

**STATEMENT OF
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THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT & INVESTIGATIONS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"PENDING LEGISLATION"**

MARCH 7, 2018

Chairman Bergman, Ranking Member Kuster, and distinguished members of the Subcommittee. On behalf of Denise H. Rohan, National Commander of The American Legion; the country's largest patriotic wartime service organization for veterans and our 2 million members; we thank you for inviting The American Legion to present our position on the pending and draft legislation before you today.

H.R. 3497 - Modernization of Medical Records Access for Veterans Act of 2017

To direct the Secretary of Veterans Affairs to carry out a pilot program establishing a secure, patient-centered, portable medical records system, that would allow veterans to have access to their Personal Health Information, and for other purposes.

The American Legion, through resolution, has long endorsed and supported the Department of Veterans Affairs (VA) in creating a Lifetime Electronic Health Records (EHR) system. Additionally, The American Legion has encouraged both the Department of Defense (DoD) and the VA to either use the same EHR system, or, at the very least, systems that were interoperable.

In 2009, The American Legion was pleased when the Obama administration announced that the DoD and the VA would finally create a path to integrate the flow of patients' information between DoD's AHLTA (Armed Forces Health Longitudinal Technology Application) and VA's VistA (Veterans Information System and Technology Architecture) Electronic Health Record (EHR) platforms.¹

In 2015, DoD announced that Cerner was awarded a coveted \$4.3 billion, 10-year contract to overhaul the Pentagon's electronic health records for millions of active military members and retirees. However, around the same time, VA announced it would maintain and modernize VistA.

The American Legion was disappointed in VA's and DoD decisions to go in different directions and voiced concerns about their decision. On June 6, 2017, VA Secretary David Shulkin

¹ Obama administration announces DOD and VA pathway to an integrated health record - <http://www.ehrscope.com/blog/white-house-announces-plan-to-integrate-dod-and-va-ehrs/>

announced that the VA would adopt the same Cerner EHR system as the DoD during a news briefing at VA's headquarters in Washington, D.C.

The impending contract, that the Department of Veterans affairs is in the final stages of negotiating, will set the standard for record transferability and standardization in America. This new national standard will increase patient access, decrease wait times, and enhance good medicine for all Americans, not just veterans. Congress should refrain from advancing any recommendations or legislation that does not directly support implementation of the VA EHR modernization effort currently being negotiated.

The American Legion understands and applauds the author of H.R. 3497, as the desire to aide veterans all while placing their medical care into the 21st Century is clear. We look forward to engaging Rep. McMorris Rodgers in the future to assist our nation's heroes and their families.

The American Legion Opposes H.R. 3497.

H.R. 4245 - Veterans' Electronic Health Record Modernization Oversight Act of 2017

To direct the Secretary of Veterans Affairs to submit to Congress certain documents relating to the Electronic Health Record Modernization Program of the Department of Veterans Affairs.

In 2009, The American Legion was pleased when the Obama administration announced that the Departments of Defense (DoD) and Veterans Affairs (VA) would finally create a path to integrate the flow of patients' information between DOD's AHLTA (Armed Forces Health Longitudinal Technology Application) and VA's VistA (Veterans Information System and Technology Architecture) Electronic Health Record (EHR) platforms.²

In 2015, DoD announced that Cerner was awarded a coveted \$4.3 billion, 10-year contract to overhaul the Pentagon's electronic health records for millions of active military members and retirees. However, around the same time, VA announced it would remain with VistA.

The American Legion was disappointed in VA's and DoD decisions to go in different directions and voiced concerns about their decision. On June 6, 2017, VA Secretary David Shulkin announced that the VA intends to adopt the same Cerner EHR system as the DoD during a news briefing at VA's headquarters in Washington, D.C.

"I had said previously that I would be making a decision on our EHR by July 1, and I am honoring that commitment today," Shulkin said. "The health and safety of our veterans is one of our highest national priorities. Having a veteran's complete and accurate health record in a single common EHR system is critical to that care, and to improving patient safety."

² Obama administration announces DOD and VA pathway to an integrated health record - <http://www.ehrscope.com/blog/white-house-announces-plan-to-integrate-dod-and-va-ehrs/>

Shulkin said VA's current VistA system is in need of major modernizations to keep pace with the improvements in health information technology (IT) and cybersecurity, as software development is not a core competency of VA.³

The *Veterans' Electronic Health Record Modernization Oversight Act of 2017* directs VA to provide Congress with its key planning and implementation documents for the EHR replacement project, to provide copies of the contracts, to keep Congress informed on progress and actual costs. The legislation also requires VA to notify Congress quickly in the event of any significant cost increase, schedule delay, loss of veteran health data or breach of privacy.

The American Legion supports VA and the DoD establishing a joint Virtual Lifetime Electronic Health Record (VLER) and the congressional oversight and funding necessary to ensure this most important and massive IT transformation is completed as seamlessly as possible.⁴

The American Legion supports H.R. 4245.

DRAFT BILL

To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to prohibit employees found to have knowingly misused Department of Veterans Affairs purchase cards from serving as purchase card holders or approving officials.

This draft bill prohibits any employee of the Department of Veterans Affairs (VA) who the Secretary or the Inspector General of the Department determines has knowingly misused a purchase card from serving as a purchase cardholder or approving official.

The American Legion leaves employee discipline, and policies to correct agency/employee behavior to the Department. VA's Purchase Card Program is part of the U.S. General Services Administration (GSA) SmartPay Program and conforms to the Federal Acquisition Regulations (FAR).⁵

While the bill would restrict a VA employee from serving as a purchase cardholder or an approving official even in cases where it is the employee's primary duty and in such cases The American Legion sees no provision contained within the legislation that addresses the future job description of the employee.

The objectives of the Purchase Card Program are to:

1. Reduce paperwork and administrative costs for the acquisition of supplies and services within the existing FAR;
2. Streamline payment procedures and improve cash management practices, such as consolidating payments and reducing petty cash funds; and

³ VA announce the decision to go with Cerner - <https://www.legion.org/veteranshealthcare/237706/%E2%80%98time-move-forward%E2%80%99>

⁴ The American Legion Resolution No. 83: *Virtual Lifetime Electronic Record*

⁵ VA Purchase Card Policy <https://www.va.gov/finance/docs/VA-FinancialPolicyVolumeXVICChapter01.pdf>

3. Provide procedural checks and feedback to improve management control.

All cardholders are required to use the purchase card for authorized procurement in accordance with Simplified Acquisition Procedures (FAR Part 13 and Veterans Affairs Acquisition Regulations (VAAR) Part 813.)

In 2017, Veterans Affairs Office of Inspector General (VAOIG) conducted two Audits of VA's Purchase Card program. On June 27, 2017, VAOIG issued report, 15-01227-249, entitled, "Review of Alleged Irregular Use of Purchase Cards by the Engineering Service at the Carl Vinson VA Medical Center in Dublin, Georgia."⁶

VAOIG substantiated the allegation that Dublin VA Medical Center cardholders in Engineering Service made unauthorized commitments by splitting purchases and exceeding micro-purchase limits. Of the 130 sampled purchases made from October 2012 through March 2015, 23 were split purchases that avoided the \$3,000 limit for supplies and 14 were purchases that exceeded the \$2,500 limit for services.

This happened because approving officials did not adequately monitor cardholders to ensure compliance with VA policy.

VAOIG did not substantiate the allegations that cardholders made duplicate payments to Ryland Contracting Incorporated and Sterilizer Technical Specialists. However, VAOIG found cardholders inappropriately made 91 micro-purchases for services received from these vendors without establishing contracts.

On September 2017, VAOIG Issued report, 15-04929-351, entitled "Audit of Purchase Card Use To Procure Prosthetics."⁷

The VA OIG received an allegation in 2015 that the VHA inappropriately used Government purchase cards to procure commonly used prosthetics, instead of establishing contracts that would leverage VHA's purchasing power, and failed to ensure VA received fair and reasonable prices. Furthermore, VHA allegedly did not report purchases in the Federal Procurement Data System (FPDS).

VAOIG substantiated the allegations that for some prosthetic purchases above the micro-purchase limit, VHA did not leverage its purchasing power by establishing contracts and did not ensure fair and reasonable prices were paid. A micro-purchase is an acquisition using simplified acquisition procedures where the aggregate amount does not exceed \$3,500.

VAOIG stated these improper actions occurred because VHA controls did not ensure the Prosthetic and Sensory Aids Service (PSAS) sufficiently analyzed prosthetic purchases to identify commonly used prosthetics and the Procurement and Logistics Office (P&LO) did not adequately monitor Network Contracting Office (NCO) procurement practices to ensure

⁶ VA OIG Report - 15-01227-249 <https://www.va.gov/oig/pubs/VAOIG-15-01217-249.pdf>

⁷ VA OIG Report – 15-04929p351 <https://www.va.gov/oig/pubs/VAOIG-15-04929-351.pdf>

contracts were established. As a result, VAOIG estimated VHA might have paid higher prices for an estimated \$256.7 million in prosthetics purchases during FY 2015 by not establishing contracts.

VAOIG did not substantiate the allegation that VHA failed to report prosthetic procurements in FPDS. We estimated VHA reported about 86,200 of the 87,100 FY 2015 prosthetic purchases (99 percent) in FPDS.

Unauthorized commitments require ratification. According to VAOIG, VHA did not have reasonable assurance that VA medical facilities used taxpayer funds efficiently when procuring prosthetics. In response to the investigation, VHA initiated actions to pursue contracts for commonly used surgical implant prosthetics. In addition, VHA has established pre-authorization procedures and plans to authorize the use of ordering to help mitigate improper payments and unauthorized commitments associated with surgical implants.

Again, The American Legion approaches management of employees with extreme caution when addressing agency/employee behavior related matters. The American Legion could not find any evidence in any of the VAOIG reports that prove that the government spent more money than they otherwise would have, or that any of the purchases would have saved money using more complicated and expensive contracting vehicles.

Since the bill would restrict a VA employee from serving as a purchase cardholder or an approving official if this is one the employee's primary duties, The American Legion is concerned that the bill would limit an employee from performing their assigned duties, which may result in additional and unidentified personnel actions. The American Legion believes VA already has the authority to take action on employees who fail to follow VA policies, and is not convinced this legislation is necessary.

The American Legion does not support this draft bill.

DRAFT BILL

To direct the Secretary of Veterans Affairs to carry out the Medical Surgical Prime Vendor program using multiple prime vendors.

In terms of contracting, private sector hospitals use multiple Group Purchasing Organization (GPOs) who bid down the price of manufactured medical equipment. This practice, forces the GPOs to compete among themselves, yielding the lowest possible prices, which is at the benefit of the hospitals, or the general market place. In summary, competition drives down prices.

Utilizing Medical Surgical Prime Vendor (MSPV) Gen2, VA has proposed using only one large single vendor as opposed to the current model of using multiple vendors. When you decide to use only one vendor, prices may be inflated, simply because of the lack of competition. Ensuring there is competition, the VA, and the government as a whole, typically receives better pricing, which is ultimately at the benefit of the U.S. taxpayer.

The American Legion understands the simplification of utilizing only one vendor, however, that does not yield the best result for the veteran, agency or the federal government. Utilizing a singular vendor is easier to deal with, but this procurement shortcut undermines the competitive system, and can result in VA overpaying for equipment or, not being able to obtain quality material necessary to supply the largest medical network that treats veterans.

In the current model that VA is employing, Service Disabled Veteran Owned Small Businesses (SDVOSBs) work with prime vendors, which not only assists and encourages veterans to work in this realm, but also allows for competition and drives down costs. SDVOSBs add value to the procurement process by providing last mile delivery, customer care, and maintenance services for prime vendors.

In short, The American Legion opposes the Department of Veterans Affairs switching to a system that allows them to simply utilize one vendor, and urges Congress to force VA to allow for competitive bidding. Further, The American Legion, by resolution⁸, supports reasonable set-asides of federal procurements and contracts for businesses owned and operated by veterans. Allowing the VA to essentially encourage a monopoly on medical supplies and equipment is not only wrong, but it could also decrease SDVOSB participation, potentially harming the quality care that veterans receive at VA, all while overspending taxpayer funding.

The American Legion supports the draft bill as currently written.

Conclusion

As always, The American Legion thanks this subcommittee 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. Matthew Shuman at The American Legion's Legislative Division at (202) 861-2700 or Mshuman@legion.org.

⁸ The American Legion Resolution No. 154: [*Support Reasonable Set-Aside of Federal Procurements and Contracts for Businesses Owned and Operated by Veterans*](#)