

**STATEMENT OF
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DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON TECHNOLOGY MODERNIZATION**

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Chairman Mrvan, Ranking Member Rosendale and Members of the Committee, thank you for inviting us here today to present our views on several bills that would impact both the Department of Veterans Affairs (VA) and Veterans as they relate to VA's information technology (IT) infrastructure, including the Electronic Health Record (EHR); cyber risk awareness; and Veteran demographic data collection. Joining me today is Mr. Kshemendra Paul, Chief Data Officer and Executive Director, Office of Data Governance and Analytics, Office of Enterprise Integration.

H.R. 2250: Department of Veterans Affairs Information Technology Reform Act of 2021

H.R. 2250, Department of Veterans Affairs Information Technology Reform Act of 2021, would amend title 38, United States Code, to improve the management of IT projects and investments of the Department through baseline and annually updated reporting on cost, schedule and performance; use of interdisciplinary project management teams for major information technology projects; formalized authority over the IT management, governance and oversight processes of VA's Financial Services Center; assessment of the suitability of migration of VA's IT investments to a cloud computing service; and production of an explanatory report on the ratings, rankings and risk categorizations used by VA in its submissions for the Office of Management and Budget's (OMB) IT dashboard.

While VA fully supports the goal of modernizing our IT programs and investments, VA cannot support this bill in its current form. VA has several concerns

with the language of the bill, most notably with the definition of a major information technology project in section 2. VA suggests a simpler method for reporting on major programs – namely, mandating these major programs be tagged in the Federal IT Dashboard and the Federal IT Acquisition Reform Act dashboard in order to leverage pre-existing resources and already established reporting requirements. VA also suggests ensuring that the terminology is in alignment with OMB Circular A-11, “Preparation, Submission, and Execution of the Budget.”

In section 8171, the definition of what constitutes a “major information technology project” is vague, insofar as there is no standardization around the word “system.” Also, it does not reflect the reality of IT investments as defined by OMB. To that end, VA recommends changing the terms “information technology project” and “major information technology project” to “information technology program” and “major information technology investment.” Furthermore, the bill is unclear about what constitutes “product costs” and “product acquisition and implementation costs.” VA recommends that additional definitions be added to define the scope of costs (e.g., contract cost, direct vs. indirect costs, fiscal year vs. life cycle, etc.).

Additionally, the cost thresholds defined in section 8171(4)(B)(ii) and (iii) are too low given modern-day IT expenditures, the scale of VA’s IT investments and the supported user base. VA recommends changing the criteria to be in line with OMB reporting criteria for “major IT investments,” defined in Circular A-130 (see <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A130/a130revised.pdf>)).

In section 8172(d)(1)(A), regarding the proposed mandate to have a certified project manager assigned to each IT project, VA notes that Federal Acquisition Certification-Program and Project Manager (FAC-P/PM) Level III certification is not in section 1701a, which is cited by the bill for project manager certification. VA recommends an adjustment to the language to include FAC-P/PM as a valid project manager certification.

In section 8172, VA recommends adding a new subparagraph (e) with the following language in order to solidify the Chief Information Officer's (CIO) role in the establishment of the VA Office of Information and Technology (OIT) budget requirements and approval process under a transparent governance framework as follows:

VA Chief Information Officer (CIO) Role on IT Governance Boards.
The Secretary shall ensure that the CIO shall be a member of any investment or related board of the agency with purview over IT, or any board responsible for setting agency-wide IT standards. The Secretary shall also direct the CIO to chair any such board.

Section 8173 does not specify if the mandated CIO approval of IT projects at the Financial Services Center (FSC) will be applied to projects already in progress, or only to projects begun after the enactment of this legislation. This could become an issue if VA is to keep track of life cycle costs retroactively for IT systems, as discussed elsewhere in the bill. In addition, it is unclear if this section would transfer the management of current projects at the FSC from other program offices such as VA's Office of Management to OIT.

VA welcomes further discussion of H.R. 2250 and would be happy to work with staff on technical issues and concerns in order to further advance our ongoing efforts to modernize the management of our IT investments.

H.R. 2326 Veterans Cyber Risk Awareness Act

H.R. 2326, Veterans Cyber Risk Awareness Act of 2021, directs the VA Secretary, not later than 90-days following enactment, through the Office of Public and Intergovernmental Affairs, to develop and conduct a communications and outreach campaign to educate Veterans about cyber risks and security. In carrying out this

campaign, the Secretary is also directed to: (i) coordinate with other entities (including Federal entities and social media companies) that educate the public about cyber risks; (ii) promote and disseminate related best practices and educational materials; (iii) establish a publicly accessible website containing the cyber campaign information; and (iv) provide a progress report on the campaign within 60 days of bill enactment. The Secretary is also directed to enter into an agreement with a federally-funded research and development corporation to perform a study that assesses: (i) the vulnerability of Veterans to cyber risks; (ii) the availability and efficacy of resources (including Federal resources) to assist Veterans in combatting cyber risks; and (iii) the efficacy of the cyber campaign. The Secretary would also be required to submit a report within 1 year on the results of this study, to include the report's recommendations to the Secretary on how to reduce cyber risks to Veterans.

VA supports the intent of this legislation but has concerns with H.R. 2326 and does not support the legislation in its current form. VA is not positioned to deliver effective security awareness marketing to all Veterans, while other Federal agencies already have specific mission taskings related to cybersecurity/disinformation awareness and prevention. The Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (DHS/CISA), leads the Nation's strategic and unified work to strengthen the security, resilience and workforce of the cyber ecosystem to protect critical services and individuals from cyber risks.

H.R. 2326 would lead to VA operating tangential to CISA's framework for establishing U.S. citizens' and Veterans' awareness of cybersecurity risks and best practices. Because H.R. 2326 would result in VA performing functions redundant to DHS' responsibilities and authorities, VA believes the intent of the bill could best be met in coordination with CISA in delivering their messaging about cyber security risks to Veterans.

H.R. 4591 VA Electronic Health Record Transparency Act of 2021

H.R 4591, VA Electronic Health Record Transparency Act of 2021, would require VA to provide a report to the Committees on Veterans' Affairs of the Senate and House of Representatives 90-days after enactment, and every 90-days thereafter, until 180-days after the Electronic Health Record Modernization (EHRM) program has achieved full implementation. The reports shall contain for the period covered by the report, and for the total period from the date of enactment, all expenses, direct and indirect, of funds expended from the accounts of the Veterans Health Administration (VHA), OIT or any other program office, including amounts expended on consultants not associated with the original EHRM contract and infrastructure expenditures necessitated or expedited by EHRM that would have been obligated in the absence of EHRM.

VA supports this bill, if amended, to address several concerns. Depending on when the bill is passed, it may be infeasible for VA to respond fully to the bill's requirements within the initial 90-day reporting timeline in light of VA's planned initiation of an independent cost estimate (ICE) of the EHRM program in October 2021. The estimated duration of the ICE, which will fully define EHRM program activities and the lifecycle costs associated with those activities, is approximately 12 months. In light of that timeline and in consideration of the bill's requirements (i.e., a report of all EHRM program costs), VA may not be able to fully respond to the requirements of this legislation until the ICE is completed.

Given the nature of collecting financial data and VA's due diligence to obtain concurrence from internal stakeholders, VA also recommends amending the reporting requirement to be 30 days after the end of each quarter. This timeframe would align with VA's currently mandated reporting requirements for the EHRM program (P.L. 115-407, Veterans Benefits and Transition Act of 2021).

Lastly, VA requests clarification of the requirements for reporting "direct and indirect funds" per section 2(a)(2) of the bill.

VA does not anticipate any significant costs associated with the implementation of H.R. 4591.

H.R. __ – VA Demographic Data Collection Improvement Act [Draft]

The draft bill, VA Demographic Data Collection Improvement Act, directs the VA Secretary to collect demographic data for all beneficiaries of VA services to include: (1) Legal Name; (2) Preferred Name; (3) Race; (4) Ethnicity; (5) Religion; (6) Tribal Affiliation; (7) Primary Language; (8) Preferred Communication Method; (9) Sexual Orientation; (10) Gender; (11) Preferred Pronouns; (12) Marital Status; (13) Parental Status; (14) Highest Level of Education; and (15) Income Level. It also requires that each beneficiary record of the Department be updated to include these data “regardless of with which element of the Department the record is associated or in which electronic system or database the record is stored.”

VA has been pleased with the dialogue we have already been able to have with the Committee staff on the important topic of demographic data collection. VA has already begun efforts to address more comprehensive data collection under Executive Order (EO) 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021, 86 Federal Register 7009), hereafter referred to as the Order. The Order directs VA to pursue a “comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized and adversely affected by persistent poverty and inequality. Affirmatively advancing equity, civil rights, racial justice and equal opportunity is the responsibility of the whole of our Government.”

The Order established an Interagency Working Group on Equitable Data to address collection of previously unsolicited or recorded data. The Order noted that “[m]any Federal datasets are not disaggregated by race, ethnicity, gender, disability, income, veteran status, or other key demographic variables. This lack of data has cascading effects and impedes efforts to measure and advance equity. A first step to

promoting equity in Government action is to gather the data necessary to inform that effort.”

The purpose of the VA Demographic Data Collection Improvement Act has much in common with the focus of EO 13985, as well as overlap with H.R. 5295, Every Veteran Counts Act of 2021, and H.R. 2250, Department of Veterans Affairs Information Technology Reform Act of 2021.

VA recognizes that opportunities exist to strengthen VA’s data management and collection capabilities, but VA has significant concerns with the VA Demographic Data Collection Improvement Act as written. Disaggregating demographic data is necessarily complicated and even more so when data collection and sharing occur across Federal agencies. Veterans’ and beneficiaries’ privacy is essential, and data collection or dissemination must be in compliance with existing statutory and regulatory protections. It remains unclear from the draft bill how collected data would be treated and/or stored (i.e., in VA Profile) and issues related to the Health Insurance Portability and Accountability Act of 1996, the Privacy Act and the Paperwork Reduction Act have not been sufficiently contemplated and cannot be adequately considered under the imposed time constraints. Additionally, VA must be mindful of important distinctions between VA beneficiaries and the Veteran population at large when considering demographic data collection.

VA also has concerns that the 180-day timeline is insufficient for proper implementation, anticipated costs are not currently calculable with certainty and we would likely only be able to comply with such legislation if sufficient funds were allocated.

VA already actively addresses enhanced data collection. Earlier this year, VA published a VA Data Strategy with a prime focus on advancing enterprise data maturity around the following five goals: stewardship, analytics, technology, workforce and

governance and maintaining line of sight to mission and business impact via a family of priority objectives.

In addition, VA is redoubling its focus on data sharing with other agencies to better serve Veterans including the Departments of Defense (DoD), Health and Human Services and Commerce. In the coming months, we expect to publish a joint VA and DoD Data and Analytics Strategy and to elevate joint data governance as an enterprise concern under our Joint Executive Committee. Our goal is to share data across the Veteran's journey and ensure we are managing and using data to deliver the best possible outcomes, experience and lifetime impact, individually and as a population. We also need to ensure that we are cost effective and evidence based with our use of the resources entrusted to us by Congress and the Administration.

With these considerations in mind, VA would welcome continued collaboration with the Committee to provide further technical assistance on this and related bills in order to arrive at a unified and workable approach towards maturing VA enterprise data management and collection. We would ask that the Committee forego advancing this legislation to allow for further discussion; continuation of VA's ongoing efforts to enhance data collection; and conformity on the strengthening of VA's data management and collection capabilities within existing statutory and regulatory provisions.

Conclusion

This concludes my statement. We would be happy to answer any questions you or other Members of the Committee may have.