Dissenting Views

The Minority offers the following dissenting views for H.R. 5674, VA Maintaining Internal Systems and Strengthening Outside Networks (MISSION) Act of 2018:

This Committee, along with our Senate counterparts, have spent the better part of this Congress outlining how to consolidate the Department of Veterans Affairs' (VA) seven community care programs, all with different eligibility criteria and payment rates, into a single, consolidated, easy to use and administer program. The policy outlined in H.R. 5674 is the result of that hard work. While the Minority largely agrees with said policy, we do have concerns.

Overall, the Minority is pleased that moving forward all community care will be funded using discretionary dollars. However, we are concerned the coming fiscal cliff could catastrophically jeopardize VA's ability to continue providing care and services to our nation's veterans.

Ranking Member Walz offered an amendment that would consider the authorization of appropriations in H.R. 5674 as a change in the concepts and definitions in section 251(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. §901(b)(1)). This Change in Concepts and Definitions, opposed by the Majority, is vital to ensuring the mandatory costs in H.R. 5674 that are shifted to discretionary costs will be covered with an adjustment to discretionary appropriations levels that are specified for those authorizations of appropriations. Without this language covering the costs within the current caps established by the Bipartisan Budget Act (P.L. 115-123) will be difficult if not impossible. Without the inclusion of this language this bill is setting up a situation where the cost of the Community Care program will exhaust its funds in the middle of FY 2019 and force VA to cannibalize itself to meet the needs of this program.

President Trump's VA budget already proposed spending half of the $4 billion increase in VA's budget caps under the Bipartisan Budget Act deal on community care instead of VA's infrastructure—a violation of the deal. The $4 billion cap increase for VA under the Bipartisan Budget Act deal was for addressing VA's significant infrastructure needs. Without a change in concepts and definitions, this bill will renege on that deal as VA would be forced to find the funds under the caps (to prevent triggering across the board cuts under sequestration) to pay for community care.

Passing this bill without the change in the concepts and definitions would amount to an unfunded mandate that would force cuts to VA programs, including medical services provided by VA providers, VA research, and maintenance and construction for VA medical facilities. The significant costs associated with sending veterans to the private sector for care under this

program could also require significant cuts to other non-defense discretionary programs such as veterans homelessness programs like HUD-VASH, veteran treatment courts, and veteran job training and employment assistance programs administered by other federal agencies. Without the change in concepts and definitions language, veterans and their families would be affected by these cuts, while more and more health care is administered by private providers.

Furthermore, given the budgetary concerns outlined above and the substantial preliminary score that accompanied HR 5674, nearly $51 billion over five years, the minority is concerned that certain provisions in this bill will become unfunded mandates giving veterans a false promise. In some instances, these veterans have been waiting for nearly a decade to receive parity in services. It would be unconscionable to not deliver on those pledges following implementation of this legislation. Restricting eligibility should not be used as a pay for in the future. Time and again the Minority has opposed robbing Peter to pay Paul and in this instance the Administration would seek to rob Paul to pay Paul. That is simply unacceptable.

At the time of writing these views, VA does not have a permanent Secretary, Undersecretary for Health or a Deputy Undersecretary for Health for Community Care. The Minority is troubled the lack of permanent leadership at VA will have a detrimental effect on the Department's ability to implement such a large piece of complex legislation. Without permanent leadership in place, Congress will not have anyone to hold accountable as VA undertakes the monumental task of consolidating multiple community care programs into a single multi-billion dollar a year program funded with taxpayer money. If history at this agency has taught us anything, interim and acting officials generally do not own the issue or problem. Instead they simply seek to maintain the status quo until a successor can be named. Given the task at hand, that would be a disaster. The Minority implores the administration to name permanent leadership in these roles as quickly as possible. The task ahead is too important.

In addition, the eligibility criteria laid out in HR 5674 for the new Veterans Community Care Program are complex, arguably more so then the current Veterans Choice Program, and in some instances nuanced, which will require careful oversight by this Committee to ensure accurate interpretation as regulations are written and policies and procedures are implemented. For example, while the Committee failed to adopt an amendment by Representative Brownley at the May 8, 2018 markup that sought to explicitly indicate traffic should be considered an "environmental factor" providers and veterans should consider as they determine whether a veteran would be best placed to receive care at a VA facility or in the community, the Minority expects as VA writes regulations related to this topic that they would allow traffic to be a consideration under "environmental factor". During the markup, Chairman Roe indicated he

agreed with the premise but had been limited in his ability to support the amendment due to a preexisting deal he had with Ranking Member Walz regarding the broader legislation.

Finally, while the Commission on Care recommended a Base Realignment and Closure (BRAC)-like review was needed for VA, declaring it would, "offer a level of rigor far beyond what currently exists for repurposing and selling capital assets"[1], we are not convinced such a model is entirely appropriate in the case of VA. That being said, the Minority is not opposed to the concept of realigning VA's capital assets to right-size the agency. To the contrary. We believe that process is long overdue.

The Minority would like to express their appreciation to the Majority for working with us to remedy some of the specific concerns we had related to the Commission and its process. However, we remain concerned that Title II does not provide the Secretary enough tools and authorities on the front end of the process as he or she makes their recommendations to the Commission. For example, Minority staff had advocated for inclusion of provisions that would have provided the Secretary the authority to enter into more public-private partnerships and the ability to enter into agreements or contracts with the Secretary of Health and Human Services for mutually beneficial coordination, use or exchange of health care resources between VA and the Public Health Service which would give the Secretary additional options to consider as they drafted recommendations to the Commission.

[1] Commission on Care, page 60, June 30, 2016, "Commission on Care Final Report," https://s3.amazonaws.com/sitesusa/wp-content/uploads/sites/912/2016/07/Commission-on-Care_Final-Report_063016_FOR-WEB.pdf