December 2, 2024

The Honorable Denis McDonough
Secretary of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Dear Secretary McDonough,

Even before your comments to the House Committee on Veterans Affairs on April 11, 2024 on the increased VA expenditures on community care, the Department has engaged in what can only be viewed as a concerted and strategic effort to stop veterans from accessing health care in the community, despite the fact the VA is unable to provide quality and timely health directly from VA clinicians. Further, the Department continues to erroneously place the blame for VA's budgetary shortfalls on the mere existence of community care, apparently ignoring the fact veterans are not eligible for community health care unless the VA is unable to provide timely and quality Direct VA health care to those veterans. In response, the House of Representatives recently passed H.R. 8371, *The Senator Elizabeth Dole 21srt Century Veterans Healthcare and Benefits Improvement Act*, to codify in law those community care access standards that already exist in regulation, apparently in response to the Department's failure to provide veterans with the timeliness of community care access required both in the MISSION Act and the regulation that established the community care access standards.

Specifically, and both in anecdote and as a matter of VA policy, numerous VA Medical Centers and Veterans Integrated Service Networks are failing to offer veterans community care health care options when the VA informs the veteran Direct VA health care is not available within the 20- or 28-day standards. At the VA Medical Center Washington, DC, numerous veterans report to the National Defense Committee they are never offered community care when they are informed Direct VA care is not available in a timely manner, and when the veteran requests community care, they are lobbied by VA staff not to request community care, claiming community care will take longer to schedule, or that the veteran won't get as good of care because the VA won't be able to coordinate the care.

Similarly, National Defense Committee personally witnessed veterans be told they are not eligible for community care because VA staff had, without the veteran's knowledge or permission, "indicated" in VA appointment systems the veteran patient asked for a date 20 or 28 days later (aligning the "patient indicated date" with the maximum community care access timeline), thereby starting the community care access "clock" that much later, effectively giving the VA 40 or 56 days to schedule Direct VA care and prevent the veteran from accessing community care more quickly, something confirmed by others broader review of VA records through a Freedom of Information Act (FOIA) lawsuit.[1] Reviewing almost 50 VA community care management documents only obtained by the plaintiff after suing the VA under the Freedom of Information Act, the plaintiff in this FOIA lawsuit found the VA used old pre-MISSION Act scheduling systems which "…distorts eligibility for referral to community care and forces veterans to continue to wait in line at the VA" and "overwhelmingly leads to the appearance of shorter wait times [for Direct VA Care]."[2]

The plaintiff's analysis delves deeply into the way the VA determined eligibility for community care versus the way it should have been determined given the requirements of the MISSION Act, and found,

[1] Americans for Prosperity Foundation, "Records Confirm VA's Use of Inaccurate Wait Time Numbers." (April 24, 2024). https://americansforprosperityfoundation.org/records-confirm-vas-use-of-inaccurate-wait-time-numbers/

[2] Ibid.

for example, in Southern Arizona for primary care 21% of appointments were eligible for community care instead of the 4.2% reported by the VA under the outdated scheduling system. Likewise for specialty care in Southern Arizona, 26.7% of the appointments were community care eligible versus 9.3% reported by VA.[3]

On top of that, during your tenure as Secretary, the VA established Community Care "Referral Coordination Teams" to review the medical records of veterans referred to community care and to decide if the VA clinician's referral to community care was, in fact, "clinically appropriate" in the Referral Team's opinion. This was especially evident in cases where VA clinicians made a "Best Medical Interest of the Veteran" determination to refer them to community care even in situations where Direct VA Care was available on a timely basis. But if the VA Direct Care clinicians' medical opinions are of such poor quality as to require higher level review by such Referral Teams, why are those clinicians still in the employ of the VA, and what questions does that raise about those clinicians' medical opinions where the VA still provides Direct VA Care?

This systematic denial of community health care became so endemic that 19 Senators wrote you on July 14, 2022, stating, "…the VA is ignoring [community care access] guidelines in an effort to reduce community care, and ultimately deny mandated care to eligible veterans. In some cases, the VA is rescheduling care without the veteran's consent…Most alarmingly, there are reports of internal VA training materials that are actually pushing to reduce community care while the VA decommissions and closes the Office of Community Care and shuts down the VA Mission Act website."[4]

Such analysis has been mirrored by the House Committee on Veterans Affairs, which sent their own letter on June 12, 2023 (where the Chair wrote regarding his, "complete frustration with the Veterans Health Administration (VHA) lack of timely action to provide community care to veterans that not only qualify, but are in dire need of timely care"[5]), and held a hearing on September 26, 2024 (where Subcommittee Chair Rosendale stated he had, "serious concerns that the current leaders of the Department of Veterans Affairs might be intentionally undermining [the External Provider Scheduling System] project—and making veterans' health care slower and more difficult—out of a political hostility to community care."[6])

Of particular concern is the VA's July 2024 request to Congress to fill a $12 billion shortfall in the VHA's Fiscal Year 2024 budget, which Under Secretary for Health Shareef Elnahal stated was due, in part, to a "higher growth rate for community care than previously projected in the President's FY 2025 Budget

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[3] VA Medical Center Tucson, AZ. "Completed Appointments Facility Summary for Southern Arizona." (January 2020 to June 2021). https://americansforprosperity.org/wp-content/uploads/2021/09/Completed-Appointments-Facility-Summary-for-Southern-AZ.xlsx.

[4] Senators Steve Daines, Mike Braun, et. al., Letter to The Honorable Denis R. McDonough (July 14, 2022). https://www.ronjohnson.senate.gov/2022/7/sen-johnson-joins-sen-daines-colleagues-in-letter-demanding-va-improve-community-care-of-veterans.

[5] Representative Mike Bost, "Chairman Bost Fights for Veteran Community Care Access, Pushes Back on Biden Administration." Letter to the Secretary of Defense (June 12, 2023). https://veterans.house.gov/news/documentsingle.aspx?DocumentID=6198,=.

[6] Representative Matt Rosendale. "Tech Mod Chairman Rosendale Leads Hearing on VA's Appointment Scheduling Systems, Including Community Care." (September 26, 2024). https://veterans.house.gov/news/documentsingle.aspx?DocumentID=6561.

Request."[7] But as we've discussed above, Mr. Secretary, there should be no unanticipated extra costs because there should be no additional total health care delivered as the veteran is not eligible for community care unless the VA is not able to provide timely Direct VA Care. And the VA should be able to provide such timely Direct VA Care if it has enough clinicians, and if it can't provide such Direct Care, it must be the VHA does not have enough clinicians to serve these veterans, and therefore experience no deficits compared to the planned VHA Direct Care budget as there would be payments for clinician salaries expected to be paid but which are not being paid, deficits which should be able to pay for the commensurate rise in community care expenditures.

In other words, Mr. Secretary, the budgetary facts do not support the argument that community care is somehow robbing Direct VA Care; instead, it's clear VHA can't provide adequate and timely Direct VA Care, but apparently it is trying to protect those Direct VA care dollars for veteran patients that cannot be seen. This led the Chairs of the House Committee on Veterans Affairs and the House Appropriations Subcommittee on Military Construction and Veterans Affairs to jointly write you on October 2, 2024, noting "VA's ongoing difficulties estimating demand, utilization, and costs" and declaring, "it would be irresponsible for Congress to appropriate extra taxpayer dollars based on speculation, or as the Veterans Health Administration (VHA) chief financial officer characterized her estimate of an element of the shortfall during the September 23rd briefing — a "S.W.A.G.""[8] This followed a similar letter from Chair Bost of July 17, 2024, where he pointed out "the Biden-Harris administration has declined to include community care growth in its base budget request for VA while seemingly straining, if not breaking, the limits of what the Toxic Exposures Fund can pay for," (sic) relating it to "VHA's continued, ill-fated campaign to reduce community care utilization, ignoring the myriad personal or medical reasons why individual veterans choose to get their care in the community."[9]

But if that were not enough to cast doubt on the VA's administration of the community care program, Chairs Bost and Carter pointed out to you in their letter of November 1, 2024 that your Department's own response to their letter of September 27, 2024 "shows that, in fact, no benefits shortfall ever existed and much of the information your leadership team has provided about a purported health care shortfall was erroneous" (emphasis in the original) instead, showing a $5.1 billion surplus.[10] I'm sure it must feel as if salt is being rubbed into the Department's open budgetary wound when Under Secretary Elnahal was forced to testify before the House Committee on Appropriations on November 20, 2024 that "Our projections could have been more accurate" as the Department acknowledged these significant errors in budget shortfall predictions, representing nearly a 133% reversal in the budget shortfall estimate.[11]

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[7] Joshua Jacobs and Shareef Elnahal. "Update on Fiscal Years (FY) 2024 and 2025 Health and Benefits Budget." Statement before the Senate Committee on Veterans Affairs (September 18, 2024). https://www.veterans.senate.gov/services/files/394E726E-E41E-4D56-A8B3-90D20FB17BF2.

[8] Representative Mike Bost and Representative John R. Carter. "House Republicans Press Biden-Harris Administration on VA Healthcare Budget Shortfall, Including Pharmacy Costs." (October 2, 2024). https://veterans.house.gov/news/documentsingle.aspx?DocumentID=6565.

[9] Representative Mike Bost. "Chairman Bost Presses VA on Budget Shortfall, Impact on Veterans." (July 17, 2024). https://veterans.house.gov/news/documentsingle.aspx?DocumentID=6511.

[10] Representative Mike Bost and Representative John R. Carter." House Republicans Slam McDonough: Who is Counting the Money at VA?" (November 1, 2024). https://veterans.house.gov/news/documentsingle.aspx?DocumentID=6575.

[11] Leo Shane III. "VA Acknowledges Significant Errors in Budget Shortfall Predictions." *Army Times* (November 20, 2024). https://www.armytimes.com/news/pentagon-congress/2024/11/20/va-acknowledges-significant-errors-in-budget-shortfall-predictions/.

Mr. Secretary, while these last approximately 50 days of the Biden-Harris Administration may seem like a minute for government agencies, for the sick veterans waiting for health care and getting the bureaucratic runaround from VHA, almost two months can be a lifetime, both figuratively and literally. The Trump-Pence administration was clear as to what their regulatory intent was with regard to community care access in their original June 2019 community care access standard regulation.[12] Please, so that these veterans can more easily access the community care health care they need and rate, especially during the transition between the Biden-Harris administration and the Trump-Vance administration, we request you:

- immediately rescind the Referral Coordination Teams and any other higher level clinical review of community care referrals;
- direct the offices of Integrated Care and the Community Care coordination offices to immediately approve community care referrals made by VA clinicians; and
- immediately implement the External Provider Scheduling System.

Mr. Secretary, you've done your nation and its veterans proud. We salute you for your steadfast support of the PACT Act, its implementation, and the presumptions your department's declared, especially with the potential for additional presumptions to be declared for veterans deployed to the K2 airbase in Uzbekistan. You have much upon which to look back and to take pride. Now is the time to get your department out of the way between the veterans it serves and the health care they need.

Very Respectfully,

National Defense Committee
Military Order of the Purple Heart
Shield of Sisters
Wisehealth, Inc.
American Military Society
Heroes Athletic Association
Military Veterans Advocacy, Inc.
Wounded Paw Project
Grunt Style Foundation
Mission: POW/MIA
TREA: The Enlisted Association
Burn Pits 360
Jewish War Veterans of the USA
Operation First Response
Association of the US Navy
Vietnam Veterans of America
Ranger Leadership Policy Center
Armed Forces Retirees Association
Reserve Organization of America
American GI Forum
Stronghold Freedom Foundation
Hunter Seven Foundation
Enlisted Association of the National Guard of the US
America's Warrior Partnership
Korean War Veterans Association
Veteran Warriors, Inc.

[12] U.S. Department of Veterans Affairs. "Veterans Community Care Program." *Federal Register* 84 CFR 26278, RIN 2900-AQ46 (June 5, 2019). https://www.federalregister.gov/documents/2019/06/05/2019-11575/veterans-community-care-program.