



Statement of Russ Duerstine

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on

“Building an Accountable VA: Applying Lessons Learned to Drive Future Success”

House Veterans Affairs Committee

February 28, 2023

Thank you to Chairman Bost, Ranking Member Takano, and Members of the Committee for the opportunity to submit this statement on behalf of Concerned Veterans for America (CVA). CVA is a grassroots network of thousands of veterans, family members, and patriotic citizens across the country who advocates and defends policies to preserve freedom and prosperity for all Americans. Our organization is driven to organize and amplify the American veteran’s unique perspective to both the American people and our leaders in Washington.

CVA’s History in Veterans’ Health Care Reform

As a leading advocate for reform and accountability at the Department of Veterans Affairs and for increased health care choices for our veterans since 2012, CVA is well-positioned to discuss the importance of robust congressional oversight of the VA and the policies that so many of our nation’s bravest rely on. As systemic failures came to light in 2014 after the Phoenix VA scandal, CVA activists were on the front lines from the beginning demanding change, contributing to bringing three major pieces of veterans’ health care legislation across the finish line.

In the immediate aftermath of the Phoenix VA scandal, CVA fought for the Veterans Access, Choice, and Accountability Act of 2014, which established the first iteration of a choice program for veterans to seek care outside the VA. CVA also backed the VA Accountability and Whistleblower Protection Act of 2017, which gave the VA the freedom to fire poorly performing employees while shielding whistleblowers from retaliation. While these efforts laid an early foundation to change incentives at the VA and improve outcomes for veterans, more work was needed to improve veterans’ care experiences.

CVA was a key supporter of the passage of the VA MISSION Act in 2018, which passed with overwhelming bipartisan support. This legislation incorporated many of the recommendations of the 2015 Fixing Veterans’ Health Care Task Force convened by CVA, namely by creating the Veterans Community Care Program (VCCP). By consolidating existing choice programs and simplifying access standards, the VA MISSION Act offered greater health care choice to millions of veterans, enabling far more to access care where and when they needed it.

Ensuring the full implementation of the VA MISSION Act and holding the VA accountable for failures to do so have been consistent priorities of CVA’s since the legislation passed. The VA’s reluctance to honor its

regulatory and statutory obligations since the VA MISSION Act's passage has limited millions of veterans' health care choices, too often resulting in delayed and denied care. Ensuring successful implementation of the VA MISSION Act is an essential oversight priority for the 118th Congress. This legislation was passed to proscribe the conditions that caused the Phoenix VA scandal, and neglecting its execution risks these failures recurring. After the passage of the PACT Act last year, the VA has new treatment obligations to millions of veterans, and ensuring the VA MISSION Act is fully implemented as intended will be essential to helping the VA keep its promises to these and existing beneficiaries.

VA MISSION Act Implementation Failures: Community Care At Risk

Since the VA MISSION Act's passage, the VA has chosen to effectively pick and choose what regulations and sections of the law to follow.

Rather than support the success of the VCCP as a treatment option that will enable veterans to get care faster and improve the VA's capacity to provide care at its own facilities, the agency has taken several actions to minimize the VCCP's use among veterans. Reports have emerged of VA administrative staff overruling doctors' assessments of patients' best medical interests and overruling community care referrals, even though these clinical referrals are listed as a source of community care eligibility in the VA MISSION Act text.¹ The VA engages in little-to-no outreach to veterans about the access standards for community care eligibility, and VA internal guidance discourages employees from offering to review veterans' eligibility for community care during appointment requests.² CVA's experiences with thousands of veterans across the country corroborates this guidance and reports from Congressional offices that constituents are simply not being told by the VA that community care is an option available to them.³ In 2021, the VA announced plans to shut down the Office of Community Care itself and the VA MISSION Act website.⁴

If this weren't evidence enough of the agency's hostility to community care, documents obtained through an ongoing Freedom of Information Act lawsuit filed by Americans for Prosperity Foundation (AFPF) reveal that VA internal phone scripts actually direct schedulers to attempt to dissuade veterans who ask for community care from using it.⁵

This pattern of unelected bureaucrats subverting the stated will of Congress in the VA MISSION Act demands robust oversight and accountability from lawmakers.

The House Veterans Affairs Committee should continue to hold hearings on the implementation and status of the VCCP, and legislators should freeze performance bonuses for senior VA leaders and subject the Office of the Secretary to funding penalties in the FY 2024 appropriations cycle if they continue to put administrative roadblocks in place for veterans' access to community care.

Wait Time Calculations

¹ Jill Castellano, "The Mission Act is supposed to help US veterans get health care outside the VA. For some, it's not working." *USA Today*, November 1, 2021. <https://www.usatoday.com/in-depth/news/investigations/2021/11/01/mission-act-aid-veterans-healthcare-va-isnt-letting-it/8561618002/>

² "Standard Mission Act Guidance: Patient Eligibility and Scheduling Sheet." *Department of Veterans Affairs*, October 28, 2020. <https://americansforprosperity.org/wp-content/uploads/2021/09/03-Mission-Act-Guidance-Oct-2020.pdf>

³ Letter to Secretary Denis McDonough. *Office of Senator Steve Daines*. July 14, 2022. <https://www.daines.senate.gov/wp-content/uploads/imo/media/doc/VA-%20Community%20Care-%20FINAL%207.14.2022.pdf>

⁴ Leo Shane III, "Changes to VA's community care program raise concerns about vets' health care access." *Military Times*, October 13, 2021.

<https://www.militarytimes.com/veterans/2021/10/13/changes-to-vas-community-care-program-raise-concerns-about-vets-health-care-access/>
⁵ Referral Coordination Guidebook. *Veterans Health Administration*, March 10, 2021. Pg. 62. <https://americansforprosperity.org/wp-content/uploads/2021/09/Referral-Coordination-Initiative-Guidebook.pdf#page=62>

Despite clear VCCP regulations the VA put in place after the VA MISSION Act took effect in 2019, the VA has ignored its own guidance, adopting legally incorrect, misleading, and often obsolete measurements that artificially make veterans' wait times appear shorter than they truly are.⁶ For years, the VA's failures to follow the standards of the VA MISSION Act in wait time calculations have come under criticism from the Government Accountability Office, the VA Inspector General, and veterans' organizations such as CVA.⁷

In May 2021, the Government Accountability Office wrote Secretary McDonough, outlining why the VA's current scheduling practices leave wait time calculations, central to determining community care eligibility, "subject to interpretation and prone to scheduler error."⁸

Documents obtained through the Americans for Prosperity Foundation's ongoing FOIA lawsuit with the VA corroborate the GAO's concerns.⁹ These records reveal that the VA is refusing to refer eligible veterans for community care, manipulating wait time data by continuing to use outdated scheduling guidance to calculate wait times based on the "patient-indicated date" (PID) metric rather than a veteran's actual date of request for an appointment as directed in the VA's own guidance for the VCCP issued after the MISSION Act.¹⁰ Through a variety of means, such as beginning wait time clocks after VA schedulers input requests into their scheduling system or restarting wait time measurements after existing appointments are canceled or rescheduled, faulty VA measurements make wait times appear artificially shorter than they truly are.

Wait time manipulation has concrete effects on how many veterans can access community care. For example, AFPP's FOIA revealed that the Southern Arizona VA's outdated PID wait time calculations left only 4.2 percent of veterans' primary care appointments eligible for community care providers, compared to the over 21 percent that would qualify if they used the veterans' "date of request" as the MISSION Act requires.¹¹ It's a similar story for specialty care, where the Southern Arizona VA's PID wait time calculations left only 9.3 percent of veterans' appointments eligible for community care, compared to the 26.7 percent that should qualify.¹²

Fortunately, in the end-of-year December 2022 omnibus, an included provision now statutorily obligates the VA to calculate and publicly display wait times from a veterans' date of request to their actual date of appointment.¹³ Congress must ensure that the VA adheres to these obligations immediately. Should the VA fail to update its wait-time calculations for public display and community care eligibility to the required date of request to date of appointment measurement, Congress should freeze performances bonuses for senior VA leaders and subject the Office of the Secretary to funding penalties in the FY 2024 Appropriations cycle.

Disengaged Leadership: Stonewalling Transparency

Unfortunately, VA leadership has displayed a pattern of resisting transparency efforts from both Congress

⁶ For a detailed explanation of the VA's wait-time calculation errors, see: "Delayed and Denied Care: Transparency and Oversight Needed for VA Wait Times." *Concerned Veterans for America*. February 22, 2022. https://cv4a.org/wp-content/uploads/2022/02/22_298900_VAPolicyBriefingHandout.pdf

⁷ "Veterans Health Administration: Concerns with Consistency and Transparency in the Calculation and Disclosure of Patient Wait Time Data," *Department of Veterans Affairs Office of Inspector General*, April 7, 2022. <https://www.va.gov/oig/pubs/VAOIG-21-02761-125.pdf>

⁸ "Priority Open Recommendations: Department of Veterans Affairs." *Government Accountability Office* to Secretary Denis McDonough. May 10, 2021. <https://www.gao.gov/assets/720/714332.pdf>

⁹ Records confirm VA's use of inaccurate wait time numbers." *Americans for Prosperity Foundation*, October 1, 2021.

<https://americansforprosperity.org/records-confirm-va-inaccurate-wait-time-numbers/>

¹⁰ "Veterans Community Care Program" Department of Veterans Affairs, *Code of Federal Regulations*, title 38 (2019): 26278. <https://www.federalregister.gov/documents/2019/06/05/2019-11575/veterans-community-care-program>

¹¹ "Records confirm VA's use of inaccurate wait time numbers." *AFPP*.

¹² *Ibid*.

¹³ Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, §2, Div. U. <https://www.congress.gov/117/bills/hr2617/BILLS-117hr2617enr.pdf>

and the public. The VA's dismissive approach to AFPP's ongoing FOIA lawsuit regarding the VCCP and VA wait-time calculations provides a trenchant example.

As AFPP explained in a December 2022 motion to modify the court-ordered production schedule:

Of the 1,767 pages of responsive records produced so far, only 269 pages have been non-duplicative after accounting for identical records released across multiple interim productions... Roughly 85% of all pages disclosed to AFPP, in other words, have been duplicate copies. In September 2022, for example, the VA produced a two-page email 44 times, and over the course of three months (September-November) it produced a twenty one-page PowerPoint file 42 times.¹⁴

Veterans and taxpayers deserve better than this woeful approach to transparency on a program that is a cornerstone of access to care for millions of veterans. The VA displays an ongoing resistance to embracing the Veterans Community Care Program as a partner, choosing instead to view it as a threat to its narrow bureaucratic interests. In the interests of ensuring the tenets of the VA MISSION Act are upheld, the House Veterans Affairs Committee should formally subpoena the records at issue in the AFPP FOIA litigation. Court filings reveal that the VA has already uploaded all potentially responsive records to its ediscovery software program, so the agency should be able to immediately turn them over to the Committee.

Conclusion

VA's failures to follow the implementing regulations and statutory requirements of the VA MISSION Act place access to care for millions of veterans in danger. Given the VA's substantial new PACT Act obligations, the agency's hostility to community care could not come at a worse time. Popular veterans' programs such as the GI Bill's educational benefits center on veterans by maximizing their individual control and choice. We do not require veterans to use their GI Bill benefits at public universities—it is the commitment to funding veterans' education that matters, not the delivery system.

VA should adopt the same approach toward veterans' health care, and Congress should continue to demand reporting from the VA on local, regional, and national average wait times, as well as community care outreach efforts. Putting veterans at the center of their health care by maximizing the choices they have available best keeps our promise to those who have borne the battle.

Sincerely,



Russ Duerstine
Executive Director
Concerned Veterans for America

¹⁴ "Plaintiff's Motion for Modification of the Court's Production Order." *Americans for Prosperity Foundation v. U.S. Department of Veterans Affairs*. Civil Action No. 21-1954 (RC). <https://americansforprosperity.org/wp-content/uploads/2023/01/ECF-No.-28-Pl.s-Mot.-for-Modification-No.-21-1954.pdf>