STATEMENT OF
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DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

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Good morning, Chairman Bergman, Ranking Member Kuster and Members of the Committee. I am pleased to be here today to provide the views of the Department of Veterans Affairs (VA) on pending legislation. With me today are Mr. Ricky Lemmon, Acting Deputy Chief Procurement Officer, Veterans Health Administration, Katrina Tuisamatatele, Health Portfolio Director, Office Information and Technology, and Mr. John Adams, Director of Corporate Travel and Charge Card Service, Office of Management.

H.R. 3497

H.R. 3497, the Modernization of Medical Records Access for Veterans Act of 2017 would direct the Secretary of Veterans Affairs to carry out a pilot program establishing a secure, patient-centered portable medical records storage system that would allow Veterans enrolled in the VA health care system to store and share records of their individual medical history with VA and community health care providers.

Although VA does not support H.R. 3497 as currently drafted, the Department is fully committed to ensuring a Veteran's access to their medical record information as required by the Health Insurance Portability and

Accountability Act of 1996 and other existing legislation, and looks forward to further collaboration on the subject. VA understands the intent of the legislation is to provide Veterans with a copy of their most up-to-date medical record; however, the use of a portable device is not the appropriate solution for several reasons. First, challenges related to network security and compatibility with electronic health records systems make doctors resistant to accepting plug-in electronic devices from a patient. Second, even with a portable storage device, Veterans may not always have the most current copy of their record as this depends on when the files are downloaded during the Veteran's visit. It may not reflect the current visit including notes and the results of diagnostic tests that were ordered during the visit. Lastly, the Department of Health and Human Services will be promulgating regulations to require health IT developers to have application programming interfaces (APIs) that enable easy access, use, and exchange of health information, and this technology would obviate the need for, or even the help from, the kind of special purpose storage system that the bill would foster.

Currently, Veterans are already able to download a copy of their medical records through the Blue Button initiative. They could even download them on a community health care provider's computers which would be a lower risk to that provider and to the Veteran. Also, implementation of the contemplated portable medical record storage system would take resources away from VA to support the Electronic Health Record Modernization (EHRM) Program Executive Office

(PEO) and duplicate functionality that could ultimately be provided by the new EHR.

VA is happy to work with the Committee to identify opportunities within EHRM PEO Innovations and industry to provide Veterans with an aggregated Personal Health Record (PHR) from multiple EHR systems in the future.

H.R. 4245

H.R. 4245, the Veterans' Electronic Health Record Modernization Oversight Act of 2017, would require VA to submit to designated committees of Congress several project management documents 30 days after enactment, as well as quarterly updates related to the Electronic Health Record Modernization (EHRM) Program. VA would also be required to submit to the designated committees any contract, order, agreement, or modification thereto under the EHRM program within 5 days after award or modification. Lastly, VA would be required to notify congressional committees following significant events including: milestone or deliverable delays of 30 days or more; equitable adjustments or change orders exceeding $1 million; any protest, loss of clinical or other data, and breach of patient privacy.

VA supports this legislation and believes transparency is important for the success of the EHRM Program. VA recommends making the following changes in Sec. 2(a) and Sec. 2(b). VA suggests changing the requirement in Sec. 2(a) to provide for submission of program-management documents to the committees

no later than 180 days after enactment of the legislation, a more practicable deadline. For Sec. 2(b), VA suggests changing the requirement to provide quarterly updates no later than 60 days after the end of the fiscal quarter. This would allow VA to provide the Committee with more accurate and complete information.

VA would also like to work with the Committee to ensure that the terminology is consistent with similar terms in the HIPAA Privacy Rule. For example, it appears that the term "breach" in this bill is broader than the similar term "breach of unsecured protected health information" in the HIPAA Privacy Rule. VA believes greater consistency among industry standards would reduce confusion, and improve VA's interoperability with community providers.

Costs for H.R. 4245 would be minimal as the referenced documents will be drafted as part of the EHRM Program.

H.R. ___ - Draft Bill Misuse of VA Purchase Cards

This draft bill would direct the Secretary of Veterans Affairs to prohibit employees found to have knowingly misused a VA purchase card from further serving as a purchase cardholder or approving official. Such prohibition would be in addition to any other applicable penalty. Under the draft legislation, misuse would mean splitting purchases, exceeding the applicable card limits or purchase

thresholds, purchasing any unauthorized item, using a purchase card without being an authorize account holder, and violating ethics standards.

VA supports the draft bill, as it would be consistent with VA efforts to reduce potential fraud, waste, and abuse within the VA charge card program. It would facilitate reduction of charge-card misuse and minimize costly ratifications that are required to be completed when unauthorized commitments are identified. The sanctions identified in the bill would support sound charge card program oversight and encourage cardholders and approving officials to strictly adhere to purchasing requirements, as outlined in VA Financial Policy, Volume XVI, Chapter 1, Government Purchase Card.

VA estimates the cost of enacting the legislation would be minimal.

H.R. ___ - Draft Medical Surgical Prime Vendor Program Bill

This bill would statutorily define the structure of VA's Medical/Surgical Prime Vendor (MSPV) program and the number of items provided in its formulary within 1 and 2 years after enactment.

VA opposes this bill. Congress has already provided, and the Federal Acquisition Regulation has already implemented, suitable tools to enable VA to make good business judgments in developing the MSPV program as well as other acquisitions. Agencies are required to conduct market research as part of their acquisition planning efforts; and at VA, we have a further need to conduct market research to fulfill our mandate under the Veterans First Contracting

Program. Properly conducted market research enables VA to assess the current state of the marketplace and structure the acquisition appropriately based on the number and types of vendors available, the geographic areas they serve, the need to ensure redundancy to avoid interruption in supply, and/or other factors.

In addition, Congress has provided tools for evaluating options for changing the number of vendors in subsequent acquisitions. Statutes on contract bundling and consolidation provide criteria for evaluating potential cost savings or other acquisition benefits to determine if such actions are necessary and justified. They also provide for elevated review of such decisions by the VA Senior Procurement Executive, VA Chief Acquisition Officer, VA Deputy Secretary, and the Administrator of the Small Business Administration.

The current MSPV structure was based on a judgment call to apply the criteria Congress enacted to guide agencies in making these decisions. Legislation eliminating VA's ability to make such calls could have unintended consequences in preventing VA from adapting to changing market circumstances.

Legislating the number of formulary items to be contracted within arbitrary time periods could also have unintended consequences. Determining the types of items needed and the number of suppliers for each type of item are also judgment calls. In making these judgment calls, VA considers factors such as opportunities for standardization and clinical needs. These judgment calls are additionally informed by market research as part of the acquisition process. However, adequate market research is necessary to make an informed business

decision, and therefore establishing arbitrary timeframes increases the risk of poor business decisions.

Providing broadly applicable criteria to make such judgments, which balance competing interests in public policy as Congress has defined them, is a much more constructive approach than the draft legislation proposes. VA should continue to have the flexibility to make such determinations based on market conditions and prevailing business practices, clinical need, and the like. As markets continue to change and develop, VA needs the ability to change and develop its procurement process accordingly.

This includes our testimony. We appreciate the opportunity to present our views on these bills, and look forward to answering any questions the Committee may have.