VARO, correspondence with the veteran and with a service officer helping that veteran is direct and many claims can be resolved more quickly through this process. The DRO review can be one of the best tools for speedy adjudication of an appeal and to reduce the appeals backlog. However, the unfortunate case recently is that DROs have not always been free to handle their appeals workload.

[7] Ibid
[8] VA Claims Backlog Dashboard – January 30, 2016
[9] VA Monday Morning Workload Report – February 1, 2016

The Veterans Benefits Administration (VBA) has been under a singular mission to reduce the backlog. To this end they have forced over four years of mandatory overtime, and key veteran staffers including DROs have seen their workloads adjusted to focus on the initial claims, the claims that are counted in the VA statistics for "backlog." This can have the effect of keeping DROs from devoting full attention to their appeals workload, and the growing appeals backlog cannot be seen as an accident.

Last year, The American Legion noted that occasional mandatory overtime in a short term crisis is prudent management, but four straight years is indicative of an organization that's clearly understaffed. The American Legion reiterates our call for better study of VBA staffing models, but also notes that last year VA had proposed making the DRO process more robust, something we wholeheartedly support.

"DROs can often resolve appeals more rapidly than the appeal process at the Board of Veterans Appeals (BVA) and with greater accuracy and clarity than the average VA rater. Reports have indicated in some offices the DROs have been reassigned to other tasks as the pressure mounts to work on initial claims. It would be the hope of The American Legion that renewed interest in hiring and increasing the DRO force would allow DROs to return to their appeals duties, and help prevent a rising backlog in the appeals area."[10]

There have been many recent proposals for measures to transform appeals as the initial claims process was transformed by the Veterans Benefits Management System (VBMS) and the Fully Developed Claims (FDC) process. The American Legion is supportive of transformative thinking, clearly the system as it has existed in the past has many flaws and has not always served veterans with the ability to develop prompt and accurate decisions on disability claims. However, it is also critical to understand that there is important due process in the system to protect veterans, and we cannot abandon these things in the interest of simply faster decisions or more convenience for VA.

Due process is important to protect veterans, especially veterans who may be uniquely vulnerable due to their disabilities incurred in the service of this nation. It is one of the reasons the veterans' disability claims system has been specifically cited as "uniquely pro-claimant" in the manner it serves veterans filing for benefits.[11] Veterans need to depend on the ability to get a DRO review in a timely fashion, or to submit evidence in response to the VA when they are informed their claim is lacking proof of a key point, such as documentation of an event that happened in service.

One of the best things to help address the growing appeals backlog would be to increase funding for DROs to fully staff all offices and to add additional full time employees elsewhere within the offices to get the DROs back to doing what they do best, reviewing appeals in a timely manner. The budget should also reflect additional funding to study proper staffing levels within the VBA, because four years of mandatory overtime is a warning flag that has been waving to tell us we're not supplying enough staff to deal with the backlog of veterans' claims.

[10] Testimony of The American Legion – HVAC Hearing February 11, 2015

[11] See Jaquay v. Principi, 304 F.3d 1276, 1280 (Fed. Cir. 2002); Nolen v. Gober, 222 F.3d 1356, 1361 (Fed. Cir. 2000); Hensley v. West, 212 F.3d 1255, 1262 (Fed. Cir. 2000).

Whether it is appeals or initial claims, a backlog is a backlog, and the budget must reflect sufficient resources to address these claims, otherwise veterans will be forced to do what we have become all too familiar with – wait.

Conclusion:

The VA cannot afford to be run as an entity reactive to one crisis after another. Effectiveness stems from long term planning, and to be truly effective that long term planning needs to include all stakeholders. While there are other areas that can benefit from predicting crises before they occur and providing resources to perceived needs, these three areas represent a key start in the sort of thinking that must be adopted to make VA successful in the long run.

In order to assimilate all outside care under one cohesive management authority VA needs the budget flexibility to utilize the Choice Card funds for community care as well as to see a boost to community care funding commensurate with the increased demand. The VACAA infused $10 billion in care funding because there was an emergency, but the demand has not gone away and future funding levels must reflect this as part of the plan, not a reaction to a crisis.

There must be attention paid to VA's hiring and incentives, and if additional resources are needed to secure key providers like psychologists and physician's assistants, then VHA must be provided with the funding needed to secure those key performers. That is the long term key to ensuring veterans get the care they need in a timely fashion in the system that is designed to treat their unique wounds of war.

Four years of mandatory overtime and reassignment of DROs needs to stop if VA is going to prevent the growing appeals backlog from reaching disaster levels. Funding must be given to better assess the workforce within VBA and to provide the full time employees needed to accomplish the mission while keeping top assets like DROs working on the work they do best.

Questions concerning this testimony can be directed to The American Legion Legislative Division (202) 861-2700, or ideplanque@legion.org