

**STATEMENT FOR THE RECORD BY
THE AMERICAN LEGION
BEFORE THE
OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE OF THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
PENDING LEGISLATION**

MARCH 19, 2015

H.R. 571: The Veterans Affairs Retaliation Prevention Act of 2015

To amend title 38, United States Code, to improve the treatment of whistleblower complaints by the Secretary of Veterans Affairs, and for other purposes.

H.R. 1129: The Veterans Whistleblower and Patient Protection Act of 2015

To amend title 38, United States Code, to establish within the Department of Veterans Affairs an Office of Whistleblower and Patient Protection.

These bills would provide Department of Veterans Affairs (VA) whistleblowers with a means to solve problems at the lowest level possible, while offering them protection from reprisals and real accountability for those who repress against them. It would establish a new system that employees could use to report retaliation claims, and supervisors would be required to report all retaliation claims to facility directors, eliminating the possibility for facility leaders to claim plausible deniability of such claims. The legislation would further codify prohibitions against negative personnel actions for employees who file whistleblower complaints or who cooperate with investigations by congressional, Government Accountability Office or authorities from the Office of the Inspector General, as well as establish mandatory disciplinary penalties for employees found to have engaged in retaliation against whistleblowers and create mandatory whistleblower protection training program for all VA employees.

In July of last year, The American Legion stated in testimony:

When the problems of VA are viewed in total, several trends become clear. The guilty are not held accountable. Those who speak out against the system, be they employee or deeply concerned stakeholders, are vilified and shouted down. There is an institutional predilection against change and against responsibility.

Whistleblowers will only be free from fears to come forward when they see consequences implemented against leaders who have harassed those who have already

spoken out. Acting Secretary Sloan Gibson has rightly stated that there is no place in VA for those who would harass whistleblowers.¹

The American Legion supports the passage of these pieces of legislation.

H.R. 593: The Aurora Hospital Financing and Construction Reform Act of 2015

To extend the authorization for the construction of the Department of Veterans Affairs Medical Center in Aurora, Colorado, and to direct the Secretary of Veterans Affairs to enter into an agreement with the Army Corps of Engineers to manage such construction.

In April 2013, the Government Accountability Office (GAO) released a report on VA Construction: ²*“Additional Actions Needed to Decrease Delays and Lower Costs of Major Medical Facility Projects”*. The purpose of the GAO report was to review the cost, schedule, and scope for new medical center projects, and for the VA to take actions for the purpose of improving their construction management practices and to improve their project management of projects. According to the report the Department of Veterans Affairs has been significantly over budget in all of the four major medical projects including: Las Vegas, Orlando, Denver, and New Orleans.

According to GAO, cost increases ranged from “59 percent to 144 percent representing a total cost of nearly \$366 million per project with average schedule delays ranging from 14 to 74 months with an average delay of 35 months per VA major construction project.”

In November 2013, the House Committee on Veterans’ Affairs held a hearing examining the state of VA’s major construction and lease programs and the VA’s Office of Inspector General’s Assistant Inspector General for Audits and Evaluations, Linda Halliday, claimed that reviews of VA’s construction and leasing programs “have disclosed a pattern of poor oversight, ineffective planning and mismanagement of capital assets in VA.”³

In April 2014, GAO released a follow-up report on VA Construction:⁴*“VA’s Actions to Address Cost Increases and Schedule Delays at Denver and Other Major Medical Facility Projects,”* in which GAO found that the costs associated with the VA medical center construction project in Denver have substantially increased, its schedule significantly delayed, and its scope modified.

In December 2014, construction on the Denver VA Medical Center was halted after Kiewit-Turner’s workforce withdrew from the hospital work site when the U.S. Civilian Board of

¹ “Restoring the Trust: The View of the Acting Secretary and the Veterans Community” – July 23, 2014, House Committee on Veterans Affairs hearing

² *United States Government Accountability Office: April 2013 GAO-13-302 VA Construction: Additional actions Needed to Decrease Delays and Lower Costs of Major Medical-Facility Projects*

³ Testimony of Linda Halliday, Assistant Inspector General for Audits and Evaluations, Office of the Inspector General – HVAC “Building VA’s Future: Confronting Persistent Challenges in VA Major Construction and Lease Programs” November 20, 2013 <http://veterans.house.gov/witness-testimony/ms-linda-halliday-2>

⁴ *United States Government Accountability Office: April 2014 GAO-14-548T VA Construction: VA’s Actions to Address Cost Increases and Schedule Delays at Denver and Other Major Medical Facility Projects*

Contract Appeals (CBCA) ruled that VA breached its contract by failing to deliver a facility design that could be built for an approved budget of about \$600 million.

On March 11, 2015, it has been reported that the Senate Veterans' Affairs Committee will visit the Denver VA Medical Facility in order to see, first-hand, the problems at the hospital, which is now "estimated to halt again around March 29 without Congressional approval for the appropriation of more funds."⁵

Dan Dellinger, Past National Commander of The American Legion, stated "*The failures in Florida, Louisiana, Colorado, and Nevada with major construction projects have made it clear that VA needs help. The Army Corps of Engineers has a proven track record of managing projects of this nature. Efforts to exhort the VA to pursue this path on their own have not proven successful. Maybe the VA should get out of the construction business, and do what they do best--take care of veterans.*"⁶

Ralph Bozella, Chairman of The American Legion's Veterans Affairs and Rehabilitation Commission testified that, "*The American Legion strongly believes there must be a serious look at how VA conducts their management of construction projects, and that the current state of affairs cannot be allowed to continue. With budgets drawn so tight in Washington, hundreds of millions of dollars of cost overruns on hospital projects hurt all veterans.*"⁷ During the hearing, The American Legion strongly urged VA to "clean up their own house, provide meaningful communication and transparency with the veterans' community, provide visible accountability for failures, and provide a clear roadmap to how the situation will improve."⁸

At The American Legion's Spring National Executive Committee, The American Legion passed a resolution that supported legislation and congressional oversight to improve future VA construction programs, as well as urged VA to consider all available options, both within the agency and externally, to include, but not limited to the Army Corps of Engineers, to ensure major construction programs are completed on time and within budget.

On January 21, 2015, The American Legion testified at a House Veterans Affairs Committee hearing regarding VA's construction issues and restated the resolution that calls on Congress and VA to "consider 'all available options' (including the Army Corps of Engineers) 'to ensure major construction programs are completed on time and within budget.'"⁹

The American Legion supports the passage of this legislation.

⁵ "Senate Committee to Visit Aurora Hospital, Work Could Stop Again this Month"

http://www.bizjournals.com/denver/blog/real_deals/2015/03/senate-veterans-affairs-committee-to-visit-aurora.html?page=all

⁶ Joint Senate and House Veterans Affairs Committees hearing to receive the testimony of The American Legion, September 10, 2014

⁷ "*Construction Conundrums: A Review of Continue Delays and Cost Overruns at the Replacement Aurora, Colorado VAMC.*" – House Committee on Veterans Affairs Subcommittee on Oversight and Investigation, April 22, 2014

⁸ Ibid

⁹ Testimony of Roscoe Butler, Deputy Director for Healthcare, The American Legion – HVAC "Building a Better VA: Assessing Ongoing Major Construction Management Problems Within the Department" January 21, 2015

H.R. 1015: The Protecting Business Opportunities for Veterans Act of 2015

To amend title 38, United States Code, to improve the oversight of contracts awarded by the Secretary of Veterans Affairs to small business concerns owned and controlled by veterans.

The American Legion believes that having small businesses certify to the VA that they comply with the relevant provisions of the Small Business Act is a good thing¹⁰. Holding small businesses accountable under the penalties of perjury would give the government the requisite authority to go after the bad actors in the small business community.

However, this is a measure that should be implemented agency-wide and not solely relegated to the veterans' small business community. The American Legion understands that HR 1015 would give existing legislation more teeth and give the courts more ammunition to go after the bad actors and we strongly support that aim, but we would also ask this Congress to consider expanding the legislation to hold all small businesses participating in government set-aside programs to this standard and not relegate this heightened threshold only to the veterans small business community. It would be wrong to think that only veteran owned small businesses were deserving of such scrutiny, and those businesses should not be unfairly thought of in that way.

The American Legion supports the passage of this legislation.

H.R. 1016: The Biological Implant Tracking and Veteran Safety Act of 2015

To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to adopt and implement a standard identification protocol for use in the tracking and procurement of biological implants by the Department of Veterans Affairs, and for other purposes.

The American Legion previously raised concerns about the lack of a robust tracking system in the Veterans Health Administration (VHA). The Department of Veterans Affairs (VA) Office of the Inspector General (OIG) conducted an audit in 2012 and made recommendations regarding VA's management of their prosthetics supply inventory. In VHA's response, they indicated that they would work to develop a plan to replace the Prosthetic Inventory Package (PIP) and the Generic Inventory Package (GIP) with a more comprehensive system. The target completion date is March 30, 2015. In the interim, VHA indicated they were working on a VA OI&T patch (VistA Prosthetics patch 101), which was 95 percent completed.

While reaching this goal by 2015 is indeed laudable, 2015 is rapidly becoming a critical year for VA to meet strategic goals including the elimination of veteran homelessness and the disability claims backlog. The American Legion would like to see a more detailed timeline implementing these changes and improvements for veterans. Reports through System Worth Saving Task Force visits and contact with VHA employees indicate responsibility for entering serial numbers of implant devices is manual, not automated, and is inconsistently implemented.

¹⁰ Resolution No. 349: "Support Verification Improvements for Veterans' Business within the Department of Veterans Affairs and Department of Defense" AUG 2014

Although VHA claims to work to a standard of "removing recalled products from inventory within 24 hours of a recall", there is still no clear policy on how veterans who have already received implants are tracked. It is not enough to cut off the problem at the source, attention must be paid to veterans who are already downstream in the process. Without consistent tracking of implants, including positive identification by serial number and other identifying factors, uncertainty remains as to how veterans are served in the case of recalls. The American Legion noted we would like to see a more comprehensive procedure and policy clearly delineated by Central Office to ensure consistency in all Veterans Integrated Service Networks (VISNs).

The analysis of the current inadequacy of the tracking system for bio-implants derives directly from The American Legion's System Worth Saving Task Force reports. The System Worth Saving Task Force was established to examine the State of VA Medical Facilities by resolution in 2004 . This annual report, provided to members of Congress and the veterans' community is a vital resource as the primary third party analysis of the quality of VA facilities.

The American Legion supports the passage of this legislation.

H.R. 1017: The Veterans Information Security Improvement Act

To improve the information security of the Department of Veterans Affairs by directing the Secretary of Veterans Affairs to carry out certain actions to improve the transparency and the governance of the information security program of the Department, and for other purposes.

H.R. 1128: The Department of Veterans Affairs Cyber Security Protection Act

To amend title 38, United States Code, to make certain improvements in the information security of the Department of Veterans Affairs, and for other purposes.

While protecting the information security of veterans' information on VA systems is important, The American Legion does not have a specific position or resolution on the best way to go about providing Information Technology security.

The American Legion has no position on these pieces of legislation.