STATEMENT

OF

TIFFANY ELLETT
DEPUTY DIRECTOR OF HEALTH POLICY
NATIONAL VETERANS AFFAIRS AND REHABILITATION DIVISION
THE AMERICAN LEGION

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT & INVESTIGATIONS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

ON

"LEGISLATIVE HEARING"

MARCH 30, 2022

EXECUTIVE SUMMARY

LEGISLATION	POSITION
H.R. 5776 – the Serving our LGBTQ Veterans Act.	**Support**
H.R. 6052 – the VA OIG Training Act.	**No position**
H.R. 6638 – to amend title 38, United States Code, to make specific improvements to the Office of Accountability and Whistleblower Protection of the Department of Veterans Affairs, and for other purposes.	**No position**
Draft Legislation – the Improving Oversight of the Veterans Community Care Providers Act.	**Support**
Draft Legislation – the Improving VA Inclusion, Diversity, Equity, and Access (IDEA) Act.	**Support**
Draft Legislation – the Improving VA Workforce Diversity Through Minority Serving Institutions Act.	**Support**
Discussion Draft – the Faster Payments to Veterans' Survivors Act.	**Support**
Discussion Draft – the VA Preventing Duplicate Payments Act.	**Support**
Discussion Draft – to direct the Secretary of Veterans Affairs to establish a centralized database for demographic data and improve the collection of demographic data of beneficiaries of the Department of Veterans Affairs.	**Support**
Discussion Draft – to authorize the Secretary of Veterans Affairs to carry out an information technology system to manage supply chains for medical facilities of Department of Veterans Affairs.	**Support**

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Chairman Pappas, Ranking Member Mann, and distinguished members of the Subcommittee, on behalf of National Commander Paul E. Dillard and the nearly two-million dues-paying members of The American Legion, we thank you for inviting The American Legion to testify today. The American Legion is directed by millions of active Legionnaires who dedicate their time and resources to the continued service of veterans and their families. As a resolution-based organization, our positions are guided by nearly 100 years of advocacy and resolutions that originate at the grassroots level of our organization.

Every time The American Legion testifies, we offer a direct voice from the veteran community to Congress. Today, The American Legion will be testifying on various legislation impacting veterans on issues spanning from community care, demographic data, minority veterans, diversity and inclusion, and whistleblower protection. All these issues directly affect veterans' ability to access, receive, and maintain high-quality, world-class healthcare services at VA and in the community.

H.R. 5776 – the Serving Our LGBTQ Veterans Act

To amend title 38, United States Code, to establish in the Department of Veterans Affairs a Center for Lesbian, Gay, Bisexual, Transgender, and Queer Veterans.

Under the Clinton Administration, the Don't Ask Don't Tell (DADT) policy was enacted, which prohibited openly gay, lesbian, or bisexual persons from military service. In September 2011, under the Obama Administration, this policy was repealed. Unfortunately, DADT created lasting disparities in Department of Veterans Affairs (VA) healthcare which effects veterans to this day. Just this past year, President Biden described DADT as an immense injustice that excluded many veterans from their earned benefits – an estimated 14,000 service members were forced out of

service during the 17-year policy.[1] Advocates have even hypothesized over 100,000 LGBTQ+ veterans were discharged from the military from World War II onward.[2]

Those servicemembers were given other-than-honorable discharges – making them ineligible for VA healthcare, disability compensation, home loans, and burial benefits. Additionally, studies have shown LGBTQ+ veterans are shown to have a higher risk of suicide than their counterparts.[3] VA efforts to better collect data on, implement programs for, and conduct social and demographic research on LGBTQ+ veterans would immensely help fill these gaps in treatment and care. However, VA data by birth sex used to assess health outcomes is limited in determining health outcomes for these veterans because it does not consistently collect sexual orientation or self-identified gender identity data.[4]

Additionally, a provider may record veterans' sexual orientation, but it is not a standardized clinical note in the electronic health records. Without a standardized field, providers may not be consistently collecting this data. The Government Accountability Office (GAO) identified VA's failure to collect data needed to determine LGBTQ+ veterans' medical needs.[5] Unfortunately, a result has been veterans' inaccessibility to earned benefits and distrust of military and veteran systems. To ensure these healthcare disparities do not continue for the LGBTQ+ veteran population, veterans who served under the old policy deserve to receive their honorable discharge.

The American Legion is the only Veterans Service Organization (VSO) that has a Discharge Upgrade Program (DUP) to assist veterans with "bad paper" discharges. Title 10, United States Code, sections 1552 and 1553, provides statutory authority for the existence and operation of the Military Discharge Review Boards and the Boards for Correction of Military Records. The American Legion was instrumental in the creation of these boards shortly after World War II and has since represented veterans who petition them for relief. Through our DUP, veterans are given assistance in applying, reviewing, and submitting discharge upgrade applications. Service officers represent applicants before boards, educate veterans on their due process and how to apply, review and submit applications, and conduct outreach to veterans who may need assistance. Between July 2020 to June 2021, our veteran service officers assisted veterans with 154 records reviews and 35 hearing reviews resulting in 17 discharges upgraded; and 115 records reviewed resulting in 15 corrections of military records.

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[1] The President of The United States, "Statement by President Joe Biden on the Tenth Anniversary of the Repeal of Don't Ask Don't Tell," The White House, September 20, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/20/statement-by-president-joe-biden-on-the-tenth-anniversary-of-the-repeal-of-dont-ask-dont-tell/

[2] "LGBTQ Veterans' Issues." Justia, October 18, 2021. https://www.justia.com/lgbtq/military-service/veterans-issues/.

[3] Veteran Affairs Office of Mental Health and Suicide Prevention, "2021 National Veteran Suicide Prevention Annual Report," Mentalhhealth.va.gov, September 2021, https://www.mentalhealth.va.gov/docs/data-sheets/2021/2021-National-Veteran-Suicide-Prevention-Annual-Report-FINAL-9-8-21.pdf

[4] U.S. Government Accountability Office, "VA Health Care: Better Data Needed to Assess the Health Outcomes of Lesbian, Gay, Bisexual, and Transgender Veterans," gao.gov, October 19, 2020, https://www.gao.gov/products/gao-21-69

[5] U.S. Government Accountability Office, "Va Health Care: Bettera Data Needed to Assess the Health Outcomes of Lesbian, Gay, Bisexual, and Transgender Veterans," Report No. Gao-21-69, gao.gov, October 2020, https://www.gao.gov/assets/gao-21-69.pdf.

VA must do a better job at collecting data to determine the medical needs of LGBTQ+ veterans. This legislation would establish a Center for Lesbian, Gay, Bisexual, Transgender, and Queer Veterans in VA. A director would be head of the center who would need to be an appointee in the Senior Executive Service and reports directly to the VA Secretary. It would be the director's responsibility to serve as principal adviser to the VA Secretary on the implementation of LGBTQ+ veteran policies, make recommendations on how to improve programs, and conduct and sponsor appropriate social and demographic research on LGBTQ+ veterans.

Furthermore, they would need to analyze and evaluate complaints by LGBTQ+ veterans about the timeliness of services and consult with officials responsible for administering programs which assist these veterans. Every veteran has unique needs, and it is a veteran's right to have access to these through a supportive, safe, and accepting environment while also being offered a full spectrum of health services to meet all veteran's physical and mental health needs.[6] This legislation will achieve this through a variety of different measures.

The American Legion has continuously worked to ensure LGBTQ+ veterans are adequately treated. In 2017, The American Legion was the only mainstream veteran service organization to condemn the vandalism on the newly dedicated monument honoring LGBTQ+ veterans.[7] In Past National Commander Oxford's 2020 legislative address to Congress, he affirmed VA's need to ensure equitable care for LGBTQ+ veterans. On The American Legion's podcast "Tango Alpha Lima," The American Legion has highlighted non-profit organizations like the Modern Military Association of America, which works to advance equality for LGBTQ+ veterans.[8]

Through Resolution No. 6: *Minority Veterans*, The American Legion urges VA to ensure the healthcare needs of all current and future minority veterans are met. This includes continuing research that identifies causes of minority disparities in veterans' healthcare.[9] It is essential VA improves its outreach to minority veterans through awareness campaigns and benefits education and community organization. All veterans who honorably served our nation deserve to receive their earned VA benefits.

The American Legion supports H.R. 5776 *as currently written*.

H.R. 6052 – the VA OIG Training Act

To require the Secretary of Veterans Affairs to direct the employees of the Department of Veterans Affairs to receive training developed by the Inspector General of the Department on

[6] Ellett, Tiffany. (March 18, 2021). *Beyond Deborah Sampson: Improving Healthcare for America's Women Veterans in the 117th Congress*. The American Legion Statement for Record. March 18, 2021, Retrieved from: https://docs.house.gov/meetings/VR/VR03/20210318/111305/HHRG-117-VR03-20210318-SD007-U2.pdf

[7] Browning, Bill, "Vandals Defaced a Monument for LGBT Veterans & Only the American Legion Cares," LGBTQ Nation, June 27, 2017, Vandals defaced a monument for LGBT veterans & only the American Legion cares / LGBTQ Nation

[8] The American Legion, "Pride on the podcast," legion.org, June 8, 2021, https://www.legion.org/tangoalphalima/252718/pride-podcast

[9] The American Legion Resolution No. 6 (2020): *Minority Veterans*.

reporting wrongdoing to, responding to requests from, and cooperating with the Office of Inspector General, and for other purposes.

The provisions of this bill fall outside the scope of established resolutions of The American Legion. The American Legion is a resolution-based, grassroots organization that takes positions on legislation based on resolutions passed by the membership or in meetings of the National Executive Committee. The American Legion has no current position on H.R. 6052. However, The American Legion is currently researching this critical issue to include consulting with our membership to determine the best course of action which best serves veterans.

H.R. 6638

To amend title 38, United States Code, to make specific improvements to the Office of Accountability and Whistleblower Protection of the Department of Veterans Affairs, and for other purposes.

The provisions of this bill fall outside the scope of established resolutions of The American Legion. The American Legion is a resolution-based, grassroots organization that takes positions on legislation based on resolutions passed by the membership or in meetings of the National Executive Committee. The American Legion has no current position on H.R. 6638. However, The American Legion is currently researching this critical issue to include consulting with our membership to determine the best course of action which best serves veterans.

Draft Legislation – the Improving Oversight of the Veterans Community Care Providers Act

To improve the methods by which the Secretary of Veterans Affairs identifies health care providers that are not eligible to participate in the Veterans Community Care Program (VCCP).

Department of Veterans Affairs (VA) encourages eligible veterans to receive care from community providers when they have issues accessing care at VA medical facilities. However, VA is still responsible for ensuring these community providers are qualified and competent.[10] A 2021 Congressional Budget Office (CBO) report noted that community care providers' quality in the Veterans Health Administration (VHA) network must meet credentialing standards, and providers must be licensed, educated, and trained.[11] In some cases, VA has inadvertently allowed ineligible community providers to participate in the Veteran Community Care Program (VCCP), as seen when the Government Accountability Office (GAO) reported 1,600 potentially ineligible providers in VA's system, including some with revoked and suspended medical licenses.

Unfortunately, this places veterans at risk of receiving care from unqualified providers. As well, it severely increases VA liability risk due to providers with convictions of healthcare fraud. VA must

[10] U.S. Government Accountability Office, "Veterans Community Care Program: VA Should Strengthen Its Ability to Identify Ineligible Health Care Providers, (March 11, 2022). https://www.gao.gov/products/gao-22-103850
[11] Congressional Budget Office, "The Veterans Community Care Program: Background and Early Effects," (October 2021). The Veterans Community Care Program: Background and Early Effects (cbo.gov)

address these deficiencies immediately as it continues to refine the controls, policies, and procedures of VCCP. Legislation such as *the Improving Oversight of the Veterans Community Care Program* will help to fix these problems and improve the quality of VA's community care providers. This legislation would require VA to carry out a plan to improve the methods by which the Secretary identifies healthcare providers that are not eligible to participate in the VCCP.

The plan would include modifying the standard operating procedures of the Office of Community Care (OCC) regarding the exclusion of healthcare providers from participating in VCCP. It would also include a fraud risk analysis conducted by the OCC regarding the exclusion of health providers; specifically, an assessment of the likelihood and impact of inherent fraud risks relating to self-certification of state licenses and the determination of the fraud risk tolerance.

The American Legion has remained active and present on this issue throughout the years. In a 2016 American Legion press release on pending veterans' legislation, it noted that ensuring veterans have access to appropriate, timely, and high-quality care by overhauling the outside care reimbursement programs is vital.[12] In 2019, The American Legion testified before Congress concerning issues about VA contracting fraud and the need for VA OIG inquiries into bad actors in contracting.[13]

Through Resolution No. 46: *Department of Veterans Affairs (VA) Non-VA Care Programs,* The American Legion believes VA should develop a well-defined and consistent non-VA care coordination program, policy, and procedure which includes a patient-centered care strategy.[14] VA must continue to improve its non-VA care coordination through the Non-VA Care Coordination Program Office to standardize its processes for referrals. No veteran should be receiving treatment from someone who is not credentialled and experienced.

The American Legion supports this draft legislation as *currently written*.

Draft Legislation – the Improving VA, Inclusion, Diversity, Equity, and Access (IDEA) Act

To amend title 38, United States Code, to establish in the Department of Veterans Affairs the Office of Diversity and Inclusion and to improve the diversity, equity, inclusion, and accessibility of the Department.

Data shows that changes in military policies have led to an increase in diversity within our military and veteran communities.[15] In 2010, an executive order was written by President Obama to form the Diversity and Inclusion in Veterans Affairs Council (DIVAC).[16] DIVAC consists of two co-

[12] The American Legion, "Pending Veterans Affairs Legislation," (March 15, 2016), Pending Veterans Affairs Legislation | The American Legion
[13] The American Legion, "Veterans Employment and Education Commission," (March 2019), https://www.legion.org/documents/legion/pdf/2019_VEE_edited.pdf
[14] The American Legion Resolution No. 46 (2012): *Department of Veterans Affairs (VA) Non-VA Care Programs*.
[15] Barrosso, Amanda. *"The changing profile of the U.S. military: Smaller in size, more diverse, more women in leadership."* Pew Research Center. September 10, 2019. Accessed March 21, 2022. https://www.pewresearch.org/fact-tank/2019/09/10/the-changing-profile-of-the-u-s-military/
[16] *"Diversity and Inclusion in Veterans Affairs Council Charter."* accessed March 18, 2022. https://www.va.gov/ORMDI/docs/2016_DiversityandInclusioninVACouncil_DIVAC_Charter.pdf.

chairs and 23 appointed representatives from each VA administration. They meet quarterly, and the provide recommendations to the Secretary on inclusion and diversity issues, including VA's hiring practices.

While the efforts of DIVAC and VA leadership have effectively incorporated diversity concepts into practice, VA has fallen behind other federal agencies in centralizing their efforts under a dedicated office. The Departments of Defense, Department of Interior, and Department of Housing and Urban Development have created offices on diversity and inclusion to conduct research and improve recruitment and talent management efforts. Yet VA still does not have a comparable office.

Nearly 80 percent of VA employees surveyed in 2020 said that there was an issue with racism within VA.[17] Many VA employees do not feel comfortable reporting acts of racism and discrimination to their leadership. The workforce and customer service problems strongly suggest that VA would benefit from an office dedicated to inclusion and diversity like many other businesses and government agencies. Studies show that patients fare better when cared for by a diverse team with similar cultures and backgrounds. Many patients lack trust in their providers due to the limited diversity within the physician population and other medical workforce populations.[18]

As reported in The American Legion's 2018 System Worth Saving report, there is an ongoing challenge of high turnover for primary care and specialty care at the provider level.[19] Within the report, a VA staffer attributed the turnover to "bad first-line supervisors" and "lack of sensitivity at the executive level for diversity in the managerial ranks." The American Legion recommended every available means be enacted to help solve the retention issue so that continuity of care is constant. This legislation addresses diversity and equity among employees at VA. It would create a Chief Diversity and Inclusion Office (CDIO) headed by a Chief Diversity and Inclusion Officer. CDIO would be responsible for conducting research and identifying disparities, evaluating activities, hiring employees, training and counseling, reviewing grant-making partnerships, providing counseling services for discrimination-based trauma, etc.

The American Legion embraces the diversity of veterans who served side-by-side with servicemembers from all walks of life. Resolution No. 5: *Vision, Mission, Values, and Motto of The American Legion* resolves that the principle of "equal justice and opportunity for everyone and discrimination against no one" is an American value.[20]

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[17] Horton, Alex. *"Most VA workers see racism against colleagues and veterans, union survey finds."* Washington Post. August 7th, 2020. Accessed March 21, 2022. https://www.washingtonpost.com/national-security/2020/08/07/veterans-affairs-racism/

[18] Dr. Huerto, Ryan. " *Minority Patients Benefit from Having Minority Doctors, But That's a Hard Match to Make*". Michigan Institute for Healthcare & Innovation. February 13th, 2020. Accessed March 21, 2022. https://ihpi.umich.edu/news/opinion-minority-patients-benefit-having-minority-doctors-thats-hard-match-make

[19] Rohan, Denise. "*2018 System Worth Saving Report*. The American Legion. Accessed March 21, 2022. https://www.legion.org/sites/legion.org/files/legion/publications/50VAR0718%20SWS%20Executive%20Summary.pdf

[20] The American Legion Resolution No. 5 (2020): *Vision, Mission, Values, and Motto of The American Legion*

The American Legion supports this draft legislation *as currently written*.

Draft Legislation – the Improving Workforce Diversity Through Minority Serving Institutions Act

To direct the Secretary of Veterans Affairs to develop an employee recruitment strategy that includes partnering with minority-serving institutions and other purposes.

In an effort to increase Department of Veterans Affairs (VA) employment force and workforce diversity, VA has undertaken a variety of initiatives. VA works with thousands of health professional trainees from over 200 minority-serving institutions every year.[21] These minority-serving institutions include historically Black colleges, Hispanic serving institutions, and tribal colleges and universities, to name a few.[22] Additionally, in 2020, VA started a pilot program called Veterans' Healing Veterans Pilot Program, which provides full scholarships to veteran medical students in exchange for four years of VA employment after the student graduates.

VA has touted its hiring-trainee initiative to give priority to VA health professional student scholarship recipients to persons who were referred by minority-serving institutions. While these are all positive steps, more must be done to improve VA recruitment and retention. VA should partner with minority-serving institutions to fill vacant positions with a pool of qualified professionals, and encourage people from underserved communities to apply at VA. This plan would ensure vacant VA positions are filled from a pool of diverse candidates. No later than 180 days after the legislation is signed into law, VA Secretary would be mandated to submit to Congress a report on the progress made to implement the strategy and plan at VA.

The American Legion has supported efforts to improve VA recruitment and retention and ensure minority veterans are represented in the VA workforce. During the American Legion's System Worth Saving visit to Salt Lake City, Utah, one of the cultural initiatives at this VA medical center was to identify ways to recruit individuals from minority outreach activities.[23] During the 2022 National Commander's Testimony before Congress on The American Legion's legislative agenda, Commander Dillard urged Congress to expand educational outreach efforts to minority veterans.[24] Furthermore, The American Legion has published numerous articles encouraging VA to increase outreach to minority veterans through community organizations.[25]

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[21] " VA's Academic Affiliations Increase Workforce Diversity" ,Vantage point (blog), April 26,2021, https://blogs.va.gov/VAntage/87796/vas-academic-affiliations-increase-workforce-diversity/.
[22] U.S. Department of Veterans Affairs. "VA Seeks Increase in Academic Relationships With Minority-Serving Institutions To Expand Health Professions Training." Office of Public and Intergovernmental Affairs Press Release. (June 9, 2021), accessed February 4, 2022. https://www.va.gov/opa/pressrel/pressrelease.cfm?id=568
[23] Butler, Roscoe, "GEORGE E. "WAHLEN VA MEDICAL CENTER," System Worth Saving, May 11-12, 2016, https://www.legion.org/sites/legion.org/files/legion/publications/SWS%20Report_2016_Salt_Lake_City.pdf.
[24] Dillard, Paul E, "The American Legion Legislative Agenda," March 8, 2022, https://www.legion.org/sites/legion.org/files/legion/publications/11LEG0222%20Commanders%20Testimony.pdf.
[25] Wolf, Mackenzie." Center for Minority Veterans Strives to Ensure Equal Access to Care," February 10,2022, https://www.legion.org/benefits/254912/center-minority-veterans-strives-ensure-equal-access-care.

Through Resolution No. 115: *Department of Veterans Affairs Recruitment and Retention,* The American Legion supports legislation which addresses VA recruitment and retention problems.[26] VA's recruitment and retention policies must adjust with the changing times. Throughout the years, there has been a dynamic change in the veteran population. Data shows changes in military policies have led to an increase in diversity within the military and veteran communities. VA must keep up with the changing culture of the veteran population and affirm their desire to employ a workforce which mirrors the diversity of the veteran population.

The American Legion supports this draft legislation *as currently written.*

Discussion Draft – the Faster Payments to Veterans' Survivors Act

To amend title 38, United States Code, to shorten the timeframe for designation of benefits under Department of Veterans Affairs life insurance programs, to improve the treatment of undisbursed funds by the Department of Veterans Affairs, and for other purposes

The National Defense Authorization Act for Fiscal Year 2021 required the Department of Veterans Affairs (VA) to report on the undisbursed funds of the Department. VA published the report in April 2021.[27] When VA issues payments to recently deceased veterans, the funds are returned to VA and held as VA attempts to contact the veteran's beneficiary. VA's undisbursed funds account consists of insurance payments, proceeds and unassociated accounts, and Veteran Education Assistance Program (VEAP) payments.

Under current law, VA is authorized to pay a named contingent beneficiary after two years, and after four years, VA is authorized to produce an alternate beneficiary. As a result of the current system, VA is sitting on tens of millions of undisbursed funds, lacks the authority to contact beneficiaries faster, and lacks data points to provide a precise accounting of the VA's total undisbursed funds.

This legislation would shorten the time frame in which VA is authorized to designate and pay alternate beneficiaries from two and four years to one and two years, respectively; require VA to retain information on undisbursed funds for 25 years (instead of the six years as currently required National Archives and Records Administration retention requirements); and direct VA to improve the process of identifying, locating, and paying hard-to-find veterans/survivors/beneficiaries. This includes conducting outreach to veterans and the general public, improving the procedures for searching for potential recipient information and expanding the Unclaimed Funds search tool available on VA's website.

Through Resolution No. 22: *Surviving Families Benefits*, The American Legion supports legislation to have all benefits paid to surviving families as expeditiously as possible.[28] This legislation would help accomplish that goal and get money back to survivors and beneficiaries faster.

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[26] The American Legion Resolution No. 115 (2016): *Department of Veterans Affairs Recruitment and Retention*.
[27] U.S. Department of Veterans Affairs, Report on Undisbursed Funds (Washington, DC, 2021).
[28] The American Legion Resolution No. 22 (2016): *Surviving Families Benefits*.

The American Legion supports this discussion draft *as currently written.*

Discussion Draft – the VA Preventing Duplicate Payments Act

To increase interagency cooperation and coordination and to require policies and procedures to detect and prevent duplicate payments for the same medical services by the Department of Veterans Affairs, Department of Health and Human Services, and Department of Defense, and for other purposes.

With the passage of the *VA MISSION Act of 2018*, elements of the *Veterans' Access, Choice, and Accountability Act of 2014* were permanently authorized. It authorized veterans to receive care outside of Department of Veterans Affairs (VA) facilities from an approved list of in-network VA community providers. Unfortunately, during the implementation of this legislation, VA has experienced a spate of billing errors when reimbursing non-VA community providers. These include making improper payments when failing to apply the lower applicable Medicare reimbursement rate.[29] Under current Medicare regulations, payment for services paid for directly or indirectly by another government entity is prohibited because claims are considered overpayments.[30]

To better address this issue, the *Payment Integrity Information Act of 2019* resulted in VA awarding Cotiviti GOV Services a recovery audit contract to identify and recover improper overpayments made to community providers. However, community providers already within the Community Care Network were excluded from the scope of this audit, as they were already abiding by reclaimant clauses in their contracts.[31] Nonetheless, these issues persist. The *VA Preventing Duplicate Payments Act* aims to stop duplicate billing by requiring VA, Department of Defense (DoD), and the Centers for Medicare and Medicaid (CMS) to enter into data-matching agreements to prevent VA from engaging in overpayments with an interagency (i.e., TRICARE).

This legislation would require VA to establish policies and procedures for detecting and preventing duplicate billings and payments by the Secretary of non-VA healthcare providers. The policies and procedures would include using data exchanges and accessing and share other programs' claims and payment data. Additionally, VA, DoD, and CMS would enter into data-matching agreements where DoD and CMS's Administrator would agree to share and match relevant data in the records systems for DoD, VA, and CMS.

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[29] Department of Veterans Affairs Office of Inspector General (OIG), *Veterans Health Administration, Review of Alleged Overpayments for Non-VA Care Made by Florida VA Facilities,* Report #1501080-208 (Washington DC, 2017), accessed March 17, 2022, https://www.va.gov/oig/pubs/VAOIG-15-01080-208.pdf

[30] .S. Department of Health and Human Services Office of Inspector General (OIG), *Duplicate Payments Made by Medicare and the Department of Veterans Affairs' Veterans Community Care Program,* Assigned Report #W-00-21-35865, (Washington DC, anticipated FY 2022 release date), accessed March 17, 2022 https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000554.asp

[31] "VA Recovery Audits Return Overpayments to Support Veteran Programs," VA Benefits and Health Care: Community Care, Information for Payers, last updated January 21, 2022 https://www.va.gov/COMMUNITYCARE/revenue_ops/provider_payments.asp

In 2009, The American Legion spoke publicly about the harms associated with VA's error-prone billing system.[32] A few years later, The American Legion testified before Congress on the damages of erroneous billing.[33] In 2016, The American Legion testified at another congressional hearing entitled "Improving VA Community Care Billing and Reimbursement."[34] Just a few years ago in 2019, The American Legion testified at a hearing entitled "Preventing Harm to Veterans: Examining VA's Overpayments and Debt Collection Practices."[35]

It is imperative for VA to have interoperability information technology systems with proper data sharing capabilities with applicable agencies to ensure accurate record keeping.[36] Through Resolution No. 2: *Uniform Payment Policy for Emergency Care at non-Department of Veterans (VA) Medical Center Facilities*, The American Legion believes veterans should not be unfairly billed.[37] Erroneous billing creates undue financial hardships for veterans as they are forced to deal with wage garnishment and damaged credit history. Creating VA partnerships and collaborations with as many agencies as necessary to correctly reflect a veterans' status is key to this.

The American Legion supports this discussion draft *as currently written*.

Discussion Draft

To direct the Secretary of Veterans Affairs to establish a centralized database for demographic data and to improve the collection of demographic data of beneficiaries of the Department of Veterans Affairs and for other purposes.

A 2019 Government Accountability Office (GAO) report found Department of Veterans Affairs (VA) struggled to meet its Health Equity Action Plan goals for minority veterans as it failed to accurately capture race and ethnicity data in VA's electronic health records.[38] Shortly afterward, in 2020, GAO found similar trends for minority veterans belonging to the LGBTQ+ community because the method does not consistently capture sexual orientation or self-identified gender

[32] Ken Olsen, "VA's Error-Prone Billing System Costs Veterans," October 16, 2009, https://www.legion.org/veteransbenefits/3071/vas-error-prone-billing-system-costs-veterans
[33] Ken Olsen, "Bill Crazy," October 28, 2011, https://www.legion.org/magazine/4908/bill-crazy
[34] U.S. Congress, House, Committee on Veterans' Affairs Subcommittee on Health, *Choice Consolidation: Improving VA Community Care Billing and Reimbursement*, 114th Cong., 2nd sess., 2016, 42. https://www.govinfo.gov/content/pkg/CHRG-114hhrg25101/html/CHRG-114hhrg25101.htm
[35] U.S. Congress, House, Committee on Veterans' Affairs Subcommittee on Oversight And Investigations, *Preventing Harm to Veterans: Examining VA's Overpayments and Debt Collection Practices,* 116th Cong., 1st sess., 262. https://www.congress.gov/116/chrg/CHRG-116hhrg40991/CHRG-116hhrg40991.pdf
[36] U.S. Congress, House, Committee on Veterans' Affairs Subcommittee on Oversight And Investigations, *Preventing Harm to Veterans: Examining VA's Overpayments and Debt Collection Practices,* 116th Cong., 1st sess., 262. https://www.congress.gov/116/chrg/CHRG-116hhrg40991/CHRG-116hhrg40991.pdf
[37] The American Legion Resolution No. 2 (2004): *Uniform Payment Policy for Emergency Care at non-Department of Veterans Affairs (VA) Medical Center Facilities.*
[38] U.S. Government Accountability Office, *VA Opportunities Exist for VA to Better Identify and Address Racial and Ethnic Disparities*, GAO- 20-83 (Washington DC. 2019), accessed March 18, 2022, https://www.gao.gov/products/gao-20-83

identity data.[39] This is because VA analyzes national-level data by birth sex to assess health outcomes. For example, when VA examines for the prevalence of most common health conditions, its query setting typically sorts this data into a binary category of male/female.

A provider may record veterans' sexual orientation, but it is not a standardized clinical note in the electronic health records. Providers may not consistently collect this data without a standardized field, creating a big unknown in VA's system of the total number of LGBTQ+ veterans. To address this issue, Congress introduced legislation such as the *Every Veteran Counts Act of 2021.* Through this process, Congress learned VA's National Center for Veterans Analysis and Statistics relies on old numbers and surveys, some five years old or later. It was discovered VA has only conducted six nationwide surveys, the last taking place in 2010.[40]

This legislation would ensure VA establishes and maintains a centralized database for the storage of complete and accurate covered demographic data of VA beneficiaries. The database would interface with all systems used to develop covered records, including the Defense Enrollment and Eligibility Reporting System (DEERS). Whenever covered demographic data is updated in an individual's covered record, the corresponding entry for that person in the database would be automatically populated with such data. Covered demographic data would include legal and preferred name, race, tribal affiliation, ethnicity, primary language spoken, religion, preferred communication method, parental status, marital status, the highest degree of education, and income level, to name a few.

The American Legion has been active on this issue. In December 2021, The American Legion applauded Secretary McDonough's inclusion of gender identifiers in its national medical record system.[41] Through Resolution No. 6: *Minority Veterans,* The American Legion believes VA needs to ensure the needs of all minority veterans are met.[42] Congress must continue to urge VA to develop veteran-centered care initiatives for minority veterans. As well, VA must continue doing research which identifies causes of minority disparities in veterans' healthcare. No veteran should be treated differently or receive sub-par care.

The American Legion supports this discussion draft *as currently written*.

Discussion Draft – the VA Supply Chain Management System Authorization Act

To authorize the Secretary of Veterans Affairs to carry out an information technology system to manage supply chains for medical facilities of Department of Veterans Affairs.

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[39] U.S. Government Accountability Office, *VA Health Care: Better Data Needed to Assess the Health Outcomes of Lesbian, Gay, Bisexual, and Transgender Veterans*, GAO- 21-69 (Washington DC. 2020), accessed March 18, 2022, https://www.gao.gov/products/gao-21-69

[40] "Brownley, Hirono Introduce Legislation to Establish National Veteran Database." Congresswoman Julia Brownley Press Release. September 21, 20211. https://juliabrownley.house.gov/brownley-hirono-introduce-legislation-to-establish-national-veteran-database/

[41] Jo Yurcaba, "In a Win for Trans Veterans, VA Adds Gender Identity to Medical Records," January 14, 2022, https://www.nbcnews.com/nbc-out/out-news/win-trans-veterans-va-adds-gender-identity-medical-records-rcna12270

[42] The American Legion Resolution No. 6 (2020): *Minority Veterans*.

Between 2020 and 2021, the Government Accountability Office (GAO) published three reports which affirmed that the Department of Veterans Affairs (VA) has long faced challenges in achieving efficient information technology (IT) acquisitions and supply chain operations, especially amidst the COVID-19 pandemic.[43] In their March 2021 report, GAO noted VA has made limited progress addressing its acquisition management challenge despite VA issuing a high-risk action plan because it lacked specifics. As a result, GAO recommended VA develop a more comprehensive supply chain management strategy. To address this issue, supply chains for medical facilities must be improved, and VA's IT system must be enhanced.

This legislation will mandate VA only carry out a covered IT system if the system meets requirements and does not require the use of a specific contract to procure supplies. The covered IT system would have to have a cloud-based system with inventory management of expendable and non-expendable items. The plan would also have to have an existing interface with or the capability to interface with the VA electronic health record system and VA's Integrated Financial and Acquisition Management System. All these systems would need to be implemented within three years after the bill's signing date.

The American Legion has long supported reforming VA's IT process. In The American Legion's 2021 Legislative Agenda for the 117th Congress, 2nd Session, it was noted that ensuring VA can meet the needs of an increasingly diverse veteran population requires fully leveraging all healthcare modalities to ensure a seamless transition between them.[44] In a 2021 congressional statement for the record, The American Legion described how the COVID-19 pandemic presented challenges at VA associated with maintaining the fidelity of its supply chain.[45] At the same time, The American Legion supported *the VA Supply Chain Resiliency Act,* which addressed VA supply chain processes during emergency periods.

Through Resolution No. 360: *Advance Appropriations for all of the Department of Veterans' Affairs' Discretionary Accounts*, The American Legion supports appropriating funding for VA's discretionary accounts, particularly IT operations.[46] If VA is going to operate at maximum capacity providing high-quality, world-class healthcare, it needs to have a functioning supply chain and IT infrastructure, which is hard to interrupt. Without this, veterans' continuity and quality of care are negatively impacted.

The American Legion supports this discussion draft *as currently written*.

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[43] Government Accountability Office, "VA Acquisition Management: Fundamental Challenges Could Hinder Supply Chain Modernization Efforts If Not Addressed," (November 18, 2021), https://www.gao.gov/products/gao-22-105483

[44] The American Legion, "The American Legion Legislative Agenda for the 117th Congress, 2nd Session," (March 2021), https://www.legion.org/sites/legion.org/files/legion/publications/13LEG0122%20Legislative%20Agenda_0.pdf

[45] The American Legion, "Statement of The American Legion Before the Subcommittee on Oversight & Investigations Committee on Veterans Affairs United States of representative on Pending Legislation," (April 21, 2021), https://www.legion.org/sites/legion.org/files/legion/documents/04-21-21%20SFR%20HVAC-OI%20Legislative%20Hearing_Final.pdf

[46] The American Legion Resolution No. 360 (2016): *Advance Appropriations for All of the Department of Veterans Affairs Discretionary Accounts.*

CONCLUSION

Chairman Pappas, Ranking Member Mann, and distinguished members of the Subcommittee, The American Legion, thanks to you for your leadership and for allowing us to explain the positions of our nearly two million members on the importance of these pieces of proposed legislation. Questions concerning this testimony can be directed to Ms. Olivia Babine, Legislative Associate in The American Legion's Legislative Division, at (202) 263-5746 or obabine@legion.org.