STATEMENT FOR THE RECORD OF
THE AMERICAN LEGION
TO THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"FROM TUMULT TO TRANSFORMATION: THE COMMISSION ON CARE AND THE FUTURE OF THE VA HEALTHCARE SYSTEM"

SEPTEMBER 7, 2016

Chairman Miller, Acting Ranking Member Takano and distinguished members of the committee, on behalf of National Commander Charles E. Schmidt and The American Legion; the country's largest patriotic wartime service organization for veterans, comprising over 2 million members and serving *every* man and woman who has worn the uniform for this country; we thank you for the opportunity to comment regarding The American Legion's position on the Commission on Care and the future of the VA healthcare system.

The American Legion has worked extensively on matters concerning veterans for nearly 100 years. Our work includes all business lines managed and operated by The Department of Veterans Affairs (VA) through sustained physical involvement, review of national policy, and donations of resources, funding, personnel, and experience.

It is with the voice and support of the largest voting block of veterans in the country that The American Legion presents the following analysis and recommendations regarding the report offered by The Commission on Care dated June 30, 2016.

The American Legion acknowledges the Commission relied heavily on the Independent Assessment as per congressional instructions, as well as some limited testimony from VA, Veteran Service Organizations (VSO), and media reports; but the primary foundation for discussion and findings were based on internal discussions among commissioners based on individual filters, experiences, and loyalties; and thus this report is reflective of those individual opinions.

The American Legion will not address the entire report, rather we will highlight the parts we believe have merit for further study or implementation, and those areas where we believe implementation would be detrimental to all veterans seeking healthcare from the VA, whether directly, or through a managed community relationship.

We are in general agreement with most of the Commission's recommendations and are pleased to see they are in line with transformation currently underway at VA through the MyVA initiative.

As you know, three of 15 Commission members did not sign the final report, with two commissioners opposing the final report because they felt it didn't go far enough. Commissioner

Michael Blecker also did not sign, saying the main recommendation, for the Veterans Health Administration (VHA) Care System, went too far.

The American Legion's positioning on the report places us closer to Commissioner Blecker's. As he explained in his June 29 dissent:

> *I cannot agree to the Commission's first and most significant recommendation, establishment of a proposed "VHA Care System." Given the design of this proposed new delivery model, the adoption of this proposal would threaten the survival of our nation's veteran-centered health care system as a choice for the millions of veterans who rely on it. Although this is only one of many recommendations in the Report, this single recommendation risks undermining rather than strengthening our veteran-centered health care system, and I cannot agree to it.* [1]

We also believe that recommendations of more privatization that some are trying to mask as "Choice" fail to take into consideration that veterans already have a myriad of choices, more so than most Americans. Choosing to see a contracted primary care physician as opposed to a VA primary care physician is a choice most veterans using VA health care already have through their private insurance, Tricare, Medicare, Medicaid or several other options. These "choices" also come with additional expenses to the veteran. Converting VA health care to an insurance payer would increase out-of-pocket expenses for veterans who rely solely on VA for all of their health care needs, and who may not have alternate insurance options.

That said, here are our initial comments on a few of the most important recommendations:

Recommendation #1: Across the United States, with local input and knowledge, VHA should establish high-performing, integrated community health care networks, to be known as the VHA Care System, from which veterans will access high-quality health care services.

This recommendation includes several sub-recommendations. Here we will address two of the most salient ones separately because they each have separate and distinct implications and will require individualized policy and/or legislative modifications in order to accomplish. The overarching theme of this recommendation involves a robust and integrated community care network.

A. The American Legion supports realigning VA's community care program and has provided testimony that discusses its restructuring. In relevant part, we said:

   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, an add-on to the existing system, The American Legion has called for the Department of Veterans Affairs (VA) to "develop a well-defined and consistent non-VA care

[1] http://www.prweb.com/releases/2016/07/prweb13535231.htm

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.[2]

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 in a timely manner, 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.

Congress created the VCP after learning in 2014 that VA facilities were falsifying appointment logs to disguise delays in patient care. However, it quickly became apparent that layering yet another program on top of the numerous existing non-VA care programs, each with their own unique set of requirements, resulted in a complex and confusing landscape for veterans and community providers, as well as the VA employees that serve and support them. Therefore, Congress passed the *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015* (VA Budget and Choice Improvement Act) in July 2015 after VA sought the opportunity to consolidate its multiple care in the community authorities and programs. This legislation required VA to develop a plan to consolidate existing community care programs.

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 seeks 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 promises 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. Generally, The American Legion supports the plan to consolidate VA's multiple and disparate purchased care programs into one New Veterans Choice Program (New VCP). We believe it has the potential to improve and expand veterans' access to health care.

Network Structure

The American Legion supports allowing VA to set up tiered networks. As we understand it, this structure is meant to empower veterans to make informed choices, provide access to the highest possible quality care by identifying the best performing providers in the community, and enabling better coordination of care for better outcomes. However, it does not dictate how veterans will use the network. The American Legion wants to make clear, though, that we do not support a wholesale option to circumvent the VA infrastructure or healthcare system entirely.

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

Prompt Pay

We support a provision mandating that all claims be made electronically by January 1, 2019 and an eligible provider should submit claims to Secretary within 180 days of furnishing care or services.

Episode of Care

Provisions ensuring that an eligible veteran receives such care and services through the completion of the episode of care, including all specialty and ancillary services deemed necessary as part of the treatment recommended in the course of such care and services.

Emergency/Urgent Treatment

The American Legion supports requiring VA to reimburse veterans for the reasonable value of emergency treatment or urgent care furnished in a non-Department facility in a final bill.

Conclusion

Ensuring veterans have access to appropriate, timely, high-quality care is critical. VA needs to overhaul its outside care reimbursement programs, consolidating them into a more efficient bureaucracy able to dynamically interact with the network of federal, public, and private providers that are to supplement VA direct provided care.[3]

B. Choice of primary care provider

The American Legion opposes allowing a complete option of primary care providers within the proposed VHA Care System based on the Commission's faulty analysis. The Commission supports this recommendation based on a Congressional Budget Office (CBO) estimate of cost that was calculated using Medicare rates. The Commission, however, gave no consideration to Medicare rules for billing structure and how those rules would apply to the current quality of care provided to veterans through VHA primary care physicians. VHA physicians are not restricted as to the amount of time they are able dedicate to each patient, or the number of presentations per patient. Medicare, on the other hand only provides payment based on a 10 or 15 minute consultation, which then denies veterans the full complement and quality of care they are entitled to through their earned benefits. If scored by CBO properly, the cost of this recommendation would be at least triple if not more, and is thus financially unsustainable. The American Legion finds the recommendation and subsequent analysis by the Commission to be in error and believe that it should not be considered by the Administration.

Recommendation #9: Establish a board of directors to provide overall VHA Care System governance, set long-term strategy, and direct and oversee the transformation process.
The American Legion does not support the creation of a governing board. We do find value in the Commission's discussion and recommendations that point out inconsistent leadership due to rotating political appointments and a leadership vision with a lack of continuity. The American

[3] http://www.legion.org/legislative/testimony/231623/pending-veterans-affairs-legislation

Legion supports appointing a Veterans Health Administration (VHA) leader for a minimum of a 5 year term, with an option for an additional 5 year reappointment. We could also support the same consistency for the Deputy Secretary position.

Congress is also part of the problem here. When Representative Beto O'Rourke addressed the Commission on Care on March 22nd of this year, he noted that part of the problem with VA has been a severe lack of continuity in oversight due to an unwillingness of Members to serve on the VA committees: it's not glamorous, there are real problems to be addressed, and there are no "mission accomplished" banners. Members tend to leave the committee as soon as they are able – to the point that, on day one as a new congressman assigned to the committee, he found himself third in seniority on the Democratic side.

The American Legion thinks consideration should also be given to proposals that the Secretary of Veterans Affairs develop and submit to Congress a Future-Years Veterans Program and a quadrennial veteran's review.[4]

Recommendation #15: Create a simple-to-administer alternative personnel system, in law and regulation, which governs all VHA employees, applies best practices from the private sector to human capital management, and supports pay and benefits that are competitive with the private sector.

This proposal to shift all 300,000 VHA employees away from Title Five and onto Title 38 to provide the department with more flexibility in pay, benefits and recruiting is worth serious consideration. While the change would be designed to ease hiring and firing at the agency, the report says the new system should maintain due process appeal rights and merit system principles and we concur.

Recommendation #18: Establish an expert body to develop recommendations for VA care eligibility and benefit design.

Included in this recommendation is consideration of the feasibility of allowing veterans' family members and currently ineligible veterans to purchase VHA care through their health plans in areas where VHA hospitals and other facilities might otherwise need to close. In many parts of the country, VHA currently maintains hospitals and other health care facilities that are underutilized or in danger of becoming so. A related challenge is maintaining safe volume of care when patient loads decline.

As the report notes, "closing a low-volume hospital may be the answer in some instances. But closing VHA facilities reduces the choices available to veterans. Increasing the volume of patients treated by VHA in areas where it currently has excess capacity may ameliorate these challenges."

Appendix C of the report discusses the outline of developing pilot programs to test the feasibility of avoiding VA hospital closures by allowing veterans' spouses and currently ineligible veterans

[4] https://www.congress.gov/bill/114th-congress/house-bill/216

to purchase VA care in selected areas. The American Legion supports further investigation of this proposal.

The American Legion appreciates the hard work from all of the commission members and we look forward to working with this administration and the incoming Congress and administration to ensure veterans are provided with the high level of expert health care that they have earned. Secretary McDonald's words on the report serve as a worthy stopping point for now: "However, until all veterans say they are satisfied, I won't be satisfied. Nobody at VA will be satisfied, but our progress so far proves that VA's current leadership, direction and momentum can produce the necessary transformation."

Conclusion

As always, The American Legion thanks this committee for the opportunity to explain the position of the over 2 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.