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AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

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OVERSIGHT HEARING ON

THE COST OF CARING

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Chairwoman Brownley, Ranking Member Dunn, and Members of the Subcommittee, the American Federation of Government Employees, AFL-CIO and its National Veterans Affairs Council (AFGE) appreciate the opportunity to provide testimony on how the rising cost of living is affecting the ability of the Department of Veterans Affairs (VA) to be a competitive employer. AFGE represents more than 700,000 federal and District of Columbia government employees, 260,000 of whom are dedicated VA employees. AFGE is the largest employee representative of the Veterans Health Administration (VHA) providers and represents providers at nearly every VA medical center in the nation.

Along with workload, provider compensation is one of the most significant factors affecting VHA's ability to recruit and retain a strong health care workforce. VHA provider pay rates must be competitive with those of other health care employers in the same markets. Pay must also be consistent among providers; favoritism and unequal application of pay laws greatly undermine recruitment and retention.

The solution to noncompetitive and inconsistent provider pay is the effective use of the many existing pay tools that Congress has provided the VA. The fact that some VHA facilities successfully apply existing pay laws to make provider pay competitive confirms that VA already has the tools it needs. What is missing is adequate training of managers and human resources (HR) personnel to ensure that they make proper pay decisions and face greater accountability when they make bad pay decisions. In addition, more Congressional oversight of pay setting processes and pay decisions will ensure use of best practices across all VHA facilities.

Modifying existing pay structures is completely unnecessary, would be very costly and is likely to lead to greater inconsistencies, discrimination and low workplace morale, thus hurting recruitment and retention. VA medical center directors and their designees who set pay do not need more flexibility to make good pay decisions; what is needed is more competency, more consistency and less secrecy.

A closer look at specific VHA pay practices illustrates the importance of greater training and oversight. Congress created two different pay structures for VHA providers: Title 38 and Hybrid Title 38. Within the Title 38 group, Congress also enacted profession-specific pay laws for physicians, dentists, podiatrists, registered nurses and physician assistants.

Physicians and Dentists

Physicians and dentists have been covered by a three-tier pay structure since 2006. Base Pay uses a nationally uniform base pay table that factors in medical specialty and years of experience; the table is updated every two years. Market Pay adds another layer of pay for each provider based on what he or she would make if working for another local employer; market pay is supposed to be updated every two years. Performance Pay awards are supposed to be paid annually by applying specialty-specific criteria to each provider.

The greatest concerns with Market Pay are management's failure to conduct updates every two years and the secrecy of the process that supervisors use to conduct and apply wage surveys. Medical Center Directors have too much discretion over which local wage data to look at and how to apply it to increase compensation. Congress intended the process to be more transparent, which is why it included a requirement for a panel of peers to set market pay in the 2004 law. However, in 2016, Congress enacted legislation that eliminated the panel of peers, making it virtually impossible for providers to know whether they or their colleagues are receiving the proper amount of market pay.

This lack of accountability and transparency has led to many instances of senior physicians getting paid significantly less than new hires, and for many providers making far below market rate (especially in high cost areas). For example, some primary care physicians with many years of VHA experience end up making $20,000 less than new hires. Specialty physicians in some parts of the country end up making up to approximately $100,000 less than colleagues working in the same community.

Performance pay awards may contribute the fewest dollars to total pay, but they nonetheless contribute a great deal to low provider morale. Unfortunately, due to broad management discretion and lack of accountability, many department heads fail to follow the requirements set forth in the law by either issuing performance pay criteria late in the year, using inappropriate criteria or paying an award in the wrong amount. This lax approach most certainly does not drive health care quality as Congress intended.

Podiatrists

In 2018, Congress added podiatrists to the physician-dentist three-tier pay structure through a provision in the Mission Act. The Congressional Budget Office estimated that this change would result in a 15 percent pay increase and allow VHA to hire 30 more podiatrists.

Podiatrists' frustrating experiences to date further illustrate how a lack of competency and accountability cause good pay tools to be poorly utilized. Many facilities delayed implementation of this pay change; others began implementing the fix, but miscalculated market pay and refused requests to reconsider their earlier determinations. In addition, the complexity of rear-foot surgeries is not being fully recognized when making comparisons with pay rates in the local market, resulting in lower market pay determinations.

Registered Nurses

The Nurse I to V pay structure and the third-party locality pay survey processes established by Congress were designed to make VA registered nurse (RN) pay competitive. Unfortunately, over the years, broad discretion given to Medical Center Directors and Chief Nurses, and a lack of transparency in the RN pay setting process

have limited the ability of RNs and their employee representatives to challenge improper pay determinations.

Pay is also determined by the initial boarding process as well as the promotion process conducted by the nurse professional standards boards (PSB). Many front-line nurses feel that the PSB is plagued by favoritism, denying promotions to many deserving RNs. Our members express frustration that many in the position of Nurse II with extensive experience never get promoted to Nurse III. Similarly, individuals in the position of Nurse I with valuable experience never get promoted to Nurse II because they do not have 4-year degrees and the PSBs fails to properly credit their years of service with the VA.

There is also a widespread problem of denying Nurse III promotions to bedside nurses. In this instance, the only option is for bedside nurses to leave with their very valuable skills or transfer to higher positions that do not involve direct patient care.

Medical center directors should not be able to use their broad discretion to ignore the realities of our national RN shortage. Their unwillingness to respond appropriately to serious RN recruitment and retention problems at their facilities take an especially heavy toll on specialty areas.

Physician Assistants

VA physician assistants (PA) who are AFGE members report that it is extremely difficult to be promoted beyond a GS-11, leaving their pay well below the PA pay offered outside the VA. Similarly, PA Leads also have difficulty moving from GS-13 to GS 14.

In 2017, Congress enacted legislation to give the VA better tools to make PAs pay more competitive, specifically by giving them the same rights as RNs to conduct third party locality pay surveys. Broad discretion of Medical Center Directors and lack of accountability have also undermined Congressional intent for these professionals. While some facilities have implemented the new locality pay process, resulting in much needed PA pay increases, others have ignored the new law entirely. PAs are concerned that when their medical center directors finally get around to complying with the new law, no backpay will be provided.

Lack of bargaining rights over implementation of pay rules

All of the above Title 38 providers face an additional barrier to receiving competitive pay. The VA's Title 38 collective bargaining rights policy, which is based on an extremely narrow reading of 38 USC, Section 7422, prohibits these providers from challenging VHA's violation of pay laws and its own policies. AFGE has fought a long battle to amend Section 7422 to eliminate the compensation exclusion and other exclusions to bargaining. We are very grateful to Chairman Takano for introducing H.R. 1133, the VA Employee Fairness Act, and other Committee members who have cosponsored this very important bill. Without this change, the VA's "7422" policy will

continue to undermine the pay laws Congress enacts to keep the VA provider workforce strong.

Hybrid Title 38 Personnel

Hybrid Title 38 provider pay is determined by the GS level set by the Hybrid Title 38 Professional Standards Board for both new and current employees, as well as special pay increases that are within the discretion of the medical center director. Unlike Title 38 providers, Hybrids have full collective bargaining rights and can grieve over improper applications of pay laws and policies.

The same concerns regarding director discretion and lack of transparency exist for Hybrids, but full collective bargaining rights allow them to hold management more accountable. Hybrids are concerned about VHA's plans to disband the PSBs, which continues to be a helpful tool for combatting arbitrary, secretive pay decisions.

The pay rules and other working conditions of VHA psychologists are the subject of pending Senate legislation. Section 501 of S.785 would transfer them from Hybrid Title 38 to Title 38. One of the reasons offered by proponents for this change is the ability to get higher pay for psychologists under the physician three-tier pay system.

AFGE strongly opposes this provision of S.785 as currently drafted. Psychologists would lose their full collective bargaining rights and their probationary periods (where virtually no rights exist) would double from one to two years. They would no longer be able to use the grievance and arbitration process, or Merit Systems Protection Board to challenge unfair terminations and discipline, or incorrect pay determinations. It is far from certain that a market pay comparison for VHA psychologists would lead to a greater pay increase than current law. Therefore, we are urging the Senate Veterans Affairs Committee to remove this provision from the bill and spend more time studying the best way to ensure good pay and working conditions for VA psychologists without risking severe unintended consequences.

Continuing Medical Education Reimbursement

Reimbursement for expenses that providers incur in order to update their skills and maintain their licenses could serve as another valuable compensation tool for VHA. Unfortunately, it has been nearly 30 years since Congress enacted legislation to provide VHA full-time board-certified physicians and dentists up to $1000 per year for continuing medical education (CME). The reimbursement amount has never been updated and eligibility for this valuable benefit has never been expanded to other licensed professions. AFGE strongly urges the Subcommittee to increase the current reimbursement amount to keep VHA competitive with other employers and to extend CME benefits to other VHA licensed professionals.

AFGE thanks the Subcommittee for the opportunity to share our views on VHA provider pay. Increased competency, accountability and transparency in all VHA pay processes will ensure that medical center directors and personnel making pay determinations properly implement new laws and accurately apply existing laws and policies. We welcome the opportunity to work with the Subcommittee to address management practices that undermine Congressional intent to make VHA a competitive employer and share the front-line perspective of providers across the country to identify the best solutions.