STATEMENT OF
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BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

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Good afternoon, Chairman Pappas, Ranking Member Bergman, and Members of the Subcommittee. Thank you for inviting us here today to present our views on several bills that would affect VA programs and services. With me today is Jessica Bonjorni, Acting Assistant Deputy Under Secretary for Health for Workforce Services, Veterans Health Administration (VHA)

We are providing views on H.R. 1133, H.R. 4949, H.R. 5245, and a draft bill on requiring a report on VA's plans to address the material weakness of the Department. Unfortunately, we are unable to provide views on H.R. 5843, but will provide them at a later date.

H.R. 1133 VA Employee Fairness Act of 2019

H.R. 1133 would repeal portions of 38 United States Code (U.S.C.) § 7422 to make matters related to direct patient care and the clinical competence, peer review, and compensation of Title 38 health care professionals (physicians, registered nurses (RN), dentists, physician assistants, et al.) subject to collective bargaining, unfair labor practice charges, and grievances. VA strongly opposes H.R. 1133, which, if enacted, could imperil VA's ability to furnish timely and high-quality care to Veterans.

Congress purposefully gave the Secretary the discretion to determine matters that should be exempt from collective bargaining under section 7422 of Title 38. In so doing, Congress implicitly acknowledged that medical and clinical management decisions should not be subject to the collective bargaining process. Currently, subsections 7422(b) and (d) grant the Secretary the authority to determine whether a matter or question concerns or arises out of professional conduct or competence, peer review, or the establishment, determination, or adjustment of Title 38 professional employee compensation and places such matters outside the realm of those subject to collective bargaining. H.R. 1133 would subject VA's actions regarding direct patient care, decisions regarding clinical competency, assessments of Title 38 professionals' clinical skills, and determinations regarding discretionary compensation for Title 38 professionals, to review by independent third-party arbitrators and other non-VA, non-clinical, labor-relations specialist third parties who lack clinical training and expertise in health care management.

Application of the collective bargaining rules and requirements in VA's labor contracts could lead to protracted negotiations and third-party proceedings with the effect being that critical changes in patient care (for example, RN staffing levels, physician on-call scheduling, temporary reassignments due to specialized skills, allegations of patient abuse, fitness-for-duty determinations, etc.) could not be implemented until after national and local bargaining has been completed. This would likely result in Veterans experiencing delays or gaps in their receipt of needed clinical care or services.

H.R. 1133 would allow VA's unions to negotiate, grieve, and arbitrate matters or questions concerning or arising out of direct patient care and clinical competence. With good reason, these matters are currently exempt from collective bargaining. If this bill is enacted, labor arbitrators, the Federal Service Impasses Panel (FSIP), and the Federal Labor Relations Authority (FLRA) would have considerable authority to impose binding decisions in matters involving clinical and patient care matters, and VA would have limited, if any, recourse. Clinical and patient care decisions should not be left to third parties who lack clinical training and have no accountability for the adverse impact their decisions may have on patient care. VA is responsible for ensuring the health and safety of its Veteran patients. VA clinicians must be able to make the clinical decisions for their patients to ensure that patient care is furnished in compliance with VA and prevailing medical practice standards.

This legislation would also adversely impact the efficacy of VA's peer-review processes, which VA uses to assess the clinical skills of its health care professionals and determine whether its patients are receiving the high standard of care they deserve. VA uses peer reviews to assess the competence of Title 38 professionals. Reviews are conducted by panels of health care professionals with comparable education, training, experience, licensure, or similar clinical privileges or scope of practice. Matters arising out of VA's peer-review process are now expressly exempted from collective bargaining under subsection 7422(b)(2). H.R. 1133 would make peer-review determinations subject to review by non-VA, non-clinical third-parties, who would assess the clinical skills and fitness for duty of VA's clinical providers and determine whether they were clinically competent in their area of practice. That clearly could pose a serious threat to our Veteran patients' welfare.

Finally, H.R. 1133 would permit VA's unions to bargain over, file unfair labor practice charges, grieve, and arbitrate regarding a subject—employee compensation—that is generally exempted from collective bargaining under Title 5. Congress granted the Secretary considerable discretion and flexibility in determining the compensation of Title 38 professionals in order to enable VA to recruit and retain the highest quality clinical providers. In fact, VA's ability to exercise its pay flexibilities with respect to market pay, performance pay, and many other recruitment or retention incentives is a vital recruitment and retention tool. VA must be able to efficiently compete, on a cost-effective basis, with the private sector and to attract and retain clinical staff to deliver health care to Veterans. If VA was obligated to negotiate over all discretionary compensation matters, decisions concerning the compensation of Title 38 professionals

would be delayed until negotiations with labor unions were completed or a binding decision from the FSIP or the FLRA was received. Negotiations and related litigation over compensation could result in unnecessary expense and delay.

In sum, VA's ability to monitor the professional conduct and competence of its clinical providers, to address matters concerning direct patient care, and to determine matters relating to its clinical professionals' compensation should be reserved for the VA professionals responsible for ensuring and delivering high-quality patient care.

We are unable to estimate the cost of H.R. 1133 for two reasons. First, if VA is required to collectively bargain over subsection 7422(b) matters and unable to reach agreements with its unions, the final decisions on these clinical, patient care, and compensation matters would ultimately rest with the FSIP and FLRA. Similarly, if subsection 7422(b) issues become grievable and arbitrable, the final decisions on these clinical, patient care, and compensation matters would rest with the arbitrators.

H.R. 4949 VA Hospitals Establishing Leadership Performance Act

This bill proposes to standardize qualification requirements and performance metrics for human resources (HR) positions in VHA.

VA does not support this bill but does support efforts to modernize and professionalize the HR function throughout the Government, including addressing the special needs of agencies that employ physicians and other clinical professionals. The Human Resources Management GS-0200 series is under Title 5 and as such, is covered by the Office of Personnel Management's (OPM) General Schedule Qualification standards. These standards are broadly written for Government-wide application and are not intended to provide detailed information about specific qualification requirements for individual positions at a particular agency. The HR occupation remains on the Government Accountability Office's high-risk list and has been identified as a skills gap. In November 2019, OPM issued staffing specialist performance elements and standards for GS-201 series HR specialists. The results and measures were created from a Government-wide perspective of what successful staffing performance looks like; however, there is flexibility to specifically tailor the measures even further to fit the needs of the various Federal agencies.

It is important to note that all Federal agencies use OPM-approved qualification standards and creating VA specific standards could negatively impact VA's ability to retain current staff, as well as to recruit HR professionals from other Federal agencies. OPM states that a description of any specialized experience requirements that an agency may deem necessary for a particular position should be included in the vacancy announcements issued by the agency. As such, rather than standardized qualification requirements across VA, individual vacancy announcements are customized to reflect the specialized experience (qualification requirements) for the particular position itself. VA already utilizes this method of applying specialized qualification requirements in all HR job announcements. Additionally, performance standards are developed on an

annual basis for each HR position in the Department. These performance standards are aligned with the specific functions and specialized HR area being performed by each HR professional.

While VA does not support the bill as written, if a decision is made to proceed with the bill, VA requests the opportunity to meet with the Committee to propose revisions to the language to address our concerns. A few examples include:

- Clearly define references to "each human resources position" to identify occupation specific series.
  - The GS-200 Human Resources Management series currently has numerous individual occupational series and title codes, of which many have varying specialized experience requirements.
- Revise references throughout the bill so as not to limit its applicability to VHA.

Should this bill be revised as suggested, we would convene a workgroup led by the Office of Human Resources and Administration and would include subject matter experts (SME) from the three VA administrations. This workgroup would meet regularly and would be similar to the SME workgroups currently working on the development of new Hybrid Title 38 qualification standards. The review and proposed revisions would potentially take less than 1 year to complete. No new full-time equivalent employees would be required. VA anticipates minimal cost to the Department if this bill is passed with suggested revisions.

H.R. 5245 SHIELD for Veterans Act

Section 2(a) of H.R. 5245, the Stopping Harm and Implementing Enhanced Lead-time for Debts for Veterans Act, or the SHIELD for Veterans Act, would establish a new section 5302B in title 38, United States Code, that would bar the Secretary from collecting all or any part of an amount owed to the United States by any individual under any program under the laws administered by the Secretary of Veterans Affairs if the amount is owed for any payment or overpayment that was caused by the amount of time taken by VA, or by any VA employee, to process information provided by or on behalf of the individual. If VA determined that it had made an overpayment to an individual, VA would have to provide notice to the individual of the overpayment and of any action VA plans to take to collect repayment for the overpayment or to reduce any benefit of the individual by reason of the overpayment by not later than 90 days before taking such action. The notice would have to include an explanation of the right of the individual to dispute the overpayment or to request a waiver of indebtedness.

As we testified before this Subcommittee last September, VA is working to address overpayments as part of a broad effort to transform VA into a world-class customer service organization and tackle issues affecting Veterans that have lingered for years. We are working closely with Congress, Veterans Service Organizations (VSO), and other stakeholders to reform delivery of care and service to our Nation's Veterans and their loved ones. We are also focusing efforts on and making significant

progress in reducing delinquent claims and improving our claims processing capabilities, and we offer multiple options for Veterans and others to address overpayments, including a Website and a toll-free call number, and can grant waivers, compromises, or other remedies to relieve the burden of repayment that some Veterans or family members may face when VA has made an error regarding their benefits.

However, as written, the legislation could be interpreted to institute sweeping changes that would effectively require VA to allow many improper payments to remain without means of recovery. As such, we strongly oppose section 2(a). The new section 5302B would prohibit VA from collecting all or any part of an amount owed to the United States by an individual if the amount owed is for any payment or overpayment "that was caused by the amount of time taken by the Department…to process information provided by or on behalf of the individual." Grammatically and logically, it is unclear how a payment or overpayment can be "caused" by the time taken by VA to process information. Each decision by the Department except those rendered instantaneously takes time to process and arguably could be within the scope of this language. This includes financial payments to Veterans, family members, private contractors, public and private entities (including community care providers), grantees, and possibly even VA employees. We believe the intent of this legislation is to ensure that, when an incorrect payment or an overpayment is made due to the failure of VA to accurately and timely process information (such as reducing an award to reflect the fact that a Veteran's number of dependents has gone down), VA would generally be barred from recovering that payment that was due to its own negligence.

While we find this approach inconsistent with the Government's responsibility to be a good steward of public funds, we understand the motivation behind it. But this legislation is not narrowly targeted to address these errors, and as such, could effectively prohibit VA from recovering almost any inaccurate payment or overpayment, if the payment could be traced to the time taken to process the payment, either by delay or haste. In this light, this new section 5302B would run contrary to existing contracts or agreements between VA and various parties, as well as countless other provisions of law, such as the Improper Payments Elimination and Recovery Act, that Congress has enacted to establish accountability and recovery mechanisms for the purpose of ensuring that Federal taxpayer dollars are not wasted. As the legislation is drafted, we are concerned that any attempt to collect repayment or recover an overpayment subject to the proposed section 5302B(b) could be vulnerable to challenge given the ambiguity in the language of the provision.

VA has established a number of standards regarding the timely processing of different claims, but the legislation could be read to not permit even normal processing time by VA. Additionally, VA's overall benefit costs would increase if we are required to write off all debt resulting from the inability to take immediate action, increasing the burden on taxpayers. We further have concerns that the bill would impact VA's ability to perform necessary functions of claims processing, including actions designed to protect the due process rights of beneficiaries.

We are unable to produce a detailed cost estimate for this proposal due to the ambiguity of its scope. Section 2(b) would require VA, not later than May 1, 2020, and 12 months thereafter, to submit a report to Congress on the improvement of the notification and communication with individuals who receive overpayments made by VA. VA would have to submit a plan to carry out each of the following: the development and implementation, not later than January 31, 2020, of a mechanism by which Veterans enrolled in VA's health care system may view their monthly patient medical statements electronically; the development and implementation, not later than April 30, 2020, of a mechanism by which individuals eligible for benefits under the laws administered by VA may receive electronic correspondence relating to debt and overpayment information; the development and implementation, not later than October 1, 2022, of a mechanism by which individuals eligible for benefits under the laws administered by VA may access information related to VA debt electronically; the improvement and clarification, not later than March 31, 2020, and in consultation with VSOs and other relevant non-governmental organizations, of VA communications relating to overpayments and debt collection, including letters and electronic correspondence; and, the development and implementation of a mechanism, not later than October 1, 2022, by which Veterans may update their dependency information electronically. VA also would have to describe the current efforts and plans for improving the accuracy of payments to individuals entitled to benefits under the laws administered by VA, including specific data matching agreements; describe the steps to be taken to improve the identification of underpayments to such individuals and improve VA procedures and policies to ensure such individuals who are underpaid receive adequate compensation payments; provide a list of actions completed, implementation steps, and timetables for each requirement above; and include a description of any new legislative authority required to complete any such requirement.

We do not oppose this subsection, subject to appropriations and note the deadlines will need to be adjusted. The first deadline was approximately 6 weeks ago, and the next deadline is within 3 weeks of the date of this hearing.

Section 3 would amend section 5315(a)(1) of title 38, U.S.C., to state that interest and administrative costs will be charged on any amount owed to the United States for an indebtedness resulting from a person's participation in a benefits program administered by VA other than a loan, loan-guaranty, or loan insurance program, a disability compensation program, a pension program, or an educational assistance program.

VA supports section 3, which is consistent with a legislative proposal VA submitted as part of its FY 2021 budget request. There are no associated costs with this proposal.

Draft Bill Submitting to Congress a Report on VA's Plan to Address the Material Weakness of the Department

The draft bill would require VA, not later than 180 days after the date of the enactment of this Act, to submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate a report containing a description of VA's plan, including steps and related timelines, for addressing the repeated material weakness of VA and recommendations related to entity level controls, including the organizational structure of the office of the Chief Financial Officer (CFO) and the steps VA plans to take to provide sufficient authority to the CFO to carry out the requirements of section 902 of title 31, U.S.C., regarding the authority and functions of agency CFOs.

VA does not support this draft bill because VA's CFO has sufficient authority to carry out his responsibilities. The material weakness on entity-level controls is an amalgamation of three separate material weaknesses relating to Veterans' benefits liabilities, obligation management, and antiquated financial management system. The weakness was not caused by insufficiency in the existing CFO organization structure; it can be adequately addressed once the three material weaknesses are eliminated. Specifically, VA plans to improve the quality and timing of data necessary to develop the education liability model. VA continues to rely on the Chief Actuary to calculate accurately the Incurred but Not Reported number for the Office of Community Care and to identify and close-out stale obligations promptly. VA will also modernize its antiquated financial management system by implementing integrated Financial and Acquisition Management System, a new integrated financial and acquisition system for VA.

It is estimated that VA has approximately 7,000 field fiscal staff performing financial functions across the Department who are outside VA CFO's immediate office. Currently, the field fiscal staff reports to various administrations and program offices, and they are funded by their respective organizations' appropriations. Realigning the fiscal staff to VA's CFO organization would be highly disruptive and cost prohibitive. The realignment would not eliminate the entity-level controls material weakness, but instead would worsen VA's financial controls by reducing the effectiveness of field fiscal staff. In the current CFO structure, the field fiscal staff are an integral part of their respective organizations and are fully committed to supporting their directives and missions. They receive direction from field management, who understand the needs of the day-to-day operations. This is in contrast to the responsibilities of VA's CFO, who is focused on oversight and policy compliance. If the field fiscal staff were to be aligned to VA's CFO organization, their priority and focus would consequently shift away from supporting the field mission. If the field fiscal staff were no longer a part of their respective field organizations, they would be excluded from critical decision making. More inefficiencies would result by having to create infrastructure in order to support a separate reporting chain. In short, the proposed realignment would hinder VA's ability to deliver patient care and benefits.

VA's CFO organization, the Office of Management, established the VA CFO Council in March 2018. In this forum, the council members regularly communicate on audit issues and collaborate on corrective actions for VA's material weaknesses. The council ensures alignment of goals and strategies regarding financial management issues.

Mr. Chairman, this concludes my statement. My colleague and I would be happy to answer any questions you or other Members of the Subcommittee may have.