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THE STATE OF THE VA: A PROGRESS REPORT ON IMPLEMENTING 2017 VA REFORM LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

JANUARY 17, 2018

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THE STATE OF THE VA: A PROGRESS REPORT ON IMPLEMENTING 2017 VA REFORM LEGISLATION

WEDNESDAY, JANUARY 17, 2018

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2 p.m., in room 418, Russell Senate Office Building, Hon. Johnny Isakson, Chairman of the Committee, presiding.

Present: Senators Isakson, Moran, Boozman, Heller, Cassidy, Rounds, Tillis, Sullivan, Tester, Murray, Brown, Blumenthal, Hirono, and Manchin.

OPENING STATEMENT OF HON. JOHNNY ISAKSON, CHAIRMAN, U.S. SENATOR FROM GEORGIA

Chairman ISAKSON. I call this meeting of the Senate Veterans' Affairs Committee to order. I appreciate Secretary Shulkin being here today and all his hard work.

The Ranking Member is on his way. I am going to start with my brief opening statement, and by the time that is over hopefully he will be here for his brief opening statement, upon which we will immediately go to Secretary Shulkin and then to the Members of the Committee for questions and answers.

Let me say, at the outset, that this meeting is not about what has happened in the past. It is about what is happening right now, to correct some of the things that have happened in the past. This is an accountability hearing. I have told the Secretary that we want to really take the legislation that we passed last year on accountability, appeals, all the things that we passed, and give the VA the tools to address the significant problems confronting the veterans of America, the VSOs of America, and this Committee. We want to begin moving away from the problems of the past and toward the solutions of the future, in particular on: appeals; accountability; the GI Bill; all those things that are important to the veterans and their families; plus the leadership of the VA, as well.

I also want to thank Secretary Shulkin. I have always been complimentary of him. A lot of people say, "You are too nice to him." I am not too nice to him, as he has been good to the veterans and I am going to be good to him. He has been a forthright leader that the administration is lucky to have, I believe the veterans are lucky to have, and I feel like this Committee is lucky to have. Now, we are at the time where there are no excuses. There are no ex-

cuses for why we do not correct the problems we have had with hiring. There are no excuses for why we do not correct the problems we have had with information technology. There is no excuse for not correcting the problems we have with veterans appeals, and other areas.

So, this is all about accountability. It is all about standing forward. It is all about looking at the past and what we did and looking for the results that are to come in the future, so that we do a good job for the veterans of the United States of America.

Mr. Secretary, I am going to swear you in for the purposes of this hearing. If you will stand and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give before the Senate Committee on Veterans' Affairs will be the truth, the whole truth, and nothing but the truth, so help you God?

Secretary SHULKIN. I do.

Chairman ISAKSON. You may be seated.

Mr. Secretary, I am going to recognize you for your 5 minutes, when the Ranking Member shows.

Secretary SHULKIN. OK.

Chairman ISAKSON. Welcome.

Secretary SHULKIN. Thank you.

STATEMENT OF HON. DAVID J. SHULKIN, M.D., SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS, ACCOMPANIED BY PETER SHELBY, ASSISTANT SECRETARY FOR HUMAN RESOURCES ADMINISTRATION; CHERYL MASON, CHAIRMAN OF THE BOARD OF VETERAN APPEALS; DR. AMY FAHRENKOPF, ACTING DEPUTY UNDER SECRETARY FOR HEALTH FOR COMMUNITY CARE; DAVE MCLENACHEN, DIRECTOR OF APPEALS MANAGEMENT; PETER O'ROURKE, EXECUTIVE DIRECTOR OF THE OFFICE OF ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION; AND FINALLY, ROBERT WORLEY, DIRECTOR OF EDUCATION SERVICES

Secretary SHULKIN. Chairman Isakson, Senator Moran, Senator Boozman, thanks for inviting me here to talk about VA's program. More important, on behalf of the veterans the VA serves and our employees who serve them, thank you for your staff's tireless, bipartisan work. It is has been great.

We certainly appreciate and respect your leadership, Mr. Chairman, and partnership in establishing those issues that we are trying to tackle at the VA head-on. Some of them, as you have said, we know have lingered for years. I have always said I think we have the best committees in Congress and that is in large part due to the leadership.

Chairman ISAKSON. We agree with that, by the way.

Secretary SHULKIN. Yeah. Well, I would not say it if it was not true. I took an oath. So——

[Laughter.]

Joining me today, seated behind me—I just wanted to introduce you in case I need a lifeline and get some help today—Peter Shelby, who is our Assistant Secretary for Human Resources Administration; Cheryl Mason, who is our Chairman of the Board of Veteran Appeals; Dr. Amy Fahrenkopf, who is our Acting Deputy

Under Secretary for Health for Community Care; Dave McLenachen, who is our Director of Appeals Management; Peter O'Rourke, who is the Executive Director of the Office of Accountability and Whistleblower Protection; and finally, Mr. Robert Worley, who is our Director of Education Services.

A year ago, at my confirmation hearing before this Committee, I testified that I would seek major reform and transformation of VA. Today, to guide VA reform and transformation we are focused on five priorities. The first, which is to provide greater choice for veterans; second, to modernize our systems; third, to focus our resources on what is most important to veterans; fourth, to improve the timeliness of how we deliver our services; and fifth, prevent veteran suicide, which is our top clinical priority. The President's Executive order last week, which supported transitioning military members with mental health services during that first critical year as veterans is an important step.

Thanks in large part to your leadership, which helped us pass the legislation in 2017, the legislation I hope we will be discussing today, we are making progress on all five of those priorities. Appeals reform would be a good example. It is about modernizing antiquated systems and focusing resources while giving veterans more timely services and greater choice.

Accountability and whistleblower protection is essential to our unwavering commitment to honoring veterans. It too is about sensible response of modern systems that process and support our people to make VA better. The Forever GI Bill gives veterans greater choice. More profoundly, it is about greater opportunity, especially for veterans returning to communities to pursue careers and fulfill dreams.

Beyond these reforms, we have announced same-day services for primary care and mental health at every VA facility across the country. We have extended mental health to veterans with other-than-honorable administrative discharges. So far, we have disposed of 111 out of 430 vacant or underutilized buildings. We published data publicly on wait time, quality data, customer satisfaction data, and last week we published our opioid prescription rates across the country. There are no other health systems in the country that publish this type of data.

And, because of that—I hope it is because of that—we are earning our veterans' trust back. At the end of this last year, 70 percent of veterans who responded to our survey said that they felt like valued customers at VA. That is up from 46 percent in 2014.

Mr. Chairman, Members of the Committee, we are deeply grateful for your role in supporting all those changes and others like them. They are immensely important. But, when I look back over this year, we are still largely managing through incrementalism, patching and repairing old systems and processes and reacting to crises. VA still is far short of the kind of bold transformational change that we need to serve veterans in the decades ahead. From health care to benefits, we have to fundamentally and holistically change our service delivery paradigm.

My objective, when it comes to health care for our veterans, is to have a fully-integrated, interoperable, operationally-efficient health care system that is easy for veterans, employees, and com-

munity partners to navigate. A full spectrum of care for veterans that capitalizes on our foundational services, delivering on our promise to provide world-class services. We need a consistent, seamless experience for veterans at every VA facility across the country. We need a national network of modern facilities that meets the changing needs of veterans locally. We need simple, convenient choice for eligible veterans among a network of high-quality community providers in a single consolidated program.

Mr. Chairman, I applaud your efforts to get this done. Your draft legislation that passed out of this Committee is highly responsive to the needs of veterans, and we are all grateful for the work that you and the Committee have done so far to make this a reality.

Benefits are a gateway to VA services and we need benefit determinations to be simpler. Veterans should know what to expect and have more predictability. They should not have to endure the burden of filing claim after claim after claim. Benefits should better enable lifetime of independence and success for veterans, economic opportunity, physical and mental well-being, and financial security for the severely disabled. In short, we need to begin an earnest dialog with stakeholders about veterans' benefits.

Mr. Chairman, in the days and months ahead, I invite and welcome your support and leadership in helping us define and then pursue the kind of worthy, transformational change the VA needs so we can all achieve what we hope to achieve. I look forward to your questions today.

[The prepared statement of Secretary Shulkin follows:]

PREPARED STATEMENT OF HON. DAVID J. SHULKIN, M.D., SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS

Good afternoon, Chairman Isakson, Ranking Member Tester, and Distinguished Members of the Senate Committee on Veterans' Affairs. Thank you for the opportunity to testify today about the successes the VA team is achieving for the Nation's Veterans, their families, and advocates with the valuable legislative tools you provided to us in 2017.

ACCOUNTABILITY

The Department of Veterans Affairs took expedient action to implement the Secretary's new authority to hold employees accountable provided for in the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017. Within weeks of the enactment of the law, the Secretary developed and effected guidance to ensure both VA managers and employees are held to the highest standards of performance, integrity, and conduct.

The Department developed four Human Resources Management Letters as guidance to managers and Human Resources personnel on how to implement several of the disciplinary provisions. Training was provided to managers, H.R. personnel, and the Office of General Counsel on the provisions of the Act, and how it would be implemented.

Additionally, the Department developed several resources to assist H.R. personnel in understanding and applying disciplinary provisions of the Act, such as flow charts outlining the requirements of the accountability authorities available to the Department, comparison guides between requirements under the Act and VA bargaining unit obligations, and frequently asked question guides. The Department continues to modify guidance and update Human Resources Letters as needed and as adverse action cases are heard before the Merit Systems Protection Board.

The VA's Office of Accountability and Whistleblower Protection (OAWP) was established and the head of the OAWP was appointed on May 12, 2017 under the authority of the President's Executive Order. OAWP is currently being led by an SES executive director who reports to the Secretary.

The executive director provides clarification and advice related to accountability, whistleblower disclosures and retaliation issues to the Secretary and other leader-

ship throughout VA. OAWP sends a senior team to raise awareness of accountability and whistleblower issues to executive leadership councils and other leadership meetings at VA facilities across the country.

On June 12, 2017, OAWP began receiving whistleblower disclosures from employees into the Central Whistleblower Office authorized under The Patient Protection Act of 2016 (PL 114–223). After enactment of the Department of Veteran Affairs Accountability and Whistleblower Protection Act of 2017 (PL 115–41), the OAWP enhanced its whistleblower capabilities, developing a new Whistleblower Disclosure Form (VA Form 10177) to streamline the process and integrate disclosure intake into the Office's new Triage Division. OAWP developed a triage, tracking, and referral process to ensure all disclosures are managed and resolved centrally. When appropriate, OAWP engages with the Office of Special Counsel (OSC) and the Office of Inspector General to refer disclosures and accept referrals for action. As of January 8, 2018 OAWP has received and validated 1,029 disclosures since June 2017.

OAWP is protecting whistleblowers by utilizing its authority to place a temporary hold on personnel actions in cases where whistleblower retaliation is alleged or a disclosure is unresolved. Working with the OSC, OAWP ensures that the ability to seek corrective action is preserved. As of January 8, 2018 OAWP has held 72 actions.

On December 14, 2017, OAWP began discussions with the Department's Executive Secretary to begin providing oversight of OSC's referred disclosures. OAWP is working on value-added processes and procedures to ensure all OSC disclosures are investigated and resolved appropriately. OAWP is also working closely with OSC to ensure whistleblower retaliation cases are investigated and employees are protected.

OAWP is evaluating methods, procedures, and information technology solutions for the systematic recording, tracking, reviewing, and confirming implementation of recommendations from audits and investigations carried out by the Office of Inspector General, Medical Inspector, Special Counsel, and the Comptroller General of the United States. Also being evaluated are the technological requirements for analyzing data produced by OAWP and the Office of Inspector General's telephone hotlines and whistleblower disclosures in order to identify trends and reports to the Secretary.

Since establishment, OAWP has been receiving, reviewing, and investigating allegations of misconduct brought against senior executives; employees in a confidential, policy-determining or policy-advocating position; and supervisors; when the allegation involves whistleblower retaliation. As of January 8, 2018 OAWP has completed 77 investigations involving 149 persons of interest. OAWP's current inventory is 139 investigations involving 228 persons of interest.

APPEALS REFORM

The Veterans Appeals Improvement and Modernization Act of 2017, enacted on August 23, 2017, is the most significant statutory change in decades affecting VA claims in the appeals process. It provided much needed reform for Veterans, and VA is committed to the law's full implementation.

VA developed an implementation plan, which was collaboratively prepared by the Board of Veterans' Appeals (Board) and the Veterans Benefits Administration (VBA) with input from other components of VA involved in the implementation of the Veterans Appeals Improvement and Modernization Act. VA initiated this plan immediately after the law's enactment, and fully expects to implement the new claims and appeals process by February 2019. VA is utilizing the 18-month period to promulgate regulations, establish procedures, hire and train personnel, implement information technology system changes, conduct outreach in order to train stakeholders on implementation of the new law, and gather data for trends analyses and metrics reporting. Due to the magnitude and scope of the statutory changes, VA is using a governance structure to oversee and document appeals modernization implementation and using dedicated project management experts to institute key project management tools and deliverables. To track implementation progress, the plan includes timelines, interim goals and milestones, risk mitigation strategies, reporting requirements, and deadlines that were established to ensure timely execution.

VA has also undertaken enterprise-wide efforts to modernize the appeals process through improvements in technology. As part of this effort, information technology funds were used to develop and optimize paperless functionality in VA appeals processing. With Fiscal Year (FY) 2017 IT funding, VA began a multi-phase process of enhancing appeals functionality in the paperless environment. Initial key appeals-specific functionality in the paperless environment will focus on seamless integration of systems, and key accountability and work efficiency features. Digital Service at the VA (DSVA) launched Reader at the Board in November 2017, is working with

the Board to launch enhanced appeals on Vets.gov appeals by March 2018, and will begin testing Caseflow at the Board in the second quarter of 2018 with subsequent BVA-related enhancements and additional user groups.

The Board is currently on pace to produce over 81,000 decisions during FY 2018 which would represent a historic level of production. In FY 2018, the Board will also gain efficiencies by issuing a new decision template in February 2018, exploring new case review techniques throughout the spring and summer of 2018 and allowing delivery of decisions in close proximity to a Veteran's hearing beginning in February 2018. The Board will begin to train all staff on the new appeals process in April 2018, and outreach training with Veterans Service Organizations in the summer of 2018.

The Veterans Appeals Improvement and Modernization Act will also permit VA to test assumptions in the implementation of a new claims appeals system. Accordingly, VA has decided to carry out a pilot program during the implementation period, the Rapid Appeals Modernization Program (RAMP). The program, which was launched on November 1, 2017, allows eligible participants with pending disability compensation appeals in VBA the voluntary option to have their decisions reviewed in the higher-level or supplemental claim review lanes outlined in the new law. RAMP provides Veterans early access to the benefits of the new system, while also allowing VA to better position itself for full implementation in February 2019. Since disability compensation-related appeals account for the vast majority of all pending appeals, the program allows most Veterans with pending compensation benefit appeals to participate.

VA will use the data collected during RAMP to create a capacity model based upon actual data. During this program, VA will gather data and conduct trends analyses on aspects of Veterans' behavior, to include their decision to opt—in to the new system, employee productivity, processing timeliness, and inventory measures. VA will use that data to assist in developing future resource requirements as part of the annual budget process. VA intends to update the model when actual data can be used to replace projected data, when assumptions are shown to be no longer accurate, or based on any change in resources resulting from annual budget appropriations.

With RAMP, VA has already made great strides toward implementing the new process; for instance, DSVA was able to support VA to design the Caseflow Intake application as a solution for managing Veterans' elections to participate in the RAMP process using agile development technology. In addition, after garnering input from Veterans Service Organizations, VA deployed and is in the process of refining a more detailed decision notice for compensation appeals, as well as the RAMP election notice. Furthermore, with the implementation of RAMP, VA is documenting enhancements to VBMS that allow higher-level adjudicators to capture duty to assist error data.

FOREVER GI BILL

VA has taken significant steps in the five months since the Colmery Act was enacted to implement thirteen provisions that were effective immediately, so that Veterans and beneficiaries could take advantage of their expanded benefits. In early November, VA notified nearly 8,000 beneficiaries that they may be potentially eligible for restoration of entitlement under a Special Application provision. To date (as of January 5, 2018), VA has received and processed close to 600 applications and restored over 3,500 months of entitlement to students, granting them the opportunity to continue to pursue their academic and education goals. VA is sending an explanatory letter and choice of election form to almost 3,200 individuals who lost their eligibility to the Reserve Educational Assistance Program (REAP), but now, because of the Colmery Act, can elect to have their qualifying active duty service periods credited toward establishing eligibility under the Post-9/11 GI Bill Program.

The most notable and recognized change to the GI Bill benefit by the Colmery Act is the removal of the 15-year time limitation for Veterans who transitioned out of the military after January 1, 2013, and eligible dependents, to use their Post-9/11 GI Bill benefits. As of December 20, 2017, all newly issued GI Bill Certificates of Eligibility and manually processed award letters are updated to notify eligible beneficiaries that they no longer have an expiration date to use their GI Bill benefit. By the end of January 2018, VA will have sent an email notification to over half a million Post-9/11 GI Bill beneficiaries informing them that they can now use their remaining entitlement when the time is right for them and their families.

An extensive outreach and promotional campaign is well underway to ensure that all Veterans and beneficiaries are aware of the Colmery Act's enhancements to the GI Bill. VA's Facebook posts on the Colmery Act including those related to the per-

manent authorization of the work-study allowance have reached almost half a million individuals, a Twitter Town Hall received 173,000 views and 1,800 engagements, and VA has sent multiple mass emails to over 1 million recipients to amplify its communications platform for the Colmery Act. During the December 12, 2017, Forever GI Bill hearing by the House Committee on Veterans' Affairs, Subcommittee on Economic Opportunity, VA live-tweeted pertinent information to be transparent and share news in real time. In late November 2017, VBA's Deputy Under Secretary for Economic Opportunity conducted interviews with 23 radio and TV stations reaching an audience of over 3.5 million. Additionally, VA has briefed stakeholders ranging from School Certifying Officials to Veterans Service Organizations to encourage their involvement and support in getting the word out about the Forever GI Bill.

VA is working closely with State Approving Agencies (SAAs) on changes that impact them because of the Colmery Act and has notified SAAs that they may now authorize independent study programs at certain educational institutions, like career and technical education schools. SAAs and VA are collaborating to redesign compliance reviews for oversight purposes, and VA has allocated increased SAA funding for FY 2018.

VA will deliver by March 1, 2018 to Congress an implementation plan outlining IT system improvements to maximize the automation of educational claims processing, and VA's Digital Services team has partnered with Education Service to collect priority enrollment information from schools for display on the GI Bill Comparison Tool.

A few provisions of the Colmery Act already aligned with policies and procedures in effect. Examples include codification of the VetSuccess on Campus program, allowing Veterans participating in the Vocational Rehabilitation and Employment program to extend eligibility if called to active duty in certain cases, and providing School Certifying Officials additional flexibility when a course start date does not align with that of an academic term.

A great deal of work remains to be done with 18 provisions slated to go in effect on August 1, 2018, including sections 107 and 501. These sections change the way VA pays monthly housing stipends by aligning payment to the location where students physically attend the majority of their classes and removing the exemption to the Department of Defense's one percent reduction to housing allowance. While VA's Office of Information and Technology has committed to implementing an IT solution for these two critical sections, it is resource challenged in balancing efforts related to the remaining 20 Colmery Act provisions with IT needs and the overall goal to decommission the antiquated Benefits Delivery Network, which is the system that currently handles much of Education claims processing and payments. With this consideration in mind, VA is optimistic that all 22 provisions with an IT requirement will have an IT solution in place by the end of FY 2019. To mitigate any impact to Veterans and beneficiaries using their education benefits, by May 2018, VBA will have hired 200 temporary field employees, and reallocated senior staff and experienced claims processors to specialized teams to account for increased workload and new programs related to the Colmery Act. VA will continue to regularly assess workload demands and resource needs, and adjust its staffing levels in order to properly deliver education benefits to Veterans and beneficiaries.

In the coming months, VA will continue planning and working toward finding IT solutions and revising and developing sensible policies and procedures for implementation. VA will stay committed to its ambitious outreach campaign to include targeted messaging and engagement to thousands of Purple Heart recipients, who starting August 1, 2018 will be entitled to Post-9/11 GI Bill benefits at the 100-percent benefit level for up to 36 months, regardless of their time in service. Additionally, VA will communicate to Reservists and National Guard members their expanded access to GI Bill benefits as these individuals will now be able to use time spent on authorized medical care and certain orders as creditable toward GI Bill entitlement. VA remains steadfast in its effort to raise awareness of the Colmery Act's broad impact to Veterans and beneficiaries so they are given the opportunity to take advantage of their expanded and enhanced benefits.

WORKFORCE IMPROVEMENTS

VA is making progress in implementing the provisions of Title II (Personnel Matters) of the VA Choice and Quality Employment Act of 2017 to improve hiring authorities of the Department. Two of the most critical focal points of this title are: 1) Section 210—Plan to hire directors of medical centers; and 2) Section 213—Expansion of direct-hiring authority. We have developed and implemented a plan for hiring highly qualified directors for each of our medical centers. As a result, we con-

tinue to make progress in staffing these positions. During calendar year 2017, we reduced the time to hire Medical Center Directors (MCDs) by about 23%. Currently, 125 of 140 MCD positions are filled. Of the remaining 15 positions under recruitment, 10 have a potential hire identified and are either going through the OPM approval process or have an established entrance on duty date.

Consistent with Section 213 of the Act, we are collaborating with the Office of Personnel Management (OPM) to expand direct-hire authority (DHA). We have submitted a formal request to OPM to receive DHA for 15 occupations because of our urgent critical hiring need to meet mission requirements. This need is in direct support of the Administration's charge to improve the quality of and access to care for our Nation's Veterans and their dependents. We must use options such as DHA to assist in meeting the unique recruitment challenges that we face over the next few years.

COMMUNITY CARE AND FUNDING FOR CHOICE

Demand for community care remains high, with over 32.7 million outpatient medical care appointments completed in FY 2017. In FY 2017, VA community care appointments for outpatient medical care were approximately 36% of all such appointments provided through VA, a 4 percentage point increase from FY 2016.

Over 1.1 million Veterans utilized the Veterans Choice Program in FY 2017, an increase of about 35,000 Veterans from FY 2016. Outpatient appointments for VA medical care in the Choice Program comprised approximately 50% of all such VA community care completed appointments in FY 2017.

In August 2017, with Choice Program poised to run out of funding and no successor program yet in place, Congress appropriated $2.1 billion in emergency funding to continue the Choice Program. In December 2017, Congress included an additional $2.1 billion for the Choice Program in the continuing resolution package while discussions continue regarding the future of VA community care.

Although more still can be done, VA continues to make progress toward business process improvements to streamline the delivery of community care for Veterans. We have implemented tools to share health information, when permitted by law, with community providers via encrypted email, through a web-based application, as well as through industry standard health information exchanges. We have introduced tools for our staff to ensure standardized authorizations for community care, including specification of the services to be provided. We continue to work toward awarding new community care network contracts to purchase community care.

Earlier this month, VA announced a series of immediate actions to improve the timeliness of payments to community providers. The actions will address the issue of delayed payments head-on and produce sustainable fixes that solve ongoing payment issues that affect Veterans, community providers and other VA partners.

On January 9, 2018, VA published a rulemaking that allows it to process claims for reimbursement of the reasonable costs of emergency treatment for non-service-connected conditions when only a portion of those costs were paid by a Veteran's other health insurance. These regulations will authorize VA to reimburse emergency treatment costs in more instances.

In October and November 2017, VA submitted the Veteran Coordinated Access & Rewarding Experiences (CARE) Bill to Congress. Veteran CARE is Veteran-centric and focuses on Veteran clinical needs. VA appreciates that Congress has developed legislation which includes many of the provisions included in CARE. We need Congress to pass legislation to give Veterans a system that works and that meets or exceeds the best the private sector has to offer. This is about building a VA that Veterans choose for their care—we want Veterans to Choose VA. The Administration's bill included $4 billion in spending authority, fully offset, to ensure a smooth transition to the new, consolidated community care program when implemented in FY 2019. We continue to urge the inclusion of offsets against any new mandatory spending to promote fiscally responsible stewardship of the taxpayer dollar.

Consistent with the Administration's proposal, VA believes that the future of community care should include the following tenets:

- Improve Veterans' choice of community providers in meeting their healthcare needs.
- Simplify Veteran eligibility with a focus on Veterans' clinical needs.
- Pave the way for consolidation of all community care programs.
- Add convenient care benefits.
- Set timely payment standards.
- Include provider agreements with flexible payment rates that streamline how we pay for care, including care in State Veterans Homes.
- Permit medical records sharing in the network when needed for Veteran care.

• And address clinical staffing shortages through expansion of graduate medical education and by improving VA hiring and retention of staff.

DISABILITY COMPENSATION CLAIMS BACKLOG

VA is committed to providing Veterans with the care and services they have earned and deserve. For the eighth consecutive year, VBA has completed over a million disability claims and anticipates completing a record number of claims in FY 2018.

The VBA's disability claims backlog continues to fluctuate at a relatively steady state between approximately 70,000 and 85,000 claims. VBA ended the calendar year with just over 80,000 backlog claims pending and is committed to reducing the backlog further. In the past, VBA focused claims processing resources on significant investments in staffing and overtime, as our claims volume far exceeded the relative timelines of claims actionability. However, as VBA has reduced the pending claims inventory, we remain focused on continuous deployment of incremental process improvements and technology initiatives to identify actionable inventory which will help further reduce our backlog and increase the timeliness of claims processing.

VBA's primary intent within backlog reduction is three-fold: ensuring the current system works efficiently by evaluating throughput metrics, ensuring efficient staff utilization by confirming appropriate actions are completed, and identifying additional actionable workload through process reviews. Our throughput metrics make sure our workloads, especially backlog claims, are processed timely and efficiently. Additionally, VBA has initiated focused quality reviews to detect human errors, found potential system-wide and employee-level improvements in initial claim actions, and identified procedural improvements. We also continue to proactively deploy effective workload management practices and explore other process enhancements.

VBA is similarly looking to reduce backlog via the expansion of VBA's contracted medical exam authority. Beginning in FY 2017, Congress granted VA the discretion to expand the Contract Medical Disability Examination (MDE) program from 15 regional offices to as many as the Secretary considers appropriate. The main purpose of this expanded contract Compensation and Pension (C&P) exam authority is to provide timely exams for Veterans residing in both the US and abroad. Contract exam expansion enables VBA to supplement Veterans Health Administration's (VHA's) internal C&P exam capacity to deliver faster claims decisions to Veterans and reduce the number of claims pending over 125 days.

DECISION READY CLAIMS

As part of VA's continued efforts to improve Veterans' experience with the disability claims process, VA has developed the Decision Ready Claims (DRC) initiative—an extension of Fully Developed Claims. DRCs are claims for disability compensation submitted with the help of accredited VSOs, who certify that all supporting evidence (e.g. medical exam, military service records, etc.) is included with the claim at the time of submission to VA. Veterans who choose to submit their claim under DRC can expect to receive a decision within 30 days from the time VA receives the formal claim. DRC enables VBA to focus resources on reducing claims pending over 125 days as well as improving timeliness.

In addition to claims for increased disability compensation (commonly known as claims for increase), as of December 2017, DRC was expanded to certain claims for direct service connection, presumptive service connection, secondary service connection, and Dependency and Indemnity Compensation. Transitioning servicemembers can use the DRC process to file pre-discharge claims less than 90 days from leaving the military.

INFRASTRUCTURE–28 LEASES

VA is pleased to report that the 28 leases authorized in the 2017 Choice Act are moving forward expeditiously. VA is utilizing a streamlined set of contract documents that more closely align with General Services Administration (GSA's) model in procuring these leases. VA is also adjusting its physical security, sustainability, and construction standards to more closely align with other Federal agencies, as well as private-sector healthcare, to increase speed to market, and cost-savings. Finally, VA is leveraging an enhanced partnership with GSA to procure 7 of the 28 leases.

The following seven (7) leases are being procured through the VA-GSA partnership: Pittsburgh, PA; Hampton Roads, VA; Tampa-Lakeland FL; Tampa, FL; Corpus Christi, TX, Denver, CO, and Rapid City, SD. GSA is reviewing the requirements packages and is in the process of assigning staff for execution of these projects.

The remaining 21 leases are being procured by VA through its Office of Construction & Facilities Management, Office of Real Property, using a delegation of GSA's leasing authority. All of these projects have started in earnest. All advertisements for the Choice Act leases under procurement by VA are slated for release by the end of Spring 2018, with issuance of the VA Request for Lease Proposals in the Summer/Fall 2018, and award slated for Spring/Summer 2019.

ELECTRONIC HEALTH RECORD

On December 13, 2017, a strategic pause was announced in the Electronic Health Record (EHR) acquisition process; the purpose of the pause is to conduct an additional and external assessment of national interoperability language contained in the Request for Proposal that would ultimately support an EHR contract award.

MITRE Corporation was selected to coordinate and lead an independent assessment of the aforementioned contract language. The independent review was held on January 5, 2018, and consisted of a diverse, distinguished and highly respected group of Clinicians, Chief Information Officers and Executives, well-versed in national interoperability challenges/issues, from across the healthcare industry.

MITRE is in the process of capturing the recommendations and comments provided during the January 5, 2018 interoperability forum and will submit a final report to the VA Secretary and other stakeholders for review by the end of January 2018.

Thank you for the opportunity to appear before you today to provide you with VA's progress on implementing the legislation in these important areas. This concludes my testimony, and I welcome any questions that you or other Members of the Committee may have.

Chairman ISAKSON. Thank you, Secretary Shulkin. I appreciate those remarks very much, and I hope the Ranking Member is coming. Is he still coming? [Pause.]

He is. OK.

I will start—you can start the clock on me. Let me make somewhat of what may appear to sound like an announcement at the beginning of the hearing. The Secretary and I have been in a lot of conversations over the past month or so, and I want to thank him for his stated support for what the Committee passed out of Committee. As we all know, we had a 14-to-1 vote, and as we all know we had some differences of opinion on the Veteran's Choice bill and the Care bill that we passed out of Committee. I did everything I could to try to bring about unanimous common ground, but I did not get that totally done.

So, I made a phone call to the White House and talked with the President, and, I believe, if I am not mistaken, the Secretary was on that phone call, as well as a number of other people of interest. The President—and this is my repeating what I remember him saying to me—he said, "You are all good guys. You have got good solutions on both sides. You all see if you cannot work it out." We tried to get together a couple of meetings to work it out, but that did not materialize for one reason or another.

My goal, as Chairman of the Committee, is to find a positive resolution no matter what problem I confront, and not because it comes from my wisdom, but my persistence to see to it we keep our eye on the goal. Of course, the goal is choice for our veterans, better quality health care, and a more accountable VA.

It is my understanding the President and the Administration is going to send our Committee, in the next couple of days, some suggestions that they are looking at, that might help us bring about a resolution. I intend to work with Senator Moran, the other Members of the Committee, and the full Committee, to see if we cannot

do that, so we can take to the floor a unanimously-supported bill, or a bill that at least everybody had their chance to support and can have their chance to amend on the floor.

One way or another, it is time our veterans had a veterans' policy that serve their choices, gave them the choices they need, funded them so they were not subject to the last-minute "we are out of money" routines, which this bill does, by the way. We consolidate the stovepipes from seven to one. Correct, Mr. Secretary?

Secretary SHULKIN. Mm-hmm.

Chairman ISAKSON. To get those things done that we have to do.

So, I want to announce up front that that is forthcoming. When it gets here I will get it to the Committee, we will begin work on it, and try and get ourselves in the regular order to find a bill that we can unanimously get to the floor, one way or another, and if we cannot, I then will have known I made every effort to do so. I will do everything I can to take it in regular order and have it debated and fully amended on the floor, if that is necessary.

Whatever the case, our veterans deserve the best of us; the best of us is to pass a bill that we can agree on, and the best of us is to find the common ground to set up that meeting. So, I intend to do that and I appreciated the input the administration has given us, and I look forward to continuing to work with them.

I am going to extend—and I have got a little time left. You know, there are three or four things I want to talk about, Mr. Secretary. One thing that concerns me deeply is the four positions that remain unfilled at the Department. One is your former position. We plucked you out of VA leadership to become the leader of VA. That was a good idea. The bad idea is it still does not have anybody in your place, where you were in terms of Under Secretary of Health.

The Assistant Secretary of Accountability and Whistleblower Protection is not in place. That person needs to be in place. The Under Secretary for Benefits, which is a critical position at the VA, needs to be in place. The Assistant Secretary for Information Technology, which is absolutely critical, particular with the Cerner technology coming in, has got to be filled somewhere sooner rather than later.

I have asked these questions privately and have looked—and I know you are trying. But this is one of those things where we—A for effort is not good enough. We have got to find a way to get the best people in the United States of America in these disciplines, working for the Veterans Administration and working for our veterans.

Can you tell us what progress you have made and what you are doing on those four posts, in particular?

Secretary SHULKIN. Yes. Let me give you a quick update on that. For the CIO candidate, we have made a selection and that person is now going through a vetting process at the White House. Our indications are that that is moving along smoothly.

For the Under Secretary of Benefits we had a commission—as you know, by law we need to form a commission. They selected three candidates. We made our top choice. That person withdrew and we have now gone on to our second choice—fortunately, all three candidates are excellent candidates—and that person has also gone through vetting at the White House, and they understand the critical nature of this.

On the Under Secretary of Health, we have—this is now going to be our third commission. We have had two commissions prior that did not select a candidate. The third commission will be chaired by Deputy Secretary Bowman on January 25 and 26. We have 11 candidates who have applied for that. We hope to have a successful selection out of that third commission process by January 26, of which we would then forward three names on to the President for consideration, that would go through vetting.

On the Assistant Secretary for Accountability and Whistleblower Protection, Mr. O'Rourke is the executive in charge of the Accountability and Whistleblower Protection Office. He is here today.

Chairman ISAKSON. That prompts me to tell you what happened this morning in the HELP Committee. We had testimony on disasters and preparedness, and out of the blue one of the chief people in charge of that for our country made a point to compliment the Veterans Administration and what the veterans hospitals and medical personnel did to help in the rescue of senior citizens in Houston during the terrible flood that we had, which magnified, for me, the importance of remembering that the VA health care system is a huge delivery system that serves, by the nature of its definition, our veterans, a more senior population. I wanted to compliment you and the doctors on what they did to earn that praise, because that is a real good thing to have.

Secretary SHULKIN. Thank you.

Chairman ISAKSON. From a standpoint of accountability, I want to see some accountability with regard to the appeals process. I read your report and I read your remarks. I know you are working on a demonstration project on appeals. Is that correct?

Secretary SHULKIN. Yes.

Chairman ISAKSON. What timetable do you have, are you working toward, to move away from a demonstration project to a project that is fact-of-the-matter; exactly how we are going to handle these appeals in the future, to stop the backlog from growing and begin to dissipate the backlog?

Secretary SHULKIN. Well, today the backlog stands at 470,000 appeals, so we have a lot of work to do. Because of your legislation, we are now implementing a new process, of course. That will be fully implemented in early 2019, but we have actually started to make major improvements already.

This year, we are on track to do 81,000 appeals. That would be 30,000 more than last year. At this period right now, of this fiscal year, we are at 21,000 appeals. That is 10,000 more than this time last year. So, we are getting better and faster, and we have brought on new staff.

Second, we have begun—and this was actually because of the feedback that we got the last time that we were together—we have begun to offer veterans now the choice, in their legacy appeals, to opt into the new process, so they do not have to wait. We have had 3 percent of veterans opt in. These are people with long appeals who opted into—this is the pilot project—the new project. And, here is the good news. They are getting their decisions within 30 days, and 75 percent of those decisions are going in favor of the veteran.

So, it is actually a pretty good deal. Instead of waiting 5 or 6 years, if they opt in for a 30-day decision, 75 percent approval rate, which is beginning to address those legacy appeals. I am hoping, through our veteran service organizations and through your offices, we will encourage more veterans to consider—because this is an elective option—to choose to opt into the new process. They will get faster decisions and we hope accurate, good decisions for them.

Chairman ISAKSON. My time is up, but as it ends I want to say this. I know our VSOs are represented here today. We did not ask them to testify because this was Dr. Shulkin's day. The VSOs are going to have their chance to address the entire House and Senate Committees in a few weeks——

Secretary SHULKIN. Mm-hmm.

Chairman ISAKSON [continuing]. In the Dirksen Building, in our annual report, and we look forward to their input.

Yet, I hope the VSOs and the agencies will do everything they can to disseminate the fact that our veterans who have had pending appeals are given the option to opt out and go into the new, modernized program. Three percent of them have done so, and those that have done so have gotten a response in 30 days. That is a light-years improvement in terms of appeals, and I commend you on what you started. Let us help him finish it by getting our veterans a timely appeal answer.

Senator Moran.

STATEMENT OF HON. JERRY MORAN,
U.S. SENATOR FROM KANSAS

Senator MORAN. Mr. Chairman, thank you very much. Let me start with just a—well, let me first say that I am going to depart our hearing as soon as my questions have been answered, and I would pay honor in this setting to Senator Bob Dole, who we will all be in the Capitol to honor today. In Kansas, and perhaps the country, there is no more esteemed public servant, but in my view, while his public service was tremendous, his military service, and then his commitment to those with disabilities and the veteran community is exemplary. No one meets that standard, so I pay a tribute to Senator Dole.

Let me just raise a few points and I am going to make a comment and ask a question, Mr. Secretary. First, I want to note that your cancellation of the contract for Region 4, for Community Care, troubles me. I understand that Senator Heller is also going to raise this topic with you today. You have a request from the Subcommittee on Appropriations to explain what happened in that regard, and I look forward to that answer.

[The information requested during the hearing follows:]

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. JERRY MORAN AND HON. DEAN HELLER TO HON. DAVID J. SHULKIN, M.D., SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS

Please provide information regarding the reasoning for the cancellation of the Region 4 CCN contract

Response. VA received proposals in response to the Community Care Network (CCN) solicitation on June 30, 2017 and performed evaluations in accordance with the criteria established in the solicitation. VA took the following four factors into consideration for award decisions for CCN Region 4: (1) Technical, (2) Past Performance, (3) Socioeconomic Concerns, and (4) Price. The evaluations resulted in the

need to conduct negotiations. After negotiations were held, VA received the final proposal revisions on December 14, 2017 and immediately began conducting evaluations of these revisions. Award decisions must result in a contract that represents the "best value" to VA. After evaluations were completed, it was determined that final proposal revisions for Region 4 did not provide the "best value" to VA, all factors considered, or for our taxpayers. VA amended the solicitation to remove Region 4 since a contract award was not possible.

Senator MORAN. Second, I will be submitting several questions for the record. I am interested in knowing the VA's efforts in regard to full implementation of the Toxic Exposure Research Act, something that Senator Blumenthal and I sponsored and became law in December 2016.

[The information requested during the hearing follows:]

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. JERRY MORAN TO HON. DAVID J. SHULKIN, M.D., SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS

Please provide an update on VA's full implementation of the toxic exposure research act (PL 114–315)

Response. VA, through the Post Deployment Health Services office, has contracted with the National Academy of Science to meet the requirements specified in section 632 of the law. This consensus report is expected to be completed by NAM by early 2019. As to the research oriented Federal Advisory Committee and accompanying research, as outlined in section 633 and 634 respectively, VA has yet to form the charter and begin work as these next steps would be contingent upon the findings of the report.

Senator MORAN. Finally, you have had conversations with me about electronic health records, originally about a reprogramming. Now I see that there are other reasons that you are not proceeding, and I am concerned about what is taking place here. I have sent you a letter which I would ask you to respond to.

Then let me talk about the topic that the Chairman mentioned, in regard to the bill that passed the Committee. I want to direct this not to the Chairman but to you, Secretary Shulkin. I have been working closely, in my view, with the Chairman and the Ranking Member, other Members of this Committee, and those in the VA that you designated for me to work with, and with the White House, to make certain that the future of Community Care for veterans works and works well for veterans and the providers who serve those veterans.

It is of utmost importance to me to reform Choice and to pass the right policies that will work for veterans in accessing health care that they deserve. It is also critical that Members of Congress continue to push for a change in the VA culture and to promote implementation of policies directed by Congress instead of the VA often narrowing the scope and thwarting the intent of Congress. This is, in fact, the conversation that you and I had, almost exclusively, during your confirmation hearing in February 2017.

Pushing for a culture that transforms the VA, in my view, we have to hold you and other VA leaders accountable, and in my view too often commitments and pledges that are made to this Committee and to individual Members regarding legislative efforts on behalf of our veterans, the follow-up, the experiences are typical of what I have found with implementation of congressional past legislation. The VA changes course and it thwarts the intent of Congress. You and I had this conversation during your confirmation hearing.

On numerous occasions, you and I have met in my office, we have had numerous telephone conversations, and in those meetings, and in those telephone conversations, you expressed support for access standards in the eligibility of Choice reform. In every instance, in my view, you led me to believe that you and I were on the same page. What I have—what I remember you saying is this: the need for specificity in legislation is there, and then I quote you, "If it is left to the reg process, nothing in the VA will change." You told me that.

I learned, though, that you have said something quite different to the Chairman and to the Ranking Member. I am of the opinion that our inability to reach an agreement is, in significant part, related to your ability to speak out of both sides of your mouth—doubletalk. My understanding is that others have had this experience and there is a shared frustration about the circumstance.

So, Mr. Secretary, you have been sworn to give testimony today. I am looking for a straightforward answer. A yes or no would be good. Do you believe that the eligibility criteria to determine if a veteran can receive care in their community ought to be explicitly linked to the access standards? Yes or no?

Secretary SHULKIN. Of course, I believe that eligibility criteria should be explicitly linked to access standards, and I believe that those access standards need to be developed by the VA.

Senator MORAN. Mr. Chairman, let me ask the Secretary, do you support the access standards that are in our bill? You have told me that. True?

Secretary SHULKIN. I support the access standards that are in the bill that the Senate committee passed 14 to 1.

Senator MORAN. Those access standards are very similar. The issue is whether they are then tied to eligibility. Why would you not tie the access standards to eligibility? Why have access standards if they do not matter who is eligible for Community Care?

Secretary SHULKIN. Well, Senator Moran, first of all, I applaud your efforts to get this right. I think it is grossly unfair to make the characterizations that you have made of me, and I am disappointed that you would do that. But, I think that you have—I do not disagree with where you want to get to. I do believe that it is our job to give veterans more choice about how and where they get their health care.

I think the issue is that I am trying to do this in a way that will work for veterans and work for VA. I have seen, as you said before, Congress passed legislation that makes it more complicated and that makes it not work for veterans, and what I am trying to do is give you my best advice about how this works. The best way that I know how to do it is the way that the Committee, 14 to 1, passed their vote, and I do believe that because of your efforts we can make those eligibility criteria, those access standards, clearer to veterans so they understand it—that should be our goal—and then make sure that they do have choices based upon their clinical needs of their condition. That is what you do in a health care system. That is what I am driving to get at.

I do not believe that we are at a faraway position here. We are now talking about the best way to implement what we all want for

veterans, which is the best care and giving them the most choice that they can get in that care.

Senator MORAN. Well, Mr. Secretary, I am sorry that you take—you are disappointed in my approach to this hearing today. I chose my words intentionally.

Secretary SHULKIN. Mm-hmm.

Senator MORAN. I believe it to be the case. I think you tell me one thing and you tell others something else, and that is incompatible with our ability to reach an agreement and to work together. I intend to be a Member of Congress who holds you accountable for what you tell me.

I hope the next step is—the Chairman indicated that the White House was sending language. I certainly would welcome a conversation, a discussion among the Members of this Committee, the Ranking Member and the Chairman, the White House, and you. This is, as you say, not that difficult, but it is an important issue. It is not one that is just a matter of a few words. It matters in the result that we get for accountability at the VA.

Mr. Chairman, thank for the opportunity to question the witness.

Chairman ISAKSON. Thank you for your attendance. I now want to do two things. First of all, I want to echo your praise for Senator Dole. A great American, a great American hero. A guy whose campaign I ran in the Southeastern United States in 1988, I might add. I have always been proud of it. I kind of got the political itch because of it. He is a great humanitarian and a great human being.

I appreciate the Secretary and Senator Moran's candor in their feelings about what we are trying to do. What I am trying to do, as Chairman, is get us to a point where our dirty laundry is clean, it is folded, it is in the cabinets, and what we are doing works for the veteran. You do that when everybody gets their chance to have their say, when every fact is on the table, and we are all willing to work together. That is what this is all about, that is what we are going to do, and what I hope comes from the White House will be a catalyst in the next few days, which is why I wanted to tell everybody about that. I found out about it today. You found out about it today. So, when we get it in a couple of days you will get notice from me as to when we have the hearing.

Thank you, Senator Moran, for your input.

Senator MORAN. Mr. Chairman, I welcome that.

Chairman ISAKSON. Please tell the Dole family we all get there if I shut my mouth. So——

Senator MORAN. Thank you.

Chairman ISAKSON. Thank you.

Senator Tester, you have got a choice. You can answer questions or you can go to opening statement, or, as big as you are, you can do whatever you want. [Laughter.]

HON. JON TESTER, RANKING MEMBER,
U.S. SENATOR FROM MONTANA

Senator TESTER. No. That is all right. I will just ask some questions. The opening statement will be for later, and I apologize to the Members. I usually kick it over to you, but I have another committee I have got to get to very quickly.

[The prepared statement of Senator Jon Tester follows:]

PREPARED STATEMENT OF HON. JON TESTER, RANKING MEMBER,
U.S. SENATOR FROM MONTANA

Secretary Shulkin, thank you for being here. Mr. Chairman, thank you for your dedication to our Nation's veterans. Largely due to your leadership, this Committee had a historic year in terms of the number and scope of bills we've had signed into law. A great deal of credit also goes to each member of Committee, as well as the tremendous advocacy of the VSOs in attendance and across the country.

Mr. Secretary, last year, you came before this Committee and made a dramatic and urgent appeal for us to modernize the appeals process. We acted.

You came to us and said you needed more tools to hold bad actors at the VA accountable, and to protect whistleblowers. We acted.

You came to us multiple times when the Choice Program was running out of money. We acted. And then we acted again. And then we acted again.

For months, you also came to us and pitched ideas about how to scrap the Choice Program. And how to replace it with a community care program that puts veterans and their doctors in charge of where to receive care. We turned those ideas into a bill that passed this Committee 14–1 and with the support of 26 VSOs. And I don't want to let this moment pass without saying in the clearest terms how disappointed I am that you did not publicly announce your support for a bill on which we collaborated for months.

If VA is not going to publicly advocate for its legislative priorities, you should not expect this Committee or this Senator to do so.

Nevertheless, I am still committed to working with you and this administration to address the continued challenges of veterans and their families. Those challenges are daunting. They require action, not words. And they require us all working together.

In recent months, the VA and the Administration have rolled out a number of initiatives, most of which I have agreed with, but many of which have included little or no substance. We can help you make them successful, but there's little we can do if we're given no notice and no information.

And I'm afraid VA will continue to spin its wheels until you address the dramatic staffing vacancies that impact everything from the delivery of health care to the safeguarding of veterans' personal information. This is a fight I have waged for years. Nearly every time we have spoken, or I have spoken with your predecessors of both parties, I have asked for specific things that can be done to help recruitment and retention efforts.

And nearly every time, I have delivered—whether it was more flexibility, additional resources or additional authorities.

Yet here we are—somewhere between treading water and drowning. And veterans in places like Montana can't access the timely care they need and have earned.

These vacancies must be a higher priority for you and the Department. Otherwise, VA won't be able to fulfill its mission, and will setting itself up for failure as it moves forward on implementation of the many reforms that have come out of this Committee. We have a lot of ground to cover, and I look forward to getting started. Thank you.

Senator TESTER. First of all, welcome, Mr. Secretary. When it came to the Caring for Our Veterans bill, we had consulted with the VSOs, and, in fact, got support of 26 of the VSOs. We actually consulted with you and the VA to make sure this stuff would work, including Members on this Committee and members off this Committee.

In your written testimony you said the VA believes that the future of Community Care should include eight tenets. Those tenets are: improve veterans' choice of community providers in meeting their health care needs; to simplify veterans' eligibility with a focus on veterans' clinical needs; to pave the way for consolidation of all Community Care programs; add convenient care benefits; set timely payment standards; include provider agreements with flexible payment rates and streamline how we pay for care, including care in State veterans' homes; permit medical record-sharing in the network when needed for veterans' care; and addresses clinical staff-

ing shortages through extension of graduate medical education and by improving VA hiring and retention of staff.

I would just tell you that the Caring for Our Veterans Act checks every one of those boxes, and it checks every one of those boxes because when we drafted it we had those tenets in mind. So, I would really look forward, and I think look forward to a strong press release in support of this bill, and I will tell you why—because there is a certain amount of frustration, as you can tell——

Secretary SHULKIN. Of course.

Senator TESTER [continuing]. From Senator Moran, the Chairman, myself, and others on this Committee, that you have been silent. OK?

Secretary SHULKIN. Mm-hmm.

Senator TESTER. So, thank you.

Section 211 of the Accountability Act requires the VA to track the usage of new authorities granted, and we have given you a lot of new authorities——

Secretary SHULKIN. Mm-hmm.

Senator TESTER [continuing]. Over the past year, thanks to the good work of the Chairman. When will we see this report?

Secretary SHULKIN. The report was due in December 2017, so I apologize that it is not there. The staff has had extreme difficulty tracking what you have required in that report, prior to the implementation of the Accountability Act.

Senator TESTER. So what——

Secretary SHULKIN. I have instructed them to give whatever data they have to you and tell you what data they cannot collect.

Senator TESTER. So, when can we expect it?

Secretary SHULKIN. I am going to say, is it reasonable to ask for 2 weeks?

Senator TESTER. Two weeks it is. We will hold you to it.

[The information requested during the hearing follows:]

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. JON TESTER TO HON. DAVID J. SHULKIN, M.D., SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS

Please provide, within two weeks, a report regarding the tracking of new authorities granted as required in section 211 of the accountability act.

Response. The Section 211 Report did not ask for any data post implementation of the Act. It was all tied to the 3-year period prior to the Act (which we included in the June 30 Report to Congress on the 1st anniversary of OAWP, attached). It was broken down by categories of 713 (senior leaders) and 714 (workforce).

ATTACHED REPORT

Department of Veterans Affairs

Report

To

The Committee on Veterans Affairs of the Senate

And

The Committee on Veterans Affairs of the House of Representatives

On the Activities of the

Office of Accountability and Whistleblower Protection

For the Period:

June 30, 2017 – June 30, 2018

This report is required under 38 U.S.C. §323(f)

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The Department gathered the best available data to provide baseline information to assist in evaluating the impact of the VA Accountability and Whistleblower Protection Act. This additional data is presented as an appendix to this report.

Introduction

The Office of Accountability and Whistleblower Protection (OAWP) represents the culmination of many years of effort to improve accountability within the Department of Veterans Affairs and to establish a new capability to centrally receive and address whistleblower disclosures. Congress built on and strengthened the capabilities developed internally by the Department creating OAWP through Public Law 115-41 in 2017.

OAWP absorbed and expanded on the work formerly performed by the Office of Accountability Review and the Central Whistleblower Office to establish an intake, investigation, and accountability vehicle to support the VA Secretary's efforts to better fulfill the Department's mandate to "…care for [those] who have borne the battle…".

OAWP is led by Executive Director Kirk Nicholas who provides oversight for the Secretary's accountability agenda. OAWP is headquartered in Washington DC and has satellite resources and programs across the United States.

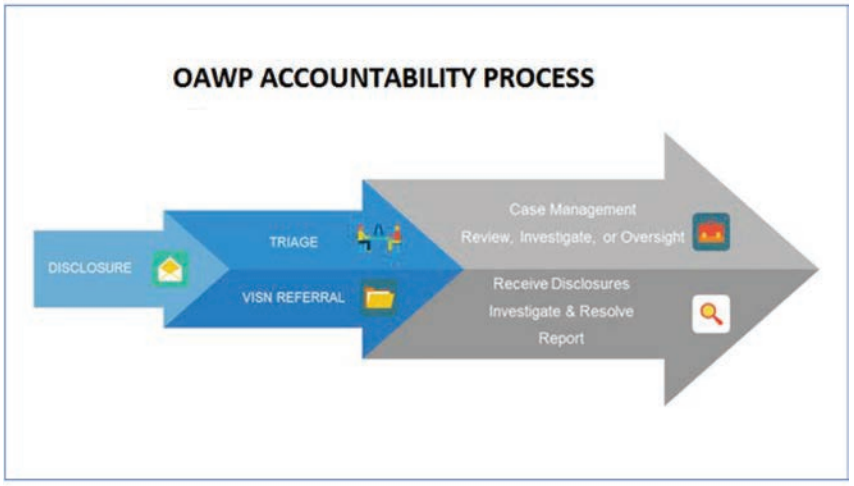
OAWP serves to improve the performance and accountability of VA senior executives and employees through thorough, timely, and unbiased investigation of all allegations and concerns. Where these actions are found factually true, OAWP will provide recommended actions related to the Senior Executive or other senior leader's removal, demotion or suspension based on poor performance and/or misconduct. Additionally, OAWP provides protection of valued VA whistleblowers against retaliation for their disclosures under the whistleblower protection provisions of 38 U.S.C. section 714.

OAWP is dedicated and empowered to provide transparency and build public trust and confidence throughout the entire VA system. The Office is committed to preserving the cultural integrity of the Department and conducting balanced, fair and efficient investigation of VA whistleblower disclosures, timely remedial resolutions and responsive recommendations.

This report is required under 38 U.S.C. §323(f) as a description of OAWP's activities over the preceding year and recommendations for improvements in VA accountability and whistleblower protection.

Background

The Office of Accountability and Whistleblower Protection (OAWP) is a newly created Office within the Department of Veterans Affairs (VA) dedicated to improving the ability of the Department to meet needs of Veterans through investigation of whistleblower disclosures and allegations of senior executive misconduct or poor performance. On April 27, 2017 the President of the United States signed Executive Order 13793 creating OAWP to advise and assist the Secretary of Department-wide issues of accountability. OAWP's roles and responsibilities were expanded significantly by Public Law 115-41, enacted June 23, 2017.



General workflow of disclosures submitted to OAWP

Investigation and resolution of Senior Leader misconduct has been the topic of multiple memoranda from VA Leadership over the years, centralizing the reporting, investigation, and resolution of these matters in various forms. In its last incarnation, the Office of Accountability Review (OAR) was created within the Office of General Counsel to elevate and address these issues. This office, formed in response to access to care issues, revealed gaps that could only be effectively addressed through action above the individual Administrations and Staff Offices.

OAWP was initially established through Executive Order 13793, Improving Accountability and Whistleblower Protection at the Department of Veterans Affairs, signed on April 27, 2017. Mr. Peter O'Rourke was appointed as the first Executive Director on May 12, 2017. Under the Executive Order the fledgling office was directed to:

> (a) Advise and assist the Secretary in using, as appropriate, all available authorities to discipline or terminate any VA manager or employee who has violated the public's trust and failed to carry out his or her duties on behalf of veterans, and to recruit, reward, and retain high-performing employees;
>
> (b) Identify statutory barriers to the Secretary's authority to discipline or terminate any employee who has jeopardized the health, safety, or well-being of a veteran, and to recruit, reward, and retain high-performing employees; and report such barriers to the Secretary for consideration as to the need for legislative changes;
>
> (c) Work closely with relevant VA components to ensure swift and effective resolution of veterans' complaints of wrongdoing at the VA; and
>
> (d) Work closely with relevant VA components to ensure adequate investigation and correction of wrongdoing throughout the VA, and to protect employees who lawfully disclose wrongdoing from retaliation.

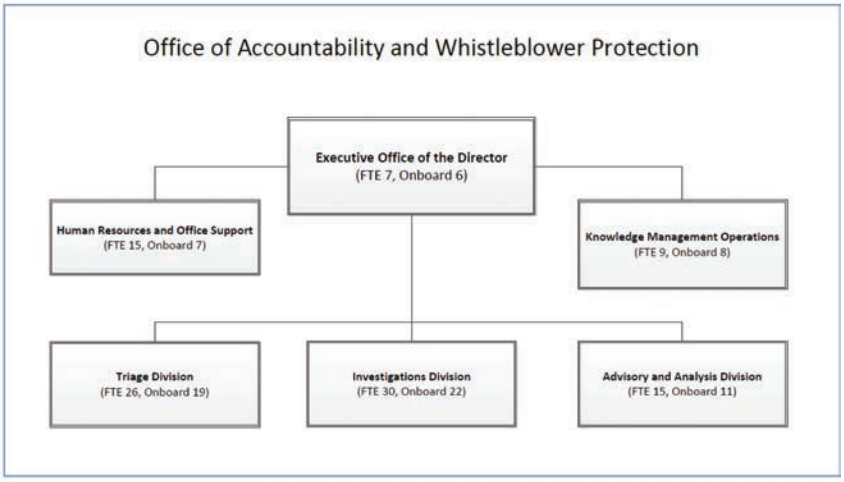
On June 22, 2017, Congress presented the President with crucial legislation to permanently effect change in VA regarding accountability and whistleblower protection. The President signed this bill as Public Law 115-41, the VA Accountability and Whistleblower Protection Act, on June 23, 2017. This statute codified and expanded OAWP, assigned it specific responsibilities, and implemented new authorities to hold senior leaders and employees accountable. OAWP absorbed the then-current staff and workload of the OAR into its new stand-alone structure. OAWP immediately began operations under its new mandate.

I. Organization & Structure

Based on the Executive Director's assessment of the requirements to meet its obligations the new organization was initially established with five divisions (Investigations; Advisory & Analysis; Central Whistleblower Office; Knowledge Management & Operations; and Administrative Support) of 96 full-time equivalent employee (FTEE) positions, with approximately 48 actually on-board.

As the Office's workload crystalized around the new authorities and responsibilities of P.L. 115-41 the organizational structure was revised. The structure maintained five divisions, redistributing resources and assignments, as well as adding the Office of Executive Director. The structure is: Office of the Executive Director; Triage Division; Investigations Division; Advisory & Analysis Division; Knowledge Management Operations; and Human Resources and Office Support. This structure consists of 102 FTEE. As of June 1, 2018, OAWP had 73 employees onboard with several additional hires pending.

Since its inception, OAWP has been operating its full range of case work. Starting at approximately 1/3 its authorized staff, the year has been characterized by the challenges in staffing a number of diverse positions to complete the full range of cases and activities under the Public Law.



Staff levels as of June 1, 2018

Executive Office of the Director –

Leading and supporting OAWP's accountability work, the Executive Office of the Director ensures transparent and timely intake, investigation, and resolution of accountability concerns. This office is the principal interaction point on accountability issues between OAWP and all Senior VA leadership. It provides strategic direction, policy development, training, and ensures integration of OAWP's operations with the Secretary's vision for accountability and whistleblower protection.

The Executive Office of the Director is headed by the Executive Director, Office of Accountability and Whistleblower Protection (OAWP) and includes the Deputy Executive Director, Senior Advisors, the Executive Director's Executive Assistant; and the Human Resources and Operations Support team.

The Executive Office of the Director is responsible for the leadership, administration and support for OAWP's operational divisions: Triage; Investigations; Advisory & Analysis; and Knowledge Management.



Left to Right: Todd Hunter, Deputy Executive Director OAWP;
Kirk Nicholas, Executive Director OAWP; and Peter O'Rourke, Acting VA Secretary

Triage Division

Triage Division is the first point of contact for whistleblower disclosures and allegations of senior executive misconduct. The Triage staff assesses the information submitted and, as needed, conducts initial development of the submission with the disclosing party. Triage maintains oversight of all matters submitted to OAWP, ensuring all issues are brought to resolution.

Triage Division consists of a Division Director, two Regional Directors, and 16 Human Resources Specialists (Employee Relations) as Case Managers.

Comprised of competent, capable and compassionate team members that help quickly manage resolution of VA employee whistleblower disclosures. The division determines if matters fall within OAWP's scope and the appropriate course of action to take on each matter. The team provides guidance, oversight, analysis and training on the whistleblower program and ensures all VA administrations implement recommendations from audits and investigations carried out by various entities including Office of Special Counsel (OSC) and Office of Inspector General (OIG).

The Triage Division is the initial entry point for matters within the Office's purview. These submissions include disclosures of information as well as completed reports or other findings (e.g. Merit Systems Protection Board decisions or Office of Special Counsel findings) involving senior leader misconduct. Triage maintains multiple avenues to receive disclosures including via a toll-free telephone number, email, and fax. A website submission form is under development. Whistleblower disclosures and completed reports are further referred for resolution.

The Triage Division refers received whistleblower disclosures for further investigation if there is reason to believe the disclosure is evidence of one of the categories of wrongdoing. See 38 USC §323(c)(1)(D). "Reason to believe" has been applied as "reasonable belief."

Depending on the specifics of the whistleblower disclosure, referrals may be then made to: the Office of Medical Inspector (for clinical or healthcare allegations), Office of Inspector General (for potentially criminal allegations), OAWP's Investigations Division (for allegations involving senior leaders), or the individual VA Administrations (i.e. VHA, VBA, or NCA) or Staff Offices (for allegations of wrongdoing not involving senior leaders or otherwise not referred to another office). Except those disclosures referred to OIG, whistleblower disclosures referred outside OAWP remain under the oversight of OAWP Triage, and require a completed investigatory report be submitted to OAWP for review and acceptance prior to concluding the matter.

Completed determinations, such as MSPB decisions or OSC reports, that include misconduct by a Senior Leader or whistleblower retaliation by a supervisor are referred from the Triage Division directly to the Advisory and Analysis Division for resolution.

OAWP also developed and published an Optional Form for Employee Disclosure to inform and assist employees submitting complete disclosures.

Triage statistics

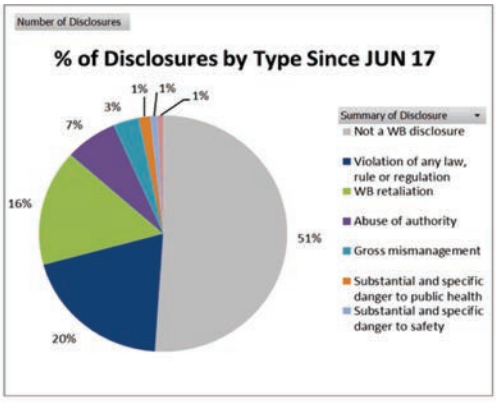
From June 23, 2017, through June 1, 2018, Triage Division has received nearly 2,000 submissions. The specific types and quantities are displayed on the following charts.

A "whistleblower disclosure" is defined in the VA Accountability and Whistleblower Protection Act as:

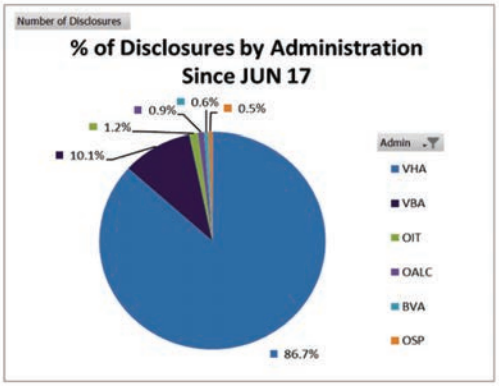
> "…[A]ny disclosure of information by an employee of the Department or individual applying to become an employee of the Department which the employee or individual reasonably believes evidences-
>
> - A violation of law, rule, or regulation; or
> - Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety."
>
> "Reasonably believes" is an objective test based on the information known, or readily discoverable by the submitter, that the information submitted shows alleged wrongdoing.

Submissions that involve an allegation of senior executive misconduct or whistleblower retaliation are referred to OAWP's Investigation Division. Submissions alleging criminal wrongdoing are referred to the VA Office of the Inspector General. Submissions that are "whistleblower disclosures," but do not involve senior executive misconduct or whistleblower retaliation are referred to the appropriate Administration or Staff Office for investigation. Referred "whistleblower disclosures" remain subject to OAWP oversight and the resulting investigation is subject to review and acceptance by OAWP.

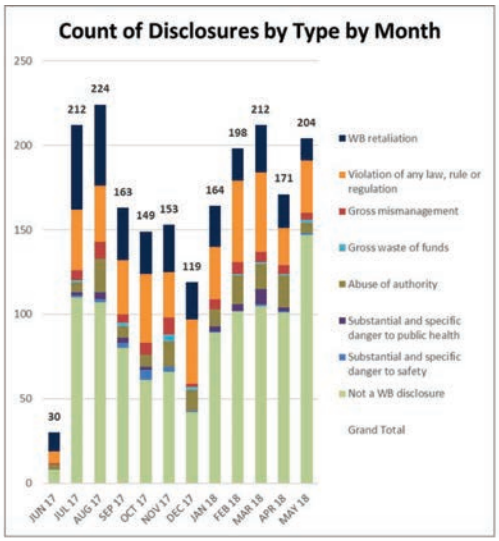
Submissions that do not meet the statutory definition of a "whistleblower disclosure" and do not involve allegations of senior executive wrongdoing are referred to the appropriate VA Administration or Staff Office for awareness. These "non-whistleblower disclosures" do not require an investigation or report to OAWP.



The above chart displays the breakdown of disclosures by general category of the disclosure as received by OAWP since June 2017 through May 2018.



The above chart displays the percentage of disclosures received broken down by Administration or Staff Office from June 2017 through May 2018.



The above chart graphically displays the types of disclosures received by month from June 2017 through May 2018.

Count of Disclosures by Type, by Month – Details

Disclosure Category	JUN 17	JUL 17	AUG 17	SEP 17	OCT 17	NOV 17	DEC 17	JAN 18	FEB 18	MAR 18	APR 18	MAY 18	Grand Total
WB retaliation	11	50	48	31	25	28	22	24	19	28	20	13	**319**
Violation of any law, rule or regulation	7	36	33	32	41	27	38	31	48	47	22	31	**393**
Gross mismanagement	1	6	10	5	7	10	2	6	7	6	5	4	**69**
Gross waste of funds		1		2		4	2		1	1	1	2	**14**
Abuse of authority	3	6	20	7	7	15	12	10	17	15	19	6	**137**
Substantial and specific danger to public health		2	4	3	2			3	4	9	2		**29**
Substantial and specific danger to safety		1	2	3	6	3	1	1		1	1	1	**20**
Not a WB disclosure	8	110	107	80	61	66	42	89	102	105	101	147	**1018**
Grand Total	**30**	**212**	**224**	**163**	**149**	**153**	**119**	**164**	**198**	**212**	**171**	**204**	**1999**

The above chart displays the type of disclosures received by month from June 2017 through May 2018.

Investigations Division

Investigations Division is the most visible division in OAWP, interacting with witnesses and persons-of-interest to resolve cases. Investigators conduct inquiries to gather evidence and testimony to resolve allegations of senior executive misconduct or whistleblower retaliation. Depending on the specifics of a case, inquiries may be conducted on-site or virtually.

Investigations Division is currently comprised of a Division Director, two Regional Directors, and as of June 1, 2018, 19 Human Resources Specialists (Employee Relations) as Administrative Investigators.

The Division began operations on June 23, 2017 with 15 Investigators, since October 2017 this number has increased to 21 Investigators as of June 1, 2018. The two Regional Directors and 6 additional Investigators will enter on duty after June 1, 2018.

Investigations Division is the primary entity within the VA for investigating senior leader misconduct, including allegations of whistleblower retaliation. The division assesses allegations and determines the appropriate scope and method of investigation. Investigators plans and conducts the actual investigations, gathering relevant evidence to substantiate or not substantiate the allegations. Investigators are typically assigned in two-person teams with a Lead and secondary investigator assigned to each case.

Investigations Statistics

On June 23, 2017, Investigations Division had a legacy workload from the Office of Accountability Review of 116 investigations involving 216 Persons of Interest (POIs).

From June 23, 2017, through June 1, 2018, Investigations Division:

Completed 128 investigations involving 236 POIs;

Received 261 cases involving 482 Senior Leaders;

Had 125 pending or ongoing investigations, involving 264 POIs.

Current Investigations Lifecycle Timeline as of June 1, 2018:

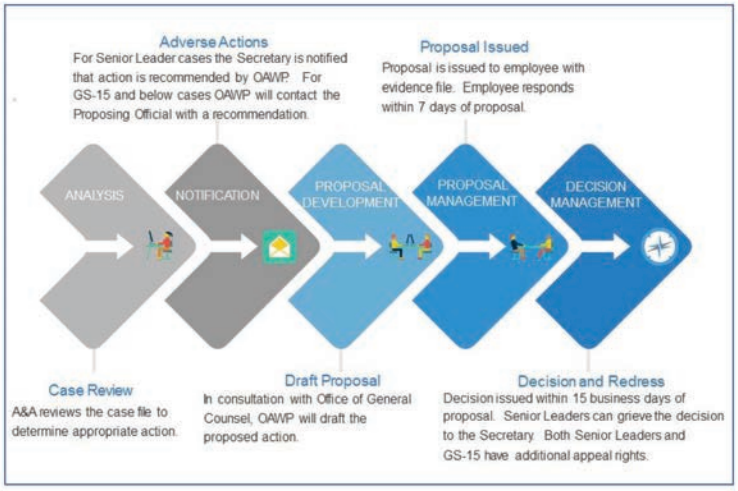


Advisory and Analysis Division

Advisory and Analysis Division is the principal accountability arm of OAWP. The staff analyzes investigative results and advises VA leadership regarding appropriate steps to resolve matters. These could include performance management, disciplinary actions, or recommending no action.

Advisory and Analysis Division is comprised of a Division Director and 10 Human Resources Specialists (Employee Relations).

Advisory and Analysis Division makes recommendations regarding disciplinary and accountability actions to the Secretary and other senior officials. The division works closely with senior management to prepare disciplinary actions in instances of senior leader misconduct or poor performance. Advisory & Analysis also provides training to VA leadership on the Accountability Law and provides guidance to management officials on the implementation of the Accountability Act and whistleblower protections.



Advisory and Analysis Statistics

From June 23, 2017 through June 1, 2018, Advisory and Analysis Division:

Received 39 cases directly from Triage as fully developed matters (e.g. MSPB decisions or OSC findings) involving 65 POIs;

Completed 182 cases, including 130 cases resulting from OAWP investigations;

Recommended disciplinary or adverse actions in 54 cases involving 58 unique POIs;

Had 49 potential disciplinary or adverse actions.

Advisory and Analysis Division has recommended disciplinary or adverse action against individuals occupying senior executive positions under 38 U.S.C. §713 as shown on the accompanying two pages.

"Administration" indicates the major organizational subdivision for which the subject employee works.
"OAWP Recommendation" reflects the Advisory and Analysis Division's recommendation to the Proposing Official.
"Action Proposed" is determined by the Proposing Official.
"Initial Decision" reflects the determination of the Deciding Official.
"Grievance Decision" reflects the VA Secretary's decision regarding any grievance filed by the subject employee regarding the Initial Decision.

Administration	**OAWP Recommendation**	**Action Proposed**	**Decision**	**Grievance Decision**
VHA	Removal	Removal	Removal	No grievance filed
VHA	30-day suspension	No action	No action	No grievance available
VHA	Removal	Demotion	Demotion	Grievance Denied (Demotion Upheld)
VBA	15-day suspension	1-day suspension	Reprimand	No grievance filed
VHA	Removal	Demotion (to GS-14)	Demotion (to GS-14)	Mitigated to a Demotion to GS-15
VHA	Reprimand	Reprimand	Reprimand	Mitigated to admonishment
VHA	5 – 10-day suspension. OAWP later recommended no action.	No action	No action	No grievance available
VHA	15 – 30-day suspension	Reprimand	Reprimand	No grievance filed
VHA	5 – 10-day suspension	Admonishment	Admonishment	No grievance available
VHA	60-day suspension – removal	3-day suspension	Reprimand	No grievance filed
VBA	60-day suspension – removal	60-day suspension	Retired in lieu of decision	No grievance available
VHA *OSC Report (minimum 12-day required)	15-day suspension	15-day suspension	15-day suspension	No grievance filed

Continuing the Advisory and Analysis Division recommendations of disciplinary or adverse action against individuals occupying senior executive positions under 38 U.S.C. §713 as shown.

"Administration" indicates the major organizational subdivision for which the subject employee works.
"OAWP Recommendation" reflects the Advisory and Analysis Division's recommendation to the Proposing Official.
"Action Proposed" is determined by the Proposing Official.
"Initial Decision" reflects the determination of the Deciding Official.
"Grievance Decision" reflects the VA Secretary's decision regarding any grievance filed by the subject employee regarding the Initial Decision.

Administration	OAWP Recommendation	Action Proposed	Decision	Grievance Decision
VHA	Reprimand	Written Counseling	None (Counseling is not proposed/ decided)	
VHA	Reprimand	Reprimand	Written counseling	No grievance available
VHA	30-day suspension	None – employee retired 3/31 before proposal issued	None	No grievance available
VHA	Reprimand	Written counseling	None (Counseling is not proposed/ decided)	No grievance available
VHA	15-day suspension – removal	Written counseling	None (Counseling is not proposed/ decided)	No grievance available
OGC	Demotion - Removal	Demotion	Written Counseling	No grievance available
VHA	Removal	Removal	Settlement Agreement (retired)	No grievance available
VHA	Removal	Removal	None - Resigned same day as proposal	No grievance available
VHA	Reprimand – 5-day suspension	Reprimand	Admonishment	No grievance available
VHA *OSC Report (minimum 12-day suspension required)	Removal	12-day suspension	Retired in lieu of suspension	No grievance available
VHA	Removal	None - Resigned prior to proposal	None - Resigned prior to proposal	No grievance available

OAWP Operational Support

Knowledge Management Operations

Knowledge Management Operations provides and maintains the data backbone to OAWP. It manages and improves the automated systems used by OAWP to assign, track, and report on matters. It provides strategic analytical assessments and business process improvements.

Knowledge Management Operations is comprised of a Division Director and 7 staff members.

Knowledge Management Operations serves as the primary lead for providing process, systems, analytical and performance consultative services to OAWP. Team members develop and maintain solutions for workload data tracking and management. The division serves as the primary entity responding to requests for data contained in the Office of Accountability and Whistleblower Protection systems.

Human Resources and Office Support

Human Resources and Office Support is comprised of 7 staff members in several functional areas. The Human Resources and Office Support (HRO) Division provides support to the Executive Director, the Deputy Executive Director, and the four primary divisions of the Office of Accountability and Whistleblower Protection (OAWP). Program Management Analysts focus on budget and finance; prepare correspondence responding to queries from Members of Congress, veterans and the public; field FOIA requests; coordinate and travel arrangements for OAWP's investigators and principals; human resources activities for recruiting, hiring and supporting full time employees.

II. Budget

OAWP had a budget of 17.3 million dollars for personnel and operations costs for June 23, 2017 through June 1, 2018. The funding was provided on a reimbursable basis from the VA Administrations and Staff Offices.

III. Other Activities

OAWP briefed VHA leadership at the Veterans Integrated Service Network (VISN) Directors Conference in November 2017. Following that meeting, OAWP conducted six briefings to individual VISN Executive Leadership Conferences involving the relevant VISN Director, the Medical Center Directors, Chiefs of Staff, Associate Directors for Patient Care Services, Assistant Directors and Associate Directors for each of the facilities in the relevant VISN. OAWP briefed the VBA Senior Leader Conference in April 2018.

OAWP made similar presentations to the American Federation of Government Employees (AFGE) leadership conferences in New Orleans LA in January 2018 and Orlando FL in February 2018 as well as a presentation to all five national unions' leadership in Aril 2018. The briefings provided an overview of OAWP and an introduction to the operation of Accountability and Whistleblower Act.



Manchester VA Medical Center
Manchester, NH



Edith Nourse Rogers Memorial
Veterans Hospital
Bedford MA



Roseburg VA Health Care System,
Roseburg, OR



William Jennings Bryan Dorn
VA Medical Center
Columbia, SC



VA Central Western Massachusetts
Healthcare System
Leeds, MA



C.W. Bill Young
VA Medical Center
Bay Pines, FL

OAWP has also responded to emergent VA needs by deploying intake and investigation teams to Manchester MA, Bedford MA, Roseburg OR, Columbia SC, Leeds (Northampton) MA, , and Bay Pines FL, as situations emerged in those locations. These teams provided real time disclosure intake and development of critical concerns at those facilities.

IV. Moving Forward

1. Improving investigatory capability

OAWP hired a Senior Advisor for Investigations to improve the training and credentialing of our Administrative Investigators. OAWP reviewed its investigatory needs and re-wrote the position description for investigators to improve focus on investigatory skills, hiring personnel in the 1810, General Investigation, Occupational Series.

2. Enhancing Advisory and Analysis Division's operations

OAWP is seeking, through the following recommendations for statutory changes, authority to hire Attorneys to practice law within the scope of OAWP operations.

3. Improving case management and data analytics

OAWP reviewed several software platforms to provide case management and information management functionality and expects to implement a solution before the end of Fiscal Year 2018.

4. Improving whistleblower protection

   a. Whistleblower Program Specialists

   The majority of processes built into OAWP are focused on resolving individual disclosures and holding Senior Leaders accountable for misconduct or poor performance. However, as OAWP matured the need for employees specializing in working with those disclosing information to our office, particularly those potentially experiencing retaliation, became apparent. Initially as a trial, OAWP hired one Whistleblower Program Specialist (WPS) and has added an additional employee in this role. The WPS works with disclosing employees to address and resolve difficulties experienced by the disclosing employee arising from their disclosing activity. Additionally, the WPSs are responsible for conducting whistleblower disclosure awareness training, advising OAWP leadership on whistleblower issues, and conducting day-to-day program management of the Office's whistleblower program.

   b. Whistleblower Integration/Mentor program

   An aspect of making disclosures of alleged wrongdoing is that the employee making the disclosure may feel themselves marginalized or excluded from the organizational group. Additionally, for some employees, whistleblowing turns into an ad-hoc job description. Balancing the need to encourage employees to disclose alleged



Executive Director OAWP meeting with facility leadership and the first participants in the Mentor/Integration Program

wrongdoing with the need to have employees performing the work for which they were hired. For application in appropriate cases, OAWP has created an Integration/Mentor program to engage the disclosing employee along with their senior leadership.

Adapted to the specifics of the individual case, an OAWP WPS works with the employee and the designated senior leader to facilitate communication, address concerns from either party, and ideally reach a result that has the employee gainfully performing VA work and management engaged in addressing issues identified through whistleblowing or other activities. Since June 23, 2017, through June 1, 2018, the program has been used twice on a trial or prototype basis and is expected to broaden in application as OAWP's capacity improves.

c. Employee Assistance Program for whistleblowers through OAWP

Many VA facilities use in-house Employee Assistance Programs (EAP) to offer personal counseling to individual employees. Employees who disclose wrongdoing, particularly those who feel they are facing retaliation for doing so, experience different stressors than a typical employee. Additionally, where EAP services are offered using in-house counselors there is often significant concern regarding confidentiality of matters discussed in the counseling setting. Consequently, OAWP intends to seek an external EAP program under the general authority granted to the heads of agencies under title 5, section 7901. The programs is expected to be provided by a contract provider to address multiple biopsychosocial areas. Access to this specific EAP program would be through the OAWP whistleblower program. Based on discussion with whistleblowers as to the types of stressors they encountered following their disclosures.

5. Whistleblower training under 38 USC § 733

Title 38 U.S.C. § 733 requires the Secretary of the VA to provide training to the Department's employees and supervisors regarding whistleblower disclosures. While there is current training provided under the earlier requirements of the No Fear Act and

the OSC Certification Program under 5 U.S.C. 2302(c), it is not as comprehensive as the requirements under section 733. OAWP intends to finalize the training materials and deployment plan by September 30, 2018.

V. Recommendations for Changes to Statute

1. To create an independent legal unit:

Explanation: To create, maintain and advance the quasi-independent nature of OAWP, a separate legal unit is essential. The Act itself separated OAWP from OGC for a reason as the OGC is responsible for defending the agency and being the sole source of legal advice and guidance. However, in matters in which the Office of General Counsel has provided legal advice and accountability actions result potentially from that advice, there is at least the appearance of a conflict. Additionally, reliance on OGC for legal review and guidance has introduced delays into the proposal process as well competing or conflicting guidance to management officials.

2. To add attorneys as a staffing resource and ensure OAWP access to agency information:

Explanation: This change is to ensure OAWP access to agency information in a manner and scope similar to the Office of Special Counsel while providing a similar degree of protection to any information gathered under these auspices. The addition of lawyers to the staffing resources of OAWP is necessary to ensure the quasi-independent nature of OAWP.

3. To prevent contradictory results from the filing of multiple complaints:

Explanation: Multiple venues to pursue complaints risks contradictory results and needlessly burden both processes. This change is intended to limit personal or individual claims to a single venue and not use the whistleblower process to pursue individual, non-whistleblower retaliation claims. Effectively carving out EEO complaints and negotiated grievances from being raised as whistleblower disclosures.

4. To increase efficiency, permit the sharing of information between OAWP, OIG, and OSC:

Explanation: Maintaining anonymity of employees who make whistleblower disclosures while permitting effective oversight is a balance of information interests. The current constraints among OAWP, OIG, and OSC regarding information sharing result in redundant efforts and severely reduce efficiency.

5. To provided consistency in 714 actions and provide a "safety valve" for whistleblower actions being held in abeyance under 714:

Explanation: These changes are intended to ensure similar burdens of proof for all disciplinary actions from reprimands through removals. The current arrangement places a higher burden of proof for lesser actions (reprimands and suspensions of 14

days or less). Additionally, the language affecting the whistleblower protections is to clarify that when the action is held due to open cases with OSC or OAWP cases, the statutory timeframe to decide the proposal is suspended until the hold is resolved. Finally, while uncommon, the need for a "safety valve" to ensure employees who present a threat to self or others are not retained despite having open cases with OSC or OAWP. As pictured the "safety valve" would require a determination at no lower level that an Under or Assistant Secretary to ensure a disinterested review of potential threat.

6. To ensure consistency in disciplinary action timeframes involving whistleblower retaliation:

Explanation: This change is to align the timeframes and process of section 731 with those already present for discipline in sections 713 and 714. Section 731 provides a unique, combined advance notice & reply period. This unique statutory requirement alongside the statutory timeframes required under sections 713 or 714 presents an obstacle to proposing actions involving whistleblower retaliation and other misconduct.

7. To create consistency in appeals standards for all VA employees, including title 38 providers:

Explanation: This change involves setting the burden of proof at substantial evidence and lack of mitigation on appeals of actions involving professional conduct or competence or not involving professional conduct or competence taken against title 38 providers thereby ensuring greater consistency across the workforce.

9. Resources:

Explanation: Line item budget authority. To develop and maintain a quasi-independent nature, direct budgeting for the operations of the Office is essential. As currently structured, the Office receives its funding through reimbursement from the very entities it investigates. This arrangement also leaves the Office's future operations vulnerable to zeroing out through administrative action within the Department.

10. To broaden OAWP's statutory coverage for investigations and proposing discipline:

Explanation: The current language in 38 U.S.C. section 323(c)(1)(H) describes a specific sub-set of individuals to be investigated by OAWP. While the listed individuals represent some senior leaders in the VA, a broader definition is needed to ensure all supervisors and managers responsible for leading major VA activities are consistently held to the same standard of accountability. For example, a typical VA medical center is led by a group of five employees (Medical Center Director; Chief of Staff; Nurse

Executive; Assistant Director, and Associate Director). As currently written only three (Medical Center Director, Chief of Staff and Nurse Executive) of the five are within the scope of OAWP's statutory charter. Additionally, the senior leadership of other major VA facilities fall outside the current statutory coverage such as Cemetery Directors and General Schedule office directors of VBA Regional Offices. Finally, the current language of 38 U.S.C. section 323(c)(1)(I) requires recommendations to the Secretary for such disciplinary action as the Assistant Secretary considers appropriate based on the results of the OAWP investigations. Request consideration of designating the Assistant Secretary, AWP as the proposing official for all disciplinary actions

Appendix - Revised Report submission from Section 211 Requirements

In accordance with the VA Accountability and Whistleblower Protection Act, P.L. 115-41, Section 211, the Secretary of Veterans Affairs shall measure and collect information on the outcomes of disciplinary actions carried out by the Department of Veterans Affairs during the three-year period ending on the date of the enactment of this Act and the effectiveness of such actions.

This report requires historical information not systematically gathered during the look back period (three-year period prior to enactment of the Act). In late 2014 the Office of Accountability Review (OAR), in response to the access-to-care crisis, developed an ad-hoc tracking system outside the Department's human resources information system. This ad-hoc system captures limited de-identified data points as entered by each individual facility human resources offices across the Department.

The Office of Accountability and Whistleblower Protection (OAWP) will discontinue use of the current ad-hoc system once an effective disciplinary tracking system has been procured.

Following discussion with Committee staff the Department assembled an estimate of the time needed to capture the retrospective date. Detailed later in the report, the broad estimate is approximately 7,000 staff hours.

The specific content requirements of Section 211(b)(2) are:

(A) The information collected under subsection (a)(2).

Subsection (a)(2) sought the following data:

(A) The average time from the initiation of an adverse action against an employee at the Department to the final resolution of that action.

Pre-June 23, 2017, average processing times from proposal to effective date was 57 days.

(B) The number of distinct steps and levels of review within the Department involved in the disciplinary process and the average length of time required to complete these steps.

(C) The rate of use of alternate disciplinary procedures compared to traditional disciplinary procedures and the frequency with which employees who are subject to alternative disciplinary procedures commit additional offenses.

(D) The number of appeals from adverse actions filed against employees of the Department, the number of appeals upheld, and the reasons for which the appeals were upheld;

(E) The use of paid administrative leave during the disciplinary process and the length of such leave.

Regarding (a)(2)(A), for the period January 1, 2015 – June 22, 2017, the average time from issuance of a proposal of an adverse action until decision of that action was 55 days.

Regarding (a)(2)(B), the specific steps and levels for review involved in the disciplinary process within the Department varies with the specific authority being exercised (e.g. title 5, title 38). Broadly the steps are: information gathering or investigation; assessment of results; development of proposed action; issuance of, and reply to, the proposed action; decision regarding the proposed action; appeal or grievance regarding the decision. There is no data available regarding the length of time for each step.

Regarding (a)(2)(C)-(E), during the three-year period prior to enactment of the Act, the Department did not have systems or other capabilities to capture and analyze the requested information regarding: usage of alternative disciplinary procedures; appeals of disciplinary actions; or the use of paid administrative leave in the disciplinary process.

In order to capture the data requested that was not acquired at the time the actions were taken the following estimates were developed:

Approximately 5,700 hours to review and capture the data for over 5,600 adverse actions taken during lookback period [(a)(2)(A) and (B)].

Approximately 500 staff hours to review and capture data related to alternative discipline and use of authorized absence during the lookback period [(a)(2)(C) and (E)].

Approximately 800 hours to review and capture the required data for the nearly 3,000 appeals over the lookback period [(a)(2)(D)].

The estimated times are purely touch times to review the files and capture the necessary data.

However, to establish a baseline to assess the impact and effectiveness of the Act the following data was gathered from the ad-hoc VA Wide Adverse Action Tracker:

The figures in the four left columns represent the numbers for the labeled groups of employees (e.g. SL & SES Actions); The figures in the two far-right columns represent the numbers for the entire workforce for that action and time period.

Senior Executive Actions:

Count of Actions by Type, SL & SES Actions
Pre (09/01/2014-06/22/2017) and Post (06/23/2017-05/31/2018) OAWP

	SL & SES Actions				
Action Taken // Pre & Post OAWP	Actions Taken	% of Total	# of Settlements	Total Actions Taken	Total # of Settlements
Pre-OAWP					
09/2014-06/2015	5	0.1%		6,432	1,207
Admonishment		0.0%		1,638	323
Reprimand	2	0.1%		1,595	301
Short Suspension		0.0%		1,254	210
Long Suspension		0.0%		376	66
Demotion		0.0%		39	10
Probationary Termination		0.0%		797	151
Removal	3	0.4%		733	146
06/2015-06/2016	15	0.2%	2	8,131	1,389
Admonishment	1	0.1%		1,961	307
Reprimand	7	0.3%	1	2,008	319
Short Suspension		0.0%		1,590	296
Long Suspension	2	0.4%	1	462	79
Demotion	2	3.3%		61	11
Probationary Termination		0.0%		1,042	196
Removal	3	0.3%		1,007	181
06/2016-06/2017	9	0.1%	1	8,233	395
Admonishment	4	0.2%		2,011	84
Reprimand	3	0.2%	1	1,968	80
Short Suspension		0.0%		1,631	87
Long Suspension		0.0%		448	24
Demotion		0.0%		68	7
Probationary Termination	1	0.1%		1,044	57
Removal	1	0.1%		1,063	56
Pre-OAWP Total	29	0.1%	3	22,796	2,991
Post-OAWP					
06/2017-06/2018	7	0.1%		9,097	178
Admonishment	1	0.0%		2,003	30
Reprimand	1	0.0%		2,099	40
Short Suspension		0.0%		1,779	39
Long Suspension	1	0.3%		316	8
Demotion	1	1.1%		93	9
Probationary Termination		0.0%		1,175	21
Removal	3	0.2%		1,632	31
Post-OAWP Total	7	0.1%		9,097	178
Grand Total	36	0.1%	3	31,893	3,169

Count of Actions by Type, SES Title 38 Equiv. Actions
Pre (09/01/2014-06/22/2017) and Post (06/23/2017-05/31/2018) OAWP

	SES Title 38 Equiv. Actions				
Action Taken // Pre & Post OAWP	Actions Taken	% of Total	# of Settlements	Total Actions Taken	Total # of Settlements
Pre-OAWP					
09/2014-06/2015	9	0.1%		6,432	1,207
Admonishment	3	0.2%		1,638	323
Reprimand	1	0.1%		1,595	301
Short Suspension		0.0%		1,254	210
Long Suspension	1	0.3%		376	66
Demotion		0.0%		39	10
Probationary Termination	2	0.3%		797	151
Removal	2	0.3%		733	146
06/2015-06/2016	9	0.1%	1	8,131	1,389
Admonishment	5	0.3%		1,961	307
Reprimand	1	0.0%		2,008	319
Short Suspension	1	0.1%	1	1,590	296
Long Suspension		0.0%		462	79
Demotion		0.0%		61	11
Probationary Termination	2	0.2%		1,042	196
Removal		0.0%		1,007	181
06/2016-06/2017	9	0.1%	2	8,233	395
Admonishment	2	0.1%		2,011	84
Reprimand		0.0%		1,968	80
Short Suspension	2	0.1%		1,631	87
Long Suspension		0.0%		448	24
Demotion		0.0%		68	7
Probationary Termination		0.0%		1,044	57
Removal	5	0.5%	2	1,063	56
Pre-OAWP Total	27	0.1%	3	22,796	2,991
Post-OAWP					
06/2017-06/2018	11	0.1%		9,097	178
Admonishment	1	0.0%		2,003	30
Reprimand	4	0.2%		2,099	40
Short Suspension	1	0.1%		1,779	39
Long Suspension		0.0%		316	8
Demotion	1	1.1%		93	9
Probationary Termination	1	0.1%		1,175	21
Removal	3	0.2%		1,632	31
Post-OAWP Total	11	0.1%		9,097	178
Grand Total	38	0.1%	3	31,893	3,169

General Workforce:

Count of Actions by Type, Title 38 Other
Pre (09/01/2014-06/22/2017) and Post (06/23/2017-05/31/2018) OAWP

	Title 38 Other Actions				
Action Taken // Pre & Post OAWP	Actions Taken	% of Total	# of Settlements	Total Actions Taken	Total # of Settlements
Pre-OAWP					
09/2014-06/2015	833	13.0%	131	6,432	1,207
Admonishment	261	15.9%	45	1,638	323
Reprimand	244	15.3%	35	1,595	301
Short Suspension	130	10.4%	21	1,254	210
Long Suspension	32	8.5%	3	376	66
Demotion	5	12.8%	1	39	10
Probationary Termination	61	7.7%	6	797	151
Removal	100	13.6%	20	733	146
06/2015-06/2016	1,044	12.8%	136	8,131	1,389
Admonishment	300	15.3%	26	1,961	307
Reprimand	366	18.2%	45	2,008	319
Short Suspension	135	8.5%	26	1,590	296
Long Suspension	43	9.3%	5	462	79
Demotion	9	14.8%		61	11
Probationary Termination	54	5.2%	7	1,042	196
Removal	137	13.6%	27	1,007	181
06/2016-06/2017	990	12.0%	39	8,233	395
Admonishment	303	15.1%	9	2,011	84
Reprimand	277	14.1%	8	1,968	80
Short Suspension	162	9.9%	9	1,631	87
Long Suspension	41	9.2%	3	448	24
Demotion	8	11.8%	1	68	7
Probationary Termination	56	5.4%		1,044	57
Removal	143	13.5%	9	1,063	56
Pre-OAWP Total	2,867	12.6%	306	22,796	2,991
Post-OAWP					
06/2017-06/2018	1,132	12.4%	9	9,097	178
Admonishment	313	15.6%	1	2,003	30
Reprimand	358	17.1%	3	2,099	40
Short Suspension	181	10.2%	1	1,779	39
Long Suspension	40	12.7%	1	316	8
Demotion	4	4.3%		93	9
Probationary Termination	58	4.9%		1,175	21
Removal	178	10.9%	3	1,632	31
Post-OAWP Total	1,132	12.4%	9	9,097	178
Grand Total	3,999	12.5%	315	31,893	3,169

Count of Actions by Type, GS 1-6
Pre (09/01/2014-06/22/2017) and Post (06/23/2017-05/31/2018) OAWP

	GS 1-6 Actions				
Action Taken // Pre & Post OAWP	Actions Taken	% of Total	# of Settlements	Total Actions Taken	Total # of Settlements
Pre-OAWP					
09/2014-06/2015	2,456	38.2%	450	6,432	1,207
Admonishment	630	38.5%	106	1,638	323
Reprimand	542	34.0%	95	1,595	301
Short Suspension	490	39.1%	85	1,254	210
Long Suspension	151	40.2%	32	376	66
Demotion	3	7.7%		39	10
Probationary Termination	332	41.7%	70	797	151
Removal	308	42.0%	62	733	146
06/2015-06/2016	2,953	36.3%	462	8,131	1,389
Admonishment	725	37.0%	96	1,961	307
Reprimand	655	32.6%	88	2,008	319
Short Suspension	584	36.7%	93	1,590	296
Long Suspension	175	37.9%	27	462	79
Demotion	4	6.6%		61	11
Probationary Termination	436	41.8%	89	1,042	196
Removal	374	37.1%	69	1,007	181
06/2016-06/2017	3,142	38.2%	140	8,233	395
Admonishment	771	38.3%	28	2,011	84
Reprimand	727	36.9%	28	1,968	80
Short Suspension	601	36.8%	29	1,631	87
Long Suspension	175	39.1%	7	448	24
Demotion	11	16.2%	1	68	7
Probationary Termination	447	42.8%	26	1,044	57
Removal	410	38.6%	21	1,063	56
Pre-OAWP Total	8,551	37.5%	1,052	22,796	2,991
Post-OAWP					
06/2017-06/2018	3,307	36.4%	75	9,097	178
Admonishment	740	36.9%	15	2,003	30
Reprimand	702	33.4%	19	2,099	40
Short Suspension	644	36.2%	16	1,779	39
Long Suspension	120	38.0%	5	316	8
Demotion	10	10.8%	1	93	9
Probationary Termination	503	42.8%	7	1,175	21
Removal	588	36.0%	12	1,632	31
Post-OAWP Total	3,307	36.4%	75	9,097	178
Grand Total	11,858	37.2%	1,127	31,893	3,169

Count of Actions by Type, GS 7-10
Pre (09/01/2014-06/22/2017) and Post (06/23/2017-05/31/2018) OAWP

	GS 7-10 Actions				
Action Taken // Pre & Post OAWP	Actions Taken	% of Total	# of Settlements	Total Actions Taken	Total # of Settlements
Pre-OAWP					
09/2014-06/2015	857	13.3%	219	6,432	1,207
Admonishment	231	14.1%	71	1,638	323
Reprimand	248	15.5%	61	1,595	301
Short Suspension	178	14.2%	35	1,254	210
Long Suspension	37	9.8%	6	376	66
Demotion	16	41.0%	4	39	10
Probationary Termination	68	8.5%	19	797	151
Removal	79	10.8%	23	733	146
06/2015-06/2016	1,077	13.2%	233	8,131	1,389
Admonishment	281	14.3%	62	1,961	307
Reprimand	272	13.5%	43	2,008	319
Short Suspension	221	13.9%	54	1,590	296
Long Suspension	66	14.3%	14	462	79
Demotion	15	24.6%	3	61	11
Probationary Termination	112	10.7%	28	1,042	196
Removal	110	10.9%	29	1,007	181
06/2016-06/2017	1,035	12.6%	48	8,233	395
Admonishment	253	12.6%	12	2,011	84
Reprimand	267	13.6%	11	1,968	80
Short Suspension	256	15.7%	12	1,631	87
Long Suspension	55	12.3%	3	448	24
Demotion	15	22.1%	1	68	7
Probationary Termination	73	7.0%	5	1,044	57
Removal	116	10.9%	4	1,063	56
Pre-OAWP Total	2,969	13.0%	500	22,796	2,991
Post-OAWP					
06/2017-06/2018	1,248	13.7%	22	9,097	178
Admonishment	292	14.6%	5	2,003	30
Reprimand	306	14.6%	7	2,099	40
Short Suspension	262	14.7%	3	1,779	39
Long Suspension	48	15.2%		316	8
Demotion	24	25.8%	2	93	9
Probationary Termination	93	7.9%	1	1,175	21
Removal	223	13.7%	4	1,632	31
Post-OAWP Total	1,248	13.7%	22	9,097	178
Grand Total	4,217	13.2%	522	31,893	3,169

Count of Actions by Type, GS 11-15
Pre (09/01/2014-06/22/2017) and Post (06/23/2017-05/31/2018) OAWP

	GS 11-15 Actions				
Action Taken // Pre & Post OAWP	Actions Taken	% of Total	# of Settlements	Total Actions Taken	Total # of Settlements
Pre-OAWP					
09/2014-06/2015	737	11.5%	168	6,432	1,207
Admonishment	200	12.2%	48	1,638	323
Reprimand	229	14.4%	59	1,595	301
Short Suspension	157	12.5%	34	1,254	210
Long Suspension	51	13.6%	9	376	66
Demotion	11	28.2%	4	39	10
Probationary Termination	36	4.5%	6	797	151
Removal	53	7.2%	8	733	146
06/2015-06/2016	948	11.7%	261	8,131	1,389
Admonishment	231	11.8%	70	1,961	307
Reprimand	282	14.0%	82	2,008	319
Short Suspension	202	12.7%	57	1,590	296
Long Suspension	68	14.7%	14	462	79
Demotion	24	39.3%	8	61	11
Probationary Termination	40	3.8%	8	1,042	196
Removal	101	10.0%	22	1,007	181
06/2016-06/2017	951	11.6%	60	8,233	395
Admonishment	246	12.2%	19	2,011	84
Reprimand	267	13.6%	17	1,968	80
Short Suspension	196	12.0%	10	1,631	87
Long Suspension	62	13.8%	5	448	24
Demotion	27	39.7%	2	68	7
Probationary Termination	39	3.7%	2	1,044	57
Removal	114	10.7%	5	1,063	56
Pre-OAWP Total	2,636	11.6%	489	22,796	2,991
Post-OAWP					
06/2017-06/2018	1,099	12.1%	24	9,097	178
Admonishment	272	13.6%	4	2,003	30
Reprimand	273	13.0%	6	2,099	40
Short Suspension	209	11.7%	4	1,779	39
Long Suspension	43	13.6%	1	316	8
Demotion	41	44.1%	5	93	9
Probationary Termination	31	2.6%		1,175	21
Removal	230	14.1%	4	1,632	31
Post-OAWP Total	1,099	12.1%	24	9,097	178
Grand Total	3,735	11.7%	513	31,893	3,169

Count of Actions by Type, WS 1-15
Pre (09/01/2014-06/22/2017) and Post (06/23/2017-05/31/2018) OAWP

	WS 1-15 Actions				
Action Taken // Pre & Post OAWP	Actions Taken	% of Total	# of Settlements	Total Actions Taken	Total # of Settlements
Pre-OAWP					
09/2014-06/2015	107	1.7%	19	6,432	1,207
Admonishment	22	1.3%	5	1,638	323
Reprimand	36	2.3%	5	1,595	301
Short Suspension	25	2.0%	4	1,254	210
Long Suspension	6	1.6%	1	376	66
Demotion	4	10.3%	1	39	10
Probationary Termination	4	0.5%	1	797	151
Removal	10	1.4%	2	733	146
06/2015-06/2016	114	1.4%	13	8,131	1,389
Admonishment	31	1.6%	4	1,961	307
Reprimand	26	1.3%	2	2,008	319
Short Suspension	32	2.0%	4	1,590	296
Long Suspension	5	1.1%		462	79
Demotion	4	6.6%		61	11
Probationary Termination	5	0.5%	1	1,042	196
Removal	11	1.1%	2	1,007	181
06/2016-06/2017	130	1.6%	4	8,233	395
Admonishment	36	1.8%		2,011	84
Reprimand	35	1.8%	1	1,968	80
Short Suspension	33	2.0%	1	1,631	87
Long Suspension	8	1.8%		448	24
Demotion	6	8.8%	2	68	7
Probationary Termination	7	0.7%		1,044	57
Removal	5	0.5%		1,063	56
Pre-OAWP Total	351	1.5%	36	22,796	2,991
Post-OAWP					
06/2017-06/2018	174	1.9%	5	9,097	178
Admonishment	40	2.0%		2,003	30
Reprimand	45	2.1%	1	2,099	40
Short Suspension	49	2.8%	1	1,779	39
Long Suspension	4	1.3%		316	8
Demotion	11	11.8%	1	93	9
Probationary Termination	7	0.6%		1,175	21
Removal	18	1.1%	2	1,632	31
Post-OAWP Total	174	1.9%	5	9,097	178
Grand Total	525	1.6%	41	31,893	3,169

Count of Actions by Type, WL 1-15
Pre (09/01/2014-06/22/2017) and Post (06/23/2017-05/31/2018) OAWP

	WL 1-15 Actions				
Action Taken // Pre & Post OAWP	Actions Taken	% of Total	# of Settlements	Total Actions Taken	Total # of Settlements
Pre-OAWP					
09/2014-06/2015	23	0.4%	4	6,432	1,207
Admonishment	8	0.5%	2	1,638	323
Reprimand	5	0.3%	1	1,595	301
Short Suspension	5	0.4%		1,254	210
Long Suspension	3	0.8%	1	376	66
Demotion		0.0%		39	10
Probationary Termination	1	0.1%		797	151
Removal	1	0.1%		733	146
06/2015-06/2016	31	0.4%	9	8,131	1,389
Admonishment	9	0.5%	3	1,961	307
Reprimand	9	0.4%	2	2,008	319
Short Suspension	5	0.3%	1	1,590	296
Long Suspension	2	0.4%		462	79
Demotion	1	1.6%		61	11
Probationary Termination	4	0.4%	2	1,042	196
Removal	1	0.1%	1	1,007	181
06/2016-06/2017	29	0.4%	1	8,233	395
Admonishment	6	0.3%		2,011	84
Reprimand	13	0.7%	1	1,968	80
Short Suspension	4	0.2%		1,631	87
Long Suspension		0.0%		448	24
Demotion		0.0%		68	7
Probationary Termination	2	0.2%		1,044	57
Removal	4	0.4%		1,063	56
Pre-OAWP Total	83	0.4%	14	22,796	2,991
Post-OAWP					
06/2017-06/2018	52	0.6%		9,097	178
Admonishment	11	0.5%		2,003	30
Reprimand	18	0.9%		2,099	40
Short Suspension	14	0.8%		1,779	39
Long Suspension		0.0%		316	8
Demotion		0.0%		93	9
Probationary Termination	1	0.1%		1,175	21
Removal	8	0.5%		1,632	31
Post-OAWP Total	52	0.6%		9,097	178
Grand Total	**135**	**0.4%**	**14**	**31,893**	**3,169**

Count of Actions by Type, WG 1-15
Pre (09/01/2014-06/22/2017) and Post (06/23/2017-05/31/2018) OAWP

	WG 1-15 Actions				
Action Taken // Pre & Post OAWP	Actions Taken	% of Total	# of Settlements	Total Actions Taken	Total # of Settlements
Pre-OAWP					
09/2014-06/2015	1,293	20.1%	211	6,432	1,207
Admonishment	264	16.1%	46	1,638	323
Reprimand	253	15.9%	44	1,595	301
Short Suspension	254	20.3%	31	1,254	210
Long Suspension	94	25.0%	14	376	66
Demotion		0.0%		39	10
Probationary Termination	266	33.4%	47	797	151
Removal	162	22.1%	29	733	146
06/2015-06/2016	1,779	21.9%	257	8,131	1,389
Admonishment	359	18.3%	44	1,961	307
Reprimand	351	17.5%	53	2,008	319
Short Suspension	382	24.0%	59	1,590	296
Long Suspension	100	21.6%	18	462	79
Demotion	2	3.3%		61	11
Probationary Termination	336	32.2%	52	1,042	196
Removal	249	24.7%	31	1,007	181
06/2016-06/2017	1,811	22.0%	97	8,233	395
Admonishment	375	18.6%	15	2,011	84
Reprimand	346	17.6%	13	1,968	80
Short Suspension	356	21.8%	25	1,631	87
Long Suspension	107	23.9%	6	448	24
Demotion		0.0%		68	7
Probationary Termination	380	36.4%	23	1,044	57
Removal	247	23.2%	15	1,063	56
Pre-OAWP Total	4,883	21.4%	565	22,796	2,991
Post-OAWP					
06/2017-06/2018	1,962	21.6%	39	9,097	178
Admonishment	312	15.6%	5	2,003	30
Reprimand	370	17.6%	3	2,099	40
Short Suspension	407	22.9%	13	1,779	39
Long Suspension	60	19.0%	1	316	8
Demotion	1	1.1%		93	9
Probationary Termination	448	38.1%	11	1,175	21
Removal	364	22.3%	6	1,632	31
Post-OAWP Total	1,962	21.6%	39	9,097	178
Grand Total	6,845	21.5%	604	31,893	3,169

(B) The findings of the Secretary with respect to the measurement and collection carried out under subsection (a).

The Department's human resources information system gathers data based on the government-wide and VA-specific data needs. Current government-wide requirements do not support requests for data outside the specific data elements captured in the regular course of business.

In late 2014 the Office of Accountability Review (OAR), in response to the access-to-care crisis, developed an ad-hoc tracking system outside the Department's human resources information system. This ad-hoc system captures limited de-identified data points as entered by each individual facility human resources offices across the Department.

The OAWP will discontinue use of the current ad-hoc system once an effective disciplinary tracking system has been procured.

(C) An analysis of the disciplinary procedures and actions of the Department.

The ad-hoc tracking system does not capture responsive data to this request. Therefore, the OAWP is not able to analyze the procedures and actions. This ad-hoc system captures limited de-identified data points as entered by each individual facility human resources offices across the Department.

The OAWP will discontinue use of the current ad-hoc system once an effective disciplinary tracking system has been procured.

(D) Suggestions for improving the disciplinary procedures and actions of the Department.

The requirements under the VA Accountability and Whistleblower Protection Act have provided an opportunity to improve disciplinary procedures and actions of the Department.

Employees hired under title 38 United States Code, section 7401(1) should be subject to the same burden of proof and provided the same whistleblower protections as those covered by section 714. Currently these employees are not covered by section 714 which is inconsistent with the employee population.

(E) Such other matters as the Secretary considers appropriate.

For period, June 23, 2017 – April 30, 2018, the Office of Accountability and Whistleblower Protection has been involved in the following number of action involving senior leaders throughout the Department:

2 Admonishments	4 Reprimands
3 Demotions	5 Suspensions
7 Removals	2 Resignations in lieu of Removal
5 Retirements in Lieu of Removal	

Senator TESTER. Your predecessors have testified that leadership includes working with underperforming employees to make them better at their jobs, rather than just firing them. Is that your philosophy too?

Secretary SHULKIN. Yes, it is, that every good manager works with their employees to make them better, to give them feedback. When an employee deviates from a professional, moral standard, sometimes you cannot coach them. Sometimes you have to help them find——

[Overlapping speakers.]

Senator TESTER. Do you believe that your leadership is doing that within the VA?

Secretary SHULKIN. Yes. Well, I think that we have room for improvement, because when you look at our employee engagement scores, they are not improving the way that I believe that they should. So, we are relooking at our efforts to do that better.

Senator TESTER. OK. On the Choice Bill that was passed last August, Congress expanded your direct hiring authority for positions for which there was a shortage of highly qualified candidates. Am I correct that the VA has still not used this authority to hire?

Secretary SHULKIN. Yeah. When you look at—my understanding, Senator, is that the direct hire authority as given to us——

Senator TESTER. Yep.

Secretary SHULKIN [continuing]. For medical center directors and network directors——

Senator TESTER. Yes.

Secretary SHULKIN [continuing]. And I think, unintentionally, it capped the salary that we are able to offer at a salary that is lower than what we currently offer. So, we have not been able to utilize——

Senator TESTER. OK.

Secretary SHULKIN [continuing]. The direct hire authority in the way that I believe it was intended to be used.

Senator TESTER. So, how can that—how can that be fixed?

Secretary SHULKIN. It is a very small——

Senator TESTER. You can do it by rule?

Secretary SHULKIN [continuing]. Technical fix.

Senator TESTER. Can you do it by rule?

Secretary SHULKIN. No. You are going to have to do it legislatively, but it is a very small technical change that we have given some technical——

Senator TESTER. OK. And——

Secretary SHULKIN [continuing]. Advice.

Senator TESTER. And it gave you authority on those positions——

Secretary SHULKIN. Yeah.

Senator TESTER [continuing]. But it also gave you authority for employees that you would deem critical.

Secretary SHULKIN. Yes, and we have gone to OPM with 15 different critical occupations that they have agreed to move forward with us on direct hire authority that I believe we will start to implement in the next several weeks.

Senator TESTER. OK. We have had the conversation before. At a town hall meeting in Great Falls, MT, Monday, I will tell you the

first question that came up was workforce vacancies. This is just Montana——

Secretary SHULKIN. Mm-hmm.

Senator TESTER [continuing]. I'm sorry about being self-centered on this. I just want to tell you that we are in a crisis. We may be in a crisis in Alaska, and we may be in a crisis in North Carolina, and every other State, too. I do not know that, but I can tell you in Montana, we are in a crisis.

Let me give you an example. Billings, MT, is supposed to have seven docs in that clinic; we have got four, and two of those are looking for another position.

Secretary SHULKIN. Yep.

Senator TESTER. When you overwork employees, they tend to hit the road.

Secretary SHULKIN. Yep.

Senator TESTER. So, my question is, what is the problem? I have talked to you many times. I know you are committed to this, yet it does not seem—it seems like it is getting worse. In fact, it does not seem like it, in my State it is getting worse.

Secretary SHULKIN. Yeah. Well, in Montana, as you know, you have an 11.2 percent turnover rate of your employees, but for physicians it is 23 percent. That is a problem. You have a 24 percent vacancy rate for practical nurses.

Senator TESTER. I have got all that.

Secretary SHULKIN. So——

Senator TESTER. So, what can we do to fix it?

Secretary SHULKIN. Here is what we——

Senator TESTER. What are you doing to fix it?

Secretary SHULKIN. Here is what we are doing. First of all, we have to hire more staff and we have to make sure that we keep them. We have announced, for Montana, an increase of up to $120,000 for primary care physicians in educational debt reduction——

Senator TESTER. Yes.

Secretary SHULKIN [continuing]. For nurses—I am sorry—for psychologists and nurse practitioners, a $10,000 hiring bonus, and for social workers a $5,000 hiring bonus. That is a beginning to start to address people to look at the VA as a place to come to work. Then we have to, as you said, if we cannot fully staff the clinic, it puts more pressure on our current staff that are there, and so it is a vicious cycle. So, we are working to recruit.

Senator TESTER. Thank you for that, but time is of the essence. I do not speak for Senator Rounds; he will speak for himself on this.

Secretary SHULKIN. Mm-hmm.

Senator TESTER. But, as you well know, there was a House bill that was going to have a Base Realignment and Closure (BRAC) done. They could literally shut down damn near every facility in Montana if they did a BRAC, because we have got no staffing.

Secretary SHULKIN. Right.

Senator TESTER. This is really, really, really important.

Secretary SHULKIN. It is.

Senator TESTER. OK.

Secretary SHULKIN. It is. It is. Absolutely.

[The information requested during the hearing follows:]

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. JON TESTER TO HON. DAVID J. SHULKIN, M.D., SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS

Please provide a list of five specific things that VA is doing above and beyond what is currently being done to address clinical vacancies in Montana.

Response. Montana has taken the following actions address clinical vacancies in Montana:

1. Participation in Hiring Fairs:

a. 12/15/17: Focused hiring fair for Medical Support Assistants in Missoula. Included on the spot interviews and tentative offers on the spot. Currently have made 23 offers.

b. 3/21/18: Participating in Billings Job Jamboree in partnership with Sheridan VAMC.

c. 4/15/18: Kalispell Health Expo 2018.

2. Institutionalized use/increased emphasis for hiring incentives:

a. Emphasis on the following:

- Use of Recruitment and Relocation incentives
- Permanent Change of Station allowances
- Student Loan Repayment Program
- Increased Education Debt Reduction Program funds for 2018

3. Process improvement/Reduced Hiring Bureaucracy:

a. Speeds up hiring process when vacancy identified.

4. Authorized 3 new Human Resources positions and 1 lead specifically dedicated to recruitment in foundational services.

Senator TESTER. Thank you, Mr. Chairman.

Chairman ISAKSON. Thank you, Senator Tester. Let me just say, for the record, the Ranking Member's cooperation throughout the process of working on the Choice legislation has been stupendous. I appreciate his help very much, and we are going to get to the finish line in large measure because of his support and the support of the members of his caucus as well as ours, for this good legislation, and I appreciate it very much.

Mr. BOOZMAN. Senator Boozman.

HON. JOHN BOOZMAN, U.S. SENATOR FROM ARKANSAS

Senator BOOZMAN. Thank you, Mr. Chairman, and thank you, Secretary, for being here. We do appreciate your hard work.

I would like to talk to you a second about a bill, the VET TEC Act, which we were able to include in the Forever GI Bill. It is a technical education pilot. I know that we do not have a Deputy Under Secretary for Economic Opportunity. He has retired. I would like to know who is going to be responsible for implementing it and how we are doing.

Secretary SHULKIN. Yeah.

Senator BOOZMAN. Talk a little bit more about——

Secretary SHULKIN. Yeah. Well——

Senator BOOZMAN [continuing]. Who is going to fill that spot, and again, you might also elaborate even more about how we can help you with these really key, you know, things that are deficient in the sense of not being able to fill your staff.

Secretary SHULKIN. Right. Well, first of all, I think you helped a great deal with the Forever GI Bill. I think this is a great success story of what this Committee was able to do in 2017. As you know, of the GI Bill, the Forever GI Bill, we have enacted already 13 of 34 of the provisions. But, the one that you are talking about, the TEC Act, which is more the STEM, the scientific, technical train-

ing, that is going to require—that is one of the ones that we have not yet implemented because it is going to require some IT solutions. What we are doing is, we have a Request for Information out now to look to how we can get private industry to help us implement that. Otherwise, we are going to need to build that in-house, which is going to be more expensive.

So, we are looking for the best way to get that implemented and committed to getting it implemented. But, on many of these, the 34, 22 of the provisions require IT assistance.

Senator BOOZMAN. How will you determine the courses that are eligible, such as coding, things like that?

Secretary SHULKIN. Under the TEC Act? Well, you asked who is responsible for it. Our Acting Under Secretary for Benefits, Mr. Tom Murphy——

Senator BOOZMAN. OK.

Secretary SHULKIN [continuing]. Has accountability under that area. Rob Worley, who is here with us today, is the Director of Educational Benefits.

Senator BOOZMAN. OK. So, we will follow up with them.

Secretary SHULKIN. Yes.

[The information requested during the hearing follows:]

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. JOHN BOOZMAN TO HON. DAVID J. SHULKIN, M.D., SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS

What challenges does VA face implementing the VET TEC program, how does VA plan to overcome those challenges, and what will be the timeline?

Response. Veterans Affairs (VA) requires a legal determination regarding the need to award VET TEC via Federal acquisitions or if VA is able to leverage its authority to approve via the normal process. Both options provide timely awards to training programs for participation in the 5-year pilot. VA is currently gathering necessary information to assist VA's Office of General Counsel (OGC) with finalizing their legal opinion.

VA estimates that as many as 50 percent of prospective applicants may not meet necessary skills screening by training institutions. Reputable IT training providers will conduct applicable screening criteria to all applicants. We recognize that if a Veteran does not meet initial screening they may benefit from various upskilling opportunities in an effort to better position them for future application windows. VA is working with a large coalition of partners to establish a series of no-cost public-private partnerships that will create a "hope pathway" for Veterans seeking to upskill. This pathway will leverage existing services by the Department of Labor (DOL), in addition to free community college programs and mentorship tools.

The VET TEC pilot program has not previously been attempted at this scale; therefore the criteria for selection of prospective VET TEC providers will require extensive market research prior to the implementation of the pilot program. VA will evaluate programs using industry best practices to ensure effective design, implementation and evaluation of the pilot.

The requirement of 50 percent of vendor payment taking place upon a Veteran's job placement is one of the more difficult aspects of implementation and may deter providers from participating. VA plans to establish "employer coalitions" in partnership with DOL, VA's Vocational Rehabilitation and Employment, and the VET TEC training institutions to ensure Veteran job placement satisfies criteria for payment.

Timely hiring of staff is critical to proper implementation. VA is in the process of making appropriate staffing determinations and authorization of necessary staff hiring. We should complete hiring of this staff by May 2018.

VA anticipates receiving a legal opinion from OGC within the next 60 days and expects to initiate or start the official pilot program by February 2019.

Senator BOOZMAN. Thank you. According to the VA OIG report on the consolidated patient account centers, in 2015, the VA billed third-party payers approximately $7.2 billion for medical treatment. I think we collected about $2.5 billion. The Department con-

siders third-party collections as revenue in its annual budget projections.

How does the VA project its expected collections for each year, and how does that match up with what we are actually collecting?

Secretary SHULKIN. We do give our projected collections as part of our budget request, because, as you have said, it is an offset to essentially our—what is given to us in our budget. Our finance team does the projections based upon actuals of last year and then sets a target for improvement. This is something that we have targeted, to improve collections. One of the provisions that I think is being considered under the current legislation is a requirement to disclose third-party insurance, because that is part of the challenge that we have. If we do not know a veteran has other insurance it is very hard for us to go and to collect it. So, that is something that we are working on.

Senator BOOZMAN. Right. I believe we have a pilot program going on in five areas——

Secretary SHULKIN. Yes.

Senator BOOZMAN [continuing]. In relation to this. Do you have any——

Secretary SHULKIN. On the third-party collection efforts.

Senator BOOZMAN. Exactly.

Secretary SHULKIN. Yeah, yeah.

Senator BOOZMAN. I know that is not done. Do you have any preliminary things that you can talk to us about?

Secretary SHULKIN. I do not have an update and I do not know if anybody behind me has an update on that. I do not think there is an expert on that, but we can get you that update.

[The information requested during the hearing follows:]

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. JOHN BOOZMAN TO HON. DAVID J. SHULKIN, M.D., SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS

Please provide preliminary data/information regarding the third-party collection effort pilot program that is set up in five areas.

Response. As an effort to further improvements and accountability, Section 201 of the Choice Act mandated a comprehensive examination of Veteran Affairs (VA) ability to deliver accessible high-quality health care to Veterans. These assessments evaluated the areas of staffing, training, facilities, business processes, and leadership.

The focus of Revenue Transformation is to implement new or enhance existing industry best practices and eliminate any inefficiency in VA's business processes specific to the revenue cycle. As a result of Revenue Transformation, VA has recognized an increase in collected revenue and the protection of other revenue that would be impacted by the changing healthcare landscape.

KEY ACCOMPLISHMENTS

Registration: The goal of the Registration portfolio is the comprehensive and timely identification of Veteran insurance information. Currently, the portfolio has increased education to Veterans and VA staff on insurance capture which resulted in decrease in front-end denials by over 75% at five test sites. It has also improved Veteran education on the importance of providing insurance at test sites, leading to the achievement of an insurance capture rate that is 8% higher than the national average. The portfolio developed a standardized dashboard to assist VA managers in monitoring the success of VA's insurance capture efforts.

Clinical Documentation: The Clinical Documentation portfolio team is improving accuracy and timeliness of clinical documentation through streamlined processes and innovative solutions. The portfolio has developed a dashboard to monitor third-party billings and collections at the provider level to improve visibility and aware-

ness. Additionally, the portfolio developed two standardized interactive templates (primary care and inpatient) focused on improving clinical documentation accuracy.

Coding: The Coding portfolio is focused on reducing outpatient revenue coding backlogs. Consolidation of resources and work assignment has resulted in the coding of an additional 94,944 encounters, resulting in a net reduction of 33,376 coding encounters pending at our test sites. The Coding Portfolio team has assisted in reducing coding pending volumes at test sites by 35% since January 2017.

Charge Capture: The Charge Capture portfolio is implementing process improvements to enhance operational efficiency and improve revenue collections. By developing enhanced billing methods for Community Care the total number of claims submitted to Other Health Insurance (OHI) has increased by 30,070, resulting in a $1,466,889 increase in total collections from May 2017 to December 2017. The portfolio has also launched an initiative to capture and submit the National Drug Codes for injectable procedures performed in an office setting to OHI at test sites and has reduced denials for these procedures by 10%.

Billing & Collections: The Billing & Collections portfolio is identifying inefficiencies in the existing revenue cycle to implement methods to improve overall collectability. The portfolio has developed and deployed net collections performance to align with industry best practice and replace collections to billing. The national net collections rate for the last 3 months is as follows: October—95.9%; November—96.2%; December—96.8%. A new function/process to increase the efficiency of payer analysis reviews in facilities was implemented. A contract to perform recovery audit services of collected and closed claims was initiated and an award is anticipated in the third quarter of Fiscal Year 2018.

Denials Management: The Denials Management portfolio is refining the existing denials process through innovative technology, procedures, and training materials for VA staff. Overall Enterprise Denials Rate, based on First Run Yield, has gone down from ~12% in January 2017 to ~8% by December 2017.

Revenue Integration Portfolio: The Revenue Integration Portfolio is consolidating functionality to streamline processes across the VA revenue cycle. The team has completed a nationwide review of the clinic set up for potential high dollar clinics. The review resulted in an additional 351 Cardiology clinics and 518 Radiology clinics now being designated high dollar, which drives 3rd party billing activities. This has resulted in increased collections of $1,446,687 from July 2017 to December 2017.

Senator BOOZMAN. OK. Thank you, Mr. Chairman.

Chairman ISAKSON. Thank you, Senator Boozman, and before I go to Senator Manchin, let me just take the liberty, if I may, of asking Gretchan Blum to stand up behind me. Gretchan?

Gretchan has been with the Committee since I came to the Committee as Chairman 3 years ago. She is going to greener pastures in Oregon, which is a beautiful coastline. Lots of veterans, lots of good people. She has been a tremendous help to our veterans and this Committee. We want to acknowledge and thank you for your service.

[Applause.]

Chairman ISAKSON. Senator Manchin.

HON. JOE MANCHIN III, U.S. SENATOR FROM WEST VIRGINIA

Senator MANCHIN. Thank you, Mr. Chairman. I appreciate it. Thank you, Dr. Shulkin, for being here.

I need to bring something of a local interest to your attention. On December 20, a high-risk veteran contacted my office after his bypass surgery was canceled while he was laying on the operating table in the Clarksburg VA, which is the Louis A. Johnson VA medical center. It is a great hospital. The reason for cancellation being that spots were found on the tools processed by the autoclave. That is the reason.

Now let me tell you how time elapsed.

We have been told that they have estimated it will be at least 10 weeks before a temporary—just before a temporary—steriliza-

tion unit will be operational, but it will also take a whopping 16 to 18 months to replace the one that is deficient. It has been reported—I understand up to what the Region 5, the VISN 5 level. That is your region. I do not know if it has ever gotten to you all. There has got to be something, doctor, when something this egregious happens. We cannot do any—we are done, and this is a big hospital, of course, so we need your help.

Secretary SHULKIN. Right.

Senator MANCHIN. Thank you for your help on that.

Next of all, I sent a letter last week, after reading the *New York Times* story that reported that the Oregon VA medical center has tried to improve their quality metrics. Well, we start looking into this, how it affects us in our State, and, for example, I have found that the emergency department medium time for administering pain medication, statistic on the HospitalCompare.gov website, it is listed as not available, and is also footnoted as no cases met the criteria for this measure. That seems unacceptable to me in emergency—for an emergency department.

How are you equipping local VA medical center staff to track and record these types of vital data, and who in West Virginia VAs are responsible for collecting the data. We could not find out——

Secretary SHULKIN. Yes.

Senator MANCHIN [continuing]. From my office.

Secretary SHULKIN. On HospitalCompare.gov, which is run out of the Department of Health and Human Services——

Senator MANCHIN. Are you all working with it? Try, OK.

Secretary SHULKIN. VA used to have all its data up there——

Senator MANCHIN. Uh-huh.

Secretary SHULKIN [continuing]. And due to contract issues with the Department of Health and Human Services, not VA, they lost the ability to take VA data. They are now actively working to get it back up by the end of this year. They will have all that data back up. We still collect and product all that data and we publish the data ourselves on accesstocare.va.gov. So, we do have that data, we do make our comparisons to local hospitals. We would be glad to share that with you. We wish it were up on the HospitalCompare site because we think it is a great site, and by the end of the year HHS will have that back up for us.

Senator MANCHIN. Opioid addiction. You know about opioid addiction in my State, in West Virginia, but also throughout the entire veterans' community. It is something of great concern. The President basically declared a medical——

Secretary SHULKIN. A public health emergency.

Senator MANCHIN [continuing]. Public health. I have told him I am very appreciative of that. I wish it would have gone farther, but I am very appreciative of what we are getting——

Secretary SHULKIN. Mm-hmm.

Senator MANCHIN [continuing]. But we have not gotten anything yet. I do not know how it is affecting you all, with your fight on opioid addiction, or how that will help you if we can get this money to start flowing. We are asking the money to flow not based on population but based on need, where the greatest occurrences are.

Secretary SHULKIN. Mm-hmm.

Senator MANCHIN. Have you seen any changes there? Have you gotten any help whatsoever? Also, you all need to be—you need to be recognized in an affirmative way for basically not allowing your VA patients to dictate the dispensing as part of the overall care they are getting and what quality of care, which could penalize your hospitals. I thank you all to change that.

Secretary SHULKIN. Mm-hmm.

Senator MANCHIN. You have helped that move all the way through the whole——

Secretary SHULKIN. Mm-hmm.

Senator MANCHIN [continuing]. Department of Human Services.

Secretary SHULKIN. Mm-hmm. Right. Well, first of all, I participated in the President's commission.

Senator MANCHIN. Right.

Secretary SHULKIN. I think it is important. We brought the Members of the Committee to the Cleveland VA that has a 3 percent prescribing rate, the lowest in the country, to see the best practices, and that did make it into the report.

Senator MANCHIN. Right.

Secretary SHULKIN. Last week, we started to publish, at VA, every medical center's prescribing rate for opioids. No other system in the country, no other hospital in the country does this. It is available now, so everybody can see.

Senator MANCHIN. It is on your website?

Secretary SHULKIN. It is on our website, the opioid posting.

Senator MANCHIN. OK.

Secretary SHULKIN. Finally, let me just say, we have made a 41 percent reduction since our efforts began in 2010, with our Opioid Safety Initiative.

Senator MANCHIN. Mm-hmm.

Secretary SHULKIN. We have more work to do. What this website says, it shows us where we have a lot more work to do. But remember, the key is not just simply withdrawing opioids.

Senator MANCHIN. Sure.

Secretary SHULKIN. These are patients who are in pain. The question is——

Senator MANCHIN. We recognize that.

Secretary SHULKIN [continuing]. Before we start opioids, before you reach for it first, are there alternatives that you can do to help relieve pain and not put your patient at risk of addiction? So, that is what we are really focused on. A lot of the veterans think this is about we have targets to withdraw opioids. We do not. We want doctors to continue to eliminate pain, but we want them to make smart choices, give veterans informed choice.

Senator MANCHIN. Right. We are doing the same thing, and we do not want any patient to think they are being penalized whatsoever——

Secretary SHULKIN. Right.

Senator MANCHIN [continuing]. Being without their other alternative methods too, not the alternative drugs that are being developed right now——

Secretary SHULKIN. Absolutely.

Senator MANCHIN [continuing]. That are not addictive.

With that being said, the one that still haunts me and bothers me more is homelessness——

Secretary SHULKIN. Yep.

Senator MANCHIN [continuing]. Which we have had an increase in homelessness——

Secretary SHULKIN. Yeah.

Senator MANCHIN [continuing]. From 2016 and 2017.

Secretary SHULKIN. Yes.

Senator MANCHIN. I cannot even fathom how any veteran should ever not have a roof over their head——

Secretary SHULKIN. Right.

Senator MANCHIN [continuing]. And a place to sleep, for what they have done for us.

Secretary SHULKIN. Right.

Senator MANCHIN. What is happening there? Is it——

Secretary SHULKIN. Right.

Senator MANCHIN. So, as you know, from 2010 until now, we have had a 46 percent reduction in homeless veterans. We still have 40,000 homeless veterans—way, way too many. Females have gone up——

Secretary SHULKIN. Yes.

Senator MANCHIN [continuing]. Female veterans homelessness is up 7 percent.

Secretary SHULKIN. Last year their rate went up 2 percent——

Senator MANCHIN. Yeah.

Secretary SHULKIN [continuing]. Which is going the wrong direction.

Senator MANCHIN. Overall.

Secretary SHULKIN. If you take a look, there are five major cities in the country, but Los Angeles and Seattle are the two that went up the most. So, what we are doing is we need a reboot of our program. This is not less money in the program; we actually want more in this program. We need to do this better. We are focused and prioritizing doing this better. We are going to target Seattle and Los Angeles, in particular, but not give up on progress everywhere else. We are going to be coming out with a new, improved approach, but it is not less resources. It is going to be more resourced and more focused.

Senator MANCHIN. Let me just—I am so sorry. I just wanted to follow up real quick.

Secretary SHULKIN. Yeah.

Senator MANCHIN. For us to know how many homeless veterans we have, we have to have them in our records somewhere.

Secretary SHULKIN. Yes.

Senator MANCHIN. There has to be contact.

Secretary SHULKIN. Right.

Senator MANCHIN. With that—it is not like saying, well, they just dropped off and they have fallen off the records.

Secretary SHULKIN. We actually now know, by name, who most of the homeless veterans are. We do, once a year, what is called a Point In——

Senator MANCHIN. We have caseworkers with that——

Secretary SHULKIN. Absolutely. We have caseworkers for our homeless veterans. We do what is called a Point In Time Count——

Senator MANCHIN. Uh-huh.

Secretary SHULKIN [continuing]. A PIT count. We are going to do it here in Washington, January 28. I will be out there at midnight——

Senator MANCHIN. OK.

Secretary SHULKIN [continuing]. With other people, making sure we accurately do that assessment. I did it in Los Angeles 2 years ago. Then, after we do our Point In Time counts, we will be able to know what——

Senator MANCHIN. Uh-huh.

Secretary SHULKIN [continuing]. The progress for, if there are more veterans——

Senator MANCHIN. Right.

Secretary SHULKIN [continuing]. Who are homeless. But, we are committed to continuing to stay at this until we end veteran homelessness.

Senator MANCHIN. Thank you.

Chairman ISAKSON. Thank you, Senator Manchin.

Senator Tillis.

HON. THOM TILLIS, U.S. SENATOR FROM NORTH CAROLINA

Senator TILLIS. Thank you, Mr. Chair. Thank you to Secretary Shulkin.

One thing you mentioned in your opening comments I just wanted to get a little bit more information on is—I knew, and I was glad that the Department is showing some latitude in providing services to veterans with other-than-honorable discharge. Can you tell me a little bit about the scope of that and maybe the numbers of people that have been served at this point?

Secretary SHULKIN. Yep. Yep. As you know, with trying to decrease veteran suicide and doing the right thing for our veterans, when you take a look at where our highest risk for veteran suicide is, it is in several categories. Homelessness and homeless veterans who do not have access to care, clearly, which is why we are targeting an end to that. Our other-than-honorable discharge veterans are very high risk as well, because they do not have access to services. So, what we have provided them with is an emergency mental health benefit, that provides—all they have to do is show up. We are going to give them 90 days' worth of emergency mental health care, make sure we stabilize the crisis, and get them into longer-term treatment, if that is what is required.

So far, we have treated, and have come to us for help, 3,200 veterans with other-than-honorable discharge. We were actually hoping the numbers are higher.

Senator TILLIS. Over what period of time?

Secretary SHULKIN. Since we started this. I think it was one of the early things I did as Secretary, so I would say 10 months ago, maybe.

Senator TILLIS. OK.

Secretary SHULKIN. We are actually hoping the numbers would get higher, so we continue to get that message out, that if you are a veteran with that type of other-than-honorable discharge and you need help, please come; we are going to help you.

Senator TILLIS. Now what happens if you get somebody to maybe a stable——

Secretary SHULKIN. Yep.

Senator TILLIS [continuing]. Position, and you improve their condition. This is emergency mental health benefit. What next? Let us say they get sick, and it does not relate to the mental health illness.

Secretary SHULKIN. Right. Oh, when it does not relate to the mental health illness.

Senator TILLIS. Yeah.

Secretary SHULKIN. Well, we have not extended a general health benefit. That is something that we would be glad to work with you or other Members of Congress on. That would be something that we would have to work on legislatively. I do not feel I have the authority to be able to do that.

Senator TILLIS. I did not think you did.

Secretary SHULKIN. Yeah.

Senator TILLIS. We had a hearing in the Personnel Subcommittee for Senate Armed Services and it was focused on concussions——

Senator MANCHIN. Mm-hmm.

Senator TILLIS [continuing]. And more data that we are getting, that at least could make you argue that perhaps discharges, in some cases, for bad behavior, actually related to——

Secretary SHULKIN. Mm-hmm.

Senator TILLIS [continuing]. Other circumstances. So, I think this is a good step——

Secretary SHULKIN. Mm-hmm.

Senator TILLIS [continuing]. Because the first thing is to try to stem any real tide of suicides——

Secretary SHULKIN. Yeah.

Senator TILLIS [continuing]. Through the emergency mental health service. But, I think we need to talk more about——

Secretary SHULKIN. Mm-hmm.

Senator TILLIS [continuing]. How we would manage this, and consider the full life cycle. What we talked about, there are the probabilities this sort of job that a man or woman did in the military were exposed to events that now the science suggests could have actually had an impact on their mental faculties or perhaps behaviors that led to their discharge.

Secretary SHULKIN. Mm-hmm.

Senator TILLIS. That would be something I would like to talk with you more about.

And maybe you could just give me a quick update on—I know the medical health record project is going to go through phases and take a while to get done, but it looks like you are using a template similar to the DOD, and you have got resources in there. So, in that case, just tell me what we could do to help you, because I think that is a very important project that we want to see to conclusion. And you need to make sure you tell us when we set a new priority that potentially taps your ability to deliver on some of the commitments you are making.

But what about other—you mentioned in your opening comments——

Secretary SHULKIN. Mm-hmm.

Senator TILLIS [continuing]. About, do you still feel like you are making incremental——

Secretary SHULKIN. Mm-hmm.

Senator TILLIS [continuing]. Not breakthrough things. What are we likely to see from you, to get from some of the incremental that needs to be done? But, you know, what are the breakthrough things that you are looking at that may actually require our help to get it moving?

Secretary SHULKIN. Well, I think what I am doing is trying to put out there that we need those breakthrough ideas, and I want to see an opportunity to get those ideas from you, as well as our veteran advocacy groups, like veteran service organizations and others who have those ideas. I think they can come in many different ways. They could come technologically, they could come through management practices, or they could come through policy and legislation.

We have seen some of them, legislatively, that I think this Committee has been in the lead during this past year, like appeals modernization. That is going to make a difference. I think—and I have said this—that we need to reorganize the way that we do business at VA, from having a large central bureaucracy to being able to give people in the field more authority and accountability, which goes along that way. And, we need to change some of our management practices that, frankly, have grown stale.

What is happening in the private sector on health care and technology is the type of transformation that I think needs to happen within government as well, and we are going to need to do that collaboratively.

Senator TILLIS. Thank you. Thank you, Mr. Chair.

Chairman ISAKSON. Thank you, Senator Tillis.

Senator Blumenthal.

HON. RICHARD BLUMENTHAL,
U.S. SENATOR FROM CONNECTICUT

Senator BLUMENTHAL. Thank you, Mr. Chairman. Thank you, Dr. Shulkin, and thank you to the men and women of the VA for all of their extraordinary, dedicated work.

I am going to be sending you, today, a letter that cites the need for stronger protections to the post-9/11 veterans under the Post-9/11 GI Bill benefits. I raised this issue with you during your confirmation hearings in January of last year.

It has been almost a year—in fact, on February 13 it will be a year since your confirmation—and, quite honestly, I am deeply dissatisfied with the lack of action under existing authority, 38 U.S. Code, Section 3696, to crack down on the predatory practices of for-profit schools, like Corinthian and ITT, that have exploited our veterans. This letter sets forth, in detail, what those actions have been and why I think that the lack of action by the VA has been troubling. I know that you are sympathetic to this cause, but I would like to see good words followed by action, and I will appreciate a response to my letter. I ask that it be made part of the record, Mr. Chairman.

Chairman ISAKSON. I am sorry.

Senator BLUMENTHAL. I am asking that my letter to Secretary Shulkin, of today, be made a part of the record.

Chairman ISAKSON. Without objection.

[The letter follows:]

RICHARD BLUMENTHAL
CONNECTICUT

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January 17, 2018

The Honorable David J. Shulkin
Secretary
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, D.C. 20420

Dear Secretary Shulkin:

I am writing to request an update on the Department of Veterans Affairs' (VA) efforts to administer reforms and policies that would protect veterans receiving Post-9/11 GI Bill Benefits. An entire year has passed since your confirmation hearing and I continue to have a number of serious concerns over the VA's tedious and inefficient implementation of existing policies that would protect veterans from predatory schools and profit-centered industries. I urge VA to review these shortcomings and take immediate action to strengthen oversight, enforcement, and accountability to make the promise of educational opportunity a reality for veterans nationwide, and protect student veterans from unscrupulous, predatory schools.

In the past several years, it has become exceedingly apparent that a number of colleges and post-secondary education programs have engaged in widespread misconduct, breaking the law and harming student veterans in pursuit of a profit. Many of these schools – like Corinthian Colleges and ITT Technical Institutes (ITT Tech) – are for-profit colleges, part of an industry that has leeched off students and taxpayer dollars funneled through the 90/10 loophole for far too long. As you know, these schools often aggressively recruit large numbers of veterans by misrepresenting their respective job prospects, transferability of credits, and accreditation status. These practices have enabled colleges with dubious educational outcomes to evade regulatory requirements and employ abusive tactics in order to gain access to veterans' education benefits. This growing problem demands your immediate attention and prioritization – in 2016 alone, for-profit colleges received 34 percent of all VA GI Bill education funds or $1.7 billion.

As you know, the Miller-Blumenthal Veterans Health Care and Benefits Improvement Act of 2016 was signed into law in December 2016. This legislation includes a critical provision that requires the VA to disapprove GI Bill benefits for programs that lack the appropriate accreditation for graduates to earn state licenses and certifications. I raised this issue during your confirmation hearing in January 2017 and you offered your full commitment to ensure that this provision be rapidly implemented. Fully implementing this law will protect veterans from wasting GI Bill benefits on worthless degrees from unaccredited education programs – enabling veterans to pursue legitimate education and employment opportunities.

During your confirmation hearing in January 2017 you also committed to using all resources and authorities available to you, as well as working with other federal agencies, to crack down on colleges that lie to veterans and cheat them and the taxpayers out of veterans' hard-earned GI Bill support. However, I remain deeply concerned that the VA is not using its existing authority under 38 USC 3696 to prohibit predatory schools from benefiting from veterans' education benefits. According to a 2016 report by the Veterans Legal Services Clinic at Yale Law School, the VA has stood idly by for years as veterans fell prey to the deceitful practices of for-profit institutions such as Corinthian Colleges and ITT Tech. Under 38 USC 3696, the VA has clear authority to suspend or otherwise restrict a school's receipt of benefits if the educational institution in question engages in misleading recruiting and advertising or provides a commission, bonus, or incentive based payment related to securing enrollments or student admissions activities. These limitations exist to protect veterans and their dependents from being targeted by deceptive recruiting tactics and must be fully exercised when appropriate.

In June 2015, I wrote then Secretary McDonald to request that the VA create a "risk index" that includes schools under investigation for fraud by the DOJ, FTC, and state Attorney Generals in the GI Bill Comparison Tool. While the VA has added flags to delineate the institutions that are under Heightened Cash Monitoring, or additional oversight by the Department of Education for financial or federal compliance issues, these caution flags are sparse and I am concerned that they do not cover the scope of the problem. Furthermore, the VA has yet to establish a risk index to define which schools are under the aforementioned types of investigation. Under section 13(a) of the Securities Exchange Act of 1934, companies must notify investors if they are under legal scrutiny or if there is a significant financial change that could impact their investment. Unfortunately, students are not afforded the same warning. The continued omission of accurate, complete, and timely information on the quality of a college or university encourages veterans to unknowingly spend their taxpayer funded benefits at predatory institutions. This risk index would highlight the unscrupulous bad actors in the for-profit industry and empower student veterans to be conscious consumers when determining their respective postsecondary education pathway.

While I commend VA's work to finalize the Principles of Excellence Executive Order and to develop the GI Bill Comparison Tool, much more must be done. Currently, this tool allows students to compare potential educational options, examine a limited number of caution flags, and includes veteran-specific outcome information as required in the Improving Transparency of Education Opportunities for Veterans Act of 2012. However, improvements are needed as its utility continues to be diminished by overly broad definitions of completion of non-degree programs, participating schools' failure to report the appropriate information, inconsistencies in the caution flags, and the lack of user feedback.

With more than $4.8 billion in Post-9/11 GI Bill dollars flowing to colleges each year, VA must do more to hold deceitful colleges accountable for providing high-quality education and preventing high-pressure recruitment tactics. The United States Government has a responsibility to ensure that our veterans receive the high-quality educational opportunities they have earned.

Therefore, I request VA take immediate action on these overdue steps by committing to the following:

1.) Provide my office with a written report on the steps VA is taking, or has taken, in the last year to carry out the education provisions outlined in the Miller-Blumenthal Veterans Health Care and Benefits Improvement Act of 2016.

2.) Identify actions VA has taken – within the past year – to use its authority established under 38 USC 3696.

3.) Add a risk index to the GI Bill Comparison Tool that will assign each school a risk level. This common sense measure should be based – but not limited to – whether the school is under heightened cash monitoring, whether the school is under investigation or has settled with a state Attorneys General or the federal government, and whether the school's credits can easily transfer to another postsecondary education institution. In addition, VA should ensure prospective veteran students have access to this critical consumer protection tool.

4.) Improve the caution flags on the GI Bill Comparison Tool to further enhance VA's capacity to identify any future acts of deceptive marketing or fraud.

I encourage you to continue to work closely with veterans, service organizations, and veteran education advocates, and urge you to seek feedback wherever possible when considering implementation of the aforementioned policies, or any policy that may impact student veterans and their families. I look forward to working with you to ensure these laws and programs are implemented expeditiously. Please provide a response no later than January 31, 2018.

Sincerely,



RICHARD BLUMENTHAL
United States Senate

Senator BLUMENTHAL. I want to focus right now on a deeply troubling, in fact, appalling incident in West Haven. I am sure you are aware of it by now. The West Haven VA has been sued by a veteran who is alleging apparently a truly egregious act of malpractice. The veteran claims that a scalpel was left in his abdomen during a 2013 surgery and it was discovered only after years of pain and dizziness. It was removed in April 2017, after an MRI by the VA.

On June 6, 2017, the veteran said that he initiated an administrative claim under the Federal Tort Claims Act, regarding this case of medical negligence. Over 6 months later, the VA has still not responded, incredibly, to the claim, beyond a simple acknowledgement of its receipt. So, the veteran has now filed suit in Federal court.

My first question to you is, is the Department investigating these specific allegations?

Secretary SHULKIN. Yes. Yes. First, on this case, I think the way that you characterized it is accurate. It is an event that should

never happen, and I am deeply sorry that any veteran should have to undergo this.

Of course, this was inadvertent on the surgeon's part. When the surgeon discovered this, he, who is extraordinarily well trained, on the Yale faculty, practices not only at the VA but at Yale New Haven Hospital, went to the veteran with the Chairman of Surgery at the VA, and acknowledged their mistake and apologized and takes responsibility for it.

While this is an extremely rare event, it happens in the country 1,500 times a year. In the VA it does happen. It happened 12 times in the VA. That is a rate, in the VA, much less than what happens outside the VA. That is no excuse. This should never happen. We are looking and a root cause analysis has been done. It has actually been presented at the Yale New Haven Mortality and Morbidity Conference so that this could be evaluated by peers who are surgical peers across the Yale New Haven system.

So we do acknowledge responsibility for this. This veteran has suffered enough. Fortunately, his first surgery, which was done, was a successful surgery, but he should not have to go through any more hassle in being acknowledged for what happened, and we will take responsibility for that.

Senator BLUMENTHAL. Part of taking responsibility is to acknowledge and act on his claim——

Secretary SHULKIN. Absolutely.

Senator BLUMENTHAL [continuing]. And to, in fact, respond positively to the request that he made for relief, under the Federal Tort Claims Act——

Secretary SHULKIN. I agree with that.

Senator BLUMENTHAL [continuing]. Administrative procedure. It does not require any court proceeding.

Secretary SHULKIN. Yes.

Senator BLUMENTHAL. The VA has an administrative and moral responsibility to respond, and I am disappointed that it has not done so. Will you commit to doing so?

Secretary SHULKIN. Everything you are saying, I share your sentiments, and absolutely, we will commit to that.

Senator BLUMENTHAL. I know, because of your own background, professionally, as head of the University of Pennsylvania medical system and other positions that you note, you are——

Secretary SHULKIN. Sure.

Senator BLUMENTHAL [continuing]. Very, very attentive to the standards of professional responsibility. I would also like a commitment that the VA protocol and practices will be reviewed so that, in fact, this incident can be a teaching moment.

Secretary SHULKIN. You have that commitment. Patient safety is my passion. I personally spoke to the Chairman of Surgery at the West Haven VA. I know that she, and this surgeon, have taken this extremely seriously and are using this for the way that you and I both believe we should learn. The VA does have a practice across the VA system for x-rays to be done in some high-risk cases. We are re-evaluating whether we should be doing more on top of that, because these events should never happen. We are going to be committed to making it a safer environment.

[The information requested during the hearing follows:]

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. RICHARD BLUMENTHAL TO HON. DAVID J. SHULKIN, M.D., SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS

Please act on the administrative claim from the Connecticut Veteran who had a scalpel left in his abdomen after a surgery at VA.

Response. The Department has acted on the claim and it is currently pending litigation.

Senator BLUMENTHAL. I appreciate your being so forthcoming——

Secretary SHULKIN. Mm-hmm.

Senator BLUMENTHAL [continuing]. And I am going to follow up——

Secretary SHULKIN. Yes.

Senator BLUMENTHAL [continuing]. And stay on it——

Secretary SHULKIN. Thank you.

Senator BLUMENTHAL [continuing]. Banking on you——

Secretary SHULKIN. Yes.

Senator BLUMENTHAL [continuing]. Because I know you are committed to it.

Secretary SHULKIN. Mm-hmm.

Senator BLUMENTHAL. I have seen the x-ray——

Secretary SHULKIN. Yes, so have I.

Senator BLUMENTHAL [continuing]. Showing the scalpel, and, frankly, I was appalled and stunned——

Secretary SHULKIN. Sure.

Senator BLUMENTHAL [continuing]. And surprised and grateful that this veteran is still alive.

Secretary SHULKIN. Yes.

Senator BLUMENTHAL. Thank you for your responses to my question.

Secretary SHULKIN. OK. Thank you, sir.

[Information on operating room directives at VA follows:]

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. RICHARD BLUMENTHAL TO HON. DAVID J. SHULKIN, M.D., SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS

Please review the patient safety protocols as a result of a scalpel left inside a Connecticut Veteran following a surgery at VA.

Response. Directive 1103, Prevention of Retained Surgical Items, provides policy to prevent incidents of surgical items being retained in a patient following surgery. It is VHA policy that the surgical team must apply a standard approach to the prevention of retained surgical items when the operative procedure being performed is one in which there is any possibility for retention of a surgical item. This standard approach/patient safety protocols have been reviewed. This policy provides clear direction and guidance for Operating Room staff regarding the required responsibilities and actions. A copy of the directive is attached for your reference.

ATTACHMENT

Department of Veterans Affairs
Veterans Health Administration
Washington, DC 20420

VHA Directive 1103
Transmittal Sheet
March 5, 2016

PREVENTION OF RETAINED SURGICAL ITEMS

1. REASON FOR ISSUE: This Veterans Health Administration (VHA) Directive provides policy to prevent incidents of surgical items being retained in a patient following surgery.

2. SUMMARY OF MAJOR CHANGES: Content updated to include drains and guidewires as retained surgical items. The updated policy also describes the Critical Incident Tracking Notification (CITN) process for the field to document retained surgical item events using a secure web-based intranet tool. The National Surgery Office (10NC2) works with the National Center for Patient Safety (10A4E) to reconcile all retained surgical items events to ensure complete capture and evaluate lessons learned.

3. RELATED ISSUES: None.

4. RESPONSIBLE OFFICE: The National Surgery Office (10NC2) in the Office of the Assistant Deputy Under Secretary for Health for Operations and Management for Clinical Operations is responsible for the content of this Directive. Questions may be directed to the National Director of Surgery at 202-461-7130.

5. RESCISSIONS: VHA Directive 2010-017, Prevention of Retained Surgical Items, is rescinded.

6. RECERTIFICATION: This VHA Directive is due for recertification on or before the last working day of March 2021.

David J. Shulkin, M.D.
Under Secretary for Health

DISTRIBUTION: Emailed to the VHA Publication Distribution List on 3/7/2016.

PREVENTION OF RETAINED SURGICAL ITEMS

1. PURPOSE

This Veterans Health Administration (VHA) Directive provides policy to prevent incidents of surgical items being retained in a patient following surgery. **AUTHORITY:** 38 USC 7301(b).

2. BACKGROUND

a. Surgical items are defined as instruments, sharps, soft goods, drains, guidewires, or any materials used by the surgical team to perform an operative procedure. Sharps are surgical needles, aspirating needles, blunt needles, scalpel blades, or any items with a sharp or pointed edge that pose a risk for skin puncture by members of the surgical team. Soft goods include cotton gauze sponges of various sizes, laparotomy pads, surgical towels, or any absorbent materials not intended to remain in the patient's body after the surgical procedure is completed.

b. A surgical item is considered to be retained if it is an item or parts thereof not intended to remain and is found in any part of the patient's body after the patient has been taken from the operating or procedure room. Drains are retained if placed intentionally in the operating room (OR) for subsequent removal (example Penrose drain, chest tube, ureteral stent) but upon attempted removal outside the OR, all or a portion of the drain is unintentionally retained requiring an invasive procedure with informed consent for removal.

c. The National Surgery Office (NSO) and the National Center for Patient Safety (NCPS) collect data for retained surgical items. For Fiscal Year 2014, the VHA incidence estimated rate of retained surgical items was determined to be 1 in 17,200 surgical procedures. This rate compares favorably to the national incidence rate for retained surgical items reported to range from 1 in every 8,000 to 18,000 procedures.

d. The occurrence of a retained surgical item is considered a sentinel event, requires Root Cause Analysis (RCA), and must be reported to the NCPS. The NCPS aggregates RCA data and reports quarterly to the National Director of Surgery. ***NOTE:*** *VHA Handbook 1050.01, VHA National Patient Safety Improvement, provides further guidance regarding sentinel event reporting and requirements for patient disclosure.*

e. Beginning in August 2010, the NSO established the Critical Incident Tracking Notification process to collect retained surgical item events using a secure web-based intranet tool. On a quarterly basis, the NSO and NCPS reconcile all retained surgical item events to ensure complete capture, evaluation and determination of lessons learned.

3. POLICY

It is VHA policy that the surgical team must apply a standard approach to the prevention of retained surgical items when the operative procedure being performed is one in which there is any possibility for retention of a surgical item.

4. RESPONSIBILITIES

a. **Facility Director.** The facility Director is responsible for ensuring compliance with this Directive at the local level.

b. **Facility Chief of Surgery.** The Chief of Surgery is responsible for ensuring that the surgical team performing an operative procedure in which there is any possibility for retention of a surgical item (including laparoscopic procedures) adheres to the following standards:

(1) **Soft Goods.** All soft goods that are placed in the surgical field must be left in their original configuration and must not be cut or altered in any way, or used for dressings.

(2) **Radiopaque Surgical Items.** Surgical items intended for placement in the surgical wound or are placed peripheral to the operating field and have the potential to be placed in the surgical wound must be radiopaque (detectable by a radiograph).

(3) **Non-Radiopaque Surgical Items.** Non-radiopaque surgical items that are used in the operating room, for example, sponges used during IV line insertion, must be disposed of in a separate waste receptacle designated for that purpose and never in the same space with counted surgical items.

(4) **Methodical Wound Exploration.** A methodical wound exploration must be performed before closing the surgical wound in every case to ensure that all surgical items are accounted for and extracted.

(a) The space to be closed must be carefully examined. Special focus must be given to closure of a cavity within a cavity (e.g., heart, major vessel, stomach, bladder, uterus, and vagina).

(b) A methodical wound exploration must be performed before removing stationary or table mounted retractors.

(c) The surgeon must visually and manually explore the operative field, making every effort to remove any and all surgical items left within a body cavity.

(d) A methodical visual inspection of the body cavity is required when performing a minimally invasive laparoscopic, thoracoscopic, or arthroscopic procedure.

(e) A methodical wound sweep is required for cataract procedures utilizing the microscope.

(f) If at any time during wound closure, the surgeon is informed of an inaccurate count of surgical items the surgeon must stop closing the wound and perform a repeat methodical wound examination while OR staff continues to look for the missing surgical item.

(5) **Count of Surgical Items.** All surgical items must be counted in every case.

(a) A count of surgical items must occur:

1. Before the procedure has begun or the incision is made to establish a baseline count;

2. When new soft goods and/or sharps are added to the field

3. When a drain or other miscellaneous item is cut, all pieces must be accounted for and counted.

4. Before the closure of a cavity within a cavity;

5. Before wound closure begins;

6. At skin closure or end of procedure; and

7. At the time of permanent relief of either the scrub person or the RN circulator.

(b) OR staff must be allowed sufficient time for a count of surgical items to be performed.

1. All surgical counts are performed using a standard two-person practice; the items are counted audibly and viewed concurrently by the scrub person and RN circulator.

2. Any time there is a question by any member of the surgical team regarding the count, an additional count must be performed.

3. Perioperative personnel must never assume that the count on prepackaged sterilized items is accurate. The contents of each package must be counted individually by the scrub person and RN circulator using the standard two-person practice. If the package has an incorrect number of items and the procedure has not begun, the entire pack must be removed from the OR. If the procedure has begun, the pack must be bagged, properly labeled, and isolated from the other counted items.

4. Counts must be performed in the same sequence each time. The count needs to begin at the surgical site and the immediate surrounding area, proceed to the instrument stand and back table, and finally to the counted items (soft goods, sharps, or instruments) that have been discarded from the field. ***NOTE:*** *The use of assistive*

technologies, including radiofrequency tags to detect technology–enabled soft goods and radio frequency identification (RFID) systems, are adjunct technologies to supplement the manual counting process but not replace the requirement to perform a count of surgical items in every case.

5. All relief personnel must be documented in the Veterans Health Information Systems and Technology Architecture (VistA) Surgery Package and will appear in the Nurse Intra-Operative Record.

(c) The surgeon must be informed by OR staff at the time a discrepancy in a count of surgical items is discovered. It is imperative that a reasonable and appropriate search of the operative field and surrounding area be undertaken to recover the item in question and resolve the discrepancy.

(d) When soft goods are used as therapeutic packing and the patient leaves the operating room with packing in place, the number and types of items placed must be documented in the VistA Surgery Package under nursing comments in the Nurse Intra-Operative Report. If and when the patient returns to the operating room for a subsequent procedure including the remove of the therapeutic packing, the number and type of radiopaque soft goods must be similarly documented and excluded from subsequent counts of surgical items.

(6) **Use of Intraoperative Radiograph.**

(a) An intraoperative radiograph of the surgical field is not required if a methodical wound exploration is performed and a count of all surgical items is correct at the completion of the procedure.

(b) A radiograph of the entire surgical field to rule out a retained surgical item must be performed and interpreted by a physician at the completion of the surgical procedure, prior to the patient's transfer from the OR, in the following circumstances:

1. When the surgical count is "incorrect" (i.e., the preoperative surgical item count plus surgical items added during the procedure is greater or less than the postoperative surgical item count) and the surgical item in question is not recovered following a methodical wound exploration.

a. A radiologist must interpret the radiograph and notify the surgical team by verbal or written communication when the missing surgical item is not found. The radiologist's report must be made available to the surgical team in a timely fashion recommended to be less than 30 minutes from the time the radiograph is requested. Consideration should be given to obtaining additional views, for example, an oblique view of the operative site when initial radiographs do not reveal the missing item and the item still has not been found. ***NOTE:*** *The surgeon has the discretion to close the surgical wound prior to receiving a report from the radiologist regarding a missing surgical item if delaying wound closure would substantially increase risk for the patient.*

b. There is no requirement for a radiologist to interpret the radiograph if the surgical team subsequently finds the missing object, thereby establishing the surgical count as correct.

c. When the surgical wound does not involve a body cavity and the entirety of the wound is visible to the surgical team, the attending surgeon may determine that an intraoperative radiograph is not required when a count of surgical items is "incorrect." All members of the surgical team must be in agreement. The attending surgeon must document the circumstances and reason for not obtaining an intraoperative radiograph in the patient's electronic health record.

2. Radiography will be substituted for an instrument count when the surgeon, scrub person, and RN circulator unanimously agree that the number of surgical instruments utilized during the operative procedure prohibits an expeditious and timely count. This situation is typically encountered with major joint replacements. ***NOTE:*** *A methodical wound exploration and count of all sharps and soft goods must still be performed even though a radiograph is substituted for the surgical instrument count in such circumstances.*

3. When the clinical circumstances dictate the patient requires emergency care and the counting of surgical items may not be in the best interest of the patient. This divergence or omission from standard protocol (i.e., methodical wound exploration and complete surgical item count) must be documented in the OR record in the following manner:

a. The surgeon must include a statement in the operative report describing the emergent nature of the procedure, the clinical condition of the patient, and the reasons for divergence from or omission of standard protocol.

b. The circulating nurse must enter a statement in the "Nursing Care Comments" section of the VistA Surgery Package, which will appear in the Nurse Intra-Operative Report describing the emergent nature of the surgical procedure, the clinical condition of the patient, and the aspects in which standard protocol was omitted or modified.

c. In such cases, a radiograph must be obtained in the Post-Anesthesia Recovery Unit or Intensive Care Unit and interpreted by a radiologist to rule out a retained surgical item unless contraindicated by the patient's clinical condition.

4. When the operative procedure being performed is one determined by any member of the surgical team to be at high risk for retained surgical items, even though a methodical wound exploration has been performed and the surgical item count is correct. ***NOTE:*** *The following operative procedures should be considered at high risk for retained surgical items: emergency procedures involving a body cavity; unexpected change in the conduct or scope of the operative procedure; operative procedures involving more than one surgical team; operative procedures of considerable duration particularly those that require a nursing staff shift change; unexpected transfusions*

defined as greater than 4 units of packed red blood cells; and high patient body mass index (BMI > 35).

5. REFERENCES

a. VHA Handbook 1050.01, VHA National Patient Safety Improvement Handbook. March 4, 2011.

b. Cima, R.R., Kollengode, A., Garnatz, J., Storsveen, A., Weisbrod, C., Deschamps, C., "Incidence and Characteristics of Potential and Actual Retained Foreign Object Events in Surgical Patients," Journal of the American College of Surgeons, July; 207 (1): 80-87, 2008.

c. The Joint Commission Sentinel Event Alert 51: Preventing unintended retained foreign objects. Published October 17, 2013, available at http://www.jointcommission.org/sea_issue_51/

d. Association of Perioperative Registered Nurses. *Guideline for Prevention of Retained Surgical Items*. 2015, available at: http://www.aornstandards.org

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Senator BLUMENTHAL. Thank you, Mr. Chairman.

Chairman ISAKSON. Thank you, Senator Blumenthal.

Senator Heller.

HON. DEAN HELLER, U.S. SENATOR FROM NEVADA

Senator HELLER. Mr. Chairman, thank you. Thank you for holding this hearing and I want to thank the Secretary for being here also. I think this Committee has done a great job and I want to thank both you and the Ranking Member. I think we have passed out of Committee, I think, in this session, 10 pieces of legislation, some of which have been mine and all of them have contained my priorities.

I just want to tell both of you I really do appreciate being part of this Committee, and for the leadership that we have this Committee has passed, legislation, for example, that have already been mentioned, like the GI Bill for life, access to STEM programs in education, which was also mentioned, also the appeals process for faster disability claims efforts. I want to thank you, Mr. Secretary, for your hard work and effort on that, but clearly the work is not over. This Committee has probably already shared that with you a few times.

Secretary SHULKIN. Mm-hmm.

Senator HELLER. You are getting to your first-year anniversary. I actually believe it is February 14. I do not know what you will be doing on February 14, but that will be your 1-year anniversary. How do you like the job? Tell me. We have had several discussions and I know you have been with the VA for a while, but not in the capacity as the Secretary. How was your first year? How do you feel about the work that is progressing?

Secretary SHULKIN. You know, Senator, look. First of all, it is an honor and a privilege to be able to serve our veterans. That is why I am here. I am a tough grader. I am a tough grader on myself and my staff, and I am impatient. I know all of you are too. There is a lot of work to be done and we have to make more progress, and we are going to stick with it to be able to do that.

But, I do believe a lot of the credit goes to you and to the House, who is also doing good work on their side, to be able to make the progress that we are making, but I think we can all do better.

Senator HELLER. I appreciate your visits to my State, which has been very, very helpful to the 300,000 veterans that we have in the State of Nevada. Now I happened to be traveling around a little bit last weekend——

Secretary SHULKIN. Mm-hmm.

Senator HELLER [continuing]. In some of the rural portions, where they have expressed some concerns. Probably the one that caught my attention the most—and, frankly, for that matter, my staff—was the cancellation of the——

Secretary SHULKIN. Yes.

Senator HELLER [continuing]. Community Care Network——

Secretary SHULKIN. Yeah.

Senator HELLER [continuing]. For Region 4. For those who do not know, Region 4 is quite a big region. The Ranking Member is in that region, as is Nevada, but so is Alaska, Hawaii, and California. We can go down the list but it is quite the region.

Can you explain to me——

Secretary SHULKIN. Yeah.

Senator HELLER [continuing]. What the situation is and why my staff and congressional offices did not hear about this? We found out on Friday.

Secretary SHULKIN. Yeah.

Senator HELLER. I do not know if it was out earlier than that, but we found out on Friday.

Secretary SHULKIN. Yeah. Yeah. I also found out last week too. The Federal contracting process is a complex process, one that is difficult sometimes to understand. It is designed to keep the people that run the business, like myself, out of negotiating these contracts. That is why I found out the same week that you did.

In this case, we divided the country up into four regions. This was hopefully our first award in Region 4. So, I am disappointed that we were not able to award it, as well.

I will tell you the reason why we were not able to award it is because our contracting officers did not believe that it was in the interest of taxpayers to proceed with that contract. That means they did not believe that they should be paying the price that was being bid out there. They did not feel it was reasonable.

This is going to be rebid, and we hope—and we have spoken to those that have bid—that they will bid again, because we believe that the quality of the contractors were there. It just was not—we were not able to reach something that made sense for the taxpayers.

Senator HELLER. So, it is my understanding that the competitive process has been closed down. Is that correct?

Secretary SHULKIN. Yes, we have put it—yes.

Senator HELLER. So, what does it mean short term, for someone who lives in Elko or Ely or Eureka, for these veterans who have to travel long distances, of course, to get health care if they are not provided in their communities?

Secretary SHULKIN. Well, we are talking about, right now, your veterans are being served by a third-party administrator that runs many of the aspects of the Choice program, and that will continue. We think that that contractor right now is doing a good job, improving its service to your veterans. We have been in direct contact about issues and they have been very responsive about fixing them.

So, business as usual. It will continue to be to serve the veterans. I know the contractor currently is committed to that. We hope to have a competitive rebid process that will result in a good outcome for veterans, contractors, but, importantly, the taxpayers.

Senator HELLER. Mr. Secretary, my time has run out but I again want to thank you, again, for coming to the State——

Secretary SHULKIN. Mm-hmm.

Senator HELLER [continuing]. Spending time with our veterans, your accessibility, your understanding of the issues and problems we have, and willingness to work to improve the issues that we have in front of us. I think this Community Care contract is one of them——

Secretary SHULKIN. Mm-hmm.

Senator HELLER [continuing]. And I look forward to working with you, trying to solve this particular problem.

Secretary SHULKIN. Thank you.

Senator HELLER. Thank you.

Secretary SHULKIN. Thank you very much.

Senator HELLER. Mr. Chairman.

Chairman ISAKSON. Thank you, Senator Heller.

Senator Hirono.

HON. MAZIE K. HIRONO, U.S. SENATOR FROM HAWAII

Senator HIRONO. Thank you, Mr. Chairman. The fact that the VA has a large number of vacancies throughout the country, and not just in Montana but also in Hawaii, and you were given tools—VA was given tools to make the hiring process work a lot more efficiently, and yet we seem to be continuously behind the 8-ball.

So, have you put your finger on why it is so hard? I realize there are, you know, a lack of certain kinds of medical professionals, et cetera, if that is the overall problem. Are there additional tools that we can give the VA to enable you to hire the necessary people?

Secretary SHULKIN. Well, yes, I do think that there is more we can do, but let me—Senator, let me tell you. Last year, we actually made progress. We have a net increase of 8,303 employees. We hired close to 40,000 but it is a net increase of 8,303.

Senator HIRONO. Mm-hmm.

Secretary SHULKIN. But, we know where we have critical vacancies, and that is where we want to move toward a direct hire authority that Senator Tester had talked about.

Senator HIRONO. Mm-hmm.

Secretary SHULKIN. OPM has been very helpful to us and indicated their support in doing that. There is this technical fix that we talked about, that will help us implement your intent last year,

when you gave us direct hire authority for medical center directors and network directors.

Senator HIRONO. Do you need additional tools?

Secretary SHULKIN. We do. We do. We want to continue to—right now we have three hiring authorities that we have to hire employees under—it is complicated—Title 5, Title 38, and a hybrid system. And the more that we can move, for our health care employees, toward a Title 38, it makes the process faster and more competitive with the private sector.

Senator HIRONO. So, is that going to take legislation?

Secretary SHULKIN. It is something that I think we have the authority to do ourselves, and that is what we are moving toward. But we have come to you in the past for help. You have always helped us with that, and we will continue to ask you if we need additional help.

Senator HIRONO. Well, please let us know.

Secretary SHULKIN. Yes.

Senator HIRONO. Because I know, for a fact, that in Hawaii we have something like 166 medical staff vacancies that need to be addressed.

Last week, the White House released an Executive order supporting our veterans during their transition to civilian life, and ensuring access to mental health care and suicide prevention, which you had talked about, as a priority. So, one of the provisions calls for access for veterans to receive mental health care, and I want to know whether you have enough mental health care professionals. What do you plan to do to devote additional resources to recruit and retain mental health professionals, because I assume that is one of your shortage categories.

Secretary SHULKIN. Right. Right. Well, first of all, thank you for acknowledging the Executive order, because if you look at any group that is at high risk for suicide it is that 12-month period from transition.

Senator HIRONO. Yes.

Secretary SHULKIN. So, this is targeted to providing every single transitioning servicemember with a mental health benefit. I think that is critically important.

In order to do that, VA does need more mental health professionals. You know, Senator Tester certainly made this point as well. We have identified a need for 1,000 mental health professionals. Unfortunately, the country at large——

Senator HIRONO. Yes.

Secretary SHULKIN [continuing]. Has a shortage of mental health professionals, so this is going to be difficult. But, we are committed to increasing the number of trainees in mental health residency programs. We work very hard with nurses, social workers, as well as psychologists and psychiatrists, to train as many as we can. We want to do more. We will continue to use efforts like our recruitment bonuses and to acknowledge that VA is actually a terrific place to work if you are a mental health professional. Hawaii would be a great place to be.

Senator HIRONO. Yes. So——

Secretary SHULKIN. So, we are going to do whatever we can.

Senator HIRONO. Thank you. I want to discuss the IG report that showed overpayments and payment errors in the Choice program. Since I am running out of time, clearly, we need to be assured that you are taking the appropriate steps to make sure that you have processes in place so that these kinds of overpayments and erroneous payments are not occurring.

Secretary SHULKIN. Yes.

Senator HIRONO. So, I need your assurance that you are doing that.

Turning to homelessness, your predecessor made a commitment that he would end veteran homelessness, and as mentioned by Senator Manchin, we seem to be going in the wrong direction here, particularly with regard to women veterans who are homeless. Why is it that we are heading in the wrong direction and what are you doing about it? By the way, where is ending homelessness in your order of priorities for the VA?

Secretary SHULKIN. Well, the commitment to ending veteran homelessness I think you correctly said was made in 2010, and we absolutely are committed to that. We will not back down from that goal, and we will continue to drive to do everything we can to end veteran homelessness. So, there is the same firm commitment.

What I have said is because of this last year, where we actually went up 2 percent, we have to rethink our effort. Any good business looks at what they are doing and says "if there is a better way to do it, we should." So, we are going to come out with a new approach that doubles down on the things that are working and maybe uses resources from things that are not working as well.

Here is what we know is working, and I will tell you what is not working. When veterans get jobs, it keeps them in sustainable housing.

Senator HIRONO. Mm-hmm.

Secretary SHULKIN. It helps in so many ways. So, we are going to re-double down on working with employers around the country to find our homeless veterans and train them and get them jobs. Number 2, the HUD-VASH voucher program works really well.

Senator HIRONO. Mm-hmm.

Secretary SHULKIN. We want to continue that partnership with HUD, and we look toward areas—Hawaii is one, but Los Angeles and Seattle too—where the—with the current value of the HUD-VASH voucher, we cannot find people who want to rent us apartments.

Senator HIRONO. Yeah.

Secretary SHULKIN. So, we have to continue to increase the value of that, which we are working on.

We have a shortage of affordable housing units, so we need to partner with construction people and landlords, and actually create more inventory of low-inventory housing, so that is going to work. We also need more community partnerships. We just—because VA cannot do this alone. HUD cannot do this alone. This is a country-wide commitment.

So, we are going to double down on the things that work and we are going to come out with a fresh, new approach here. We would like to work with you on this, because I am not satisfied with the progress we are making.

Senator HIRONO. Yeah, and let us know how that is going, especially Hawaii which has, per capita, the highest number of veteran homeless in the entire country.

Secretary SHULKIN. The housing market there, you know, it is so expensive. So, thank you.

Chairman ISAKSON. Senator Cassidy.

HON. BILL CASSIDY, U.S. SENATOR FROM LOUISIANA

Senator CASSIDY. Hello, Secretary Shulkin, how are you?

Secretary SHULKIN. Hey.

Senator CASSIDY. A lot of what I am going to be asking you today references a *Newsweek* article written in October of last year, authored by Mr. Levine. Are you familiar with it?

Secretary SHULKIN. Yes.

Senator CASSIDY [continuing]. The article is about how the VA fueled the national opioid crisis and is killing thousands of veterans.

Secretary SHULKIN. Yeah.

Senator CASSIDY. As you might guess from the title, it is critical of VA.

Secretary SHULKIN. Yes.

Senator CASSIDY. So, I heard today, or read, that you have now published facility-specific statistics regarding those prescriptions.

Secretary SHULKIN. Yes.

Senator CASSIDY. I have been interested in this data, in terms of applying to the VA, and knowing facility specificity. However, we have had challenges receiving the data requested and expect to receive it shortly. The article addresses Huntington, WV, where the local VA prescribes take-home opiates to roughly 18 percent of its patients, a rate that is 230 percent higher than the national average, for all adult male patients.

I have not looked at the statistics you referenced earlier, but does this VA still prescribe a rate that exceeds the national average by 230 percent?

Secretary SHULKIN. What we published now, and, Senator Cassidy, I hope you will appreciate this, no other system has ever published this data. We are hoping that they will join us, because we believe, like you, that this is how you get better, by sharing your data and understanding it.

What you will see, for every single one of our VA facilities, not only what the rate is now but what it was in 2012, and whether they have made improvements. Every single site, except for one, has made improvements in their prescribing rates in opioids. The one that did not may be somewhat unique. It is in the Philippines. It is Manila. But every domestic site in the VA has made improvements. Some made a lot more than others, and that is where we hope that they are going to learn from each other.

I do not recall Huntington, WV's, improvement rate but I know it has improved.

[The information requested during the hearing follows:]

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. BILL CASSIDY TO HON. DAVID J. SHULKIN, M.D., SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS

Are 18 VA state programs not reporting prescribing data with PDMPs, is this still the case?

Response. 48 states and the District of Columbia are activated for PDMP data transmission, receiving data from the VA.

Missouri just recently established a statewide PDMP by executive order. Nebraska's program has transitioned to Appriss Health's PMP AWARxE and work is underway to initiate transmissions; the state is working to implement FIPS 140–2 cryptography required for Federal data sharing.

Senator CASSIDY. Got it. Another issue which I asked about last time is if the VA is sharing its prescribing data with the PDMPs?

Secretary SHULKIN. Yes.

Senator CASSIDY [continuing]. The article by Mr. Levine states that by the end of last year, 2016, 18 State VA healthcare programs were still not reporting to the State PDMPs. Is that still the case, now that we are a year out from this?

Secretary SHULKIN. I do not believe that that is the case anymore. I am going to want to confirm with you that we are in 100 percent compliance, because that is our commitment. If we are not in 100 percent compliance, I am going to want to know about that, because we have committed to that and we should be.

Senator CASSIDY. Thank you. The article also suggests that VistA, your electronic medical record program, is incapable of flagging drug interactions between benzodiazepines like Valium, and opioids, and details—gives anecdotes of people who are given polypharmacy with Ritalin along with everything in every class, as well as one patient who got 130 morphine tabs. Yes, it is very disturbing. Why would a veteran patient get so much?

Is VistA capable of flagging this? Are the pharmacy programs incapable of seeing these drug interactions and flagging them?

Secretary SHULKIN. We do measure and follow the statistics on patients who are on both benzodiazepines and opioids, because of the danger. I am not able to tell you right now. We do have drug interactions that come up on VistA. I see them when I use VistA. I am not able to tell you why we would not be able to do that.

Senator CASSIDY. The pharmacist is quoted in this article.

Secretary SHULKIN. Yeah. Yeah.

Senator CASSIDY [continuing]. The pharmacist said that it, VistA, does not flag it.

Secretary SHULKIN. Yeah.

Senator CASSIDY. And he, apparently, testified to that under oath.

Secretary SHULKIN. Yes. Again, I just do not know the answer to that. I would like to—and I would be glad to confirm with you, very shortly, whether that is the case or not or whether that has been fixed. I do not know a technological reason why we would not be able to do it, but——

Senator CASSIDY. OK.

Secretary SHULKIN [continuing]. I may not understand it.

[The information requested during the hearing follows:]

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. BILL CASSIDY TO HON. DAVID J. SHULKIN, M.D., SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS

Is VISTA incapable of flagging drug interactions?

Response. VISTA is capable of generating drug interaction checks.

Senator CASSIDY. Let me ask, you have mentioned how many fewer patients are now prescribed opioids.

Secretary SHULKIN. Yes.

Senator CASSIDY [continuing]. If the opioid dosing is going down, does the VA have any spot checks as to how many veterans have gone from receiving prescription opioids to perhaps seeking out illicit sources of opioids? Have we just had an apparent victory or is it documented to be a real victory?

Secretary SHULKIN. Yeah. I do not know what they are doing illicitly. I mean, we just do not have a way of tracking that.

Senator CASSIDY. Do we have, for example, drug screens of patients that theoretically have been taken off of opioids, but a drug screen might show that they are still taking?

Secretary SHULKIN. Right. Those that return and had been started on opioids sign a patient informed consent that says that we will do the urine screening. We do the urine screenings and we report on that, in terms of general statistics. But, if a veteran does not return to us, we do not have any way of tracking that.

Senator CASSIDY. Do we have any sense of the number or the percent of opioid overdoses in people whom, theoretically, are no longer taking opioids?

Secretary SHULKIN. That is a good question. I have never seen the statistic reported that way. We do track Narcan use, and we distribute a lot of Narcan. That hopefully would be a measure of people who have overdosed that we have been able to resuscitate. But, I have never seen the data broken down in the way that you have asked.

Senator CASSIDY. I think that would be helpful.

Secretary SHULKIN. Yeah.

Senator CASSIDY. It would be helpful to the Committee, because it would provide critical information——

Secretary SHULKIN. Yeah.

Senator CASSIDY [continuing]. On whether or not we really are making progress to end the opioid crisis.

Secretary SHULKIN. Yeah.

Senator CASSIDY. We need to know whether it is more apparent than real.

[The information requested during the hearing follows:]

RESPONSE TO REQUESTS ARISING DURING THE HEARING BY HON. BILL CASSIDY TO HON. DAVID J. SHULKIN, M.D., SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS

1. Does VA screen those patients who were taken off of prescribed opioids for illicit drug use?

• Secretary Shulkin responded that there was screening and that VA could provide a report on the results.

Response. Patients on opioid therapy for chronic pain receive annual urine drug testing (OSI metric, 89 percent as of Q1fy18). Patients on opioid agonist treatment for opioid use disorder receive quarterly urine drug testing (sud 17 SAIL metric, currently 94.3%).

All other urine drug testing is at provider discretion based on clinical presentation.

2. Does VA have statistics on opioid deaths from those Veterans who were not prescribed opioids?

Response. The latest cause of death data available is FY 2014. The following table includes the statistics related to Veteran overdose deaths that year, and whether those patients received an outpatient VA prescription for an opioid analgesic in the

year of their death. Note that overdoses were not restricted to overdoses involving opioids, but instead include all accidental and intentional overdoses on any drug or substance. The cohort of VHA users includes all persons using VHA services since 2000; users may not have used VHA health care in FY 2014.

Cause of death among VHA users that died in FY 2014	All VHA users	VHA Users receiving an outpatient VA opioid analgesic prescription in FY 2014	VHA Users who did not receive an outpatient VA opioid analgesic prescription in FY 2014
Any overdose mentioned in cause of death information	2,193	801	1,392

Senator CASSIDY. Finally, is the VA using medication-assisted therapy for those who are addicted?

Secretary SHULKIN. Yes. Suboxone and other medication-assisted treatment. We are seeing a rise in that, and certainly we are keeping up with the contemporary literature on that.

Senator CASSIDY. Correct. A rise could be from a very small baseline——

Secretary SHULKIN. Yeah.

Senator CASSIDY [continuing]. Which could still be very small. Can you perhaps submit, for the record, the percent of patients whom you think have opioid addictions——

Secretary SHULKIN. Yeah.

Senator CASSIDY [continuing]. To include disuse orders, and how many have been transitioned, et cetera?

Secretary SHULKIN. Yeah. I would be glad to get you those statistics. My impression is—although I have not looked at this in detail recently—that your representation is probably correct, starting from a small baseline, beginning to use it more, probably still underutilized, and an opportunity for us to do better.

[The information requested during the hearing follows:]

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. BILL CASSIDY TO HON. DAVID J. SHULKIN, M.D., SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS

Percentage of patients who were transitioned from opioids

- Secretary Shulkin noted that this is done but that it was probably "underutilized"
- Can VA provide what it currently is doing and/or what it will do track this for the future?

Response. As of 4thQFy17, VA serves 6.29 million Unique Patients. (Source: VSSC VHA Pocket Card https://securereports2.vssc.med.va.gov/ReportServer/Pages/ReportViewer.aspx?%2fMgmtReports%2fPocketCard%2fPocketCard&rs:Command=Render)

A subset of the Unique Patient population is the number of Veterans receiving opioid prescriptions dispensed through the VA pharmacies. As of Q4Fy17, 418,895 patients are receiving opioids; this is 260,481 fewer patients or a 38 percent reduction than when the data was benchmarked in Q4Fy17. The latest data for patients receiving opioids is Q1FY 2018 in which 398,899 Veterans received opioids, a 41% reduction. Both quarter's data are included to allow a comparison to the VSSC data. These reductions represent the number of patients that have been transitioned from opioids.

VA currently reports on the Opioid dispensing data on the website https://www.data.va.gov/story/department-veterans-affairs-opioid-prescribing-data. This data will continue to be tracked and updated on the website semi-annually. The website additionally includes regional comparison data to CMS reports on opioid prescribing rates by state.

ADDITIONAL INFORMATION

After reviewing the hearing recording it appeared Senator Cassidy (at time 1:17) was interested in Medication Assisted Treatment. Quote from hearing "he asks "is

the VA using medication assisted treatment for addiction." In response to this question VHA is providing the following additional information:

Medication Assisted Treatment for Opioid Use Disorders

VHA has responded to growing demand for opioid use disorder treatment by increasing access to Medication-Assisted Treatment (MAT). MAT includes counseling or psychotherapy, close patient monitoring, and medication using buprenorphine/naloxone, methadone (administered through an Opioid Treatment Program), or extended-release injectable naltrexone. Buprenorphine/naloxone and extended-release injectable naltrexone are on the VHA National formulary. These are available at VHA facilities and through non-VA purchased care options in the community. Methadone is administered and dispensed through 32 VHA Opioid Treatment Programs across the Nation and through non-VA purchased care options at many facilities.

VHA has been expanding access to MAT for patients with opioid use disorders. In the year ending in FY17Q4, VA treated 24,069 patients with MAT, up from 19,333 patients in the year ending in FY14Q4, a 24% increase in patients treated in just 3 years. This expansion is the result of a comprehensive and integrated approach. The Buprenorphine in VA Initiative provides clinician education through monthly webinars, newsletters, a SharePoint with educational resources, individual consultations, and a national community of practice supported by an e-mail group. The Psychotropic Drug Safety Initiative (PDSI) combines use of informatics tools, action planning, and a national quality improvement collaborative to improve the evidence-based use of psychotropic medications. One of the PDSI program's many impacts has been significantly increased rates of using medication assisted treatment among Veterans with Opioid Use Disorder. In addition, VA Pharmacy's Academic Detailing service is developing an Opioid Use Disorder campaign using informatics tools and individual provider support to increase Veteran access to MAT.

VHA offers several medication assisted treatments for opioid use disorder. Opioid Agonist Treatment includes prescription of methadone or buprenorphine delivered either in a licensed clinic or office-based setting. Opioid Antagonist Treatment includes prescription of injectable depot naltrexone. Only opioid agonist treatment was tracked until FY 2014.

Year	Number of patients that received Opioid Agonist Treatment	Number of patients that received Opioid Agonist or Antagonist Treatment
FY 2006	8,091	NC
FY 2007	8,581	NC
FY 2008	9,694	NC
FY 2009	10,564	NC
FY 2010	11,887	NC
FY 2011	13,493	NC
FY 2012	14,412	NC
FY 2013	16,306	NC
FY 2014	17,575	19,333
FY 2015	19,971	21,915
FY 2016	22,103	22,606
FY 2017	23,406	24,069

Senator CASSIDY. I yield back. I apologize for going over my time.
Chairman ISAKSON. Senator Murray.

HON. PATTY MURRAY, U.S. SENATOR FROM WASHINGTON

Senator MURRAY. Thank you very much, Mr. Chairman. Mr. Secretary, thank you for being here today.

Last year, the Department tried to quietly take money away from some really essential programs—HUD-VASH, childcare, treatment for women veterans—and move the money to general purpose accounts where it could be spent on literally anything. Meanwhile, over the last year, you have come to us repeatedly, sometimes with just days or weeks left, saying VA will run out of funding for the Choice program earlier than expected.

The Department has to start being transparent with Congress—it has to—about its budget needs and not keep raiding critical programs to cover these shortfalls; to give us, finally, a realistic picture of Community Care spending. Those are really basic expectations—how much you are spending and to ask for what you really need.

I wanted to ask you today, will there be any changes in how VA manages its business operations, or is it time to consider a new approach to these functions?

Secretary SHULKIN. Well, first of all, I think those are fair criticisms, and I have to take responsibility for some of the observations that you have. I will tell you that there is no desire to do anything underhanded or hide things. This is a system where we are trying to do so much so fast that we are obviously making some mistakes, and we have to do better at that.

So, let me just address things. First of all, the projections on the Choice program, financial projections, are very, very complex to do, largely because—not only, but largely because of this issue that we hope to get fixed, with your Committee's bill, that we have to obligate the money at the time that we order the service, not when it was rendered. So, it is a little bit of a guessing game that makes financial projections hard.

But, we are doing better. We projected that the money which was left in the Choice program before you renewed it, right before the break, was going to run out the first or second week in January. It ran out the first or second week in January. You gave us $2.1 billion. Today we have $2 billion left, which means we have spent $100 million already of what you gave us.

So, I think we are getting better. We have a brand-new CFO who was just confirmed, thanks to you, in the last 2 weeks. But, it is a hard job to do it, and we are never going to be totally accurate unless we get some of these rules changed.

On this issue of us doing something like taking money away from HUD-VASH vouchers or women's services, it was absolutely never, never our intent to spend less money for women's services or HUD-VASH or mental health, or anything else. Here was our intent, which I stopped because of the reason that you said—it was not accurately being rolled out or communicated. So, it is not happening now. But, let me just tell you what my intent was, because if you disagree with it, I would like to talk to you.

Right now, everything is controlled out of Washington, out of a central office. We tell people across the field, this is how much you get and this is where you need to spend it. My idea of management is, you let the people closer to where you are serving the veteran be more involved in how they should spend their money, and they have to be accountable for the results—treating more women veterans, getting more homeless veterans off the street. You allow them to understand what is better in Seattle versus what is better in Honolulu.

I was trying to advocate a management philosophy that has worked for me that I believe in. It was not rolled out well, so I stopped it. But, we are going to think about how to make this system work better—that was in my opening statement. We need to do more. We need to do better, and I am going to continue to try to do it. I am going to commit—we are going to do a better job of being transparent and collaborative with you, because——

Senator MURRAY. OK. Well, that is what we will be watching.

Secretary SHULKIN. I got it. That is fair.

Senator MURRAY. So, you know, we have had a rough year, but that is what we will be watching for.

Secretary SHULKIN. That is fair.

Senator MURRAY. Let me move to another topic. An Inspector General report from December found in six of seven medical centers it reviewed primary care provider panels were significantly below required levels, and that VHA did not provide oversight of that requirement. That resulted in decreased access for our veterans, and hundreds of millions of dollars of waste in appointments that were not filled.

That report also found, once again, that VA's reported wait times are misleading, and in this case, by the IG's calculation, more than half of the newly-enrolling veterans waited longer than 30 days for their first appointment.

Another IG report found that the Eastern Colorado Health Care System is still keeping secret waiting lists for group mental health care therapy. And finally, according to VA data from November, there are more than 35,500 vacancies in VHA.

Those are senior-level shortcomings across the system that end up with reducing access to our veterans for care and wasting taxpayer dollars. So, I just want to know, who is accountable here?

Secretary SHULKIN. Well, I am accountable, but—and there is no but about the accountability—the statistics that you are reporting—and this is not being defensive; I just want you to understand what they are. The 35,000 vacancies. We have 370,000 employees. That makes a 9 percent vacancy rate, which is not overly high. So, you are always going to have 40,000 vacancies during the course of the year. The 35,000 are part of that turnover rate, and as I already mentioned, we had a net gain of 8,303 employees last year. So, we are not only keeping up——

Senator MURRAY. OK. But we have got secret waiting lists for group mental health care, wait times. This is all from the IG. I am not making this up.

Secretary SHULKIN. No. No, I have got it. We have a big system. Secret wait times, we have clearly said to all of our leadership are

not to occur, not acceptable. If we find them, there are disciplinary actions.

In Colorado, I think that this was one clinic, and it was—I believe, and I may stand corrected—I believe that the facility actually identified that and dealt with that issue. So, that was there. It was dealt with. It was a deviation that is not acceptable. This is not representative of what is happening across the country.

Wait times we continue to struggle with. We have made progress, there is no doubt, The data says we have made progress, but we are not anywhere near where we need to be.

Senator MURRAY. No, we are not.

Secretary SHULKIN. I agree. and we are working on it. We are making progress every day. What we have indicated—our progress in is in matching clinical urgency and need to access.

Senator MURRAY. OK, well——

Secretary SHULKIN. But—yeah.

Senator MURRAY [continuing]. This goes back to my original question. We need you to tell us how much you are spending——

Secretary SHULKIN. Yes.

Senator MURRAY [continuing]. And what you are asking us for these veterans.

Secretary SHULKIN. Yes.

Senator MURRAY. We need to know that.

Secretary SHULKIN. Yep.

Senator MURRAY. OK.

Secretary SHULKIN. Thank you.

Chairman ISAKSON. Senator Sullivan is recognized for the patience-of-Job award.

HON. DAN SULLIVAN, U.S. SENATOR FROM ALASKA

Senator SULLIVAN. Thank you, Mr. Chairman. Mr. Secretary, good to see you. I am going to start with just some thanks and kudos to you and your team. We finally passed out of the Committee here the Serving Our Rural Veterans Act, which was Senator Tester and I's bill, but you were kind of the brainstorm on that when you and I were in Alaska. So, your team and I—we all worked together well on that. Hopefully we get that across the Senate floor. So, I want to thank you for really helping inspire the idea and having the team.

I also want to thank you, Dr. Ballard. Alaska is doing a great job.

Secretary SHULKIN. Good.

Senator SULLIVAN. We have added over 100 employees——

Secretary SHULKIN. Mm-hmm.

Senator SULLIVAN [continuing]. Including two docs, at the CBOC in the Mat-Su Valley——

Secretary SHULKIN. Wow.

Senator SULLIVAN [continuing]. Which has been—we have not had a doctor there in 5 years.

Secretary SHULKIN. I am impressed. That is great.

Senator SULLIVAN. It was kind of the crisis situation that Senator Tester was talking about. We filled it. I know you had a focus on that, so I appreciate that.

I was in the Kenai Peninsula yesterday with some constituents, actually having coffee; been doing a lot of that. One of them asked me, "Hey, what are we doing, Senator, on suicide?" From, you know, an older gentleman, just really concerned. I talked about the Clay Hunt Suicide Prevention Act. I talked about some of the other issues. So, could you literally talk to this constituent right now and say, "Hey, here is what else we are focusing on?" Because I know you are focused a lot, but sometimes it does not always get out, and I thought, you know, having the Secretary here to answer——

Secretary SHULKIN. Yeah.

Senator SULLIVAN [continuing]. A constituent of mine would be beneficial.

Secretary SHULKIN. Yeah. Real briefly, last week the President signed an Executive Order where 100 percent of transitioning servicemembers are going to have a mental health benefit for 12 months.

Senator SULLIVAN. Right.

Secretary SHULKIN. We have expanded mental health services, emergency services, for those that are other-than-honorable. We are making sure our Veterans Crisis Line is being answered—now less than 1 percent of dropped calls and the calls answered within 11 seconds. We are adding 1,000 mental health professionals. We have offered same-day services for mental health in any one of our facilities where people present.

We are using predictive analytics, and a program called Reach Vet to identify those at highest risk by going out and actually contacting them, then bringing them in. We are using community partnerships like Give an Hour and the Cohen Veterans Network as a way to supplement the types of services available to our veterans. Our Vet Centers are open for walk-in services. We can see family members as well as veterans, to be able to help them. We are also looking at a number of other things that can help reduce this crisis, quite frankly.

Senator SULLIVAN. Well, thank you for that. I know the Committee is very interested. We have a lot of bipartisan support on that.

Let me ask another, you know, Senator Hirono talked about homelessness, and I know we are all focused on it. Probably one of the best ways to deal with homelessness is grow the economy, and I think the administration deserves credit and a lot of kudos on that, right? We are probably going to have a fourth quarter of last year that is probably going to be another really strong 3 percent, maybe even 4 percent GDP growth, right?

Secretary SHULKIN. Yep.

Senator SULLIVAN. I mean, we have not grown like that in over a decade.

Secretary SHULKIN. Yep.

Senator SULLIVAN. I mean, there is a lot the VA can do, but if you do not have a strong economy, you are going to have more homelessness. So, I commend the administration for its focus on that.

Let me turn to an Alaska-specific issue. You know the uniqueness of our State. You have been up there, and I look forward to getting you up there again, as the Secretary. But, the VA central

office has made a policy call which would change the reimbursement rates for military partnerships to be in line with Medicare rates, and this would have a very negative impact on our VA partnerships with some of our DOD partners, the 673rd Medical Group there at Joint Base Elmendof-Richardson.

Can you commit to me to make sure that you are taking feedback from all local VAs—you know how unique many of them are throughout the State—and ensure that they understand the kind of ramifications of this policy change? As you know, in this country of ours, one size never fits all. What works in Alaska does not work in Connecticut or other places, and vice versa. So, can you just make sure—can I get your commitment on this issue before there is some kind of big change? You will look at it for the ramifications in Alaska and other places, plus get feedback from leaders, like Dr. Ballard and others, before you guys make kind of a one-size-fits-all call, which my folks back home are saying would be very negative, at least in terms of Alaska?

Secretary SHULKIN. Absolutely. I think you have always been effective at describing the situation in Alaska and other parts of the country that need different types of programs in it, and we certainly are open to that feedback. We will reach out to you to make sure that we are connecting with the people you think we should connect with.

[The information requested during the hearing follows:]

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. DAN SULLIVAN TO HON. DAVID J. SHULKIN, M.D., SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS

Prior to making any changes please commit to receive feedback from local VA facilities regarding the ramifications of the VACO policy that would change the reimbursement rates of military partnerships to be in line with Medicare rates.

Response. The Department will solicit feedback prior to making changes.

Senator SULLIVAN. Great. I appreciate that.

This is just really more of a comment. I know, earlier in the hearing, you talked about, and the Chairman asked about making sure that we get the other Senate-appointed—or Presidential-appointed, Senate-confirmed positions.

Secretary SHULKIN. Yeah.

Senator SULLIVAN. You know, we need to get those from you. I would ask my colleagues on this side of the aisle, on the other side of the aisle, though, none of the games, right? We have had historic records of just holding up nominees for no other reason than to just hold them up on the other side.

So, you guys get them out and I ask my colleagues here, no footsies with these nominees. Let us get them confirmed, let us get them going. We do not need 40 hours of debate on some of these. They are not going to be controversial. Delays and delays and delays on, you know, Senate, or Presidential-appointed nominees, particularly as it relates to the VA——

Secretary SHULKIN. Right.

Senator SULLIVAN [continuing]. Would be a shame. So, we want to work with you on that, and I certainly hope everybody on this Committee wants to do that.

Secretary SHULKIN. Senator, yes. I do not think you were here when I said I think we have the best Committee in the Senate. We

have not seen any of those games. You guys have done everything that we have asked. We owe you the nominees, and then I am sure——

Senator SULLIVAN. I agree with that.

Secretary SHULKIN [continuing]. That you will do your job.

Senator SULLIVAN. Good point on the Committee.

Secretary SHULKIN. Yeah. Yeah.

Senator SULLIVAN. Those games do not occur on this Committee.

Secretary SHULKIN. Yeah.

Senator SULLIVAN. The games occur on the floor of the Senate, where this administration's nominees——

Secretary SHULKIN. Yeah.

Senator SULLIVAN [continuing]. Have been——

[Overlapping speakers.]

Secretary SHULKIN. Fortunately, not with VA.

Senator SULLIVAN [continuing]. Delayed in ways——

Secretary SHULKIN. Right.

Senator SULLIVAN [continuing]. That have been unfortunately historic——

Secretary SHULKIN. Yeah.

Senator SULLIVAN [continuing]. And should not happen at all, but it definitely should not happen with nominees to go fill senior VA positions.

Secretary SHULKIN. That is right. Thank you.

Senator SULLIVAN. All right. Thank you. Thank you, Mr. Chairman.

Chairman ISAKSON. Thank you very much for your service, and thank you. By the way, I will point out our Secretary was the only Cabinet member who was unanimously approved in his nomination and confirmation, which is a testimony to him and the job the VA is doing.

I think Senator Blumenthal and Senator Tester have another question or two. I would ask that they be as brief as possible and succinct, to get to the point.

Who wants to be first?

Senator TESTER. Go ahead, Senator Blumenthal. Go ahead.

Chairman ISAKSON. Senator Blumenthal.

Senator BLUMENTHAL. Thank you very much, Mr. Chairman, and thank you for spending the extra time with us and being so forthcoming in your responses.

I want to come back to some of the questions that have been asked about the vacancies——

Secretary SHULKIN. Mm-hmm.

Senator BLUMENTHAL [continuing]. And the 9 percent turnover that you described.

Secretary SHULKIN. Yes.

Senator BLUMENTHAL. Has the composition of that turnover, or the vacancies, changed at all? In other words, are there more positions? Are they more psychiatrists? I know we have talked about the difficulty of recruiting people, in particular, specialty providers to the VA.

Secretary SHULKIN. They do and they change by location. In Montana, our biggest vacancy is physician assistants, a 36 percent vacancy rate. We have about 15 occupations that we see as criti-

cally hard to hire right now. They are the ones that we have gone to OPM, Office of Personnel Management, for direct hire authority, that they are working with us on. We have difficulty—we have 2,428 vacancies for physicians right now. Last year we had a net gain of 266. So, while we are making an improvement, it is only about 10 percent of the improvement we need. We have 5,507 nurse vacancies right now. Last year we had a gain of 1,494. Nursing assistants, we have 1,268 open, and they vary by region.

So, that is how we recruit by region. We had a recruitment problem in Little Rock last year, where we were desperately short of nurses. We had a hiring fair where we hired 87 nurses in a single day. So, we are approaching this by a regional effort, but the most important part is for us to know where our shortages are, and we do have that data.

Senator BLUMENTHAL. I also want to ask about the education issue that I mentioned.

Secretary SHULKIN. Mm-hmm. Yeah.

Senator BLUMENTHAL. Could you give me some idea of what action has been taken——

Secretary SHULKIN. Yeah.

Senator BLUMENTHAL [continuing]. What is the plan, and so forth?

Secretary SHULKIN. Yeah. So, the biggest thing that we have done—and I really think you got it right. I do want to do something on this. I think that there is an issue, and I know you believe that too. We have put caution flags up on our comparison tool for veterans. Meaning when a veteran goes to our education site and looks at what their options are, there are actually caution flags for deceptive marketing and some of the other practices. We do about 5,000 compliance visits a year to these schools, and where we find concerns, the way that I know you have them, we actually share that information with our veterans.

Now a lot of veterans still go on and choose to enroll in those schools, and as long as they have a State accreditation our current policy is that we will continue to pay for that. We have been battling, sometimes publicly, with schools that have struggled with their State accreditations, and we are trying to hold firm to protecting veterans and doing the right thing.

Do I think we can do more? I do, and would look forward to working with you on that.

Senator BLUMENTHAL. I would welcome that work.

Secretary SHULKIN. Mm-hmm.

Senator BLUMENTHAL. To be absolutely frank, I have been unhappy——

Secretary SHULKIN. Mm-hmm.

Senator BLUMENTHAL [continuing]. With some of the laggard and lacking action on the part of the Department of Education——

Secretary SHULKIN. Mm-hmm.

Senator BLUMENTHAL [continuing]. Which has much bigger impact on these practices and predatory actions of for-profit schools around the country. So, I very much welcome your dedication to this cause.

Secretary SHULKIN. Yes.

Senator BLUMENTHAL. Thank you.

Secretary SHULKIN. Thank you.

Senator BLUMENTHAL. Thanks, Mr. Chairman.

Chairman ISAKSON. Thank you. Senator Tester.

Senator TESTER. Thank you, Mr. Chairman, and thank you for being here, Secretary Shulkin. I would just add on to Senator Sullivan's comments that you continue to put forth good people, some of which are behind you, that we have confirmed. We will continue to get them out of this Committee as quickly as possible. I will put pressure on my side of the aisle to get them through the Senate as soon as possible. We have not done that here, but you have put forth good candidates, which I think is the key.

Look, I have an editorial comment very quickly. Timing for the allocation of dollars for services for the new Community Care program is in the Caring for Our Veterans Act. The fix to the medical director hiring provision that we talked about——

Secretary SHULKIN. Yeah.

Senator TESTER [continuing]. When they did the first round is in the——

Secretary SHULKIN. Yes, it is.

Senator TESTER [continuing]. Caring for Our Veterans Act. The Serving Rural Veterans Act that you worked hard on with Senator Sullivan is in the Caring for Our Veterans Act. We talked about the shortage of docs nationwide, the 1,500 residency slots are in the Caring for Our Veterans Act. Yet, a number of another reasons why we hope to get your support of this bill publicly, because I think this bill would have been passed already——

Secretary SHULKIN. Yes.

Senator TESTER [continuing]. If we could have gotten you on board.

Secretary SHULKIN. Yes.

Senator TESTER. Look, I do not want to be hardcore about this, but I am going to be hardcore about this. I would really like to get a list of about five specific things that the VA central office is going to do above and beyond what you are currently doing to address the clinical vacancies in our State. My staff says they wanted it done by the end of the week but it is already Wednesday. Could you get that to me in a week?

Secretary SHULKIN. Yes.

Senator TESTER. Perfect.

Secretary SHULKIN. Yes.

Senator TESTER. You know, I sent out for online questions for you——

Secretary SHULKIN. Yeah.

Senator TESTER [continuing]. And I think it is important.

Secretary SHULKIN. Your Facebook page.

Senator TESTER. Yes. We got a bunch of excellent questions, but I just picked this one. What have you done to remove the barriers for women's health care and how are you responding to veterans with MST?

Secretary SHULKIN. Well, I believe that we have done a lot to remove barriers for women's health care, but we have a lot more to do. One of the things that we are doing is we are continuing to train more providers in specialty-specific practices to care for women veterans, so that we can expand our access. So, I believe

we are holding a conference in the very near future in Orlando to train another 332 VA providers in women-specific care, in which they will be certified to be able to go out to expand practices throughout the country. I think that is critical. We continue to look at sites that are not providing women's health care clinics, and making sure that they are developing them as well.

Women are our fastest-growing demographic.

Senator TESTER. Yep.

Secretary SHULKIN. We know our culture has not traditionally been as sensitive to them as needed. That is why we have FACA, a Federal advisory committee, telling us how we can do a better job for women veterans. We are listening to their advice. We have a director at the Center for Women Veterans and we are trying to do as much as we can. If you think that there is more we can do, or you—anybody is making suggestions, please let us know.

Senator TESTER. We will do that, and thank you for that.

One last thing. We talked about opioids. It is a huge problem, and we all know it is a huge problem. Within the VA, outside the VA, it is a problem. I know that Attorney General Sessions has said no more marijuana. It is going to be nowhere. Montana is one of those States that said it would legalize it for medical purposes.

Look, I am not enamored with the crap—I will just tell you that—but the VA is a big dog, OK?

Secretary SHULKIN. Mm-hmm.

Senator TESTER. If marijuana helps people that have chronic pain, we ought to be doing research on it, and you guys do the research.

Secretary SHULKIN. Yep.

Senator TESTER. I know you came out with a statement that said no more research.

Secretary SHULKIN. No. Actually, let me clarify that.

Senator TESTER. Perfect. I want to hear the clarification.

Secretary SHULKIN. OK. OK. What I said is that, first of all, VA has done research on marijuana——

Senator TESTER. Yeah.

Secretary SHULKIN [continuing]. But it has not been dispensing marijuana and testing its impact.

Senator TESTER. Yes.

Secretary SHULKIN. It has been observational, or, let us say, for data analysis.

Senator TESTER. Right.

Secretary SHULKIN. VA can do research on marijuana, but I said that we are restricted, because it is a Class 1 substance, so we have to go through multiple agencies, and it is very challenging to work our way through that process. We do have the ability to do it. I have said I am in favor of exploring anything that will help our veterans and be able to relieve some of their suffering.

So, it is challenging to get through that process. Our researchers are working through that process right now. If Congress made it easier to go through the process it would probably happen faster.

Senator TESTER. Well, I would just tell you this. Look, I do not have chronic pain. I know people that do. I do not care if it is marijuana or sagebrush or thistle or cactus. I do not give a damn so long as it helps them.

Secretary SHULKIN. Mm-hmm.

Senator TESTER. Especially when we are fighting the opioid crisis——

Secretary SHULKIN. Yes.

Senator TESTER [continuing]. We are today, we ought to be doing research to make sure it is real. That is all.

Secretary SHULKIN. I agree.

Senator TESTER. Thank you, Mr. Chairman, for your flexibility.

Chairman ISAKSON. Thank you, Senator Tester. I appreciate your contribution and the contribution of all Committee Members.

I want to wish Gretchan Blum the very best in her wishes, and thank you very much for what you have done for the Committee and our veterans.

I thank all of you who came here today, particularly our VSO representatives who will be heard from at great length in February, when we have the VSO meetings, which we appreciate.

The record will be kept open for 7 days for any Member who would like to include their written statement or ask questions for the record, or any other comments we might want to have.

We have a long to-do list, a lot of things to do. This is a hearing to reflect on what we talked about and we wanted to do, the bills we passed to cause it to happen, and now the accountability phase, where, not just at this meeting, but every year we want to analyze where we have been and where we are going. Hopefully, we are always improving the services to our veterans, lessening, wherever possible, the cost to our taxpayers, but most importantly, making sure we pay back those who have given so much to our country, the veterans of the United States of America.

With that said, is there any other business to come before the Committee? My staff—have I forgotten anything?

We are good. This meeting is adjourned. Thank you.

[Whereupon, at 3:46 p.m., the Committee was adjourned.]

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. JOHNNY ISAKSON TO U.S. DEPARTMENT OF VETERANS AFFAIRS

Question 1. I have consistently said that efforts to overhaul VA's appeals process must include efforts to address the over 470,000 existing appeals. In VA's Comprehensive Plan for Processing Legacy Appeals and Implementing the Modernized Appeals System that was submitted to Congress in November 2017, it states that VA plans to allocate resources to establish "timely processing in the new system and will allocate all remaining appeals resources to address the inventory of legacy appeals."

a. What does "timely processing" mean and what are VA's specific goals?

Response. VA has committed to an average processing time goal of 125 days to complete higher-level reviews and supplemental claims under the new appeals process, and 365 days to complete appeals to the Board of Veterans' Appeals (Board) in which there is no additional evidence and no request for a hearing. The Board is working collaboratively with the Veterans Benefits Administration (VBA), VA Program Management Professionals, and US Digital Service (USDS) on establishing timeliness goals for the remaining two dockets in the new process. VA will continue to gather data and conduct trend analyses on aspects of Veterans' behavior, to include their decision to elect to participate in the new process, the distribution of elections among the new process lanes, claims processing timeliness, and individual employee productivity. The Rapid Appeals Modernization Program (RAMP) test program will provide better data and trend analysis for capacity modeling the resources needed for these other dockets prior to the implementation date. The Board will use the actual data obtained regarding appellant behavior in the new system to assist in developing future resource requirements as part of the annual budget process.

The 2017 Government Accountability Office report recommended that VA conduct additional sensitivity analyses of its forecast modeling to more accurately estimate future appeals inventories, timeliness, and cost factors. VA has developed a more robust, scalable model that allows for the recommended analysis. The model may serve several specific purposes, to include:

- Estimating the legacy inventory remaining as implementation of appeals modernization approaches;
- Determining the impact of the claim disagreement rate on the new system inventory;
- Determining the distribution of resources given Veterans' choices among new system lanes;
- Determining the efficiency of the new process and the allocation of resources based on estimated employee productivity rates across the various new system decision review and appeal lanes; and
- Adjusting, as needed, resources required to eliminate the legacy inventory as quickly as possible, while also meeting established timeliness goals in the new system.

VA will continue to verify and validate the model to ensure the accuracy of its outputs and its utility in VA's appeals modernization forecasting.

Besides forecast modeling, the Board will also continue to refine and improve its process model to capture additional changes aimed at improving the timeliness of appeals under the new system.

b. Does VA have timeliness goals for the inventory of legacy appeals?

Response. VA tracks appeals processing goals under certain cycle measures. These measures track both inventory and timeliness at stages in the appeals process. As noted in VA's May 2017 Annual Performance Plan and Report, among the appeals measures that VA tracks are the following: Notice of Disagreement (NODs) pending inventory, NODs average days pending, Substantive Appeals to the Board (Form 9) pending inventory, Substantive Appeals to the Board (Form 9) average days to complete, and Substantive Appeals to the Board (Form 9) average days pending. For a listing of all appeals measures, to include Board measures, that VA tracks, please see the full report, available at https://www.va.gov/budget/docs/VAapprFY2018.pdf.

While VA tracks appeals processing goals under certain cycle measures, VA is unable to set a realistic and comprehensive timeliness goal that measures legacy appeals processing from the date the appeal is filed to when it is finally resolved. This is because appeals in the current legacy process has no defined endpoint and can cycle through various steps, several times, before moving to the next phase in the process. The current multi-step process is too inefficient; splits jurisdiction for processing appeals between the agency of original jurisdiction and the Board; and features an open record and ongoing duty to assist. As a result, the continuous evidence gathering and readjudication prolong the ability to reach a final decision.

The rate at which the legacy appeals inventory can be resolved is dependent on a number of factors and variables, including funding made available to appeals processing through the annual budget appropriations process in future years and the rate of election of claimants with legacy appeals pending who opt-in to the new process.

The Board is working with program management staff and Digital Service partners to develop milestones for the reduction of the legacy inventory, considering such dependencies as the opt-in rate from RAMP and statutory mechanisms, current resource levels, trends in adjudication of legacy appeals at the agencies of original jurisdiction, and increases in productivity resulting from the strategies discussed above.

c. Does VA plan to prioritize new appeals over legacy appeals?

Response. No. VA's goal is to eliminate the inventory of legacy appeals as quickly as possible while also maintaining timely processing in the new system. The opt-in features, whereby Veterans with a pending legacy appeal can elect to participate in the new process, will assist VA in accomplishing that goal.

The Board is working with Digital Services partners to ensure that Caseflow functionality includes the ability to continuously adjust the case distribution ratio between all Board dockets based on actual data. Adjusting the case distribution ratio will allow the Board to meet its 365-day average processing time goal for cases on the direct docket, while ensuring fair treatment of legacy appeals and appeals on the new system's hearing and evidence dockets by distributing cases from the other dockets proportionate to the scale of each docket's inventory.

Question 2. VA began a Rapid Appeals Modernization Program (RAMP) to pilot parts of the new Appeals system and to work on the existing appeals backlog.

a. Under RAMP, what specific parts of the new appeals process is VA testing?

Response. RAMP will assist the Department in testing a number of elements of the Veterans Appeals Improvement and Modernization Act of 2017 (Modernization Act). The initiative, which was launched on November 1, 2017, allows eligible participants with disability compensation appeals pending with VBA the voluntary option to have their decisions reviewed in the higher-level review or supplemental claim lanes outlined in the Modernization Act. RAMP gives Veterans early access to the benefits of the new system, while also allowing VA to better position itself for full implementation in February 2019.

During RAMP, and with feedback from Veterans, Veterans Service Organizations (VSOs), and congressional stakeholders, VA is testing the new process from intake to issuance of a decision. This includes testing the election opt-in notice, the new decision notice that meets the requirements outlined in the statute, as well as internal standard operating procedures. In addition, VA is testing information technology solutions for managing Veterans' opt-in elections and capturing duty to assist error data identified during higher-level reviews. During this program, VA will gather data and conduct trend analyses on aspects of Veterans' behavior, to include their decision to elect to participate in the new process, the distribution of elections among the new process lanes, and individual employee productivity. In addition, the data will inform VA as to appropriate work credit, workload and resource capacity estimates, as well as processing timeliness and quality metrics for the new process.

b. What lessons have been learned so far?

Response. Although it is still too early in the process to glean any meaningful lessons learned, to date, VA has seen lower than expected opt-in rates from Veterans. That is in part because VA initially extended the invitation to participate in RAMP to Veterans who have the oldest appeals pending and may have reservations in participating in the new process. As a result, VA is currently reassessing its outreach and marketing campaign regarding RAMP. Also, starting in February 2018, VA will open up the elections to newer appeals, and will work with VSOs in reviewing processes that will allow Veterans to opt-in at a faster rate.

c. When will this pilot program conclude?

Response. VA plans to invite most Veterans with pending legacy appeals to participate in RAMP by February 2019 when it fully implements the Modernization Act.

d. Why has VA decided to not pilot RAMP at the Board of Veterans Appeals and test all aspects of the system?

Response. Currently, Veterans who receive a RAMP decision have the option of appealing to the Board by filing a NOD. In October 2018, the Board will begin adjudicating the first of these appeals in a phased implementation to test processes and technology. Implementing RAMP will allow the Board to identify and address potential issues and risks relating to implementation of the new framework.

e. To date how many individuals with legacy appeals have opted in to RAMP?

Response. As of May 14, 2018, 15,645 individuals, with a total of 19,208 legacy appeals pending, have opted to participate in RAMP.

f. Are there any concerns that RAMP may not be an adequate solution to drive down the pending legacy appeal inventory?

Response. VA believes it is too early to conclude that RAMP is not an adequate solution. Since the inception of RAMP, in November 2017, 15,645 individuals, with 19,208 appeals have decided to opt in to RAMP. In addition, the earlier requirement that Veterans need to be "invited" into RAMP was removed on April 2, 2018, and now any eligible Veteran with a pending disability compensation appeal can choose to opt in to RAMP, and benefit from the faster review process. RAMP allows Veterans and appellants with pending disability compensation appeals not yet activated at the Board the choice for early resolution of their appeals at VBA. RAMP provides Veterans and appellants the choice to opt into the benefits of the new appeals framework and will reduce the number of appeals under the current, legacy system. Thus, VA is working closely with VSOs, and external stakeholders to encourage participation in RAMP. VA's legacy reduction plan includes RAMP and initiatives to improve appeals production.

g. Are there other solutions VA is looking at?

Response. VA is working with its VSO partners in assessing ways to increase individual RAMP opt-in rates. In addition, VA is continuously evaluating ways to increase efficiencies. For instance, VBA is considering plans to consolidate processing of all remands at the Appeals Resource Center. The Board is completing its hiring plan in fiscal year (FY) 2018, seeking opportunities to enhance training and employee engagement for all staff, and working with a VA Program Management team and IT/Digital Service staff to re-engineer processes and implement technological

upgrades promoting increased decision production. The Board is already seeing positive results from our multi-faceted approach to reducing the pending legacy inventory. To date in FY 2018, the Board has signed 24,468 decisions, which is an increase of 13,073 signed decisions over the same time period in FY 2017. VA will consider recommendations of the Committee.

Question 3. Under the new Appeals Act, Congress deliberately gave VA the flexibility to take the needed amount of time to get the new system right, but also gave the Secretary the responsibility for signing off that the new system is ready before it fully replaces the existing system.

a. Although it is still early in the implementation process, does VA anticipate launching the new system in February 2019 or taking more time?

Response. VA anticipates launching the new appeals system in February 2019.

b. What specific indicators will you look for when deciding to move ahead or take more time?

Response. VA will look at the following indicators when assessing its readiness for full implementation:

• Status of the rulemaking: If public comments prompt extensive revisions to draft regulations, VA may need more time to make the revisions, gain stakeholder buy-in, and complete the approval process.

• Lessons learned from processing of higher-level reviews and supplemental claims in RAMP: Should VA's experience in RAMP indicate significant problems with the new processes and/or systems, VA could potentially require more time to resolve these issues. However, VA does not anticipate encountering any significant issues.

• Status of IT systems development: If VA encounters unanticipated delays in updating IT systems to support the new appeals framework, VA may require more time to implement. However, at this time, VA anticipates that the updates will be completed on time. The Board has established timelines for development of necessary IT systems, training and hiring of personnel, and publication of regulations, among other dependencies. The Board is working with a VA Program Manager to ensure that all dependencies are on track for full implementation. In particular, the Board's progress in the areas of IT systems, training, and publication of regulations will serve as strong indicators as to VA's readiness to implement the new system.

Question 4. The Accountability and Whistleblower Protection Act gave VA authority to remove unsuitable employees and authority for direct hire of some critical positions.

a. What metric does VA use to determine how well it is doing at removing unsuitable employees? What are those numbers currently?

Response. These are the two metrics that appear in the VA 2020–2024 Strategic Plan that will be used to measure VA compliance with the Accountability and Whistleblower Protection Act. We have not performed analysis based on these metrics. Performance-based action will be taken against all proven poor performers within 90 days of substantiation of poor performance. Appropriate disciplinary or adverse action will be initiated against all employees within 90 days of substantiation of misconduct.

b. How many employees has VA fired in 2017? How many of those were allowed to retire or resign? How many were terminated during an initial probationary period?

Response. There were 1,582 removals between June 23 and December 31, 2017. Of these, 960 were removals of regular employees and 622 were terminations of probationary employees.

c. How many employees has VA hired under its new direct hire authority for Veterans Integrated Service Networks (VISNs) and medical center directors?

Response. In September 2017, VA hired one Medical Center Director (Shreveport, Louisiana) using direct hire authority. No VISN Directors were hired using the direct hire authority.

Question 5. What direct outreach has VA done to inform school certifying officials about changes enacted in the Forever GI Bill? What future plans does VA have for direct outreach to this group?

Response. On November 29, 2017, VA's Education Service conducted a School Certifying Official (SCO) webinar on the Forever GI Bill and provided information on our progress toward implementation. The webinar also included a question and answer session in which Education Service responded to questions from SCOs. VA sent targeted emails to SCOs on the removal of the delimiting date for eligible beneficiaries and the expansion of approvable Independent Study programs. In early February 2018, Education Service held a focus group with stakeholders including

SCOs on its implementation plan for Section 107, and will continue to engage with SCOs through regularly scheduled webinars, targeted emails, state, regional, national conferences and serve as resource to SCOs as they educate students at their facility on the Forever GI Bill.

Question 6. How does VA plan to fill the role of Deputy Under Secretary for Economic Opportunity in the Veterans Benefits Administration and what is your timeline for noticing the position and reviewing candidates?

Response. In response to Executive Order 13781 and the Office of Management and Budget (OMB) Directive M–17–22, VA has a comprehensive modernization effort underway. While VA is continuing its efforts to modernize its infrastructure and focus resources more efficiently, we must evaluate the position and responsibilities of the Deputy Under Secretary for Economic Opportunity (DUSEO) in accordance with our modernization goals.

VBA has a newly appointed Under Secretary for Benefits, Dr. Paul R. Lawrence. One of his top priorities is providing Veterans with the benefits they have earned in a manner that honors their service. Under his leadership, VBA is taking a comprehensive look at the layers of oversight and organizational alignment to determine the most effective and efficient manner to oversee the delivery of timely and accurate benefits. To ensure continuity of operations and appropriate support, the business lines that fall under the Office of Economic Opportunity are reporting directly to the Principal Deputy Under Secretary for Benefits.

Question 7. Do you expect any changes to the role of the Deputy Under Secretary for Economic Opportunity or any significant changes to the Office of Economic Opportunity?

Response. VBA is currently evaluating the role of the Deputy Under Secretaries. As neither the Deputy Under Secretary for Economic Opportunity or the Deputy Under Secretary for Disability Assistance are encumbered at this time, all business lines that previously reported those Deputy Under Secretaries are reporting directly to the Principal Deputy Under Secretary for Benefits. This allows the business line leaders direct access to top leadership. We will continue to assess if this type of oversight is sustainable long-term and make adjustments to positions and/or roles and responsibilities as necessary.

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. JON TESTER TO U.S. DEPARTMENT OF VETERANS AFFAIRS

Question 8. I made it quite clear that I thought the Federal hiring freeze was a bad decision for the President to make, but even after that concluded, you've made the decision to continue a hiring freeze of sorts at VA. Do you still believe that is the right decision, and do you intend to continue it?

Response. Consistent with OMB Memorandum M–17–22, effective April 26, 2017, VA removed hiring restrictions for field positions located in the Veterans Health Administration's medical facilities (for medical and non-medical positions), and for VBA regional and field offices. The National Cemetery Administration had no restrictions, and that remained unchanged. Hiring restrictions were also removed for the following Executive level positions: Medical Center Directors; Network Directors; Cemetery Directors; and VBA Regional Office Directors. This allowed the Administrations to fill the positions they determined as necessary to meet mission requirements.

Although the hiring freeze was lifted, the Secretary did direct that managers be deliberative in the hiring actions taken to ensure VA is postured for success as we implement overall Modernization efforts and reform plans, in accordance with OMB Memorandum M–17–22, that improve and ensure the more efficient and effective delivery of services to Veterans, while identifying opportunities to reduce duplication or overlap. To this end, VA maintains a process that requires a thorough review before hiring all other positions outside of those listed in the preceding paragraph. Hiring for all other positions in the Administrations requires the appropriate Under Secretary level approval. Recruitment for positions at VA's Central Office and all other Executive level hiring requires approval by the VA Chief of Staff.

Question 9. Last month, a VA official testified at HVAC that the hiring freeze made it difficult for VA to keep up with purchasing needed medical equipment. We also heard this month that the administration's hiring freeze played a significant role in USDA pulling out of the agreement to support VA's financial management business transformation. In addition to these instances, do you believe that veterans or programs serving veterans were harmed by the hiring freeze?

Response. As referenced in the response to Question 8, VA leaders are authorized to fill the positions they determine are necessary to meet mission requirements. While hiring managers are expected to obtain approval at the appropriate level in their chain of command prior to filling certain positions (non-medical/clinical positions), this should not have an adverse impact on the delivery of services to Veterans.

Question 10. The latest data from VA shows that in your continuing hiring freeze, there are: 100 non-exempt vacancies in Human Resources, and more than 2,700 non-exempt vacancies in VHA.

a. How many of those VHA vacancies are within VHA's workforce management or human resources office?

Response. As referenced in the response to Question 8, VA leaders are authorized to fill the positions they determine are necessary to meet mission requirements. This includes H.R. positions across VHA. While hiring managers are expected to obtain approval at the appropriate level in their chain of command prior to filling certain positions, VHA's Workforce Management and Consulting (WMC) Office has been successful in getting approval to fill critical H.R. vacancies.

b. Do you believe addressing vacancies of positions that focus on recruitment and retention would help address ongoing hiring challenges?

Response. Generally, the filling of H.R. vacancies can impact the organization's ability to recruit and retain employees. It is imperative that H.R. departments have the necessary staffing for its organization in order to help mitigate overall hiring challenges. WMC has submitted its vacancies for hiring exemption waivers and they have been approved. As referenced in Question 8, the Under Secretary is authorized to approve hiring for vacant positions that are necessary to meet mission requirements. That includes vacant H.R. positions that are required to support critical hiring needs.

Additionally, on January 24, 2018, the Office of Personnel Management approved VA's request for Direct Hire Authority (DHA) for 15 occupations. H.R. Specialists (GS–201 series) and H.R. Assistants (GS–203 series) are included on the list occupations approved for DHA. This will assist the VA in filling these mission critical positions.

Question 11. Nearly two years ago, the National Academy of Medicine released its final Agent Orange update, recommending three new presumptions of service connection for Bladder Cancer, Hyperthyroidism, and Parkinson-like conditions. I wrote to you in September with some colleagues and asked for a decision from VA. In November you released a statement stating your intent to "explore new presumptive conditions." Given the length of time since the National Academy of Medicine released their recommendations, when can we expect these veterans to be able to receive the health care and compensation they earned?

Response. Once the President's nominee has been confirmed and sworn in as Secretary, VA will examine the current policy, complete a full review on this issue and provide new guidance on this issue as needed.

Question 12. Is there a treatment protocol in place at VA for veterans with symptoms of Gulf War Illness? What is VA doing to advance their care and treatment?

Response. VA has put considerable efforts into the diagnosis, research and treatment of Gulf War Illness (GWI) also referred to as Chronic Multi-symptom Illness. One of the most comprehensive documents on treatment was a joint effort by VA and DOD entitled: The Management of Chronic Multisymptom Illness (CMI) 2014. This Clinical Guideline provides comprehensive evidence based recommendations incorporating current information and practices for practitioners throughout the DOD and VA Health Care systems. The guideline is intended to improve patient outcomes and management of patients with CMI. The guideline is available at: https://www.healthquality.va.gov/guidelines/MR/cmi/.

Post-Deployment Health Services/War Related Illness and Injury Study Center (WRIISC) led the development of an extensive e-learning module for clinicians on GWI available at: https://www.train.org/main/course/1074205/. This e-learning module provides health care providers with the knowledge needed to recognize, evaluate, manage and treat GWI in Veterans and be able to apply the VA/DOD Clinical Practice Guideline for Chronic Multi Symptom Illness. VA also oversees the Gulf War Registry whereby thousands of Veterans get evaluated each year for health conditions.

Recent research led by either the WRIISC and/or the Office of Research and Development, focused on the treatments of GWI, has included the topics of yoga, acupuncture, tai chi, dietary supplements such as coenzyme Q10, cognitive behavioral therapy, light therapy, exercise, inflammatory markers for diagnosis, and nasal continuous pressure to alleviate sleep disorders in Gulf War Veterans.

VA also has a Research Advisory Committee (RAC) on Gulf War Veterans' Illnesses that advises VA on studies that include potential treatments. For more information, please visit https://www.va.gov/rac-gwvi/. Gulf War RAC membership includes: Academics, Researchers, Veterans, VA staff, VSOs and Scientists. For a list of members, please visit https://www.va.gov/RAC-GWVI/Members_and_Consultants.asp. There is currently no accepted single clinical case definition for GWI/CMI. VA contracted with the National Academy of Medicine (NAM) to evaluate existing case definitions. In 2014, the NAM released a report noting it was unable to find a single definition. VA has developed a plan to create a single, validated case definition and will be initiating research this year in execution of this plan.

Question 13. This summer, you stood with me in Montana and announced that you would issue new regulations to help rural communities build nursing homes for veterans. When will those be released?

Response. VA is currently reviewing the proposed regulations. Upon completion of the review, the regulations will be published as a proposed rule, followed by a 60-day public comment period, and a final rule that responds to public comments and makes the changes effective. VA anticipates the proposed rule process may take 6 to 9 months.

Question 14. VA has nearly 1,000 open recommendations: 772 from the OIG and 215 from GAO. Further, VA health care has been on the GAO High Risk List for the past 3 years, and according to GAO, is not likely to be removed any time soon.

a. What is your approach to addressing these open recommendations?

Response. VA is working to implement all open Government Accountability Office (GAO) recommendations. Additionally, VA is working with GAO to leverage GAO best practices to improve the Department by the most effective and efficient means.

VA continuously works to address deficiencies identified by GAO with an aim to resolve recommended actions within 3 years of report publication.

Currently, 83 percent of VHA's open GAO recommendations were made within that 3 year timeframe; 47 percent of them were made within the past 12 months. VHA has requested GAO consider closure on 28 percent of our open recommendations. In FY 2017 GAO closed 56 recommendations to VHA and made 46 new recommendations.

Each Administration and Staff office within the Department is responsible for providing the status on open Office of the Inspector General (OIG) recommendations. The OIG process is to obtain updates every 90 days until recommendations are closed. Each office works with the OIG to close recommendations as quickly as possible.

b. Can you assure me that VA is using a strategic approach to respond to these recommendations?

Response. Yes, the Department is using a strategic approach to respond to recommendations. In FY 2017, for the first time, GAO provided all Federal Agencies with a list of priority recommendations. GAO identified 22 high-priority recommendations for VA, and the Department is working to implement them. The Office of Enterprise Integration considers open recommendations as they move to strategically transform the Department.

Question 15. In response to a question after your confirmation hearing, you agreed to provide quarterly briefings to staff on the status of the Department's open recommendations from OIG, GAO, OSC and others. When can we look forward to beginning those briefings?

Response. VA is in the process of analyzing various trends in GAO/OIG/OSC reports and the Department looks forward to providing quarterly briefings in the future.

Question 16. Do you have any data to demonstrate whether the Department's removal actions under the new accountability law are increasing across all grades, or whether you're seeing lower-level employees disproportionately affected?

Response. The Office of Accountability and Whistleblower Protection (OAWP) does not have visibility on all personnel actions. OAWP's scope for actions are the Senior Executive Service (SES), SES equivalents, and program managers at many levels that run major programs that have an impact across VA. Actions taken with lower grade employees are predominantly facility level actions.

Question 17. Mr. Secretary, in September the IG released a memorandum detailing concerns with payment errors in the Choice Program. The timeframe for the review of claims was November 1, 2014, through September 30, 2016. Without yet getting into the December IG report, my very narrow question for you is—what did you do in response to that September memorandum?

Response. Through use of internal audit and assessment tools, VA had identified overpayments to Third Party Administrators (TPAs) through Veterans Choice Program prior to the issuance of the September 2017 OIG memo and corrective actions were initiated before its publication. Duplicate payments were identified to be a particular area of vulnerability and, as a result, VA's Office of Community Care implemented an automated internal control to identify and prevent potential duplicate Choice payments prior to payment in the bulk payment environment. Since implementation in July 2017, over $35 million in potential duplicate overpayments have been prevented.

As noted in the September 2017 memo, VA completed an extensive analysis of prior Choice payments made in the bulk environment in the summer of 2017 and identified more than $80 million dollars in potential overpayments. This information was shared with the Choice TPAs and VA OIG. VA continues to work closely with the VA OIG, VA OGC, and other government stakeholders to ensure that overpayments through the Choice program are identified and recovered.

Question 18. In December, a more exhaustive report was released by the IG expanding on its earlier memorandum. My question for you is: where are we today? If the IG's office were to knock on your door today—would it find the same problems?

Response. The December 2017 OIG audit report focused on claims processing using the Fee Basis Claims System (FBCS), a highly manual claims processing system that is no longer utilized to process Choice claims. The process that followed, known as bulk payments, involved payments to TPAs in bulk form and was implemented to address delays in payments to TPAs and maintain critical provider networks in the Choice program. It was understood that this process would require post-payment reviews and, as noted in response to Question 17, VA has since implemented a process for preventing potential duplicate payments prior to payment and has conducted, and will continue to conduct, post-payment analyses to identify overpayments.

Starting in February 2017, VA's Financial Services Center (FSC) began processing Choice claims and utilize an automated payment system to conduct pre and post-payment analyses and to pay TPAs timely, reducing the burden of manual work that previously was required using the FBCS system. As of December 2017, more than 99 percent of clean claims received by the FSC were paid within 30 days of receipt.

As noted in response to Question 17, VA continues to closely collaborate with the VA OIG, VA OGC, and other government stakeholders to ensure that overpayments made through the Choice program are identified and recovered.

Looking forward, VA has incorporated many lessons learned from the Choice Program into its Community Care Network request for proposal (RFP) and future contracts will include stringent requirements for timeliness and accuracy of claims payments by TPAs. In parallel, VA will continue to strengthen its internal abilities to improve accuracy of payments and detect and prevent fraud, waste, and abuse (FWA). VA's Office of Community Care is currently working collaboratively with other government agencies including CMS and the Department of Treasury on joint initiatives to reduce FWA. In addition, a Federal Advisory Committee consisting of national experts in FWA detection and prevention is advising VA and VA's Office of Community Care is working closely with this Committee to identify further opportunities to reduce FWA in VA's Community Care Programs.

Question 19. I am pleased to see that after much prodding from Congress the Department has finally decided to more aggressively address delayed payments to community providers. What took so long for VA to become more aggressive on this issue? What are the changes community providers can expect?

Response. VA has been proceeding with individual solutions to address individual provider needs as our teams become aware. We believe that this more comprehensive approach is needed to ensure that VA is committed to resolving the provider payment issues. VA is taking the following multi-pronged approach to resolve these issues:

First, VA is optimizing staffing levels and labor mix to increase claims output and enhancing Contact Center capabilities. Customer service functions performed by the claims processors will be transitioned to the Contact Center over the next year. This will allow additional claims to be processed as the staff transition. The Contact Center will also utilize email to increase the number of inquiries they can field from providers

Focus on provider education on Vendor Inquiry System, which allows providers direct access to claims status via a website.

Second, VA is increasing workload of claims processing vendors and dedicating teams to resolving outstanding claims with major providers. VA is shifting more claims to vendors over the next several months. The target is to increase to 840,000 per month by March 2018. This represents about 40 percent of incoming claims volume. VA has also created rapid response teams to develop tailored resolutions working with the top 20 providers. Outreach has begun with a target of resolving outstanding issues by April 3, 2018. After this effort is completed, the teams will move onto other providers.

The third prong is to continue to make implement IT solutions to improve productivity. Existing claims processing systems has two enhancements to reduce manual processing that will be implemented by September 2018. We are also implementing a process to convert paper claims to electronic, reducing manual entry of claims. In addition, a new claims processing system will be in use at the end of 2019.

Question 20. We've received a lot of enthusiastic feedback from veterans about the Edith Norse Rogers STEM scholarship, which provides additional GI Bill benefits to students in programs of study that are STEM or a field which the Secretary has identified as a national need. Despite this enthusiasm we have not yet received any feedback on how this benefit will be implemented, or how the Department will use this new authority to identify fields of study which are a national need. When can we expect to see VA's implementation plan for the Edith Norse Rogers STEM Scholarship?

Response. VA is analyzing statutory requirements to develop planning documents for the STEM scholarship, which does not go into effect until August 1, 2019. The requirements for this provision do not conform to VA's current technology and business rules for the Post-9/11 GI Bill; therefore, VA has identified the VA Regional Processing Office in Buffalo, NY, as the sole site dedicated to processing and tracking the STEM Scholarship. VA expects a more fully developed plan with regulatory, communication and program requirements to be drafted by December 2018.

Question 21. The Forever GI Bill appropriates $30 million to the secretary for changes and improvements to the information technology systems used to administer veterans education benefits. Please provide us with a description of the IT requirements that VA has to improve their IT systems and a detailed spending plan for that $30 million?

Response. Section 115 of the Colmery Act authorizes $30 million specifically for the automation of the remaining supplemental claims and original claims processing. To date, no funding has been appropriated. Notwithstanding the absence of resources, the Office of Information Technology (OIT) in coordination with Education Service has committed to address those provisions of the Act that are most critical. Those include Sections 107, 501 and 112. This work is being absorbed into ongoing education systems modernization effort focused on the retirement of the Benefits Delivery Network (BDN) that was already underway.

Additionally, VBA's Education Service and OIT are partnering to explore managed services opportunities to deliver all education benefits. We are targeting FY 2019 (after the BDN decommissioning is largely complete) for a potential managed services implementation.

If this approach is successful, we should be able to integrate the remaining Forever GI Bill provisions needing an IT solution into Education IT systems in FY 2019 through managed services. If a managed services solution is deemed not feasible we will employ a traditional development approach, subject to the availability of funding.

In summary, this approach, achieved through VBA/OIT partnership ensures that all Forever GI Bill provisions are implemented on time for Veterans, while enabling VA/OIT to best position the supporting IT environment for the future.

Question 22. State Approving Agencies provide the on the ground workforce that ensures VA education benefits are being used on quality programs of study. The Forever GI Bill appropriated an additional $3 million to be provided to the State Approving Agencies for fiscal year 2019 and another $2 million for each fiscal year after that. Can you provide details for the Committee on how you plan to work with the SAAs to divide that money amongst each state? Will you ensure that states which currently only receive enough funding to hire one full time employee will be prioritized to ensure that no state is left with funding for "1.5" full time employees?

Response. The Forever GI Bill authorized an additional $2 million for FY 2018 for State Approving Agencies (SAA) funding, which increased the funding from $19 million to $21 million. An additional $2 million will be authorized in FY 2019, increasing the total funding from $21 million to $23 million and allowing for a cost of living allowance increase.

Currently, VA is using an engineered model that distributes the SAA funding based on workload, training, size and type of schools, and approval and compliance requirements. VA will continue to work with the Contract Committee of the National Association of State Approving Agencies (NASAA) regarding the SAA allocation model and formulas. VA anticipates a thorough review of the allocation model prior to FY 2019, with potential contractor analysis, to ensure appropriate and equitable funding distribution.

The current allocation model determines the individual SAA funding based on the workload required and distributes the overall funding (currently $21 million) based on the number of full-time employees (FTE) needed to perform the work. The model may determine that a state requires two FTE, and allocates $200,000 toward the staffing costs. However, due to fluctuations in state salaries and benefits packages that amount may be sufficient in one state to hire three FTEs; in another state, two FTEs; and in another state, one FTE. VA does not dictate to an SAA how they must utilize the funding provided; the SSA determines how many FTEs they can hire with the funding provided.

Question 23. VA provided committee staff information on the number of students who applied to have their benefits restored in the wake of the ITT closure. VA stated that they received 441 applications, and have restored benefits for 302 students. 441 students responding when over 12,000 veterans attended ITT in the 2016–2017 school year alone is not a good response rate. What outreach is VA using to reach impacted students? What are examples of outreach they've done to reach them? And finally, why have 140 veterans applied but not had their benefits restored?

Response. During the week of November 9, 2017, VA provided notification to 8,000 students identified as potentially eligible to have benefits restored under the Special Application provision of Section 109. Of those, approximately 80 percent received an email with a letter, instructions, and a form to apply for restoration. The remaining 20 percent received the same documentation via postal mail. As of January 26, 2018, VA has received over 700 applications and restored over 4500 months of entitlement to almost 450 individuals.

To reach the population of students impacted by this closure, VA announced through its social media outlets instructions for restoring entitlement, established a new webpage with additional information (https://benefits.va.gov/gibill/fgib/restoration.asp), and issued three email missives to over 1.2 million individuals VA is committed to restoring benefits to all eligible Veterans and will continue to promote and encourage Veterans to apply for restoration through all available outlets including Facebook and Twitter. VA plans a 90-day follow-up communications effort.

VA was not able to restore benefits for all Veterans who applied as they did not meet the criteria for restoration. In most instances, it was because the beneficiary was not enrolled in the closed school within 120 days of its closure, or the beneficiary transferred credits to a comparable program at a new school thereby making them ineligible for restored benefits.

Question 24. In a question taken for the record from your confirmation hearing you committed to reporting back to this Committee within three months with your recommendation for practical and realistic steps VA can take to ensure student veterans are protected from predatory and deceptive practices and given the information they need to make an informed choice about their college. What is the status of your report to the Committee?

Response. VA was asked to report on the steps used to actively prevent and detect the utilization of predatory and deceptive practices by institutions approved for GI Bill benefits. VA now completes a three-step process to identify and remove predatory and deceptive practices and ensure student Veterans are given the information they need to make an informed choice about their college:

1. Program Approval: VA has been collaborating with SAAs to ensure that advertising and recruiting materials are thoroughly vetted for accuracy during the approval process. The SAA and VA complete initial training and follow up training with the school officials and provide continuous updates to ensure new laws and policies are implemented timely for school enrollment certifications. Furthermore, the VA and SAAs monitor and provide guidance as school's update or change their academic programs.

2. Online Resources: VA has updated information, functionality, and options to the GI Bill Comparison Tool (i.e., new types of "caution flags," to alert prospective students about judgments, settlements, and lawsuits regarding such prohibited practices) to ensure Veterans make informed choices about their benefits. In addition, VA continues to use the GI Bill Feedback System to receive student feedback about schools and to identify trends and risk indicators of "bad actor" schools to trigger targeted, Risk-Based Reviews. Finally, VA offers an online tutorial called Choos-

ing the Right School that educates users on the steps to take to make sure they find a school that is the right fit. The tutorial provides resources to gauge and evaluate interests, pay scales, accreditation, and Veteran support.

3. Compliance Surveys: VA and SAAs conduct, on average, more than 5,000 compliance reviews per year, which includes examination of a school's advertising and recruiting materials. VBA's Education Service and NASAA recently established a Risk-Based Review Workgroup comprised of VA and SAA staff to analyze and implement policy change and to provide guidance regarding SAA coordination and completion of Risk-Based Reviews, all aimed at preventing fraudulent and misleading practices.

VA does not expect to complete a report at this time.

Question 25. HUD recently reported an increase in homeless veterans last year and this month HUD will conduct a Point-in-Time count of homeless veterans across the country. Likewise, the number of homeless female veterans increased last year by 7 percent. A survey conducted by the National Coalition for Homeless Veterans found that women veterans are likely to access services from mainstream resources, instead of VA-funded assistance resources. How are you going to specifically reach out to women veterans at risk of, or currently experiencing, homelessness?

Response. Local services and resource gaps may vary from site to site. However, with the recent development and dissemination of VA policy outlining specific expectations of VA medical centers (VAMCs) regarding their participation in local coordinated entry systems, VA homeless programs are required to coordinate with local community providers. Such coordination is to conduct enhanced outreach efforts, as well as facilitate VA services for female Veterans, regardless of where they first seek services in that community. The outreach activities, which will be coordinated with community partners, will be conducted at programs, community centers, and specifically VAMCs as well as other sites not typically identified as 'homeless service provider facilities. With the VAMC full participation in coordinated entry in each community, our efforts will broaden engagement of homeless women Veterans, or those at-risk for homelessness with VA homeless services.

Question 26. Dr. Shulkin, the Nation and veterans are waiting eagerly for VA to sign the EHR contract and begin the 8-year process to fully deploy the new EHR. So, it's been 7 months since your announcement, and a month since the procurement pause because of VA's confusion about the contract's interoperability language. Can you confirm whether your self-imposed December delay will lead to any price increase?

Response. VA signed a contract with Cerner on May 17, 2018, to modernize VA's legacy electronic health record (EHR) systems. The Department is balancing the implementation timeline of the new EHR with potential risks to cost, schedule, and performance minimizing potential impacts to Veterans care. VA is also working closely with DOD to ensure alignment with best practices from their commercial EHR implementation.

Question 27. Do you have the technical experts on-board to manage the implementation of the contract?

Response. The terms and conditions of the 10-year Cerner contract with VA calls for the delivery of all services and capabilities necessary to successfully replace the disparate VistA EHR systems across the entire VA enterprise over a 9-year and 6-month deployment/implementation period. To ensure the field is represented and involved in the management of the implementation, VHA is supporting the Electronic Health Record Modernization (EHRM) by providing experts to develop new workflow processes and using staff from the Office of Chief Medical Officer. It is critical that we have engagement from frontline staff (e.g. medical clinicians) in this process to ensure successful implementation.

As an important cost control measure during the transition from the VistA-based EHR solution to the Cerner product, VA will utilize personnel transitioning from the legacy systems to train with, augment, and then ultimately replace many of the Cerner contracted employees. We believe this methodology enhances our integration posture and stability of our workforce, which in turn enriches our overall change management efforts. This transition will be a well-coordinated, documented, controlled, and approved transition process with a clear understanding that the quality of care to our Veterans must not be compromised. It is anticipated these personnel would be transitioned in the out-years (years 6 through 10).

VA is providing industry competitive compensation to attract highly trained technical experts in the EHRM Program Management Office (PMO), charged with providing oversight of Cerner contract. PMO employs highly trained Government and Contractor personnel to provide this expert oversight in a myriad of professional disciplines including: clinical, technical, engineering, information assurance, security,

testing, acquisition, contracting, data migration, communication, independent validation and verification, training, change management, governance and many more. Together, these technical disciplines will manage the contract's adherence to cost, schedule, and performance objectives, and the corresponding management of associated project risks.

Additionally, functional and technology leads, and necessary support staffs, were assigned by DOD at the inception of contract negotiations to foster inclusion of the requisite lessons learned throughout the VA contract negotiation process and will continue post-contract award throughout EHR deployment/implementation.

Question 28. I think I speak for all of us in saying that we look forward to you providing us more information on what the recent Executive Order on mental health will mean for veterans in the long run. There are news reports saying that VA will enroll all veterans for a year. We also understand from press reports this effort will require hundreds of millions of dollars.

a. Please provide information about how you are planning to handle the strain on staff and your budget?

Response. VA estimates as much as $100 million from VA's existing budget will be used to support implementation of the Executive Order (EO), by realigning funds to support suicide prevention as one VA's core priorities.

b. What initiatives will you NOT be able to complete due to reallocation of dollars to this new effort?

Response. VHA is not setting aside any current initiatives in attaining the full implementation of the EO.

Question 29. We are concerned about the risks faced by veterans who received bad paper, many of whom received those discharges as a result of conduct resulting from injuries they sustained in service. With regard to the EO, what is the justification for excluding them from this year of care?

Response. Currently, in some situations, VHA is bared by statute from providing care, beyond emergency services/stabilization. With respect to character of discharge, a transitioning Servicemember generally is not eligible for VA benefits, to include mental health care, if he or she is subject to a bar to benefits. Individuals bared from receiving benefits include those who, unless considered insane, were discharged or released as a conscientious objector or deserter, by reason of general court-martial, or as a result of AWOL for a certain period unless exempted. See 38 U.S.C. 5303(a), 38 C.F.R. 3.12(c). If bared, VA may refer the individual to community resources (not at VA's expense). For an individual ineligible for readjustment counseling under 38 U.S.C. 1712A, VA provides referral services to assist the individual in obtaining mental health care and services outside VA, and if pertinent, advises the individual of his/her right to apply for a review of the individual's discharge or release. See 38 U.S.C.1712A(c).

Question 30. The VA Choice and Quality Employment Act required VA to establish a database that lists vacancies for critical, difficult-to-fill, and mental health positions at VA.

a. What is the current status on implementing that system?

Response. VA has H.R. SMART, the VA's personnel data system, to track vacancies for critical, difficult-to-fill, and mental health positions at VA. We have also engaged in a VA-wide effort to validate the data in the system. In February 2018, VA completed the Position Vacancy Reconciliation Project, an extensive cleansing of vacant position data in H.R. SMART. As a result, VA now has the ability to identify vacancies for mission critical, including mental health, positions.

b. Does the system ensure that folks who were qualified for, but were not offered, a position are considered for other positions at VA?

Response. The system leverages USAJobs and USAStaffing in order to generate a list of qualified candidates for positions. If a candidate is qualified, but was not offered a position, the system does not automatically allow the applicant to be considered for other positions at VA. We are working with the Office of Personnel Management (OPM) on system enhancements to USAStaffing to further improve/streamline this process.

Question 31. Please provide a list of the 15 occupations that the Department has submitted to OPM for consideration for use of the direct hire authority.

VA Response:

15 Occupations included in VA's Request for Direct Hire Authority

Position Title	Occupational Series and Grade(s)	Geographic Location
Accountant*	GS-0510-9/11/12/13/14/15	Nationwide
Biomedical Equipment Support Specialist	GS-1601-9/11/12	Nationwide
Boiler Plant Operator	WG-5402-9/10/11/12	Nationwide
General Engineer	GS-0801-5/7/9/11/12/13	Nationwide
Health Science Specialist (Veterans Crisis Line)	GS-0101-5/7/9/11/12	Nationwide
Health Technician	GS-0640-4/5/6/7	Nationwide
Histopathology Technician	GS-0646-5/6/7/8/9	Nationwide
Human Resources Assistant	GS-0203-5/6/7	Nationwide
Human Resources Specialist	GS-0201-7/9/11	Nationwide
Information Technology Specialist**	GS-2210-7/9/11/12/13/14/15	Nationwide
Personnel Security Specialist	GS-0080-7/9/11/12/13	Nationwide
Police Officer	GS-0083-5/7/9/11/12/13	Nationwide
Realty Specialist	GS-1170-9/11/12/13/14	Nationwide
Utility Systems Operator	WG-5406-8/9/10/11	Nationwide
Utility Systems Repair	WG-4742-9/10/11	Nationwide

* Accountant Specialty Areas—General, Accounting Officer, Cost, Staff, and System.
** Information Technology Specialty Areas—Network Services, Enterprise Architecture, Data Management, Systems Administration, Operating Systems, Application Software, Systems Analysis, Customer Support, Internet, Policy and Planning, and Project Management.

Response to Posthearing Questions Submitted by Hon. Jerry Moran to U.S. Department of Veterans Affairs

Dr. Shulkin, the Committee and I need clarity on one of your answers provided in the hearing January 17, 2018. When asked whether eligibility criteria to determine if a veteran can receive care in their community ought to be explicitly linked to the access standards, you stated, "of course I believe that eligibility criteria should be explicitly linked to access standards." However, you present a different and conflicting position with the follow-on statement, "I support the access standards that are in the bill that the Senate committee passed 14–1."

As you know, the bill that the Senate committee passed (S. 2193) would establish access "guidelines" versus "standards," which is different than your support for access standards. In addition, the bill passed by the Committee would "establish localized benchmarking guidelines that can inform provider and veteran clinical decisionmaking."

Question 32. Do you believe "benchmarking guidelines that can inform provider and veteran clinical decisionmaking" constitutes a requirement for providers to use such guidelines to determine if a veteran can receive care in their community?

Response. Benchmarking guidelines do not constitute a requirement that providers must use. Future VA policy will require providers to refer to the guidelines, but as part of one of many pieces of information that will be used to make clinical decisions (unless otherwise stated).

Question 33. How will you oversee the community care program with guidelines that "can inform" decisions but does not guarantee the guidelines will be used?

Response. VA will provide criteria for eligibility, and guidelines to inform decisionmaking by both VA medical facilities and providers. VA will closely monitor utilization patterns of community care as well as wait times and access standards at VA medical facilities to provide proper oversight.

Question 34. How will you prevent inconsistent experiences for veterans without strong, data driven standards that are required to be used by providers when determining if a veteran receives care in the community?

Response. We believe there is even more we can do for our Veterans, through internal VA policies and guidelines, such as:

- Provide increased transparency to Veterans regarding eligibility, access, and quality guidelines, through both the *Federal Register* and public websites.
- Provide clarity to Veterans around how they can start the process of pursuing community care as well as explain the appeals process.
- Provide additional eligibility triggers for certain types of care (urgent care, routine x-rays) as long as they are clinically necessary.

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. DEAN HELLER TO U.S. DEPARTMENT OF VETERANS AFFAIRS

Question 35. A few months ago, a Nevadan came into my office from a military aviators group known as the River Rats. Over the years, many of these fighter pilots have been diagnosed with varying forms of cancer.

They have begun studying the high rate of cancer in fighter pilots, potentially due to toxic exposure.

We know that toxic exposure severely impacts our veterans and can harm their children and grandchildren. The U.S. has a responsibility to investigate these issues and determine whether there is a link between their service and these diseases.

This issue needs to be looked at by the VA and the appropriate health agency.

How will you make that happen? What is the process for veterans to address concerns about exposure and its connection to cancer?

Response. Veterans who have concerns about potential toxic exposures during service and the possible connection to development of cancer are advised to speak with their primary care provider. They may also contact and the Environmental Health Clinician and Coordinator at their local VAMC. The Environmental Health Coordinators can help make the connection to care; the state by state index with contact information for Coordinators is found at https://www.publichealth.va.gov/exposures/coordinators.asp.

However, for many Veterans, particularly those of the Vietnam and the Persian Gulf Wars, it appears that reliable occupational and environmental health surveillance data just do not exist. To the extent that such data are available, DOD shares them with VA as needed. DOD has much better surveillance data available for more recent conflicts and events.

A major emphasis of the DOD/VA Deployment Health Work Group (DHWG) is on Servicemembers with military environmental exposures. DHWG also coordinates initiatives related to Veterans of all eras. Joint efforts continue to increase sharing of health surveillance information and review of relevant literature on hazardous environmental exposures. DHWG analyzes complex clinical medicine, toxicology, and policy aspects to develop synchronized DOD and VA actions. DHWG provides ongoing oversight of the development of the Individual Longitudinal Exposure Record (ILER) project. The goal of ILER is to create a complete record of every Servicemember's occupational and environmental exposures over the course of their career. ILER will mine several existing DOD data systems that contain in-garrison and deployment exposure-related information. It will link career, location, and year with exposure data and will be available to DOD and VA health care providers to help inform diagnosis and treatment, and to VBA claims adjudicators to help establish service connection.

In addition, VA conducts ongoing surveillance of VA health care utilization through systematic reviews and investigation of diseases treated. This surveillance drives in-depth investigation of areas of special concern. These studies enable VA to identify potential adverse health effects associated with deployment, including cancer, and follow them over time.

With regard to the health of descendants, VA has contracted with the National Academy of Medicine (NAM) to assess areas requiring further scientific study on the descendants of Veterans with toxic exposures. Formally the Committee is charged with producing the report titled "Gulf War and Health, volume 11." The NAM committee will further assess the scope and methodology required to conduct research on such descendants to identify current or possible health effects in the Veterans' descendants. The resulting plan and recommendations should help to identify for VA the way forward to best address the issue of intergenerational concerns. The NAM report is expected to be completed by early 2019.

Additionally, VA has an additional contract with NAM, whose committee is studying a broad range of conditions that Agent Orange might have affected the health of Veterans. NAM's report is due to VA by January 2019. The Committee's charge includes looking at descendant health and in particular, the Committee was asked to pay special attention to the potential risk of parental transmission of disease conditions to descendants.

Question 36. Under the new Rapid Appeals Modernization Program (RAMP), what are the criteria used by VA to determine which veterans will receive an "invitation" to participate in this quicker appeals process?

Response. Eligible Veterans have a pending compensation appeal in one of the following stages of the legacy appeals process:

- Notice of Disagreement;
- Substantive appeal to the Board (Form 9);
- Certified to the Board (not activated); and
- Remand from the Board.

While VA had initially provided the invitations to appellants with the oldest appeals pending in these stages, as VA has received some initial data from RAMP elections, it has begun to test various assumptions on Veteran behavior. As of February 2018, VA continued to mail invitations to the oldest appellants in each of the stages identified above, but also sent approximately 12,000 invitations to Veterans with newly established appeals. This allows VA to test the assumption whether the age and stage of a pending appeal impacts the election rate.

a. How many Nevada veterans have been invited to participate?

Response. As of May 15, 2018, VA has mailed 1,239 invitations to Veterans with an appeal pending under the jurisdiction of the Reno Regional Office. Of that number, 109 Veterans have opted into the program. Additionally, the earlier requirement that Veterans need to be "invited" into RAMP was removed on April 2, 2018, and now any Veteran with an eligible pending disability compensation appeal can choose to opt in to RAMP, and benefit from the faster review process. As of May 15, 2018, VA has identified 2,479 Nevada Veterans that are eligible to opt into RAMP.

b. Will you start expanding this program to ensure veterans from Nevada have the option to participate?

Response. The earlier requirement that Veterans need to be "invited" into RAMP was removed on April 2, 2018, and now any Veteran with an eligible pending disability compensation appeal can choose to opt in to RAMP, and benefit from the faster review process.

c. Under the new program, how long has it taken to decide an appeal on average?

Response. As of May 15, 2018, VA processed higher-level reviews in an average of 69.1 days and supplemental claims in an average of 53.9 days. VA's response pertains to all RAMP completed claims as of May 15, 2018, and is not specific to Nevada residents.

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. BILL CASSIDY TO U.S. DEPARTMENT OF VETERANS AFFAIRS

Question 37. On January 18th the National Governor's Association noted its recommendations on how the Nation can address the opioid crisis. The National Governor's Association recommended the need to ensure that electronic health records and state prescriptions drug monitoring programs are interoperable. Is VA committed to ensuring that this will be a component in VA's future solutions to interoperability?

Response. VA is committed to finding better ways to manage pain in Veterans, while limiting the risk of long-term opioid therapies. VA pharmacy currently participates in State Prescription Monitoring Data bases by transmitting (sharing/sending) data on controlled substance prescriptions dispensed from VA pharmacies as indicated by several legislative requirements, most recently Public Law No: 115–86. This data originates from our current EHR, or more specifically, the VistA Outpatient Pharmacy application package. The requirement to share data, similar to any network of pharmacies, remains in place regardless of the pharmacy system being used to process and dispense these prescriptions. The technical requirements for VA's future EHRM Platform will be interoperable with State Prescription Monitoring Programs.

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. THOM TILLIS TO U.S. DEPARTMENT OF VETERANS AFFAIRS

FOREVER GI BILL IMPLEMENTATION

Question 38. Mr. Secretary, most of us here understand the critical role that State Approving Agencies (SAA) play in protecting and enhancing Veterans' education benefits. I understand that the GAO is presently conducting a study into the role of SAAs and how the VA partners with them to protect veterans. Can you share with us your ideas and plans pertaining to SAAs, particularly in regard to their funding level and their role in the oversight of institutions through conducting risk based surveys, as mandated and updated by the Colmery Act?

Response. Strong oversight by SAAs helps protect Veterans in several ways. First, oversight ensures that the approved programs continue to meet all the statutory criteria in 38 U.S.C. Chapter 36, as well as any individual state requirements the SAAs used in their assessment to initially approve a course for Veteran's training.

Second, SAAs are familiar with the responsibilities of SCOs. SCOs are responsible for certifying students' enrollments to VA, to ensure proper payment to individuals in receipt of VA benefits. Through oversight, SAAs can identify out-of-line situations that require additional training that VA or SAAs can provide; ensuring VA students are certified properly for payment, are in courses necessary for completion of their program, and that appropriate credit has been granted for their prior training. In this oversight review, the SAA may identify violations that could result in disapproval of programs.

Finally, using information VA obtains from students through VA's GI Bill complaint system, SAAs can conduct an immediate risk-based unscheduled visit to the school to resolve issues, or to determine if there are violations that require disapproval of the program or suspension of enrollment. The following are areas of focus in the complaint system:

Recruiting/Marketing Practices	Quality of Education
Accreditation	Grade Policy
Financial Issues (e.g. Tuition/Fee charges	Release of transcripts
Student Loans	Transfer of Credits
Post-Graduation Job Opportunities	Refund Issues
Change in Degree Plan/Requirements	Other (as identified by student)

Prior to the Colmery Act, as part of VA's strong partnership with SAAs in our mutual oversight and compliance responsibilities, SAAs conducted approximately 30 percent of the targeted risk-based compliance reviews at schools where special risk indicators were discovered. These mutual efforts help ensure schools are held accountable and VA students are in proper programs for their educational objective, and are receiving proper payments.

Regarding funding please see the response to Question 22 above.

PROCUREMENT

Question 39. How is clinical input from VHA incorporated in the contracting and procurement processes for healthcare acquisitions? Do you see areas in VA procurement where that input is particularly useful yet not fully incorporated?

Response. The VHA Procurement and Logistics Office (P&LO) involves clinician subject matter experts throughout the acquisition process, from inception through award and performance monitoring. Clinicians are Integrated Project Team (IPT) co-chairs together with assigned Project Managers as requirements are developed. Clinicians remain fully engaged through technical product reviews to determine whether or not the vendor's proposal truly meets their requirements.

VHA has initiated a process for Clinician Driven Strategic Sourcing (CDSS) that further codifies the clinical role in sourcing commodities, equipment and services. CDSS, once fully realized, will involve physicians and other clinicians in the strategic sourcing process to improve quality, outcomes and cost. These improvements will support identification of high quality preferred items, and reduce variation in products and clinical protocols. The CDSS program also facilitates better pricing, and streamlines the procurement and delivery of clinical equipment, and medical/surgical supplies and services throughout VHA. VHA's Clinical Program Offices will

validate the requirements for their clinical specialties, and take the lead in managing the catalog of items and services available to their colleagues.

Question 40. Is VA currently exploring ways to increase transparency, define the term "best value," and eliminate contracting and administrative delays for healthcare acquisitions, notably high tech medical equipment?

Response. VA continues to develop methods to increase transparency to industry. For each consolidation, VA develops milestones with planned execution dates, dependent on the number of requirements included in each consolidation, and provides these milestones to industry via public posting to the Federal Business Opportunities website. Although these dates are estimates and are subject to change, VA strives to meet all milestones. When necessary, VA provides updated milestones to reflect any changes, to keep industry informed on where VA is in the procurement process. VA has developed standard evaluation factors for High Tech Medical Equipment (HTME) requirements including 1) Availability of Features (Technical and Functional), 2) Availability of Service, 3) Past Performance, and 4) Price, with all non-price factors when combined being significantly more important than price. By assigning significantly more weight to the non-price factors, VA ensures we can achieve the best technical solution via tradeoff in order to meet the needs of the customer. The contracting office is consistently striving to improve contracting processes, train personnel, and engage in open dialog with industry in order to minimize administrative delays, provide clarity on VA requirements, and maximize efficiency in the HTME procurement process.

Question 41. How does the Department interpret the Kingdomware decision when considering whether or not to exercise option years in contracts that predate the Supreme Court decision? How is this information disseminated to local contracting officers to ensure consistency throughout VA?

Response. VA has department-level policy, procedures, guidance, and instruction regarding the Veterans First Contracting Program. Policy as it relates to Exercising Contract Options is as follows:

- A single award contract is considered non-competitive. Therefore, the Rule of Two does not apply.
- Prior to exercising an option on existing multiple award Indefinite Delivery Indefinite Quantity contracts, the Contracting Officer (CO) will determine if there are two or more verified Veteran-Owned Small Businesses (VOSB) awardees on the contract. If there are 2 or more, the options for the verified Service-Disabled Veteran-Owned Small Business (SDVOSB)/VOSB contracts will be exercised, if appropriate. If the number of SDVOSBs/VOSBs is not sufficient to meet the needs of the agency, the CO will apply the Rule of Two to identify other SDVOSBs/VOSBs. If no additional SDVOSBs/VOSBs exist, the options for the other contracts may be exercised if it is in the best interest of the agency to do so.

All contracting personnel were required to attend the 38 U.S.C. 8127 implementation training. In addition, guidance on options was provided during the Acquisition Workforce Innovation Symposium in November 2016 and March 2017. Finally, a refresher webinar was held in December 2016 specifically for supervisors which also addressed options during this training session.

ELECTRONIC HEALTH RECORD (EHR)

In the context of the "strategic pause" in awarding the EHR contract to study interoperability.

Question 42. Do you view interoperability among and between VA facilities to be the chief objective? What about interoperability with DOD? What about interoperability with the Community Care Network?

Response. VA will employ a multi-pronged strategy to achieve interoperability within VA, between VA and DOD, and amongst our contracted community care providers, and will leverage a technical solution that supports nationwide interoperability and enables data to be shared amongst healthcare facilities and providers.

More specifically our approach consists of four stages that run in parallel:

1. VA to VA Interoperability;
2. VA to DOD Interoperability;
3. Community Care Partner Interoperability; and
4. National Interoperability.

The EHRM Program Executive Office (PEO) is focused on and accomplishing 1–3, and a portion of 4. Therefore, (1) VA to VA Interoperability and (2) VA to DOD Interoperability are completely solved through EHRM and served as the basis for Seamless Care to the Veteran. (3) VA to Community Care Partners is provided by EHRM and works off the first two objectives so VA can provide Seamless Care for

the Veteran. VA currently plans on completing the remaining portions of (4) with its upcoming Digital Veteran's Platform (DVP), where we expect participation of other commercial EHR providers (i.e., Epic, Allscripts, etc.) to contribute to the development of a national health information exchange platform and related Application Programming Interface (API) gateways in support of interoperability across the entire healthcare information exchange continuum. The adoption of open standards for information exchange such as SMART on FHIR (Fast Healthcare Interoperability Resource) framework by all EHR providers will be a key to national success. Aggressive interoperability-based terms and conditions will be included in any contract with Cerner to lead the advancement of this national interoperability objective as well as to align fully with the DVP and its respective API gateway requirements.

Although the focus of VA's EHRM program is to establish intra-VA interoperability, VA/DOD interoperability, and VA-Community Care interoperability, each of these phases of interoperability allows VA to incrementally build toward and support nationwide EHR interoperability. Nationwide EHR interoperability amongst all healthcare providers will empower Servicemembers and Veterans to utilize their electronic health records to the fullest extent and equip providers to deliver safer and more efficient seamless care.

Question 43. When looking at the full EHR "software stack," are you considering Commercial Off the Shelf interoperability solutions that are separate from or in addition to the larger EHR contract?

Response. For the EHRM Program, the only Commercial solutions which are planned for use are the D&F authorized Cerner Platform and its Interoperability software, and VA's Enterprise InterSystems HealthShare software. Separately, VA's API gateways plan to utilize commercial systems per the Secretary's direction for VA to get out of the software development business.

The selection of Cerner Millennium does not eliminate VA's need to continue to assess the commercial market to identify additional software tools and products that may further enhance our overall interoperability and seamless care objectives. VA will be using the reciprocity process to fully leverage successful testing practices and results already solidified as part of the DOD deployment effort. However, under EHRM, there will be a comprehensive Test & Evaluation department reporting to the EHRM Program Executive that will be fully leveraging the breath of existing VA and Cerner test facilities to continue to not only test the 30 percent more capabilities being delivered under the VA contract, but also to stimulate introduction of more efficient/effective functional and technological industry advancements into the VA healthcare environment.

OFFICE OF ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION

Question 44. Can you please provide an update on the vacancy of the Assistant Secretary for Accountability and Whistleblower Protection? Can you please highlight any challenges you are facing in sending Congress a nominee?

Response. Once the President's nominee has been confirmed and sworn in as Secretary, VA will complete an assessment and provide a recommendation for a nominee as Assistant Secretary for Accountability and Whistleblower Protection.

VA INNOVATION

Question 45. With respect to VA's ability to innovate and modernize, do you feel that the department currently has sufficient authority to proactively test out new approaches to care and payment that could increase efficiency and optimize care?

Response. The Center for Compassionate Innovation was created to explore emerging therapies that are safe and ethical to enhance Veteran physical and mental well-being when other treatments have not been successful. The Center specifically evaluates innovations for special populations of Veterans who have not achieved optimal outcomes with traditional, evidence-based medicine including developing partnerships and collaborations with community-based organizations to optimize access to safe, innovative treatment.

The Department has sufficient authority to proactively test out new approaches to care and payment that could increase efficiency and optimize care. As an example, for the first time in VA history, Veterans may receive hyperbaric oxygen therapy (HBOT) to treat Post Traumatic Stress Disorder (PTSD) symptoms. HBOT treatment for PTSD is considered off label use by the Food and Drug Administration and, therefore, is not a standard of care treatment option.

The Center is not only using sharing and provider agreements for payment, it is also leveraging telehealth for care where feasible for certain treatments.

Question 46. How would authorities contained in Section 402 of VA's CARE Proposal (Authority for VA Center for Innovation for Care and Payment) affect VA's ability to pursue these new and innovative approaches?

Response. Section 402 would allow VA, with Congressional approval, to waive certain authorities found in Sections 1701–1730A of title 38 that could otherwise limit VA's ability to identify and test new and innovative approaches to care and payment. We also note that section 401 would allow for a pilot project to improve how VA and DOD furnish care to Veterans and Servicemembers. If this section were enacted, the VA and DOD Secretaries could determine the feasibility and advisability of sharing health care resources without entering into reimbursement agreements for such services.

Question 47. What sorts of approaches would you pursue using this new authority?

Response. Innovations would be focused on testing payment and service delivery models to determine whether such models improve the access to and quality, timeliness, and patient satisfaction of such care and services, as well as the cost savings associated with such models. VA would be able to consider changes to collections, copayments, payment rates, and contracting authorities.

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. DAN SULLIVAN TO U.S. DEPARTMENT OF VETERANS AFFAIRS

Question 48. Regarding the recent decision on the Community Care Network Acquisition for Region 4,

a. What were the contributing factors that led to the decision to not grant an award under the current solicitation?

Response. VA received proposals in response to the Community Care Network (CCN) solicitation on June 30, 2017, and performed evaluations in accordance with the criteria established in the solicitation. VA took the following four factors into consideration for award decisions for CCN Region 4: (1) Technical, (2) Past Performance, (3) Socioeconomic Concerns, and (4) Price. The evaluations resulted in the need to conduct negotiations. After negotiations were held, VA received the final revised proposals on December 14, 2017, and immediately began conducting evaluations of revised proposals. After evaluations were completed, it was determined that final proposal revisions for Region 4 did not provide the "best value" to VA, all factors considered, or for our taxpayers. VA amended the solicitation to remove Region 4 since a contract award was not made.

b. What will the VA's new acquisition strategy for Region 4 be?

Response. VA's Office of Community Care (OCC) is currently reviewing the requirements that were included in the CCN Performance Work Statement for Region 4. VA intends to issue a new solicitation, which will include revised requirements for Region 4. Once the contracting office has received the complete revised requirements, a detailed timeline concerning the re-procurement will be developed.

c. What is the timeline for reopening competition?

Response. Competition will be reopened in the next 2 to 3 months.

d. Will you be proactive in notifying Members whose states are a part of this region on process and decisions regarding the acquisition moving forward?

Response. Yes, VA will notify Members of Congress whose states are a part of this region on the process and decisions regarding the acquisition.

Question 49. Regarding the VA/DOD National Resource Sharing Agreement (dated 12/16), the AK VA/DOD joint venture recently requested an exemption from the exchange rate citing adverse budgetary and staffing impacts due to variabilities among localities for CMS and CMAC—especially in Alaska that would negatively affect their partnership and Veteran healthcare. Will you commit to communicate with Alaska's VA leadership to fully understand the VA/DOD landscape in Alaska and possible impacts before implementing this change in my state?

Response. VA and DOD have been committed to working with local VA and DOD facilities on this recent (December 2016) joint policy decision to standardize the VA/DOD sharing reimbursement rate. We are currently testing the methodology with the help of local VA/DOD partners to gather input prior to a phased National roll out. We recently learned of Alaska's concerns and requested the local VA/DOD sharing partners provide a briefing to the VA/DOD Health Executive Committees, Shared Resources Work Group (SRWG) for further consideration. SRWG is collaborating with various VHA and Air Force Surgeon General staff office experts to review Alaska's concerns and provide guidance as applicable.

Question 50. What has the VA done regarding negotiations of new reimbursement rates for VA-IHS tribal sharing agreements in Alaska since current rates were last extended?

Response. VA held a tribal consultation in September 2016 and a round table discussion in August 2017. During those meetings, VA and Tribal leaders discussed the future of Tribal Health Agreements in Alaska and the lower 48 states. This included potentially changing reimbursement rates to Performance Based Rates rather than the current rates, which are primarily based upon all-inclusive rates published by Indian Health Service annually. The tribes expressed major concerns about implementing new rates which are more complex to assess. Therefore, VA agreed to extend all current agreements through June 30, 2019, while continued discussions with Tribes will take place to enhance care coordination and potentially negotiate rates that are based on the quality of care provided.

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. PATTY MURRAY TO U.S. DEPARTMENT OF VETERANS AFFAIRS

MENTAL HEALTH

Question 51. Many critical details, and much of the major policy provisions, were left out of President Trump's recently signed executive order dealing with mental health for veterans. Please provide a comprehensive description of the changes that will be made pursuant to the executive order, especially—

a. What veterans will be eligible, and for what type of care?

Response. There are several legal authorities under which VA can provide mental health care, to include outpatient, inpatient, and residential services, to transitioning Servicemembers and Veterans. These authorities include:

- *Emergency circumstances*. If a transitioning Servicemember or Veteran presents to a VA medical facility with an emergency mental health need, VA may provide the treatment while the emergent health care need persists. Unless otherwise eligible, the emergency care would be provided to the individual on a humanitarian basis (38 U.S.C. 1784), or possibly under tentative eligibility (38 CFR 17.34(a)) if a former Servicemember presents at a VA facility seeking care for a mental health condition he or she asserts is related to military service. For emergency care provided on a humanitarian basis, and for emergency care provided to a former Servicemember under tentative eligibility who is later determined to be ineligible for VA health care, VA will bill for the care at a cost-based rate.
- *Medical benefits package*. Veterans enrolled in VA's system of patient enrollment, established under 38 U.S.C. 1705, may receive mental health care under the medical benefits package (38 CFR 17.38). VA encourages all former Servicemembers who may be eligible to apply for enrollment. Additionally, Veterans who have a service-connected disability or disabilities rated 50 percent or more can receive mental health care under the medical benefits package (38 CFR 17.38) without respect to enrollment. See 38 U.S.C. 1705(c)(2), 38 CFR 17.37(a).
- *Other treatment authorities and bars to benefits*. Transitioning Servicemembers and Veterans not eligible for enrollment or who elect not to enroll may still be eligible for mental health care through VA. Generally, to be eligible for enrollment in VA health care, a person must have been discharged or released from active military, naval, or air service under conditions other than dishonorable and, unless an exception applies, satisfy minimum active duty service requirement. Some Veterans may also be ineligible for enrollment because their income is over the applicable threshold.
- With respect to character of discharge, a transitioning Servicemember generally is not eligible for VA benefits, to include mental health care, if he or she is subject to a bar to benefits. Individuals barred from receiving benefits include those who, unless considered insane, were discharged or released as a conscientious objector or deserter, by reason of general court-martial, or as a result of AWOL for a certain period unless exempted. See 38 U.S.C. 5303(a), 38 C.F.R. 3.12(c). If barred, VA may refer the individual to community resources (not at VA expense). For example, for an individual ineligible for readjustment counseling under 38 U.S.C. 1712A, VA (1) provides referral services to assist the individual in obtaining mental health care and services outside VA, and (2) if pertinent, advises the individual of his/her right to apply for a review of the individual's discharge or release. See 38 U.S.C.1712A(c).
- Authorities under which VA may provide mental health care to recently transitioned Servicemembers and Veterans who are not otherwise eligible include: 38 U.S.C. 1705(c)(2) (for service-connected and presumptive service-connected disabilities); 38 U.S.C. 1702 and 38 CFR 17.109 (presumptive eligibility for psychosis

and other mental illness); 38 U.S.C. § 1720D (related to military sexual trauma); and 38 U.S.C. § 1712A and 38 CFR § 17.2000 (readjustment counseling). These authorities are discussed below, along with a discussion of eligibility for former Servicemembers with other than honorable administrative discharges.

• *Service-connected and presumptive service-connected disabilities.* Under 38 U.S.C. 1705(c)(2), VA is required to provide hospital care and medical services without respect to enrollment for (1) Veterans seeking care for a service-connected disability, and (2) for the 12-month period following their discharge or release from service, Veterans whose discharge or release from active military, naval, or air service was for a disability that was incurred or aggravated in the line of duty for that disability. This means that VA must provide mental health care to any Veterans seeking mental health care for a service-connected disability. Additionally, as may be more applicable to the EO, Veterans whose discharge or release from active military, naval, or air service was for a disability that was incurred or aggravated in the line of duty may receive VA mental health care for that disability, without respect to enrollment, for the 12-month period following their discharge or release from service.

• *Presumptive eligibility for Veterans with psychosis and other mental illness*. In general, VA can provide treatment for an active psychosis or other active mental illness without copayments for recently-discharged or released Veterans who developed such psychosis or mental illness within 2 years after discharge or release from the active military, naval, or air service. See 38 U.S.C. 1702, 38 CFR 17.109. Such treatment is available without respect to enrollment or eligibility for enrollment (38 CFR 17.37(k)), without respect to whether the Veteran served in combat, and without regard to the Veteran's length of active duty service. These Veterans do not have to file a claim for service-connection or have received a formal grant of service-connection from VBA to receive treatment under this authority.

• *Military sexual trauma*. VA provides counseling and appropriate care and services under 38 U.S.C. 1720D to Veterans who VA determines require such counseling and care and services to overcome psychological trauma, which in the judgment of a VA mental health professional, resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the Veteran was serving on active duty, active duty for training, or inactive duty training. VA refers to these experiences as military sexual trauma (MST). Care for MST-related mental and physical health conditions is provided without copayments. Veterans are not required to enroll in VA's system of patient enrollment, file a disability claim, be service-connected, or provide evidence of the sexual trauma to receive MST-related care.

• *Readjustment counseling*. VA provides readjustment counseling to eligible Veterans and certain members of the Armed Forces under 38 U.S.C. § 1712A and 38 CFR § 17.2000 through its Vet Centers. The specific categories of individuals eligible for readjustment counseling are set forth in law, and include Veterans and members of the Armed Forces who served on active duty in a theater of combat operations or an area at a time during which hostilities occurred in that area. Vet Centers maintain confidential records independent from any other VA or DOD medical records; Vet Centers will not disclose such records without a voluntary, signed authorization, or a specific exception permitting their release. Readjustment counseling is available without respect to enrollment and without copayment requirements. For more information or to find a Vet Center near you, go to https://www.vetcenter.va.gov or call 1–877-WAR-VETS (1.877.927.8387).

• *Other than honorable administrative discharges*. Former Servicemembers with other than honorable (OTH) administrative discharges who present to VA seeking mental health care may be eligible for mental health services under the OTH initiative, which is based on VA's authority in section 2 of Public Law 95–126 (38 U.S.C. 5303 NOTE) and 38 CFR 3.360 (service-connected health care); 38 U.S.C. 1702 and 38 CFR 17.109 (psychosis and mental illness presumptions); and 38 CFR 17.34 (tentative eligibility). Notwithstanding any other provision of law, VA provides former Servicemembers with other than honorable administrative discharges the type of health care and related benefits authorized to be provided under chapter 17 of title 38, U.S.C., for any disability incurred or aggravated during active military, naval, or air service in line of duty, with the exception of (1) any disability incurred or aggravated during a period of service terminated by a bad conduct discharge, or (2) when a bar to benefits (discussed above) applies. See 38 U.S.C. 5303 NOTE, 38 CFR 3.360. Additional information is available on the OTH Fact Sheet (external link).

b. Does VA have the excess capacity in mental health care to provide this treatment?

Response. VHA continues to evaluate capacity and the regional impact the EO may have. VHA is continuing the Mental Health Hiring Initiative requested by Secretary Shulkin to add 1,000 net providers to the current workforce.

c. What happens at the end of the year for veterans who still need treatment?

Response. This will depend upon the legal authority for providing treatment. For example, if the Veteran is eligible under the Presumed Eligibility for Psychosis or Other Mental Illness, this care does not have maximum limit, and care will continue beyond 12 months. In other situations, where care is to be terminated, all mental health providers have the ethical responsibility to ensure a transfer of care is completed to a community provider. This transfer of care is completed as part of the patient-provider agreement, ensuring there is no Veteran left without clinically appropriate follow-up.

d. Will VA request additional funds to cover the hundreds of millions of dollars a year the Administration estimates this will cost?

Response. It was not VA's intention to request additional funding when the OTH Initiative was implemented. As VA expands healthcare eligibility, we will continue to work with Congressional partners in addressing fiscal impact as appropriate.

HUD-VASH

Question 52. Data from the Department of Housing and Urban Development showed that there was an increase in veteran homelessness this year, and a significant increase in my home state of Washington. You stated before the Committee that VA will be implementing a new plan to address this issue in Seattle. Please provide a full description of what additional resources will be made available, any proposed programmatic changes, and a timeline for implementation.

Response. The state of Washington saw an increase of over 600 homeless Veterans in the 2017 Point in Time Count; an increase of 41 percent over 2016. This statewide increase was caused almost entirely by increases in the Seattle/King County Continuum of Care, which saw an increase of 673 homeless Veterans; an increase of over 100 percent compared to 2016. The rest of the state actually saw a small net decrease.

VA's Homeless Program Office (HPO) is actively engaged with the Puget Sound VAMC and with city, county and state officials to develop a comprehensive plan to address the increasing numbers of homeless Veterans in Seattle and King County. Planning sessions have included the following: a) VAMC-specific calls focused on internal operational challenges such as rapidly filling vacant homeless program positions, and maximizing available beds and vouchers; b) calls between HPO, the VAMC, and city and county officials focused on refining the "By Name List" and getting consensus across agencies on the current number of homeless and at-risk Veterans as well as understanding inflow rates in order to best address current and projected demand for resources; and c) calls between HPO, the Network Homeless Coordinator, and officials from the State Department of Veterans Affairs and the Governor's Office focused on strategies for development of additional beds and units to increase the stock of available housing.

VA will continue to work with the VAMC and city, county and state officials to finalize a plan to decrease the number of homeless and at-risk Veterans in Seattle/King County, and we will be happy to share the details of that plan once finalized.

The Grant and Per Diem (GPD) program made the Seattle/King County Continuum of Care area a priority for funding in the current GPD Notice of Funding Availability.

Question 53. I have received reports that at least one VA medical center in my state is proceeding with the redesignation of Specific Purpose funds to General Purpose funds, despite your statement that no changes would be made.

a. Is there an effort underway to redesignate any Specific Purpose funds?

Response. On February 6, 2018, a memo was issued to all Network Directors, Network Homeless Coordinators, and Medical Center Directors stating that there will be no conversion of Department of Housing and Urban Development—VA Supportive Housing (HUD-VASH) Program Specific Purpose funding to General Purpose funding during FY 2018. The memo goes on to clarify that HPO is currently disbursing HUD-VASH program Specific Purpose funding to VISNs and VAMCs based on the FY 2018 budget requests submitted by each VISN while adhering to the funding provided under the Advanced Appropriation. Once Congress passes the FY 2018 budget the remaining annual funding will be disbursed. All HUD-VASH program requirements remain in place, including staffing, reporting, and program metrics.

b. What directives or instructions have been issued to VISNs regarding changes in funding designation, including instructions not to move forward with redesignation? Please provide a copy of any information or instructions distributed within VA on this topic.

Response. As requested, enclosed please find the January 8, 2018, memo regarding the delay transitioning Special Purpose non-core funds to General Purpose. Also enclosed is the February 6, 2018, memo referenced in the previous paragraph, noting that there will be no conversion of HUD-VASH program Specific Purpose funding to General Purpose funding during FY 2018.

VET CENTERS

Question 54. Vet Centers are one of the most important parts of VA's mental health service system. They provide care in a unique setting, and often see veterans who would not seek care from a traditional clinic. So preserving their unique culture and autonomy is very important.

a. Does the Readjustment Counseling Service have all the resources and authorities they need to meet demand from veterans and successfully implement new initiatives?

Response. Readjustment Counseling Service (RCS) is in the final stages of implementing single points of service for our Human Resource and Fiscal functions. This consolidation has allowed RCS to improve all budgeting projection processes. Subsequently, RCS has asked for increases in the FY 2018 and future FY budget submissions to meet current demand and projected demand through increasing access to services.

In addition, RCS is in the 7th year (with extensions) of a pilot program to provide recently returning Women Veterans readjustment counseling through retreats. This has been accomplished utilizing the existing RCS Specific Purpose budget, with no request for additional funding. Those who have participated in these retreats have seen reduction in their symptoms associated with PTSD and increases in their coping abilities.

There are currently three Bills pending in Congress that address readjustment counseling in a retreat setting:

- *H.R. 91* Building Supportive Networks for Women Veterans Act (Sec. 2): This bill makes permanent the requirement for the Department of Veterans Affairs to carry out, through the Readjustment Counseling Service of the Veterans Health Administration, a program to provide reintegration and readjustment services in group retreat settings to women veterans who are recently separated from service after a prolonged deployment.
- *S. 681* Deborah Sampson Act (Section 103): Provision of Reintegration and Readjustment Services to Veterans and Family Members in Group Retreat Settings. (Similar to H.R. 2452)
- *H.R. 2452* Deborah Sampson Act (Section 103): Provision of Reintegration and Readjustment Services to Veterans and Family Members in Group Retreat Settings. (Similar to S. 681)

RCS supports all three Bills, however firmly believes that all cohorts of combat Veterans and their families would benefit greatly from this modality.

DATA SHARING

Question 55. The IG has testified before this Committee previously regarding barriers to VA having access to the DOD suicide database that would help VA better design and target suicide prevention efforts. It is unacceptable to me that this data is not routinely provided to VA. I understand the Departments are working on an agreement to fix that problem.

Response. VA has received data from DOD partners and DOD regularly shares summarized data analyses on an as needed basis with VA. The DOD and VA data sharing Memorandum of Agreement (MoA) will allow more timely sharing of Department of Defense Suicide Event Report data and enable broader VA utilization. The MoA is fully developed, and is going through VA and DOD privacy clearance prior to DHA and VA signature.

Question 56. When will that agreement be completed and VA will start receiving the DOD suicide data?

Response. The MoA is currently going through VA and DOD privacy clearance prior to DHA and VA signature. Once signed, the MoA will be complete and VA will start receiving DOD suicide data.

FOREVER GI BILL

Question 57. Many student veterans who could benefit from provisions in the Forever GI Bill are still unaware of the changes that were made. How does VA plan to ensure veterans who are now eligible for expanded educational opportunities are properly informed of these recent changes and making decisions in their best interest?

Response. VA has taken a multi-pronged approach to highlight and promote the Colmery Act to Veterans and beneficiaries. This includes an extensive social media campaign with regular posts on Facebook, a Twitter Town Hall, a satellite media tour that reached an audience of over 3 million, new websites, and posting Frequently Asked Questions for provisions with the most immediate impact on Veterans and beneficiaries.

VA sent targeted emails and mail to individuals identified as eligible for Sections 109 and 106 of the Forever GI Bill, and sent an email to over 500,000 individuals who may no longer have a time limit to use their Post-9/11 GI Bill benefits. VA has briefed VSOs, attended the Student Veterans of America National Conference, and sent notifications to internal and external stakeholders on Forever GI Bill changes and impacts. As VA moves forward with implementing other provisions and making changes because of Forever GI Bill, it will continue to send out targeted notifications, and regularly and aggressively promote Forever GI Bill through all available mediums.

Question 58. School Certifying Officials also tell my staff that they have not received any information from VA on recent changes from the Forever GI Bill. School certifying officials are the first persons student veterans turn to for information regarding their benefits. Without proper outreach from VA, school certifying officials are relying on other unverified sources for information on recent or pending changes. I am worried this could lead to misinformation and confusing messaging to student veterans. Mandatory training for school certifying officials is crucial, when will VA start implementing curriculum on the Forever GI Bill?

Response. On November 29, 2017, the VA's Education Service conducted a SCO webinar on the Forever GI Bill and provided information on our progress toward implementation. The webinar also included a question and answer session in which Education Service responded to questions from SCOs. VA sent targeted emails to SCOs on the removal of the delimiting date for eligible beneficiaries and the expansion of approvable Independent Study programs. In early February 2018, the Education Service held a focus group with stakeholders including SCOs on its implementation plan for Section 107, and will continue to engage with SCOs through regularly scheduled webinars, targeted emails, state, regional, national conferences and serve as resource to SCOs as they educate students at their facility on the Forever GI Bill.

VA is also meeting regularly with members and leaders from the NASAA and other internal and external stakeholders to discuss training development and implementation planning for Section 305.

Question 59. Regarding the Forever GI Bill, a December memo from VA notes that VA has processed 600 applications out of potentially 8000 beneficiaries (7.5 percent of those eligible) for the restoration of entitlement from former students of ITT Tech and Corinthian Colleges. How did VA conclude that there were only 8000 potential beneficiaries, and what type of notices is VA considering to ensure the benefits restoration reaches 100 percent of those eligible?

Response. Through data analysis, VA identified approximately 8,000 beneficiaries who attended a facility that met the school closure criteria between January 1, 2015, and August 16, 2017. During the week of November 9, 2017, VA provided notification to 8,000 students identified as potentially eligible to have benefits restored under the Special Application provision of Section 109. Of those, approximately 80 percent received an email with a letter, instructions, and a form to apply for restoration. The remaining 20 percent received the same documentation via postal mail. As of January 26, 2018, VA has received over 700 applications and restored over 4,500 months of entitlement to almost 450 individuals.

VA plans a 90-day follow-up via postal mail to those individuals that were sent an email, but not applied for restoration. Additionally, we will call a sample of those who have not applied to understand their choice and to verify receipt of the initial notification. VA will use this information to improve its communication efforts and continue to regularly post updates and notices across its social media platforms, website, and leverage its partners to ensure impacted students are aware that VA can restore lost entitlement.

Question 60. Has VA placed any outbound calls to potential beneficiaries of the entitlement restoration who have not yet applied or been approved to notify them of their eligibility?

Response. Please see our response to question 59 above.

Question 61. Regarding the Forever GI Bill, the December update from VA notes that VA is "collaborating with SAAs to redesign compliance reviews" per the requirement to include risk-based surveys in State Approving Agency oversight activities. What guidance is VA providing on the potential risk factors that SAAs might use in their reviews?

Response. VA partnered with SAAs to conduct targeted risk-based compliance reviews over the last 3 years, and has continued to examine and evaluate our compliance regimen. VA recently completed a year-long study of our compliance and liaison processes, organizational structure, and stakeholder engagement. Additionally, VA and NASAA constituted a working group to consider the findings from this study and section 310 of the Colmery Act. Among many other aspects, we will be collaborating on the issue of risk factors and resultant oversight and compliance actions.

Question 62. What is VA's timeline for completing the collaboration with SAAs and seeing risk-based reviews implemented as required by the Forever GI Bill?

Response. As the VA-NASAA joint working group was just implemented, no specific timeline has been established. VBA expects to begin implementing potential changes from this workgroup in FY 2019.

Question 63. Regarding the Forever GI Bill, the updated provided by VA notes that VA is "establishing IPT to develop requirements and processes" for the High Technology Pilot Program. The Senate Committee report accompanying S. 1598 emphasized that "the Committee seeks to ensure that veterans are protected against programs that will not allow them to obtain sustainable employment in the technology sector" particularly given the closure of other technology programs, including coding "boot camp" locations, and listed specific indicators of risk for VA to consider when entering into contracts with providers of these programs, including financial stability and alignment to industry-recognized certifications and credentials. How is VA planning to incorporate these defined outcome and quality expectations into its initial design of the High Technology Pilot Program?

Response. The statutory requirements for the High Technology Pilot Program outline approval criteria and a payment schedule for contractors based on targeted milestones. VA will look to further expand on the approval criteria in consultation with SAAs, and will further clarify payment schedule milestones in the agreements it enters into with providers. These agreements will also include termination clauses and oversight measures for VA to perform compliance reviews.

Question 64. Regarding the Forever GI Bill, the December update notes that VA is "reviewing statutory requirements to develop appropriate safeguards and processes" for the Edith Nourse Rogers STEM Scholarship. When does VA expect to conclude its review of the requirements, and what actions does it anticipate taking at the conclusion of this review?

Response. VA is analyzing statutory requirements to develop planning documents for the STEM scholarship, which does not go into effect until August 1, 2019. The requirements for this provision do not conform to VA's current technology and business rules for the Post-9/11 GI Bill; therefore, VA has identified the VA Regional Processing Office in Buffalo, NY, as the sole site dedicated to processing and tracking the STEM Scholarship. VA expects a more fully developed plan with regulatory, communication and program requirements to be drafted by December 2018.

Question 65. The Senate Committee report on the Forever GI Bill specified that safeguards for the Edith Nourse Rogers STEM Scholarship should include a mechanism to ensure that schools or programs are not expanding the number of credit hours needed to complete a STEM program so they can receive additional tuition and fee payments from the Edith Nourse Rogers STEM Scholarship. Is VA capable of monitoring for changes in credit hour requirements and will VA ensure that it will examine whether additional semester or quarter hours are being required in non-STEM fields or for non-GI bill beneficiaries?

Response. VA has had preliminary discussions with SAAs regarding requirements of the STEM provision and will engage other appropriate stakeholders as we further develop the implementation plan.

Question 66. Has VA communicated with accrediting agencies or SAAs requiring their ability to assist in gathering information regarding program length for those programs which may become eligible for the Edith Nourse Rogers STEM Scholarship?

Response. Please see our response to question 65 above.

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. SHERROD BROWN TO U.S. DEPARTMENT OF VETERANS AFFAIRS

Question 67. How many student veterans has VA identified as eligible for restoration of benefits established in the Forever GI Bill? Please provide my office with updated numbers, disaggregated by institution, of veterans and their families from Ohio or attended for-profit schools in Ohio who are eligible for GI Bill benefits restoration in light of the Forever GI bill.

Response. For the Special Application provision we have identified three Ohio schools whose students would be eligible for restoration:

Name of School	Number of students
Brown Mackie College-North Canton	12
Miami-Jacobs Career College-Sharonville	1
Sanford Brown College	3

Please note, this number does not include beneficiaries who may have resided in Ohio, and attended a school that closed out of state or online.

a. What have you done to ensure that students impacted by the closure of ITT and Corinthian Colleges have the benefits that they have earned restored?

Response. VA notified approximately 8,000 individuals, regarding their potential eligibility for entitlement restoration, of which, nearly 6,000 were ITT Tech or Corinthian students. VA created a dedicated webpage, https://benefits.va.gov/gibill/fgib/restoration.asp, which addresses restoration of entitlement and includes the form that beneficiaries can use to apply for benefit restoration. VA is using social media including Facebook and Twitter to let beneficiaries know that VA can now restore entitlement and encourage those potentially eligible to apply.

b. What communication via phone, mail, email, and social media has VA sent to these veterans? What additional communication do you have planned?

Response. Through data analysis, VA identified approximately 8,000 beneficiaries who attended a facility that met the school closure criteria between January 1, 2015, and August 16, 2017. During the week of November 9, 2017, VA provided notification to 8,000 students identified as potentially eligible to have benefits restored under the Special Application provision of Section 109. Of those, approximately 80 percent received an email with a letter, instructions, and a form to apply for restoration. The remaining 20 percent received the same documentation via postal mail. As of January 26, 2018, VA has received over 700 applications and restored over 4,500 months of entitlement to almost 450 individuals.

c. What tools and resources are being expended to ensure all students who are eligible to have their benefits restored are fully informed and able to reclaim these benefits and continue their education?

Response. VA is continuously looking to push its communications through new platforms and leveraging its partners to help get its message out. To that end, VA plans to host a Facebook Live event in partnership with a National Military Family Association and using Medium to publish blogs on the Forever GI Bill.

d. Would student veterans happen if a for-profit college or university shuttered their doors abruptly tomorrow have the ability to get their GI Bill benefits restored?

Response. The Forever GI Bill sections in Section 109 also allow restoration of entitlement for VA students if a school closes. This means that VA will not make a charge against students' entitlement for the portion of the period that the students did not receive credit toward their programs (or lost training time toward the completion of their program). For example, if a student was enrolled in a semester full-time, and the school closed 60 days after the semester started, the student would have used 2 months of their entitlement. VA will restore those two months back to the student and the student will have those 2 months available to use at another time.

Additionally, for school closings on or after August 16, 2017 (date of bill enactment), VA may continue the housing allowance for Post-9/11 GI Bill students beyond the date of closure up to the end of the term, quarter or semester, not to exceed 120 days. The law requires that VA begin making these payments of housing allowance on August 1, 2018. No charge to a student's entitlement will be made for the extended period of eligibility for housing allowance.

Question 68. In addition to restoring GI Bill benefit eligibility to student veterans harmed by the precipitous closure of ITT Tech and Corinthian Colleges, this bill gives VA additional tools to provide oversight of programs to ensure that student veterans are using their benefits at reputable programs and institutions. State Approving Agencies approve, review, and monitor training and education programs that have access to VA education benefits. The Forever GI Bill authorized additional funding for State Approving Agencies (SAAs) and expanded SAA's oversight duties by charging SAAs to conduct risk-based program reviews.

a. How has VA worked with SAAs on including risk-based reviews as part of their oversight efforts?

Response. Over the last 3 years and well prior to the Colmery Act, as part of VA's strong partnership with SAAs in our mutual oversight and compliance responsibilities, SAAs conducted approximately 30 percent of the targeted risk-based compliance reviews at schools where special risk indicators were discovered. The Executive Director of VBA's Education Service and the President of the National Association of State Approving Agency have constituted a Risk-based Review Workgroup comprised of VA and SAA staff to analyze and implement potential policy and procedural changes with respect to Risk-Based Reviews.

b. How has VA worked to strengthen SAAs' ability to evaluate and monitor programs receiving GI Bill funds?

Response. VA reduced the number of compliance surveys required for the majority of SAAs for FY 2017 and FY 2018 in order to ensure SAAs have the time and resources to focus on school and facility approvals, as well as referrals made to SAAs regarding school concerns and student complaints.

Question 69. As you know Ashford University, the large for-profit school, was found to be out of compliance in November 2017. The school had 60 days to get in compliance. Earlier this month, Ashford announced it would seek approval from the California SAA to receive VA educational benefits and VA announced Ashford would continue to receive GI Bill dollars as the school pursues approval from the California SAA. Please outline statutory requirements and VA procedure for communicating with student veterans if their program is found to be out of compliance. Detail the communication VA had with student veterans since Ashford was found to be out of compliance last fall. Should the California SAA not approve Ashford's programs, what steps would VA take to protect student veterans and taxpayer investment in higher education and how would VA communicate that information with student veterans?

Response. Section 3690(b)(3)(B)(iii) of title 38, United States Code, requires VA to notify beneficiaries enrolled in an affected program at least 30 days prior to suspending or disapproving benefits for failure to meet approval, recordkeeping or reporting requirements. Student notification requirements are also codified in VA regulations in section 21.4210(e)(2) of title 38, Code of Federal Regulations. In fulfillment of these statutory and regulatory notification requirements, VA identified current or recent GI Bill beneficiaries enrolled in Ashford University's online programs and notified them by email, or by letter if no email address was found, of the situation and of the fact that benefit payments for enrollment in Ashford's online programs could be discontinued in 30 days if corrective action was not taken by Ashford.

Since Ashford University's online programs were approved by the Arizona SAA, VA has provided information and status updates on three separate occasions.

- November 10, 2017: Students were informed of VA's correspondence to Ashford University and the Arizona State Approving Agency that GI Bill benefits could potentially end in 60 days if corrective actions are not taken.
- December 13, 2017: Students were informed that GI Bill benefits could potentially end in 30 days if Ashford does not submit an application for approval to the California SAA by January 8, 2018, and support the approval process in good faith.
- January 23, 2018: VA sent an email informing beneficiaries that Ashford submitted a timely application to the California SAA, and that benefits would not be interrupted as long as Ashford continues to make a good faith effort to support the approval process in California.

Unless Ashford University is determined to be fully compliant with program approval requirements, Federal law mandates that VA must ultimately discontinue benefits for enrollment in the school's online programs. Since June 2016, VA has notified GI Bill beneficiaries of the potential for disruption of benefits due to program approval issues at Ashford University on nine separate occasions in order to ensure that they are informed consumers and understand the potential risks of continued enrollment. In the event that VA is forced to discontinue benefits, we will work with schools, State Approving Agencies, and Veterans Service Organizations to identify

educational alternatives and additional resources that can assist our beneficiaries in continuing their educational pursuits, and we will provide that information to affected students.

Question 70. What kind of oversight efforts has VA anticipated needing to ensure that new offerings from Forever GI, including the STEM Scholarship and the High Tech pilot program, are actually serving veterans? Please provide a status update on those oversight efforts.

Response. VA is currently analyzing the statutory requirements for both these provisions and developing planning documents for implementation. Both programs will require oversight and compliance efforts to ensure proper program administration and protection for both the taxpayer and beneficiary. To accomplish this task, VA is establishing specialized teams located at the VA Regional Processing Office in Buffalo, NY.

Question 71. What is the timeline for the interagency to make a determination regarding Agent Orange presumptive conditions including bladder cancer, hypothyroidism, and Parkinson's-like symptoms?

Response. Once the President's nominee has been confirmed and sworn in as Secretary, VA will examine the current policy, complete a full review on this issue and provide new guidance on this issue as needed.

Question 72. What is the status of the National Academy of Medicine study regarding Agent Orange exposure on descendants? I know they held a meeting in November 2017, when do you anticipate a report to VA?

Response. VA has a current contract with the National Academy of Medicine (NAM) to investigate the broad range of conditions possibility associated with exposure to Agent Orange. Included in this review is a review of the potential that Agent Orange may have affected the health of Veterans' descendants. The NAM's report is due to VA by January 2019. The Committee's charge includes looking at descendant health and in particular, the Committee was asked to pay special attention to the potential risk of parental transmission of disease conditions to descendants.

Question 73. I support the recent executive action to provide mental health care for transitioning servicemembers. However, I am concerned that VA does not have the resources it will need to meet the additional demand.

a. What steps are you taking to ensure that medical facilities staff mental health professional shortages?

b. What additional resources-funding or personnel- are needed to meet this growing need, and how will propose bridging the gap?

Response (73 a & b). VA has a Mental Health Hiring Initiative goal of hiring 1,000 providers by December 31, 2018, to enhance VHA's ability to provide mental health services. There is a nationwide shortage of psychiatrists and psychologists. Psychiatrists have been identified as the top hard to recruit and retain VHA physician specialty in FY 2016 and FY 2017. Psychologists have been identified as the fourth hardest to recruit and retain VHA occupation in FY 2016 and FY 2017.

Despite national shortages in mental health providers, VHA outpatient mental health demand is anticipated to grow by 12 percent by 2021. The recent Executive Order requires all new Veterans to receive mental health care for at least 1 year following their separation from service. Veterans choose to get more of their mental health care from VA than the private sector, so there is an expectation the demand will exceed the previous 12 percent estimate.

VA is expanding the use of tele-mental health to reach areas of the country with a shortage of providers and working with community partners to provide care in the community. VA has increased the number of graduate medical education physician residency positions in mental health by 167.55 since 2014, with the newest cohort expected to begin training this July. However, VA needs additional resources such as funding for recruitment and retention incentives, Education Debt Reduction Program, and the Student Loan Repayment Program in order to aggressively compete with the private sector for this limited pool of mental health providers.

Question 74. As of the hearing there were 1,321 vacancies in Ohio, with the following breakdown: Veteran Health Administration 1,204 exempt 55 nonexempt, Veteran Benefit Administration 48 exempt 9 nonexempt, Human Resources and Administration 2 nonexempt, Office of Information and Technology 3 exempt.

a. Of those exempted positions, what is the average time to fill a vacancy?

Response. The following Time to Hire (T2H) data is based on the data utilized for hiring metrics during the 1st quarter of FY 2018. The data provided represents hiring actions made via a job announcement and does not include hires made via the noncompetitive hiring process.

T2H Overview:

The T2H metric is measured from the date the hiring need is validated to the actual start date. OPM's recommended T2H is 80 days.

- VA-wide average T2H: 73 days.
- VHA average T2H: 79 days.
- VBA average T2H: 44 days.
- NCA average T2H: 64 days.

b. What is the breakdown of the VHA exempted vacancies by VAMC and specialty?

Response. The Secretary removed the hiring freeze on VHA medical centers within days after expiration of the Federal hiring freeze. Medical centers are able to hire for all positions and occupations.

Question 75. Does the Department support the SVAC-passed comprehensive health care bill?

Response. VA finds much of value in S. 2193, as approved by the Senate Veterans' Affairs Committee on November 29, 2017, but an Administration position has not been established on the legislation. We look forward to continuing work with the Committee on this important effort.

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. MAZIE K. HIRONO TO U.S. DEPARTMENT OF VETERANS AFFAIRS

GI BILL ELIGIBILITY FOR FORMER CORINTHIAN COLLEGES STUDENTS

With the passage of the Harry W. Colmery Act, also known as the "Forever GI Bill," VA has been given authority and resources to restore education benefits to student veterans who lost them following the closure of for-profit institutions like Heald College which operated in many states including Hawaii and approximately enrolled 192 veterans at the time of its closure.

Question 76. Secretary Shulkin, could you provide the Committee with an update on the number of affected student veterans VA has restored benefits for those who attended Corinthian Colleges in Hawaii and the total number across the country who attended for-profit institutions that closed down?

Response. As of January 26, 2018, VA has received over 700 applications and restored over 4,500 months of entitlement to almost 450 individuals. Heald College, which operated in many states including Hawaii, had enrolled 192 Veterans at the time of its closure. Since the new passage of the law, 67 beneficiaries that attended a school in Hawaii could apply for restoration. Of those, only 7 students have applied. Six students were found ineligible and 1 student benefits was restored for 11 months and 12 days.

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. JOE MANCHIN III TO U.S. DEPARTMENT OF VETERANS AFFAIRS

Question 77. In a January 5th interview with Federal News Radio, Secretary Shulkin proposed that a review and closure process of underutilized and vacant facilities, like the Department of Defense has with BRAC, would free up resources and do maintenance on its newer facilities.

a. How does VA define 'underutilized' in this context?

Response. VA kicked off an initiative in June 2017 to reduce the burden of vacant buildings within its inventory. At the time, VA had 430 vacant buildings that cost approximately $7 million a year to maintain. To date, VA has reused or disposed of 131 (30 percent) of the 430 assets identified as vacant and is on track to meet its goal of initiating disposal or reuse actions for all 430 buildings by June 2019. On an annual basis, VA reports the number of underutilized buildings in its inventory. An underutilized building is defined as an individual building that is occupied and in use, but the function(s) housed there do not require the full amount of space in the building to operate. Essentially, the building is too big and not right-sized for the functions housed in it. While an underutilized building is not as efficient as it could be, the functions currently housed in it are still needed. VA is not reviewing or closing any underutilized facilities at this time. nor is VA initiating a Base Realignment and Closure (BRAC)-like process for these buildings.

b. What criteria would be used in the evaluation process for determining which facilities would be susceptible to a BRAC?

Response. The Department is neither planning, initiating, nor undergoing a BRAC-like process. VA has developed the methodology for completing market area health system optimization assessments in each of the 96 health care markets around the country, with the goal of assessing the current and future Veteran demand for health care, assessing the available Federal and non-Federal assets available to meet that demand in each market, and planning to match that capacity to the demand in modernized high performing networks using a data-driven approach. The primary drivers for decisionmaking in each market would be better access, better quality of care, and higher levels of Veterans satisfaction in each market, at a sustainable cost.

These networks will be well-connected, comprehensive coalitions, led by experienced VA managers who will coordinate VA health care services, complemented where appropriate by DOD providers, VHA's academic affiliates, and other high quality private sector providers with competence in caring for veterans with service-connected conditions. Once the market assessments are complete and VA has market level, VISN level and regional or national level plans, the needs for capital investments for modernization, access, quality and Veteran satisfaction will be known. Similarly, the need for divestments of underutilized facilities may become apparent, where plans for the high performing local network would render an underutilized facility vacant. Until this process is completed in some VISNs, the facilities susceptible to renovation, modernization, repurposing or divestment will not be fully known.

The VA MISSION Act of 2018, Section 203 requires the development of Criteria on the "modernization or realignment of VHA Facilities." VHA will work with the Office of Asset Enterprise Management, which has existing criteria that has been used, most recently, in development of the list of vacant and underutilized buildings that was referenced by former Secretary Shulkin in January. Additionally, VHA Operations will also be included in the discussion to insure broad understanding and field impact to follow the requirements of this section of the MISSION Act.

Question 78. In terms of the 110 quality metrics posted on VA webpages—

a. How are you equipping local VA Medical Center staff to track and record these metrics?

Response. These metrics are available to all VA staff through the Strategic Analytics for Information and Learning (SAIL) reporting system via the agency's intranet. SAIL includes drill-down tools that allow more detailed trending of individual metrics and access to diagnostic tools that can help facilities improve their performance. Employees with authorization to view Social Security Number-level data for their facility will also be able to identify the specific Veterans records that contributed to the quality measure.

b. Who in the West Virginia VAMCs are responsible for collecting this data?

Response. Data are collected via a centralized process for all VAMCs and are not dependent on local data collection efforts. This ensures the reliability of the data and reduces the likelihood of manipulation or "gaming." The exact process of collecting data vary by the specific measure domain. For instance, patient experience data is collected via a survey mailed by an outside contractor to Veterans who have recently used VA inpatient services. That contractor conducts the survey, collates, analyzes, and reports results according to standard protocols established by the Centers for Medicare and Medicaid Services (CMS). Health outcomes data are calculated using CMS algorithms from electronic data derived from our EHR. Measures for timely and effective care are collected via standardized processes for medical record abstraction through VA's External Peer Review Program.

c. In your hearing, you cited that an HHS contract issues resulted in VA data not being able to update information on Hospital Compare website. Can you please elaborate on the contract issues and what VA and HHS are doing to mediate this in the near term?

Response. VA and CMS have been working together to include quality measure data on the Hospital Compare website. Revisions to an Interagency Agreement (IAA) with CMS were completed, and the new VA-CMS IAA was signed in April 2017. Subsequent to that, CMS has been updating its processes to incorporate VA data in the calculation of measures for the different domains of performance such as Outcomes, Safety, Timeliness and Effectiveness, and Patient Experience. Many quality measures for VA hospitals have been updated and are posted on Hospital Compare, such as hospital survey data and readmissions and mortality measure data. CMS is also working with the VA on additional measures that can be added to the website.

Question 79. In light of President Trump's declaration of a public health emergency, what additional resources or authorities does VA need to more effectively combat the opioid crisis?

Response. Action steps if new budget dollars were identified within VHA's budget:

- Enhanced Pain Management Teams with multi-modality approaches and increased consultative opportunities through SCAN-ECHO and Telehealth.
- Expand education opportunities and collaborations between VA, other Federal Agencies and private providers.
- Provide Academic Detailers and other VA developed training to private providers, especially those providing care to Veterans in the community.
- Increased capacity for high functioning primary care teams with timely access to pain specialty care for the most complex pain patients (stepped care).
- Fully integrated bidirectional State Prescription Drug Monitoring Programs (PDMP) and data storage allowing automated checks and data retrieval reducing the provider burden.
- National media campaign for STOP PAIN to enhance the awareness, availability, and utilization of VA developed best practices in the private section to include:
  - Stepped Care Model;
  - Treatment alternatives/complimentary care;
  - Ongoing monitoring of usage;
  - Practice Guidelines;
  - Prescription monitoring;
  - Academic Detailing ;
  - Informed consent for patients; and
  - Naloxone distribution.

Question 80. In your written testimony, you cite that the December 2017 strategic pause of the Electronic Health Record Acquisition occurred so that additional and external assessments of national interoperability language contained in the request for proposal (RFP) would ultimately support an EHR contract award.

a. Please describe specifically what assessments were done before the Cerner award was announced.

Response. The MITRE Corporation was selected to coordinate and lead an independent assessment utilizing external clinical, technical, and executive-level interoperability experts to evaluate the contract language related to interoperability. After reviewing the assessment, the Department of Veterans Affairs (VA) adjudicated/reconciled each of MITRE's comments into the updated request for proposal (RFP).

VA took an additional step utilizing a myriad of key leaders from the private sector (e.g., Johns Hopkins, Mayo Clinic, Intermountain, Cleveland Clinic, among others), who recently implemented a new electronic health record solution, to ensure there were no gaps in the RFP and lessons learned were captured from the private sector. The comments submitted were primarily high-level lessons learned from their own past experiences. VA effectively re-validated the RFP language based on these inputs.

b. How much will this additional MITRE Corporation assessment cost?

Response. The MITRE Corporation Interoperability Assessment (Task 1) was awarded for $396,581.

c. In the meantime, what are you doing to undergird the current EHR system to ensure patient care presently?

Response. VA is committed to maintaining high-quality connections through health information exchanges. These connections, in turn, push further cooperation among the three dominant exchanges (CareQuality, CommonWell, eHealthExchange) and with regional health information exchanges.

A P P E N D I X

PREPARED STATEMENT BY NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, INC.

CHAIRMAN ISAKSON, RANKING MEMBER TESTER, AND MEMBERS OF THE COMMITTEE, The National Organization of Veterans' Advocates (NOVA) would like to thank you for the opportunity to provide a statement in response to Secretary Shulkin's testimony regarding VA reform legislation passed in 2017. Our statement will focus on implementation of the Veterans Appeals Improvement and Modernization Act of 2017.

NOVA is a not-for-profit 501(c)(6) educational membership organization incorporated in the District of Columbia in 1993. NOVA represents nearly 600 attorneys and agents assisting tens of thousands of our Nation's military veterans, their widows, and their families seeking to obtain their earned benefits from VA. NOVA works to develop and encourage high standards of service and representation for all persons seeking VA benefits. NOVA members represent veterans before all levels of VA's disability claims process, and handle appeals before the U.S. Court of Appeals for Veterans Claims (CAVC) and U.S. Court of Appeals for the Federal Circuit (Federal Circuit). In 2000, the CAVC recognized NOVA's work on behalf of veterans with the Hart T. Mankin Distinguished Service Award. NOVA operates a full-time office in Washington, DC.

Attorneys and agents handle a considerable volume and growing number of appeals at the Board of Veterans' Appeals (BVA). In FY 2015, for example, attorneys and agents handled 14.9% of appeals before BVA. This number was fourth only behind Disabled American Veterans (28.1%), State Service Officers (16.5%), and American Legion (15%). U.S. Department of Veterans Affairs, *Board of Veterans' Appeals Annual Report Fiscal Year 2015* at 27. In FY 2016, this number grew to 15.9%, third only to Disabled American Veterans (28.1%) and American Legion (19.6%). U.S. Department of Veterans Affairs, *Board of Veterans' Appeals Annual Report Fiscal Year 2016* at 26. Similar statistics are available for FY 2017, with attorneys and agents representing appellants in 17% of cases, again third behind Disabled American Veterans (31%) and American Legion (18%).

NOVA members have been responsible for significant precedential decisions at the CAVC and Federal Circuit. In addition, as an organization, NOVA has advanced important cases and filed amicus briefs in others. *See, e.g., Henderson* v. *Shinseki*, 562 U.S. 428 (2011)(amicus); *NOVA* v. *Secretary of Veterans Affairs*, 710 F.3d 1328 (Fed. Cir. 2013)(addressing VA's failure to honor its commitment to stop applying an invalid rule); *Gray* v. *Secretary of Veterans Affairs*, No. 16–1782 (Jan. 3, 2018)(amicus in support of petition for rehearing before the Federal Circuit); *Robinson* v. *McDonald*, No. 15–0715 (July 14, 2016)(CAVC amicus).

We detail below concerns that should be addressed to ensure implementation of the appeals reform legislation preserves the long-standing intent of Congress: that the VA benefits adjudication and appeals process be veteran friendly and nonadversarial.

OVERVIEW

NOVA appreciated the opportunity to participate in the discussion of appeals reform that led to the passage of the Veterans Appeals Improvement and Modernization Act of 2017. We also applaud VA's ongoing inclusion of stakeholders in the discussion of its implementation plans, which has included opportunities to review draft regulations and documents related to its Rapid Appeals Modernization Program. NOVA remains committed to providing constructive feedback in response to these opportunities, and urges VA to consider and implement the recommendations of the stakeholder community.

As we have previously noted, successful implementation will be key if appeals reform is truly to be the positive change veterans deserve and VA promises. Success-

ful execution of VA's proposed process hinges on its ability to consistently meet its goals of adjudicating and issuing decisions in the 125-day window identified for supplemental claims and deciding appeals within the one-year period before BVA. As demonstrated with the prior backlog of original claims and scheduling of medical appointments, VA often struggles to meet its own internal goals to the detriment of veterans.

RAPID APPEALS MODERNIZATION PROGRAM (RAMP)

Relying on section 4 of Public Law 115–55, VA implemented the Rapid Appeals Modernization Program (RAMP) in November 2017. According to the Standard Operating Procedures (SOP) designed for RAMP, the Veterans Benefits Administration (VBA) "will administer this pilot during the 18-month period after enactment allowed for full implementation of the new process and continue processing elections by Veterans as long as necessary thereafter to continue to accelerate resolution of legacy appeals." SOP at 1. Based on VA's proposed rollout of this program, as of January 1, 2018, VA sent approximately 15,500 letters to veterans with appeals eligible for acceptance into RAMP. Secretary Shulkin testified that, to date, three percent of invited veterans have elected to opt into RAMP, and 75 percent of those decided have received a grant.

As an initial matter, stakeholders need information and statistics on a regular basis to understand the current status of RAMP. How many appeals have been withdrawn from the legacy system and moved into RAMP, and what option was selected? What constitutes a grant? Have the 25 percent who received denials chosen to take any additional action? We realize it is still early in the process and some statistics might not yet be available. However, such data is important to stakeholders to understand the current state of the program and provide the best advice to veterans and their families. Data is also a critical component of any true pilot program to measure its success, and VA must commit to regular updates so stakeholders can gauge progress and suggest improvements. Furthermore, VA should ensure its field staff is receiving regular communications and training on RAMP operations, as well as updates on its progress.

From NOVA's perspective, there are a few reasons why there is a low opt-in rate to RAMP. First, VA chose not to extend the program through to BVA. Therefore, a veteran who withdraws his or her pending appeals (with no opportunity to return to the legacy system), is denied after either a higher-level review or supplemental claim, and wishes to appeal to BVA must now wait until the system is fully implemented—at the earliest in February 2019—to obtain BVA review. While VA has stated those veterans will be first in line for BVA review upon full implementation of the system, many representatives are reluctant to counsel an appellant to move into a program that does not extend to BVA and does not provide a full understanding of how the procedure will ultimately operate at BVA. Furthermore, VA's recently submitted implementation plan indicates that the "average processing time goal for appeals under § 7107 does not apply to appeals submitted to the Board in response to a decision under VBA's RAMP." U.S. Department of Veterans Affairs, *Comprehensive Plan for Processing Legacy Appeals and Implementing the Modernized Appeals System 8* (November 2017).

Second, VA is targeting the oldest appeals. While we understand this strategy is designed to be fair to those who have been waiting the longest, many veterans currently receiving invitations are close enough to a BVA decision that they do not wish to move into something new, particularly in light of Secretary Shulkin's welcome statement that BVA intends to decide 81,000 appeals in FY 2018.

In addition, veterans with cases in remand status may be more likely to stay in the legacy system because BVA will retain jurisdiction over the appeal. The veteran will be entitled to expedited consideration upon return to BVA if he or she is not satisfied with the action taken on remand, as well as enforcement of the prior order.

Finally, although NOVA appreciates VA efforts to ensure attorneys and agents receive copies of RAMP correspondence sent to veterans (required under its M21–1 Adjudication Procedures Manual for *all correspondence*), VA's mailing systems remain seriously flawed both for RAMP and overall adjudication procedures. NOVA receives nearly daily complaints from members that copies of correspondence are not being received. While VA has stated it plans to launch a centralized outgoing mailing system to rectify these issues, far too much correspondence has gone unmailed and unreceived. When VA fails to properly notify, important deadlines are missed and additional claims and appeals must be pursued to address VA's failures, resulting in yet more delay in the process.

It is clear that VA is not fulfilling its responsibilities in this regard. In July 2017, the Government Accountability Office (GAO) completed a report addressing VA's

outgoing mail deficiencies. U.S. Government Accountability Office, Report to the Chairman, Committee on Veterans Affairs, House of Representatives, *Veterans Affairs: Actions Needed to More Effectively Manage Outgoing Mail*, GAO–17–581 (July 2017). In addition to finding VA has an outdated mail management policy directive and handbook, it noted that "VA cannot ensure consistent mailing practices in its administrations and facilities because it has not provided mail managers with appropriate authority and responsibilities to oversee mail operations across the agency." GAO Report at 7; *see also* GAO Report at 15. VA must improve its mailing practices, so veterans and their representatives receive proper notice of claims and appeals processing.

IMPLEMENTATION OF THE VETERANS APPEALS IMPROVEMENT AND MODERNIZATION ACT OF 2017

As part of the reporting requirements imposed under Public Law 115–55, in November 2017, VA submitted its first report, *Comprehensive Plan for Processing Legacy Appeals and Implementing the Modernized Appeals System* (hereinafter Comprehensive Plan). VA does not provide sufficient details for how it will handle legacy appeals in relation to modernized appeals once the new system is implemented. Based on several statements made in the report, it appears VA intends to devote resources first to modernized appeals and allocate "leftovers" to legacy appeals. *See, e.g., Comprehensive Plan* at 4 ("VA will allocate available resources to meet the timely processing goals in the new system, as outlined in section 3(a)(3), and remaining resources are then employed to process legacy appeals."); *Comprehensive Plan* at 9 ("VA intends to allocate resources in an efficient manner that will establish timely processing in the new process and will allocate all remaining appeals resources to address the inventory of legacy appeals."); *Comprehensive Plan* at 10 ("VBA intends to allocate field resources in an efficient manner that will establish timely processing in the new process and will allocate all remaining resources to address the inventory of legacy appeals."). VA needs to provide more details about how it will continue to process legacy appeals in a fair and timely manner while fulfilling its obligations under the new legislation, to include how it will address the substantial backlog of BVA hearing requests.

Furthermore, in its implementation plan, VA stated it needs enhancements to the Veterans Benefits Management System (VBMS) to meet the statute's specifications. *Comprehensive Plan* at 15. Secretary Shulkin also testified to VA's "enterprise-wide efforts to modernize the appeals process through improvements in technology." Statement of the Honorable David J. Shulkin, M.D., Secretary of Veterans Affairs, for Presentation Before the Senate Committee on Veterans' Affairs, *The State of VA: Progress Report on Implementing 2017 VA Reform Legislation 3* (January 17, 2018). Congress must ensure VBA and BVA continue to receive sufficient resources to implement necessary technological upgrades to its systems, particularly VBMS and Caseflow. VBMS was not designed with appeals processing in mind, and it lacks many features that would make work for VBA employees, BVA employees, and representatives easier and more efficient. VA should ensure VBMS enhancements continue, Caseflow is fully operational, and all representatives have access to as many features as appropriate to help them represent veterans as effectively as possible.

CONCLUSION

NOVA is committed to continue working with this Committee, VA, and fellow stakeholders to ensure the appeals process for veterans is fair, timely, and preserves veterans' due process rights. We again thank the Committee for allowing us to provide our views on implementation of appeals reform.

PREPARED STATEMENT OF CARLOS FUENTES, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

CHAIRMAN ISAKSON, RANKING MEMBER TESTER, AND MEMBERS OF THE COMMITTEE, On behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, it is a great pleasure to submit a statement for the record in response to Secretary of Veterans Affairs David J. Shulkin's state of the Department of Veterans Affairs (VA) testimony.

First and foremost, the VFW would like to thank the Committee and VA for all the accomplishments in 2017. Thanks to the bipartisan leadership of this Committee, Congress passed ten important veterans bills to improve benefits and service for those who have worn our Nation's uniform and their families. While the VFW lauds the Committee's efforts, Congress still has a long list of unfinished business.

The VFW looks forward to highlighting those topics when the VFW presents its legislative priorities before the Committee on March 7, 2018.

COMMUNITY CARE

One item which should not be on the unfinished business list is S. 2193, the Caring for our Veterans Act of 2017, which was approved by committee nearly unanimously. This important bill would make much needed improvements to the way VA provides community and internal care to America's veterans. Furthermore, this important bill would also correct a serious inequity between veterans who served before September 11, 2001 (9/11) and their pre-9/11 brothers and sisters by expanding caregiver benefits to veterans of all eras.

The VFW implores the Committee to move this important bill as soon as possible. A recent continuing resolution provided VA with additional Choice Program funding, which is estimated to last up to five months, but veterans cannot afford for Congress to wait until the 11th hour to act. Veterans who rely on the Choice Program for their care are directly impacted by Congress' inability to act swiftly on community care legislation. As we have seen in the past when funds were close to being depleted, when the Choice Program faces an immediate uncertainty veterans who are unable to receive VA care are forced to wait or travel long distances for the care they have earned and deserve simply because Congress has failed to act on comprehensive and permanent community care legislation.

The VFW urges Congress to quickly pass the Caring for our Veterans Act of 2017, so we can finally put an end to the constant fear of budget shortfalls that leave veterans without timely access to the high quality and veteran-centric care they have earned.

FOREVER GI BILL

The historic, bipartisan, and bicameral Forever GI Bill is the most significant improvement to veterans' educational benefits in nearly a decade. Thanks to the hard work of the Committee and its staff, the Forever GI Bill tiger team, and a broad coalition of veterans, military, and educational organizations, more veterans and their survivors have an opportunity to pursue their educational goals.

Thanks to the Forever GI Bill, all Purple Heart recipients will have full access to their GI Bill benefits; veterans attending schools that close abruptly through no fault of the veterans will be able to complete their degrees; thousands of involuntarily activated Reservists and Guardsmen will finally receive their well-deserved GI Bill benefits; surviving family members will be able to accomplish their educational goals with having to incur crippling educational debt; and veterans will no longer have a 15-year limitation on their earned educational benefits, which means veterans truly have a lifetime to use their GI Bill.

The VFW is pleased to hear VA has implemented 13 provisions of the Forever GI Bill and that it is committed to ensuring all veterans impacted by changes are fully informed of their new benefits. However, the VFW has received mixed feedback on VA's outreach efforts. VA has published informative websites and releases on the changes to VA education benefits. Yet, the veterans who are impacted tell us they have not been informed by VA about recent changes. Specifically, the VFW reached out to veterans who were impacted by recent school closures, and reported knowing they knew about the Forever GI Bill but had not been contacted by VA to have their educational benefits restored.

Similarly, school certifying officials tell the VFW that they have not received any information from VA on recent changes to the GI Bill. School certifying officials are the first people student veterans turn to for information regarding their benefits. Without proper outreach from VA, school certifying officials are having to turn to other sources for information on impending changes. Doing so could lead to misinformation and confusing messaging to student veterans. VA must improve its outreach efforts and work with veterans organizations to make certain a uniform message is delivered to impacted veterans.

APPEALS MODERNIZATION

When the negotiation process began for what would become Public Law 115–55, the Veterans Appeals Improvement and Modernization Act of 2017, it was made clear that the input and support of veterans service organization (VSO) was paramount to the enactment of the legislation.

The VFW's goal with appeals modernization was to build a process that placed the veteran first, was easy to navigate, and protected a veteran's rights every step of the way. The VFW, along with several other organizations, has long advocated for appeals reform, and were honored to be a part of the process with the assurance

that the level of engagement that existed during the bills development would be sustained when implemented.

However, once the legislation was passed, we began having concerns almost about VA's implementation plans. As a result, in September, the VFW and DAV (Disabled American Veterans) sent a letter to Deputy Secretary of Veterans Affairs Thomas Bowman expressing our concerns with the speed of the roll out; the language used in the initial opt-in notification letter and phone script; and the overall lack of engagement that we, and other VSOs have been afforded up to that point.

While VA has addressed of the issues identified on the joint letter, the VFW still has lingering concerns with regard to how VA is implementing these changes and communicating with VSOs regarding the progress that has or has not been made, and the data that supports that narrative.

As an organization that represents a large portion of appellants with cases pending before the Board of Veterans Appeals (BVA), our clients depend on us to provide the most accurate advice in order to increase their chances of a successful appeal. We have been representing veterans for decades and have a good understanding of how the system works. Having researched the possible impact of the program on our clients, we have found that there are circumstances where opting-in may actually be detrimental to the veteran.

Many of our clients have been waiting for years to have their cases heard at BVA. They have invested time and energy into appealing their claims, and many of them are appealing denials for extremely complex issues. For our organization to recommend that they opt-in to a program that is potentially faster, and may lead to their case being decided more quickly, but may also lead to them losing their place in line at BVA if they are denied would be reckless.

As of this submission, we have not yet been shown concrete evidence from VA, or any of our clients that would suggest that Rapid Appeals Modernization Program (RAMP) will actually improve a veteran's chance of a favorable outcome. During the hearing, Secretary Shulkin reported that 75 percent of RAMP decisions "are going in favor of the veteran." While 75 percent may seem to indicate RAMP is a good option for veterans, VA's testimony does not clarify how many appeals were adjudicated and what VA defines as favorable. To VA, issuing a zero percent service-connection may qualify as favorable. A veteran would disagree if the decision is for a debilitating condition that merits a higher rating. As a result, we have declined to recommend to veterans we serve that have received eligibility notices to participate in the program, and will continue to do so until we are provided with more thorough data from VA.

The VFW urges Congress and VA to properly resource Veterans Benefits Administration (VBA) and the Board of Veterans Appeals to ensure they are able to timely adjudicate legacy appeals from veterans who do not opt into the new appeals process, and the potential influx of supplemental claims and higher level review requests at VA Regional Offices. VA must be empowered to manage its workload, and stakeholders must be properly informed if the new framework is expected to succeed.

ACCOUNTABILITY AND WHISTLEBLOWER PROTECTIONS

The VFW strongly believes that proper accountability is vital to ensuring VA fulfills its mission to care for those who have borne the battle. VFW members across the country have firsthand experience with VA's inability to quickly discipline wrongdoers. That is why the VFW praised the enactment of S. 1094, the VA Accountability and Whistleblower Protection Act of 2017.

The VFW is pleased VA has taken steps toward improving accountability and transparency by implementing S. 1094 and publically releasing accountability reports. However, VA still has a long way to go. The VFW continues to hear reports of employees who are allowed to disrespect veterans or provide poor customer service. VFW members also report that whistleblower protections are not working because both patients and employees continue to fear they will be retaliated against if they report malfeasances. One VA employee tells the VFW that he fears the enhanced accountability measures have worsened nepotism at VA medical facilities. The VFW urges Congress to closely monitor implementation of S. 1094 to ensure wrongdoers are swiftly held accountable, whistleblowers are protected, and nepotism is eliminated.

However, Congress cannot simply focus on firing bad employees. It must also ensure VA is able to quickly hire high quality employees. If VA is not able to replace wrongdoers with high quality employees, it will lack the staff needed to accomplish its mission. The VFW urges the Committee to work with VA to address barriers in

recruiting and retention of high quality professionals, who are willing to work at VA medical facilities.

Specifically, the VFW continues to hear that VA's licensing and credentialing process is excessively long and should be modified to make certain VA is able hire high quality doctors on a timely basis. The VFW also heard from providers who work at VA that they face delays transferring to underserved areas because they are required to undergo credentialing procedures again even though VA policy authorizes transfers between VA medical facilities without having to undergo credentialing. Veterans want more doctors at their VA medical facilities, but requiring doctors who want to serve veterans to jump through hoops prevents this from happening.

Congress must also ensure VA has the authority to timely hire front line staff. Due to the lack of support staff, many VA providers are required to spend time on administrative tasks instead of treating patients or spending more time with their patients. VA is in the process of streamlining its hiring process for medical scheduling assistants (MSAs) and has set the goal of hiring MSAs within 30 days, which is half the time it takes, on average, to hire support staff today. The VFW commends VA for its efforts, but it is time Congress expands direct hire authorities to all Veterans Health Administration staff, not just doctors and nurses. We fear that VA's workforce productivity could decline due to staffing shortages and low employee morale if Congress does not reform VA's hiring authorities.

HOMELESS VETERANS PROGRAMS

The nearly 50 percent reduction in veteran homelessness is laudable and the holistic partnerships and approaches taken by VA, the Department of Housing and Urban Development (HUD) and the Department of Labor (DOL) are absolutely critical to that success. Success, however, could be diminished if funding fails to keep pace with demand. Congress cannot allow VA to stymie its homeless veterans by reducing much needed funding.

Specifically, the VFW has great concerns with VA's decision to realign specific-purpose funds allocated for homeless programs as a means to provide VA health care facility directors with more individual control over their location's general funding needs. In theory, this could be a successful idea. But this theory will undoubtingly be a failure without the transparency and desire to work with VSOs and Congress, and that cost should most certainly not come at the expense of homeless veterans.

After receiving negative feedback from VSOs, and a letter from the Senate Appropriations Subcommittee on Military Construction, Veterans Affairs, and Related Agencies, VA chose to put a temporary halt on this initiative. We ask that this Committee join us in closely monitoring VA's attempts to handicap its successful homeless veterans programs.

Taking away the guaranteed specific-purpose funding for homeless veteran programs, such as the massive cut initially suggested by VA to HUD- Veterans Affairs Supportive Housing (VASH), would result in a guaranteed failure of the program. The specific funding for HUD-VASH is crucial to the ability of case managers within VA to properly perform their jobs and assist homeless veterans in all the ways they are intended to help. These case managers are like life coaches for homeless veterans getting their feet back on the ground. This program's case management is the embodiment of the holistic approach and the answer to successfully overcoming homelessness.

Since VA has reconsidered and postponed the timeline to readjust this funding, the VFW has eagerly awaited the opportunity to have a transparent and open conversation with VA about the intent and how to responsibly move forward. Yet, just because the decision was put on hold for now does not mean there were no repercussions. The VFW's Department of California's Homeless Service Providers have found that VA's attempts to reallocate HUD-VASH funding has negatively impacted the program.

The two primary concerns they have found thus far include employment rates of HUD-VASH case managers as well as individual state-funded programs for homeless veterans. In communities across California, such as Kerr County, VA has not been able to hire enough HUD-VASH case managers even with current funding. This results in case managers taking on an average of 50 homeless veterans instead of VA's suggestion of 25 homeless veterans per case manager. While managing twice as many veterans as suggested, and with the travel requirements of case management, locations such as these are not able to utilize all the vouchers they receive. With a massive cut in funding, there is a major fear that employment rates for case

managers will only get worse. It has also been rumored that voucher distribution will be halted in some communities, out of fear that they will run out.

Also, various states that rely on HUD-VASH funding have implemented their own programs to assist in combating veteran homelessness. For example, California's Proposition 41, Veterans Housing and Homeless Prevention Bond, is heavily dependent on VA's Supportive Housing as a subsidy for the bonds used to provide for homeless veterans and their families. This serves as an example of how cutting HUD-VASH funding could have even more worrisome and unintended consequences that cut deeper than originally thought.

PRE-DISCHARGE CLAIMS

As the Nation's oldest major VSO, the VFW serves 24 military installations to help veterans navigate and understand their earned VA benefits. To the VFW, filing claims prior to separation from the military is one of the most important processes that a servicemember can complete during the transition process. Not only does this ensure timely delivery of benefits after discharge, but it also increases the likelihood of granting benefits, setting veterans up for future success.

As transition programs evolve, Congress, the Department of Defense (DOD), and VA all seek to make changes to better suit the transition experience. Many times these changes result in improved service for the transitioning servicemember, such as the Transition Assistance Program mandate included in the VOW to Hire Heroes Act; DOD's deployment of the military lifecycle model for transition; VA's establishment of the pre-discharge claims program; or the joint DOD/VA commitment to develop a single medical record for servicemembers and veterans.

Unfortunately, sometimes changes have unintended consequences that may result in a degraded transition experience for the servicemember. This is where the VFW takes its responsibility as a veterans' advocate to inform the agencies of jurisdiction and the Committee of our concerns. Recently, VA made two significant changes to its pre-discharge claims programs that make the VFW concerned about the future of this critical interaction and the professional services we provide to our transitioning military members. First, VA shifted its timelines for the Benefits Delivery at Discharge (BDD) program, only allowing servicemembers to submit BDD claims from 180–90 days prior to discharge. Second, VA eliminated the Quick Start (QS) claims program entirely, meaning veterans with 89 days or fewer left on active duty no longer have an option tailored to their unique circumstances to easily access their earned benefits.

The VFW understands why VA wanted to shift the timeline for BDD to 90 days. We understand that this allows VA to complete exams and propose rating decisions to deliver benefits as close to a servicemember's date of discharge as possible. In a vacuum, this is a positive step. However, coupled with the elimination of QS and the military's cumbersome transition timelines, the VFW believes this change would disqualify most servicemembers the VFW serves from easily accessing their benefits on their way out of the military.

According to VA, the VFW's claimants on military installations who filed QS claims fluctuated between 33 and 50 percent over the past year. In visiting with our pre-discharge claims sites, we hear that most clients visit our offices with far fewer than 90 days left on active duty, meaning most of our past BDD clients would no longer be qualified for the program. Yes, VA still accepts these claims, but they are no longer processed expediently while the veteran still serves on active duty, and they are no longer tracked with a unique end product (EP) code specific to QS claims, formerly EP code 337.

In the past, this EP code allowed the VFW to track pre-discharge claims work to perform rating reviews and ensure the best possible outcome for our transitioning servicemembers. Now, with the elimination of the QS EP code, claims we submit on behalf of transitioning servicemembers are assigned as any other claim in VA's National Work Queue. VA will argue that this is not a big deal and that VFW-accredited representatives anywhere can conduct these rating reviews. While this is technically true, we lose optics on these claims and can no longer properly track and report how well VA is serving the transitioning servicemember population. If we cannot identify problems this early in the process, we are not setting up the servicemember for post-military success.

As of this hearing, the VFW has six personnel stationed at the VA regional offices (VARO) responsible for pre-discharge claims adjudication whose sole responsibility is to review rating decisions and correct any possible errors. Our most recent data indicates that our rating review specialists catch VA adjudication errors in up to 20 percent of pre-discharge claims and are able to resolve such errors prior to promulgation of the award.

Several years ago, recognizing the unique needs of transitioning servicemembers, VA committed not to broker work from the consolidated pre-discharge claims worksites at the VAROs in Winston-Salem, Salt Lake City, and San Diego. VA reneged on this promise last year with its across-the-board implementation of the National Work Queue, as we have testified in the past, and we do not expect VA will go back to its old workflows since this has seemed to increase productivity and efficiency for VA. However, through unique EP codes and Station of Origination filtering in the Veterans Benefits Management System, our pre-discharge quality control team was able to track and review work regardless of the VARO of jurisdiction for adjudication. This was a satisfactory middle ground to meet both the needs of VA to broker its work and the VFW's need to maintain optics on transitioning servicemembers' claims for quality control purposes. However, with the elimination of the QS EP code, we lose optics on this work and can no longer fulfill our commitment to transitioning servicemembers to perform the proper quality controls on their claims.

Moreover, VA exacerbated an already tenuous situation by notifying transitioning servicemembers with fewer than 90 days on active duty that they were "disqualified" from filing BDD claims. Since the change went into effect October 1, 2017, we have heard from all of our pre-discharge claims sites and several of our VARO worksites that veterans have called or visited the offices, concerned that something went wrong with their claim. We even have one report from our office at Walter Reed National Military Medical Center that a retiree received a BDD disqualification letter 92 days prior to separation.

This is a situation where language is critical. When the VFW was first presented with this letter, we vehemently disagreed with VA's decision to send it as worded. This concern was ignored until the recent House Veterans' Affairs Disability Assistance and Memorial Affairs Subcommittee hearing, after which VA has agreed to review these notification letters with VSOs.

The VFW calls on VA to put veterans, not appearances, first. It must accept claims prior to separation, instead of punishing transitioning servicemembers whose chain of command does not permit them the opportunity to begin their transition process 90 days before they separate from military service. At the very least, VA must reestablish an EP code for transitioning servicemembers who file a claim within 90 days of separation to ensure the VFW and other veterans organizations are able to assist veterans in successfully transitioning from military service back to civilian life, regardless of where they choose to call home.

VA must also rework the disqualification letters to simply notify the veterans that their claims have been received, but cannot be worked until they separate from service and submit their DD–214 paperwork. These simple steps will once again ensure that the VFW and similarly-structured organizations can continue to provide the advocacy our clients expect, and transitioning servicemembers will once again have peace of mind that VA is responsibly handling their pending benefits claims.

Unfortunately, the VFW worries there is a larger objective with the recent changes to VA's pre-discharge claims programs. While VA asserts that moving the window to 90 days results in better claims service, the elimination of the QS EP code and the rapid deployment of programs like the Decision-Ready Claims process indicate to the VFW that VA's primary objective is to obfuscate the total pending workload.

Based on the VFW's estimates, we would lose optics on up to 50 percent of our pre-discharge workload simply by VA shuffling the BDD timelines and eliminating the QS EP code. The problem is not only that we lose optics on the claims, but VA will not formally establish the BDD-excluded claims until veterans formally submit their DD–214s after they separate from service. This means that any time from 89 days to the time of the veteran's submission does not count as pending work as it formerly counted when the claim was established under a QS EP code.

To the VFW, the time when servicemembers transition off of active duty is one of the most significant changes they will experience in their lives. This Congress and the VSO community have dedicated substantial resources to make sure that we get this right. The VFW values the role that we are allowed to play in the process through both VA and DOD, and we are always looking for ways to improve. Our goal is that we can move forward together to ensure that our transitioning servicemembers have access to the programs, information, and services they need for a successful transition out of military life.

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