TESTIMONY

OF

JOSHUA HASTINGS

VETERANS BENEFITS POLICY ANALYST

VETERANS AFFAIRS & REHABILITATION DIVISION

THE AMERICAN LEGION

BEFORE THE

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

ON

"PENDING AND DRAFT LEGISLATION"

JULY 12, 2023

EXECUTIVE SUMMARY

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Chairwoman Kiggans, Ranking Member Mrvan, and distinguished members of the subcommittee, on behalf of National Commander Vincent J. "Jim" Troiola and more than 1.6 million dues-paying members of The American Legion, we thank you for the opportunity to testify on pending legislation considered before this Subcommittee.

The American Legion is directed by active Legionnaires who dedicate their time and resources to serve veterans and their families. As a resolution-based organization, our positions are guided by more than 104 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.

H.R. 196 – Expediting Temporary Ratings for Veterans Act

To direct the Secretary of Veterans Affairs to modify the information technology systems of the Department of Veterans Affairs to provide for the automatic processing of claims for certain temporary disability ratings, and for other purposes.

This legislation would mandate the Secretary of Veterans Affairs to automatically process claims for temporary disability ratings no later than one year after the legislation's enactment. Unique inefficiencies impacting the Veterans Benefits Administration's (VBA) processing of temporary disability ratings have been identified as a backlog barrier for more than a decade. In February 2013, Department of Veteran Affairs (VA) Inspector General (IG) Linda Halliday reported that the Office of Inspector General (OIG) inspections at VA Regional Offices "have continued to report systemic problems in VBA's processing of temporary 100 percent disability ratings. We found inaccuracies in 66 percent of the cases we reviewed. These errors resulted in over $15.5 million in overpayments and almost $293,000 in underpayments."[1]

[1] *The 100% Temporary Disability Rating: An Examination of Its Effective Use: Hearing before the Subcommittee on Disability Assistance and Memorial Affairs, of the House Committee on Veterans'*. 113th Cong. Linda Halliday (2013). https://www.govinfo.gov/content/pkg/CHRG-113hhrg78764/html/CHRG-113hhrg78764.htm

IG Halliday noted in her 2013 testimony that "VBA agreed to review temporary 100 percent evaluations to ensure proper controls existed to process these evaluations correctly; however, VBA's efforts have not been aggressive enough to address this issue effectively."[2] Processing problems caused substantial financial errors and contributed to unreasonable delays in processing and deciding such claims. According to VBA's Office of Automated Benefit Delivery, the average wait time once stood at 1,000 days.[3]

The time it takes for VA to grant a temporary disability rating ranges from a couple of weeks to several months – there is no consistency. Veterans should receive their benefits in a consistent and timely manner. Increased automation can help to reduce the claims backlog and deliver benefits more efficiently. Additionally, automation could help reduce the variability in the time it takes to make rating decisions for temporary disability claims.

Through Resolution No. 123: *Increase the Transparency of the Veterans Benefits Administration's Claim Processing,* The American Legion urges Congress to pass legislation requiring the VA to be held accountable for achieving an operational state of no claims over 125 days with an accuracy rate of 98% or higher.[4]

The American Legion supports H.R. 196 *as currently written.*

H.R. 2733 – Department of Veteran Affairs Office of Inspector General Training Act

To require the Secretary of Veterans Affairs to require the employees of the Department of Veterans Affairs to receive training developed by the Inspector General of the Department on reporting wrongdoing to, responding to requests from, and cooperating with the Office of Inspector General of the Department, and for other purposes.

According to the Office of Inspector General (OIG) within the Department of Veterans Affairs (VA), the whistleblower hotline recorded more than 14,000 contacts in the first half of the fiscal year 2021 and more than 28,000 contacts in the entirety of fiscal year 2020.[5] In spite of this growth, the OIG has identified a conspicuous lack of clear and consistent guidance and comprehensive policies and procedures within the Office of Accountability and Whistleblower Protection (OAWP). Inadequate staffing and training further complicate these issues. All these factors are crucial when considering the reputations at stake and the need for absolute protection of whistleblowers' identities.

[2] Ibid
[3] VBA Office of Automated Benefit Delivery (2022, March 11). Joint meeting with American Legion and Robert Reynolds and Paul Shute. Microsoft Teams Meeting.
[4] The American Legion Resolution No 123 (2016): *Increase the Transparency of the Veterans Benefits Administration's Claim Processing.* https://archive.legion.org/node/349
[5] *Protecting Whistleblowers and Promoting Accountability: Is VA Making Progress?*, Hearing before Subcommittee on Oversight and Investigations, House Committee on Veteran Affairs. 117th Cong. Christopher Wilber. May 13, 2021. https://www.va.gov/oig/pubs/statements/VAOIG-statement-20210519-wilber.pdf

Currently, the VA offers a voluntary 45-minute training for whistleblowers. Unfortunately, many employees opt out of this program and hence may lack the ability to detect early fraud indicators and potential crimes.[6]

The American Legion is a staunch advocate for improving whistleblower education and protections and supports the *Department of Veterans Affairs Office of Inspector General Training Act of 2023* in its endeavor to ensure the protection of whistleblowers. Additionally, this legislation seeks to transform the optional training into a mandatory one-time event that would prepare employees to identify issues and protect themselves, thereby possibly reducing fraud and safeguarding taxpayer dollars. The legislation also removes the need for VA OIG to seek permission from the VA Secretary to contact employees, facilitating better communication.

Through Resolution No. 16: *Department of Veterans Affairs Accountability and Whistleblower Protections*, The American Legion supports legislation enhancing accountability at the VA and ensures that VA employees are empowered to report wrongdoings properly.[7]

The American Legion supports H.R. 2733 *as currently written.*

H.R. 3504 – VA Medical Center Security Report Act

To direct the Secretary of Veterans Affairs to submit to each of the Committees on Veterans' Affairs of the Senate and the House of Representatives an annual report regarding security at medical centers of the Department of Veterans Affairs, and for other purposes.

The American Legion has grown increasingly concerned that the safety of our veterans, staff, and patients at VA Medical facilities is waning. A 2022 report from the VA Office of the Inspector General highlighted severe understaffing, lack of proper training, and various security vulnerabilities within the police department. The report identified an alarming 33% average vacancy rate in officer positions across 70 medical facilities, and in some cases, this rate surged to over 60%.[8] This concerning state of affairs has led to multiple serious incidents, including a bomb threat and instances of firearms being discharged.[9]

Addressing these alarming deficiencies is the focus of *the VA Medical Center Security Report Act,* which mandates the VA Secretary to implement an annual survey over a five-year period. This survey will gather information on various facets of facility safety, including the number and type of criminal activity, staffing vacancies, the quality and availability of equipment and training resources, and existing security weaknesses.

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[6] Department of Veterans Affairs Office of Inspector General. "Failures Implementing Aspects of the VA Accountability and Whistleblower Protection Act of 2017." VA OIG #18-04968-249 (2019). https://www.va.gov/oig/pubs/VAOIG-18-04968-249.pdf

[7] The American Legion Resolution No.16 (2022): *Department of Veterans Affairs Accountability and Whistleblower Protections*. https://archive.legion.org/node/7908

[8] Department of Veterans Affairs Office of Inspector General. "Security and Incident Preparedness at VA Medical Facilities." VA OIG #22-03770-49 (2023). https://www.va.gov/oig/pubs/VAOIG-22-03770-49.pdf

[9] "VA Police Shortages Leave Medical Center Patients, Staff Vulnerable, Watchdog Finds." February 23, 2023. Patricia Kime. Military.Com. https://www.military.com/daily-news/2023/02/23/va-police-shortages-leave-medical-center-patients-staff-vulnerable-watchdog-finds.html

Notably, the findings of this survey are to be compiled into an annual report, which includes an analysis of the results, a plan of action to address identified issues, and a list of vacancies. This report is then submitted to the Committees on Veterans' Affairs in the House and Senate. The enactment of this bill would provide the necessary oversight for policing at VA Medical Centers, setting a foundation for enhanced safety protocols and more effective staffing strategies.

The American Legion recognizes that ensuring the safety of our veterans extends beyond providing quality medical care, and we believe that enacting this bill would provide the necessary oversight for policing at VA Medical Centers, setting a foundation for enhanced safety protocols and more effective staffing strategies.

Through Resolution No. 16: *Department of Veterans Affairs Accountability and Whistleblower Protections*, The American Legion supports legislation urging VA to maintain oversight and implement accountability on all methods of care provided through the VA healthcare system to ensure the needs of the veterans are met in a supportive, safe, and accepting environment.[10]

The American Legion supports H.R. 3504 *as currently written.*

H.R. 4225 – VA Acquisition Review Board Act

To amend title 38, United States Code, to establish the Acquisition Review Board of the Department of Veterans Affairs, and for other purposes.

The Department of Veterans Affairs (VA) has a crucial mandate to ensure that the procurement of goods and services is optimized to meet the needs of our nation's veterans. A 2022 report from the Government Accountability Office (GAO) highlighted that the VA's acquisitions approach has been varied and unstandardized, leading to oversight difficulties and subpar acquisition outcomes.[11] This haphazard strategy undermines the VA's mission and discourages veteran-owned small businesses from seeking partnerships with the VA. These issues are further exemplified by the VA's flawed implementation of the Electronic Health Record Modernization (EHRM) program.[12]

A prime example of this inconsistency is the VA's Medical Surgical Prime Vendor Program (MSPV).[13] This critical program is designed to streamline the delivery of essential medical supplies to our veterans. However, a lack of a definitive implementation strategy has created uncertainty for veteran small business owners seeking to fulfill contracts under this program. Moreover, the VA's EHRM program, intended to replace the antiquated Veterans Health Information Systems and Technology Architecture program, mirrors the chaotic nature of previous

[10] The American Legion Resolution No.16 (2022): *Department of Veterans Affairs Accountability and Whistleblower Protections*. https://archive.legion.org/node/7908
[11] U.S. Government Accountability Office. "VA Acquisition Management: Actions Needed to Improve Program Oversight and Acquisition Outcomes." GAO-22-106220 (2022). https://www.gao.gov/products/gao-22-106220
[12] U.S. Government Accountability Office. "Electronic Health Records: VA Needs to Address Management Challenges with New System." GAO-23-106731 (2022). https://www.gao.gov/products/gao-22-103718
[13] Ibid

acquisitions. In the wake of management missteps and delayed problem resolutions, its deployment has been stalled since June 2022, with the program costs escalating to an exorbitant $59.12 billion.[14]

The VA Acquisition Review Board Act aims to address these issues by establishing an "Acquisition Review Board," creating a standardized and transparent framework for managing major VA acquisitions. Chaired by the VA Deputy Secretary, the Board would be charged with the approval and oversight of major acquisition programs.

The creation of this board would bring forth a two-fold benefit. First, it would heighten accountability and transparency, thereby helping to rectify the issues that led to the VA's GAO high-risk designation. Second, it would contribute to a more uniform acquisition process, boosting the efficiency of VA procurement and ultimately enhancing the provision of care to our veterans. Moreover, this legislation would facilitate the VA's ongoing efforts to modernize the electronic health record system. It would ensure the effective implementation of a single system across the VA and bidirectional connectivity to the Department of Defense, curbing further delays and unnecessary expenditures.

An additional advantage of this legislation is the impetus it would provide to veteran-owned small businesses. The legislation's transparent and predictable framework for VA acquisitions would enable these businesses to better cater to the VA's needs, fostering their growth and furthering their role in caring for our veterans.

The American Legion supports *the VA Acquisition Review Board Act* as it will foster transparency, consistency, and accountability in VA acquisitions. Further, it will serve as a crucial tool in ensuring our veterans receive top-quality supplies and services while providing veteran-owned businesses with a fair and predictable playing field in which to operate.

Through Resolution No. 16: *Department of Veterans Affairs Accountability and Whistleblower Protections*, The American Legion supports legislation urging the VA to maintain oversight and implement accountability on all methods of care provided through the VA healthcare system.[15]

The American Legion supports H.R. 4225 *as currently written.*

H.R. 4278 – Restore Department of Veterans Affairs Accountability Act

To amend Title 38, United States Code, to modify personnel action procedures with respect to employees of the Department of Veterans Affairs, and for other purposes.

In 2017, the 115th Congress passed the VA Accountability and Whistleblower Protection Act of 2017 (AWP Act of 2017) to assist the Department of Veterans Affairs (VA) protect veterans and

[14] Ibid

[15] The American Legion Resolution No.16 (2022): *Department of Veterans Affairs Accountability and Whistleblower Protections*. https://archive.legion.org/node/7908

employees by holding employees accountable and providing protection for whistleblowers.[16] In 2017 the VA Office of Accountability and Whistleblower Protection (OAWP) was established as a result of the new public law. Shortly thereafter, complaints were reported, identifying a possibility that VA was implementing the act improperly. As a result, the Office of Inspector General (OIG) conducted a review in 2018 that continued to 2019.[17] In this report, OIG identified 22 deficiencies, all of which VA concurred and planned to take action on.

During the peak of the COVID-19 pandemic, The American Legion supported the VA's decision to exercise its new authority granted under the AWP Act *of 2017* against those found guilty of neglect and incompetence at State Veterans Homes.[18] Beyond this, data showed that AWP was working: in 12 months from June 2019-2020, the VA had initiated 1,410 adverse actions, a 40% increase from 2016-2017.

In August of 2021, it was found in court that VA misinterpreted the AWP Act of 2017 by the United States Court of Appeals for the Federal Circuit.[19] Though one of the protections assumed in the AWP Act of 2017 was to mitigate the involvement of the U.S. Merit Systems Protection Board in certain decisions surrounding an employee, there was nothing written in the law to do so. The lack of clarity and specific verbiage in the AWP Act of 2017 has given room for courts to dilute the Secretary of Veterans Affairs' authority in making decisions to hold employees accountable, protect whistleblowers, and keep veterans safe.

Having these newly granted disciplinary authorities intercepted by different interpretations of law and policy after the bipartisan-supported legislation was passed is difficult for veterans and families harmed by misconduct and wrongdoing to process. The American Legion's Systems Worth Savings program has previously uncovered numerous mistruths and wrongdoings at VA Medical Centers, and The Legion will continue to demand a process that delivers swift accountability for front-line workers, middle managers, supervisors, and even senior executives. In the adjacent perspective, the Legion also advocates for safe working environments to increase staff protection and decrease attrition rates.

Restoring confidence in the VA system necessitates ensuring VA leaders possess the tools to hold ill-intentioned actors accountable and to protect those trying to create a more productive and safer environment. This legislation clarifies and reinforces critical authorities initially granted in 2017 and introduces a supremacy clause to close the loopholes revealed in recent court rulings and labor union disputes, thereby reinstating the heightened accountability established by the bipartisan *Whistleblower Protection Act of 2017*.

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[16] Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017, P.L. 115-41, 131 stat. 862 (June 23, 2017).
[17] Department of Veterans Affairs Office of Inspector General. "Failures Implementing Aspects of the VA Accountability and Whistleblower Protection Act of 2017." VA OIG 18-04968-249 (2019). https://www.va.gov/oig/pubs/VAOIG-18-04968-249.pdf
[18] The American Legion. (2015). "Pending, Legislation." https://docs.house.gov/meetings/VR/VR08/20150319/103139/HHRG-114-VR08-20150319-SD002.pdf
[19] Connor D. Dirks,"Federal Circuit Disputes VA's Interpretation of 2017 Accountability Law." FED Manager, Shaw Bransford & Roth P.C. August 17,2021. https://fedmanager.com/news/federal-circuit-knocks-vas-interpretation-of-2017-accountability-law

There are some apprehensions about VA's capacity to enforce the provisions of this bill that we would like to address. In a press conference this past March, Secretary McDonough expressed that Section 714 of the *VA Accountability and Whistleblower Protection Act* "wasn't really helping us necessarily manage our workforce as much as it was getting us in front of federal judges and in front of administrative bodies."[20] Every provision of the *Restore Department of Veterans Affairs Accountability Act* has been written not to expand the scope of the 2017 law, but rather to address the technical legal challenges the Secretary alluded to. VA's track record of enforcing AWP in the initial years after its passage demonstrated a good faith effort to address systemic workforce challenges that have plagued the VA for decades; The American Legion expects the VA to resume this effort with passage of the *Restore Department of Veterans Affairs Accountability Act.*

Through Resolution No. 16: *Department of Veterans Affairs Accountability and Whistleblower Protections*, The American Legion supports legislation urging the VA to hold any employee or VA-contracted vendor found guilty of misconduct or wrongdoing fully accountable.[21]

The American Legion supports H.R. 4278 *as currently written.*

H.R. 4461 – Modernizing Department of Veteran Affairs Disability Benefits Questionnaires Act

To require the Secretary of Veterans Affairs to make certain improvements relating to the transmission of disability benefits questionnaire data to the Department of Veterans Affairs, and for other purposes.

Disability Benefits Questionnaires (DBQs) provide clinicians with a standardized form to perform disability examinations and Compensation and Pension (C&P) exams. This discussion draft would require VA-contracted healthcare providers to transmit DBQ data in machine-readable format to ensure the compatibility of their documents with Veterans Benefits Administration (VBA) systems. Documents commonly scanned and sent in a PDF (Portable Document Format) cannot be "read" by machines and present compatibility, analytics, and data extraction challenges.

To leverage the utility of machine-readable documents, uniformity and standardization in data formats and processing are needed.[22] Requiring VA-contracted healthcare providers to transmit DBQ data in machine-readable format would ensure the compatibility of their documents with VBA systems. VA contractors' use of machine-readable documents should help improve the quality and timeliness of C&P exams and contribute to an overall reduction in the claims backlog.

The American Legion applauds the subcommittee's focus on automating VBA processes but encourages a deeper technical review of this discussion draft's language. To accommodate all VA contracted clinicians, The American Legion recommends adding "assigned to or" before

[20] VA Secretary Press Conference. March 23, 2023. https://news.va.gov/press-room/va-secretary-press-conference-march-3-2023

[21] The American Legion Resolution No.16 (2022): *Department of Veterans Affairs Accountability and Whistleblower Protections*. https://archive.legion.org/node/7908

[22] U.S. General Services Administration. "A Primer on Machine Readability for Online Documents and Data." September 24, 2012. https://data.gov/developers/blog/primer-machine-readability-online-documents-and-data/.

"selected" on Page 3, Line 2. In most cases, veterans are assigned to VA-contracted medical staff for C&P exams.

Through Resolution No. 14: *Quality Assurance for Department of Veterans Affairs (VA)*, The American Legion urges Congress to pass legislation that will ensure the quality and timeliness of C&P examinations performed by VA contractors and provide veterans with professional, high-quality service.[23]

The American Legion supports H.R. 4461 *with amendments.*

Conclusion

Chairwoman Kiggans, Ranking Member Mrvan, and distinguished members of the subcommittee; The American Legion thanks you for your leadership and for allowing us the opportunity to explain the positions of our 1.6 million members on the importance of these pieces of proposed legislation. Questions concerning this testimony can be directed to Legislative Associate Matthew Brennan at 202-221-8105, or mbrennan@legion.org.

[23] The American Legion Resolution No. 14 (2021): *Quality Assurance for Department of Veterans Affairs.* https://archive.legion.org/node/3595