



Statement of John Byrnes

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For

“Accountable or Absent?: Examining VA Leadership Under the Biden-Harris Administration”

House Veterans Affairs Committee

September 10, 2024

Thank you, Chairman Bost, Ranking Member Takano, and Members of the Committee for the opportunity to submit this statement on behalf of Concerned Veterans for America (CVA). CVA is a grassroots network of thousands of veterans, family members, and patriotic citizens across the country which advocates and defends policies to preserve freedom and prosperity for all Americans. Our organization is driven to organize and amplify the American veteran’s unique perspective to both the American people and our leaders in Washington.

CVA’s History in Veterans’ Health Care Reform

Concerned Veterans for America has been a leading advocate for reform and accountability at the Department of Veterans Affairs and for increased health care choices for veterans since 2012. CVA’s history positions our organization well to discuss the importance of robust congressional oversight of the VA and the policies that so many of our nation’s bravest rely on. As systemic failures came to light in 2014 after the Phoenix VA wait time scandal, CVA activists were on the front lines from the beginning demanding change and contributing to the passage of three major pieces of veterans’ health care legislation.

In the immediate aftermath of the Phoenix VA wait time scandal, CVA fought for the Veterans Access, Choice, and Accountability Act of 2014, which established the first iteration of a choice program for veterans to seek care outside the VA. CVA also backed the VA Accountability and Whistleblower Protection Act of 2017, which gave the VA the freedom to fire poorly performing employees while shielding whistleblowers from retaliation. While these efforts laid an early foundation to change incentives at the VA and improve outcomes for veterans, more work was needed to improve veterans’ care experiences.

CVA was a key supporter of the passage of the VA MISSION Act in 2018, which passed with overwhelming bipartisan support. This legislation incorporated many of the recommendations of the 2015 Fixing Veterans’ Health Care Task Force convened by CVA, and the 2016 Commission on Care, of which our senior advisor Darin Selnick was a



member—namely by creating the Veterans Community Care Program (VCCP). 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.

CVA's VA Accountability Priorities

1) Ensuring the full implementation of the VA MISSION Act and holding the VA accountable for failures to do so have been consistent priorities of CVA's since the legislation passed. Since the MISSION Act's passage, the VA's reluctance to honor its regulatory and statutory obligations, including through rampant wait time manipulation, has limited millions of veterans' health care choices, too often resulting in delayed and denied care.

2) Congress should work to improve VA personnel incentives by passing H.R. 4278, the Restore VA Accountability Act. This legislation would reinstate standards passed in the wake of the Phoenix scandal that the agency stopped enforcing last March, with adjustments to ensure their durability in court.

3) Congress must leverage its power of the purse in future appropriations to ensure that VA remains committed to its core mission of veterans care, is adequately transparent with the American people, and carries out the will of Congress.

Each of these priorities is discussed in further detail below:

I: VA MISSION Act Implementation Failures: Community Care at Risk

Since the VA MISSION Act's passage, the VA has chosen to effectively pick and choose what regulations and sections of the law to follow.

Instead of supporting the success of the VCCP as a treatment option that will enable veterans to get care faster and improve the VA's capacity to provide care at its own facilities, the agency has taken several actions to minimize the VCCP's use among veterans. Reports have emerged of VA administrative staff overruling doctors' assessments of patients' best medical interests and overruling community care referrals, even though these clinical referrals are listed as a source of community care eligibility in the VA MISSION Act text.¹

The VA engages in little-to-no outreach to veterans about the access standards for community care eligibility, and VA internal guidance discourages employees from offering to review veterans' eligibility for community care during appointment requests.² CVA's

¹Jill 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/>

²"Standard Mission Act Guidance: Patient Eligibility and Scheduling Sheet." Department of Veterans Affairs, October 28, 2020. <https://americansforprosperity.org/wp-content/uploads/2021/09/03-Mission-Act-Guidance-Oct-2020.pdf>



experiences with thousands of veterans across the country corroborates this guidance and reports from Congressional offices that constituents are simply not being told by the VA that community care is an option available to them.³ In 2021, the VA announced plans to shut down the Office of Community Care itself and the VA MISSION Act website.⁴

If this weren't evidence enough of the agency's hostility to community care, documents obtained through an ongoing Freedom of Information Act lawsuit filed by Americans for Prosperity Foundation (AFPF) reveal that VA internal phone scripts actually direct schedulers to attempt to dissuade veterans who ask for community care from using it.⁵

This pattern of unelected bureaucrats subverting the stated will of Congress in the VA MISSION Act demands robust oversight and accountability from lawmakers.

VA Leadership Drives a Culture of MISSION Act Non-Compliance

The VA's culture of non-compliance with and active subversion of the MISSION Act comes from the top.

In June 2022, Secretary McDonough suggested before the Senate Veterans Affairs Committee that the increasing popularity of community care among the share of VHA services was grounds for tightening access standards, due to cost concerns. This proposal was only put on hold due to vociferous opposition from lawmakers and veteran activists, but it remains a long-term threat. Secretary McDonough's decision to seek a 34% reduction in community care funding in FY 2025 from the previous year despite increased utilization betrays an ongoing opposition to the promise of the MISSION Act.⁶

This pattern extends to VHA leadership as well. In August 2023, embattled VA Secretary Shareef Elnahal—currently under scrutiny for improperly awarding \$11 million in bonuses to Senior Executives from funds meant to support PACT Act implementation—told VA staff in an employee town hall to “press the easy button less with community care.”⁷ Elnahal's comments frame community care providers as adversaries for VA staff rather than partners in delivering quality and timely veterans' health care through multiple pathways.

Finally, an internal VA “Red Team” report made public in April underscored that

³ Letter to Secretary Denis McDonough. Office of Senator Steve Daines. July 14, 2022. <https://www.daines.senate.gov/wp-content/uploads/imo/media/doc/VA-%20Community%20Care-%20FINAL%207.14.2022.pdf>

⁴ Leo Shane III, “Changes to VA's community care program raise concerns about vets' health care access.” Military Times, October 13, 2021. <https://www.militarytimes.com/veterans/2021/10/13/changes-to-vas-community-care-program-raise-concerns-about-vets-health-care-access/>

⁵ Referral Coordination Guidebook. Veterans Health Administration, March 10, 2021. Pg. 62. <https://americansforprosperity.org/wp-content/uploads/2021/09/Referral-Coordination-Initiative-Guidebook.pdf#page=62>

⁶ “FY 2025 Budget Submission: Budget in Brief,” U.S. Department of Veterans Affairs, March 2024. <https://department.va.gov/wp-content/uploads/2024/03/fy-2025-va-budget-in-brief.pdf>, pg 5.

⁷ “Letter to Secretary Denis R. McDonough re: Application of VA MISSION Act of 2018,” Empower Oversight, January 18, 2024. https://empowr.us/wp-content/uploads/2024/01/2024-01-18-TL-to-VA-community-care_Redacted.pdf



McDonough and Elnahal's comments reflect the agency's strategic planning.⁸ The Red Team report revealed the VA's explicit desire to reduce community care usage by tightening community access standards and using telehealth appointments to claim overall reductions in wait times for VA facilities. Alarming, the report recommends cutting back veterans' use of community care for services such as emergency treatment, mental health, and oncology, where access to a timely appointment is vital.⁹ The report further recommends disrupting veterans' continuity of care by driving "repatriation" back into VHA facilities, regardless of veteran preferences.¹⁰

In light of these public statements and internal documents, VA measures to undermine community care discussed below should come as no surprise.

Case Studies: Wait Time Calculations

The VA has systematically ignored the very MISSION Act implementing regulations that it developed itself in 2019. Instead, the agency adopts legally incorrect, misleading, and often obsolete measurements that artificially make veterans' wait times appear shorter than they truly are.¹¹ For years, the VA's failures to follow the standards of the VA MISSION Act in wait time calculations have come under criticism from the Government Accountability Office, the VA Inspector General, and veterans' organizations such as CVA.¹²

In May 2021, the Government Accountability Office wrote Secretary McDonough, outlining why the VA's current scheduling practices leave wait time calculations, central to determining community care eligibility, "subject to interpretation and prone to scheduler error."¹³

Documents obtained through the Americans for Prosperity Foundation's ongoing FOIA lawsuit with the VA corroborate the GAO's concerns.¹⁴ These records reveal that the VA is refusing to refer eligible veterans for community care, manipulating wait time data by continuing to use outdated scheduling guidance to calculate wait times based on the "patient-indicated date" (PID) metric rather than a veteran's actual date of request for an

⁸ "Empower Oversight Obtains VA Red Team Report on Community Care," Empower Oversight, April 30, 2024. <https://empowr.us/empower-oversight-obtains-va-red-team-report-on-community-care/>

⁹ Kenneth W. Kizer, et. al., "The Urgent Need to Address VHA Community Care Spending and Access Strategies: 'Red Team' Executive Roundtable Report," Department of Veterans Affairs, April 30, 2024. <https://empowr.us/wp-content/uploads/2024/04/VA-Red-Team-Executive-Community-Care-Roundtable-Report-post.pdf>, pg. 10-11.

¹⁰ Ibid, pg. 13.

¹¹ For a detailed explanation of the VA's wait-time calculation errors, see: "Delayed and Denied Care: Transparency and Oversight Needed for VA Wait Times." Concerned Veterans for America. February 22, 2022. https://cv4a.org/wp-content/uploads/2022/02/22_298900_VAPolicyBriefingHandout.pdf

¹² "Veterans Health Administration: Concerns with Consistency and Transparency in the Calculation and Disclosure of Patient Wait Time Data," Department of Veterans Affairs Office of Inspector General, April 7, 2022. <https://www.va.gov/oig/pubs/VAOIG-21-02761-125.pdf>

¹³ "Priority Open Recommendations: Department of Veterans Affairs." Government Accountability Office to Secretary Denis McDonough. May 10, 2021. <https://www.gao.gov/assets/720/714332.pdf>

¹⁴ Records confirm VA's use of inaccurate wait time numbers." Americans for Prosperity Foundation, October 1, 2021. <https://americansforprosperity.org/records-confirm-va-inaccurate-wait-time-numbers/>



appointment as directed in the VA's own guidance for the VCCP issued after the MISSION Act.¹⁵ Through a variety of means, such as beginning wait time clocks after VA schedulers input requests into their scheduling system or restarting wait time measurements after existing appointments are canceled or rescheduled, faulty VA measurements make wait times appear artificially shorter than they truly are.

Wait time manipulation has concrete effects on how many veterans can access community care. For example, AFPP's FOIA revealed that the Southern Arizona VA's outdated PID wait time calculations left only 4.2 percent of veterans' primary care appointments eligible for community care providers, compared to the over 21 percent that would qualify if they used the veterans' "date of request" as the MISSION Act requires.¹⁶ It's a similar story for specialty care, where the Southern Arizona VA's PID wait time calculations left only 9.3 percent of veterans' appointments eligible for community care, compared to the 26.7 percent that should qualify.¹⁷

II: Empowering VA Leaders to Restore Personnel Accountability

In the face of widespread VA personnel and policy failures, Congress needs to change incentives inside the VA. H.R. 4278, the Restore Department of Veterans Affairs Accountability Act, brought by Chairman Bost, would carry out the will of Congress as expressed in the overwhelmingly supported VA Accountability and Whistleblower Protection Act of 2017. CVA supported this 2017 legislation, along with a majority of legacy Veteran Service Organizations.

When fully in place, this law gave the VA Secretary the authority to discipline, suspend, demote, or remove employees that were poorly performing or had committed misconduct, expediting procedures to do so and requiring a greater burden of proof for these decisions to be overturned. Unfortunately, as discussed, litigation and administrative rulings rendered the 2017 accountability hollow.

In any organization, personnel incentives can make or break a culture. Protecting those who do not take their responsibility to our nation's veterans seriously demoralizes quality VA employees who want to help those who have served to the best of their abilities. On its staff, CVA has multiple former VA employees who were passionate about caring for veterans at the VA. They became disillusioned with an organizational culture that tolerated failure and too often did not reward or even discouraged employees from going above and beyond to provide quality care.¹⁸

¹⁵ "Veterans Community Care Program" Department of Veterans Affairs, Code of Federal Regulations, title 38 (2019): 26278. <https://www.federalregister.gov/documents/2019/06/05/2019-11575/veterans-community-care-program>

¹⁶ "Records confirm VA's use of inaccurate wait time numbers." AFPP.

¹⁷ Ibid.

¹⁸ "My VA Story: Former VA Employee Sheds Light On A Dream Job Turned Into A Nightmare," *Concerned Veterans for America*, April 10, 2023. <https://cv4a.org/the-overwatch/my-va-story-former-va-employee-sheds-light-on-a-dream-job-turned-nightmare/>



The consequences of the status quo were clear in recent years at the Loma Linda VA Medical Center (VAMC) in California. At this facility, a supervisor accused of creating a toxic working environment remains employed despite three internal investigations in as many years, 36 witnesses, and 4,000 pages of evidence.¹⁹ Two of the three investigations have recommended this individual's removal, yet inexplicably, this person remains entrusted to supervise those caring for our nation's veterans. The Loma Linda VAMC leadership has been unable to terminate this supervisor due to existing legal constraints, leaving employees with the choice to either tolerate a toxic environment or leave.

The Restore VA Accountability Act would revive the Congressional intent that actions taken against the 2017 VA Accountability law denuded. H.R. 4278 would provide a comprehensive follow-on. The bill would empower the VA Secretary with the disciplinary tools necessary to have on hand to maintain a constructive, motivating employee culture. The legislation would combat frivolous appeals that would delay an otherwise warranted personnel decision by ensuring that those supported by substantial evidence are upheld. It would also streamline the disciplinary process by eliminating the requirement for a personnel improvement plan (PIP) prior to disciplinary action being taken. At their worst, PIPs can allow employees, like the Loma Linda supervisor discussed above, to linger when it is clear to supervisors that they are holding back their team's operations.

Most importantly, the Restore VA Accountability Act would more widely apply accountability across the VA workforce. It would allow for expedited disciplinary processes to be employed not just on Senior Executives, but on supervisors and employees as well. The bill would also require supervisors and Senior Executives to appeal decisions directly to the VA Secretary rather than through the Merit Systems Protection Board. This step would give the Secretary greater control over the leadership standards he or she seeks to ensure are modeled for the rest of the Department.

III: Employing Congress' Power of the Purse

In December 2023, national media reported that the VA had a long-standing service-level agreement in place with U.S. Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) to process medical claims for unauthorized migrants in federal custody that required specialized care.²⁰ This practice is an egregious misuse of VA administrative resources. The VA's mission is to serve veterans, not to do paperwork for ICE and CBP. Lawmakers were right to point out the absurdity of an agency so resistant to facilitate community care access to veterans helping provide similar services for an unrelated agency. Fortunately, Appropriators showed how leveraging Congress' power of the purse can force agency change.

¹⁹ "Rep. Olberholte, Chairman Bost demand answers from VA on Loma Linda employee misconduct case," *Office of Rep. Jay Olberholte*, April 13, 2023. <https://olberholte.house.gov/media/press-releases/rep-olberholte-chairman-bost-demand-answers-va-loma-linda-employee-misconduct>

²⁰ VA's role in migrant medical care draws scrutiny from advocates as border crisis intensifies," *Fox News*, December 1, 2023. <https://www.foxnews.com/politics/vas-role-migrant-medical-care-draws-scrutiny-advocates-border-crisis-intensifies>



The House's FY 2025 Military Construction, Veterans Affairs, and Related Agencies Appropriations (MilCon-VA) bill barred the VA from using any funds or staff time to process medical claims for unauthorized migrants.²¹ This approach should be a model for combatting the other abuses described above.

Empowering VA leadership to hold poorly performing staff accountable is important, but leveraging the power of the purse is the only way Congress can drive a more fundamental VA commitment to carrying out its will over the long-term. Veterans' legislation and future MilCon-VA Appropriations should require the VA to take measures like publishing accurate wait times and consistently informing veterans of their community care eligibility.

To enforce such requirements, Congress should impose automatic funding penalties on the office of the VA Secretary, including freezing performance bonuses for senior VA leaders should the agency fail to comply. When in doubt, exercising the power of the purse is the best way to align the VA's incentives with veterans.

Conclusion

The VA's failures to carry out the VA MISSION Act place access to care for millions of veterans in danger and underscore Congress' role in holding the VA more accountable. Congress should continue to demand reporting from the VA on local, regional, and national average wait times, community care outreach efforts, and tie future funding to compliance. Putting veterans at the center of their health care by maximizing the choices they have available best keeps our promise to those who have borne the battle.

Sincerely,

John Byrnes
Strategic Director
Concerned Veterans for America

²¹ "House Passes First FY25 Bill, Fully Funding VA Health Care and Bolstering National Security," House Appropriations Community, June 5, 2024. <https://appropriations.house.gov/news/press-releases/house-passes-first-fy25-bill-fully-funding-va-health-care-and-bolstering>