Statement for the Record

of

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on

"VA First, Veteran Second: The Biden-Harris Legacy"

before the

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Thank you to Chairwoman Kiggans, Ranking Member Ramirez, and Members of the Subcommittee for the opportunity to submit this statement on behalf of Concerned Veterans for America (CVA). CVA is a grassroots network of thousands of veterans and military families dedicated to a freer and more secure America where every person is empowered to live their American dream. Our organization elevates veterans' unique perspectives in order to deliver people-empowering policy solutions, rooted in liberty-based principles, to the issues Americans face.

CVA's History in Veterans' Health Care Reform

Concerned Veterans for America has a thirteen-year track record as a leading advocacy organization for empowering veterans to seek the care that best meets their needs. CVA helped elevate the voices of VA whistleblowers who revealed that veterans had died while waiting for care on secret wait lists during the Phoenix VA scandal of 2014. In the aftermath of Phoenix, CVA also supported early reform efforts like the Veterans Access, Choice, and Accountability Act of 2014, which created the first options for veterans to seek care outside the VA. CVA also helped secure passage of the 2017 VA Accountability and Whistleblower Protection Act to change the personnel incentives that created the Phoenix scandal to begin with.

These early efforts culminated in the VA MISSION Act of 2018, which CVA helped shape and support in Congress. The legislation which passed with overwhelming bipartisan support, incorporated many of the recommendations of CVA's 2015 Fixing Veterans' Health Care Task Force—namely by creating the Veterans Community Care Program (VCCP).[1] By consolidating existing choice programs into an easier-to-use VCCP and simplifying access standards, the MISSION Act has been a game-changer for millions of veterans' access to timely and quality care.

Over the past four years, CVA has fought for additional congressional oversight as the Department of Veterans Affairs prioritized its bureaucratic interests over the well-being of veterans it exists to serve. Veterans have suffered because the VA has not properly followed the requirements of the MISSION Act, particularly when it comes to ensuring veterans have access to community care when eligible. This status quo has hurt veterans and must change under the new administration.

VA MISSION Act Implementation Failures Under the Biden-Harris Administration

During the Biden administration, the VA effectively picked and chose which portions of the MISSION Act it would follow in an effort to drive veterans to VHA facilities rather than offer community care alternatives, regardless of veteran preferences.

Despite its clear intent to offer veterans more control over their own health care, the MISSION Act made the mistake of giving the VA bureaucracy too much discretion to gatekeep community care access—instead of following the law, the Biden administration attempted to reduce community care usage as much as possible. The 119th Congress should learn from these mistakes and remove opportunities for bureaucratic meddling in veterans' health care choices in the future.

A Freedom of Information Act (FOIA) suit conducted by the Americans for Prosperity Foundation revealed that the VA undermined the MISSION Act's community care access standards and manipulated

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[1] "Fixing Veterans Health Care: A Bipartisan Policy Task Force," *Concerned Veterans for America*, 2015. https://cv4a.org/wp-content/uploads/2016/01/Fixing-Veterans-Healthcare.pdf

wait time measurements which improperly reduced the number of veterans able to obtain community care referrals.[2]

Undermining Community Care Access Standards

As directed under the MISSION Act, the VA wrote the implementing regulations determining veterans' eligibility rules, or access standards, for community care. These access standards specify that when wait times at Veterans Health Administration (VHA) facilities exceed 20 days or a 30-minute drive from the veterans' residence for primary or mental health care, and 28 days or a 60-minute drive for specialty care, veterans are eligible for a community care referral.[3] The regulations also allow a veteran's VHA clinician to refer them to community care, regardless of wait or drive time, if he or she determines that doing so is in the veteran's best medical interest.

Over the past four years, the VA repeatedly chose to ignore these rules and even issue contradictory internal guidance. VA training documents recommended that schedulers not inform veterans of their community care eligibility unless veterans directly asked for it.[4] On top of this, VA scheduling scripts instructed employees to actively try to dissuade veterans from choosing community care instead of VHA facilities.[5] Veterans who knew about and wanted community care nevertheless faced a variety of obstacles for access.

VA training documents obtained via FOIA revealed that officials added an an additional approval layer for community care requests. Despite appearing nowhere in the MISSION Act or its implementing regulations, the VA created a new standard for determining whether a veteran's community care request was "clinically appropriate," which in practice functioned as an additional opportunity to improperly deny referrals despite no legal basis for the VA to do so.[6]

What's more, the VA allowed its administrators to overturn clinicians' assessment of a veteran's "best medical interest" for community care referrals.[7] VA internal guidance even created carveouts where wait time access standards were simply ignored for scheduling purposes without the veteran's consent.[8]

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[2] For detailed overviews of the evidence obtained via FOIA, see: "Records Confirm VA's Use of Inaccurate Wait Time Numbers," October 21, 2021, Americans for Prosperity Foundation, https://americansforprosperity.org/blog/records-confirm-va-inaccurate-wait-time-numbers/, and "More Evidence the VA is Improperly Delaying or Denying Community Care to Eligible Veterans," January 28, 2022, Americans for Prosperity Foundation, https://americansforprosperity.org/blog/va-denying-delaying-care/

[3] CFR § 17.4040

[4] "Unless the patient requests to review their other eligibility, no additional [community care] eligibility is required to be reviewed other than wait time." See: "Standard MISSION Act Guidance: Patient Eligibility and Scheduling Reference Sheet," *Department of Veterans Affairs*, October 28, 2020, pg. 2. https://americansforprosperity.org/wp-content/uploads/2021/09/03-Mission-Act-Guidance-Oct.-2020.pdf

[5] "Referral Coordination Initiative Implementation Guidebook," Veterans Health Administration, *Department of Veterans Affairs*, March 10, 2021. https://americansforprosperity.org/wp-content/uploads/2021/09/Referral-Coordination-Initiative-Guidebook.pdf#page=62

[6] VA training flowcharts obtained via FOIA: https://americansforprosperity.org/wp-content/uploads/2022/01/21-06268-F_Responsive_Records_1-Part-1.pdf#page=347

[7] Jill Castellano, "The Mission Act is supposed to help US veterans get health care outside the VA. For some, it's not working." *USA Today*, November 1, 2021. https://www.usatoday.com/in-depth/news/investigations/2021/11/01/mission-act-aid-veterans-healthcare-va-isnt-letting-it/8561618002/

[8] For example, the VA's internal community guidebook, obtained via FOIA, included directives such as "For Veterans with a Return to Clinic order with CID greater than 20/28 days, the wait time standard is considered waived." This guidance is in direct contravention to MISSION Act eligibility access standards, under which only a veteran can waive community care wait time standards. "Office of Community Care Field Guidebook," Veterans Health Administration, *Department of Veterans Affairs*, August 21, 2021. https://americansforprosperity.org/wp-content/uploads/2022/01/21-06268-F_Responsive_Records_1-Part-1.pdf#page=198

In October 2021, the VA announced it was shutting down its Office of Community Care and the VA MISSION Act website, which offered information about community care eligibility (missionact.va.gov).[9] This decision damaged efforts to educate veterans on their community care options while the MISSION Act was still relatively new. The Concerned Veterans for America Foundation ultimately took it upon itself to recreate the archived website (under the URL vamissionact.com) to preserve this clearinghouse for community care information.

The VA's core mission is caring for veterans. The agency should aid veterans in accessing whatever care veterans feel best meets their individual needs, whether inside or outside of the VA. Instead, over the past four years, the agency has focused on protecting its narrow bureaucratic interests by obstructing the treatment options those who have served our country.

Wait Time Manipulation

One of the VA's more alarming efforts to undermine the MISSION Act has been its widespread use of improper wait time measurements in direct violation of its own regulations. The MISSION Act's access standards, listed under CFR § 17.4040, clearly state that wait times for the purposes of community care eligibility determinations are to be calculated from the veteran's "date of request" for an appointment to the date the veteran is able to receive treatment.

FOIA evidence confirmed that, in contravention of MISSION Act implementing regulations, the VA used obsolete "patient indicated date" (PID) wait time criteria—a measurement dating from the earlier 2014 Choice Act.[10] In practice, PID measurements were usually set by a scheduler sometime after the veterans' initial appointment request and could dramatically reduce the appearance of wait times for reporting and community care eligibility purposes. This broken wait time system—eerily reminiscent of the conditions that created the Phoenix VA scandal—was criticized by the Government Accountability Office for being too subjective and prone to manipulation.[11]

Case studies from Arizona, Montana, Kansas, Tennessee, and Illinois FOIA data reveal that improper PID wait time measurements excluded large portions of veterans who were legally eligible for community care under the MISSION Act's "date of request" framework.[12]

A Leadership Culture Hostile to Community Care

All of these MISSION Act implementation failures are easier to understand given the anti-community care tone regularly set by senior VA leadership throughout the Biden administration.

In a June 2022 hearing before the Senate Veterans' Affairs Committee, former VA Secretary Denis McDonough suggested that the increasing popularity of community care was potential grounds to tighten

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[9] "VA embarks on process to design new model to deliver seamless integrated care," *Department of Veterans Affairs*, October 5, 2021. https://news.va.gov/press-room/press-statement-va-embarks-on-process-to-design-new-model-to-deliver-seamless-integrated-care/

[10] See examples of VA training materials using PID wait time measurements in: ""More Evidence the VA is Improperly Delaying or Denying Community Care to Eligible Veterans," January 28, 2022, Americans for Prosperity Foundation, https://americansforprosperity.org/blog/va-denying-delaying-care/

[11] Comptroller General Gene Dodaro to Secretary Denis McDonough, *U.S. Government Accountability Office*, May 10, 2021. https://www.gao.gov/assets/720/714332.pdf

[12] For more information on how PID wait time calculations have restricted community care eligibility, see: "Delayed and Denied Care: Transparency and Oversight Needed for VA Wait Times," *Concerned Veterans for America*, February 2022. https://cv4a.org/wp-content/uploads/2022/02/22_298900_VAPolicyBriefingHandout.pdf

access to further restrict eligibility.[13]

In an August 2023 town hall, then-Under Secretary for Health, Dr. Shareef Elnahal, told VA staff that they needed to drive more veterans to seek treatment at the VHA, encouraging them to "press the easy button less" with community care referrals, instead offering every VA option first before allowing veterans to seek an alternative provider.[14]

The VA "Red Team" Report Targeting Community Care:
The VHA commissioned a "Red Team" report, released in March 2024, which identified the growing popularity of the Veterans Community Care Program as a threat to be countered.[15] Citing rising community care costs, the Red Team report was an effort to further operationalize Secretary McDonough's misgivings about the VCCP.

The Red Team recommended a messaging campaign to convince veterans that VA services are superior, despite survey data in the VA's FY 2024 budget request indicating higher veteran satisfaction in the community care network than at VA hospitals.[16] The report also suggested including telehealth availability in wait and drive time calculations to be able to claim shorter VHA wait times and remove more veterans from community care eligibility.

The Red Team also argued for restricting community care access for certain care specialties it considered greater cost drivers. These specialties included emergency care, mental health, cardiology, and oncology.[17] Routing a veteran in need of an ER visit, a cancer screening, or access to a mental health professional to a VHA facility, regardless of wait time or distance, is a clear example of putting the VA first and veterans' urgent health care needs last.

Finally, the Red Team recommended "repatriating" veterans from community care providers to VHA facilities.[18] This practice would have plainly put VA bureaucratic interests over veterans' stated health care preferences while causing harmful disruptions to veterans' continuity of care.

In practice, the Red Team's recommendations directly translated into performance incentives for Veterans Integrated Service Network (VISN) Directors to reduce community care usage. For example, the Referral Coordination Initiative Plan for VISN 16 (covering parts of Mississippi, Louisiana, Arkansas, Texas,

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[13] Patricia Kime, "VA Weighs Limiting Access to Outside Doctors to Curb Rising Costs," *Military.com*, June 15, 2022. https://www.military.com/daily-news/2022/06/15/va-weighs-limiting-access-outside-doctors-curb-rising-costs.html

[14] "Veterans Affairs Under Secretary for Health: Video," *Empower Oversight*, January 18, 2024 https://empowr.us/veterans-affairs-under-secretary-for-health-video/; See also: Tristan Leavvitt to Secretary Denis McDonough, *Empower Oversight*, January 18, 2024. https://empowr.us/wp-content/uploads/2024/01/2024-01-18-TL-to-VA-community-care_Redacted.pdf

[15] Kenneth Kizer, et. al., "The Urgent Need to Address VHA Community Care Spending and Access Strategies," "Red Team" Executive Roundtable Report, March 2024. https://empowr.us/wp-content/uploads/2024/04/VA-Red-Team-Executive-Community-Care-Roundtable-Report-post.pdf

[16] This data was not available in the VA's FY 2025 budget request. See: "FY 2024 Budget Submission: Supplemental Information and Appendices," *U.S. Department of Veterans Affairs*, pg. 20. https://www.va.gov/budget/docs/summary/fy2024-va-budget-volume-i-supplemental-information-and-appendices.pdf

[17] Kizer, et. al., "Red Team" Executive Roundtable Report, March 2024. https://empowr.us/wp-content/uploads/2024/04/VA-Red-Team-Executive-Community-Care-Roundtable-Report-post.pdf, pg. 10-11.

[18] Ibid. pg. 14-16.

Oklahoma, Missouri, Alabama, and Florida) specifically identified a "decrease in [community care] referrals" and an "increase in direct care consults" as key performance indicators.[19]

VA officials also falsely presented the Red Team's report as impartial and separate from the VA. Secretary McDonough insisted to Senator Cassidy before the Senate Veterans Affairs Committee that the Red Team report was an "independent look," a characterization repeated by opponents of community care in the press.[20] FOIA records suggest otherwise.

Documents obtained by the Americans for Prosperity Foundation reveal that VA employees drafted and edited the Red Team report, despite no indications of this in the publication itself. Before the report was published, VHA Chief of Staff Ryung Suh indicated that the VHA planned to use the report's recommendation "as an opening step for a broader strategy to include an Interagency Task Force to look deeper at the issues raised in the report" as well.[21] These records suggests that the Red Team process was designed to support the Biden-Harris white house's goal of reducing community care usage rather than providing a truly independent assessment.

Focus on Community Care Took Focus Off Larger Cost Drivers

The Red Team's cost concerns about community care are unfounded. Though the VA's FY 2025 budget request indicates that 40% of veterans' care was handled through community care in 2023, these costs only accounted for 24% of the VHA discretionary medical care budget, suggesting that community care is disproportionately cheaper per patient than VHA care.[22]

In emails about the Red Team report obtained via FOIA, the VA even acknowledges that community care use only accounted for 15% of the VHA growing expenses between FY 2019 and 2023.[23] In contrast, 74% of VHA's spending increases were due to the cost of VHA care and staffing expenses.[24]

Lessons for the 119th Congress:

The past four years of VA mismanagement has revealed that congressional oversight is only the start of compelling a VA bureaucracy intent on limiting veterans' access to health care options to fulfill its true mission.

Ultimately, Congress needs to take greater responsibility for writing clearer, more specific statutes, less open to violation through malicious agency interpretation. Congress' role is even more important considering the U.S. Supreme Court's decision last year in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), which overruled the 40-year-old *Chevron* deference regime. The VA—like any other

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[19] Darin Selnick, Testimony before the House Committee on Veterans' Affairs, Subcommittee on Health, December 17, 2024.

[20] See: Suzanne Gordon and Steve Early, "Is Denis McDonough a Slow Reader?" *The American Prospect*, May 14, 2024. https://prospect.org/health/2024-05-14-is-denis-mcdonough-slow-reader-veterans-affairs/

[21] Kevin Schmidt, "VA's Claim of an 'Independent' Red Team Report Falls Apart Under Scrutiny," *Americans for Prosperity Foundation*, November 25, 2024. https://americansforprosperityfoundation.org/vas-claim-of-an-independent-red-team-report-falls-apart-under-scrutiny/

[22] Community providers delivered for 40% of care to VA enrollees, as measured in Global Relative Value Units, see: "Table: Global RVUs for VA and Non-VA Facilities," FY 2025 Budget Submission: Volume I, Supplemental Information and Appendices, *Department of Veterans Affairs*, pg 43. For the share of community care outlays within overall VHA discretionary medical care outlays, see "Table: Medical Care Appropriations by Account Category, Recurring Expenses Transformational Fund, and Medical Care Collections." FY 2025 Budget Submission: Volume II, Medical Programs, *Department of Veterans Affairs*, pg. 29. https://www.va.gov/opa/docs/remediation-required/management/fy2025-va-budget-volume-ii.pdf

[23] Kenneth Kizer to Hillar Peabody, et. al. April 9, 2024, obtained via Freedom of Information Act by the Americans for Prosperity Foundation. See: https://americansforprosperityfoundation.org/wp-content/uploads/2024/10/24-14214-F.pdf Pg. 3.

[24] Ibid.

agency—can no longer expect reflexive judicial deference to its understanding of how VHA activities should be carried out. Courts—and, by extension, officials within the VA tasked with the adjudication of veterans' claims—will instead need to focus on statutory text.

In the immediate term, the end of *Chevron* will likely mean more cautious rulemaking. But it could also witness a shift to the use of guidance, especially in future administrations. In either case, Congress's re-assertion of Article I authority must go hand-in-hand with robust oversight of the VA's regulatory and sub-regulatory actions.

There are several concrete steps that Congress could take in this respect.

First, Congress should quickly act to codify existing community care access standards. Doing so would provide veterans with certainty of their future care options and prevent VA leadership in future administrations from attempting to tighten community care access standards without congressional approval. Congress should similarly codify VA wait time calculation criteria on a "date of request" to "date of appointment" basis, the common-sense standard used elsewhere, to remove the potential for bureaucratic manipulation.

Second, Congress should consider tightening its delegation of general rulemaking authority to the Secretary under 38 U.S.C. § 501, which previous administrations have liberally construed to the detriment of veterans.

Third, Congress should remain vigilant when the VA claims special technical expertise in the administration of congressionally created programs, as if such bureaucratic expertise can insulate agency action from legislative oversight or judicial review.

Finally, Congress could consider how it might revitalize the so-called "veteran's canon," which directs that any ambiguity in the law—whether statutory or regulatory—is to be resolved in favor of veteran beneficiaries. By regulating in line with this canon, the VA could simplify its bureaucracy, especially in complicated claims adjudications, and foster a regulatory apparatus that prioritizes veterans and advances their interests.

The Veterans' ACCESS Act

Fortunately, H.R. 740, the recently introduced Veterans' ACCESS Act of 2025, sponsored by House Veterans Affairs Committee Chairman Mike Bost, would address many of these deficiencies.[25] The bill would codify community care access standards, require the VA to notify veterans of their eligibility for the program, and mandate wait time calculation from the veteran's "date of request." The legislation also creates a pilot program allowing veterans to seek mental health care and substance use treatment, for which timely access is urgent, in the community without VA pre-approval.

Full Choice: The Veterans Health Care Freedom Act

The Veteran ACCESS Act's pilot program points toward a deeper lesson Congress should learn from the past four years of VA failures—the need for "full choice." The best way to remove opportunities for the

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[25] "Veterans' ACCESS Act of 2025," Representative Mike Bost, *House Committee on Veterans Affairs*, February 2025. https://veterans.house.gov/uploadedfiles/veterans_access_act_of_2025.pdf

VA administrative meddling that violates the intent of Congress is to end the VHA's role as a gatekeeper for whether a veteran can choose to go to the VA or a community care provider to begin with.

H.R. 71, the Veterans Health Care Freedom Act, sponsored by Rep. Andy Biggs, would create a full choice pilot program that becomes permanent after a three-year trial in at least four VISNs.[26] This legislation would truly put veterans first in making the health care decisions that are best for their individual circumstances.

Conclusion

When speaking about veterans' health care, General Omar Bradley, the first administrator of the VA, noted, "we are dealing with veterans, not procedures; with their problems, not ours." Honoring America's promise to its veterans requires rededication to General Bradley's mindset. Unfortunately, over the past four years, VHA leadership lost sight of the fact that driving patients to its facilities alone is not its mission. Caring for veterans and improving their health outcomes should be the sole focus of the VA, regardless of where that care takes place.

Fortunately, by reclaiming its role in legislating from agencies and holding the VA accountable for systematically skirting the law, Congress can better serve veterans. Opportunities like the Veterans' ACCESS Act and the Veterans Health Care Freedom Act offer ready-made options for ensuring the mistakes of the past four years are not repeated in serving those who served our nation.

Sincerely,

Nathan Anderson
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[26] "Blackburn, Colleagues, Introduce Veterans Health Care Freedom Act," Senator Marsha Blackburn, January 24, 2025. https://www.blackburn.senate.gov/2025/1/issues/veterans/blackburn-colleagues-introduce-veterans-health-care-freedom-act