STATEMENT FOR THE RECORD

MILITARY OFFICERS ASSOCIATION OF AMERICA

On

Pending Legislation

115th Congress

HOUSE COMMITTEE on VETERANS' AFFAIRS

October 24, 2017

CHAIRMAN ROE, RANKING MEMBER WALZ, and Members of the Committee, the Military Officers Association of America (MOAA) is pleased to present its views on pending legislation under consideration by the Committee.

MOAA does not receive any grants or contracts from the federal government.

EXECUTIVE SUMMARY

On behalf of the Military Officers Association of America, the largest military service organization representing the seven uniformed services, including active duty and Guard and Reserve members, retirees, veterans, and survivors and their families, MOAA thanks the committee for holding this very important hearing and for your continued support of our nation's servicemembers and veterans and their families.

MOAA offers our position on the following bills. MOAA takes no position on the remaining bills before the committee, as some are outside our scope of expertise.

- **Draft legislation to establish a permanent Veterans Choice Program**
- **Veteran Coordinated Access and Rewarding Experiences (CARE) Act**

DISCUSSION

Draft legislation to establish a permanent Veterans Choice Program—MOAA strongly supports consolidating all six of the VA's community care programs into one, as recommended in the June 30, 2016, independent Commission on Care report. This bill will accomplish that and prevent a confusing set of rules unique to each individual program, as well as provide the VA more flexibility in providing care.

MOAA also supports creating a more formalized network for community-based health care professions to become accustomed to working with veterans and their unique needs, as well as increasing partnerships with community clinics and hospitals. It is vital, however, that Congress maintain a strong oversight to ensure the VA retains existing special-emphasis resources and specialty care expertise such as spinal cord injury, blind rehabilitation, mental health, prosthetics, and similar foundational services. To date, the VA has not shared a list of expertise and resources it intends to retain, nor has it shared a methodology for how it will make such determinations in the future. It also has not shared the methodology it intends to use to perform the market assessments required in this bill. Transparency in this regard is essential to determining whether the permanent program will serve veterans' health care needs adequately.

MOAA offers the following legislative considerations to ensure the intended effect is achieved.

- Assignment of a patient-aligned care team or dedicated primary care provider should be made only after the VA determines a patient will actually be utilizing VHA services. As written, the draft legislation mandates that *upon enrollment* a dedicated primary care

provider will be assigned. A Congressional Research Service report found in 2014 there were 9.1 million veterans enrolled in the VHA, while only 5.9 million veterans were patients within the VHA system[1]. Assigning primary care providers to veterans who are not utilizing the VHA to receive medical care would be inefficient and wasteful.

- The draft legislation sets forth three ways a veteran may receive medical services, depending upon clinical determinations: at a VA medical facility, by a regional network provider, or pursuant to a provider agreement. The language contained in the legislation pertaining to provider agreements is very broad and has few restrictions. The VA should only be able to enter into direct provider agreements for services not already covered by regional network providers or in locations where regional gaps exist. Duplicating a regional network with provider agreements may prove to be inefficient and could undermine the existing networks, confuse providers, and result in claims being sent to the wrong payer.

- All community providers should be required to meet some standards regarding scheduling, payment rates, and care provided. Absent such standards establishing reasonable performance expectations, the VA will be left attempting to enforce compliance without adequate legal authorities.

- Given the broad eligibility criteria, there is significant potential veterans will either become confused with the requirements or disagree with the determinations made by the VA. An appeals process must be included in the statutory language to establish a clear, fair, and expeditious process for veterans to dispute the VA's determination that they should or should not use care in the community.

- Language should be added to the legislation providing for service-connected disability compensation as a result of injuries incurred or aggravated by medical care by a community care provider, as set forth in 38 U.S.C. § 1151. Absent such a provision, veterans will be required to pursue recovery through the civil court system. Aside from the onerous burden civil legal action places on an individual, including retaining an attorney, years of litigation, and steep legal fees (some estimates place them at $30,000-$50,000 for a basic case and $100,000 for a complex case), veterans would be subjected to any number of additional legal hurdles. Some of these include capped recovery amounts due to tort reform legislation and potential mandatory arbitration if a health care provider requires it as a condition of rendering care. While the draft legislation leaves open the option a veteran may reject care in the community and choose to instead to be treated at a VHA facility, this places the veteran in the position of potentially not receiving timely care in exchange for preserving a legal right – a decision that could have life-or-death implications, and a position in which a veteran should never be placed.

[1] Congressional Research Service, "The Number of Veterans That Use VA Health Care Services: A Fact Sheet," June 3, 2014.

Veteran Coordinated Access and Rewarding Experiences (CARE) Act—MOAA reiterates all of the above-stated concerns, as they are relevant to this draft legislation as well. In addition, the following recommendations are offered.

- Walk-in Care Copayments: The draft legislation states if any eligible veteran utilizes walk-in care, the veteran must pay a copayment for those services. It does not differentiate between care sought for service-connected disabilities and non-service-connected disabilities. When a veteran seeks care at VHA facilities for a service-connected disability, there is no fee associated with that care. The same standards should be applied for care received in the community. Although the draft allows the Secretary to adjust those copayments based on a veteran's priority group, there is no assurance veterans seeking medical care for service-connected disabilities will not be required to pay. The legislation should make clear that veterans are not required to pay a copayment for any care received in a walk-in clinic for a service-connected disability. Because this co-payment exclusion would apply only to service-connected disabilities, and because walk-in care services are extremely limited in their type and scope, the potential that a veteran will overuse a walk-in clinic versus seeking primary care for a service-connected disability is very low.

- Round-down of certain cost-of-living adjustments: While a round-down of cost-of-living adjustments for veterans benefits will not have a devastating financial impact on any individual veteran, the effects are cumulative and over a period of several years could yield significant reductions. The legislation as drafted provides that the round down would apply for 10 years (2018 through 2027) but no alternative funding source for these changes is apparent and the round-down will more than likely be extended for several 10 year periods thereafter leading to a lifetime of reduced benefits for veterans. Such a round down could lead to approximately $2,000 of lost benefits over the lifetime of a disabled veteran. It is unsettling that this reduction in benefits is proposed in the same bill that rescinds limitations on awards and bonuses paid to VA employees. This creates the appearance that cuts to veterans' benefits are being used to fund bonuses to VA employees. MOAA encourages the VA to continue, in earnest, all other potential funding options rather than to reduce veterans' benefits to pay for their own or other veterans' health care and VA employee bonuses.

MOAA thanks the committee for considering this important legislation and for your continued support of our veterans and their families.