



CONGRESSIONAL TESTIMONY

STATEMENT BY

RICHARD C. LOEB
SENIOR POLICY COUNSEL

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE

HOUSE COMMITTEE ON VETERANS' AFFAIRS

ON

U.S. DEPARTMENT OF VETERANS AFFAIRS BUDGET REQUEST FOR FISCAL YEAR 2022
JUNE 8, 2021

Chairman Takano, Ranking Member Bost, and Members of the Committee:

On behalf of the American Federation of Government Employees, AFL-CIO (AFGE) and its National Veterans Affairs Council (NVAC), I appreciate the opportunity to testify at today's oversight hearing, "U.S. Department of Veterans Affairs Budget Request for Fiscal Year 2022." AFGE represents more than 700,000 federal and District of Columbia government employees, 260,000 of whom are proud, dedicated Department of Veterans Affairs (VA) employees, more than 100,000 of whom are veterans themselves.

President Biden's budget request for the Department of Veterans Affairs demonstrates an intention to depart from the previous administration's agenda of starving the internal operations of the VA and lavishing unlimited largesse on private sector providers. VA privatization gained support and momentum because the VA had too few resources to meet demand for services. The VA left almost 50,000 funded in-house positions unfilled, and veterans were waiting too long for appointments for treatment. There was never any question about whether this policy of allowing the VA to deteriorate in terms of its ability to carry out its mission fully was deliberate or not; the previous administration's hostility to the VA and its workforce was constantly made apparent. The unfortunate result

was the enactment of the potentially ruinous Mission Act. The early results of the Mission Act almost immediately validated AFGE's warnings about its consequences: fraudulent billing and other scandals from so-called "community" providers, inferior treatment from private providers that led to costly duplication and remediation from in-house experts, and uncontrolled costs that far exceed even the generous funding for private care that the previous administration provided.

President Biden's budget proposal suggests a departure from the destructive path to privatization. Should this request be enacted into law it would represent a 10% increase in funding over Fiscal Year (FY) 2021 levels. The VA is at a crossroads. After more than a year fighting on the frontline of the COVID-19 pandemic, the next year will be critical for the future of the VA and its world-class, veteran-centric care. In 2022 and 2023 the Mission Act's VA Asset and Infrastructure Review (AIR) Commission will examine the VA and make recommendations to the President on what facilities and departments to close, to remediate, or to build. This budget request allocates \$5 million for the completion of that task. To those of us who hold the VA dear, it feels like walking into a doctor's office for a thorough physical after four years of malnutrition, neglect of problems diagnosed long ago, and constant stress from living in

an environment of hostility, abuse, and ongoing exposure to a deadly virus. The fact that VA employees carried on so steadfastly and courageously throughout this dark period is truly remarkable, but the wounds from the past four years will be apparent to anyone taking a close look. It is for this reason that AFGE has recommended that the AIR Commission be delayed in its work. The White House and Congress should allow the benefits of new investments in the VA and its workforce to enhance the system's capacity to meet demand and provide the world-class care our veterans deserve rather than rush to compile a plan for divestiture and privatization.

Private sector healthcare providers have always played an important and positive role in supplementing the care provided internally at the VA. However, the Mission Act's broad authorities to recommend closures and partial closures could entail privatization of discrete portions of clinical care to private providers. This would undermine one of the VA's most important and unique virtues, the ability to provide seamless, integrated and holistic care to veterans. Often, the veteran patient population requires treatment for unusually complex physical, psychiatric, and behavioral health issues. To allow the AIR Commission to cherry pick departments for privatization, for example an Emergency, Oncology, Cardiology, or Urology Department, would leave a medical center without the ability to integrate care for

patients with needs in multiple areas. But that is exactly the risk that the AIR Commission poses to the VA's ability to deliver on behalf of veterans.

President Biden's budget proposes \$17.1 billion in advanced appropriations for so-called "community care" (a misnomer, as VA facilities are central to the communities where they exist, and particularly to veteran communities) coupled with \$1.4 billion already appropriated under the Consolidated Appropriations Act of 2021. Also included in the President's budget is a \$24.2 billion request in advance appropriations for privatized care for FY 2023. These enormous figures would be far better spent on improving and expanding in-house capacity at the VA.

If Congress agrees to continue to send this largesse to private providers, it should mandate far more accountability than the Mission Act required. For example, the two contractors who originally most benefited from this mass privatization program, TriWest and Health Net, were billing the government for overhead in amounts that were effectively twice the rate of other private sector health care administrators, that is 24% versus 10 - 12% for most private sector administrators, and only 8% for the Department of Defense Tricare program. Moreover, the private contractors largely failed to meet the timelines required in the Mission Act (appointment wait time not to exceed 30 days), averaging a 50-day wait time. Both TriWest

and Health Net have been the subjects of various Department of Justice investigations, with the former contractor subject to a federal grand jury investigation in Arizona. Clearly, these contractors were not chosen to administer the program based on their competence at cost containment, and although Health Net is no longer a part of the program, both Health Net and TriWest epitomize the pitfalls of VA health care privatization.

We ask the Committee to require application of the contract cost principles used by the Federal Employees Health Benefits (FEHB) Program administered by the U.S. Office of Personnel Management (OPM) to control Mission Act private provider health care administrative costs. OPM's FEHB practices should also be used to limit contractor profits. The FEHB uses the Federal Acquisition Regulation (FAR) cost principles to determine the allowability and allocability of costs claimed by contractors. Although OPM acceded to contractor lobbyist demands to be exempted from the Cost Accounting Standards (to which most FEHB experienced-rated contractors were subject from the 1980s until the early 2000s) thereby weakening accountability, the program nevertheless experiences administrative costs between 4% – 9% of healthcare payments costs, far less than what the VA is experiencing. In addition, OPM generally holds contractors to profit margins of 0.5% - 1.0%, and rarely exceeds 1.1% for

experienced-rated health plans. The application of these cost principles and profit guidelines would provide a measure of discipline on the enormous costs of the Mission Act's private care provisions and ensure that unallowable costs are not paid. This would at least mitigate the risk that money spent on care outside of the VA is not wasted.

Appropriators must also ensure that under no circumstances will the private or "community care" accounts be merged with the VA's in-house medical accounts. It is imperative that Congress maintain the firewall between these two accounts to ensure the financial integrity of both programs.

President Biden's request includes several items that are critically important to the future of the VA. One item that stands out is the creation of the Office of Resolution Management, Diversity, and Inclusion. AFGE has worked to shed light on racial disparities and systemic racism within the VA. In 2019 we conducted a survey on management selection that found only 2.5% of African American applicants were selected for management positions at the VA. Earlier this year, on May 6, 2021, an AFGE witness provided testimony to the House Veterans' Affairs Subcommittee on Oversight and Investigations on the crucial need for the VA to make real

changes in diversity and inclusion. We believe that the creation of this office holds great promise for the future of diversity and inclusion in the VA.

Another area of major investment in this budget request is in psychiatric and behavioral health. We are extremely supportive of the Biden administration's effort to invest directly in mental health care and suicide prevention programming for veterans. AFGE had grave concerns last year as Congress debated the Commander John Scott Hannon Mental Health Care Improvement Act. That legislation, as originally drafted, provided broad authorization to allow profiteers to sell mental health care to vulnerable veterans. We were happy to see changes we suggested added to the underlying text prior to final passage that put more parameters around outsourcing mental health care to those trying to profit from the wounds of war.

President Biden's budget request calls for an investment of \$2.2 billion in discretionary funding for mental health care and services. It also calls for an additional \$598 million for suicide prevention programs. This investment should be used to hire more in-house professional staff to meet the mental health needs of the veteran population. Our most serious concern has always been that these privatized schemes do not enforce adequate standards to ensure that for-profit providers have even basic

skills in suicide prevention. We know that they lack the specialized knowledge, experience and training that in-house VA providers possess for treating veterans with complex mental health needs. The providers at the VA have dedicated their careers to healing the hidden wounds of battle, and we ask that Congress require that this investment be used to provide them with additional resources.

The Biden Administration's proposal for the Veterans Benefits Administration (VBA) calls for \$3.4 billion dollars in discretionary spending, a \$259 million increase over the FY 2021 appropriation. AFGE supports this investment. We call your attention to several provisions that will help VBA employees to better perform their duties and serve veterans. AFGE strongly supports spending \$40.3 million to help with the processing of presumptive illnesses associated with Agent Orange Exposure. Those funds will help hire an additional 334 full-time equivalents (FTE) to process these claims and will help all claims processors more accurately and efficiently process claims for affected veterans. AFGE also supports the use of \$13.6 million to hire an additional 140 FTE including 95 claims processors for disability claims processing. Additionally, while the budget calls for an overall increase in FTE at VBA, it appears the VA is expecting a decrease in total FTE for the employees processing compensation and

education claims. Considering the claims backlog, AFGE urges Congress to require VBA to make sure it maintains its workforce and has the ability to process all claims accurately and efficiently.

In relation to Compensation and Pension (C&P) Exams as well as Integrated Disability Examination System (IDES) Exams, which VA uses to measure and assess the disabilities of veterans or discharging active-duty personnel and their eligibility for benefits, AFGE strongly opposes the VA's continued efforts to contract out these important examinations. The VA is proposing \$558.1 million to pay for extra contract exams, money which would be far better spent in-house where C&P examinations are both less costly and of higher quality. In-house C&P exams also help the veteran receive immediate referral to a VA provider (and often immediate healthcare services) when a VA provider conducts the exams and finds a condition that needs treatment.

According to the VA, in 2020, 77 percent of exams were performed by contractors, and rather than insourcing this work now that the VA is no longer in the hands of irresponsible privatizers, the VA seems intent on continuing to contract out this critical element of veterans' care. While the VA rightly says it will use its internal C&P and IDES capacity to focus on specialty cases, they should reverse course and allow in-house staff to

again perform this function. The VA should prioritize hiring additional practitioners and support staff able to perform exams in-house who are not influenced by profit pressures to complete as many exams as possible as rapidly as possible, instead of hiring new employees to oversee the continued privatization of this work. The VA should also prioritize allowing C&P and IDES clinicians to begin performing the exams they handled prior to their reassignment to other duties during the COVID-19 pandemic.

We greatly appreciate the Biden administration's efforts to have the federal government be a model employer with respect to compensation, respect for the merit-based civil service, and its commitment to fulfilling its collective bargaining obligations. We agree that this new posture will help the VA to recruit and retain a high-quality workforce. However, there remains one glaring problem with regard to the VA's treatment of its unionized employees. In this regard, we appreciate the efforts of Chairman Takano in reintroducing the VA Employee Fairness Act. Specifically, the VA must correct past mistakes and extend full collective bargaining rights and representational rights to its Title 38 workforce. Medical professionals in the private sector have full collective bargaining rights, equivalent to those of workers in other occupations. Only the VA deprives medical professionals of full union rights. Without addressing these issues, the VA

will never be able to fully become an employer of choice for medical professionals. We urge the Congress to require VA to restore collective bargaining rights to pure Title 38 employees.

The Title 38 collective bargaining rights exemption law, 38 U.S.C. § 7422 (“7422”) has long been interpreted and applied by the VA in an arbitrary and unfair manner. In 2003, the Bush Administration nullified a Clinton Administration labor-management agreement to bargain over routine workplace issues such as calculation of overtime pay and scheduling of shifts for nurses. As a result, the employees covered by 7422 (physicians, dentists, registered nurses, physician assistants, optometrists, podiatrists, chiropractors, and expanded-function dental auxiliaries) have not been able to bargain or grieve over a wide range of workplace issues that are routinely grieved by Title 5 and Hybrid Title 38 employees without any negative operational impact. The VA could provide an administrative remedy to this problem today, and while we have urged them to do so immediately, we also ask for your support of this policy change.

Another area where the VA can improve today is fully restoring representational rights to its employees. On January 22, 2021, President Biden signed an Executive Order rescinding the Trump-era orders on union

activities. Even though President Biden's executive order was issued more than four months ago, there are some facility managers who are resisting implementation of the President's order. The VA has also failed so far to restore official time for Title 38 employees, telling us that it has been "under review" since March. AFGE urges the VA to move swiftly to remedy this problem and restore these rights to Title 38 workers. The administration can and should restore the ability to represent our bargaining units today.

The end to unrelenting privatization, outsourcing and austerity at the VA as reflected in the President's FY 2022 budget proposal is a win for veterans and all health care consumers who benefit from VA as a National leader in integrated care, best practices in medical and mental health, research and medical training.

During this time of COVID-19, the VA has proven its worth not only in providing direct patient care to veterans, but also by providing state and community support to non-veteran beneficiaries as a part of VA's "Fourth Mission", to assist the nation in times of emergencies and disasters. The VA has risen to this challenge. It is incumbent upon Congress to support the VA as the VA has supported the Nation.