

**STATEMENT OF  
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BEFORE THE  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS  
HOUSE COMMITTEE ON VETERANS' AFFAIRS**

**June 19, 2013**

Good afternoon Chairman Coffman, Ranking Member Kirkpatrick, and Members of the Subcommittee. Thank you for inviting me here today to present our views on several bills that would affect Department of Veterans Affairs (VA) health programs and services. Joining me today is Jane Clare Joyner, Deputy Assistant General Counsel. Because of the time afforded for preparation of testimony, we do not yet have cleared costs for these bills.

**H.R. 1490 Veterans Privacy Act.**

H.R. 1490 would amend VA's informed consent statute to establish a new subsection concerning visual recording of Veterans made when VA is providing care under title 38, United States Code. The bill would require the Secretary to promulgate regulations establishing procedures to ensure that a visual recording of a patient receiving such care is made only with the full and informed consent of the patient or, in appropriate cases, the patient's representative. The bill would allow the VA to waive the informed consent requirement under three circumstances: pursuant to a determination by a physician or psychologist that such recording is medically necessary; pursuant to a warrant or order of a court of competent jurisdiction; or in a public setting where a

person would not have a reasonable expectation to privacy. The term “visual recording” would be defined to mean the recording or transmission of images or video.

VA supports the intent of the bill but we recommend some clarification to ensure the best interests of patients are supported. We are concerned that the definition of “visual recording” is ambiguous and open to interpretation, which could adversely impact patient care. For example, the “transmission of images” could encompass still photographs or images, such as x-rays that are then digitized or scanned, as well as cine images that are now routine in catheterization laboratories and Magnetic Resonance Imaging (MRI). In VA, such images are commonly sent to a physician via secured email for reading. These concerns could be corrected by revising subsection (b)(3) to state that the term “visual recording” means the recording or transmission of images or video, excluding medical imaging such as those images produced by radiographic procedures, nuclear medicine, endoscopy, ultrasound, etc., and images, video and other clinical materials transmitted for the purposes of telehealth. For example, in FY2012, 9 percent of Veterans received elements of their care via telehealth.

We recommend this change to the definition, in part, because as written, H.R. 1490 would allow a physician or psychologist to conduct a medical imaging procedure, such as an X-ray, Computed Tomography (CT) scan, MRI scan, or ultrasound on a patient without the patient’s consent if the physician or psychologist deemed the procedure to be medically necessary. This exception is not consistent with ethical standards for informed consent for treatments and procedures. Competent patients have the right to make autonomous decisions about the medical interventions that clinicians propose to

perform on them. H.R. 1490 would, as currently written, lower the standard for patient consent and autonomous decision-making. We assume this is not the intent of the drafters.

### **H.R. 1792 Infectious Disease Reporting Act.**

H.R. 1792 would amend VA's quality assurance statute, 38 U.S.C. §7311, to require VA to report certain infectious diseases that occur in VA medical facilities. The bill would define a "reportable infectious disease" as a disease that the State, in which the facility is located, requires to be reported. VA would be required to report such diseases to an appropriate entity in accordance with State law. Similarly, the bill would require reporting to the accrediting organization of the facility. The bill states that if VA fails to make a required report in accordance with State law, VA must pay the State an amount equal to the penalty paid by non-Federal facilities that fail to make such reports. The bill would waive sovereign immunity and authorize States to file civil actions against VA to recover any amounts due for failure to make required reports in accordance with State law. Such suits would be filed in U.S. district court for the district in which the medical facility is located. The reporting requirement would take effect 60 days after the date of enactment.

VA supports, in general, the provision of information to outside entities on infectious diseases. The Centers for Disease Control and Prevention (CDC) depends on communicable disease surveillance to carry out analysis and form national recommendations. Reporting of selected infectious diseases has been widely accepted as mutually advantageous to both health care providers and the recipients of the

information. CDC advises States and Territories as they formulate their individual requirements for health reporting. While no VA entity is currently required to participate in these State-mandated reporting processes, VA Medical Centers have been encouraged to participate in the process; over the years VA and VHA have provided guidance through Handbooks and Directives on how to achieve this participation while assuring compliance with existing Federal laws that protect privacy and confidentiality.

VA would like to discuss with the Committee ideas to provide more standardization and consistency in its practices to fulfill the aims of the bill, which we believe can be achieved without new mandates in legislation that raise legal complications, as well as create administrative burdens by requiring compliance with many different State laws.

Most States do espouse a general framework of “accepted” reportable disease as agreed to by the Council on State and Territorial Epidemiologists; many of these are similar to, if not identical to, those recommended by CDC. However, while CDC has some basic elements of data which it evaluates relative to communicable diseases, many States have reporting requirements that included numerous data elements beyond those which contributes to the disparity in reporting requirements from State to State.

We look forward to discussing with the Committee VA’s current practices and ideas to expand on what VA is now doing.

While we submit that a voluntary approach is our preferred course of action, we also offer below suggested changes to the bill should Congress choose to move forward with a mandated approach.

First, the bill would amend VA's quality assurance statute, 38 U.S.C. §7311. This type of reporting requirement is not appropriate as part of VA's Quality Assurance (QA) program because names and personal identifiers cannot generally be disclosed from QA records. Thus, we recommend the legislation not be drafted as an amendment to 38 U.S.C. §7311. We are available to provide technical assistance to the Subcommittee to address this concern.

Second, in light of the reporting requirements, it may be necessary to amend two VA statutes protecting the confidentiality of Veterans records: 38 U.S.C. §5701 and §7332. Unless amended, these provisions may hinder, or even prohibit, disclosure of necessary information.

Third, the bill requires reporting of "a reportable infectious disease that occurs at a medical facility of the Department of Veterans Affairs in accordance with the laws of the State in which the facility is located." Each State defines reportable infectious diseases for its purposes. However, precisely which infectious diseases should be reported by VA is not clear. Specifically, the phrase "occurs at a medical facility" in section 2 is ambiguous. It is not clear whether this means that VA should report all State-defined reportable infectious diseases, all health care facility-associated infectious diseases (such as central line-associated bloodstream infections, catheter-associated urinary tract infections, and ventilator-associated pneumonia), or only those health care facility-associated infectious diseases that are part of the State-defined reportable infectious diseases. Further, it is not clear what would be required if, for example, a patient who resides in Nevada, develops a reportable infection while being cared for at a VA hospital in California, where State law may differ.

Fourth, we believe that requiring the reporting of each case of a reportable infectious disease to the accrediting organization of each facility would be inappropriate, unnecessary, and burdensome. The Joint Commission, which is currently the accrediting organization for all Veterans Health Administration facilities, does not typically receive systematically-collected health outcomes data on infectious conditions, and it is not clear how such data would inform the accreditation process. In the normal course of their reviews of VA health care facilities, The Joint Commission, as well as other oversight entities, would be able to verify reporting to States once the legislation is enacted.

Finally, we are also concerned about the administrative burden associated with waiving sovereign immunity to allow States to fine VA for failure to report in accordance with State law and to file civil action against VA to recover such fines. We are opposed to this provision of the statute, and believe these features are not necessary to achieve the intent of the bill. We are glad to make ourselves available to provide technical assistance to the Subcommittee to address these concerns.

#### **H.R. 1804 Foreign Travel Accountability Act.**

H.R. 1804 would amend title 38, United States Code by adding a new section 518 to establish a requirement for semiannual reporting of “covered foreign travel” made during the 180 days preceding the report. The bill would require VA to report the details of each instance of covered foreign travel, including the purpose, destination, name, and title of each traveling employee, as well as the final costs of all covered foreign travel made during the period covered by the report. The bill would provide that reports

required by section 518 include all of the above information regardless of whether the information duplicates the quarterly report to Congress on conference expenses under section 517 of title 38, United States Code. The bill would define "covered foreign travel" to include any official travel made by a VA employee, including one stationed in a foreign country, to a location outside of the United States or Washington, D.C., any U.S. territory, commonwealth or possession, Indian lands, or U.S. territorial waters.

VA has no objection to providing Congress with useful information for its oversight responsibilities, but we recommend the bill be amended so the data required by the semiannual reports is consistent with the data available from the E-Gov Travel Service (ETS) system, which is currently FedTraveler.com. We believe these data will meet the general purpose of this legislation. Using ETS data will ensure an efficient and accurate report. As currently outlined in the bill, the report would require data that are not available in ETS. For example, expenses or reimbursements related to operating and maintaining a car, including the cost of fuel and mileage are generally not available in ETS. Rather, privately-owned vehicle costs would only be reimbursed based on mileage. Operating and maintenance costs would not be reimbursed. Costs for rental vehicles, if authorized, would be identified on the travel report, but operating and maintenance costs would not be reimbursed or known. Operating and maintenance costs for Government vehicles would be difficult to separate out for each travel episode. Similarly, computer rental fees, rental of hall auditoriums or meeting spaces, and entertainment appear to fall under the category of acquisition expenses associated with a conference. As such they would not be associated with a particular traveler, nor would such costs be reflected in the ETS.

VA recommends the bill be amended to exclude any employee foreign travel where a non-Federal source reimburses the Government for all costs. Section 1353 of title 31, United States Code, authorizes agencies to accept gifts of travel in support of official travel from non-Federal sources. Agencies are required to report the acceptance of such travel gifts on a semi-annual basis to the Office of Government Ethics (OGE). Because the bill appears to be concerned with reporting the costs of VA employee foreign travel, such purpose would not be served by including no-cost travel which VA already reports on a semi-annual basis to OGE.

Finally, VA requests clarification as to the timeframe covered by each report. Our understanding is that the initial report due June 30, 2014, would cover the first half of Fiscal Year (FY) 2014, October 1, 2013 through March 31, 2014, and that the report due December 31, 2014, would cover the second half of FY 2014, April 1, 2014 through September 30, 2014. Similarly, we understand that the required reports would be based on approved and completed expense vouchers, so that travel for which an expense voucher is pending but not approved at the end of the reporting period would be included in the subsequent period. VA would be glad to meet with the Committee to provide technical assistance on this legislation.

Mr. Chairman, this concludes my statement. Thank you for the opportunity to appear before you today. I would be pleased to respond to questions you or the other Members may have.