



**Statement of Russ Duerstine
Deputy Director, Concerned Veterans for America**

On

H.R. 3520: The Veteran Care Improvement Act

**House Veterans' Affairs Subcommittee on Health
Legislative Hearing**

June 21st, 2023

Thank you to Chairwoman Miller-Meeks, Ranking Member Brownley, and the Members of the Subcommittee 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 that advocates for 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 appreciates the opportunity to support key legislation before the subcommittee today. Throughout our ten-year history, CVA has been on the front lines working to improve veterans' health care outcomes, contributing to bringing three major pieces of veterans' health care legislation across the finish line.

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. During the height of the COVID-19 pandemic, the VA admitted to cancelling or delaying 20 million appointments, often without follow-up.¹ This failure makes access to alternative treatment options to VHA care essential.

Unfortunately, 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

¹ "Secretary McDonough's remarks to Veterans Service Organizations regarding the American Rescue Plan," VA News, *Department of Veterans Affairs*. February 12, 2021. https://news.va.gov/84721/secretary-mcdonoughs-remarks-veterans-service-organizations-regarding-american-rescue-plan/?utm_source=facebook&utm_medium=social&utm_campaign=&utm_term=&utm_content=

delayed and denied care. After the passage of the PACT Act last year, 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 new and existing beneficiaries alike.

Community care remains under threat and needs further statutory protection. Last summer, Secretary McDonough suggested interest in reducing veterans' health care choices even further by tightening the regulatory access standards for community care.² The VA's apparent reluctance to facilitate access to community care was also made clear when it quietly shut down MissionAct.va.gov in 2021, the dedicated website educating veterans on community care options. To address this educational gap, CVA's sister organization, Concerned Veterans for America Foundation, created vamiissionact.com, replicating the previous community care resources for the fifth anniversary of the MISSION Act's passage.³ It should not be necessary for civil society to provide the resources the VA should be offering to veterans to begin with.

In light of the VA's failures to effectively implement and educate veterans about the VCCP, the time has come to codify community care access standards and require greater accountability for the MISSION Act's successful implementation.

H.R. 3520: The Veteran Care Improvement Act

CVA strongly supports H.R. 3520, the Veteran Care Improvement Act (VCIA), brought by Rep. Miller-Meeks. The VCIA directly addresses several ongoing failures of the VA to fully implement the MISSION Act.

Codifying Access Standards

Most importantly, the VCIA codifies the community care access standards created under MISSION Act. Given the VA's refusal to follow these implementing regulations it developed in 2019, codifying them is a vital step. While still providing for a process of regular review and recommended statutory updates to access standards should future changes be necessary, codification through the VCIA provides veterans longer-term certainty about their care options.

Codified access standards are necessary because the VA has refused to implement its own regulations for years. Documents obtained through a Freedom of Information Act lawsuit by the Americans for Prosperity Foundation (AFPF)⁴ show that the VA has manipulated wait time data for determining community care eligibility, artificially reducing the length of public wait times. This practice cuts veterans off from community care they are legally entitled to.⁵ By continuing to rely on outdated scheduling guidance, the VA uses the metric of "patient indicated date" (PID) rather than a veteran's actual "date of request" for an appointment as directed in the community care access standards.⁶ The VCIA requires that wait times must be calculated from a veteran's date of

² Patricia Kime, "VA Weighs Limiting Access to Outside Doctors to Curb Rising Costs," *Military.com*, June 15, 2022. <https://www.military.com/daily-news/2022/06/15/va-weighs-limiting-access-outside-doctors-curb-rising-costs.html>.

³ "Increasing Veterans' Access to Health Care: The VA MISSION Act," *Concerned Veterans for America Foundation*, June 2023. [VAMISSIONAct.com](https://vamiissionact.com).

⁴ Records confirm VA's use of inaccurate wait time numbers." *Americans for Prosperity Foundation*, October 1, 2021. <https://americansforprosperity.org/records-confirm-v-a-inaccurate-wait-time-numbers/>

⁵ For a detailed explanation of VA wait time manipulation practices, see: "Delayed and Denied Care: Transparency and Oversight Needed for VA Wait Times," *Concerned Veterans for America*, 2022. https://cv4a.org/wp-content/uploads/2022/02/22_298900_VAPolicyBriefingHandout.pdf.

⁶ "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>.

request to the date of their appointment, bringing this VA practice that subverts the will of Congress as expressed in the MISSION Act to an end.

Community Care Outreach and Scheduling

The VCIA addresses the issue of the VA routinely failing to educate veterans about their community care options and the access standards for eligibility. At every CVA event around the country, our staff encounter veterans who were previously unaware that community care existed because they were never informed by the VA that it was an option. Veterans who do request community care regularly find themselves having to cite MISSION Act access standards to VA schedulers in order to have their legal right to community care recognized. AFPP's FOIA suit further revealed that internal VA guidance directs schedulers to attempt to persuade veterans to use VHA facilities instead when they request community care access.⁷

Members of this committee are all too familiar with the VA's resistance to offering community care. For example, Chairman Bost, an original co-sponsor of the VCIA, wrote Secretary McDonough last week expressing frustration with the VHA's attempts to deny his constituent access to urgently needed cancer treatment in his community.⁸ This veteran legally qualified for community care under the MISSION Act's access standards. Nevertheless, the VA subjected this veteran to four-months of delays and denials, first ignoring requests for updates on the status of their referral and then referencing outdated rules to claim that the veteran did not qualify for community care and would need to drive over 50 miles to a VHA facility for treatment. It took Chairman Bost's staff directly intervening with the VHA central office and reiterating the community care access standards to their staff for the VA to finally relent and approve the veteran's request for community care.

It should not need intervention from a Member of Congress to move the VA to follow its own rules and allow veterans to receive the care they have earned. Unfortunately, veterans like Chairman Bost's constituent deal with these problems every day in every Congressional district and will continue to until the VA is forced to change.

The VCIA addresses these staggering failures by requiring the VA to inform veterans about their community care options and incorporate preferences for this option during scheduling. The VCIA requires the VA to inform veterans of community care eligibility within two business days of determining eligibility internally and periodically reach out with information about the access standards thereafter. If veterans' referral requests are denied, the bill requires the VA to inform them in writing of the reason for the denial and how to appeal. In response to reports of VA administrators overturning clinicians' recommendations that veterans pursue community care, the VCIA makes these agreements final.

Access Standards for Substance Use Treatment:

The VCIA also streamlines community care access for substance use treatment. The legislation adds access standards for residential treatment and rehabilitative services, recognizing the importance of timely treatment. These substance use access standards offer community care eligibility for these services if the VHA cannot provide treatment at a facility within a 10 day wait-time or 30-minute drive from a veteran's home.

⁷ "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>

⁸ Kathleen McCarthy, "Chairman Bost Fights For Veteran Community Care Access, Pushes Back on Biden Administration," *House Committee on Veterans' Affairs*, June 12, 2023. <https://veterans.house.gov/news/documentsingle.aspx?DocumentID=6198>

Proper Incorporation of Telehealth:

The ongoing importance of embracing innovative, cost-reducing health care options such as telehealth was clearer than ever over the course of the COVID-19 pandemic. The VCIA requires the VA to discuss telehealth options with veterans during scheduling, should that be the right option for their needs.

Crucially, however, the VCIA works to ensure that telehealth is used appropriately, where a virtual appointment makes sense, rather than replacing in-person treatment. Specifically, the VCIA clarifies that telehealth cannot be used by the VA to satisfy wait time targets under the access standards. This provision prevents telehealth availability from being abused by the VA to deny veterans community care access.

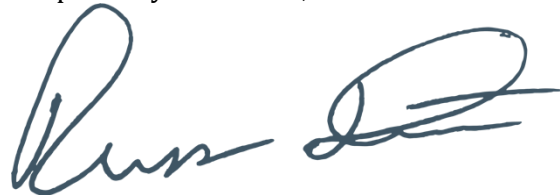
Accountability:

The VCIA adds accountability for its implementation as well. The legislation requires the VA Inspector General to assess every VHA medical center's performance at identifying veterans eligible for community care, informing them of this treatment option, and delivering VCCP referrals in a timely fashion, well-coordinated with community providers.

Conclusion:

The VA's failures to fully implement the MISSION Act are well-known and affect millions of veterans in every Congressional district around the country. The VCIA takes necessary steps to protect community care options by codifying current access standards. It adds further protections to community care scheduling to thwart bureaucratic restrictions on veterans' access to the full range of care they have earned. For these reasons, I strongly urge the subcommittee to support H.R. 3520, the Veteran Care Improvement Act.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Russ Duerstine". The signature is fluid and cursive, with a large initial "R" and "D".

Russ Duerstine
Executive Director
Concerned Veterans for America