

**STATEMENT OF  
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CHIEF FINANCIAL OFFICER  
OFFICE OF MANAGEMENT  
DEPARTMENT OF VETERANS AFFAIRS (VA)  
BEFORE THE  
HOUSE COMMITTEE ON VETERANS' AFFAIRS  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS AND  
SUBCOMMITTEE ON TECHNOLOGY MODERNIZATION**

**March 30, 2022**

Good afternoon, Chairman Pappas, Chairman Mrvan, Ranking Member Mann, Ranking Member Rosendale and Members of the Subcommittee: thank you for inviting us here today to present our views on bills affecting VA's programs and Veterans' benefits. Joining me today are Maryanne Donaghy, Assistant Secretary for Accountability and Whistleblower Protection, Office of Accountability and Whistleblower Protection (OAWP) Harvey Johnson, Deputy Assistant Secretary for Resolution Management, Diversity and Inclusion, Office of Human Resources and Administration/Operations, Security and Preparedness (HRA/OSP); Dan Keenaghan, Executive Director, VA Insurance Service, Veterans Benefits Administration (VBA); and Jennifer Adams, Executive Director, Network Management, Office of Community Care, Veterans Health Administration (VHA).

**H.R. 5776    Serving Our Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ+) Veterans Act**

This bill would create a new section 324 in title 38 U.S.C., establishing a Center for LGBTQ+ Veterans (the Center). This section, generally modeled after 38 U.S.C. §§ 317 and 318 establishing Centers for Minority Veterans and Women Veterans, respectively, would establish the Center, provide for the appointment of the Director of the Center and require the Director to report directly to the Secretary or Deputy Secretary, define the duties of the Center with respect to LGBTQ+ Veterans, authorize the provision of staff and resources for the Center and require reports concerning the Center.

Improving access, advancing outcomes and fostering an inclusive environment for LGBTQ+ Veterans and employees is a top priority for VA; and the Department shares the commitment, urgency and intent of the sponsors of this legislation to make permanent VA's ability to advance this work. VA is actively leveraging enterprise governance to determine the best possible permanent model for management and governance of this work in the enterprise. Notably, this work affects employees and Veterans throughout the entire organization – in each of VA's Administrations and Staff Offices, and VA desires a model that is appropriately resourced and designed to reflect that broad scope and scale. VA is unsure this breadth can be effectively addressed

through a single office and would appreciate engaging with the Committee to discuss options ahead of this legislation being advanced.

Operating as an integrated enterprise with that broad scope in mind, VA has been able to achieve unprecedented milestones this past year to advance equity for LGBTQ+ Veterans and employees. This included conducting an enterprise-wide policy review; clarifying benefits eligibility policy for Veterans who were given other than honorable discharges based on “Don’t Ask, Don’t Tell” and prior discriminatory policies; completing an extensive human-centered design project to better understand the LGBTQ+ Veteran experience and how to improve access to care and benefits; developing and testing LGBTQ+ Veteran-specific customer experience training for VA employees; establishing VA’s first ever LGBTQ+ Employee Resource Group; initiating the rulemaking process to change the policy ban on gender affirming care for LGBTQ+ Veterans; and displaying gender identity, sexual orientation and pronouns in VA health care records.

VA supports the goal of the draft bill but has concerns with a number of provisions and would like to work with the Committee to discuss alternative approaches to effectively and sustainably improve the Department’s ability to improve access and outcomes for LGBTQ+ Veterans and employees.

#### **H.R. 6052 VA Office of Inspector General Training Act of 2021**

This bill requires the Secretary of Veterans Affairs to require VA employees to receive training that VA’s Office of Inspector General (OIG) develops covering “reporting wrongdoing to, responding to requests from, and cooperating with the [OIG], and for other purposes.”

Section 1 provides the title of the bill as the “Department of Veterans Affairs Office of Inspector General Training Act of 2021.”

Section 2 includes the following seven sub-sections:

- Sub-section (a) requires VA’s Secretary to require each VA employee to receive training developed by VA’s OIG on the reporting of wrongdoing, responding to requests from OIG and cooperating with OIG.
- Sub-section (b) requires the training not later than one year after enactment of the Act.
- Sub-section (c) sets forth four elements of the required training, including:
  - 1) definitions and duties of employees engaging with OIG;
  - 2) identification of circumstances and mechanisms for reporting fraud, waste, abuse and other wrongdoing to OIG;
  - 3) identification of prohibitions and remedies that help protect VA employees from retaliation with reporting wrongdoing to OIG; and
  - 4) “[r]ecognition of opportunities to engage with staff of the OIG to improve Department programs, operations, and services.”

- Sub-section (d) provides that OIG shall design and update its training as OIG considers appropriate.
- Sub-section (e) requires VA's Secretary to provide OIG training through the Department's talent management system (TMS) or successor system.
- Sub-section (f) requires the training to be distinct from mandatory Whistleblower training.
- Sub-section (g) requires the Secretary to permit the Inspector General (IG) to use VA's email system to notify all authorized users at least twice each year and as frequently as the IG considers appropriate under extraordinary circumstances, of the following:
  - 1) The roles and responsibilities of the employees of the Department when engaging with OIG;
  - 2) The availability of training provided under subsection (a);
  - 3) How to access training provided under subsection (a); and
  - 4) Information about how to contact OIG, including a link to any website-based reporting form of the Office.

Federal legislation is not needed to accomplish the goals of this bill. The requirements of this bill have been timely and non-legislatively accomplished through VA Secretary action. Specifically, on September 22, 2021, the Secretary directed that "all employees be trained on reporting wrongdoing to the independent OIG and cooperating fully in OIG audits, investigations, inspections and other reviews."<sup>1</sup> On December 23, 2021, VA's Deputy Secretary issued an all employee message entitled "Cooperation with the Department of Veterans Affairs (VA) Office of the Inspector General (OIG)" which addressed the goals of this bill and reiterated the Secretary's message regarding mandatory training.<sup>2</sup>

In addition to the internal VA Secretary's message of required training for all VA employees, the goals of this bill may be accomplished through memorialization of the requirements for cooperation and for training through a Department-wide VA Secretary's directive (policy). Both a Secretary's message and policy directive are consistent with actions of other Federal Agency Secretaries. Federal legislation is not needed. VA OIG's Semiannual Reports reflect consistent levels of contacts to the OIG Hotline. According to VA OIG's 2021 VA Management and Performance Challenges Report, "[t]he current VA Secretary has taken steps to improve communication and cooperation in support of the OIG's oversight mission, including supporting training developed by the OIG for VA employees to educate staff on the OIG mission and authorities."<sup>3</sup> Federal legislation mandating action that the Secretary is willing and or able to initiate internally is fiscally unnecessary. Such legislation also would signal distrust in the Secretary's intent and demonstrated actions, to date, in support of OIG's oversight mission.

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<sup>1</sup> Secretary's Message, email to All VA Employees, 09/22/2021, 11:03 a.m. (Eastern time), titled: MESSAGE FROM THE SECRETARY: Office of Inspector General Training.

<sup>2</sup> Deputy Secretary's Message, email to All VA Employees, 12/23/2021, 07:29 am (Eastern time), titles: MESSAGE FROM THE DEPUTY SECRETARY: Cooperation with Department of Veterans Affairs Office of the Inspector General.

<sup>3</sup> Inspector General's VA Management and Performance Challenges (2021) at page 13.

Rather than mandating cooperation through Federal legislation, VA supports a two-pronged, internal approach:

- First, issuing a VA Secretary's message, similar to what other Federal sector Department Secretaries have issued.<sup>4</sup> The message would demonstrate the Secretary's commitment to accountability by directing all VA employees to complete a specific OIG training course within a specific time-period (1 year). The Secretary's message or subsequent executive leadership message(s) would address reporting wrongdoing to, responding to requests from and cooperating with OIG. Such communication(s) are consistent with other Federal Departments and would immediately address the purpose of this Act. Executive leadership completed this first of a two-pronged approach through VA Secretary's September 2021 All-Employee Message and VA Deputy Secretary's December 2021 All-Employee Message.
- Second, issuing a VA-wide Departmental directive, similar to that of other Federal Departments<sup>5</sup> would memorialize the All-Employee Messages discussed above, including the requirement that all employees attend annual training. Employee Relations Policy Consultants within VHA Workforce Management and Consulting Center of Expertise are prepared to draft such a directive for the Secretary's consideration.

With respect to specific provisions of the proposed bill:

- VA considers the scope of section 2, sub-section c, 4 to be overly broad as applied to all VA employees. The IG Act clearly establishes IG's role regarding audits, investigations and inspections. Employees are expected to cooperate with OIG by promptly providing materials and information responsive to a request related to one of these specific activities. VA's OIG currently coordinates with VA Integrity and Compliance Officers on opportunities to partner and support initiatives throughout the next fiscal year.<sup>6</sup> The language of section 2, sub-section c, 4, as written, could be interpreted as either a solicitation for information not specific to an oversight activity (i.e., audit, investigation or inspection) or engagement in activity that may exceed the bounds of the IG Act.
- As would be required by section, 2, sub-section e, VA's TMS system already has a variety of VA OIG training courses available on demand to all VA employees that address the four elements listed in section 2, sub-section c, 1-3.<sup>7</sup> VA has

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<sup>4</sup> See, e.g., [Michael Regan Administrator Message to EPA Employees on Cooperation with the Office of the Inspector General, April 28, 2021](#); [Cooperating.pdf \(americorpoig.gov\)](#); [Memo from Secretary Anthony R. Foxx Regarding Ongoing Cooperation with OIG \(dot.gov\)](#); [DHS Secretary Jeh Johnson's Memo on Cooperation with OIG](#).

<sup>5</sup> See, e.g., [12000.01, Cooperation with the Office of Inspector General \(fdic.gov\)](#); [Management Directive 9.2, "O/F, Office of the Inspector General." \(nrc.gov\)](#).

<sup>6</sup> *TMS Course No. 4615701* (OIG and Integrity and Compliance Officers Opportunities to Partner and Support Initiatives Throughout the Next Fiscal Year (to be posted following the August 31, 2021, live presentation)).

<sup>7</sup> *TMS Course No. 4561374* (VA OIG Fraud, Waste and Abuse Discussion); *TMS Course No. 39390* (VA OIG Annual Training, including Understanding the VAOIG, Overview of the IG Act of 978, Employee Responsibility to Report; How Employees Can Contact OIG); *TMS Course No. 4202869* (OIG Audits); and *TMS Course No. 36847* (OIG Freedom of Information Act Training).

skilled instructional designers who build highly impactful training that is tailored for adult learners. OIG partnered with VHA on developing a web-based training (WBT) module titled "Meeting Responsibilities to Report Misconduct and Promote VA Efficiency and Effectiveness Training." This WBT was released September 22, 2021, through VA's TMS. In addition, at least two specific Federal regulations specify the responsibility of VA employees regarding the duty to report and information to be reported to VA's OIG.<sup>8</sup> VA's Secretary has already mandated all employees complete one or more of these courses annually. The Secretary's message and an associated VA directive could be included as attachments that employees could certify, in TMS, that they received and read.

Regarding section 2, sub-section g, effecting the purpose of this bill does not require separate notification from VA's OIG to all VA employees through VA's email system. Additionally, the phrase "and as frequently as the Inspector General considers appropriate under extraordinary circumstances," (lines 8-10) is overly broad, as it is unclear what "extraordinary circumstances" would require OIG notification to VA employees of training opportunities that already exist in TMS and for which this bill would mandate VA's Secretary require, rather than OIG.

For the reasons stated above, VA does not support this bill.

### **H.R. 6638 Making Improvements to the Office of Accountability and Whistleblower Protection**

This bill would amend 38 U.S.C. § 323 in a way that fundamentally changes the responsibilities and tools provided to VA through the Office of Accountability and Whistleblower Protection (OAWP). VA does not support this bill because its provisions would eliminate important OAWP responsibilities and tools for whistleblowers. The bill would eliminate provisions in the statute that support VA's ability to improve accountability and to protect whistleblowers.

Two of OAWP's current statutory functions are to conduct independent investigations of allegations of whistleblower retaliation and investigate allegations of senior leader misconduct and poor performance. This bill eliminates these functions and would require OAWP to refer allegations of whistleblower retaliation to the Office of Special

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<sup>8</sup> Federal regulation 38 CFR § 1.201 (Employee's duty to report) provides:

[a]ll VA employees with knowledge or information about actual or possible violations of criminal law related to VA programs, operations, facilities, contracts, or information technology systems shall immediately report such knowledge or information to their supervisor, any management official or directly to the Office of the Inspector General.

Federal regulation 38 CFR § 1.204 (Information to be reported to the Office of Inspector General) requires:

[c]riminal matters involving felonies will also be immediately referred to the Office of Inspector general, Office of Investigations. VA management officials with information about possible criminal matters involving felonies will ensure and be responsible for prompt referrals to the OIG. Examples of felonies include but are not limited to, theft of Government property over \$1000, false claims, false statements, drug offenses, crimes involving information technology systems and serious crimes against the person, i.e., homicides, armed robbery, rape, aggravated assault and serious physical abuse of a VA patient.

Counsel (OSC). In lieu of OAWP's investigative authority, the bill would provide authority for the Secretary of Veterans Affairs to transfer funds to OSC for the purpose of addressing claims.

Two other OAWP functions are to advise the Secretary on all matters related to accountability, including whistleblower retaliation and other matters the Secretary considers similar; and to issue reports and recommendation concerning such matters. The bill would eliminate these functions.

The bill would establish a two-year pilot program under which the Assistant Secretary for OAWP would be required to offer counseling to VA whistleblowers regarding relevant laws and policies and other aspects of their disclosure. The bill would also modify the timeline for the Assistant Secretary to submit an annual report, on yearly activities, to Congress, eliminate the requirement to maintain a toll-free telephone number and require that OAWP post standard operating procedures, applicable regulations and annual reports to a public facing website.

The statute establishing OAWP was passed in 2017. However, OAWP's ability to adequately lay the groundwork for this new office and begin to execute on the tools provided by Congress was significantly hampered during the first several years of its existence, culminating in an October 24, 2019, report by VA's OIG titled "*Failures Implementing Aspects of the VA Accountability and Whistleblower Protection Act of 2017.*" The recommendations made by OIG were fulfilled by OAWP, and OIG formally closed the matter as completed on August 27, 2021. Building on these efforts, VA is just beginning to embed the tools provided by the Accountability Act, engage in continuous improvement of a function that is new across the Federal Government and begin to assess how OAWP can use the additional aspects of the statute (such as the ability to provide advice, reports and recommendations to the Secretary) to help to identify and affect cultural improvements within VA and to continue to work to protect whistleblowers. VA believes that additional time is needed to operationalize the statute, and thus to appropriately assess the effectiveness and impact of OAWP.

Moreover, this bill would remove significant whistleblower protections. By eliminating OAWP's investigative function, the bill would reduce the options for individuals who have experienced whistleblower retaliation. Under current law, individuals have the option to file a whistleblower retaliation complaint with OAWP and/or OSC. Whistleblowers have, and have always had, the right to bypass OAWP and file their complaint with OSC if they choose. VA believes that this choice is an important option for whistleblowers who claim retaliation. Further, the potential for duplication is mitigated by collaborative work between OAWP and OSC to avoid overlapping investigations, and continuous communication to identify best practices to ensure consistency and efficient use of public funds.

VA views OAWP functions as supplementing, and not supplanting, OSC functions. OSC tends to focus on relief for the whistleblower, rather than accountability for the wrongdoer. OAWP's processes are more directly targeted to address accountability as

its investigative authority is focused on the individuals responsible for the wrongdoing and enable recommendations directly to VA. OAWP's statute also requires notification to Congress regarding how VA management implements OAWP's recommendations. Therefore, OAWP's investigative focus is an important complement to OSC's mission. Both work in tandem to ensure that whistleblower rights are protected.

Moreover, as an investigative entity that handles VA matters only, OAWP can establish institutional knowledge and expertise in matters unique to VA. OSC is responsible for investigating whistleblower retaliation for all executive branch agencies with few exceptions. OAWP provides much needed support to OSC by taking on allegations of VA whistleblower retaliation.

OAWP's investigative authority is also broader than OSC's authority in that OAWP is also charged with investigating VA senior leader misconduct and poor performance. OSC's investigative authority does not extend to certain categories of senior leader misconduct, including poor performance and neglect of duty and general misconduct. Consequently, the bill dilutes the tools available to VA to monitor and embed accountability.

The bill would also require OAWP to refer all whistleblower disclosures to OSC rather than referring them to VA's Office of Medical Inspector, OIG or to VA officials for investigation. OSC does not investigate whistleblower disclosures. Rather, OSC refers disclosures back to an agency for investigation. This bill would create an inefficient whistleblower disclosure process by requiring OAWP to receive disclosures and send them to OSC, which would then refer the disclosures back to VA for investigation.

VA has not had time to assess the legal and resource implications of the proposed 2-year counseling pilot program. VA generally supports continuous review of additional resources for whistleblowers within VA, including that OAWP provides appropriate and helpful general informational resources about OAWP processes and other resources available to individuals outside of OAWP. However, VA does not support establishing a support program that counsels or advocates for individuals regarding their specific claims within OAWP. The statute establishing OAWP provided a framework for OAWP to remain independent and unbiased. OAWP's ability to function and continue to be perceived as independent and unbiased is critical to an overall VA system that protects whistleblowers. VA also supports a review of additional resources for individuals such as a targeted resource or ombudsman within the Employee Assistance Program. More time is needed, however, to assess the degree of counseling that is appropriate for individuals to receive from VA so as not to impinge on legal conflicts of interest or otherwise impugn individual rights.

For the reasons stated above, VA does not support this bill.

**Draft Bill     Faster Payments to Veterans' Survivors Act of 2022**

This unnumbered bill would amend 38 U.S.C. §§ 1917 and 1952 to allow VA to pay a contingent or alternate beneficiary the proceeds of VA insurance sooner by reducing the 2-year period for a designated beneficiary to file a claim to 1 year and reducing the 4-year period for an alternate beneficiary to file a claim to 2 years. The amendments made by this section would apply to the deaths of insured persons occurring on or after the date that is 2 years before the date of the enactment of this legislation.

The proposed legislation would require VA to maintain records in any case where a beneficiary was not paid within 1 year following the death of a Veteran insured for at least 25 years. The proposed legislation would also require VA to make changes to VA's Insurance Unclaimed Funds website, conduct additional outreach about the website and improve the processes for searching for potential beneficiaries, including ensuring a dedicated staff with primary responsibilities for searching for such beneficiaries with a goal of paying all undisbursed/unclaimed funds within 1 year of enactment of the legislation. Lastly, VA would be required to submit a report within 180 days of enactment of this legislation to provide Congress an update on implementation.

VA is supportive of the bill's efforts to encourage prompt payment of life insurance proceeds to beneficiaries. Specifically, paying beneficiaries sooner improves access and Veterans' intended outcomes. However, VA does not support the provisions in the bill related to changes in the Unclaimed Funds website and the requirement to dedicate staff to pay all unclaimed funds within 1 year of the enactment of the proposed legislation. These concerns are primarily for privacy, not wanting to collect or retain unnecessary personal data, and prevention of mandatory staffing or other costs that would commit Veterans' premium or dividend dollars, that are not appropriated.

Further, while VA supports the legislation's reduction in the time periods to pay a designated or alternate beneficiary, the legislation only applies to National Service Life Insurance (NSLI) and United States Government Life Insurance (USGLI). VA's newest program of insurance, Veterans Affairs Life Insurance (VALI), contains a different order of by-law beneficiaries who must be paid in the 2-year period after the death of the Veteran than NSLI and USGLI statutes. 38 U.S.C. § 1922B. VA believes these changes should apply to all VA programs so that all beneficiaries are able to access timely and accurate payments faster, without excessive statutory limitations.

VA recommends modifications to the legislation that would align the alternate beneficiary provisions in the following government life insurance programs, including: NSLI, USGLI and VALI (which will begin issuing coverage in 2023). These modifications would ensure the procedures for paying a contingent or alternate beneficiary are uniformly applied and consistent between government life insurance programs. More specifically, VA recommends amending 38 U.S.C. § 1922B(e) and adding the following beneficiary order of precedence to 38 U.S.C. §§ 1917 and 1952:

The insured shall at all times have the right to designate the beneficiary or beneficiaries and to change the beneficiary or beneficiaries of the policy without the consent of such beneficiary or beneficiaries.

Any amount of insurance under this subchapter in force on any Veteran on the date of the insured's death shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date of the insured's death, in the following order of precedence:

First, to the beneficiary or beneficiaries as the Veteran may have designated in writing received by the Department prior to death;

Second, if there be no such beneficiary, to the widow or widower of such Veteran;

Third, if none of the above, to the child or children of such Veteran and descendants of deceased children by representation;

Fourth, if none of the above, to the parents of such Veteran or the survivor of them;

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such Veteran;

Sixth, if none of the above, to other next of kin of such Veteran entitled under the laws of domicile of such Veteran at the time of the insured's death.

As the bill relates to beneficiary location outreach, VA has been assertive in attempting to locate and pay beneficiaries of government life insurance. When VA cannot locate a beneficiary, the agency becomes the unintended and indefinite custodians of such funds until a beneficiary can be located. For this reason, VA developed an Unclaimed Funds search tool on VA's Life Insurance website that allows third parties to inquire whether a certain individual may have once had government life insurance and whether funds are owed on the policy. VA expressly designed the search tool to comport with the requirements of the Privacy Act of 1974 (5 U.S.C. § 552a). Adding the additional search features required by this legislation to assist in locating alternate beneficiaries could impinge upon privacy rights in this statute.

VA also does not support provisions in the bill that would increase administrative expenses to provide outreach to find potential recipients of unclaimed VA life insurance payments within 1 year of enactment of the law. VA Insurance is self-funded through Veteran-paid premiums, and any additional costs would be borne by Veteran policyholders. This is especially notable because VA has a team of dedicated staff who conduct extensive search efforts to identify and locate designated beneficiaries who have not filed claims. VA Insurance reviews these accounts on a periodic basis and continues reaching out to designated beneficiaries to encourage filing a claim for government life insurance death benefits. Additionally, VA previously contracted with a commercial beneficiary locator service to assist in search efforts for difficult to find beneficiaries but found that the results did not provide significant additional information to locate and pay claimants. The search results achieved by VA employees exceeded what the private sector could find. It is unlikely that additional staff or contract services

will enable VA to pay all undisbursed funds within 1 year of enactment. In short, requiring additional expenditures on full-time equivalent (FTE) employees to locate designated beneficiaries where extensive efforts have already been undertaken and are regularly reviewed, prevents VA from using policyholder funds to improve other services to insureds.

For these reasons, VA supports reducing statutory times to pay, requests additional alignment across all insurance programs and does not support the additional request of dedicated FTEs or time requirements in order to best meet Veteran policyholder interests.

### **Draft Bill    Improving Oversight of the Veterans Community Care Providers Act**

Section 2(a) of the draft bill would require VA, not later than 90 days after the date of enactment, to carry out a plan to improve the methods by which VA identifies health care providers who are not eligible to participate in the Veterans Community Care Program (VCCP). The plan would have to include modifying VA's standard operating procedures regarding the exclusion of health care providers from participating in VCCP to require the automated, continuous matching of providers in the Provider Profile Management System (PPMS) with covered data systems using multiple unique identifiers (including taxpayer identification number, national provider identifier, Social Security number and date of birth); a fraud risk analysis regarding the exclusion of health care providers from participating in VCCP; and any other matters the Under Secretary for Health determines would improve the oversight of health care providers participating in VCCP. By not later than December 31, 2022, section 2(b) would require VA to certify to Congress that it has implemented this plan; and by not later than January 31, 2023, section 2(c) would require VA to submit to Congress a report that describes VA's progress in carrying out the plan and includes recommendations for legislative action to further improve the methods by which VA identifies health care providers that are not eligible to participate in VCCP. Section 2(d) would define the term "covered data systems" to mean the list of excluded individuals/entities (LEIE) of the Office of Inspector General of the Department of Health and Human Services, the System for Award Management (SAM) exclusions list, the monthly deactivation file of the National Plan and Provider Enumeration System (NPPES) of the Centers for Medicare & Medicaid Services (CMS) and the National Practitioner Data Bank (NPDB).

The Government Accountability Office (GAO) issued a report, "Veterans Community Care Program: Immediate Actions Needed to Ensure Health Providers Associated with Poor Quality Care Are Excluded" (GAO-21-71), recently regarding the issues identified in this bill. Although VA agrees that it needs to ensure that community providers are properly and thoroughly vetted before providing care to Veterans, VA is currently using data systems that include LEIE, SAM, NPPES and NPDB in our processes. VA's third-party administrators (TPA) utilize LEIE and NPDB as part of their credentialing process, and NPDB is subject to ongoing, continuous monitoring. PPMS incorporates automated checks for LEIE, SAM and NPPES discrepancies that automatically inactivate a provider, and VA queries NPDB when quality concerns arise. VA's TPAs processing

claims for VCCP have implemented LEIE, SAM, NPPES and NPDB data system checks. The Provider Exclusion Management Standard Operating Procedures combine all auditing requirements and include additional checks for quality; VA issued these procedures earlier this month. VA further excludes providers who are ineligible under section 108 of the VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018.

We are also concerned that the bill's requirement to include social security numbers and dates of birth could deter some providers from participating in the network; additionally, we are concerned that this would create significant logistical issues for our TPAs. We note that the Privacy Act and other relevant privacy laws impose limitations regarding the collection and use of certain information. We believe our current systems address the intent of this draft bill by excluding certain providers from VCCP and that additional requirements would severely limit VA's operational flexibility.

VA does not support this bill because it is not necessary given current efforts that satisfy the goal of this bill. We do not have a cost estimate for this bill.

#### **Draft Bill    VA Preventing Duplicate Payments Act**

Section 2(a) of the bill would require VA to establish policies and procedures for detecting and preventing duplicate billings and payments by VA of non-Department health care providers under VCCP through the comparison of a billing or payment made by VA for a medical service to a billing or payment for the same medical service by the CMS Administrator under the Medicare program or the Department of Defense (DoD) under the TRICARE program. The policies and procedures would have to include the capability to use data exchanges and the capability to access and share the claims and payment data of other programs and agencies, if permitted pursuant to data-matching agreements. VA would have 90 days from the date of enactment to establish a plan to comply with these requirements. Section 2(b) would require VA, DoD and CMS to enter into data-matching agreements under which DoD and CMS agree to share and match relevant data in DoD and CMS systems of records with VA for the purpose of implementing the policies and procedures required by subsection (a). Section 2(b)(2) would provide that 5 U.S.C. § 552a(o) would not apply to these data-matching agreements. Section 2(c) would require VA, in coordination with DoD and CMS, to establish and implement policies that clarify which department or agency is financially responsible in a situation in which an individual is eligible, or potentially eligible, for payment or reimbursement of an expense relating to a medical service under the laws administered by VA and the TRICARE program or the Medicare program. VA would also have to establish and implement policies that provide for recouping payments if duplicate payments are made for the same medical service. Section 2(d) would require VA, not later than 1 year from the date of enactment, to submit to Congress a report containing a description of VA's progress in implementing this Act, an analysis of the effects of any data-matching agreements on reducing duplicate payments and any recommendations for legislative action to eliminate duplicate billing and payment for the same medical services.

We agree the Federal Government should not pay twice for the same medical services; VA conducted preliminary research and found that VA and CMS both paid between \$45 million and \$60 million for the same care during a 12-month period, and that VA and TRICARE paid between \$3 million and \$9 million for the same care during a 15-month period. VA has been working for several years on claims matching research projects but has encountered challenges due to a lack of policy identifying which agency should pay when more than one can pay a medical claim. Due to restrictions under the Privacy Act, we have had issues sharing claims data to confirm VA research estimates and determine a path ahead. We note that this draft bill would likely require modifications to our existing contracts.

On a technical level, we believe the bill could be clearer in several areas. Most notably, we read the draft bill to direct VA to establish and implement policies clarifying which agency is financially responsible, but the draft bill would not dictate which agency is financially responsible. Given the various Departments involved and the different types of funds potentially at issue (both mandatory and discretionary accounts), we think Congress should clearly indicate which agency has responsibility by amending the draft bill. We are also concerned that the exemption under the Privacy Act requires clarification. We believe the draft bill is ambiguous as to its intended effect regarding waiver of limitations in the Privacy Act, and we recommend clarification on this point. We believe an exemption like the one available for matches performed by HHS with respect to potential fraud, waste, and abuse would be more appropriate. Further, if the drafters intended for one agency, such as VA, to recoup duplicate payments made by another agency and refund that agency, we think the bill should clearly state that as well. Currently, the draft bill would only direct VA to establish and implement policies clarifying which agency is financially responsible, but it would not direct DoD and CMS to establish similar policies and procedures. Based on discussions VA has had with DoD and CMS, we understand there may be limitations in the authorities applicable to those agencies that need to be addressed to ensure the intended outcomes of this bill are realized. To the extent DoD or CMS need additional authority to recoup duplicate payments, the legislation should address those needs as well. We believe coordination with DoD and CMS would be valuable, and we encourage the Committee to solicit their input before moving forward with the legislation. Ultimately, if the purpose of the legislation is to ensure that VA, DoD and CMS are not paying for the same service, and that to fulfill this end, the agencies need to be able to share information and recoup duplicate payments, we believe the legislation needs to be clearer in this regard. We would be happy to work with the Committee to address these issues.

VA supports the goal of the draft bill and would like to work with the Committee to address some technical concerns with the language. We are unable to provide a cost estimate at this time.

**Draft Bill     Improving VA Inclusion, Diversity, Equity and Access Act (IDEA Act)**

This bill would create a new Office of Diversity and Inclusion at VA. It would identify best practices for broadening inclusion, diversity, equity and access for the hiring and advancement of VA employees; and providing services and benefits to beneficiaries of VA programs.

VA's Office of Resolution Management Diversity and Inclusion (ORMDI) currently houses enterprise-wide IDEA programs and initiatives for Veterans and employees. This includes responses to Executive Order (EO) 14035. VA seeks greater clarity on whether this legislation is intended to require VA to perform the current activities and programs managed by ORMDI or if this legislation seeks to replace this model with a new Office of Diversity and Inclusion. We would appreciate the opportunity to discuss this bill with the Committee to understand the intent of this bill and compare that with VA's current state. VA would particularly want the bill's provisions on workforce planning in proposed section 324(e) to be consistent with EO 14035.

VA has steps underway to identify a Chief Diversity Officer to continue VA's efforts to weave IDEA into the enterprise's mission. If this bill proceeds, VA recommends adding a subsection (b)(4) to the new section 324 that state: "The Chief shall be a non-career or career appointee in the Senior Executive Service." This proposed addition would comport with other VA statutes where a permanent office is codified in law.

VA does not have sufficient information to either support or object to this bill. We are unable to provide a cost estimate at this time.

### **Draft Bill    Establishing a Centralized Database for Demographic Data and Improving Collection of Demographic Data of Beneficiaries**

This bill would direct the Secretary of Veterans Affairs to establish a centralized database for demographic data and to improve the collection of demographic data of VA beneficiaries.

The intended purpose of the data collection is not stated, and VA has concerns about respondent burden and compliance with the Paperwork Reduction Act. VA would ask that the bill not specify the use of a single central database but rather allow VA to determine implementation (including the ability to leverage existing VA systems or databases as appropriate) once the intent is clarified. Finally, VA has engaged with the Committee on multiple data collection bills and would ask that the Committee forego advancing this legislation currently to allow for that discussion to continue and for VA to advance its ongoing efforts.

For the reasons listed above, VA does not have sufficient information to either support or object to this draft bill. Additionally, VA has concerns with the draft bill as written. VA is unable to provide a cost estimate at this time.

### **Conclusion**

This concludes my statement. My colleagues and I would be happy to answer any questions you or other Members of the Subcommittees may have.