

**STATEMENT OF
ROSCOE G. BUTLER, DEPUTY DIRECTOR OF HEALTH CARE
NATIONAL VETERANS AFFAIRS AND REHABILITATION DIVISION
THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEES ON HEALTH AND ECONOMIC OPPORTUNITY
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"DRAFT LEGISLATION TO IMPROVE THE AUTHORITY OF THE SECRETARY OF
VETERANS AFFAIRS TO HIRE AND RETAIN PHYSICIANS AND OTHER
EMPLOYEES OF THE DEPARTMENT OF VETERANS AFFAIRS"**

MARCH 16, 2016

As far back as 1998, The American Legion expressed concerns regarding VA physicians and medical specialists staffing shortages within the Veterans Health Administration (VHA). This was accomplished by monitoring the progress in establishing patient centered primary care within each Veterans Integrated Service Network (VISN), including both rural and urban localities as well as ensuring that the model of care features both the quality and efficient combination of medical professionals that are tailored to the needs of the local veteran's population.¹

Chairmen Benishek, Wenstrup, Ranking Members Brownley, Takano and distinguished members of the Subcommittees on Health and Economic Opportunity on behalf of National Commander Dale Barnett and The American Legion; the country's largest patriotic wartime service organization for veterans, comprising over 2 million members and serving *every* man and woman who has worn the uniform for this country; we thank you for the opportunity to testify regarding the draft legislation regarding "Improving the authority for the Secretary of Veterans Affairs (VA) to hire and retain physicians and other employees of the Department of Veterans Affairs".

From the inception of The American Legion's System Worth Saving (SWS) Program in 2003, The American Legion has tracked and reported staffing shortages at every VA medical facility across the country and submitted those to Congress, VA Central Office (VACO), and to the President of the United States. Through numerous SWS hospital site visits, The American Legion has dedicated considerable resources to monitoring the Veterans Health Administration (VHA) healthcare system.

Unfortunately, there are no easy solutions for VA when it comes to effectively and efficiently recruiting and retaining medical staff to treat the growing number of veterans that are entering the VA healthcare system. The American Legion believes that access to basic health care services offered by qualified primary care providers should be available locally as often as

¹ [*Resolution 311: The American Legion Policy on VA Physicians and Medical Specialists Staffing Guidelines*](#)

possible. VHA is still currently struggling to achieve the appropriate balance of primary care and medical specialists across the country.

In 2004, The American Legion urged the VA to develop an aggressive strategy to recruit, train, and retain advanced practice nurses (APN's), registered nurses (RN's), licensed practical nurses (LPN's), and nursing assistants (NA's) to meet the inpatient and outpatient health care needs of veterans. The Legion fully supports VA's education-assistance programs for APNs, RNs, LPNs, and NA's. We also urged VA to provide equitable and competitive wages for Advanced Practice Nurses (APNs), Registered Nurses (RNs), Licensed Practical Nurses (LPNs), and nursing assistants.²

Due to the fact that one out of every three veterans treated by the VA lives in a rural area, The American Legion remains concerned with the problems rural veterans face due to a lack of access to qualified health care. As the number of veterans residing in rural communities increases, veterans will continue to struggle to find timely and quality VA health care that meets their individual health care needs. VA medical centers in rural areas have often expressed concerns in recruiting and retaining qualified medical and clinical providers due to their inability to compete with medical centers in large metropolitan areas. In The American Legion's 2012 System Worth Savings (SWS) Report on Rural Healthcare, The American Legion found that:

*“[Department of Veteran Affairs Medical Centers (VAMCs)] in rural America, recruitment and retention of primary and specialty care providers has been a constant challenge. Some clinicians prefer to practice in more urban settings with more research opportunities and quality of life that urban settings provide.”*³

In 2014, The American Legion published a SWS report titled “*Past, Present, and Future of VA Healthcare*”, which noted several challenges VA still faced regarding recruiting and retention such as:

- *Several VAMCs continue to struggle to fill critical leadership positions across multiple departments.*
- *These gaps have caused communication breakdowns between medical center leadership and staff that work within these departments.*

During our 2013 site visit to the Huntington VA Medical Center in Huntington, West Virginia, we recommended that, “VHA conduct a rural analysis for hard to recruit areas and look into different options to support VAMCs in getting talent they need to better serve veterans.” VHA needs to ensure that veteran health care is consistent across each Veterans Integrated Service Network (VISN).

In 2015, during our SWS site visit to the VA Medical Center in St. Cloud, Minnesota, providers expressed concerns about the number of physician vacancies, and how the additional workload is

² [Resolution No. 237: The American Legion Policy on VA Nurse Recruitment and Retention](#)

³ [The American Legion: 2012 System Worth Saving Report on Rural Health Care](#)

impacting morale at the medical centers. During the same visit, one veteran expressed concern noting “every time [I] visit the medical center, [I am] assigned a new primary care provider because [my] last provider either quit or transfer to another VA.”

There have been numerous reports citing VA’s staffing issues, for example in January 2015, the VA’s Office of Inspector General (VAOIG) released their determination of the “Veterans Health Administration’s Occupational Staffing Shortages,” as required by Section 301, of the “Veterans Access, Choice and Accountability Act (VACAA) of 2014”. With this report, VAOIG determined that the five occupations with the largest staffing shortages were Medical Officers, Nurses, Physician Assistants, Physical Therapists, and Psychologists. The OIG recommended that the “Interim Under Secretary for Health continue to develop and implement staffing models for critical need occupations.” Ultimately, if the VA continues to struggle with retention and recruitment, the trend of closures (or continued closures) for multiple departments within VAMCs nationwide will continue.

As The American Legion continues to conduct System Worth Saving Site visits across the VA health care system, we see VA staffing shortages getting worse rather than improving.

Draft Legislation to Improve Hiring Practices at the Department of Veterans Affairs:

This draft bill aims to improve the authority for the VA Secretary to hire and retain physicians and other employees of the VA. Below is a section by section analysis of the draft bill as presented:

Section 2: Appointment and Pay for Directors of Medical Centers and Veterans Integrated Services Network (VISN)

Currently, Paragraph (4) of section 7306(a) of Title 38, United States Code (U.S.C.) states that the Office of the Under Secretary for Health shall consist of such Medical Directors as may be appointed to suit the needs of the Department, who shall be either a qualified doctor of medicine or a qualified doctor of dental surgery or dental medicine⁴. Subsection (a) of this bill would add “or other qualified medical professionals.”

This subsection includes a new section in Title 38 U.S.C. Chapter 74, Subchapter IV “Pay for Nurses and Other Health-Care Personnel.” The new section, titled “Medical Directors and directors of Veterans Integrated Service Networks (VISN),” discusses elements of pay, base pay, market pay, requirements and limitations on total pay, treatment of pay, and ancillary effects of decreases in pay.

The American Legion supports legislation addressing the recruitment and retention challenges that the VA has regarding pay disparities among those physicians and medical specialists who are providing direct health care to our nation’s veterans⁵.

⁴ [38 U.S. Code § 7306 : Office of the Under Secretary for Health](#)

⁵ [American Legion Resolution No. 101: Department of Veterans Affairs Recruitment & Retention-Sept. 2015](#)

The American Legion supports this section.

Section 3: Adjustment of Hours Authorized for Certain Full-Time Employees of Veterans Health Administration

Currently, Section 7423(a) of Title 38, U.S.C., sets the hours of employment of Full Time Employees (FTEEs) to not less than 80 hours in a biweekly pay period⁶. This section is a legislative request by the VA which would allow the Secretary to modify the hours that employees work within the Veterans Health Administration by changing the regulation to “be more or less than 80 hours in a biweekly pay period if the total hours of employment for such an employee does not exceed 2,080 hours per calendar year.”

The American Legion encourages and supports VA in providing extended hours and weekend appointments for both primary and specialty care at all VA medical facilities in addition to their regular hours of operation⁷.

The American Legion supports this section.

Section 4: Public-Private Contributions for Additional Educational Assistance for Graduate Degrees Relating to Mental Health

This section allows the Secretary to pay 66 percent for the Yellow Ribbon Program under the Post-9/11 GI Bill for a graduate degree in the mental health field instead of “up to 50 percent” as is currently the case. The schools would then only be required to pay the remaining 34 percent as opposed to “an equal percentage.”

This increase is not going to apply to all people using the GI. Bill, as there are several particular requirements to qualify. In order to qualify the veteran would be required to already have a bachelor’s degree; be eligible for the Post-9/11 GI Bill and eligible for the Yellow Ribbon Program; and pursuing the degree with the intention of being a mental health professional for VA.

The Yellow Ribbon Program allows institutions of higher learning (i.e., colleges, universities, and other degree-granting schools) in the U.S. to voluntarily enter into an agreement with VA to fund tuition and fee expenses that exceed the tuition and fee amounts payable under the Post-9/11 GI Bill. It is well documented and understood that present and future labor shortages are in the healthcare field. It’s important to note – as the aging U.S. population causes the number of working-age adults to shrink – the demand for medical workers will certainly increase. Consequently, paired with the often high education and experience requirements needed to enter the job market – it has been a factor in the shortage in healthcare workers.

⁶[38 U.S. Code § 7423: Personnel Administration: Full-Time Employees-2011](#)

⁷[Resolution No. 251: Extended Hours and Weekends for Veterans' Health Care-Aug 2014](#)

Based upon VA's report, they've determined that the five occupations with the largest staffing shortages' were Medical Officer, Nurse, Physician Assistant, Physical Therapist, and Psychologist. Without question there is a tremendous need for healthcare professionals, and something has to be done to deal with this shortage.

This increase in payment just might provide the right incentive for more schools to participate in the Yellow Ribbon Program and more student-veterans to potentially pursue employment within the healthcare field, which would lead to a greater percentage of potential employees in the healthcare industry. The healthcare industry is an attractive and high growth industry (includes good pay, benefits and mobility) -- it's a win-win for all of them and the VA.

The American Legion seeks and supports any legislative or administrative proposal that improves, but not limited to the GI bill, Department of Defense Tuition Assistance (TA), Higher Education Title IV funding (i.e., Pell Grants, Student Loans, etc) and education benefits so servicemembers, veterans, and their families can maximize its usage.⁸

The American Legion supports this section.

Section 5: Modification to Annual Determination of Staffing Shortages in Veterans Health Administration

Currently, subsection (a) of section 7412 of title 38 U.S.C. requires the Secretary to publish in the Federal Register, the five occupations of personnel of this title of the Department covered under section 7401 of this title for which there are the largest staffing shortages throughout the Department as calculated over the five-year period preceding the determination⁹. This section would modify the Veterans Access, Choice and Accountability Act, (VACAA) which required the VA Office of Inspector General (VAOIG) on an annual basis to determine the five occupations that have the highest staffing shortages. The VAOIG would now be required to conduct a review to evaluate staffing shortages within five clinical and nonclinical fields within each Veterans Service Integrated Networks (VISNs).

The American Legion encourages and supports the VHA leadership to conduct an internal review and develop an action plan to address VISN management, staffing and its current geographic boundaries/catchment areas for the purpose of providing veterans better and timely access to quality health care.¹⁰

The American Legion supports this section.

Section 6: Repeal of Compensation Panels to Determine Market Pay for Physicians and Dentists

This section would replace subsection (c) paragraph (4) of Section 7431, Title 38 U.S.C. Paragraph (4) which determines the amount of market pay for physicians or dentists, with a

⁸ [Resolution 312: Ensuring the Quality of Servicemember and Veteran Student's Education at Institutions of Higher Learning-Aug. 2014](#)

⁹ [38 U.S. code § 7412: Annual determination of staffing shortages; recruitment and appointment for needed occupations-March 2016](#)

¹⁰ [Resolution 114: Department of Veterans Affairs Veteran Integrated Service Networks-Aug. 2014](#)

system that would require the Secretary consult two or more national surveys of pay for physicians or dentists, as applicable, whether prepared by private, public, or quasi-public entities in order to make a general assessment of the range of pays payable to physicians or dentists. It also requires the Secretary to consult with and consider the recommendations of an appropriate panel or board composed of physicians or dentists.

The American Legion currently does not have a position on Section 6.

Section 7: Executive Management Fellowship Program

This would require the Secretary to select, each year, at least 18 but not more than 30 eligible Veterans Benefits Administration (VBA) and Veterans Health Administration (VHA) employees to participate in a one year fellowship with a private sector company or entity.

As it currently stands, VA has over half of their critical leadership positions either unfilled or filled in an interim role. Sending a portion of the workforce out of VA every year would only exacerbate this situation. If VA can afford to lose these personnel for an entire year then they don't need that position. The American Legion would rather see VA fill the positions they have and ensure there is a full workforce available to treat the needs of veterans.

The American Legion opposes this section.

Section 8: Accountability of Leaders for Managing the Department of Veterans Affairs

The VA has come under scrutiny by Congress, Veterans Service Organizations (VSOs), media, veterans, and the American public for their failures in leadership performance and accountability which resulted in numerous quality and patient safety issues, as well as patient deaths.

This section would add a new section following Chapter 7 of title 38, U.S.C.'s section 709 pertaining to Employment Restrictions. The new section, "Annual Performance Plan for Political Appointees," requires the Secretary to conduct an annual performance plan for each political appointee of the Department that is similar to the annual performance plan conducted for an employee of the Department who is appointed as a career appointee within the Senior Executive Service at the Department. This assessment would ensure the employee is meeting their goals with recruiting, engaging and motivating employees, training employees, and holding each employee accountable for performance issues.

The American Legion urges Congress to enact legislation that provides the VA Secretary the authority to remove any individual from the Senior Executive Service (SES) due to performance and transfer those individuals to a General Schedule (GS) position without any increased monetary benefit.¹¹

The American Legion supports this section.

¹¹ [Resolution No. 30: Department of Veterans Affairs Accountability- May 2015](#)

Section 9: Modification to Veterans Preference

Veterans' preference is authorized by the Veterans' Preference Act (VPA) of 1944; it only applies to federal government employment. It provides that most veterans are to receive an extra five points (ten points for disabled veterans) in receiving and keeping federal jobs. The Veterans' Employment Opportunity Act (VEOA) of 1998 extended certain rights and remedies to recently separated veterans. A grateful nation created veterans' preference to ensure fair treatment for those citizens who served this country in the Armed Forces. The following recommendations are:

- *Change the service requirements to receive veterans' preference for Reservists and Guardsmen from 180 days of consecutive active-duty service to 180 days of cumulative active-duty service.*

Based upon the high percentage of Reservists and Guardsmen that have honorably served as well as been deployed multiple times in the war against terror – their days of service should merit inclusion within veterans' preference criteria for 180 days of cumulative service.

- *Expand those to be considered "preference eligible" to include all retired service members, including those who retire above the rank of major or its equivalent.*

In addition, approximately 250,000 service members leave the Armed Forces every year, of which 6.4 percent are Officers O-4 and above (6.4 percent equates to roughly 16,000 Officers O-4 and above). America shouldn't overlook the minority of high ranking officers who are ready to start a second career in public service. The lessons learned in the Armed Forces allow these individuals to provide a quality level of professionalism, expertise and patriotism within the structure of a federal agency who's seeking that kind of talent.

- *Expand veterans' preference to also apply to hiring individuals for the Senior Executive Service at VA.*

The attributes that define a veteran employee, which include a strong work ethic, adaptability, organizational skills, team player, self-confidence, preparedness – are all things a leader needs to have in abundance. It only seems fitting that veterans applying for a Senior Executive Service position would receive veterans' preference.

Lastly, veterans' preference should play a large role in employing veterans and their spouses. Federal agencies need to make sure that their Human Resource personnel are properly trained to effectively implement veterans' preference. The federal government has scores of employment opportunities that educated, well-trained, and motivated veterans can fill given a fair and equitable chance to compete. Working together, all federal agencies should identify those vocational fields, especially those with high turnover rates, for transitioning veterans who are trying to continue their service within the federal government.

The American Legion restates its commitment to ensure that veteran preference is consistently and accurately applied in federal civilian recruitment, application, and hiring¹².

¹² [Resolution 301- Enforcing Veterans' Preference Hiring Practices in Federal Civil Service: Aug 2014](#)

The American Legion supports this section.

Section 10: Reemployment of Former Employees

This section would allow the Secretary to noncompetitively reappoint a qualified former employee to any position within the VA as long as the position is not more than one grade higher than what they received in their former position and as long as if they employee left VA voluntarily within the prior two years and has kept all licensures and credentials up to date.

The American Legion currently has no position on Section 10.

Section 11: Recruiting Database

This section would require the Secretary of VA to establish a single centralized database that lists all critical vacancies that are difficult to fill within VA. This database would contain information on qualified individuals who have applied previously for other positions within VA in which they have not been selected however, would be qualified for another position within VA. The Secretary would be required to use this database to consider qualified applicants who have already applied for other positions within VA to fill prolonged vacancies.

The American Legion urges the VHA to continue to develop and implement staffing models for critical need occupations.¹³

The American Legion supports this section.

Section 12: Human Resources Academy

This section would require Human Resources (HR) professionals within VA be trained in hiring Title 38 employees within VHA. These professionals will be adequately trained on how to best recruit and retain employees in VHA.

The American Legion currently has no position on Section 12.

Section 13: Promotional Opportunities for Technical Expert

This section would require the Secretary to establish a promotional track system for employees of the VA for technical experts without requiring them to take managerial positions if they choose to stay employed at VA.

The American Legion currently has no position on Section 13.

Section 14: Comptroller General Study on Succession Planning

¹³ [Resolution 101- Department of Veterans Affairs Recruitment and Retention: Sept. 2015](#)

This section would require the VA Comptroller General to conduct a succession planning study at each VA Medical Center (VAMC), Regional Office (RO), and National Cemetery (NCA). While The American Legion supports studies on VHA staffing, we currently do not have a position on staffing at the VARO's or at NCA.

The American Legion encourages and supports the VHA leadership to conduct an internal review and develop an action plan to address VISN management, staffing and its current geographic boundaries/catchment areas for the purpose of providing veterans better and timely access to quality health care.¹⁴

The American Legion supports this section.

Section 15: Information on Hiring Effectiveness

This section requires VA to measure and collect certain information regarding hiring effectiveness. The American Legion continues to be concerned VA's hiring process is cumbersome and negatively affects VHA's ability to recruit and retain effective staffing levels in order to meet veteran's overall health care needs.

The American Legion urges the VHA continue to develop and implement staffing models for critical need occupations and that VA work more comprehensively with community partners when struggling to fill shortages within VA's ranks.¹⁵

The American Legion supports this section.

Section 16: Employment of Students and Recent Graduates

This section requires VA to promulgate regulations to allow for excepted service appointments of students and recent graduates leading to conversion to career or career conditional employment of a student or recent graduate.

The American Legion has no position on Section 16.

Section 17: Exit Surveys

This section requires VA to request that employees voluntarily leaving VA service complete standardized exit surveys.

The American Legion has no position on this section.

¹⁴ [Resolution 114: Department of Veterans Affairs Veteran Integrated Service Networks- Aug. 2014](#)

¹⁵ [Resolution 101: Department of Veterans Affairs Recruitment and Retention- Sept. 2015](#)

Conclusion

The American Legion understands that filling highly skilled vacancies at premiere VA hospitals around the country is challenging. We also expect VA to do whatever legally permissible to ensure that veterans have access to the quality healthcare they have come to expect from VA. VA leadership needs to do more to work with community members and stakeholders.

Except as noted above, on balance there is a large amount of this proposed legislation which would have a positive effect on transforming VA to a more effective healthcare delivery system.

As always, The American Legion thanks the Subcommittees on Health and Economic Opportunity for the opportunity to explain the position of the over 2 million veteran members of this organization.

For additional information regarding this testimony, please contact Mr. Warren J. Goldstein at The American Legion's Legislative Division at (202) 861-2700 or wgoldstein@legion.org