

# H.R. 2460, H.R. 3956, H.R. 3974, H.R. 3989 and Draft Legislation

Apr 20, 2016

STATEMENT OF  
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VETERANS OF FOREIGN WARS OF THE UNITED STATES

FOR THE RECORD

UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON VETERANS' AFFAIRS  
SUBCOMMITTEE ON HEALTH

WITH RESPECT TO

**“H.R. 2460, H.R. 3956, H.R. 3974, H.R. 3989, Draft legislation to ensure each VA medical facility complies with requirements relating to scheduling veterans for health care appointments and to improve the uniform application of directives; and Draft legislation to direct VA to establish a list of drugs that require an increased level of informed consent”**

WASHINGTON, D.C.

Mr. Chairman and members of the subcommittee:

On behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliaries, thank you for the opportunity to offer our thoughts on today's pending legislation.

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## **H.R. 2460, To improve the provision of adult day care services for veterans**

The VFW supports this legislation, which would expand adult day health care for veterans.

Currently, veterans who are at least 70 percent service connected are eligible to receive cost free nursing home or domiciliary care at any of the more than 150 state veterans homes throughout the country. While nursing home care is a necessity for veterans who can no longer live in the comfort of their home, the VFW strongly believes veterans should remain in their homes as long as possible before turning to inpatient, long term care options. Adult day care is vital to ensuring such veterans are able to remain in their homes as long as possible.

However, veterans who are eligible for cost-free nursing home care at state veterans homes are largely denied the option to receive cost-free adult day care services at these facilities. Due to VA's delay in publishing regulations for adult day care, only three state veterans homes currently provide adult day care services. This legislation would rightfully ensure VA and state veterans homes have the authority to provide nursing home eligible veterans the ability to delay institutional care and remain in their homes with their loved ones.

## **H.R. 3956, VA Health Center Management Stability and Improvement Act**

This legislation would require VA to develop and implement a plan to hire highly qualified directors for each VA medical center (VAMC). The VFW agrees with the intent of this legislation and has recommendations to improve it.

The VFW agrees that VA must urgently address the high volume of interim and acting directors throughout the VA health care system. According to recent VA data, more than 20 percent of VAMC and Veterans Integrated System Network (VISN) director positions are currently vacant. It is critical for VA to install permanent leadership at its medical centers to ensure it addresses the access crisis and is able to restore veterans' faith and confidence in their health care system.

However, the VFW does not believe a plan to hire permanent directors would be successful if VA is not given the authority to properly compensate VAMC and VISN directors. Director positions are difficult to fill because they are responsible for overseeing hundreds of employees, who deliver care and services to thousands of veterans. That is why the VFW recommends the Subcommittee authorize market-based compensation for VA medical directors.

VA must also have the leeway to quickly hire a qualified candidate when one is identified. The best qualified person for a medical center position may not be searching for a job on USA Jobs, and if VA identifies a qualified candidate it should not be required to have that candidate apply for an opening through USA Jobs. That is why the VFW urges the

Subcommittee to authorize VA to directly hire VAMC and VISN directors.

Furthermore, VA will not be able to quickly fill vacancies amongst VAMC and VISN directors if it lacks the human resources staff needed to identify qualified candidates and process their employment applications. Recent VA data shows VA has 633 vacancies in human resources throughout the Department. The VFW urges the Subcommittee to work with VA to ensure it has the authority to recruit, employ and retain the human resources employees it needs to quickly fill vacancies and develop succession planning processes to prevent high vacancy rates.

### **H.R. 3974, Grow Our Own Directive: Physician Employment and Education Act of 2015**

This legislation would build on the success of the Intermediate Care Technician (ICT) Pilot Program. Launched in December 2012, the ICT pilot program recruited transitioning veterans who served as medics or corpsmen in the military to work in VA emergency departments as intermediate care technicians. The ICT program offered transitioning medics and corpsmen, who have extensive combat medicine experience and training, the opportunity to provide clinical support for VA health care providers without requiring them to undergo additional academic preparation.

This legislation would go a step further by affording transitioning medics and corpsmen the opportunity to become physician assistants. With the end of the wars in Iraq and Afghanistan, and the continued drawdown of military personnel, more medics and corpsmen will be leaving military service and transitioning into the civilian workforce. The VFW strongly supports efforts to leverage their medical knowledge and experience to meet the health care needs of our nation's veterans.

### **H.R. 3989, Supporting Our Military Caregivers Act**

This legislation would require VA to contract with an independent entity to review appeals regarding eligibility determinations for the program of Comprehensive Assistance for Family Caregivers, commonly known as the Caregivers Program. While the VFW agrees with the intent of this legislation, we cannot support it as written.

The VFW has heard too many instances of inconsistent implementation of the Caregivers Program. This is largely due to the fact that Caregivers Program eligibility is determined at the local VAMC level by a veteran's treatment team without proper guidance on how to make such a determination. The VFW has urged VA to establish a handbook for VA physicians to use as a reference when making a determination on whether a veteran is able to live independently without the assistance of others.

VA physicians must also have the proper guidance on how to conduct a clinical evaluation to

determine the degree to which a veteran is unable to perform activities of daily living and how many hours of care a veteran requires per week. To this date, VA has failed to provide such guidance to the field and has allowed VAMC personnel to continue to make inconsistent eligibility determinations. VA has informed the VFW it is working diligently on a directive to address inconsistent implementation of this important program. The VFW looks forward to such directive and will monitor progress to ensure VA medical facilities comply with the directive.

The most common concern we hear from veterans regarding the Caregivers Program is that they were considered to be in the highest tier (requiring at least 40 hours of care per week), but were downgraded or discontinued from the program when they relocated to a different VAMC or VISN. The VFW has found that this is caused by an automatic re-evaluation that is triggered when a veteran moves from one VISN or VAMC to another.

For example, a veteran who is service connected for numerous severe mental health conditions from Tennessee, where he was determined to require at least 40 hours a week of caregiver support, moved to Colorado. When the veteran received a re-evaluation at his new VAMC, it was determined the veteran no longer needed the assistance of a caregiver and was discontinued from the program, despite needing the aid of his wife to perform activities of daily living. Furthermore, the determination to discontinue the veteran from the program was made without a VA health care professional from his new VAMC conducting a site visit.

The VFW strongly believes veterans who are determined to be eligible for the Caregivers Program should not be required to undergo a re-evaluation simply because they move to a different state or VISN catchment area. That is why we have urged VA to end such practice and ensure a qualified health care professional conduct a site visit to review a veteran's level of dependency before such veteran is discontinued from this important program.

Veterans who disagree with a clinical determination made by their treatment team are not given appropriate recourse for appealing such decisions. This legislation seeks to correct this issue by authorizing veterans to seek a second opinion from an independent entity. While the VFW strongly believes veterans who disagree with a decision made by their treatment team must be afforded a fair and expedient opportunity to appeal such decision, we do not believe an independent contractor would have the experience in diagnosing and treating the unique health care conditions veterans face. Furthermore, this legislation fails to address the larger issue that limits a veteran's ability to appeal an eligibility decision regarding the Caregivers Program – VA's inadequate clinical appeals process.

VA's current clinical appeals process does not afford veterans the ability to have their decision reviewed beyond the VISN level. Veterans who disagree with a clinical review conducted by the VAMC chief medical officer are given the opportunity to have the decision reviewed by the VISN director, who rarely overturns the VAMC decision. Moreover, the VISN level appeal is final, unless a veteran appeals to the Board of Veterans Appeal, which is

not a viable option for veterans who require time sensitive medical treatments. That is why the VFW strongly urges this Subcommittee to review and reform the VA clinical appeals process.

### **Draft legislation to ensure each medical facility of the Department of Veterans Affairs complies with requirements relating to scheduling veterans for health care appointments**

The VFW supports the intent of this legislation, which would require all VA medical facilities to certify compliance with scheduling laws and directives. However, the VFW does not believe this legislation would resolve the underlying issue with scheduling at VA medical facilities.

In the VFW's two reports on the Veterans Choice Program, which can be found at [www.vfw.org/vawatch](http://www.vfw.org/vawatch), we found VA's wait time metric is flawed and susceptible to data manipulation. For example, VA's preferred date metric does not properly measure how long a veteran waits for an appointment. A recent Government Accountability Office (GAO) report entitled "*Actions Needed to Improve Newly Enrolled Veterans' Access to Primary Care*" also highlights how a veteran who waited 20 days to see a primary care provider from the time he requested an appointment is recorded into the scheduling system as waiting 4 days for his appointment.

The VFW recognizes that using the request date as the starting point is also flawed because VA has established an arbitrary wait time goal of 30 days for all appointments, which does not represent how the health care industry measures wait times. In a recent report, the RAND Corporation found the best practices in the private sector for measuring timeliness of appointments are generally based on the clinical need of the health care requested and in consultation with the patient and their family. That is why the VFW has urged VA and Congress to move away from using arbitrary standards to measure whether an appointment was delivered in a timely manner and adopt industry best practices by basing the timeliness of appointment scheduling on a clinical decision made by health care providers and their patients.

The VFW does not believe this legislation can be successful if VA's wait time metric remains flawed and susceptible to data manipulation. Compliance with flawed metrics does not lead to better health care outcomes for veterans.

### **Discussion draft to direct the Secretary of Veterans Affairs to establish a list of drugs that require increased level of informed consent**

This discussion legislation would ensure veterans are properly informed of the possible side effects and dangers of certain prescription drugs before beginning a treatment regimen. The VFW supports this draft legislation and has several recommendations to improve it.

The VFW has heard from veterans time and time again that they want to be incorporated in decisions regarding their health care. In particular, veterans who have been prescribed high dose medications to treat their health conditions would like to know whether they have alternatives to pharmacotherapy that are effective and lead to similar or better health care outcomes. This draft legislation would rightfully require increased informed consent before VA health care professionals prescribe potentially harmful drugs.

While informed consent is important to ensure veterans are incorporated in decisions regarding their health care, such consent cannot be used to waive a VA provider's liability if veterans are adversely impacted by such medications. The VFW recommends the Subcommittee include a provision to ensure informed consent, as detailed in this legislation, does not release VA from liability if an adverse action were to occur as the result of such treatment.

This legislation would also require VA to inform veterans of the potential danger of mixing drugs and dosages in sizes and combinations that have not been approved by the Food and Drug Administration. While general information on drug interactions is important, the VFW believes it would be more beneficial to give veterans an explanation of how the suggested prescription drug would affect the patient in accordance with all of the patients currently prescribed pharmaceuticals. By doing this veterans will be able make a personalized informed decision.

### **Information Required by Rule XI2(g)(4) of the House of Representatives**

Pursuant to Rule XI2(g)(4) of the House of Representatives, the VFW has not received any federal grants in Fiscal Year 2016, nor has it received any federal grants in the two previous Fiscal Years.

The VFW has not received payments or contracts from any foreign governments in the current year or preceding two calendar years.