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HEARING ON PENDING HEALTH AND BENEFITS LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

NOVEMBER 18, 2015

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HEARING ON PENDING HEALTH AND BENEFITS LEGISLATION

WEDNESDAY, NOVEMBER 18, 2015

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

The Committee met, pursuant to notice, at 2:30 p.m., in room 418, Russell Senate Office Building, Hon. Johnny Isakson, Chairman of the Committee, presiding.

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

WELCOME BY HON. JOHNNY ISAKSON, CHAIRMAN, U.S. SENATOR FROM GEORGIA

Chairman ISAKSON. I call this meeting of the Senate Veterans' Affairs Committee come to order.

Since our distinguished Senator from the State of Iowa is here early, in a timely fashion, I do not want to make her wait any longer, and it is always our tradition to have members of the Senate who are not on the Committee who have bills to be testified about speak first, and we always honor them by not asking them any questions. That is not because we know they do not have the answers. It is because we do not want the hearing to go so long.

So, Senator Ernst, we are delighted to have you here. You are our first witness and we will be glad to hear from you.

STATEMENT OF HON. JONI ERNST, U.S. SENATOR FROM IOWA

Senator ERNST. Thank you, Mr. Chairman. I appreciate it very much, and thank you for your service and, of course, your service to our veterans, as well. Thank you, as well, Senator Sullivan.

I do wish to thank all of the Members of the Committee who have worked so hard for our veterans. This is one of the most important Committees, I feel, to making sure that we honor our commitments to the men and women that have served in our Nation's military. Again, thank you for allowing me to testify today.

I want to specifically thank my lead Democratic sponsor, Senator Hirono, for her help with this legislation, which is designed to improve the access and quality of care we provide our veterans. The bill is called the VETS Act for a reason, and that is because we all want to honor and help those that served and sacrificed for our country.

The VA has been practicing telemedicine since 2001 and they are largely cited as leaders and innovators in the field. Their efforts in

telemedicine have saved money and veterans' time by eliminating often an hour or more long drives to the VA and reducing bed days at the VA. For example, according to the VA, in fiscal year 2014, telehealth reduced bed days of care by 54 percent, reduced hospital admissions by 32 percent, and saved $34 per consultation in travel savings.

Our legislation is straightforward, common sense, and builds upon this work that the VA is already doing in telemedicine. It allows VA doctors to conduct telemedicine across State lines for patients in their homes, something they are already able to do within State lines. Unfortunately, current law allows doctors to call patients at their homes if they are in the same State but prevents them from doing so if their veteran patient lives across State lines. VA doctors wishing to treat patients via telehealth across State lines must have the patient drive to a Federal facility. This is the case even though there is no special licensing requirement for VA doctors to practice in different States.

For example, a veteran in my small town of Red Oak, Iowa, who wishes to have a telemedicine appointment with a doctor at the VA hospital in Omaha, Nebraska, that is closest to my home town, an hour away, that veteran must drive to the VA center in Des Moines, a 2-hour drive. By contrast, if the doctor was based in Des Moines, the patient could remain in their home in Red Oak and have a telemedicine appointment.

Back in Iowa and in many other States, rural veterans are often faced with the struggle of making it to a VA facility in the city. Increasing opportunities for telemedicine is a great way to tackle this challenge for services ranging from mental health treatment to post-surgery follow-up.

In addition, this bill includes language we worked with the VA on to ensure policymakers have up to date information on the VA's telehealth program. This report language is designed not to have a cost or create any extra work as this is data that the Department already collects on its telehealth program.

As you may know, this legislation has broad bipartisan support, with 12 cosponsors, three from this Committee, and is supported by the Veterans of Foreign Wars, The American Legion, Concerned Veterans for America, the Paralyzed Veterans Association, Iraq and Afghanistan Veterans of America, and the American Telemedicine Association, and Health IT Now.

I hope you all are able to see the common sense behind this legislation and I greatly appreciate all of you taking time to consider this legislation and listen to my remarks today. Thank you very much, Mr. Chairman.

Chairman ISAKSON. Senator Ernst, we appreciate your leadership, and Senator Hirono, your cosponsorship of the legislation——

Senator HIRONO. I am proud to.

Chairman ISAKSON. A proud cosponsor.

Senator ERNST. Thank you, Mazie, very much, Senator Hirono.

Chairman ISAKSON. I think we have five other Committee Members who are also cosponsors of the bill.

Senator ERNST. Wonderful.

Chairman ISAKSON. It does address a critical need. We have had some input, which I will go over with you, but we want to move

forward as soon as we can. It is a great suggestion that really helps us solve a problem in a most economical way, but it also benefits mostly our veterans, which is why we are here to begin with.

So, thank you very much——

Senator ERNST. Thank you.

Chairman ISAKSON [continuing]. For submitting the legislation. We will be with you shortly, when we do a markup.

Senator ERNST. Thank you, Mr. Chair.

Chairman ISAKSON. Thank you.

We will go ahead and do opening statements by the Chairman and Ranking Member and then we will go straight to our first and second panels, if that is OK. Thanks again to Senator Ernst for being here today and her legislation.

Senator ERNST. Thank you.

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

Chairman ISAKSON. Today's agenda touches on a variety of areas, including whistleblower protection, educational benefits, vocational rehabilitation, and improving medical staffing and care. I want to commend Senator Ernst and Senator Kirk, who are not Members of the Committee but have come forward with legislation we will consider today, as well as each Member of the Committee who has had input on the hearing today.

VA has come under increasing fire recently for treatment of whistleblowers and this Committee wants to see to it that whistleblowers who truthfully come forward to testify have the protection and the ease necessary to accomplish what they do. It is a valuable service to make the Veterans Administration better.

The Committee will continue to look closely at all the programs that support the transition from service to private sector employment and do everything we can to see to it we are fostering the type of transition that is necessary. It is important to evaluate new ideas to staff VA facilities adequately and connect veterans with health care providers. Most importantly, it is important that we always make sure that we are providing our veterans with the services they need from the Veterans Administration when they leave the military.

I appreciate our members that have submitted legislation today. We will have five pieces that we will take up. We will hear from six witnesses who will testify, and I will now recognize the Ranking Member, Richard Blumenthal.

OPENING STATEMENT OF HON. RICHARD BLUMENTHAL, RANKING MEMBER, U.S. SENATOR FROM CONNECTICUT

Senator BLUMENTHAL. Thanks, Mr. Chairman. Thank you for having this hearing and for including priorities from the minority side on today's agenda. Also, that you for continuing to work with us in a bipartisan way to address the many important bills that have been referred to the Committee.

I am particularly proud of the whistleblower protection bill that Senator Kirk and I have introduced last night. It was the result of many hours of painstaking and sometimes painful work to accommodate the interests involved and balance the rights on both sides

to make sure that whistleblowers are protected against potential reprisal and retaliation. I know from my work as a State Attorney General as well as a Federal prosecutor how important whistleblowers are as a source of information and evidence and how vulnerable they may be when they speak truth to power.

Therefore, I felt strongly and deeply about this measure, and I recognize there may not be unanimity and support for it. But I think it makes some critically important advances in providing the safeguards that are needed for whistleblowers to step forward and do what they have done throughout our history in protecting the public interest which sometimes includes putting that public interest ahead of their own personal welfare. At the very least, they ought to be protected from reprisal and retaliation, which has happened in the VA, it has happened in the government as a whole, and that is why we have the system of whistleblower protection that we do.

In addition, I am very pleased today that the Committee is considering my legislation S. 2253, the Veterans Education Relief and Reinstatement Act. Again, I want to thank colleagues on both sides of the aisle, Senator Tillis of this Committee as well as Senator Brown, for cosponsoring this legislation.

The catastrophic collapse of Corinthian Colleges earlier this year left thousands of students, literally thousands of young people, who had not received an education of any value, let alone a degree, stranded under mountains of debt. Four-hundred-and-twenty-two of the students impacted were beneficiaries of the Post-9/11 G.I. Bill, which rightfully provides our veterans and other dependents with the opportunity to pursue higher education after military service.

Not only did Corinthian's closure mean that these veterans had wasted a semester of Post-9/11 G.I. Bill entitlements at a college that closed, forgoing credit for their coursework, but this unexpected closure also led the VA to cutoff housing allowance benefits for them and their dependents. This monthly educational housing assistance is a crucial component of the Post-9/11 G.I. Bill benefit. When this benefit is abruptly terminated, it can leave beneficiaries stranded and without supplemental income for housing, food, utilities, and other basic necessities.

I introduced the Veterans Education Relief and Reinstatement Act to give the VA Secretary authority to restore Post-9/11 G.I. Bill entitlements and provide housing relief to those who have been harmed by the permanent closure of an educational institution such as Corinthian. I am hopeful we can consider to advance this bill and other important education legislation, such as the Career Ready Student Veterans Act, through this Committee to ensure that our veterans have not wasted hard-earned education benefits and are given the opportunity to complete their degrees.

This June, along with Senate and House colleagues, I urged the VA to provide more information to veterans on the G.I. Bill comparison tool to warn users when schools are under accreditation probation, facing heightened cash monitoring from the Federal Government, or under probation from the Department of Defense Military Tuition Assistance Program.

I have more to say on a number of these bills. I am going to ask, with the Chairman's permission, that I enter my full statement in the record——

Chairman ISAKSON. Without objection.

Senator BLUMENTHAL [continuing]. And simply again thank him for his consideration in permitting us to move forward on these critical measures.

Thank you, Mr. Chairman.

[The prepared statement of Senator Blumenthal follows:]

PREPARED STATEMENT OF HON. RICHARD BLUMENTHAL, RANKING MEMBER, U.S. SENATOR FROM CONNECTICUT

OPENING REMARKS

Thank you, Mr. Chairman, for holding today's hearing on pending legislation before this Committee, and thank you to all of the witnesses providing testimony today. We appreciate your dedication to the veteran communities that you serve and thank you for sharing your insight.

Today's hearing agenda reflects the commitment of Members on both sides of the aisle to do right by this Nation's veterans and their families. As this Congress continues, it is increasingly apparent there is much work to be done.

I want to thank the Chairman for including priorities from the minority side on today's agenda, and for continuing to work with us in order to address the many important bills that have been referred to the Committee.

I thank my Senate colleagues for their work to advance important bills through this Committee—specifically related to the vocational rehabilitation program, physician assistants and workforce shortages at VA, accountability, and education—and I am pleased that we have this opportunity to discuss these legislative measures today.

Given the number of bills and legislative proposals on today's agenda, I will briefly highlight a few bills we'll consider today.

EDUCATION BENEFITS

I am especially pleased that the Committee is considering consider my legislation, S. 2253, the Veterans Education Relief and Reinstatement Act. I thank my colleagues, particularly my distinguished Committee colleagues, Senator Tillis as well as Senator Brown, for cosponsoring this legislation.

The catastrophic collapse of Corinthian Colleges earlier this year left thousands of students, who had not received an education of any value, stranded under a mountain of debt.

422 of the students impacted were beneficiaries of the Post-9/11 GI Bill, which rightfully provides our veterans and their dependents with the opportunity to pursue higher education after their military service.

Not only did the Corinthian closures mean that these veterans had wasted a semester of Post-9/11 GI Bill entitlement at a college that closed, forgoing credit for their coursework. But this unexpected closure also led VA to cutoff housing allowance benefits.

This monthly educational housing assistance is a crucial component of the Post-9/11 GI Bill benefit. When this benefit is abruptly terminated, it can leave beneficiaries stranded and without supplemental income for housing, food, utilities, and other basic necessities.

A recent investigation by the Department of Education and California Attorney General Kamala Harris determined that Corinthian Colleges repeatedly falsified job placement rates and preyed on veterans and taxpayers. These predatory practices took advantage of veterans using Post-9/11 GI Bill benefits to facilitate the transition to civilian life, and we must do more to protect the student veterans adversely impacted by such predatory practices and resulting school closures.

I introduced the Veterans Education Relief and Reinstatement Act to give the VA Secretary authority to restore Post-9/11 GI Bill entitlement and provide housing relief to those who have been harmed by the permanent closure of an educational institution, such as Corinthian.

No veteran should have to suffer, or lose their hard-earned educational benefits, due to the unsound financial practices and predatory actions of schools like Corinthian.

I'm hopeful that we can continue to advance this bill and other important education legislation, such as the Career-Ready Student Veterans Act, through this Committee to ensure that our veterans have not wasted hard-earned education benefits and are given the opportunity to complete their degrees.

This June, along with Senate and House Colleagues, I urged VA to provide more information to veterans on the GI Bill Comparison Tool to warn users when schools are under accreditation probation, facing heightened cash monitoring from the Federal Government, or under probation from the Defense Department's military tuition assistance program.

VA recently updated the GI Bill Comparison Tool with yellow caution flags to warn users that certain schools, notably the University of Phoenix, are under probation. This is a good first step to ensure that veterans are provided with the resources they need to make informed education decisions to best use their Post-9/11 GI Bill benefits.

We must do more to ensure that our Nation's heroes are using GI Bill education benefits to receive education training, and are not squandering these benefits on incapable institutions. I am pleased that the Veterans Education Relief and Reinstatement Act has broad support from VA as well as the veteran service organizations represented at our hearing today and in written testimony.

WHISTLEBLOWER PROTECTIONS

The agenda also includes legislation to strengthen whistleblower protections at VA. I'd like to thank my colleague Senator Kirk for introducing this critically important bill.

The Government Accountability Project has referred to the provisions in this legislation as "a major breakthrough in the struggle for VA whistleblowers to gain credible rights when defending the integrity of the agency mission and disclosing quality of care concerns."

In addition, this legislation would hold supervisors accountable for retaliating against whistleblowers.

I'm proud to co-sponsor this legislation, and I'd like to again thank Senator Kirk for working with me and introducing this bill. I'd like to thank the Veterans Service Organizations, the Government Accountability Project, and other good government organizations for their leadership on this issue.

CONCLUSION

In conclusion, I again would like to thank our many witnesses for joining us today. I look forward to our continued cooperation and bipartisan collaboration with Chairman Isakson to work toward better serving those who have served our country.

Thank you and I look forward to hearing your testimony.

Chairman ISAKSON. Thank you, Senator Blumenthal.

If our first panel will come forward, I will introduce our first panel.

First is Mr. Curtis L. Coy, Deputy Under Secretary for Economic Opportunity, Veterans Benefits Administration, U.S. Department of Veterans Affairs; Dr. Maureen McCarthy, Acting Assistant Deputy Under Secretary for Health for Patient Care Services, Veterans Health Administration, Washington, DC; and Meghan Flanz, Deputy General Counsel, Legal Operations and Accountability.

We appreciate you all being here today. Mr. Coy, please limit your testimony to about 5 minutes.

STATEMENT OF CURTIS L. COY, DEPUTY UNDER SECRETARY FOR ECONOMIC OPPORTUNITY, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY MAUREEN McCARTHY, M.D., ACTING ASSISTANT DEPUTY UNDER SECRETARY FOR HEALTH FOR PATIENT CARE SERVICES, VETERANS HEALTH ADMINISTRATION; AND MEGHAN FLANZ, DEPUTY GENERAL COUNSEL, LEGAL OPERATIONS AND ACCOUNTABILITY

Mr. COY. Mr. Chairman, we will do just that. Good afternoon, Mr. Chairman and Members of the Committee. We are pleased to be here today to provide the views of the Department of Veterans Affairs on pending legislation affecting VA's programs. Accompanying, as you mentioned, are my colleagues Dr. Maureen McCarthy, Acting Assistant Deputy Under Secretary for Health, and Ms. Meghan Flanz, Deputy General Counsel.

S. 2106, the Wounded Warrior Employment Improvement Act of 2015, would require the Secretary to develop and publish an action plan for improving VA's vocational rehabilitation and employment (VRE) services. While VA appreciates the support the Committee has for our VRE program, we do not believe that a new action plan is necessary.

VA's recent and planned efforts in this area are extensive. For example, we have already conducted a business process reengineering initiative from 2011 to 2014, resulting in streamlined workload and outreach strategies, new performance metrics, developed an automated resource center, eliminated redundant forms, and a staffing model; developed national training modules for VRE staff that include TBI, PTS, and other mental health issues, and have worked with VHA on these specialized trainings; developed partnerships with VHA, Department of Labor and Defense on a variety of issues, to include homelessness, mental health, telecounseling, disability and employment, and the Integrated Disability Evaluation System, or IDES, stationing counselors at 71 military installations for transitioning servicemembers.

We agree with AMVETS' written testimony today and have expanded our public-private partnerships for VRE. Of note, public-private partnerships are of particular interest to Secretary McDonald. He has recently engaged with over 100 different organizations to develop MOUs or agreements with more on the way. We have expanded our Vets Success on Campus Program to 94 campuses. As one might imagine, it has been a very busy and transformational few years.

S. 2134, the Grow Our Own Directive: Physician Assistant Employment and Education Act of 2015, would establish a pilot program to provide educational assistance to former members of the Armed Forces for education and training as physician assistants within the VA. While VA supports the entire concept, the cost, as we laid out in our written testimony, associated with the legislation causes concern within our available resources.

With respect to S. 2170, the Veterans eHealth and Telemedicine Support Act of 2015, VA supports the section of the bill that allows VA employed or contracted health care professionals to provide health care and to support the provision of health care to the VA patient by telemedicine. As outlined in more detail in our written

testimony, VA supports certain reporting requirements but does not support other reporting requirements that would be overly burdensome on VA operations.

S. 2253, the Department of Veterans Affairs Veterans Education Relief and Restoration Act of 2015, would provide veterans affected by school closures with certain relief and restoration of education benefits if the VA finds that the individual was forced to discontinue a course or courses as a result of permanent school closure. VA supports this bill and appreciates the leadership of Senator Blumenthal and the Committee in helping those veterans who deal with a school closure through no fault of their own.

The draft bill regarding whistleblower complaints would define a whistleblower complaint to include not only a VA employee's disclosure of wrongdoing, but also a complaint made by a VA employee assisting other employees to disclose wrongdoing. Amongst many other requirements, we do note that it would establish a process for employees to file whistleblower complaints with their immediate supervisor and establish a central whistleblower office which is not part of VA's Office of General Counsel that would be responsible for investigating all whistleblower complaints.

In recent months, the Department has taken several important steps to improve how we address operational deficiencies and to ensure that those who disclose such deficiencies are protected from retaliation. In the summer of 2014, the Secretary reorganized and assigned new leadership to VA's Office of the Medical Inspector, which reviews whistleblower disclosures related to VA health care operations. The Secretary also established the Office of Accountability Review to ensure leadership accountability for whistleblower retaliation and other serious misconduct.

While we appreciate the Committee's efforts to assist the Department in these endeavors, we believe the specific whistleblower disclosure and protection procedures provided by this bill would be unworkable and current whistleblower protections are effective. From a legal perspective, our analysis suggests that portions of the draft bill present due process problems and conflicts with other laws.

Mr. Chairman, this concludes my statement. We thank you for the opportunity to appear before you today and we will be pleased to respond to any questions you or other members may have, sir.

[The prepared statement of Mr. Coy follows:]

PREPARED STATEMENT OF CURTIS L. COY, DEPUTY UNDER SECRETARY FOR ECONOMIC OPPORTUNITY, VETERANS BENEFITS ADMINISTRATION (VBA), U.S. DEPARTMENT OF VETERANS AFFAIRS

Good morning, Mr. Chairman and Members of the Committee. I am pleased to be here today to provide the views of the Department of Veterans Affairs (VA) on pending legislation affecting VA's programs, including the following: S. 2106, S. 2134, S. 2170, S. 2253, and a draft bill regarding whistleblower complaints. At this time, VA is unable to develop cost estimates for the "Department of Veterans Affairs Veterans Education Relief and Restoration Act of 2015;" however, we will provide these to you as soon as they are available. Accompanying me this morning are Maureen McCarthy, Acting Assistant Deputy Under Secretary for Health for Patient Care Services, Veterans Health Administration and Meghan Flanz, Deputy General Counsel, Legal Operations & Accountability.

S. 2106

S. 2106, the "Wounded Warrior Employment Improvement Act of 2015," would require the Secretary to develop and publish an action plan for improving VA's vocational rehabilitation services and assistance. Section 2(b) would require the action plan to include: (1) a comprehensive analysis of, and recommendations for, remedying workload management challenges at VA's regional offices (ROs), including steps to reduce counselor caseloads of Veterans participating in a rehabilitation program, particularly for counselors who are assisting Veterans with Traumatic Brain Injury (TBI) and Post Traumatic Stress Disorder (PTSD), and for counselors with educational and vocational counseling caseloads; (2) a comprehensive analysis to address the reasons for the disproportionately low percentage of Veterans, with service-connected disabilities and military service after September 11, 2001, who opt to participate in a rehabilitation program under chapter 31 of title 38, United States Code (U.S.C.), relative to the percentage of such Veterans who use their entitlement to educational assistance under chapter 33, including an analysis of barriers to timely enrollment in rehabilitation programs under chapter 31 and any barriers to a Veteran enrolling in the program of that Veteran's choice; (3) recommendations for encouraging more Veterans who have military service after September 11, 2001, and have service-connected disabilities to participate in rehabilitation programs under chapter 31; and (4) a national staff training program for Vocational Rehabilitation Counselors (VRC) to include: (a) training to assist VRCs in understanding the profound disorientation experienced by Veterans with service-connected disabilities whose lives and life plans have been complicated due to service-connected disabilities; (b) training to assist VRCs in working in partnership with Veterans on individual rehabilitation plans; and (c) training on PTSD and other mental health conditions and on moderate to severe TBI that is designed to improve the ability of VRCs to assist Veterans with these conditions, including providing information on the broad spectrum of such conditions and the effect of such conditions on an individual's abilities and functional limitations.

VA does not believe that a new action plan is necessary to improve vocational rehabilitation services and assistance provided under chapter 31 and accordingly does not support S. 2106. VA's recent and planned efforts in this area are already extensive.

The Vocational Rehabilitation and Employment (VR&E) program conducted a business process re-engineering initiative from 2011 to 2014 to examine workload issues, training, roles, responsibilities, and outreach. As a result, workload management strategies were streamlined and a new staffing model was developed. VA has an outreach campaign underway to increase awareness of and access to chapter 31 services. This includes the August 2015 deployment of an online application for chapter 31 and chapter 36 benefits through eBenefits and Enterprise Veterans Self-Service. VR&E places VRCs in colleges and universities across the Nation as part of the VetSuccess on Campus (VSOC) initiative. VSOC VRCs provide information on VA benefits to a variety of populations on campus, including Veterans, Servicemembers, and dependents. VR&E is an integral part of the joint Department of Defense and VA Transition Assistance Program and the Integrated Disability Evaluation System, with VRCs placed on military installations for early outreach and delivery of vocational rehabilitation services to transitioning Servicemembers. VA's national training curriculum for VR&E staff covers a variety of topics related to job duties, which includes information on working with individuals with TBI, PTSD, and other mental health issues. VR&E partners with the Veterans Health Administration (VHA) on many of these specialized trainings.

Our VR&E program has also recently implemented two major initiatives to improve services to Veterans and ensure that those services are accurately measured. The first, TeleCounseling, fielded nationwide in May 2015, is an optional method of coordinating case management and supportive services for Veterans participating in a program of vocational rehabilitation. This initiative allows the VRC and Veteran to have more frequent face-to-face contact. The second, the implementation of new performance measures, fielded nationwide in July 2015, ensures that the daily activities and operations of employees who provide direct service to Veterans are linked to program measures that define successful outcomes for those Veterans. VR&E is developing a new case management system (CMS), VRE-CMS, that will streamline responsibilities, enable a paperless environment, and improve data integrity.

The cumulative impact of these processes, trainings, outreach programs, and initiatives encourages more Servicemembers and Veterans with service-connected disabilities to participate in chapter 31 services by ensuring that VR&E staff understands the specialized needs of Veterans with service-connected disabilities; provides

appropriate and timely rehabilitation services to meet those needs; provides Servicemembers and Veterans information necessary to make an informed choice on available VA benefits to which they may be entitled; and removes barriers to accessing rehabilitation services.

The chapter 33 program is an educational benefit for individuals who served on active duty after September 10, 2001. The chapter 31 program is a benefit that assists individuals with service-connected disabilities meeting certain statutory guidelines, with a focus on obtaining and maintaining employment and/or achieving the maximum possible level of independence in daily living. Congress has mandated that, in addition to a service-connected disability, the Servicemember or Veteran must also have an employment handicap, defined as impairment to one's ability to prepare for, obtain, or retain employment, to qualify for services under chapter 31. Also, chapter 31 is required by law to ensure that the vocational goal for which services are provided is a suitable goal. The training that individuals receive for a specific occupation should assist them in performing the duties of that occupation. Not all Veterans with a service-connected disability will meet these criteria or have an interest in pursuing a suitable vocational goal. For those individuals, chapter 33 is often the program of choice, as it provides access to education benefits regardless of level of impairment or suitability of the educational or vocational goal.

There are no mandatory costs associated with this legislation. To conduct a new analysis and develop an action plan as outlined in the proposed legislation, VA would need to use administrative funds to procure a contract. The estimated cost to procure a contract for these services is approximately $2 million.

S. 2134

S. 2134, the "Grow Our Own Directive: Physician Assistant Employment and Education Act of 2015," would establish a pilot program to provide educational assistance to certain former members of the Armed Forces for education and training as physician assistants within the VA. While VA supports the concept, the cost associated with the legislation would cause concern within our available resources.

S. 2134 would require the Secretary to provide information on the pilot program to eligible individuals. An eligible individual would be defined as an individual who: (1) has medical or military health experience while serving as a member of the Armed Forces; (2) has received a certificate, associate degree, baccalaureate degree, master's degree, or post-baccalaureate training in a science related to health care; (3) has participated in the delivery of health care services or related medical services; and (4) does not have a degree of doctor of medicine, doctor of osteopathy, or doctor of dentistry.

S. 2134 would also require the Secretary to select no less than 250 eligible individuals to participate in the program with a minimum of 35 scholarship participants per year. Priority would be given to: individuals who participated in the Intermediate Care Technician Pilot Program of the Department that was carried out by the Secretary between January 2011 and February 2015, and individuals who agree to be employed as a physician assistant for VHA in a community designated as a medically underserved population and in a State with a per capita Veteran population of more than 9 percent. Although VA supports the minimum requirement of scholarship participants, VA is concerned that the applicant pool of eligible individuals may be insufficient to meet the required number.

S. 2134 would also require the Secretary, in carrying out the pilot program, to provide educational assistance to individuals participating in the program to cover the costs to the individuals of obtaining a master's degree in physician assistant studies or a similar master's degree. The legislation would call for the use of the Health Professionals Educational Assistance Program (HPEAP) and other educational assistance programs the Secretary considers appropriate, to administer a 5-year pilot program.

S. 2134 would also require each individual participating in the pilot program to enter into an obligated service agreement with the Secretary to be employed as a physician assistant with VHA for a period of time that is either specified in the HPEAP or other educational assistance program or, if the individual is participating through a program where an obligated service period is not specified, a period of at least 3 years or such other period as the Secretary considers appropriate.

The bill would also provide that where an individual who participates in the pilot program fails to satisfy the period of obligated service, he or she shall be liable to the United States, in lieu of the obligated service, for the amount that has been paid or is payable to or on behalf of the individual under the pilot program, reduced by the proportion that the number of days the individual served for completion of the

period of obligated service years to the total number of days in the period of obligated service of such individual.

The bill would also require the Secretary to ensure that a physician assistant mentor or mentors are available for individuals participating in the pilot program at each facility of VHA at which a participant in the pilot program is employed.

The bill would require the Secretary to seek to partner with not less than 15 institutions of higher education that offer a master's degree program in physician assistant studies or a similar area of study accredited by the Accreditation Review Commission on Education for the Physician Assistant. These institutions would also agree to guarantee seats in such master's degree program for pilot program participants, and to provide pilot program participants with information on admissions criteria and process. VA recommends that it be granted flexibility with the final number of partnerships/affiliates as less than 15 institutions may be sufficient to meet these requirements.

The bill would also require four new employees to administer the pilot program: a Deputy Director of Education and Career Development of Physician Assistants; a Deputy Director of Recruitment and Retention; a recruiter; and an administrative assistant. All positions would be aligned with VHA's Office of Physician Assistant Services.

This pilot program would require scholarship recipients to complete a service obligation at a VA health care facility after graduation and licensure/certification. VHA has had difficulty recruiting and retaining physician assistants for several years. Additionally, VHA Workforce Succession Strategic Plan and Reports have listed physician assistants in the top ten critical occupations, and VA's Office of Inspector General's Critical Occupation Staffing Shortage Report has listed physician assistants in the top five most critical occupations shortages.

The total cost of the Health Professional Scholarship Program for 450 awards over 5 years would be $56,573,810.

The total cost associated with administering the pilot program over 5 years would be $2,764,667.

The total cost associated with establishment of pay grades for physician assistants and the requirement of providing competitive pay would be $374,921,436 over 10 years.

S. 2170

Section 2(a) of S. 2170, the "Veterans E-Health and Telemedicine Support Act of 2015," would amend title 38, U.S.C., to add a new section 1730B, which would permit a covered health care professional to practice their health care profession at any location in any State, regardless of where such health care professional or the patient is located, if the health care professional is using telemedicine to provide treatment under chapter 17 of title 38. New section 1730B would specify that this authority would apply regardless of whether the covered health care professional is located in a facility owned by the Federal Government. In addition, new section 1730B would state that nothing in that section would be construed to alter any obligation of the covered health care professional under the Controlled Substances Act (21 U.S.C. 801 et seq.). New section 1730B would define "covered health care professional" to mean an individual "authorized by the Secretary to provide health care under [Chapter 17 of title 38], including a private health care professional who provides such care under a contract entered into with the Secretary, including a contract entered into under section 1703 [of title 38]" and "licensed, registered or certified in a State to practice the health care profession of the health care professional." In addition, "telemedicine" would be defined to mean "the use of telecommunication technology and information technology to provide health care or support the provision of health care in situations in which the patient and health care professional are separated by geographic distance."

Section 2(b) would provide a clerical amendment to the table of sections at the beginning of chapter 17 of title 38.

Section 2(c) would require the Secretary, not later than 1 year after the date of enactment of the Act, to submit to Congress a report on VA's effective use of telemedicine. The report would require specific elements such as the assessment of the satisfaction of Veterans and health care providers with VA telemedicine; the effect of VA-funded telemedicine on the ability of Veterans to access health care, the frequency of use by Veterans of telemedicine, the productivity of health care providers, wait times for appointments, and any reduction in the use of other services by Veterans; the types of appointments for telemedicine that were provided; the number of requested appointments for telemedicine disaggregated by Veterans Integrated Service Networks; and any VA savings, including travel costs.

VA supports section 2(a) of the bill. Section 2(a) would allow VA employed or contracted health care professionals who are professionally licensed in a State and practicing within the scope of their VA employment or contract, to provide health care and to support the provision of health care to the VA patient by telemedicine, without regard to where the health care professional is licensed or where the patient and the health care professional are physically located. Section 2(a) would also permit VA employees and contract health care professionals and VA patients to be located anywhere during such telemedicine, including in a non-VA facility. In addition, section 2(a) would clarify that the title 38 licensure requirements apply to both VA employed or contracted telemedicine practitioners during the performance of their official duties, whether they are on-station or not. In these ways, Section 2(a) would remove the barriers that might be imposed by local licensure laws of the places where the patient or the covered health care professional are located, or the State of licensure of the health care professional. Further, section 2(a) would make clear that any telemedicine services that involve prescribing controlled substances would have to be provided in accordance with the Controlled Substances Act.

VA supports section 2(c) of the bill in part. Specifically, VA supports reporting on elements identified in paragraphs (A); (C) subparts (i), (ii), (iii), and (v); and (D) of section 2(c)(2). However, VA does not support the reporting required elements in paragraphs (B), (C) subpart (iv), (E), and (F) of section 2(c)(2). Reporting on these elements would be overly burdensome on VA operations because VA lacks the resources to routinely measure and assess this type of data over the reporting period.

VA does not have a cost estimate for section 2(a) of the bill at this time. VA estimates that implementation of the one-time reporting requirement in section 2(c) of the bill would cost $17,000.

S. 2253—DEPARTMENT OF VETERANS AFFAIRS VETERANS EDUCATION RELIEF AND RESTORATION ACT OF 2015

This bill would amend title 38, U.S.C., to provide Veterans affected by school closures with certain relief and restoration of education benefits. The bill would add a new subsection (d) to section 3312 of title 38, U.S.C., to allow for the restoration of entitlement to educational assistance and provide other relief for Veterans affected by a school closure. More specifically, no payment of educational assistance would be charged against an individual's entitlement to educational assistance under the Post-9/11 GI Bill, or counted against the aggregate period for which an individual may receive educational assistance under two or more programs, if VA finds that the individual was forced to discontinue a course or courses as a result of a permanent school closure and did not receive credit, or lost training time, toward completion of the program of education being pursued at the time the school closed.

S. 2253 also would amend section 3680(a) of title 38, U.S.C., authorizing VA to prescribe regulations allowing VA to continue a monthly housing allowance stipend under the Post-9/11 GI Bill during a temporary school closure or for a limited period following a permanent school closure. The housing allowance would be payable until the end of the term, quarter, or semester during which the school closure occurred, or 4 months after the date of the school closure, whichever is sooner.

VA supports S. 2253, as it would allow VA to restore entitlement and continue monthly housing allowance stipend payments to Post-9/11 GI Bill beneficiaries impacted by school closures. While VA currently has authority to continue payments to beneficiaries when schools are temporarily closed due to an emergency or under an established policy based on an Executive Order of the President, there is no similar statutory authority upon which to continue benefit payments in the event of a permanent school closure. Furthermore, regardless of whether a school closure is temporary or permanent, there is no statutory authority that allows VA to restore entitlement for a term, quarter, or semester for which a beneficiary fails to receive credit toward program completion due to such a closure. VA would interpret the bill to apply only to a course or courses in which an individual was enrolled in FY 2015, and all current or future enrollments. VA would also interpret the bill as currently written to provide that the portion of a course or courses that a beneficiary has participated in through the time of the school's closure (e.g., the portion of an incomplete college semester that has already passed at the time of a school closure) is not charged against the beneficiary's entitlement. We note that there appears to be a discrepancy between the new subsection (d)(2), which applies to an individual who meets the criteria of both (A) and (B) of that subsection, and the applicability provision in section 2(a)(2) of the bill, which describes new subsection (d) as applying if the criteria of either paragraph (A) or paragraph (B) of subsection (d)(2) are met.

The closure of educational institutions while GI Bill beneficiaries are actively pursuing approved programs of education or training negatively impacts Veterans and eligible dependents in a number of ways. First, their monthly housing benefits are suddenly and unexpectedly discontinued in the middle of the term. In many cases, these payments are the primary (or sole) source of funds for paying for housing, food, utilities, and other basic necessities while attending school. Second, while VA can pay benefits for the term, quarter, or semester up to the time of the school's closure, the student is still charged entitlement for that period, even though he/she does not earn any credit toward program completion. In some instances, this could result in a beneficiary exhausting his/her entitlement before being able to complete his/her program at another institution.

We will be pleased to provide for the record an estimate of the cost of enactment of this bill.

DRAFT BILL REGARDING WHISTLEBLOWER COMPLAINTS

Section 2 of the draft bill would add a new subchapter to title 38, U.S.C. on whistleblower complaints. Section 731 would define a "whistleblower complaint" to include not only a VA employee's disclosure of wrongdoing, but also a complaint made by a VA employee assisting another employee to disclose wrongdoing.

Section 732 would establish a process for employees to file whistleblower complaints with their immediate supervisors; require supervisors to notify employees in writing, within 4 business days of receiving a complaint, whether there is a reasonable likelihood the disclosure meets the statutory definition of whistleblowing; permit employees to elevate complaints if the employee determines the action taken was inadequate; require the Secretary to notify whistleblowing employees of the opportunity to transfer to another position; and establish a Central Whistleblower Office, which is not a part of VA's Office of the General Counsel, that would be responsible for investigating all whistleblower complaints.

Section 733 would require the Secretary to discipline any employee found to have committed an offense listed in subsection 733(c), with a first offense punishable by at least a 12-day suspension and a second offense punishable by removal, and would limit the notice and reply period associated with such discipline to not more than 5 days. Section 733 would also limit the appeal rights of employees who are removed so that they would match the limited appeal rights of VA Senior Executives under 38 U.S.C. § 713.

Section 734 would require the Secretary to consider protection of whistleblowers when evaluating supervisors' performance, prohibit payment of an award to a supervisor within a year after the supervisor is found to have committed an offense listed in subsection 733(c), and require the Secretary to recoup an award paid to a supervisor for a period in which the supervisor committed such an offense.

Section 735 would require the Secretary to coordinate with the Whistleblower Protection Ombudsman to provide annual training to all VA employees on whistleblower rights and protections, including the right to petition Congress regarding a whistleblower complaint. Section 736 would require annual reports to Congress on the number and disposition of whistleblower complaints filed with VA supervisors and through other disclosure mechanisms, and would also require the Secretary to notify Congress of whistleblower complaints filed with the U.S. Office of Special Counsel (OSC).

Section 3 of the draft bill would amend section 312 of title 38, U.S.C., to require that whenever the Inspector General, in carrying out the duties and responsibilities established under the Inspector General Act of 1978, issues a work product that makes a recommendation or otherwise suggests corrective action, the Inspector General shall submit the work product to: (1) the Secretary; (2) the Committee on Veterans' Affairs, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; (3) the Committee on Veterans' Affairs, the Committee on Oversight and Government Reform, and the Committee on Appropriations of the House of Representatives; (4) if the work product was initiated upon request by an individual or entity other than the Inspector General, that individual or entity; and (5) any Member of Congress upon request. Section 3 would also require that the Inspector General post the work product on the Inspector General's Internet Web site no later than 3 days after the work product is submitted in final form to the Secretary.

Section 4 of the draft bill would add to subchapter I of chapter 7 of title 38, U.S.C., a new section 715 dealing with the treatment of congressional testimony by VA employees as official duty. Section 715(a) would establish that a VA employee is performing official duty during the period with respect to which the employee is testifying in an official capacity in front of either chamber of Congress, a committee

of either chamber of Congress, or a joint or select committee of Congress. Section 715(b) would require the Secretary to provide travel expenses to any VA employee performing official duty described in subsection (a).

VA is absolutely committed to correcting deficiencies in its processes and programs and to ensuring fair treatment for whistleblowers who bring those deficiencies to light. The Secretary frequently shares his vision of "sustainable accountability," which he describes as a workplace culture in which VA leaders provide the guidance and resources employees need to successfully serve Veterans, and employees freely and safely inform leaders when challenges hinder their ability to succeed. VA needs a work environment in which all participants—from front-line staff through lower-level supervisors to senior managers and top VA officials—feel safe sharing what they know, whether good or bad news, for the benefit of Veterans.

In recent months, the Department has taken several important steps to improve how we address operational deficiencies, and to ensure that those who disclose such deficiencies are protected from retaliation. In the summer of 2014, the Secretary reorganized and assigned new leadership to VA's Office of the Medical Inspector, which reviews whistleblower disclosures related to VA health care operations. The Secretary also established the Office of Accountability Review to ensure leadership accountability for whistleblower retaliation and other serious misconduct. VA has also improved its collaboration with OSC, which is the independent office responsible for overseeing whistleblower disclosures and investigating whistleblower retaliation across the Federal Government. VA has negotiated with OSC an expedited process to speed corrective action for employees who have been subject to retaliation. That process is working well, and we are now beginning a collaborative effort with OSC's Director of Training and Outreach to create a robust, new training program to ensure that all VA supervisors understand their roles and responsibilities in protecting whistleblowers.

While we appreciate the Committee's efforts to assist the Department in these endeavors, we believe the specific whistleblower disclosure and protection procedures provided by this bill would be unworkable. We also believe they are unnecessary in light of the long-standing system of OSC authorities, remedies, and programs specifically created to address claims of improper retaliation in the workplace. We believe the current whistleblower protections are effective, and, as noted above, VA is working closely with OSC to ensure that the Department and its employees are gaining the maximum benefits from its remedies and protections.

Turning to what we see as likely unintended consequences of the draft bill, the draft bill's strict notification requirements, short timelines, and severe penalties may create an adversarial relationship between supervisors and subordinates that would likely hinder, rather than foster, sustainable accountability. The draft bill would require the supervisor to notify the employee within 4 days after receiving a disclosure to indicate whether the supervisor has determined that there is a reasonable likelihood the disclosure meets the statutory criteria for whistleblowing. Four days would be inadequate in many cases for a supervisor to come to an informed conclusion that "there is a reasonable likelihood that the complaint discloses a violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific and danger to public health and safety," in the terms of the draft bill. The fact that there are substantial "downstream" effects from these 4-day determinations will, in our view, create unpredictable and destabilizing effects in a workplace where collaboration and trust is paramount.

The draft bill would also impose specific penalties on supervisors found to have engaged in retaliation and would significantly limit the time those supervisors have to defend themselves against the imposition of those penalties. While well-intentioned and designed to protect VA whistleblowers, we believe the cumulative effect of these provisions, in combination with the 4-day notification requirement, would not only raise a host of constitutional and other legal issues, but would also leave supervisors too fearful about the possible penalties for retaliation to effectively manage their employees. We also believe that imposing onerous new requirements on VA supervisors, alone in the Federal Government, would significantly impede the Secretary's efforts to recruit and retain the talented leaders needed to improve service to Veterans.

From a legal perspective, our analysis suggests that portions of the draft bill present due process problems and conflicts with other laws. VA is unable to estimate the costs for the draft bill at this time.

Mr. Chairman, this concludes my statement. Thank you for the opportunity to appear before you today. We would be pleased to respond to questions you or other members may have.

Chairman ISAKSON. We will begin a round of 5-minute questions from the Members of the Committee, and my first one would be, would you repeat the second-to-the-last sentence of your printed testimony you just said about this whistleblower protection.

Mr. COY. From a legal perspective, our analysis suggests that portions of the draft bill present due process problems and conflicts with other laws.

Chairman ISAKSON. Due process for whom?

Mr. COY. I will let our General Counsel answer that, if I may, sir.

Ms. FLANZ. Thank you very much. Our concern is with the version of the bill that preceded the one that we received this afternoon, and it particularly focused on the 5-day limitation on the reply period for a supervisor who is subject to discipline for retaliation. Our concern based on our reading of the case law is that that could create a problem with the pre-decisional due process, whereby courts expect to see what they call a meaningful opportunity to respond to charges and evidence before a decision is made on discipline.

Having a hard and fast rule that in no case could that individual have more than 5 days, no matter how voluminous the evidence might be or other circumstances making it difficult to respond, we felt some concern that a 5-day limitation could create due process problems. The version of the bill that we reviewed today seems to address that concern.

Chairman ISAKSON. How is that addressed?

Ms. FLANZ. I believe the wording calls for a 14-day reply period and did not have the restrictive language that suggested in no circumstance could that 14 days ever be enlarged to provide additional time for the individual to respond.

Chairman ISAKSON. OK. I wanted to be sure I understood what you meant by damaging due process, because it seemed like to me it was offering due process to somebody who felt like they had an incident they wanted to report. You are saying the due process violation was the short length of time to respond, and the 14 days is preferable to the five.

Ms. FLANZ. Yes, sir.

Chairman ISAKSON. OK. Thank you.

On the Ernst-Hirono-Tillis-Boozman-Rounds legislation regarding telemedicine, I want to make sure I understood what you said, Mr. Coy. You said that you were generally supportive of the legislation, but were concerned about the overly burdensome reporting, is that correct?

Mr. COY. Yes, sir.

Chairman ISAKSON. Would you be more specific about overly burdensome reporting.

Mr. COY. I will ask my colleague, Dr. McCarthy, to address that particular issue, if I may, sir.

Dr. MCCARTHY. Thank you, sir. Yes. I would have to say, first of all, we wanted to thank very much Senator Ernst for sponsoring this legislation and for the support that is behind it, as well.

What we are concerned about are some of the reporting requirements which we do not report at this time. We do report patient satisfaction data. We do report the number of veterans. We do not

have wait times in terms of telehealth. Typically, a patient gets scheduled immediately. I do not want to say never, but typically, they are scheduled immediately in the system for a telehealth appointment.

What we do not have are things like the satisfaction data of the telehealth provider. There are a few things like that that are added to the legislation that were not part of the version that is in the House. Other than that, we are extremely grateful for this bill to be before the Committee.

Could I clarify one thing?

Chairman ISAKSON. Sure.

Dr. MCCARTHY. What is different about this bill for us is that it would allow a VA provider in any site, geographically separated from a patient in any site, to be able to provide that kind of care, and it is important for us because there are VA employees that would have the ability sometimes to cross the State lines. It is the VA contractors that do not. This bill spells out particularly the VA employees and the VA contractors and that is a very important provision for us.

Chairman ISAKSON. I would assume, Mr. Coy and Dr. McCarthy, you would be willing to work with Senator Hirono and Senator Ernst to try and deal with that issue, to make it a better piece of legislation?

Dr. MCCARTHY. Absolutely.

Mr. COY. Absolutely. We would be happy to.

Dr. MCCARTHY. We would be very happy to.

Chairman ISAKSON. For Senator Hirono's benefit and also Senator Ernst's, who has left now, we have had an inquiry from the AMA with regard to scope of practice issues with across State line medical services being offered by telemedicine, and we want to work with them to try and find out what concerns might exist there so we can work out any difficulty. For people like Jon Tester in Montana and for others who have sparse populations and large geographic territories, legislation like this is a godsend, I would suspect. Because of that, I think it answers a significant—it helps us to solve a significant problem. So, if you would agree to work on that, that would be appreciated, I am sure, by all.

Mr. COY. Happy to do that, Senator.

Chairman ISAKSON. Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman.

Mr. Coy, would you agree that whistleblowers have been victims of retaliation in the VA?

Mr. COY. I do not have direct evidence of that, sir, but Ms. Flanz may.

Ms. FLANZ. Thank you for the question. We have been challenged through the course of the last year and change to address the volume of whistleblowing that is occurring in the VA. I think that those who study the science of quality improvement in health care will tell us that it is actually a good thing when people raise their hands and their voices to point out deficiencies in any policy or practice, and across a system as large as ours, we have been challenged to ensure that all supervisors understand the whistleblower protection rules and do the right thing.

We have been gratified by the help that has been offered by the Members of this Committee, members of your staff, and our other partners and stakeholders, to include the Office of Special Counsel, in providing additional training——

Senator BLUMENTHAL. I do not mean to interrupt you. I apologize. But, is that a yes?

Ms. FLANZ. Yes, sir.

Senator BLUMENTHAL. OK. You understand the reason for this bill, and I assume that you have no due process objections to it at this point.

Ms. FLANZ. The concern that we had about the short reply period for supervisors is definitely addressed by the longer reply period.

Senator BLUMENTHAL. Your colleague, Mr. Coy, has called this bill unworkable. Do you agree?

Ms. FLANZ. Let me explain exactly what our most pressing concern is about the bill, and that is that although certainly the vast majority of whistleblowers, I believe, are courageous and are, as you stated, putting their own interests perhaps behind that of the public and the veterans, we do have a phenomenon—I do not think it is unique to the VA, I think it happens across the government and in private sector, as well—where an employee who finds himself or herself in trouble, either due to conduct or performance issues and looks for an opportunity for protection.

Our concern with the particularly severe penalties for supervisors in this bill is that our supervisors, who already perhaps feel challenged to deal with problem employees, may be even less inclined to do the right things around dealing with problem employees if they are concerned that an employee will invoke the protections of this bill, become a whistleblower, and then be able to create difficulty for that supervisor in terms of his or her continued employment and even the possibility of having to repay a past bonus. Our concern is with the extent to which it is calibrated.

Senator BLUMENTHAL. Presumably, that would be a very small minority of the potential whistleblowers, correct?

Ms. FLANZ. I hope so, but in terms of——

Senator BLUMENTHAL. By the way, a whistleblower may on occasion be involved in the problem that is the subject of the complaint. I know as a prosecutor——

Ms. FLANZ. Sure.

Senator BLUMENTHAL [continuing]. Our witnesses, as we told juries, were not always choirboys——

Ms. FLANZ. Absolutely true.

Senator BLUMENTHAL [continuing]. But the challenge here is to get at the root of the problem to protect the public interest, and the whistleblower is a means to protect veterans and the public interest.

I would suggest to you that before you call this bill unworkable, you come back to us with specific changes. I am not guaranteeing that we will adopt them, but the spirit of the bill is, I would suggest respectfully, the spirit of the overwhelming number of hard working, honest VA employees who are really diligently working every day to help veterans, and whistleblowers are a means to root out wrongdoing among the very small faction—we are not looking at the majority—of employees that may be committing wrongdoing.

I believe this bill is really important in light of the recent record, and if you have suggestions, we would be happy to consider them.

Ms. FLANZ. We share that interest, sir. Thank you.

Senator BLUMENTHAL. Thank you, Mr. Chairman. My time has expired and I thank you.

Chairman ISAKSON. Senator Rounds.

HON. MIKE ROUNDS, U.S. SENATOR FROM SOUTH DAKOTA

Senator ROUNDS. Thank you, Mr. Chairman.

I am very happy to be a supporter of S. 2170, the Veterans eHealth and Telemedicine Support Act. I really do believe that veterans should have very easy access to telemedicine services no matter where they live. In South Dakota, we appreciate what that means in terms of being able to access professionals from across State lines throughout the area.

Mr. Coy, I appreciate your testimony regarding the bill. Would you be willing to work with us to try to work through the issues and concerns that you have expressed concerning the reporting requirements, and if we are able to come to an agreement on that, would you be willing to support the bill if we get those reporting requirements amended?

Mr. COY. Senator, we are always happy to work with the Committee and we would be happy to see where we can make adjustments in the bill and make those recommendations to you and the Committee.

Senator ROUNDS. If we are able to work through those specific issues, you would find the remaining portion of the bill as being helpful in providing or responding for services in those rural areas?

Mr. COY. I will let my colleague, Dr. McCarthy, go out on that note.

Dr. MCCARTHY. Thank you. Sir, we would be thrilled to have this bill. You just need to know there are multiple versions of this bill we have submitted and there is a version in the House, as well. This bill is something we are very grateful that it is there. It is just the details that were added, the differences between the House and the Senate versions, that are really just the only problem for us right now. It is minor. It truly is minor. We are thrilled with the bill.

Senator ROUNDS. I look forward to working with you along with the other sponsors on the bill——

Mr. COY. Absolutely.

Senator ROUNDS [continuing]. Seeing that it be put into law.

I do have a question based upon your testimony, Mr. Coy, with regard to the costs involved. I recognize that the prime sponsor and Senator Tester is here and will be wishing to address it, as well. I am curious. You have identified the cost as being one of the concerns with regard to the Grown Our Own Directive: Physician Assistant Employment and Education Act of 2015. It seems to me that there were two identified items.

First of all, you indicated in your written testimony that the cost was about $2.7 to $2.8 million for the pilot project in terms of administrative costs, I believe. Then we are looking at somewhere around $50-some million in terms of costs over a 5-year period of time for the actual cost of the program, $56 million over a 5-year

period of time to add 450 awards for new PAs coming into the system.

Mr. COY. Right.

Senator ROUNDS. Do we have a shortage of PAs right now within the system itself?

Mr. COY. I do not have that specific information, but I am sure Dr. McCarthy does.

Dr. MCCARTHY. Thank you, sir. We have identified the five professions that have the highest need in VA and PAs are within the top five—physicians, nurses, physician assistants, so forth. We do have a need to hire more PAs. Our PA contingent is a group that is one-third eligible for retirement at this point, and within—by 2021, about 47 percent of our PA workforce will be eligible to retire.

We see PAs as being able to help us with the access struggles that we face. I will give you an example for how Houston——

Senator ROUNDS. If I could, and I——

Dr. MCCARTHY. I am sorry.

Senator ROUNDS. My time is limited, but I think what you are saying is, yes, you do have a need for more PAs——

Dr. MCCARTHY. Absolutely.

Senator ROUNDS [continuing]. And you are going to see a larger need coming up.

Dr. MCCARTHY. Yes.

Senator ROUNDS. I do not believe that I am a sponsor but it looks to me like a good piece of legislation. What you are saying is that you have the need. You are going to end up paying PAs to come to work for you. Was the fact that you are going to be paying PAs when they come to work for you, has that cost been taken into account when you say that the total cost of this program over a 5-year period of time is $56 million?

Dr. MCCARTHY. Sir, there are three parts to this bill. The first part is the scholarship program, the second part is the administration of the PA program in general, and the third part is the adjustment of salaries of PAs to bring them up to the right speed. The cost for the scholarships is separate. They are kind of spelled out differently.

What we are saying is that this is of significant cost. The scholarships themselves are not things that would normally be in our budget. But, we definitely do need PAs. At this point, our salary scale for the starting PAs is lower and we end up hiring more PAs at the higher end. The third part of the bill adjusts the salary and we would potentially be more competitive to hire——

Senator ROUNDS. My time has expired. Mr. Chairman, we are looking here basically at less than $60 million, and I know that in D.C., we should be talking about millions being a lot of money, but $56 to $60 million total over a 5-year period of time for 450 new applicants coming in as PAs, you take that over a 5-year period of time, you are talking perhaps $12 million a year. You are all aware, you paid out bonuses to individuals over $140 million in 1 year.

It seems to me that if we have a real serious issue here with regard to PAs and providing services at the very basic levels, it seems that, if nothing else, we should be able to find a way to work

through the issue involved in this if that is really where our focus is at, is providing those basic services, which clearly Dr. McCarthy indicates is of real concern to the Department.

Thank you, and Mr. Chairman, if they care to respond, my time is now your time, sir, so——

Chairman ISAKSON. Well, I think Dr. McCarthy wants to say something. I will give her time to respond.

Dr. MCCARTHY. Right. I basically wanted to just say, sir, we definitely want to support this bill. In particular, the part of the bill in terms of the scholarships is really important to us. I think it is really important to veterans. It is important to people that are leaving the military that have some medical skills. They are going to have to have a certain amount of training before they can even apply to go to PA school. We would strongly support the ability of them to participate in a program like this. I think the source of the funding is the issue.

Senator ROUNDS. Thank you. Thank you, Mr. Chairman.

Chairman ISAKSON. Thank you, Senator Rounds.

Senator Hirono.

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

Senator HIRONO. Thank you, Mr. Chairman.

Mr. Coy, how does S. 2170 differ from the telehealth services already available in the VA?

Mr. COY. Dr. McCarthy, can you handle that?

Senator HIRONO. Briefly.

Dr. MCCARTHY. Yes. I am a telehealth provider in the VA from central office. I provide telehealth care to a small number of patients. I can tell you firsthand, there are some wonderful data on the kinds of telehealth that we do right now.

What, for me, the big difference in this bill is, this gives VA what DOD has in terms of authority to cross State lines with the telehealth care. At this point, I do want to clarify a little bit about what Senator Ernst said. Our Office of General Counsel has reviewed and re-reviewed and our providers are able to provide care across State lines if they are VA employees. The issue is contractors, and contractors are important as part of Choice. They are important when we have contractors that are able to provide telemedicine care. It is the contractors—for instance, if we wanted to have someone contracting to provide services nationally, they might have to be licensed in every single State. What this bill allows is the same privilege that a VA provider has, to be able to provide care but to have one license.

Senator HIRONO. Right now, the telehealth services that are provided generally, it is within the State, within the State that the provider is licensed, is that kind of how it works?

Dr. MCCARTHY. That is how we started, but that is not how it has continued. We have teleradiology happening in Hawaii, Palo Alto, and Durham. We have a telemental health center up in Connecticut. We have various sites. We have telegenomics going on in Salt Lake City. In addition, we have, for instance, when El Paso had a need for a psychiatrist, El Paso has providers who are based in another State that provide that mental health care because they cannot recruit in El Paso.

Senator HIRONO. The providers in another State have to do it out of a VA facility, was that one of the——

Dr. MCCARTHY. Initially, that was the thinking, that they had to be based at a VA facility, either the patient or the provider was the next round. Then General Counsel reviewed, and it is looking like the physician or the provider, as long as they are licensed and they are a full-time—or, they are a VA provider, VA employee, that that has changed at this point.

Senator HIRONO. OK. For the employees, they can do that, but this bill really allows for contractors.

Dr. MCCARTHY. Yes.

Senator HIRONO. Is the VA able to implement the provisions of this bill upon enactment? Do you already have whatever is set up to implement this expansion of services?

Dr. MCCARTHY. Yes, ma'am. I could give you the statistics. We had 677,000 veterans——

Senator HIRONO. Yes.

Dr. MCCARTHY [continuing]. Receive telehealth care last year. We are very excited about our telehealth program.

Senator HIRONO. A veteran in Hawaii, for example, because this really helps the veterans in rural areas——

Dr. MCCARTHY. Yes.

Senator HIRONO [continuing]. Where provider availability is an issue, distance would be an issue. A veteran in Hawaii wants to have access to a provider in Illinois or Virginia, and it would be made very clear how that veteran would be able to access that provider's services.

Dr. MCCARTHY. Yes. Yes——

Senator HIRONO. You would be able to set it up very quickly.

Dr. MCCARTHY. This would help us, also. I know there is testimony submitted by State licensing boards, but this would clarify for us. It would be helpful for VA employees and for contractors to have this just very blatant in a bill like this.

Senator HIRONO. Mr. Chairman, I understand that the AMA has some concerns about this bill, the scope of practice, et cetera, and I am hopeful that we can work out those kinds of differences, because I am very familiar with scope of practice issues, having dealt with so many of those when I used to chair the appropriate committee in the State legislature, where, as you know, most licensing laws are passed. I am hopeful that we will be able to work out whatever issues there are with the AMA, and I am pretty sure that we can work out whatever reporting requirements that you all raise as a concern.

Dr. MCCARTHY. Thank you.

Chairman ISAKSON. That is why I mentioned that I think they can work them out, and I wanted to make it part of the record today so we can work toward solving whatever problem AMA might have.

Senator HIRONO. Yes. Having worked on scope of practice issues, we may not be able to resolve all of the concerns that AMA has, but——

Chairman ISAKSON. Maybe not.

Senator HIRONO [continuing]. I would say that we should move forward with this bill.

Chairman ISAKSON. Well, I absolutely agree. Absolutely agree.
Senator HIRONO. Thank you.
Chairman ISAKSON. Thank you, Senator Hirono.
Senator Brown.

HON. SHERROD BROWN, U.S. SENATOR FROM OHIO

Senator BROWN. Thank you, Mr. Chairman.

I want to ask a couple of questions, Mr. Coy, about Vocational Rehabilitation and Employment services, VR&E. We get reports that there has been an inconsistency of application, if you will, of counselors. Some counselors have even—the words that were used that we have heard from some students—have ostracized and stigmatized veterans who have used this benefit for education. I guess my questions are, I want you to make sense of that, first of all.

My question is this. First of all, I think there is some inconsistency in how counselors are providing services under VR&E. Second, I think that, typically, we are hearing, particularly from Iraq and Afghanistan veterans, that their members are not even aware of this benefit, and it really goes back long before this Secretary, even long before General Shinseki, that there was not very good communication between DOD and VA. I think you can almost make the case that the DOD did not really care that much about what happened to these men and women, if I can say that, when they returned Stateside. They did not really plug them in well to health care and education benefits and reintegration into the community. In States like mine, where you have county veteran service organizations, that they did not even plug them into those organizations and they did not even know which soldiers had left the Army or Marines had left and were left in Coshocton or Cleveland, OH.

If you would kind of clear up for me any inconsistencies you have seen that have been reported to you in the way that your counselors are carrying out their job, and second, maybe more importantly, how does the VA work more closely with DOD so that soon-to-become veterans, so that the men and women who are serving, as they leave the military, understand better that VR&E is available and how we increase participation.

Mr. COY. Absolutely. I would love to clarify that, Senator. On the first, the inconsistencies, we have counselors at 56 regional offices and a whole bunch of outreach offices, as well, in round numbers, about a thousand counselors. As you know, VRE is a case management system. It is a one-on-one with the veteran and the counselor. We work and deal with inconsistencies, one counselor believing they have a requirement to do one thing and across the country it very well could be something different. It is an interpretation.

Quite frankly, when you look at the VRE, it is both an eligibility and an entitlement requirement. you are eligible if, for example, you have a 10-percent service-connected disability but you have a serious employment handicap, or a 20 percent service-connected disability and just an employment handicap. Making that determination is sometimes an individual case and we are working very hard to try and make sure that we lessen those inconsistencies. The employment plan from one veteran on one side of the country to another, they also vary, as well.

One of the other things, to answer your question about DOD and how do we reach these veterans, as I am sure you know, we have got an enhanced TAP program, Transition Assistance Program, of which is now mandatory for every servicemember to go to as they get out, and we explain all of their VA benefits in that Transition Assistance Program. We are also putting those kinds of things online, as well.

We also have VRE counselors, about 170-plus VRE counselors at 71 different military installations across the country, so they can, in fact, provide those initial services as they go out. We are doing that through TAP IDES. We also have 94 campuses that participate in our VRE program—our vocational rehabilitation Vets Success on Campus program. We are trying to get out into the community, as well, particularly where those younger veterans are in their schools.

Senator BROWN. We have asked from MILCON what the right ratio—do we have enough counselors, considering the number of people coming home? Give us a brief assessment of sort of where we are in that way.

Mr. COY. We have seen our caseload per counselor grow from about 129, average, to now about 139, about an 8-percent growth in average caseload. We have seen a 17 percent increase in our actual clients, the people who are applying and have been admitted into the program.

What we are seeing from that is the good news is the backlog is going down. As the backlog goes down, and the backlog is for disability compensation, as that backlog goes down, our volume of new applicants or potential new applicants grows.

Senator BROWN. What is a typical interface between a counselor and a veteran? How long? How many times, typically, do they counsel any single veteran? What are your averages or a scenario you could paint quickly?

Mr. COY. I do not know that I have an average that I am prepared to give you right now, but the initial consultation where we determine that you are not only eligible for the program but that you want to partake in the program, that is a face-to-face. Then after that, depending upon your program—so, for example, you could be entered into a program where you are going to an institution of higher learning and so you are sort of checking in with your counselor on a frequent basis, but not a lot. You are checking——

Senator BROWN. Not necessarily face-to-face.

Mr. COY. Not always. One of the good things is we are also developing a telecounseling program, which we think is going to be a real game changer in terms of making people come in and go to the parking lot and park their car and sit in and come in and sit down and go to those sessions. We are working through those things, as well, Senator.

Senator BROWN. That is a great service, Mr. Coy. Thank you.

Chairman ISAKSON. Thank you, Senator Brown.

Before I go to Senator Boozman, I am going to excuse myself for about 30 minutes to make a report at a conference committee and I am going to turn the gavel over to Senator Moran until I come back, and I will be back in time.

With that said, Senator Boozman.

Senator MORAN [presiding]. Senator Boozman.

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

Senator BOOZMAN. Thank you, Mr. Chairman.

Mr. Coy, in regard to S. 2170 that spans telemedicine, do you have any recommendations for the Committee on other ways we can measure the impact of implementing this type of legislation other than wait times?

Mr. COY. I will certainly ask Dr. McCarthy to see if she can provide that response.

Dr. MCCARTHY. Thank you, sir. When we look at the effectiveness of telemedicine, we look at not just access, but we also look, for instance, at the impact of other kinds of telemedicine. We provide home-based telehealth services, how it decreases the bed days of care and the length of stay if the patients need to be readmitted, and it actually decreases readmission rates. It does the same when we provide care in the home to veterans who have been recently discharged from facilities with psychiatric conditions. We have a decreased readmission rate. We have decreased lengths of stay when they return. Those are very veteran-centric ways that we can measure that kind of impact.

Senator BOOZMAN. Very good.

Mr. Coy, you mentioned that the Physician Assistant Employment and Education Act would require VA to partner with institutions accredited by the Accreditation Review Commission. Can you tell us how many institutions currently meet this requirement? Has the VA ever conducted any outreach to these institutions or shared the opportunity to provide health care services to our veterans? If so, were those efforts well received?

Mr. COY. I would again ask Dr. McCarthy if she would provide a good response for that.

Dr. MCCARTHY. I am speaking from memory. I believe there are about 191 schools that train physician assistants. We have affiliation agreements with many of them. We train students right now. We actually pay stipends for some of those students and we have some partnerships with them for residency programs for physicians. We have reached out to them.

Senator BOOZMAN. Dr. McCarthy, then, in regards to S. 2134, the Grow Our Own Directive: Physician Assistant Employment and Education Act of 2015, you all state that the VA supports the concept but is concerned about the cost.

Dr. MCCARTHY. Yes, sir.

Senator BOOZMAN. The estimated cost over 10 years, $374 million. In this bill, VA is essentially providing scholarships to former servicemembers who served as medics, and again, were corpsmen and would like to become physician assistants. Why do they not just use the G.I. Bill in furtherance of that objective? I mean, why should the VA take money away from other priorities to provide scholarships to these individuals?

Dr. MCCARTHY. Just so you are aware, many of the corpsmen are not folks who have Bachelor's degrees, and a Bachelor degree is a prerequisite for a physician assistant program. There are courses similar to pre-med type courses—chemistry, biochemistry, and anatomy and physiology—that are required for PA school. Typi-

cally, the corpsmen may need to use their G.I. Bill benefits in order to complete the prerequisites. Some do not have an Associate's degree. Typically, the Air Force corps medics do. What we are talking about is getting folks to their Bachelor's degree and this would be over and above.

Senator BOOZMAN. You are saying they would use up their G.I. Bill in order to do that——

Dr. MCCARTHY. Some may. I am not the expert on the G.I. Bill benefits, but that is the concern, sir.

Senator BOOZMAN. Right. Certainly, that should be factored in, that there is a possibility of the G.I. Bill being used toward that.

Dr. MCCARTHY. Right, but——

Senator BOOZMAN. So, that would reduce the cost.

Dr. MCCARTHY [continuing]. But it would be earlier. Yes.

Senator BOOZMAN. OK. Very good. That is really all I have.

Thank you, Mr. Chairman.

Senator MORAN. The Senator from Montana, Senator Tester.

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

Senator TESTER. Thank you, Mr. Chairman, and thank you all for being here.

I am going to focus for right now on S. 2134, and using some of your own testimony, which actually was pretty compelling, 47 percent of your PAs currently employed will be eligible for retirement by 2021. I was actually going to get into the methodology of how you came up with the figures, but I will not. I guess I will make it much more simple than that. I think we both agree you need more medical professionals and PAs are a big part of that. They are in, as you said, your top five needs. Have you got a cheaper way of doing it?

Dr. MCCARTHY. I do not—I would not know, sir, what would be a cheaper way to do it. I have to tell you that we are very enthusiastic about this bill. We think it is a really wonderful idea for the veterans who would be receiving care. For the veterans who are leaving the military, it is a wonderful opportunity to transition and build their skills and have them serve veterans, and this——

Senator TESTER. OK. I agree with that and I appreciate the fact that you are concerned about the costs. I think that is a good thing. I also think that we need to make sure that if we do not do this, we need to make sure the costs are accurate, first of all, going in, so we go in with our eyes wide open. If we say no to this, is it going to be replaced with something that is more costly, and that is really the point here, other than all the good points you just brought up about it, about how it can impact our veterans in a very positive way.

I am not going to get into the figures, because, for instance, in your testimony, it talks about—let me get the page up here—it talks about S. 2134 would require the Secretary to select no less than 250 eligible individuals. Can I ask, how did we come up with 450? Where did that come from?

Dr. MCCARTHY. OK. I am sorry. This was provided by workforce management, physician assistant services, and so forth. What happens is the first year you would have—PA programs average—are

between 24 and 36 months, but the average is 27 months. There was a calculation done that was based on——

Senator TESTER. Twenty-seven months.

Dr. MCCARTHY. Yes. What you would do is, if you have 50 people that start 1 year, the next year they would typically be second years and you would start 50 new.

Senator TESTER. Right.

Dr. MCCARTHY. So, after 5 years, you would have 450.

Senator TESTER. The seven allows for the additional——

Dr. MCCARTHY. Yes.

Senator TESTER. OK. That is fine.

Let me talk about telemedicine. The bottom line here, I think, as we move forward on this Committee, and I know the Chairman is committed to this stuff, too, we just need to figure out how we give you guys the resources to be able to provide the benefits that veterans have earned. I do not need to give you that speech. You guys know it and you should know it every day. In the meantime, we should be doing it in the most cost effective way possible, and if we can help veterans out in the process, it is a win-win deal. OK.

I want to talk about telemedicine for a second because the previous Chairman was absolutely correct. Senator Isakson was absolutely correct when he said telemedicine has some amazing impacts on rural areas. Can you tell me if the Department is doing anything to expand telemedicine capabilities in the homes of patients?

Dr. MCCARTHY. Absolutely, and we are. Let me start with telemental health, which is one I know more. Last year, we had 122,000 veterans that were treated with telemental health in the home, and this is a 13 percent increase over the prior year. If we looked at visits——

Senator TESTER. You said 13 percent or 30 percent?

Dr. MCCARTHY. Thirteen.

Senator TESTER. OK.

Dr. MCCARTHY. Yes.

Senator TESTER. That is still good.

Dr. MCCARTHY. It is. We are looking at the technologies, as well. I am not the technology expert as far as this goes, but it used to be that there were just a limited number of ways of doing it. People talk about Jabber and other kinds. I can get more information about that, if you like. What we are trying to do is use whatever technologies are available. We have kind of worked with our information security people to free up some of those possibilities.

Senator TESTER. OK. That is good.

I am going to close very, very quickly. I have been out front in getting the VA the dollars they need to be effective because you are getting slammed by Vietnam veterans getting older and a war that has been going on for 15 years in the Middle East. All that said, this budget is very—what do I want to say, the right word—it is very kind to the VA. We went over the President's budget by a solid sum of money. I advocated that to hold you and the people that you work with accountable for the health care that you give your veterans, and I will be doing that, by the way.

Dr. MCCARTHY. Mm-hmm.

Senator BOOZMAN. The point is what Senator Rounds talked about. The point I want to get to is his point, and that is that

sometimes we spend some money in some pretty goofy areas, OK, that really we should be paying attention to. Sometimes it is more than what we really—where we really need to be spending the money to get the health care professionals on the ground, whether that is MDs, nurses, PAs, nurse practitioners, all that stuff.

What I would say is, as we move forward, if these figures are correct and if it actually costs that much, what I would say is we need to look at other line items within your budget and figure out where we can get that money.

Thank you, Mr. Chairman.

Senator MORAN. Thank you, Senator.

The Senator from North Carolina, Senator Tillis.

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

Senator TILLIS. Thank you, Mr. Chair.

I want to start out by thanking Ranking Member Blumenthal and Senator Brown for some opportunities to work with you all on various policies here and appreciate you all's leadership in bringing this freshman along.

I know that Senator Brown has some questions about S. 2106, so I am going to jump down to S. 2170 and, Mr. Coy, your testimony. You had indicated that you support Section 2(a). You do not yet know what the costs are going to be. Do you have any rough order of magnitude costs for what it is going to take to implement 2(a)?

Mr. COY. I believe Dr. McCarthy probably has those specific numbers.

Dr. MCCARTHY. I am sorry, 2170?

Senator TILLIS. S. 2170.

Dr. MCCARTHY. Is that the telehealth or the PA bill? I am sorry. S. 2170 is the telehealth bill, sir. Actually, that is cost neutral.

Senator TILLIS. It is cost neutral?

Dr. MCCARTHY. Mm-hmm.

Senator TILLIS. OK. So there is no surprise in terms of the implementation of Section 2(a).

Dr. MCCARTHY. 2(a)—that does not include the reporting requirement, correct?

Senator TILLIS. I am about to get to that one——

Dr. MCCARTHY. OK.

Senator TILLIS [continuing]. Because I know you partially support 2(c), the $17,000 implementation.

Dr. MCCARTHY. Right.

Senator TILLIS. I do not think you have estimated the other one. I wanted to use this as an opportunity to try and figure out how we begin to weave what I think are good proposals, the proposals that we are discussing today, into an overall transformation strategy to know that it may not be—I think if you are talking about the analytics and reporting, you are not really opposed to the value of the data that would be produced. You are concerned with the cost of it, and the systematic capturing and reporting without a systematic approach could be very costly and very distracted.

I would be interested to know what it would cost only because another bill that Senator Brown and I cosponsored really highlighted the sort of issue that we have with the cost of implementing good ideas. We had this one bill where, over 10 years, the total cost

of the benefit by conveying benefits to surviving family members of a combat veteran—it was a miss in a prior bill—was $6.2 million over 10 years. But the cost to implement the administration to provide those benefits, the system changes, et cetera, was $5.1 million over the first year.

I think what we need to do when your concern has less to do with the policy and more to do with the cost and the timing of it, we need to start doing a better job of putting in the context of other changes that may over time make those costs less because they are a part of a rationalized systems and process infrastructure where these good ideas do not have huge price tags which may come at the expense of other good ideas that have come before them and been appropriated.

I think back to the Chair. I was going to see if we could actually have a Committee hearing on the transformation and then maybe use as a few case examples some of these good ideas that just right now, with the hairball of the systems and processes that we are dealing with, make it very, very difficult or not cost effective to implement. I think we need to start describing that you are not opposed to the policy. You are concerned with the costs and the distraction based on the current environment that you have to operate within, the 30-year-old scheduling systems and information systems that need to be modernized. I would be happy for you all to respond to that if you disagree.

Dr. MCCARTHY. I do not disagree. I do want to tell you one bright light. We do have a new telehealth scheduling system, which is actually an off-the-shelf product, which allows us to schedule the provider, the room, whatever equipment the provider needs, the patient, the room, whatever support staff is needed and the equipment there, with one click, which——

Senator TILLIS. That helps——

Dr. MCCARTHY. Yes.

Senator TILLIS [continuing]. That is because telehealth is relatively new.

Dr. MCCARTHY. Yes. Yes. I just want to say that that is the kind of thing, I hear what you are saying. Our new scheduling package is supposed to marry up with that very well, so we are excited about that. I hear what you are saying.

Senator TILLIS. I will bring this back to the Secretary in the ongoing discussions Senator Tester and I are having with them. It would be really good to take some of these things—there are probably people in the audience that are supportive, too—but explain why, if all of the sudden this becomes the new priority, and if you heed the advice of the Senator to say, find the funding from within current resources, then what do we lose in the process, and to what extent can we accelerate it to get a lot more. I think a lot of that is going to be dependent upon doing a better job with our organizational transformation. Thank you.

Dr. MCCARTHY. Thank you.

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

Senator MORAN. Mr. Coy, thank you very much for being here. I think I have just a few short questions. Perhaps these get directed to Dr. McCarthy, but how does the VA view nurse practi-

tioners, in a sense, versus physician assistants? How are they utilized? Is there one that fills a different role than the other?

Dr. MCCARTHY. In some situations, they fill similar roles, but nurse practitioners, we talk about full practice authority in terms of being able to themselves work in States that allow it without supervising practitioners. Physician assistants typically work with physicians, although they are functioning not in the same physical space necessarily with the physician. They are not exactly interchangeable, but they are both really important to our health care.

Senator MORAN. Are there different scopes of practice State by State regarding the two professions?

Dr. MCCARTHY. So——

Senator MORAN. Let me ask it this way. In all States, does a physician assistant need more direct supervision than a nurse practitioner?

Dr. MCCARTHY. It is hard to say "all." Let me start with nurse practitioners. Some States do allow nurse practitioners full practice authority, no supervising practitioner, and other States require supervision, actually. Yet, physician assistants typically have a collaborating provider and often do not function independently. I cannot say for sure every State.

Senator MORAN. It was an unfair question when I said "all."

Dr. MCCARTHY. OK.

Senator MORAN. Thank you for your answer.

One of the areas that I think we are most insufficient, lacking the greatest number of professionals within the VA, is mental health services, and how does a physician assistant, or does a physician assistant help fill that need?

Dr. MCCARTHY. Absolutely. I can give you a personal experience. I was an inpatient psychiatrist for a long time and I worked very closely with a physician assistant. In an inpatient setting, a patient may have medical needs as well as psychiatric needs and it was very helpful for me to have a physician assistant who could provide medical care for the patient in a way that I might not have had the same ease of doing, if you know what I am saying.

I can tell you, also, that physician assistants do see outpatients. They do run mental health clinics. They, for instance, work in our clozapine clinics for, in particular, our seriously mentally ill individuals who need to be seen quite frequently and have careful monitoring of their blood tests and so forth because of side effects. Some are seeing patients independently in the mental health outpatient setting. Many work on inpatient settings. Some also work in our emergency rooms.

Senator MORAN. In the recruitment effort at the VA, how do you determine whether you focus recruitment of a physician assistant or a physician, how do you prioritize what professional you most pursue?

Dr. MCCARTHY. I think we typically would look at needs and who could best meet that need. In primary care, for instance, we would certainly want the right mix of individuals on teams. We would have physicians who have panel sizes of 1,200 patients, whereas PAs and NPs might have panel sizes of 900 patients.

Senator MORAN. Let me ask the question this way. In the absence of a physician, does it hinder your ability to pursue hiring

a physician assistant? If we have a shortage of physicians within the VA, does that limit the number of PAs that you would be able to utilize in providing services to veterans?

Dr. MCCARTHY. That is not a black-and-white kind of issue, because we can use telemedicine, for instance, for collaborating practitioners for PAs.

Senator MORAN. There is a way to make certain that the supervision required by State law is available, and it in some instances may be by telemedicine?

Dr. MCCARTHY. Correct.

Senator MORAN. OK. Let me ask a question about telemedicine. Does telemedicine save the VA money?

Dr. MCCARTHY. You know, that is an interesting question. If you talk about in terms of being able to provide care that might be more costly in another setting, yes, it saves. If you look at the cost for the veterans to travel where we reimburse travel costs, I think the average figure is about $20 per visit that is saved. If you look at the hospitalizations that are avoided because of the home telehealth, we are talking an average of, adding in all costs, we are talking $2,000 a year. There is a lot of savings that come from telemedicine.

Senator MORAN. You know, editorial comment. It has been surprising to me as I have visited with patients in and outside of the VA who utilize telemedicine how much they appreciate telemedicine. I always assumed that it would be considered kind of the secondary, the last resort, in a sense. Patients in my conversations do not see telemedicine as something less than the service they are entitled to or want. Is that accurate?

Dr. MCCARTHY. Yes. I have been a psychiatrist in VA for over 20 years, and some of the patients I see now, and I see a limited number, granted, from my office, are patients I have seen for 16 or 17 years, many veterans who have PTSD from their experiences in Vietnam. They are so grateful to be able to see someone that they have seen over time without having to tell their story again.

They also feel very much like they have your undivided attention. When you give satisfaction surveys, they talk about the fact that they have you kind of on the screen—it is kind of embarrassing to say that—but they have the full attention of the provider. It is so much like Skype and FaceTime that people do with relatives, you know.

Senator MORAN. I know less about that, but——

[Laughter.]

Dr. MCCARTHY. For mental health, it is a lot like that.

Senator MORAN. But——

Dr. MCCARTHY. Now, the other services, I can speak to the others in terms of there is additional equipment. The patients love the fact that they do not have to travel. Typically, we started by doing it more in the Community-Based Outpatient Clinics (CBOCs) and having the kind of the specialists in the main clinic. There is a decreased "no show" rate, for instance, and that saves us money. The patient appreciates not having to travel. They still get the kind of interpersonal contact that they feel they need. It saves a lot of money and also the satisfaction is quite high.

Senator MORAN. Thank you. My experience has been that people develop a very personal relationship with the person that they see on a screen, sometimes more so than the physician who may change on them when they show up at the VA in person.

Senator Blumenthal asked for the opportunity to ask another couple of questions, and I recognize the Senator.

Senator BLUMENTHAL. Thank you very much.

Let me ask whoever wants to respond, on the Telemedicine Support Act, I gather you are satisfied that you can screen and supervise the contractors who may be involved in this program?

Dr. MCCARTHY. Yes, sir. We would—when contractors are employed by VA, we would credential them and have the same kind of oversight as——

Senator BLUMENTHAL. Whether or not they are in Federal facilities?

Dr. MCCARTHY. Right.

Senator BLUMENTHAL. You are satisfied, as well, that you can protect their privacy?

Dr. MCCARTHY. Umm——

Senator BLUMENTHAL. As you do now with all your patients.

Dr. MCCARTHY. Yes. Let me back up to what you said about whether or not they are in Federal facilities. For instance, so, I am in a VA hospital and I have a contract with a physician to provide services through Choice. The supervision is not necessarily at the same level as if I were to have a contract for someone to come into my facility and provide that care. There is a different kind of supervision. We do engage in a sort of credentialing——

Senator BLUMENTHAL. You can oversee and supervise their credentials and the quality of care? This is not meant to be a trick question.

Dr. MCCARTHY. Right. We are in the middle of working out the Choice requirements as a result of the second version of Choice that passed, and we are developing standards for qualified providers. We are looking at how we will supervise. We have not got all the details worked out for the Choice providers who might be providing things that the older form of Choice is not able to provide, but we are getting there.

Senator BLUMENTHAL. Thank you. I had asked the question as to privacy and I am assuming that you can safeguard privacy, as well?

Dr. MCCARTHY. Yes. Yes.

Senator BLUMENTHAL. Thank you. With that understanding, I would like to be added as a cosponsor of the bill.

I have just a couple of other questions regarding the whistleblower bill. I guess I will ask you, Ms. Flanz. I noticed that Mr. Coy's statement says that you believe that you have already, in effect, dealt with this problem sufficiently.

Ms. FLANZ. It has been an ongoing challenge and it continues to be a challenge. We are dealing with it, as I said before, with considerable assistance from the Office of Special Counsel. As I said, the number of whistleblowers continues to be quite high. I am not going to sit here and tell you we have got it all under control, but we have made it a priority.

Senator BLUMENTHAL. How many supervisors have been disciplined or demoted because of retaliation or reprisal against whistleblowers?

Ms. FLANZ. We are working to collect that number systemwide. We do not have a centralized H.R. system that collects exactly that data, but we do have a couple of oversight requests for exactly that data. We are working to collect it now.

Senator BLUMENTHAL. Would you provide it to this Committee, please.

Ms. FLANZ. Yes, sir.

Senator BLUMENTHAL. Could you provide the specific cases of discipline or demotion or discharge?

Ms. FLANZ. I believe that is precisely what we have been asked to do, to collect, and absolutely.

Senator BLUMENTHAL. I am asking not just for the numbers, but for the specific cases.

Ms. FLANZ. I understand.

Senator BLUMENTHAL. OK. Thank you.

Finally, let me just say, I am very hopeful that the VA will support this bill. I think the failure to do so will send a message unnecessarily and unfortunately about its commitment to protect whistleblowers. It has been carefully protected to preserve due process rights, the rights of supervisors as well as the rights of employees who may be coming forward with information. I understand your concern about employees potentially exploiting this measure, but I think, as with any whistleblower protection and with any law, the motives and the facts can be gleaned through effective investigation. I am very hopeful that you will take that message back to the Secretary.

Ms. FLANZ. I certainly will.

Senator BLUMENTHAL. Thank you.

[Responses were not received within the Committee's timeframe for publication.]

Senator BLUMENTHAL. Thanks, Mr. Chairman.

Senator MORAN. Thank you, Senator Blumenthal.

I understand Senator Tillis has no additional questions. I have just one other comment and question.

Dr. McCarthy, you were very strong in your praise for S. 2134, which is the physician assistant issue, so thank you for that statement. I may quote you from time to time.

Second, it occurred to me as you said it about the use of telemedicine to CBOCs, the ability to recruit a physician assistant is not limited by the lack of a physician because of the use of telemedicine. Less than half of our CBOCs in Kansas have a full-time physician. Those positions are filled, at least the needs as best can be met for our veterans, by a physician assistant. It occurs to me as the VA further develops its Choice Act, what I am hoping you will agree with me is that that is all the more reason we are going to need more physician assistants within the VA. Can you help me by repeating something close to that? [Laughter.]

Dr. MCCARTHY. I guess——

Senator MORAN. Do you agree or disagree?

Dr. MCCARTHY. I have to say, as we continue to implement the Choice Act, there are opportunities especially for coordination of

care in terms of what is provided in the community, what is provided in the VA, ensuring that people get the right services outside, and those kinds of coordinations, there are various levels of people in VA who can do that. I could clearly see physician assistants having a role in the management of patients who have complicated conditions and may need to go to multiple sites or something like that. So, yes. That is a long answer. I am sorry.

Senator MORAN. No, it is a fine answer.

Dr. MCCARTHY. OK.

Senator MORAN. Thank you very much. I thank this panel for appearing this afternoon and we appreciate your testimony.

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. RICHARD BLUMENTHAL TO U.S. DEPARTMENT OF VETERANS AFFAIRS

Question 1. VA officials testified that they generally support S. 2134, the "Grow Our Own Directive: Physician Assistant Employment and Education Act of 2015 legislation which seeks to build on the success of the Intermediate Care Technician (ICT) Pilot Program as a means to recruit former combat veterans who served as medics and corpsmen to work at VA as Physician Assistants (PAs). This effort is laudable. Not only should we be looking for creative ways to ensure our returning Servicemembers have access to jobs that match their unique skill sets, it looks to fill a noticeable gap in the Veteran Health Administration's capabilities. In the IG's recent assessment of the largest staffing shortages at VHA, PAs were tied for 4th place and had one of the highest rates of regrettable losses in FY 2014 (52.2%).

a. To date, what strategies has VA used to enhance recruitment of PAs? What more could VA do?

b. Without legislation like this, how does VA intend to address the issue of regrettable losses within the PA profession?

Response. The Veterans Health Administration (VHA) continues to implement aggressive, multi-faceted, national recruitment and marketing campaigns to attract qualified candidates. VHA is targeting recruitment incentives toward critical occupations to compete with other Government and private sector organizations for top talent. Physician's assistants were one of the top five staffing shortage occupations as identified by the Office of the Inspector General (OIG). In fiscal year (FY) 2015, VHA increased net onboard staff by 4.7 percent overall and 6.4 percent for physician's assistants.

To address the issues with shortages, VHA has targeted the Education Debt Reduction Program (EDRP) and development programs such as scholarships. VHA believes that the debt reduction program is among VA's strongest tools available for recruitment and retention of health care professionals, which is central to improving health care access for Veterans. The passage of Public Law 113–146, The Veterans Access, Choice, and Accountability Act of 2014, increased the maximum EDRP loan amount from $60,000 to $120,000, over a 5-year period. In the FY 2015 award cycle, 82 percent of new EDRP awards recipients were individuals in the top five shortage occupations.

VHA utilizes the electronic VA Exit Survey per VA Directive 500, which states that the purpose of the exit survey is to provide voluntarily-separating employees the opportunity to communicate their reasons for leaving. The information provided is shared with VA supervisors, managers, leadership, and human resources professionals to assist them in identifying methods to improve employee retention and morale at the local and national levels. Responses to the survey indicate that advancement for a unique opportunity elsewhere, normal retirement, relocation with a spouse, and family matters, such as marriage and pregnancy, are the most common reasons for leaving VHA. Physician's assistants had a 34 percent response rate to the survey.

The Under Secretary for Health (USH) has outlined five strategic priorities for VHA, one of which is Employee Engagement. VHA is working to create a work environment where employees are valued, supported, and encouraged to do their best for Veterans. This includes making VA a place where all employees and providers feel supported and able to serve our Veterans. This priority is in alignment with the Secretary's *MyVA* strategic initiative to improve the Employee Experience by focusing on people and culture.

Table 1. Breakdown of Losses by OIG top five staffing shortage occupations (FY 2015)

Occupation	Onboard Average	Quits	Retirements	Removals	All Other Losses	Total Losses	Turnover Rate
0180 Psychology	5,167	215	88	13	101	417	8.1%
0602 Medical Officer (Physician)	23,743	1,263	641	76	93	2,073	8.7%
0603 Physician's Assistant	2,070	89	63	23	48	223	10.8%
0610 Nurse	62,300	2,529	2,037	211	119	4,896	7.9%
0633 Physical Therapist	1,901	68	24	3	57	152	8.0%
All VHA Occupations	305,657	14,356	9,649	2,416	1,650	28,071	9.2%

Onboard staff for VHA includes all full and part-time employees in a pay status, excluding intermittent, non-pay, medical resident, and allied health trainees, and excluding canteen service employees.

Turnover rate is defined as losses from the organization for a given year divided by the average onboard staff for that year. This does not include internal transfers from one facility to another.

All other losses include deaths, expirations of appointment, and separations related to military service and reductions in force.

Question 2. VA's written testimony indicates that VA supports the general concept of S. 2170, the Veterans E-Health and Telemedicine Support (VETS) Act of 2015. This legislation seeks to expand the use of telemedicine through loosening current restrictions on health care providers practicing within their scope of care regardless of where the provider and patient are located. While this bill would remove barriers to expanding this vital model of care, there are concerns about potential unintended consequences of this legislation given that it covers both VA employees and contractors who provide care to veterans.

a. Under this program, what process would VA use to ensure that contractors providing services through telemedicine were held accountable in the event of an adverse event that harms a patient?

Response. VA's process for accountability of VA-contracted telehealth providers is identical to the VA process for VA contracted (in-person) providers. The only difference is that the adverse event reporting for VA-contracted tele-providers would not only involve the provider site, but it could possibly involve multiple VA telehealth patient sites supported by the contracted telehealth services, whereas event reporting for VA-contracted in-person providers would typically be limited to a single VA provider site.

Care purchased from community providers using contracting authorities is subject to the terms and conditions within the contract. In the event of an adverse event that harms the patient, such event must be reported in accordance with the applicable terms of the contract.

Additional Information: Telehealth in VA is a setting for the provider to perform the privileges (e.g., mental health, dermatology, etc.) granted at the provider's facility—the accountability reporting and monitoring are the same regardless of the setting (i.e., in-person or telehealth) and regardless of the type of VA appointment (i.e., full-time, part-time, contract, fee basis, volunteer, without compensation, etc.). If any VA provider, including a VA-contracted telehealth provider, is involved in an adverse event or if any clinical care concern is identified through VA's monitoring service (details below), the provider facility will conduct a thorough focused review, including the telehealth patient site(s), as appropriate.

If the finding is that an adverse patient outcome resulted from the VA contractor's substandard care, professional misconduct, or professional incompetence, VA will report the provider to the National Practitioner Data Bank (NPDB) in accordance with VHA Handbook 1100.17, *National Practitioner Data Bank (NPDB) Reports*.

All Licensed Independent Practitioners (LIP) being considered to perform care within VA facilities must be fully credentialed and privileged in accordance with VHA Handbook 1100.19, *Credentialing and Privileging*, and such requirements apply to any and all LIPs regardless of their appointment status (i.e., full-time, part-time, contract, fee basis, volunteer, without compensation (WOC), etc.) VA's thorough credentialing and privileging process must be completed before a VA contractor is approved to provide any care to a VA patient.

All credentialed and privileged VA providers undergo continuous monitoring through the Focused Professional Practice Evaluation (FPPE) and Ongoing Professional Practice Evaluation (OPPE) as required by VHA policy and Joint Commission requirements, regardless of whether they are providing care via an in-person setting or a telehealth setting.

Before a remote VA practitioner conducts either telemedicine and/or teleconsultation with another facility or site, the facility or site where the patient is physically located must enroll the VA practitioner in the National Practitioner Data Bank—Health Integrity and Protection Data Bank Continuous Query (NPDB-HIPDB CQ). NPDB-HIPDB CQ registration must be renewed in accordance with credentialing

and re-appraisal requirements of VHA Handbook 1100.19. If this is not done, it must be clearly documented why an NPDB-HIPDB query was not completed before the VA practitioner engages in patient care using telemedicine and/or teleconsultation.

b. Under this program, to what extent would contractors remain accountable to state licensing boards for the quality of care they provide to veterans?

Response. VA contractors are accountable for the care provided to VA patients regardless of the setting (see a. above) in which they are providing that care—in-person or via telehealth. Current VA regulation and guidance impose specific reporting requirements for health care professionals with appointments to provide VA care as VA employees or VA contractors whose behavior or clinical practice substantially failed to meet generally-accepted standards of clinical practice as to raise reasonable concern for the safety of patients. Specifically, the regulatory state licensure board reporting requirements cover VA providers "regardless of the status of the professional, such as full-time, part-time, contract service, fee-basis, or without compensation." See 38 Code of Federal Regulations (CFR 47.1 and 47.2. Likewise, VHA Handbook 1100.18 provides guidance for reporting VA health care professionals to state licensing boards.

Care purchased from community providers using contracting authorities is subject to the terms and conditions within the contract. In the event of an adverse event that harms the patient, such event must be reported in accordance with the applicable terms of the contract.

Additional Information: Under current practice, as set out in VHA Handbook 1100.19, contracts for telemedicine and/or teleconsultation services must require that these services be performed by appropriately-licensed individuals. Unless otherwise required by the specific contract or Federal law (such as the Federal Controlled Substances Act), VA contract health care professionals must meet the same licensure requirements imposed on VA employees in the same profession whether they are on VA (Federal) property or not when providing telemedicine or teleconsultation services. Some states do not allow telemedicine and/or teleconsultation across state lines, unless the provider is licensed in the state where the patient is physically located. In these states, the clinical indemnity coverage of VA contract practitioners may be void, even if they are credentialed and privileged by VA. Prior to the commencement of services by the VA contract practitioners providing telemedicine and/or teleconsultation or remotely monitoring physiology data from Veteran patients, the state regulatory agency in the state in which the practitioner is physically located, as well as the state where the patient is physically located, must be consulted. When dealing with Federal entities, additional licenses that authorize the provision of telemedicine and/or teleconsultation services in the relevant states may not be required. State by State consultations and determinations of additional licensure requirements are made on a local basis with VA Office of General Counsel regional offices.

c. How would VA ensure that with the expansion of telemedicine, patients' privacy would be rigorously protected and patient safety measures tightly controlled?

Response. For more than 15 years, VA has rigorously and successfully protected millions of Veteran patients' privacy and tightly-controlled patient safety through its telehealth services. Last fiscal year alone, more than 677,000 Veterans safely and securely accessed VA care during more than 2.1 million telehealth visits. All clinic-based and home telehealth services employ the highest Federal Information Processing Standards (FIPS 140–2) for encrypting interactive video between VA telehealth providers and Veterans, as well as for image or data storing and forwarding to a VA facility from home or from another VA facility. All VA employees and contractors are required to take annual VA Privacy training.

Before a VA telehealth service commences, a VA Telehealth Service Agreement (TSA) is established between the telehealth provider site and telehealth patient site to outline roles, responsibilities, safety risks, etc. and to ensure tight controls are in place. TSAs provide specific patient privacy and patient safety requirements. The TSA establishment includes a review and approval process by senior leadership at both the provider and patient sites. The TSA outlines all pertinent patient safety guidance and all pre-, intra-, and post-visit requirements including communication channels (routine and emergency), diagnostic testing and reporting, critical lab reporting, and pharmacy protocols and procedures.

VA, through its Telehealth Services Quality Management program, has established and implemented Conditions of Participation (CoP), a nationally-standardized review process of all telehealth services provided to Veterans. This biennial review process includes a structured process for Veterans Integrated Service Network (VISN) and program-level self-assessments and a site visit that includes interviews

with key program staff members, tracer methodology, and data reviews. Considerations of field experiences, broad expert input, and commendable practices identified in the course of the review create a dynamic and evolving process that continues to advance Telehealth across VHA. The CoP process is intended to be collaborative, consultative, and proactive in an effort by VA to facilitate the growth and maintenance of quality telehealth services that are safe, effective, and efficient. In addition, this focus on quality management has been very successful in achieving both internal standards and readiness for external accreditation applying to all telehealth services.

Question 3. As you may know, the U.S. Drug Enforcement Agency has announced that it is drafting regulations that would make it possible for doctors to prescribe narcotics via telemedicine as a way reach patients in underserved communities.

a. In light of some of the ongoing issues with over prescription of ?pain medications/opioids within VA, how does VA plan to monitor prescribing practices for community providers who are seeing VA patients via telemedicine if S. 2170, the Veterans E-Health and Telemedicine Support (VETS) Act of 2015, were enacted?

Response. VA's process for monitoring the prescribing practices of contracted telehealth providers is identical to VA's process for contracted (in-person) providers; the only difference being that the adverse event reporting for contracted tele-providers would not only involve the provider site, but it could possibly involve multiple VA telehealth patient sites supported by the contracted telehealth services, whereas event reporting for contracted in-person providers would typically be limited to a single VA provider site.

All credentialed and privileged providers in VA undergo continuous monitoring through the FPPE and OPPE, as required by VHA policy and Joint Commission requirements, regardless of whether they are providing care in an in-person setting or a telehealth setting. If any VA provider, including contracted telehealth providers, is involved in overprescribing or if any clinical care concern is identified through VA's monitoring service (details below), the provider facility will conduct a thorough focused review including the telehealth patient site(s), as appropriate.

If the finding is that an adverse patient outcome resulted from the contractor's overprescribing, the VA will report the provider to the VHA National Practitioner Data Bank in accordance with VHA Handbook 1100.17, *VHA National Practitioner Data Bank (NPDB) Reports*, and to their respective state licensing board(s), in accordance with VHA Handbook 1100.18, *VHA Reporting and Responding to State Licensing Boards*.

b. Earlier this year, Dr. Clancy informed me that VA was reviewing prescribing practices at the provider level for VA-employed doctors to determine whether individual doctors were inappropriately prescribing dangerous medications. Can you please provide an update on the status of that review and indicate whether any adverse employment actions were taken as a result of any inappropriate prescribing?

Response. The Opioid Safety Initiative (OSI) and the Opioid Overdose Education Naloxone Distribution (OEND) are two medication safety initiatives VA has used to review prescribing practices at the VA provider level to identify and mitigate opioid prescribing concerns. These reviews are based on various clinical factors, including the concomitant use of opioid and benzodiazepine medications and relatively high dosages of opioid medications. VA initiated the reviews based on directives communicated in March 2015 requiring each Veterans Integrated Service Network (VISN) to establish an academic detailing (AD) program to support front-line clinicians with specialty-trained VISN AD clinical pharmacy specialists. These AD pharmacists employ individualized provider benchmarking data and specialized educational programming. AD was implemented to ensure provider prescribing is consistent with evidence-based practices. AD is a service for clinicians, by clinicians, that provides individualized, evidence-based, educational outreach visits. AD has been effective in changing prescribing practices and fostering the utilization of evidence-based treatment modalities in a variety of practice settings and therapeutic areas.

The AD approach customizes content and barrier-resolution strategies to meet individual clinician needs in the context of local health care delivery operations. Provider education tools that address questions on medications (i.e., overuse, under-use, indications for use, titrating doses, etc.) are developed, along with patient education materials. AD can be used to effectively target opportunities for improvement as part of an overall strategy for addressing this area of need within VHA. The VISN academic detailing pharmacists offer one-to-one visits with psychiatrists, primary care providers, and health care team members to enhance prescribing through targeted education on VA's OSI. VHA has implemented four primary OSI metrics: percent of patients dispensed opioids, percent of patients dispensed opioids and benzodiazepines, percent of long-term opioid patients and urine drug screen, and percent

of patients dispensed greater than or equal to 100 Daily Morphine Equivalents. Prescribing practices have shown consistent positive trends on these four metrics. In addition, VA has dispensed nearly 15,000 naloxone kits, provided many hours of education on naloxone use to Veterans and documented nearly 150 opioid overdose reversals.

In an October 2015 Presidential Memorandum, President Obama directed that Federal agencies shall, to the extent permitted by law, provide training on the appropriate and effective prescribing of opioid medications to all employees who are health care professionals and who prescribe controlled substances. VHA recognizes that many providers, including those in VA, need more training as well as more monitoring as part of a successful strategy to improve pain management, including safer opioid prescribing. VHA's OSI program metrics enable facilities and VISNs to identify providers with a pattern of inappropriate opioid prescribing. Then facility and VISN pain management points of contact and clinical leadership, in collaboration with the AD program, can provide remedial education and training that helps these providers change any inappropriate prescribing patterns. In cases where re-education and remedial training are ineffective, disciplinary action may be taken by the facility.

c. What process does VA have for informing state medical boards of adverse events when non-VA employee providers are seeing patients? Please indicate how often and in what states VA has made reports to State Medical Boards in each of the last 3 years.

Response. If any VA provider, including contracted telehealth providers, is involved in an adverse event due to prescription of narcotics, or if any clinical care concern is identified through VA's monitoring service (details below), the provider facility will conduct a thorough focused review including the telehealth patient site(s), as appropriate.

If the finding is that an adverse patient outcome resulted from the contractor's prescribing of narcotics, substandard care, professional misconduct, or professional incompetence, the VA will report the provider to the NPDB, in accordance with VHA Handbook 1100.17, and to their respective state licensing board(s), in accordance with VHA Handbook 1100.18.

With respect to statistical information over the past three years, the above-referenced reports are done on a facility-by-facility basis and are not centrally reported. Thus compilation of an answer would require manual review of records of facilities throughout the VHA system, requiring significant time and resources. VA would be glad to brief the Committee in more detail on its reporting regime.

Question 4. Deputy Under Secretary Coy's testimony stated that VA does not currently have the authority to restore Post-9/11 GI Bill entitlement for which a beneficiary fails to receive credit due to a permanent school closure.

a. What actions did VA take to disseminate information to veterans impacted by the recent closure of Corinthian Colleges?

Response. VA's Education Call Center employees called all affected GI Bill students to inform them of the impact to their benefits and to offer assistance. Also, an email was sent to all beneficiaries in Hawaii in order to ensure they were aware that Corinthian was hosting meetings to assist them with next steps. In addition, VA posted information on its GI Bill Facebook page and GI Bill Web site regarding the closure, resources for finding a new school, and information on the Department of Education's student loan discharges. Finally, VA notified the State Approving Agencies so that any available state aid could also be provided to impacted students.

b. Was VA able to provide any support to Post-9/11 GI Bill beneficiaries enrolled in the Corinthian institutions?

Response. While VA took the steps detailed above, no further support could be provided as VA has no statutory authority to continue payments to Veterans (or other enrollees) beyond the date of school closure or restore benefit entitlement used at Corinthian Colleges.

c. Could you elaborate on how this legislation would enable VA to provide relief and assistance, specifically in regards to the interim housing allowances and their ability to provide stability to student veterans in the aftermath of a sudden school closure?

Response. The proposed legislation would authorize VA to restore entitlement and continue a monthly housing allowance (MHA) until the end of the term, quarter, or semester during which a school closure occurred, or 4 months after the date of the school closure, whichever is earlier. In many cases, the MHA is the sole source of funds that students use to pay for housing, food, utilities, and other basic necessities while attending school. Allowing VA to provide an interim housing allowance following a sudden school closure would prevent any unnecessary disruption to stu-

dents and their families during the closure and would provide much needed stability until the student can begin courses at another educational institution.

d. I understand that the Department of Education has begun to use its established authority to provide comprehensive loan forgiveness to former Corinthian College students with Federal student loans. Has VA collaborated with the Department of Education to discuss support for veteran students impacted by permanent school closures?

Response. VA continues to work closely with the Department of Education on a range of issues and has discussed the closure of the Corinthian schools; however, because VA lacks the authority to provide relief in the case of permanent school closures and has no direct involvement with student loans, as they fall under the jurisdiction of the Department of Education, the collaboration has been limited in scope. As noted above, part of VA's outreach to impacted students involved the provision of information regarding student discharges and directing those students to the Department of Education's Web site on the topic.

Senator MORAN. We will call the next panel to the table. That panel consists of Elizabeth Hempowicz, Public Policy Associate, Project on Government Oversight; William Hubbard, Vice President of Government Affairs, Student Veterans of America; Aleks Morosky, Deputy Director, National Legislative Service of the Veterans of Foreign Wars; Thomas Porter, Legislative Director, Iraq and Afghanistan Veterans of America; and Diane Zumatto, National Legislative Director of AMVETS. [Pause.]

Welcome. I would call on Ms. Hempowicz to begin.

STATEMENT OF ELIZABETH HEMPOWICZ, PUBLIC POLICY ASSOCIATE, PROJECT ON GOVERNMENT OVERSIGHT

Ms. HEMPOWICZ. I want to thank the Committee for inviting me to testify today and thank you for your continued leadership on whistleblower protections at the VA. I want to say a special thank you to Senator Kirk, who is not here, for introducing the Veterans Affairs Patient Protection Act.

My name is Liz Hempowicz and I am the Public Policy Associate at the Project on Government Oversight (POGO), a nonpartisan, independent watchdog that champions good government reforms.

POGO has been investigating whistleblower retaliation at the VA since May 2014, and during my last year and a half at POGO, I have been consulted and advised on over a dozen legislative proposals to enhance whistleblower protections in the Federal Government.

In the last year, POGO was approached by over a thousand current and former VA employees and veterans seeking to blow the whistle on problems within the agency. We received multiple credible submissions from 35 States and the District of Columbia. These complaints made it clear that VA employees across the country feared that they would face repercussions if they raised a dissenting voice within the agency. Some were willing to speak. Some were willing to be interviewed by POGO and to be quoted by name, but others said they contacted us anonymously because they are still employed at the VA and are worried about retaliation.

The cultural shift that is required inside the VA cannot be accomplished without legislation that codifies accountability for those who retaliate against whistleblowers. This is why legislation such as that introduced by Senator Kirk is so incredibly important. The VA Patient Protection Act includes many necessary improvements to how whistleblower complaints are addressed, and perhaps more

importantly, how those who retaliate against whistleblowers are punished.

Managers at the VA have abused their discretionary authority and have chosen not to punish those who retaliate against whistleblowers time and time again. This bill would put in place a minimum 12-day unpaid suspension when a complaint that a supervisor has retaliated against a whistleblower is substantiated.

Supervisors accused of retaliating against whistleblowers will have 14 days in which to submit evidence to dispute the accusation. This combination of due process and mandatory punishment for retaliators is the right way to send and enforce the message that retaliating against whistleblowers will not be tolerated.

This bill also expands the definition of prohibited personnel practice to include peer reviews and retaliatory investigations, two common forms of retaliation that have not previously been prohibited.

We are happy to see that this bill makes how supervisors handle whistleblower complaints a part of the criteria for their annual reviews, and further, that bonuses will not be awarded to those employees who have retaliated against whistleblowers.

It is also encouraging to see that this legislation includes a provision that would give preference to a whistleblower's request to transfer to another office within the VA.

It is POGO's hope that the VA Patient Protection Act will ensure that whistleblowers can expose wrongdoing, confident that coming forward will not result in retaliation. This bill is a great starting place for necessary reforms in the VA. However, there are a few changes that we would like to see before it becomes law in order to make sure that this bill does not inadvertently weaken whistleblower protections.

First, stating that whistleblowers have the ability to report wrongdoing to a direct supervisor is a good clarification, but it should not be a required step for a whistleblower complaint. We are worried that the legislation appears to make it mandatory for whistleblowers to go to their supervisors, which would narrow their ability to report wrongdoing to less than what is currently available under the law. There are many scenarios where an employee would not want to disclose concerns to his or her direct supervisor and those are not limited to the three provided in this legislation. Therefore, we respectfully suggest that you amend provision (a)(2) in Section 732 to say that a whistleblower may go to his or her direct supervisor instead of shall go to them.

Additionally, we are concerned about the creation of a central whistleblower office within the VA. While it is clear that more resources are necessary to address the influx of whistleblower complaints, we believe that this office would not be sufficiently independent to do so effectively. We worry that this lack of independence will hurt the ability to attract the necessary expert personnel and will divert resources from other offices already filling that role, like the Office of Special Counsel. Our concern is that a new office would create duplication and confusion instead of streamlining the process as intended.

The OSC has done a great job of securing favorable outcomes for VA whistleblowers, but they still have nearly 100 pending VA reprisal cases. Therefore, POGO recommends that you consider ap-

propriating additional funds to the OSC to help with their increased workload rather than create a new office to do largely the same thing there.

Finally, we urge Congress to extend whistleblower protections to contractors and veterans who raise concerns about medical care provided by the VA. POGO's investigation found that both of these groups also fear retaliation, which prevent them from coming forward.

The VA and Congress must work together to end the culture of fear and retaliation. Whistleblowers who report concerns that affect veteran health must be lauded, not shunned, and the law must protect them. It is POGO's hope that the VA Patient Protection Act will ensure that whistleblowers can step forward to expose wrongdoing, confident that it will not result in retaliation.

Thank you.

[The prepared statement of Ms. Hempowicz follows:]

PREPARED STATEMENT OF LIZ HEMPOWICZ, PUBLIC POLICY ASSOCIATE, PROJECT ON GOVERNMENT OVERSIGHT

Chairman Isakson, thank you for inviting me to testify today, and thank you Senator Kirk for your continued leadership on whistleblower protections at the Department of Veterans Affairs and for introducing the Veterans Affairs Patient Protection Act. I am Liz Hempowicz, the Public Policy Associate at the Project On Government Oversight (POGO). Founded in 1981, POGO is a nonpartisan independent watchdog that champions good government reforms. POGO's investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable, open, and ethical Federal Government.

FEAR AND RETALIATION AT THE DEPARTMENT OF VETERANS AFFAIRS

None of us would be aware of the extent of the problems at the Department of Veterans Affairs if not for whistleblowers. Early last year, whistleblowers came forward to expose that managers at the Phoenix, Arizona, VA facility were falsifying records of extensive wait times in order to get bonuses.[1] Quickly, news of similar wrongdoing at VA facilities began to pop up in other parts of the country. Although POGO had never investigated the operations of the VA before, we were deeply concerned about what we were seeing in these reports. Last year, POGO held a joint press conference with Iraq and Afghanistan Veterans of America asking whistleblowers within the VA to share with us their inside perspective in order to help us better understand the issues the Department was facing.

In POGO's 34-year history, we have never received as many submissions from a single agency. In little over a month, nearly 800 current and former VA employees and veterans contacted us. We received credible submissions from 35 states and the District of Columbia.[2] A recurring and fundamental theme became clear: VA employees across the country feared they would face repercussions if they dared to raise a dissenting voice.

Based on what POGO learned from these whistleblowers, we wrote a letter to Acting VA Secretary Sloan Gibson in July last year, highlighting three specific cases of current or former employees who agreed to share details about their personal experiences of retaliation after they had raised concerns about wrongdoing.[3]

In California, a VA inpatient pharmacy supervisor was placed on administrative leave and ordered not to speak out after raising concerns with his supervisors about "inordinate delays" in delivering medication to patients and "refusal to comply with

[1] Scott Bronstein, Drew Griffin, and Nelli Black, "Phoenix VA officials put on leave after denial of secret wait list," CNN, May 1, 2014. http://www.cnn.com/2014/05/01/health/veterans-dying-health-care-delays/ (Downloaded July 27, 2015)

[2] Statement for the Record, Project On Government Oversight (POGO), for the House Committee on Veterans' Affairs' Subcommittee on Oversight and Investigations Hearing on "Addressing Continued Whistleblower Retaliation Within VA," April 13, 2015. http://www.pogo.org/our-work/testimony/2015/pogo-provides-statement-for-house-hearing-on-va-whistleblowers.html

[3] Letter from Project On Government Oversight to Sloan D. Gibson, then-Acting Secretary of the Department of Veterans Affairs, about Fear and Retaliation in the VA, July 21, 2014. http://www.pogo.org/our-work/letters/2014/pogo-letter-to-va-secretary-about-va-employees-claims.html

VHA [Veterans Health Administration] regulations."[4] In one case, he said, a veteran's epidural drip of pain control medication ran dry, and in another case, a veteran developed a high fever after he was administered a chemotherapy drug after its expiration point.

In Pennsylvania, a former VA doctor was removed from clinical work and forced to spend his days in an office with nothing to do, he told POGO. This action occurred after he reported to his supervisors that, in medical emergencies, physicians who were supposed to be on call were failing or refusing to report to the hospital. The Office of Special Counsel (OSC) shared his concerns, writing "[w]e have concluded that there is a substantial likelihood that the information that you provided to OSC discloses a substantial and specific danger to public health and safety."[5]

In Appalachia, a former VA nurse was intimidated by management and forced out of her job after she raised concerns that patients with serious injuries were being neglected, she told POGO. In one case she was reprimanded for referring a patient to the VA's patient advocate after weeks of being unable to arrange transportation for a medical test to determine if he was in danger of sudden death. "Such an upsetting thing for a nurse just to see this blatant neglect occur almost on a daily basis. It was not only overlooked but appeared to be embraced," she said. She also pointed out that there is "a culture of bullying employees * * *. It's just a culture of harassment that goes on if you report wrongdoing."

That culture clearly isn't limited to just one or two VA clinics. Some people, including former employees who are now beyond the reach of VA management, were willing to be interviewed by POGO and to be quoted by name, but others said they contacted us anonymously because they are still employed at the VA and are worried about retaliation. One put it this way: "Management is extremely good at keeping things quiet and employees are very afraid to come forward."

This kind of fear and suppression of whistleblowers who report wrongdoing often culminates in larger problems, as the VA has been experiencing.

VETERANS AFFAIRS PATIENT PROTECTION ACT

Current laws have failed to adequately protect whistleblowers. Shifting the VA's culture to identify and correct risks to veterans' health and well-being cannot be accomplished without legislation that codifies accountability for those who retaliate against whistleblowers. This is why legislation such as that introduced by Senator Kirk is so incredibly important. The Veterans Affairs Patient Protection Act includes many necessary improvements to how whistleblower complaints are addressed, and perhaps more importantly, how those who retaliate against whistleblowers are punished. Accountability for illegal retaliation has been missing in other pending VA legislation, and is one of the strongest aspects of Chairman Kirk's legislation.

Managers at the VA have abused their discretionary authority and chosen not to punish those who retaliate. This bill would put in place a minimum 12-day, unpaid suspension when a complaint that a supervisor has retaliated against a whistleblower is substantiated. This combination of due process and mandatory punishment for retaliators is the right way to send and enforce the message that retaliating against whistleblowers will not be tolerated. This bill also expands the definition of prohibited personnel practice to include peer reviews and retaliatory investigations—two common forms of retaliation that have not previously been prohibited.

Additionally, the misconduct committed at the VA in Phoenix has shown how important bonuses and evaluations are in motivating supervisors' behavior. We are happy to see that this bill makes how supervisors handle whistleblower complaints part of the criteria for annual reviews, and further, that bonuses will not be awarded to those employees who have been found to have retaliated against whistleblowers.

Both POGO's investigation and the work of Congress have shown that working under a supervisor or alongside a colleague on whom you have blown the whistle often prompts future retaliation or simply a hostile work environment for everyone involved. This is why it is encouraging to see that this legislation includes a provision that would give preference to a whistleblower's request to transfer to another office within the VA. This provision could make the difference between a whistle-

[4] Letter from Kelly Robertson, Pharmacy Service Chief at Palo Alto VA Health Care System, to Earl Stuart Kallio, Pharmacy Service, about Direct Order—Restricted Communication, June 20, 2014.

[5] Letter from Karen Gorman, Deputy Chief, Disclosure Unit Office of Special Counsel, to Dr. Thomas Tomasco, about Dr. Tomasco's allegations OSC File No. DI–13–0416, March 21, 2013.

blower feeling comfortable enough to come forward or being too worried about rocking the boat to speak up.

We are also pleased to see that the Veterans Affairs Patient Protection Act requires annual training for all VA employees on prohibited personnel actions, which includes retaliating against whistleblowers as a prohibited action. Further, VA employees will receive an explanation of all the methods they can use to report wrongdoing.

RECOMMENDATIONS

It is POGO's hope that the Veterans Affairs Patient Protection Act will ensure that whistleblowers can expose wrongdoing, confident that coming forward will not result in retaliation. This bill is a great starting place for necessary reforms in the VA; however there are a few changes that we would like to see before it becomes law, in order to make sure the bill doesn't inadvertently weaken whistleblower protections.

First, stating that whistleblowers have the ability to report wrongdoing to a direct supervisor is a good clarification, but it should not be a required step for a whistleblower complaint. We are worried that the legislation appears to make it mandatory for whistleblowers to go to their supervisors, which would narrow their ability to report wrongdoing to less than what is currently available under the law. Most whistleblowers already try to solve problems by directly going to their supervisors. But there are many scenarios where an employee would not want to disclose concerns to his or her direct supervisor, and those are not limited to the three provided in this legislation. Therefore, we respectfully suggest that you amend this section to allow a whistleblower to go to his or her direct supervisor to make a protected disclosure, but not require them to do so.

In addition, we are concerned about the creation of a Central Whistleblower Office within the VA. While it is clear that more resources are necessary to address the influx of whistleblower complaints, we believe that this office would not be sufficiently independent to investigate whistleblower complaints. Without proper independence, we worry this office could become an internal clearinghouse that helps agency officials identify and retaliate against whistleblowers. Moreover, we worry that this lack of independence will hurt the ability to attract the necessary expert personnel and will divert resources from offices already filling that role—like the Office of Special Counsel. Our concern is that a new office would create duplication and confusion instead of streamlining the process as intended.

OSC has been working to investigate claims of retaliation and get favorable actions for many of the VA whistleblowers who have come forward. In 2014 and 2015 alone, the OSC has achieved favorable actions for 116 VA whistleblowers. But the OSC still has nearly 100 pending VA reprisal cases for disclosing concerns about patient care or safety, among the highest of any government agency, according to Special Counsel Carolyn Lerner. Therefore, POGO recommends that you consider appropriating additional funds to this agency to help with the increased workload rather than creating a new, less independent office to do largely the same thing.

Finally, we urge Congress to extend whistleblower protections to contractors and veterans who raise concerns about medical care provided by the VA. POGO's investigation found that both of these groups also fear retaliation, which prevents them from coming forward. Contractors are only currently protected under a pilot program, but need permanent statutory protections. In addition, a veteran who is receiving poor care should be able to speak to his or her patient advocate without fear of retaliation, including a reduction in the quality of health care. A veteran should not fear that they would lose access to their medications for blowing the whistle on problems they've experienced at VA hospitals or clinics. Without this reassurance, there is a disincentive to report poor care, allowing it to continue uncorrected.

The VA and Congress must work together to end the culture of fear and retaliation. Whistleblowers who report concerns that affect veteran health must be lauded, not shunned. And the law must protect them. It is POGO's hope that the Veterans Affairs Patient Protection Act will ensure that whistleblowers can step forward to expose wrongdoing, confident that it will not result in retaliation.

Sen. MORAN [presiding]. Thank you.

Mr. Hubbard.

STATEMENT OF WILLIAM HUBBARD, VICE PRESIDENT OF GOVERNMENT AFFAIRS, STUDENT VETERANS OF AMERICA

Mr. HUBBARD. Thank you, Mr. Chairman. Chairman Isakson, Ranking Member Blumenthal, and Members of this Committee, thank you for inviting Student Veterans of America to submit our testimony on health care and benefits legislation pending before this Committee.

With over 1,200 chapters across the country, we are pleased to share the perspective of those most directly impacted by these subjects. We would like to discuss opportunities with the vocational rehabilitation and employment services, or VR&E, the need for increased pathways for medical professionals at VA, and the importance of reinstating benefits for those impacted by school closures.

On S. 2106, the Wounded Warrior Employment Improvement Act of 2015, a meeting between Student Veterans at a New York university and the Secretary of VA, Bob McDonald, made one fact readily apparent. Not enough veterans know about the VR&E program. We believe that this is the fundamental challenge facing VR&E today. We maintain concerns about the consistency of information shared among counselors and are eager to work closely with the VA on these issues if given the opportunity. Overall, we strongly support the intent of S. 2106. However, we encourage VA to address the components of the bill without the requirement of legislation.

Moving on to S. 2134, the Physician Assistant Employment and Education Act of 2015, we note that despite VA's commitment to our veterans, fundamental problems, such as inadequate staffing, extended wait times, and the lack of accessibility, have plagued the system for the last three decades. As of just this last year, the VA medical system was in need of more than 28,000 medical professionals to address their staffing shortage. "I am worried about our ability to recruit and retain talent," Secretary McDonald said at his first news conference at the Department's central office here in D.C. We are highly supportive of S. 2134 and believe it would establish a model for a broader VA hiring initiative needed to address the ongoing gap of medical professional talent.

Research we published last spring indicates there will be an estimated 52,000 veterans trained and qualified to work in medical professions across the country in the next 5 years. If that timeframe is extended to 7 years to accommodate the track for medical school, the research projects a population of over 75,000 medical professionals trained through Post-9/11 G.I. Bill benefits. With the thousands of veterans expected to pursue health-related fields, we believe VA could capitalize on this talent pool but are not currently positioned to do so. This legislation presents an opportunity which may lead to additional necessary hiring programs.

In addition to physician assistant pathways, residency opportunities will be imperative to long-term VA employment. A clearly defined path from education to employment, coupled with previously mentioned benefits, will create a trajectory toward health careers and VA employment for student veterans currently in or separating from the military.

VA has shown significant improvement under the leadership of Secretary McDonald. We continue to hear from those within the VA

system that they have positive experiences with those VA employees. Indeed, Secretary McDonald's emphasis on the customer experience, including the rollout of the MyVA program, demonstrates that the Department is headed in the right direction. Despite these leaps in improved service, we believe there is more to be done, which VA has also publicly shared. The Senate Veterans' Affairs Committee and this legislation will be pivotal in that effort and we stand ready to support that work if we should so humbly be called upon.

Last, we turn to the Veterans Education Relief and Restoration Act. In 2014, we quickly learned of the insolvency of the Corinthian Colleges' institutions of higher learning. As we reached out to Corinthian leaders to address the situation, we received no response, despite concerted efforts to attempt to meet with their representatives. For us, it was a critical time, as more than 8,800 student veterans were under the Corinthian umbrella. Since then, we have been actively seeking to remedy the situation and to protect the interests of those student veterans directly impacted by the closures.

We are pleased to see this legislation and continue to seek the support of Members of the Committee for this proposal. For us, we believe this issue is a matter of maximizing the economic impact of the Post-9/11 G.I. Bill.

Unfortunately, we have not seen the last of school closures. The higher education industry deserves a hard look at its practices and how schools deliver education to non-traditional students, the growing education audience. As more schools with faulty practices and insolvent structures close, we should be prepared to offer them solutions. We believe this Committee and its House counterpart are positioned to lead the way on behalf of student veterans, carving a path for non-traditional students.

We thank this Committee for the opportunity to testify on these important issues and look forward to answering questions as the Members of this Committee may have.

[The prepared statement of Mr. Hubbard follows:]

PREPARED STATEMENT OF WILLIAM HUBBARD, VICE PRESIDENT OF GOVERNMENT AFFAIRS, STUDENT VETERANS OF AMERICA

Chairman Isakson, Ranking Member Blumenthal and Members of the Committee: Thank you for inviting Student Veterans of America (SVA) to submit our testimony on "pending health care and benefits legislation." With over 1,200 chapters across the country, we are pleased to share the perspective of those most directly impacted by this subject with this Committee.

Established in 2008, SVA has grown to become a force and voice for the interests of veterans in higher education. With a myriad of programs supporting their success, rigorous research development seeking ways to improve the landscape, and advocacy throughout the Nation, we place the student veteran at the top of our organizational pyramid. As the future leaders of this country, nothing is more paramount than their success in school to prepare them for productive and impactful lives.

We will discuss opportunities with the vocational rehabilitation services, the need for increased pathways for medical professionals at VA, and the importance of reinstating benefits for those impacted by school closures. Two proposals on the agenda are outside of the scope of SVA, though we support the intent of each: S. 2170, "a bill to improve the ability of health care professionals to treat veterans through the uses of telemedicine, and for other purposes;" and, the "Veterans Affairs Retaliation Prevention Act of 2015."

S. 2106, "A BILL TO REQUIRE THE SECRETARY OF VETERANS AFFAIRS TO DEVELOP AND PUBLISH AN ACTION PLAN FOR IMPROVING THE VOCATIONAL REHABILITATION SERVICES AND ASSISTANCE PROVIDED BY THE DEPARTMENT OF VETERANS AFFAIRS, AND FOR OTHER PURPOSES"

At a meeting between student veterans at a New York university and the Secretary of VA, Bob McDonald, one fact was readily apparent: not enough veterans know about vocational rehabilitation and employment (VR&E) program opportunities. We believe this is the fundamental challenge facing the VR&E program today. We support the intent of S. 2106, however we encourage VA to address the components of the bill without the requirement of legislation. VA has openly made it clear that they seek to serve their customers, our Nation's veterans, to the fullest extent possible. As such, we believe this would be a timely opportunity for VA to demonstrate action on a valuable program, which we believe is critical to those transitioning from their time in service.

The components of S. 2106 touch on several areas that we see as necessary in addressing the success of the VR&E program. First, in our testimony to the House Veterans Affairs Subcommittee on Economic Opportunity on October 22, 2015, we identified the need for reduced caseloads on VR&E counselors.[1] Inclusion of element one would address an issue that is consistent with the comments from our members. As a minor note, we would strike "disorder" from line 19 in section two, and refer to the particular issue instead as post-traumatic stress; we note that inclusion of "disorder" is an improper characterization of that challenge. Element two gets to the heart of the challenge with the VR&E program, and we appreciate the thoughtful inclusion of this point. Element three is a supporting component of the previous element, and we similarly applaud its inclusion. Finally, element four is one issue we would like to see VA address as a priority of any action plan. It is our understanding that VA provides training opportunities for VR&E counselors. However, it would be important to publish the type and extent of that training so public comment could be shared for potential improvements.

In general, it has become increasingly clear that the consistency of program delivery and awareness of the VR&E opportunities are points for immediate consideration. We applaud VA for their commitment to delivering a program with high impact and strong return on investment. We recognize the challenge of funding in supporting the VR&E work, a high-touch and resource-intensive program. We look forward to working closely with VA and this Committee on implementing common sense solutions to influence the impact and delivery of this program.

S. 2134, "PHYSICIAN ASSISTANT EMPLOYMENT AND EDUCATION ACT OF 2015"

VA is charged with providing benefits and medical care for those citizens who served our Nation and bore her battles. While the specific medical treatments and procedures have changed since its establishment, VA's commitment to care for our Nation's veterans has not wavered. Despite this commitment, fundamental problems such as inadequate staffing, extended wait times, and lack of accessibility have plagued the system over the past 30 years. The unfortunate circumstances leading to the investigation and resignation of senior officials at the Phoenix, Arizona, Veterans Health Administration facility further has exasperated an already exhausted and problematic system of abuse and neglect.

On September 8, 2014, Sec. McDonald testified before the Senate Veterans' Affairs Committee that the VA medical system is in need of more than 28,000 medical professionals to address the staffing shortage. "I am worried about our ability to recruit and retain talent," Secretary McDonald said at his first news conference at the department's office in Washington, DC. We are highly supportive of S. 2134, and believe it would establish a model for broader VA hiring initiatives needed to address the on-going gap of medical professional talent at VA.

Aligning Priorities

VA has stated that its top three priorities for the coming months include the following: rebuilding trust, improving service delivery, and setting a course for long-term excellence. Congress appropriated $16.3B to address the significant challenges facing the VA; $5B is directly targeted to hire trained and qualified medical professionals. The size of this investment provides the VA with a historic opportunity to shape not just the present, but the future of the entire VA.

In 2012, there were approximately one million veterans using GI Bill benefits through data captured by the Million Records Project. It is projected that slightly

[1] Congressional Testimony, House Veteran's Affairs Subcommittee on Economic Opportunity, October 22, 2015, https://veterans.house.gov/witness-testimony/mr-william-hubbard–2

more than half of those Veterans (about 520,000) will complete an undergraduate/graduate degree program over the next five years. Of the 520,000 graduates, roughly ten percent are projected to earn a degree in a health-related or social work career field. The result is an estimated 52,000 veterans trained and qualified to work in medical professions across the country in the next five years. If that timeframe is extended to seven years to accommodate a track for medical school, current research projects a population of over 75,000 medical professionals trained through Post-9/11 GI Bill benefits.[2] As such, we know the talent exists within the system, and we hope VA makes the most of this opportunity.

The Scope of the Challenge

Unfortunately, the current human resources model relies exclusively on advertisement-heavy recruitment architecture. If minimum credentialing standards are met, specific conditions are present for the applicant, the applicant provides the proper information when applying, and interview questions are answered to satisfaction, a vacancy is filled. Unfortunately, that process is inefficient and breeds a culture of practitioners whose narrow interest is to avoid being unemployed.

VA lacks a national pipeline that identifies universities with high-demand professional training programs with large numbers of prior military enrolled in those programs, and a streamlined talent management system. With more than 75,000 veterans expected to pursue health-related fields, we believe VA could capitalize on this talent pool, but are not currently positioned to do so.

A Unique Solution

This legislation presents an opportunity which may lead to additional hiring programs. As the first initiative, the legislation addresses a critical gap in physician assistants (PAs). In addition to the work of the VA in response to this potential proposal, we believe that education and veterans non-profits are in a unique position to deliver a long-term solution to the challenge of recruiting medical professionals. Advocacy on behalf of veterans affords SVA a unique capability to address the immediate shortages and project fills for the future in conjunction with VA.

As part of this solution, program partners would be in a position to help recruit, screen and support no less than 250 student veterans who are currently pursuing their degree in one of six critical job fields identified by VA. These job fields include the following: M.D.'s (emphasis on general practitioners), R.N.'s, Psychiatrists, Psychologists, MSW's, Medical Technologists, and Health Administrators.

Based on this legislation's criteria, we have identified 15 schools highlighted by location across the country as detailed in Figure 1 below. When evaluating the existence of priority medical programs, schools were scored for their number of offerings in the following disciplines: medicine (general practitioner emphasis), nursing, psychology, psychiatry, medical technology, social work (MSW), and health administration. In addition to this first 15, we have researched an additional 15 schools we also feel would be worth considering, and would look forward to working with this Committee to consider the attributes of each school.

[2] Cate, Chris. Million Records Project, March 2014, http://studentveterans.org/images/Reingold_Materials/mrp/download-materials/mrp_Full_report.pdf

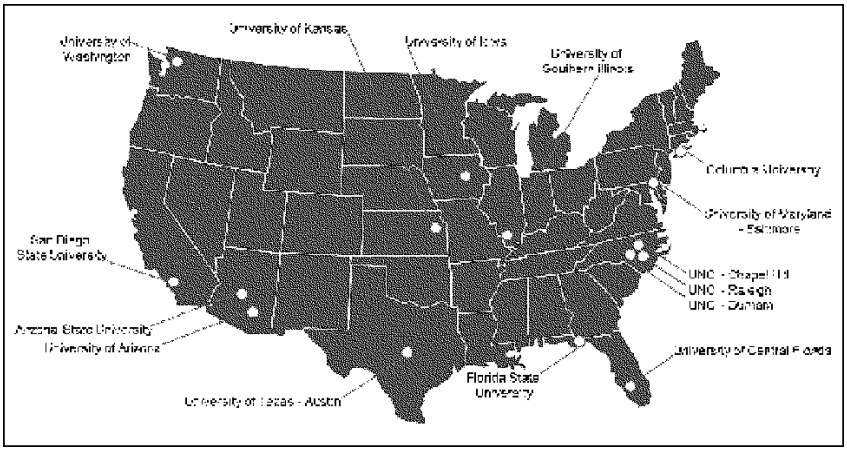

Figure 1. Potential Schools by Location

Additional Considerations

In addition to the work with PAs, residency opportunities will be imperative to long term VA employment. A clearly defined path to education and employment coupled with previously mentioned benefits will create a trajectory toward health careers and VA employment for student veterans currently in or separating from the Department of Defense (DOD). The VA assisting in the branding and promotion of this program through their various public relation channels will maximize the audience and rates of success.

One problem identified by current research is the lack of trust in the current VA health care system. We believe the system has an absence of much needed medical professionals who are themselves, veterans. In addition, this proposal leverages a significant cost-savings to taxpayers by harnessing the existing benefits that veterans receive through their military service in the form of the Post-9/11 GI Bill.

VA has shown significant improvement under the leadership of Sec. McDonald. We continue to hear from those within the VA system that they have positive experiences and appreciate the work of VA employees. Indeed, Sec. McDonald's emphasis on the customer experience, including the rollout of *MyVA*, demonstrates that the department is headed in the right direction. Despite these leaps in improved service, we believe there is more to be done, which VA has also publicly shared.

In recognizing current programs that VA operates, we would like to highlight the following opportunities: the Health Professional Scholarship Program (HPSP), Veterans Affairs Learning Opportunity Residency (VALOR), Graduate Healthcare Administrative Training Program (GHATP), Visual Impairment and Orientation and Mobility Professionals Scholarship Program (VIOMPSP).[3] These are existing programs which would be complimentary to this legislation, and we encourage this Committee to explore these as additional avenues to expand this legislation.

Ultimately, this is a gap that has to be filled; it may be costly, but it's both necessary and beneficial for the long-term sustainability of our Nation's overall health care system. The Senate Veterans' Affairs Committee and this legislation will be pivotal in that effort, and we stand ready to support that work if we should be called upon.

S. ____, "A BILL TO PROVIDE VETERANS IMPACTED BY SCHOOL CLOSURES CERTAIN RELIEF AND RESTORATION OF EDUCATION BENEFITS"

Last year, we quickly learned of the insolvency of Corinthian Colleges, Inc. (CCi) institutions of higher learning (IHL). As we reached out to CCi leaders to address the situation, we received no response, despite concerted attempts to meet with their representatives; for us, it was a critical time, as more than 8,800 student veterans were within their system. Since then, we have been actively seeking to rem-

[3] HPSP: http://www.va.gov/vaforms/medical/pdf/vha-10-0491f-fill.pdf; VALOR: http://mycareeratva.va.gov/library/internships/veterans-affairs-learning-opportunity-residency-valor; GHATP: http://www.vacareers.va.gov/assets/common/print/GHATP-Info-Flyer.pdf; VIOMPSP: http://www.va.gov/vaforms/medical/pdf/vha-10-0491L-fill.pdf

edy the situation, and to protect the interests of those student veterans directly impacted in the situation. We are pleased to see this legislation, and continue to seek the support of Members of this Committee for the proposal.

When we learned of the closures, our first reaction was to find out how we could support the student veterans immediately impacted by IHL closures, and we also considered the future to see what can be done to prevent such from reoccurring. We believe it's important that VA recovers Post-9/11 GI Bill dollars spent on reckless programs where students are either passively or aggressively misled. The Department of Education announcement regarding the closures provides precedent for this authority to be granted to VA.[4 5] For student veterans who lost valuable time due to closures or misrepresentation, they should be able to regain the benefits they earned. In initial conversations with VA, it was clear that even though restoring these benefits was right, the VA lacked the proper authority to justify such action.

Most importantly, we believe it's a matter of maximizing the economic impact of the Post-9/11 GI Bill. For students who lose benefits to weak schools, the investment in those student veterans is squandered. Thousands of student veterans were left wondering what would happen to them when their schools ceased to exist last summer; we can't allow even one more student veteran to face such a bleak prospect. We also note that while this proposal addresses situations which have already occurred, we continue to encourage potential student veterans to ask the right questions so they can avoid potential traps in the future.

We fully stand in support of this legislation which would restore entitlement for individuals who pursued a program of education with VA educational assistance and failed to receive credit, or lost training time, toward completion of the veteran's educational, professional, or vocational objective due to IHL closures. We are pleased to see that this proposal would continue monthly educational assistance payments, including housing allowances, through the end of the term, quarter, or semester in which the school closes, or up to four months from the date of the school closure while not charging any of the veteran's entitlement.

Unfortunately, we believe that we haven't seen the last of school closures. The higher education industry deserves a hard look at its practices and how they deliver education to non-traditional students—the growing education audience. As more schools with faulty practices and insolvent structures close, we should be prepared to offer them solutions. We believe this Committee and its House counterpart are positioned to lead the way on behalf of student veterans for all non-traditional students.

We thank the Chairman, Ranking Member, and the Committee Members for your time, attention, and devotion to the cause of veterans in higher education. As always, we welcome your feedback and questions, and we look forward to continuing to work with this Committee, the Senate Veterans' Affairs Committee, and the entire Congress to ensure the success of all generations of veterans through education.

Sen. MORAN Thank you.

Mr. Morosky.

STATEMENT OF ALEKS MOROSKY, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. MOROSKY. Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee, on behalf of the men and women of the Veterans of Foreign Wars of the United States, I would like to thank you for the opportunity to testify on today's pending legislation. These bills that we are discussing today are aimed at improving educational opportunities and health care quality for veterans and we commend this Committee's hard work in bringing them forward.

The VFW supports the Wounded Warrior Employment Improvement Act, which would require VA to create an action plan to improve the vocational rehabilitation and employment program,

[4] Department of Education, Debt Relief for Corinthian Colleges Students, June 8, 2015, http://blog.ed.gov/2015/06/debt-relief-for-corinthian-colleges-students/

[5] Federal Student Aid, Loan Forgiveness Programs, http://blog.ed.gov/2015/06/debt-relief-for-corinthian-colleges-students/

which offers disabled veterans access to education and training in order to give them the skills and counseling necessary to transition to civilian life. This bill would require VA to conduct an analysis of and develop a plan to remedy vocational rehabilitation workload management challenges.

Recent figures indicate that the workload for vocational rehabilitation counselors at many regional offices often exceeds the VA's standard of one counselor for every 125 veterans. The VFW believes that VA must hire additional counselors to meet this standard and then evaluate if the 1:125 ratio is truly effective, especially for counselors that assist veterans with severe cases of PTSD and TBI.

VA would also be required to conduct an analysis on why a higher percentage of disabled veterans choose to use their G.I. Bill benefits over vocational rehabilitation and to conduct outreach for the vocational rehabilitation program. The VFW supports this provision, believing that it would be helpful in identifying other weaknesses in the program, such as barriers to entry and lack of awareness.

The Grow Our Own Directive. This legislation would afford transitioning medics and corpsmen the opportunity to become physician assistants. With the end of the wars in Iraq and Afghanistan and the expected drawdown of military personnel, more medics and corpsmen will be leaving the 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.

While the VFW supports the pilot program this legislation would establish, we believe that new funding should be authorized for new programs so that existing care and services are not diminished.

The VFW supports the Veterans eHealth and Telemedicine Support Act, which would allow qualified VA physicians to provide telehealth services to veterans across State lines, removing the requirement that both be located in a federally owned facility. Currently, veterans who are enrolled in out-of-state VA medical centers may be forced to travel significant distances to access telehealth services. Under this bill, a veteran's physical location would no longer be a limiting factor in his or her ability to take advantage of telehealth services.

The VFW strongly supports the Department of Veterans Affairs Education Relief and Restoration Act, which would authorize VA to restore G.I. Bill benefits for student veterans who receive no course credit or lose training due to the closure of their educational institutions. Veterans who lose a semester of benefits due to an unexpected school closure are put at a disadvantage, since they may no longer have enough time to complete their educational goals. The VFW believes it is reasonable that their G.I. Bill benefits be restored in those cases, allowing them to complete their courses of education at another school before their benefits are exhausted.

We are pleased that this authority would be made retroactive for fiscal year 2015, covering veterans who were impacted by the recent closure of Corinthian Colleges. The VFW notes the Department of Education has established a debt forgiveness program for

students who were attending Corinthian on Federal student loans and we believe it is equitable for student veterans to receive similar relief.

Finally, the VFW strongly supports the Veterans Affairs Retaliation Prevention Act, which would offer significant protections to VA employees who step forward to identify wrongdoing within the Department. These employee whistleblowers are the first line of defense against mismanagement, abuse, and other actions that put veterans in danger. Although they should be commended for their actions, they sometimes suffer reprisal from supervisors who would rather cover up problems than fix them.

The VFW strongly believes that whistleblower must be protected. This legislation sets up a framework for whistleblower reporting as well as training on whistleblower rights and protections for staff and supervisors. It also creates mandatory standards for discipline and removal of supervisors that engage in whistleblower retaliation. The VFW believes these provisions are necessary and appropriate.

There has been much emphasis lately on increasing employee accountability at VA. The VFW supports these efforts, believing that VA must have the authority to swiftly discipline or terminate any employee whose actions endanger veterans. Still, enhanced firing authority could be used by managers to eliminate whistleblowers if proper protections are not in place.

For this reason, we strongly supported the whistleblower protection provisions that were added to H.R. 1994, the VA Accountability Act, before it passed the House. This legislation contains similar whistleblower protections and we urge this Committee to consider it as a complement to the Senate version of the VA Accountability Act, S. 1082.

Mr. Chairman, this concludes my testimony and I am happy to answer any questions you or the Committee may have.

[The prepared statement of Mr. Morosky follows:]

PREPARED STATEMENT OF ALEKS MOROSKY, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Chairman Isakson, Ranking Member Blumenthal and Members of the Committee, On behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliaries, I would like to thank you for the opportunity to testify on today's pending legislation.

S. 2106, WOUNDED WARRIOR EMPLOYMENT IMPROVEMENT ACT OF 2015

The VFW supports this legislation, which would require the Department of Veterans Affairs (VA) to create an action plan to improve the Vocational Rehabilitation and Employment (VR&E) program. Similar to education programs, such as the GI Bill, VR&E offers disabled veterans access to education and training in order give them the skills necessary to transition to civilian life. Additionally, it provides other support, such as counseling and assistance finding jobs that are suitable for their disabilities. VR&E must be viewed as a cornerstone of VA services. Veterans who have been wounded or injured, or have fallen ill want to be productive members of society. VR&E is the bridge to get them there. Still, there are certain improvements to the program that should be made.

This bill would require VA to conduct an analysis of and develop a plan to remedy VR&E workload management challenges. Recent figures indicate that the workload for VR&E counselors at many Regional Offices often exceeds the VA standard of one counselor to every 125 veterans. The VFW believes that VA must hire additional counselors to meet this standard and then evaluate if 1:125 is truly an effective ratio, especially for counselors who assist veterans with severe cases of Post-trau-

matic Stress Disorder and Traumatic Brain Injury. VR&E must focus on building careers for veterans—not just placement into jobs. To do this, counselors must be able to invest the time necessary to achieve a higher standard of success. The VFW also believes that VA must change its current veterans' success rate tracking model from the current 60-day threshold to the end of the veterans' probationary period.

VA would also be required to conduct an analysis on why a higher percentage of disabled veterans choose to use their GI Bill benefits over VR&E and to conduct outreach for the VR&E program. The VFW supports this provision, believing that it would be helpful in identifying other weaknesses in the program, such as barriers to entry and lack of awareness.

S. 2134, 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 expected 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.

While the VFW supports the pilot program this legislation would establish, we believe that new funding should be authorized for new programs, so that existing care and services are not diminished.

S. 2170, VETERANS E-HEALTH AND TELEMEDICINE SUPPORT (VETS) ACT OF 2015

The VFW supports this legislation, which would allow qualified VA physicians to provide telehealth services to veterans across state lines, removing the requirement that both be located in a federally owned facility. This would be especially helpful for veterans who do not live in the same state as the facility in which they are enrolled.

With geographic distance remaining a significant barrier to care for many veterans, the use of telemedicine technology has emerged as a highly effective method of providing veterans with timely and convenient care. Current law, however, restricts VA health professionals from practicing telemedicine across state lines unless both the provider and the veteran are located in federally owned facilities. Consequently, veterans who are enrolled in out-of-state VA medical centers may be forced to travel significant distances to access telehealth services. By allowing VA health care professionals to practice telemedicine across state borders, a veteran's physical location would no longer be a limiting factor in his or her ability to take advantage of telehealth services.

DRAFT LEGISLATION, DEPARTMENT OF VETERANS AFFAIRS VETERANS EDUCATION RELIEF AND RESTORATION ACT OF 2015

The VFW strongly supports this legislation, which would authorize VA to restore GI Bill benefits for student veterans who receive no course credit or lose training time due to permanent closure of their educational institutions. We are pleased that this authority would be made retroactive for fiscal year 2015, covering veterans who were impacted by the recent closure of Corinthian Colleges. The VFW notes that the Department of Education has established a debt forgiveness program for students who were attending Corinthian on Federal student loans, and we believe that it is equitable for student veterans to receive similar relief.

Veterans who attend schools using their GI Bill benefits are limited to 36 months of assistance, with the assumption that this is the amount of time necessary to complete a four year degree attending classes at the full-time rate. Veterans who lose a semester of benefits due to an unexpected school closure are put at a disadvantage, since they may no longer have enough time to complete their educational goals. While the VFW realizes that veterans have the responsibility to be informed consumers when choosing where to use their education benefits by using resources like the GI Bill Comparison Tool, we believe it is unreasonable for veterans to anticipate that the schools they currently attend will close mid-semester. For this reason, we believe it is fully justified that their GI Bill benefits be restored in those

cases, allowing them to complete their courses of education at another school before their benefits are exhausted.

DRAFT LEGISLATION, VETERANS AFFAIRS RETALIATION PREVENTION ACT OF 2015

The VFW strongly supports this legislation, which would offer significant protections to VA employees who step forward to identify wrongdoing within the Department. These employee whistleblowers are the first line of defense against mismanagement, abuse, and other actions that put veterans in danger. Although they should be commended for their actions, they sometimes suffer reprisal from supervisors who would rather cover up problems than fix them. The VFW strongly believes that whistleblowers must be protected.

There has been much emphasis lately on increasing employee accountability at VA. The VFW supports these efforts, believing that VA must have the authority to swiftly discipline or terminate any employee whose actions endanger veterans. Still, enhanced firing authority could be used by managers to eliminate whistleblowers if proper protections are not in place. For this reason, we strongly supported the whistleblower protection provisions that were added to H.R. 1994, the VA Accountability Act, before it passed the House. This legislation contains similar whistleblower protections, and we urge this Committee to consider it as a compliment to the Senate version of the VA Accountability Act, S. 1082.

This legislation defines a whistleblower complaint as "a complaint by an employee of the Department disclosing, or assisting another employee to disclose, a potential violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health and safety." It creates a reporting system that protects employees from retaliation by immediately involving higher level management and the central whistleblower office, which will be responsible for investigating all complaints. If a positive determination is made that the complaint is valid, the whistleblower will be given the option to transfer. VA will be required to develop a whistleblower complaint form and conduct training on how to file whistleblower complaints and on whistleblower rights. The VFW thinks these protections are necessary and appropriate.

Supervisors found to have engaged in retaliation in accordance with section 2302 of title 5 will be suspended for at least 12 days for the first offense and terminated on the second offense. Whistleblower compliance will be added to supervisors' performance evaluation criteria, and bonuses will be prohibited or clawed back for any supervisor who engages in whistleblower retaliation. The VFW believes these provisions will act as an effective deterrent, allowing whistleblowers to come forward with confidence that they will not suffer reprisal.

This legislation would also require the Inspector General to submit to Congress and make public any report that makes a recommendation or suggests corrective action. The VFW supports this provision, however, we suggest that any report that substantiates an allegation should also be made public. This will promote greater transparency in cases where the IG makes no recommendations because it believes that VA has already taken corrective action before the report is published.

Mr. Chairman, this concludes my testimony and I will be happy to answer any questions you or the Committee members may have.

Chairman ISAKSON [presiding]. Thank you very much.

Mr. Porter.

STATEMENT OF THOMAS PORTER, LEGISLATIVE DIRECTOR, IRAQ AND AFGHANISTAN VETERANS OF AMERICA

Mr. PORTER. Chairman Isakson, Ranking Member Blumenthal, Members of the Committee, on behalf of IAVA and our more than 425,000 members, thank you for allowing me to share our views today.

IAVA supports each of the bills considered today, which address issues we highlighted in our recently updated policy agenda. I would like to focus on the main areas our members have expressed concern, VA accountability and defense of the Post-9/11 G.I. Bill.

Because a top IAVA priority is VA accountability, we support Senator Kirk's draft, which directs the VA to punish supervisors found to take retaliatory actions against whistleblowers. We have

heard whistleblowers from within the VA detailing abuses of veterans and how they have experienced the retaliation for stepping forward. VA must ensure that retaliating against whistleblowers and veterans who complain about care does not happen.

The common sense provisions that establish punishments for violators, a formal process for filing complaints within the VA, a central whistleblower office separate from the General Counsel's Office, and additional training for VA employees are welcome proposals to improve how veterans and well-meaning VA employees are treated by their government.

Another measure that would improve services for veterans is the Wounded Warrior Employment Improvement Act, to require the VA to develop a plan for improving the vocational rehabilitation services and assistance provided by the VA. To underscore the importance of such programs, one of our Nebraska members, an Afghanistan veteran, recently provided inspiring testimony to the House Veterans' Affairs Committee on his use of the VETS Success on Campus Program. Through this program, he rebounded from numerous setbacks and is now on a path to success. Seeing this young man testify before Congress after overcoming so many challenges exemplifies the empowered veteran we highlight online with the social media hashtag #vetsrising.

There is some satisfaction among our members that participate in the program. Our 2014 member survey showed that 12 percent of respondents rated VA's vocational rehabilitation services as good, but an equal percentage rated it as neither good or bad or bad. Seventy-six percent of our members have not used it.

Another of our priorities is the defense of veteran Education benefits, such as the Post-9/11 G.I. Bill, which IAVA fought hard to establish. Many using the G.I. Bill have been adversely impacted when their schools closed. According to the Veterans Benefits Administration, 70 VA approved schools closed in fiscal year 2013 and 2014, affecting 1,605 G.I. Bill beneficiaries. Just this April, 422 veterans receiving G.I. Bill benefits saw their education plans abruptly end when Corinthian Colleges closed 28 schools and filed for bankruptcy.

Because the receipt of G.I. Bill benefits is conditioned upon enrollment, veterans education benefits are suddenly discontinued when a school permanently closes. While the VA can pay benefits up to the time of the school's closure, the student is charged with the entitlement for that term but does not earn any credit toward program completion. In addition, their housing benefit is terminated the day the school closes.

IAVA's Rapid Response Team, made up of master's level case managers that has helped more than 6,000 veterans connect to resources, including with the G.I. Bill, has taken steps to get veterans assistance with their education funds following school closures. We understand that VA has the authority to continue payments for up to 4 weeks when schools are temporarily closed due to an emergency, but there is no similar authority to continue benefits in the event of a permanent closure.

For this reason, IAVA supports the Veterans Education Relief and Reinstatement Act, to allow VA to restore any Post-9/11 G.I. Bill entitlement for student veterans that fail to receive credit due

to a permanent school closure. It also directs VA to continue paying the G.I. Bill housing allowance until the end of the term or the 4 months, whichever is sooner, during which the school closure occurred. The Post-9/11 G.I. Bill has sent more than one million veterans to school, training America's next greatest generation.

Although wildly successful, it is clear that all of us, including Congress, must be vigilant to ensure the benefit lives up to its goals and maintains the confidence of our veterans who depend on the benefit to transition to civilian life. All veterans deserve the best our Nation can offer when it comes to fulfilling the promises made to them upon entry into the military.

Thank you for considering our views. I am happy to answer any questions.

[The prepared statement of Mr. Porter follows:]

PREPARED STATEMENT OF TOM PORTER, LEGISLATIVE DIRECTOR, IRAQ AND AFGHANISTAN VETERANS OF AMERICA

Bill #	Bill Name or Subject	Sponsor	IAVA Position
S. 2106	Wounded Warrior Employment Improvement Act	Sen. Sherrod Brown	Supports
S. 2134	Grow Our Own Directive: Physician Assistant Employment and Education Act	Sen. Jon Tester	Supports
S. 2170	Veterans E-Health & Telemedicine Support Act (VETS Act)	Sen. Joni Ernst	Supports
S. 2253	Veterans Education Relief and Reinstatement Act	Sen. Richard Blumenthal	Supports
S. [Draft]	Veterans Affairs Retaliation Prevention Act	Sen. Mark Kirk	Supports

Chairman Isakson, Ranking Member Blumenthal and Distinguished Members of the Committee, On behalf of Iraq and Afghanistan Veterans of America (IAVA) and our more than 425,000 members and supporters, I would like to extend our gratitude for the opportunity to share our views regarding these pieces of legislation.

IAVA supports each of the bills before the Committee today. To varying levels, they address issues IAVA has highlighted in our updated Policy Agenda, which was recently released and distributed to each of your offices. I would like to focus my testimony on the main areas that our members have expressed concern: (1) Accountability at the Department of Veterans Affairs (VA) and (2) Defense of the Post-9/11 GI Bill.

Because one of IAVA's top priorities is accountability at the VA, we support Sen. Kirk's draft legislation which directs the VA to punish supervisors found to take retaliatory actions against whistleblowers. Time and again, we have heard whistleblowers from within the VA detailing abuses of veterans and how they have experienced retaliation for stepping forward. VA must ensure that retaliating against whistleblowers and veterans who complain about care does not happen. A culture of intimidation is inconsistent with accountability within the Department.

The common-sense provisions that establish strong punishments for violators, a formal process for filing complaints within the VA, a central whistleblower office separate from the General Counsel's office, and additional training for VA employees are welcome proposals to improve how veterans and well-meaning VA employees are treated by their government.

Another measure that would improve the services being delivered to our veterans is the Wounded Warrior Employment Improvement Act (S. 2106), which would require the VA Secretary to develop and publish an action plan for improving the vocational rehabilitation services and assistance provided by VA.

To underscore the importance of such programs, one of our members from Nebraska, an Army veteran who served in Afghanistan, recently provided inspiring testimony across the Capitol before the House Veterans Committee on his use of the VetSuccess on Campus program. Through this valuable program, he rebounded from numerous personal and professional setbacks and is now on a path to success. Seeing this young man testify before Congress after overcoming so many challenges ex-

emplifies the empowered veteran we highlight online with the social media hashtag "Vets Rising."

There is some satisfaction among our members that participate in the program. Our 2014 survey of our members showed that 12% of respondents rated VA's Vocational Rehab services as "good," but an equal percentage rated it as "neither good or bad" or "bad." 76% have not used it.

Another of IAVA members' top priorities is the defense of veteran and military education benefits, such as the Post-9/11 GI Bill, which IAVA fought hard to establish. Many veterans using Post-9/11 GI Bill benefits have been adversely impacted when the schools they attended closed. According to the Veteran Benefits Administration, 70 VA-approved schools closed in FY 2013 and 2014, affecting 1,605 GI Bill beneficiaries. Just this past April, 422 veterans receiving Post-911 GI Bill benefits saw their education plans abruptly end when Corinthian Colleges closed 28 schools and filed for bankruptcy.

Because the receipt of GI Bill benefits is conditioned upon enrollment, veterans' education benefits are suddenly discontinued when a school permanently closes. While the VA can pay benefits up to the time of the school's closure, the student is charged with the entitlement for that term, but does not earn any credit toward his or her program completion. In addition, the housing benefit—oftentimes their primary or sole source of paying for lodging, food, and other basic necessities while attending school—is terminated the day the school closes.

IAVA's Rapid Response Referral Program Team, made up of masters level case managers that has helped more than 6,000 veterans meet their goals through connections to quality resources and benefits, has taken steps to get veterans assistance with their education funds following school closures.

We understand that VA has the authority to continue payments for up to four weeks when schools are temporarily closed due to an emergency, but there is no similar statutory authority to continue benefits in the event of a permanent school closure.

For this reason, IAVA supports the Veterans Education Relief and Reinstatement Act, which would allow the VA to restore any Post-9/11 GI Bill entitlement for student veterans that fail to receive credit toward their educational goals due to a permanent school closure. It also directs the VA to continue paying the Post-9/11 GI Bill housing allowance until the end of the term—or up to four months, whichever is sooner—during which the school closure occurred.

The Post-9/11 GI Bill has sent more than one million veterans to school, training America's next "greatest generation" for success in business and government careers. Although wildly successful, it is clear that all of us, including Congress, must be vigilant to ensure that the benefit lives up to its goals and to maintain the confidence of our veterans who depend on the benefit to transition to civilian life.

IAVA's members, and all veterans, deserve the very best our Nation can offer when it comes to fulfilling the promises made to them upon entry into the military. There is no doubt this Committee has the best interests of our veterans in mind when drafting legislation. But we do hope you take into consideration and implement what we, and our fellow veteran service organizations, have had to say on these pieces of legislation today.

Thank you for your time and attention. IAVA is happy to answer any questions you may have.

Chairman ISAKSON. Thank you very much.

Ms. Zumatto.

STATEMENT OF DIANE ZUMATTO, NATIONAL LEGISLATIVE DIRECTOR, AMVETS

Ms. ZUMATTO. Chairman Isakson, Ranking Member Blumenthal, Senators Moran and Tillis, I am pleased to be here today to share AMVETS's position on this pending legislation.

S. 2106, the Wounded Warrior Employment Improvement Act, AMVETS supports the legislation, which directs the Secretary to develop and publish an action plan for improving the vocational rehabilitation program of the VA. AMVETS believes that the VA needs to provide veterans with the highest level of transition assistance, giving special attention to disabled veterans in a more efficient and timely manner. AMVETS suggests improving currently

existing VA public-private partnerships and making new connections with providers in order to provide veterans with the broadest array of services and resources available.

It is our belief that part of the reason for the disproportionately low participation of post-9/11 veterans in the vocational rehabilitation program is that it is not well publicized and, therefore, not well known as it could be in the veteran community. The legislation's ultimate goal should be to better enable catastrophically injured eligible veterans to return to productive lives. Hopefully, the provisions outlined in this bill will better able the VA to do just that.

S. 2134, the Grow Our Own Directive: Physician Assistant Employment and Education Act, we enthusiastically support this legislation which seeks to address the PA shortage within the VA. AMVETS actually loves this approach, which would serve a dual purpose of not only helping to improve timely access to health care, but also helping to reduce veteran unemployment. AMVETS also applauds the fact that the eligible participants must meet certain requirements, including previous military health care experiences, which just makes the whole program more cost effective.

It seems obvious that by increasing the number of PAs within the VA system, the burden on physicians and other clinicians would be reduced. This, in turn, would make it easier for a veteran to get in to see a doctor when that is actually necessary.

S. 2170, the eHealth and Telemedicine Support Act, AMVETS supports this legislation, which seeks to increase timely access to health care resources through the use of telemedicine services by licensed, registered, or State certified clinicians in any State, regardless of whether either or both are located in a VA facility. There is no denying that the practice of telemedicine continues to expand as one of the fastest growing and most viable health care options. Just as importantly, however, is to ensure that those services are being provided by properly accredited professionals.

S. 2253, the Education Relief and Restoration Act, AMVETS also supports this bill, which seeks to protect education benefits if a veteran, due to no fault of his own, is forced to discontinue a course as a result of an educational institution's permanent closure and they did not receive credit or lost training time toward the completion of that program. That is enough for that one.

The discussion draft to provide procedures within the VA for whistleblower complaints, AMVETS wholeheartedly supports this very important piece of legislation, which seeks to address the issue of retaliation by VA supervisors against whistleblower employees. This is an absolutely heinous practice which needs immediate systemwide action. If a VA employee at any level is violating laws or regulations, misusing or wasting funds, stealing or putting veterans in danger, either by their actions or lack thereof, then they are the ones who should be targeted by the Department, not the whistleblower who steps forward to report those illegal actions.

Unfortunately, it seems the whistleblower gets all the negative attention and is the one who sometimes gets prosecuted while the evildoer is allowed to continue unpunished. This is both wrong and a travesty of justice. It should not be allowed to continue under any circumstances.

This completes my testimony at this time and I would be happy to answer any questions.

[The prepared statement of Ms. Zumatto follows:]

PREPARED STATEMENT OF DIANE M. ZUMATTO,
NATIONAL LEGISLATIVE DIRECTOR, AMVETS

Distinguished members of the Senate Veterans' Affairs Committee, it is my pleasure to be here today representing AMVETS' position on the following pending legislation:

- S. 2106, the Wounded Warrior Employment Improvement Act of 2015
- S. 2134, the Grow Our Own Directive: Physician Assistant Employment & Education Act of 2015
- S. 2170, the Veterans E-Health & Telemedicine Support Act of 2015
- S. 2253, the Veterans Education & Restoration Act of 2015
- S. ———, Discussion draft—to establish procedures within the VA for processing Whistleblower complaints.

I would like to begin today's statement with the following introductory remarks prior to turning to each specific piece of legislation: As the United States absorbs the aftereffects of more than a decade of continuous war and in the face of the planned draw-down of military personnel, the physical and mental health of our military and veterans will continue to be priority issues for AMVETS, the veteran's community and hopefully Congress. Thanks to improvements in battlefield medicine, swift triage, aeromedical evacuations and trauma surgery, more combat-wounded than ever before are surviving horrific wounds and will be needing long-term rehabilitation, life-long specialized medical care, sophisticated prosthetics, etc. Your committee has a responsibility to ensure that the VA and our Nation live up to the obligations imposed by the sacrifices of our veterans.

It is encouraging to acknowledge at this time that, despite the extraordinary sacrifices being asked of our men and women in uniform, the best and the brightest continue to step forward to answer the call of our Nation in its time of need. I know that each of you is aware of, and appreciates the numerous issues of importance facing our military members, veterans and retirees.

PENDING LEGISLATION

S. 2106, the Wounded Warrior Employment Improvement Act of 2015—AMVETS supports this legislation which directs the VA Secretary to develop & publish an action plan for improving the vocational rehabilitation program of the VA. AMVETS believes that the VA needs to provide veterans with the highest level of transition assistance, giving special attention to disabled veterans, in a more efficient and timely manner.

AMVETS suggests improving currently existing VA public/public partnerships and making new connections with providers in order to provide veterans with the broadest array of services and resources as possible.

It is our belief that part of the reason for the disproportionately low participation of Post-9/11 veterans in the VA's Voc-Rehab program is that it is not as well publicized, and therefore not as well known, as it could be in the veteran community.

This legislation's ultimate goal should be to better enable catastrophically injured, eligible veterans to return to productive lives. Hopefully, the provisions outline in this bill will better able the VA to do just that.

S. 2134, the Grow Our Own Directive: Physician Assistant Employment & Education Act of 2015—AMVETS enthusiastically supports this legislation which seeks to address the physician assistant shortage within the VA. AMVETS loves this approach which would serve the dual purpose of:

- helping to improve timely access to healthcare; and
- helping to reduce veteran unemployment

AMVETS also applauds the fact that the eligible participants must meet certain requirements including: previous military healthcare experiences, which make this effort more cost effective.

It seems obvious that by increasing the number of PAs within the VA system, the burden on Physicians and other clinicians, would be reduced. This in turn should make it easier for a veteran to get in to see their doctor.

S. 2170, Veterans E-Health & Telemedicine Support Act of 2015—AMVETS supports this legislation which seeks to increase timely access to healthcare resources through the use of telemedicine services by licensed, registered or state certified cli-

nicians in any state, regardless of whether either or both are located in a VA facility.

There's no denying that the practice of telemedicine continues to expand as one of the fastest growing and viable healthcare options. Just as importantly however, is to ensure that those services are being provided by the properly accredited professionals.

S. 2253, Veterans Education Relief & Restoration Act of 2015—AMVETS supports this legislation, which seeks to protect education benefits if a veteran, due to no fault of their own, is forced to discontinue a course as a result of an educational institution's permanent closure and did not receive credit or lost training time toward completion of the education program, Department of Veterans Affairs (VA) educational assistance payments shall not, for a specified period of time, be:

- charged against the individual's entitlement to educational assistance, or
- counted against the aggregate period for which such assistance may be provided.

This seems pretty straight forward in its intent, though I have no actual data on how often this type of situation occurs. It seems only right and proper, however, not to penalize a veteran for something entirely out of his/her control, especially because whatever course they didn't get credit for will have to be repeated elsewhere at a future date.

*S.*____, Discussion draft—to establish procedures within the VA for processing Whistleblower Complaints—AMVETS wholeheartedly supports this very important piece of legislation which seeks to address the issue of retaliation by VA supervisors against whistleblower employees. This is an absolutely heinous practice which needs immediate, system-wide action.

If a VA employee, at any level, is violating laws or regulations, misusing or wasting funds, stealing or putting veterans in danger, either by their actions or lack thereof, then they are the ones who should be targeted by the department, not the person (whistleblower) who steps forward to report the illegal actions. Unfortunately, this is not how the process currently works, in fact, it's just the opposite—the whistleblower seems to get all the negative attention and is the one who gets prosecuted, while the evil doer is allowed to continue unpunished. This is both wrong and a travesty of justice and it should not be allowed to continue under any circumstances.

This completes my testimony at this time and I thank you again for the opportunity to offer our comments on pending legislation. I will be happy to answer any questions the Committee may have.

Senator MORAN [presiding]. Thank you all for your testimony.

The Chairman will return in just a moment, but I am going to use the opportunity of having the gavel to ask the first question. I think I only have one, and that is to you, Ms. Hempowicz. The consequences that whistleblowers face, has it changed over time? Is it better today than it was in the past? Do the consequences, the poor consequences to someone who reports bad behavior, do they change?

Ms. HEMPOWICZ. I do not know if I know far enough back to know if they have changed over time, but I think the consequences for blowing the whistle today are pretty severe. You run the risk of losing your career, your livelihood. You lose your good name if your reputation is dragged through the mud. I think the consequences are pretty high today. I would assume that they have always been pretty high.

Senator MORAN. I was just interested in knowing whether—in my view, leadership matters. Who is in charge of the VA, I assume, determines the culture or the nature of how the VA responds to these kind of circumstances and I wondered if there was any empirical evidence, any reporting data that would suggest that either today or in the past, it has been handled better and, therefore, there are less instances of bad behavior toward whistleblowers.

Ms. HEMPOWICZ. I am not sure if we have enough information to say that, empirically, it is better or worse. I mentioned in my testi-

mony that we have received over a thousand complaints in the last year. We are still receiving complaints on a weekly basis.

Senator MORAN. I thank you very much.

Ms. HEMPOWICZ. No problem.

Senator MORAN. Mr. Chairman, thank you.

Chairman ISAKSON [presiding]. Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Mr. Chairman.

I would like to ask, first of all, Mr. Hubbard, have you encountered veterans who have been victimized by the Corinthian debacle?

Mr. HUBBARD. Thank you for the question, Senator. When that issue first came up, we did a quick survey to find out how many student veterans were under the Corinthian umbrella, under the Everest, Heald, and WyoTech schools. After looking at the database on the GEOGO [phonetic] comparison tool, we found that approximately 8,800 student veterans were studying at those institutions. We quickly reached out to and interacted with those students to make sure that they were taken care of, and our initial conversations actually with the VA, I think, were quite positive. There was the interest in addressing that situation directly and having the authorities that identified they did not for that situation.

Interestingly, when we did reach out, as pointed out in our testimony, to the Corinthian executives, we received no response for several weeks. I think that was pretty telling of the situation. Ultimately, you know what the end result was.

Senator BLUMENTHAL. Thank you.

I want to thank all of the folks who are here today for your support for the Whistleblower Protection Act that I have introduced with Senator Kirk. I want to ask you, Ms. Hempowicz, because I gather you have some suggestions for changing it, whether you think that the Office of Special Counsel is a sufficient enforcement vehicle for protecting whistleblowers. I gather you feel that a central whistleblower office would not have the independence and that it would detract from the resources available to the Office of Special Counsel.

Ms. HEMPOWICZ. Yes. I think that the Office of Special Counsel has proven itself to be well equipped to deal with whistleblowers from VA. Our concern is less that resources would be diverted from OSC, but that the resources that go into the central whistleblower office could do a better job, or could be better put to use by putting them into the Office of Special Counsel. Any new office, there are going to be some growing pains. So, creating a new office to do largely what another office is doing, we think is a little bit redundant.

There is the problem of our concern that it would not be independent enough in the same—this office, the central whistleblower office, is supposed to be independent the same way that the Inspector General's Office is supposed to be independent, and especially at the VA, we have seen that is not really the case. So, that is where our concerns stem.

Senator BLUMENTHAL. I do not remember what the House bill does. Do you recall?

Ms. HEMPOWICZ. It has a very similar provision to create a central whistleblower office, and we are still concerned.

Senator BLUMENTHAL. In terms of contractors and veterans that you say should also be protected against retaliation, that would not necessarily be against retaliation by supervisors. It would be against retaliation by anyone, I assume.

Ms. HEMPOWICZ. Yes.

Senator BLUMENTHAL. That would be, in effect, a separate goal of the bill, in effect, stopping retaliation not only against VA employees, but also against contractors and veterans.

Ms. HEMPOWICZ. Yes.

Senator BLUMENTHAL. Let me ask you, are there provisions in the House bill that you would recommend that the Senate adopt that are not in the present bill?

Ms. HEMPOWICZ. Not off the top of my head, but I can certainly get back to you with an answer for that.

Senator BLUMENTHAL. OK. Well, I would be interested in that, if you think that the Senate bill could be improved by any provisions or any other ideas that you or others testifying today may have, because I agree with all of you that this is a centrally important measure. As much as the VA may in good faith think that it is addressing this problem, I think that stronger deterrence and prevention are absolutely necessary. Punishment and enforcement are really important goals.

Thank you all for your testimony today. Thank you.

[Responses were not received within the Committee's timeframe for publication.]

Chairman ISAKSON. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chair, and Mr. Chair, I want to mention, I think you had to be out for a moment when we were talking with the previous panel about some of the recommendations in the bills that we are talking about today. I think that the VA may have some concern, less to do with the merits of the provisions and more to do with how to pay for it and how much it will cost. It brought up to my mind probably the need at some point for us to get an update on the transformation and say, if this is a good idea and it does not work right now, tell us how the transformation is going to make it easier to implement and something that you would support later on. For your consideration for a future committee meeting.

Ms. ZUMATTO AND MR. Morosky, you more or less supported without qualification S. 2106. Mr. Hubbard, you support the direction of the legislation, but you suggest that it can be accomplished without a legislative fix, just a policy change. Would you then say that we do not move forward with this bill because we think the VA will act on it, or is it just a statement that it is within their purview to address this anyway?

Mr. HUBBARD. Thank you for the question, Senator. We believe this issue is of immediate importance, as I believe you do, as well.

Senator TILLIS. Do you think it is going to take us too long to get it done?

Mr. HUBBARD. We believe that it is important to address currently. We believe that they have shown the intent to address it, would like to give them an opportunity to show the results of which and fine tune from that point forward.

Senator TILLIS. Mr. Morosky or Ms. Zumatto, any additional comment? I mean, we all think that we can get it done, but we would also like to continue to move this to provide the pressure to make sure that it gets done.

Mr. MOROSKY. Yes, Senator. I think that putting it into legislation, codifying it, would continue to apply the pressure. If they have a plan that is very similar than what is laid out, then they would just have to publish it. It is also some of the reporting requirements having to do with the underutilization of Chapter 31. I do not think that they have any plans of looking at that right now, so that would be helpful, as well.

Ms. ZUMATTO. I would agree with Aleks. Absolutely. Thank you.

Senator TILLIS. All right. I just wanted to make sure there was not anything beyond the point that you made. The sooner the better, and let us hope they can get it done and render the need to move the bill unnecessary.

Mr. HUBBARD. We absolutely support the intent, without question.

Senator TILLIS. Ms. Hempowicz, you mentioned something. I was not going to talk about whistleblowers except to say that I support the legislation before us. I am one of the founding members of the Senate Whistleblower Caucus, so on a broad basis, I think there is a lot more that we need to do to protect whistleblowers. I think, generally speaking, there is broad consensus that we need to have more whistleblower protections, but one of the things that comes up every once in a while is the protections of the accused. You just said something that had to do with a supervisor having been accused of retaliation having 14 days to respond and prove that they did not retaliate. In your view, do we have adequate protections for the accused in the policies that are moving forward?

Ms. HEMPOWICZ. I think, yes, this is a provision that has gotten some back and forth on the House side and on the Senate side. The change from 14 days to 5 days happened very recently [sic]. I think, yes, that change does address and does kind of put in place enough due process for the accused supervisors. Yes.

Senator TILLIS. What about the discussion we had? You were saying that in some cases, you think it makes sense to revise the bill to have kind of a skip-level reporting option. Can you talk a little bit more about that? Do we already have proposed changes before us?

Ms. HEMPOWICZ. Well, I mentioned the one word change in——

Senator TILLIS. From "shall" to "may"?

Ms. HEMPOWICZ. From "shall" to "may," yes.

Senator TILLIS. But, what does that really do? One of the things I have seen, less so in the VA, but we were having a similar discussion over in the Department of Justice, and it is also making sure that there are more options for reporting potential abuses, but clarity at the same time. Am I willing to put my reputation or my job on the line, we need to provide some level of clarity and safe harbor for them. Do we have draft language right to do that?

Ms. HEMPOWICZ. I think the change from "shall" to "may" would do that. Whistleblowers already have the ability to go to their direct supervisor. I think this is an excellent clarification, but we believe that the "shall" word makes it a mandatory step, and this bill

does give three exceptions where you could just jump that step. However, we do not think that is an inclusive list, and rather than make it a mandatory step with an inclusive list of exceptions, we think just that one word switch would clarify without making it overly burdensome for the whistleblower.

Senator TILLIS. Thank you.

Thank you, Mr. Chair.

Chairman ISAKSON. Thank you very much, Senator Tillis.

Mr. Hubbard, you are the Vice President of Government Affairs for the Student Veterans of America, is that correct?

Mr. HUBBARD. Yes, Mr. Chairman.

Chairman ISAKSON. When I was listening to your testimony a moment ago, I want to make sure I heard something correctly. We were talking about the Corinthian issue, which is a terrible tragedy for veterans and their families. Did you make a generic statement, though, about all of the for-profit institutions, or did I hear that? Did you make a reference to all of them or just to Corinthian?

Mr. HUBBARD. We made a statement on the umbrella of the issue. We believe that this is a good example of what could be applied more broadly. We are obviously concerned about all student veterans everywhere, and we saw that this situation with Corinthian identified that school closures is not something that is going to be going away any time soon. We have seen that the insolvent practices and the questionable marketing techniques of many schools are of concern. I believe that does apply more broadly, but it was not necessarily intended to be a statement on the sector.

Chairman ISAKSON. Good. I wanted that clarification, because there are some who think that, by definition, a for-profit school is not providing quality services to their students. I think we have to be very careful to not throw the baby out with the bathwater. We probably need to look at the entire issue of for-profit schools that are providing services to our veterans and find out where there is a problem and address the problem rather than generically castigate a category of schools.

Because for the non-traditional students, which all veterans really fall in the non-traditional student category, distance learning, the use of technology in learning, and things of that nature, which are more common to the for-profit schools than they are for the institutions of higher learning like universities, are a good way to deliver quality services. We do it with the eArmyU in the military. I mean, we have 37 universities delivering college credit content over the Internet to our soldiers in the field today. That is a program I was very proud to start with Senator Kerry years ago.

I wanted to make sure that was not a general statement, but I think it does beg the question. It is probably time for us to look at all of them and make sure we know where the actors are and what the degree of action really is, whether they are Academy Award winners or not so good, one way or another.

Ms. Hempowicz, I could not help but laugh at myself last night, and I apologize. The only testimony I missed today was yours, and I apologize. I had to run out for a brief speech that I had to make. I was sitting there reading your testimony. I looked up at the acronym for your organization and it is POGO, and I remember that

cartoon character Pogo who said, "We have met the enemy and it is ourself." [Laughter.]

I think in the Veterans Administration, that is an applicable thing for us to talk about for a second.

You had said your organization never received more inquiries in your 34-year history on any investigation other than the one for the VA, is that correct?

Ms. HEMPOWICZ. Yes.

Chairman ISAKSON. How comprehensive was that input, extremely or just tertiary?

Ms. HEMPOWICZ. I am sorry. I do not understand——

Chairman ISAKSON. How comprehensive was the feedback? I mean, did you get specific cases, specific claims, specific grievances, things of that nature?

Ms. HEMPOWICZ. Yes. We got very specific claims. We were not able to follow up on every single one because there were a lot of anonymous submissions. However, the ones that we were able to follow up with and do some more investigation, coupled with the anonymous complaints that we received, painted a broad picture of fraud, waste, abuse, mismanagement within the VA.

Chairman ISAKSON. Using the terminology "broad picture," and I do not want to put any words in your mouth. I want you to answer this the way you would just answer, which I am sure you would, but those comments were not limited to that Phoenix area or were not limited to a specific area of the United States. They came from pretty much all over, is that correct?

Ms. HEMPOWICZ. Absolutely.

Chairman ISAKSON. Do you think the problem in the VA in terms of the whistleblower problem and the problem with the services to the veterans that we hear the complaints about so often, it is more of a cultural problem within the VA than it is anything else attitudinally-wise?

Ms. HEMPOWICZ. I do. I think there is a culture of sweeping things under the rug at the VA that needs to be addressed, and this legislation like this that would hold those who retaliate against whistleblowers accountable does go leaps and bounds to addressing that culture.

Chairman ISAKSON. I am going to go a little bit over my time, but this is an important point I want to try to make with Mr. Morosky and Mr. Hubbard. I want you all to listen to what I am about to say and then give me your comment.

The VA appears to me to be—in the last 10 months, it appears to me the VA has improved its response on wait times and its delivery of quality services, and I am hearing there is improvement within the VA in delivery of those services to veterans. Would you agree or disagree with that?

Mr. HUBBARD. I would agree with that overall, Mr. Chairman.

Chairman ISAKSON. What about you, Mr. Morosky?

Mr. MOROSKY. I would, as well, Mr. Chairman.

Chairman ISAKSON. Here is my point. You go ask the average American on the street, what do you think of the Veterans Administration, they will tell you, they are really screwed up. You know, I read about bonuses, I read about people not getting appointments, I read about the Choice not working, and you go on and on

and on. The fact of the matter is that with the changes this Committee originated in August of last year and have been implemented by the VA and its new Secretary, Secretary McDonald, are appearing to start to change the ship of State. It is a big ship, the second largest agency of the government.

We have to somehow find a way to do as an organization is root out the problems by protecting the whistleblowers and having a disciplined program to go after those that are causing the cultural problems while at the same token elevating those that are doing the good job, that are changing the VA internally. I personally think that is what is going on.

We are at that crossroads where we are going to go from being what we have not been to something we always wanted to be, but we have got to help as a committee to do that, and your organizations, I think, to a certain extent, do, too. Now, I am kind of making a speech here. I am not making a question. Do you see where I am coming from, Mr. Morosky?

Mr. MOROSKY. Yes, I do, Mr. Chairman.

Chairman ISAKSON. Mr. Hubbard.

Mr. HUBBARD. Same here, Mr. Chairman.

Chairman ISAKSON. Mr. Porter.

Mr. PORTER. Yes, sir.

Chairman ISAKSON. Ms. Zumatto.

Ms. ZUMATTO. There is no question about that, although I will say that my own personal experience with the VA has not been improving, unfortunately.

Chairman ISAKSON. Well, that is why I asked the question. I am hearing good things about some that is improving. I hear others that it has not changed a bit. I think we have got to find a way to take things like this whistleblower initiative to satisfy the entire country and the VA that we are going to go after the problems in the VA and we are going to try and correct them. We are going to see to it somebody that has a constructive complaint or information can come forward without fear of retribution, while at the same token, those who are in the agency doing a good job have the opportunity to be pointed out and be elevated in the public view. If we can do that, I think we can begin to change the entire culture.

One last thing I am going to say, then I will shut up, and I apologize. Mr. Morosky, I think you were the one that talked about firing the people who were not performing, is that correct? Did you make that statement, or Mr. Hubbard? Somebody made that statement. Mr. Porter, did you make it?

Mr. PORTER. Yes, sir.

Chairman ISAKSON. You were making it in the context of services to the veterans, medical services to the veterans?

Mr. PORTER. Yes, Mr. Chairman.

Chairman ISAKSON. Do you have any—and I do not know the answer to this question, so it is an open-ended question. Hopefully, my staff will tell me. One of the problems that we hear from the Veterans Administration is the difficulty under the law, under union contracts and other constraints, that they have to actually firing somebody. Have you heard any of that, Mr. Porter?

Mr. PORTER. We have heard that there are objections by unions to some of the proposals that would allow for firing or transferring of bad actor employees.

Chairman ISAKSON. That is the part that can ultimately perpetuate the internal culture that does not help the productivity of the individual employees, correct?

Mr. PORTER. Correct, Mr. Chairman.

Chairman ISAKSON. Well, I want to end by saying this, and Senator Blumenthal, I want you to hear what I have got to say so if I say anything wrong, you can correct me. You cannot correct me on the first part, because you do not know the information. But, the second part, you can correct me.

We had a terrible problem at Robins Air Force Base in Georgia, which is an air logistics center (ALC) for our military, our Air Force, whose on-base employment base is mostly union workers. They are mostly civil employees. They are not military employees. There got to be a huge problem between the union, the management of the base, and the commanding officer, and the throughput of that base dramatically declined in terms of the number of F–15s and F–16s they could process through to the point they were not meeting their goals.

A very highly qualified, very ingenious general came in and said, "You know, we have got to stop this." He invited the union shop foreman in and said, "What can we do to change this from being a problem to being an asset?" In 2 years, they have gone from being the least productive ALC in terms of throughput to the most productive ALC in terms of throughput. Every time I have gone to the base the last 2 years to meet with the general, the union leader is in there with him and they are like a team.

My point being, we need to find a way in the agency to foster that type of approach within the VA, as well, to where the employees and the leadership appear as a team to carry out the best interest of the veteran and not are enemies one to another. I will just stop talking now, because I know I am making a speech, but you can correct me if you think I am wrong.

Senator BLUMENTHAL. I enjoy your speeches, Mr. Chairman, and I appreciate them. Can I ask a question——

Chairman ISAKSON. Sure. Absolutely.

Senator BLUMENTHAL [continuing]. I did not mean to interrupt if you have——

Chairman ISAKSON. I am shutting up.

Senator BLUMENTHAL. Thank you, Mr. Chairman.

Mr. Hubbard, could you tell me, in terms of your statement that the wait times and other performance by VA health care has improved, what is the basis for your statement?

Mr. HUBBARD. Thank you for the question, Senator. What we are really focused on is the fact that based on what we have seen with the G.I. Bill and the research that we conducted last year, we understand that there is going to be an influx of veterans into the system. Whether they go to work for VA or for the health care system, in general, that is going to ultimately depend on what the VA determines as far as their hiring programs. We are hoping that over the next couple of years, if they shift their programs and they make it possible for pathways like the bill that is on the table cur-

rently, if those proposals come to fruition, we think that those individuals, who we already know have a propensity for service and want to serve other veterans, we think that we can direct them toward VA.

Senator BLUMENTHAL. I am sorry. Maybe I was unclear in my question. The Chairman asked you whether, if I understood it correctly, whether your dealing or perception is that the VA's performance has improved in terms of reducing wait times, and you said yes.

Mr. HUBBARD. Oh, OK. I understand what you are asking, Senator. Yes, we do have anecdotal evidence for that. There is not any data that we have reviewed on that subject. We——

Senator BLUMENTHAL. Your information is strictly anecdotal?

Mr. HUBBARD. It is based on the feedback we have received from our members, yes.

Senator BLUMENTHAL. OK. Mr. Morosky—I am sorry, the basis for your—a similar question. I know that the VA has some information and data out there.

Mr. MOROSKY. Right. We know of a lot of veterans who have used the Choice program. We know Choice has helped a great deal in eliminating some of the wait time backlogs, particularly for specialty care, at a lot of health care facilities that had significant backlogs before. It is still not perfect. It is a pilot program, of course. I know that this Committee is going to be doing a lot of work and discussing ways to improve on that and roll together the various non-VA care programs into a comprehensive program. So far, it has shown some improvement there.

Senator BLUMENTHAL. Mr. Porter, your information is similarly anecdotal; in other words, stories and——

Mr. PORTER. Yes, Senator——

Senator BLUMENTHAL [continuing]. Contacts with veterans?

Mr. PORTER. I would have to get back with you if we have actually received hard data, but we have heard a lot of anecdotal evidence from the Secretary, senior staff, media reports, but I would have to circle back if we actually have the hard data.

[Responses were not received within the Committee's timeframe for publication.]

Senator BLUMENTHAL. Finally, your feeling is somewhat different, Ms. Zumatto?

Ms. ZUMATTO. I shared my personal experience. I do not have any data from our membership. Again, it is stories, and one of the biggest problems that we believe the VA is suffering from is there is no continuity in service across the system. You get the mixture of, everything is great here and everything is terrible here. My experience has been subpar.

Senator BLUMENTHAL. Thank you. Thank you all again for being here. This has been very, very helpful and informative. Thanks for your service, every one of you.

Chairman ISAKSON. We appreciate your time that you have given. Your testimony is extremely helpful and we welcome you to submit any other testimony you want to for the record. We will be glad to hold it open for that purpose.

This meeting stands adjourned.

[Whereupon, at 4:37 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. MARK KIRK, U.S. SENATOR FROM ILLINOIS

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee: Thank you for allowing me to submit testimony for the record for this legislative hearing on behalf of my bill S. 2291, VA Patient Protection Act. I wrote this legislation after hearing harrowing stories of retaliation and intimidation from VA whistleblowers from across the country. Sadly a consistent theme emerged from these accounts: the VA does not hold those who retaliate against whistleblowers accountable for their actions and continues to fail to combat the culture of corruption and intimidation within the VA.

Dr. Lisa Nee first came to me in the spring of 2014 and shared her story of corruption and intimidation from her time as a cardiologist at the Edward Hines Jr. VA Hospital in Hines, Illinois. Upon arrival at Hines, Dr. Nee was given several bankers boxes full of unread echo cardiograms to begin reading and assessing. She was understandably concerned by such a backlog but was horrified to find that some of the tests were left unread for over a year, in which some patients had died. When Dr. Nee voiced her concerns she experienced retaliation from Hines administration. As if this was not enough, Dr. Nee observed another cardiologist, Dr. Robert Dieter, fraudulently inflating his productivity by entering service codes that he did not perform. This allegation was substantiated by the VA Office of Medical Inspection, which found that this conduct may be in violation of criminal statutes. I am unhappy to state that Dr. Dieter is still employed at Hines VHA and has not been disciplined for this egregious misconduct nor has the VA turned these findings over to the Justice Department to explore criminal allegations. Unfortunately, the VA turned its focus and resources on trying to discredit Dr. Nee in a response letter to my office, which included blatantly false explanations concerning the Inspector General's handling of Dr. Nee's allegations. I am fortunate to work closely with Ms. Germaine Clarno, a social worker and local President of the American Federation of Government Employees (AFGE) at Hines VA. Ms. Clarno first disclosed wrong doing at Hines in regards to waitlist and scheduling manipulation in the spring of 2014. She works closely with other whistleblowers to protect their rights and counsel them on their options. Ms. Clarno continues to work at Hines where she observes and experiences continued retaliation from management against whistleblowers.

Dr. Nee and Ms. Clarno's stories are not isolated cases. I have heard from Mr. Shea Wilkes, who is an employee at the Shreveport VAMC and discovered secret waits lists extending for months and years. Mr. Wilkes filed complaints with the Investigator General (IG), who in turn sent criminal investigators to look into how **he** obtained the wait lists, confiscating computer equipment and asking him to submit to a lie detector test. I met with Dr. Kathryn Mitchell, an emergency room doctor at the Phoenix VAMC, who told me how she disclosed improper staffing in the emergency department and secret waitlists. Management retaliated against Dr. Mitchell by removing **her** as the emergency department director. In addition to these stories, which I am personally familiar, the Office of Special Counsel shared several additional accounts of whistleblower retaliation to President Obama in its letter dated September 17, 2015. These stories are just as disturbing as what I have encountered in Illinois and continue to occur across the VA system where the VA focuses on the conduct of employee whistleblowers rather than the reported wrongdoing of the Department, such as when at the Department of Veterans Affairs Medical Center (VAMC) in Philadelphia, Pennsylvania, a food services employee reported improper sanitation and safety practices and was fired after being accused of eating four expired sandwiches instead of throwing them away. At the Puerto Rico VA, the Department sought to remove an employee who disclosed the hospital director's misconduct. Instead of investigating the director's misconduct, the VA claimed the em-

ployee made an unauthorized disclosure of information and then tried to remove the privacy officer, in part because she concluded that the whistleblower did not make an unauthorized disclosure. A VA employee in Wisconsin sent an email to VA privacy and compliance officers disclosing concerns about improper disclosures of veterans' health information. Again the VA targeted the employee and fired her for sending an email that contained personal information about a veteran. At the Wilmington, Delaware VAMC, a nurse disclosed improper treatment of opiate addiction and was retaliated against by receiving a 14-day suspension for minor allegations of misconduct. Ryan Honl was an employee at the Tomah VAMC in Tomah, Wisconsin and filed for whistleblower protection after being asked to falsify attendance records. Two weeks later, he resigned citing harassment and further disclosed problems with opioid over prescription at Tomah VAMC. The VA fired an employee who is a disabled veteran in Baltimore, Maryland, for pre-textual reasons after the employee petitioned Congress for assistance with the employee's own veterans benefits claim. In Kansas City, the Department fired an employee who reported improper scheduling practices, claiming for the first time after her disclosures that she was acting "too slowly" in scheduling appointments for veterans.

These stories are the reason why I crafted this bill that will protect our protectors. The VA Patient Protection Act seeks to set up a process to PROTECT whistleblowers while PUNISHING those who retaliate against whistleblowers to ENSURE better care for our veterans. My bill will 1) increase accountability within the VA by creating a formal process/paper trail at the VA for whistleblower complaints and responses; 2) allow employees to file complaints with the next level supervisor if the immediate supervisor fails to properly handle the complaint or is the focus of complaint; 3) ties supervisors' performance rating to how they respond to whistleblower complaints; and 4) force the VA to strongly punish those who are found to retaliate against whistleblowers: for a first offense a minimum of a 12-day suspension and for a second offense removal.

These measures will show VA employees that supervisors must pay attention to whistleblower allegations, will be held accountable for how they handle those allegations, and ultimately will be punished if found to retaliate against whistleblowers for making allegations.

Currently, the VA has no mechanism to track whistleblower complaints and how they are handled; this makes it difficult for the VA to enact change and for Congress to understand what, if any, improvements the VA has made to improve its culture of retaliation against whistleblowers. The VA Patient Protection Act addresses this problem by creating the Central Whistleblower Office, an independent office to exclusively address whistleblower cases in the VA; requiring the VA to annually conduct in person training to all employees about whistleblower rights, Privacy Act, and HIPPA exemptions; and requiring that the VA annually report to Congress on whistleblower complaints.

Stronger whistleblower protection is needed in the VA due to the increase in whistleblower complaints and instances of retaliation. According to the Office of Special Counsel (OSC), it will receive nearly 2,000 whistleblower disclosures from Federal employees in 2015 and at current levels, approximately 750 or 37.5% of these disclosures will be filed by VA employees.[1] In addition, Dr. Lisa Nee, Germaine Clarno, and Shea Wilkes provided statements for the record for this hearing, which further illustrates the need for enacting my bill and I ask that their statements be included with the record.

I am committed to ensuring our veterans receive the care they deserve from our VA hospitals and care providers, whistleblowers play an indispensable role in preventing fraud, waste, abuse, and gross misconduct at our VA facilities. I believe that the VA Patient Protection Act will start to change the culture at the VA by educating VA employees on their whistleblower protection rights and holding management accountable for their treatment of whistleblowers. Our veterans, who bravely served our country, deserve the best medical care and services available and at the very least deserve their leaders' attention to people and systems that obstruct them from receiving that care.

Thank you.

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[1] Written Testimony of Carolyn Lerner, Special Counsel, OSC for US Senate Committee on Appropriations Subcommittee on Military Construction, Veterans Affairs, and Related Agencies "Review of Whistleblower Claims at the Department of Veterans Affairs," July 20, 2015.

PREPARED STATEMENT OF AMERICAN ACADEMY OF PHYSICIAN ASSISTANTS

On behalf of the more than 104,000 nationally-certified physician assistants (PAs), the American Academy of Physician Assistants (AAPA) appreciates the opportunity to submit a statement for the record regarding S. 2134, the "Grow Our Own Directive: Physician Assistant Employment and Education Act of 2015." AAPA is very pleased to endorse this critically important legislation.

Ready access to quality patient care is among the most critical issues facing our Nation's veterans. AAPA believes PAs are a key part of the solution to increasing access to quality medical care at VA medical facilities. PAs provide high quality, cost-effective medical care in virtually all health settings and in every medical and surgical setting. They are educated to seamlessly work in a healthcare team, and they manage the full scope of patient care, often handling patients with complex diagnoses or multiple comorbidities, conditions which commonly occur within the Nation's veteran population. The private healthcare market has embraced and rewarded the use of PAs to alleviate healthcare provider shortages; it is time the VA does too.

The PA profession has long been connected and committed to veterans and veterans' healthcare. The first PA students were Navy Corpsmen who served in the Vietnam War; and recruitment of and support for veterans in PA educational programs continues to this day. As of 2014, nearly 12% of all PAs are veterans, active duty, or retired military in the National Guard and Reserves, and more than 2,000 PAs are currently employed by the U.S. Department of Veterans Affairs.

Given all that PAs can offer to the Veterans Health Administration (VHA), AAPA is very concerned that PAs are one of the top five medical professions experiencing shortages within the VA healthcare system. Both the January 2015 and September 2015 VA Office of Inspector General (OIG) reports recognize the importance of PAs as part of VHA's healthcare team, and both reports identify PAs within the five occupations with the "largest staffing shortages." S. 2134 proposes a two part approach to recruiting and retaining a VA PA workforce—the GOOD pilot program and a VHA commitment to recruiting and retaining PAs.

GOOD PILOT PROGRAM

The Good Pilot Program is designed to create a pathway for veterans to become educated as PAs and adds to the supply of PAs in VA medical facilities. We are confident this pilot program will work because:

- Medical schools and universities have recruited veterans into PA educational programs since the profession began nearly 50 years ago. In the last several years, the Health Resources Services Administration (HRSA/HHS) studied best practices for recruiting and retaining veterans in PA educational programs and GOOD will utilize these best practices.
- Data compiled by the MEDEX PA Program in Washington, which has a long history of recruiting veterans into its program, reports that veterans who are educated as PAs make particularly good PAs. And, veterans who become PAs are well suited to provide medical care in medically underserved communities.
- It mirrors the National Health Service Corps, a model that has been educating PAs and other healthcare professionals for decades in exchange for a commitment to serve in medically underserved areas.
- The private healthcare market values PAs who were former veterans. For example, Blue Cross/Blue Shield recently invested in instituting a PA program at the University of North Carolina, whose mission will be to educate veterans as PAs for service in the state's medically underserved areas. Recognizing the additional skill sets offered by healthcare professionals who are veterans, the American Hospital Association recently convened a series of meetings on recruiting PAs and other healthcare professionals who are veterans to hospitals.

NATIONAL VHA STRATEGY TO RECRUIT AND RETAIN PAS, INCLUDING COMPETITIVE PAY FOR PAS

Critical to S. 2134 is its requirement that the VHA make a commitment it has not previously undertaken—a plan to grow and maintain its PA workforce. VA compensation for PAs simply can't compete with the salaries offered in the private market. Additionally, PAs and nurse practitioners (NPs) employed by the VA perform nearly identical functions and are employed in the same manner, but PAs are at a competitive disadvantage. NPs often start at a higher grade than PAs, and it is not uncommon for NPs in the VA to be compensated by as much as $30,000 more than PAs while providing the same medical services.

To AAPA's knowledge, the VHA has not expanded recruitment and retention initiatives for PAs in response to the identification of PAs as one of the VA's top five critical occupation shortages. The VA has always had the authority to include PAs in the Locality Pay for Nurses and other Healthcare Professionals, but has chosen not to do so. The addition of PAs to the VA locality pay system could assist the VA in recruiting PAs to replenish the ranks of approximately 40 percent of the VA PA workforce eligible for retirement within the next five years.

The value of the PA profession is highly regarded and in demand by the private market:

- Demand for PAs increased more than 300 percent from 2011 to 2014, according to the national healthcare search firm Merritt Hawkins.
- Upon earning their certification, 63 percent of PAs accepted a clinical positon and 76 percent of these received multiple job offers. (National Certification Commission for the Physician Assistant (NCCPA) 2014 Statistical Profile of Certified Physician Assistants).
- Nearly half (46.7%) of PAs who have accepted a position, indicated that they did not face any challenges when searching for a job.
- 64.7% of the recently certified PAs who accepted a position indicated they were offered employment incentives. (NCCPA 2014 Statistical Profile of Certified Physician Assistants).
- Employment of PAs is projected to increase 38.4 percent between 2012 to 2022, much faster than the average for all occupations, according to the U.S. Bureau of Labor Statistics (U.S. Department of Labor, Occupational Outlook Handbook, 2012–2013 Edition, Physician Assistants).
- Forbes, Young Invincibles and Glassdoor.com all reported that the #1 most promising job of 2015 is becoming a PA.
- U.S. News & World Report ranked the PA profession as one of the top 10 best jobs of 2015.

An historic lack of attention to recruitment and retention of PAs by the VA, coupled with the high demand and economic reward for PAs in the private healthcare market, has resulted in a significant challenge for the VA to fill PA positions. Unless the VA invests in its PA workforce, AAPA believes the VA will lose its PA workforce.

S. 2134, the "Grow Our Own Directive: Physician Assistant Employment and Education Act of 2015," represents a significant step forward in building and sustaining the VA's PA workforce through proposals to create a five year pilot program to educate veterans as PAs and to require the VA to establish a national strategic plan to recruit and retain PAs, including the adoption of standards leading to competitive pay for PAs employed by the VA. AAPA would be pleased to serve as a resource to the Committee in making recommendations to support the VA's PA workforce. Thank you again for the opportunity to submit a statement for the record in support of S. 2134.

PREPARED STATEMENT OF GERMAINE CLARNO, LCSW, CADC AND LOCAL PRESIDENT OF THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Senator Kirk, Thank you for the opportunity to provide my testimony to discuss the culture of continued fear and retaliation at Edward Hines, Jr. Hospital.

I also want to personally thank you for your unrelenting efforts in protecting those that nobly care for our Nation's veterans. The VA Patient Protection Act will include a method to protect whistleblowers while holding those who retaliate against whistleblowers accountable and as a result will provide better care for our veterans.

I am a Social Worker and Local President of the American Federation of Government Employees (AFGE). I have worked at Edward Hines, Jr. Hospital in Illinois for 6 years, 2 years after receiving a Masters in Social Work. Social Work is a second career, it was important to me that I work with veterans so I was elated with the opportunity to work at the VA. It has been an honor and privilege to serve our nations veterans in the capacity of a mental health provider. I have worked alongside amazing dedicated employees that share the same passion for helping our veterans heal from the invisible wounds of war.

Unfortunately, I experienced early in my career the toxic culture of fear. Asking a simple question or suggestion can result in career sabotage. I witnessed good intentioned professional employees be retaliated against for simply wanting to raise issues that interfered with quality health care for our veterans. After 3 years working in mental health, I had experienced and witnessed deplorable treatment of employees that dared to speak up against fraud, waste and abuse. My dedication to

our veterans convinced me to explore means to improve the culture at Hines. The root cause was mistreatment of frontline employees that did not have a voice or an advocate. I then became a Chief Steward for Local 781 at Hines, with determination and the union contract, I optimistically marched onward with an honored mission to change the culture at Hines.

The Master Agreement (our union contract) states in our preamble "The Department and the Union agree that a constructive and cooperative working relationship between labor and management is essential to achieving the Department's mission and to ensuring a quality work environment for all employees."

This agreement is not honored by the leadership at Hines. They spend more time finding loop holes of the contract and ways not to comply with this simple agreement, which is also an element of Secretary McDonald's "Blue Print for Excellence." He states "VA will become an organization where employees are comfortable raising issues and concerns. Only then, can we truly thrive and innovate." This plan for change was published a year ago and employees are still afraid, more than ever.

During my time as a union representative I have seen firsthand the obstacles for employees to perform at the highest level due to an environment that is not conducive to enhancing employee morale and efficiency. In the fall of 2012, after exhausting all avenues with in her chain of command, Dr. Lisa Nee came to me, as other employees have with overwhelming evidence of wrongdoing by the leadership at Hines.

The severe retaliation that Dr. Nee's experienced as the result of her disclosure is not unique. Retaliation at Hines is a systematic campaign of interpersonal destruction that jeopardizes employee's health, careers, and the jobs they once loved. These forms of retaliation is a nonphysical form of violence, but because it is violence and abusive, emotional harm often is the result.

It's been over a year since I first disclosed wrong doing at Hines in regards to waitlists—scheduling manipulation and excessive wait time for veterans requesting individual therapy for PTSD on CBS evening news. The very next day of my disclosure the Hines leadership had a meeting without my knowledge, in the chapel, with approximately 300 of my coworkers from mental health. That day 300 employees were taken away from their work areas and were not serving veterans. The purpose of the meeting was to discredit my claims and turn my coworkers against me. That same day I received emails and voicemails from my supervisor ordering me to report to the criminal division of the OIG on Hines Campus.

What was more outrageous is that leadership attempted to discredit a veteran that also was in this news story by sharing information from his medical chart. Blaming him for the delays by saying that he canceled appointments or was a no show. Veterans aren't immune to retaliation at Hines.

I wish I could report that things have improved at Hines but the sad truth is it has not. Just in the past couple of weeks employees have been severely retaliated against. One of these employees is Jasmine Ramakrishna. Jasmine gave me permission to tell her story today. Jasmine is a Dental Hygienist at Hines, like most of our front line employees she is dedicated to serving veterans. She has reported wrongdoing on issues in the dental clinic to include unnecessary procedures (for the purpose of increasing productivity) and issues with assessments and coding procedures. As a result of her raising concerns, she is currently being retaliated against. Jasmine has always been rated outstanding on her performance appraisals but when she received her performance appraisal a few weeks ago her rating was lowered. Jasmine and I met with her supervisor to discuss her rating and he responded that she has violated the VA Code of Conduct. Jasmine has never been counseled or informed of any wrongdoing but in this meeting he referenced a folder that contained information that he "has on her" and is refusing to share with the employee. As you can imagine this is devastating for this employee. This is example of a supervisor using his power to make false allegations and violate the law to harass and intimidate an employee. The union has filed grievances and he is refusing to respond. As a result, the union has filed two separate Unfair Labor Practices with the Federal Labor Relations Authority against the agency.

This same supervisor, the Chief of the Dental clinic is also harassing another employee, a dentist. This supervisor is asking co-workers to surveillance him. After a meeting I had with this supervisor to notify him that asking co-workers to surveillance other employees is not appropriate and is illegal, he called the police and made a false a report that I was aggressive and threatening him. This event took place just this past Monday. Ironically, one of Senator Kirk's staff members was in my office when the police arrived and witnessed the harassment. That same day I notified Hines leadership of this disgraceful conduct and I have not received a reply. Another form of retaliation is to ignore the complaint or justify the supervisor's behavior.

My concern is for our veterans. When employees are being intimidated and retaliated against for speaking up for quality care, the Nation's veterans pay the price. In order to retain the best and brightest healthcare providers, to service the needs of our Nation's heroes, we must rid our workplace of the toxic, retaliatory practices engaged in by management.

PREPARED STATEMENT OF PAUL R. VARELA, ASSISTANT NATIONAL LEGISLATIVE DIRECTOR, DAV (DISABLED AMERICAN VETERANS)

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee: Thank you for inviting DAV (Disabled American Veterans) to submit testimony for the record of this legislative hearing, and to present our views on the bills under consideration. As you know, DAV is a non-profit veterans service organization comprised of nearly 1.3 million wartime service-disabled veterans. DAV is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

S. 2106—THE WOUNDED WARRIOR EMPLOYMENT IMPROVEMENT ACT OF 2015

This bill would require the Secretary of the Department of Veterans Affairs (VA) to analyze VA's Vocational Rehabilitation and Employment (VR&E) services and make recommendations in a report to Congress for the purpose of encouraging more service-disabled veterans to use the benefits of Chapter 31, title 38, United States Code, versus services authorized in Chapter 33 of the Code. The bill also would require an action plan be developed to improve the vocational and employment services and assistance provided to veterans under chapter 31. The required report would include a plan to remedy certain workload management challenges at VA regional offices (VARO), including reducing counselor caseloads for veterans participating in rehabilitation, and in particular counselors assisting veterans with Traumatic Brain Injury and Post Traumatic Stress Disorder, and also counselors with dual educational and vocational counseling workloads.

The bill also would require VA to analyze and assess the decisions and circumstances of veterans with service-connected disabilities who served on or after September 11, 2001 who choose not to participate in rehabilitation under Chapter 31 but instead use their entitlement to educational assistance under Chapter 33. The analysis required by this bill would examine barriers to timely enrollment in rehabilitation programs under Chapter 31 and any additional barriers to a veteran's enrollment.

The bill would require VA to report within 270 days of the date of its enactment, and to develop and publish the action plan to improve the services and assistance provided under Chapter 31.

DAV has no resolution from our membership on the particular issue within this bill. While we would not oppose passage, we have identified some concerns that we recommend be addressed prior to passage of this bill.

DAV recognizes the intrinsic value of Chapter 31 vocational rehabilitation services for wounded, ill and injured veterans. However, encouraging those veterans with eligibility under Chapter 33 to instead use Chapter 31 authority would require additional resources in VR&E to meet the increase in demand.

Today, VR&E's counselor-to-client ratio is far too high, at 1:135. This ratio has been historically disproportionate and contributes to the delays in the administration of timely and effective services. However, the average ratio can be misleading. For example, the Cleveland VARO's counselor-to-client ratio is 1:206, but in the Fargo VARO it is 1:64.

Ideally, an effective counselor-to-client ratio would be 1:125, as has been advocated by the *Independent Budget* for the past several years. In order to achieve the 1:125 counselor-to-client ratio in FY 2016, VR&E would require an additional 382 full-time employee equivalents (FTEE), of whom 277 would be dedicated as VR&E counselors and the remaining 105 employees would be in support services, bringing VR&E's total FTEE strength to 1,824. While increased staffing levels are required to provide efficient and timely services, it would also be essential that these increases be properly distributed throughout VR&E to ensure that counselors' caseloads are equitably balanced among VAROs.

DAV calls on Congress to increase staffing levels within VA's VR&E program in accordance with DAV Resolution No. 135, approved by our membership at our most recent National Convention. As contemplated by this bill, if Congress intends to encourage increased use of Chapter 31 services, versus services afforded under Chapter 33, then adequate resources would be essential to strengthen this critical pro-

gram to meet the increased demands inherent in servicing more eligible service-disabled veterans for their rehabilitation and vocational needs.

S. 2134—THE GROW OUR OWN DIRECTIVE: PHYSICIAN ASSISTANT EMPLOYMENT AND EDUCATION ACT OF 2015

This bill would direct the VA to carry out a five-year pilot program to provide educational assistance to certain veterans for education and training as VA physician assistants.

Under this bill, the pilot program would target veterans with experience gained in medical or military health while serving; had received a certificate, associate degree, baccalaureate degree, master's degree, or post-baccalaureate training in a science related to health care; had participated in the delivery of health care services or related medical services. The bill would exclude physicians and dentists from participation.

The bill would require VA to provide educational assistance, including scholarships, to no fewer than 250 participants. VA would reimburse their costs of obtaining master's degrees in physician assistant studies or similar master's degrees. The bill would require VA to make available mentors for participants at each VA facility at which a veteran is participating, and would require VA to establish partnerships with other government programs and with a significant number of educational institutions that offer degrees in physician assistant studies.

The bill also would require VA to establish standards to improve the education and hiring of VA physician assistants, and implement a national plan for the retention and recruitment of VA physician assistants.

The bill would establish a series of new, mandatory positions in VA's national Office of Physician Assistant Services in VA Central Office, including a Deputy Director for Education and Career Development, a Deputy Director for Recruitment and Retention, a designated recruiter of physician assistants, and an administrative assistant to support these functions. The bill would specify their major duties.

The bill would redesignate not less than $8 million in funds appropriated prior to the passage of this bill to carry out its purposes. The bill is silent on sources of any additional funding that might be needed to meet its mandates.

Finally the bill would align VA physician assistant pay grades equivalent to the pay grades of VA registered nurses.

DAV has not received a national resolution from our members dealing with VA recruitment, training or employment of physician assistants; therefore, DAV takes no formal position on this bill. Nevertheless, we observe that this bill is unusually prescriptive, is not based on any broadly understood need for VA to hire additional physician assistants, and assumes these 250 individuals who would undergo the subsidized VA education and training the bill would authorize, are in fact needed by VA. Also, the bill would divert previously appropriated funds from other purposes to serve this new, unanticipated purpose. These issues raise a number of concerns that we ask the Committee to consider as it deals further with this bill.

S. 2170—THE VETERANS E-HEALTH AND TELEMEDICINE SUPPORT ACT OF 2015, OR THE "VETS ACT OF 2015"

This bill would enable a health care professional of the VA, including a contract provider, who is authorized to provide health care by or through VA, and who is licensed, registered, or certified in a state to practice his or her profession at any location in any state, regardless of where the professional or veteran is located, to treat a veteran through telemedicine. If enacted the bill would permit telemedicine treatment regardless of whether the professional or the patient were physically located in a federally owned facility.

The bill would require VA to report to Congress one year following its implementation on a variety of aspects of VA's telemedicine program, including patient and provider satisfaction, access, productivity, waiting times and other information related to appointments made and completed through telemedicine.

Because health professional licensure is a state-regulated function, as a national system VA has experienced barriers in its efforts to broaden the use of telemedicine across state lines. A number of VA telemedicine initiatives have been frustrated because of the interstate restriction. Enactment of this bill would eliminate that barrier, and would promote much greater use of telemedicine, especially in facilities whose treatment populations come from multiple states (Martinsburg, WV—patients from VA; Washington, DC—patients from VA and MD; Pittsburgh, PA—patients from OH; New York City, NY—patients from NJ; Boston, MA—patients from NH, VT and ME; Fayetteville, AR—patients from MO, OK, and KS, etc.). Enactment of this bill would open the door to VA specialists treating veterans through telemedi-

cine irrespective of state jurisdiction, physical location, or the distance that separates patient from provider (for example, VA specialists in Seattle telemedically treating VA patients at the VA Outpatient Clinic in Anchorage, AK), and should also be highly cost-effective and more convenient for veterans who live at a distance from their VA medical centers, or who must travel long distances for access to basic VA care.

Delegates to our most recent DAV National Convention approved Resolution No. 126. Among other priorities, this resolution calls on VA and Congress to establish and sustain effective telemedicine programs as an aid to veterans' access to VA health care, particularly in the case of rural and remote populations. Our delegates also approved Resolution No. 226, fully supporting the right of rural veterans to be served by VA. This bill is consistent with these resolutions and DAV policy; therefore, DAV strongly supports its enactment and appreciates the sponsors' intention to promote the use of telemedicine in the care and treatment of veterans.

S. 2253—DEPARTMENT OF VETERANS AFFAIRS VETERANS EDUCATION RELIEF AND RESTORATION ACT OF 2015

This bill would address a veteran's continued entitlement to VA education benefits in situations in which an educational institution permanently closed prior to the completion of a term, quarter, or semester. Under current law, a veteran in this circumstance would be penalized by a charge against educational entitlement for failing to successfully complete the prescribed period of education. VA also reclaims living allowances and other payments as if the veteran simply withdrew from the educational institution. This bill would hold harmless a veteran in such a situation.

Under this bill, if a veteran were forced to discontinue a course as a result of an educational institution's permanent closure and did not receive full credit for, or lost training time toward completion of, the VA-approved education program, VA educational assistance payments would not, for a specified period of time thereafter, be charged against the individual's entitlement to educational assistance, or counted against the aggregate period for which VA assistance would be provided in the absence of such a closure.

The bill would require VA to continue to pay the approved monthly housing stipend following a permanent school closure, but only until the earlier of: (1) the date of the end of the term, quarter, or semester during which the school closure occurred; or (2) the date that is four months after the school closure.

The bill also would require VA to continue to pay educational assistance and subsistence allowances to veterans and other eligible persons enrolled in specified courses for up to four weeks in any 12-month period if their schools were closed temporarily under an established policy based on an executive order of the President, or due to an emergency situation.

The effective date of this bill would begin retroactively with Fiscal Year 2015.

DAV has received no resolution from our membership that would address the purposes of this bill. However, the bill seems to be a reasonable accommodation for a situation that has been reported, affecting educational entitlements of numerous veterans who are victimized by unexpected, permanent school closures. DAV would not object to passage of this legislation.

DRAFT BILL—THE VETERANS AFFAIRS RETALIATION PREVENTION ACT OF 2015

If enacted this bill would sanction VA employees who take retaliatory steps against other employees when truthful complaints are made about waste, fraud, gross mismanagement, and risks to life and safety of veterans. The bill also would specify a number of procedures and actions VA would be required to take to address and document complaints made, while protecting the VA employee(s) who made them. The bill also would establish a central repository of complaints made that are subject to the purposes of the bill. The bill would restrict the payment of bonuses to VA supervisors who are found to have committed prohibited personnel actions in circumstances as defined in the bill.

The bill would require VA to create a whistleblower training program, and would require VA to train every VA employee in whistleblower rights, including the right to petition Congress, and in the processing of complaints and related matters.

The bill would require a series of reports to Congress related to its purposes, and would require the VA Office of Inspector General (OIG) to make public, and provide to Congress broadly and on request in specific cases, all OIG work products that make recommendations or call for corrective action in any VA matter.

The final section of this bill would declare that official testimony before Congress by any VA employee to be that of official duty by that employee, including coverage of salary and travel support.

Delegates to our most recent National Convention approved Resolution No. 214. This resolution requires that any legislation changing existing employment protections in VA must strike a balance between holding civil servants accountable for their performance, while maintaining VA as an employer of choice. Resolution No. 214 does not directly discuss the plight of VA whistleblowers, but DAV supports fairness for all VA employees, including those whom this bill would declare to be whistleblowers. Therefore, DAV would not object to the passage of this bill.

Mr. Chairman and Members of the Committee, this concludes DAV's testimony. We thank the Committee for inviting DAV to submit this testimony for the record of this hearing. DAV is prepared to respond to any further questions by Committee Members on the positions we have taken with respect to the bills under consideration.

PREPARED STATEMENT OF SUSAN TSUI GRUNDMANN, CHAIRMAN,
U.S. MERIT SYSTEMS PROTECTION BOARD

Chairman Isakson, Ranking Member Blumenthal and distinguished Members of the United States Senate Veterans' Affairs Committee ("Committee"). Thank you for the opportunity to present written testimony to the Committee on behalf of the United States Merit Systems Protection Board ("MSPB"), an independent, quasi-judicial agency in the executive branch of the federal government. As the Chairman of MSPB, I am pleased to present written testimony for the record for this Committee hearing on pending legislation. Chairman Isakson has asked that MSPB present testimony on a draft bill, S. __, the "Veterans Affairs Retaliation Act of 2015," which we understand may be introduced by Senator Kirk. A similar version of this legislation, H.R. 571, is pending in the United States House of Representatives.

As an initial matter, as I have stated in previous written testimony for the record to this Committee, under statute, MSPB is prohibited from providing advisory opinions on any hypothetical or future personnel action in the executive branch of the federal government. 5 U.S.C. § 1204(h) ("The Board shall not issue advisory opinions."). Accordingly, this testimony should not be construed as an indication of how I, any other presidentially-appointed, Senate confirmed Member of the three-Member Board at MSPB Headquarters in Washington, D.C. ("Board"), or an MSPB administrative judge would rule in any pending or future matter before MSPB. Instead, I would respectfully request that the Committee consider this testimony technical in nature.

A. The MSPB's Interest in the Veterans Affairs Retaliation Prevention Act of 2015

MSPB's interest in the draft "Veterans Affairs Retaliation Prevention Act of 2015," derives from its statutory responsibility to adjudicate appeals filed by federal employees in connection with certain adverse employment actions. As I have previously explained to the Committee, generally, after a federal agency

imposes an adverse personnel action upon a federal employee, such as removal or demotion, and the federal employee chooses to exercise his or her statutory right to file an appeal with MSPB, MSPB will begin the adjudication process. In the case of a federal employee who is removed from his or her position, that individual is no longer employed by the federal government, and is not receiving pay, at the time he or she files an appeal with MSPB or at any point during the subsequent MSPB adjudication process.

B. Pertinent Provisions of the Draft Veterans Affairs Retaliation Prevention Act of 2015

In pertinent part, the draft "Veterans Affairs Retaliation Prevention Act of 2015," if enacted, would establish the following:

1. A process within the Department of Veterans Affairs ("Department") whereby Department employees may file a "whistleblower complaint," as that term is defined in the legislation, with certain Department officials, who will review and act on the complaint;

2. A "Central Whistleblowing Office" within the Department, which shall be responsible for investigating all whistleblower complaints made "by or against" Department employees;

3. A new 38 U.S.C. § 733(a)(1), under which Department supervisory employees who are found to have engaged in a "prohibited personnel practice," as that term is defined in the legislation, by certain individuals or entities, including MSPB, shall be subject to an automatic proposal of specified disciplinary action by the Secretary of the Department of Veterans Affairs ("Secretary");

4. A new 38 U.S.C. § 733(a)(2), under which the above-referenced Department supervisory employees subject to the above-referenced disciplinary action shall be entitled to "not … more than five days following … notification" of the proposed disciplinary action to provide evidence to dispute the proposed action; and then may appeal to the MSPB pursuant to 38 U.S.C. § 713(d) and (e);

5. That certain criteria be considered in the evaluation of Department supervisory employees, including the manner in which those employees

"treat[] whistleblower complaints" and whether those employees have been found to have engaged in a prohibited personnel practice by certain entities, including MSPB;

6. Training requirements in connection with the requirements of the draft legislation; and

7. Reporting requirements for the Department on whistleblower complaints filed.

As stated above, under the new 38 U.S.C. § 733, the Secretary would be required to propose discipline[1] upon Department supervisory employees who are found to have committed a prohibited personnel practice[2], as determined by any of the following: the Secretary, an administrative judge, MSPB, the Office of Special Counsel, an adjudicating body under a union contract, a Federal judge, or the Inspector General of the Department. Prior to the imposition of such discipline, the Department supervisory employees in question "may not be given more than

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[1] The new 38 U.S.C. § 733(a)(1)(A) would provide that, with respect to a first offense, the Secretary propose that Department supervisory employees receive "not less than a 12-day suspension and not more than removal," and that with respect to a second offense, Department supervisory employees be removed.

[2] The legislation defines a prohibited personal practice as taking or failing to take a personnel action in violation of section 2302 of title 5 against an employee relating to the employee: A) filing a whistleblower complaint; B) filing a whistleblower complaint with the Inspector General of the Department, the Special Counsel, or Congress; C) providing information or participating as a witness in an investigation of a whistleblower complaint in accordance with section 732 or with the Inspector General of the Department, the Special Counsel or Congress; D) participating in an audit or investigation by the Comptroller General of the United States; E) refusing to perform an action that is unlawful or prohibited by the Department; or F) engaging in communications that are related to the duties of the position or are otherwise protected.

The legislation further defines a prohibited personnel practice to include "preventing or restricting an employee from making an action described in any of" the above referenced sections and "requesting a contractor to carry out an action that is prohibited by section 4705(b) or section 4712(a)(1) of title 41, as the case may be."

five days following such notification to provide evidence to dispute the Secretary's "proposed adverse action." Once the disciplinary action is imposed, the Department supervisory employee would be permitted to appeal to MSPB pursuant to "subsections (d) and (e) of section 713 of title 38."

C. Appeals to MSPB Under Subsections (d) and (e) of Section 713 of Title 38, United States Code

Section 713 of title 38, United States Code, codifies provisions of the Veterans Access, Choice, and Accountability Act of 2014 ("the 2014 Act"), Public Law 113-146. Under the 2014 Act, upon either removal or transfer, a covered employee at the Department may appeal to MSPB "under section 7701 of title 5" not later than seven days after the date of such removal or transfer. Once an appeal is filed at MSPB by a covered Department employee, MSPB shall refer the appeal to an MSPB administrative judge "pursuant to section 7701(b)(1) of title 5." The MSPB administrative judge shall "expedite" such appeal and issue a decision "not later than 21 days after the date of the appeal." If an MSPB administrative judge fails to issue a decision within 21 days, the Secretary's decision to either remove or transfer the employee becomes final.

Significantly, the decision of the MSPB administrative judge in any such appeal shall be final and shall not be subject to further appeal, either to the three-member Board at MSPB Headquarters in Washington, D.C., or to any federal court.

D. Possible Constitutional Defects with the Draft Veterans Affairs Retaliation Prevention Act of 2015

As stated above, the draft Veterans Affairs Retaliation Prevention Act of 2015 allows covered Department supervisory employees to appeal disciplinary action to the MSPB pursuant to procedures established by the 2014 Act. The MSPB has addressed the possible constitutional defects with certain provisions of

the 2014 in prior testimony to this Committee. Ranking Member Blumenthal has articulated similar constitutional concerns in connection with other legislation the Committee has considered that incorporates the same provisions of the 2014 Act.

I encourage members of the Committee and their staff to review the MSPB report entitled *What is Due Process in Federal Civil Service Employment?* [3] This report provides an overview of current civil service laws applicable to adverse actions and, perhaps more importantly, the history and considerations behind the formation of those laws. It also explains why, according to the Supreme Court of the United States, the Constitution requires that any system which provides that a public employee may only be removed for specified causes must also include a meaningful opportunity for the employee – prior to his or her termination – to be made aware of the charges the employer will make, present a defense to those charges, and appeal the removal decision to an impartial adjudicator.

In the landmark decision of *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985) the Supreme Court held that while Congress (through statutes) or the president (through executive orders) may decide *whether to grant protections* to employees, they lack the authority to decide whether they will grant due process rights *once those protections are granted*. Stated differently, when Congress establishes the circumstances under which employees may be removed from positions (such as for misconduct or malfeasance), employees have a property interest in those positions. *Loudermill*, 470 U.S. at 538-39[4]. Specifically, the *Loudermill* Court stated:

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[3] This report can be found at: http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=1166935&version=1171499&application=ACROBAT

[4] The *Loudermill* case involved a state employee, not a federal employee. Nevertheless, while the Federal Government is covered by the Fifth Amendment and the states by the Fourteenth Amendment, the effect is the same. *See Lachance v. Erickson,* 522 U.S. 262, 266 (1998); *Stone v. Federal Deposit Insurance Corp.*, 179 F.3d 1368, 1375-76 (Fed. Cir. 1999).

> Property cannot be defined by the procedures provided for its deprivation any more than can life or liberty. The right to due process is conferred, not by legislative grace, but by constitutional guarantee. While the legislature may elect not to confer a property interest in public employment, it may not constitutionally authorize the deprivation of such an interest, once conferred, without the appropriate procedural safeguards.

Id. at 541.

The Court explained that the "root requirement" of the Due Process Clause is that "an individual be given an opportunity for a hearing before he is deprived of any significant property interest," and that "this principle requires some kind of a hearing prior to the discharge of an employee who has a constitutionally protected property interest in his employment." *Id.* at 542.

According to the Court, one reason for this due process right is the possibility that "[e]ven where the facts are clear, the appropriateness or necessity of the discharge may not be; in such cases, the only meaningful opportunity to invoke the discretion of the decisionmaker is likely to be before the termination takes effect." *Id.* at 542. The Court further held that "the right to a hearing does not depend on a demonstration of certain success." *Id.* at 544.

I further note that the requirements of the Constitution have shaped the rules under which federal agencies may take adverse actions against federal employees, as explained by the Supreme Court, U.S. Courts of Appeal, and U.S. District Courts. Accordingly, should Congress consider modifications to these rules, many of which have been in place for more than one hundred years, MSPB respectfully submits that the discussion be an informed one, and that all Constitutional requirements be considered.

Finally, I note that the constitutionality of certain provisions of the 2014 Act is currently the subject of litigation at the United States Court of Appeals for the Federal Circuit. *Helman v. Dep't. of Veterans Affairs*, Case No. 15-3086 (Fed.

Cir. 2015). The plaintiff in that litigation is alleging that Section 707 of the 2014 Act is unconstitutional primarily on two grounds:

- By permitting the Department to remove a tenured federal employee without any pre-removal notice or an opportunity to respond, and by severely limiting post-removal appeal rights, Section 707 violates an employee's right to constitutional due process as articulated by the Supreme Court; and

- By removing the three-member Board from the MSPB appellate review process and permitting MSPB administrative judges to make a final decision binding an executive branch agency which is not reviewable by a presidential appointee, Section 707 violates the Appointments Clause contained in Article II, Section 2 of the United States Constitution.

This concludes my written testimony. I am happy to address any follow up questions the Committee may have.

PREPARED STATEMENT OF LISA M. NEE, MD, INTERVENTIONAL CARDIOLOGIST

Dear Committee members, thank you for the opportunity to provide written testimony for the record in support of Senator Kirk's VA Patient Protection Act. I wish to extend my gratitude to Senator Kirk and his staff for the continued attention to the alarming matter of whistleblower retaliation and for moving forward with this important legislation. Although there is significant rhetoric from various branches of government that this type of behavior is detrimental to the care of the veteran, there seems to be no end in sight for those who continue to face retribution for taking the courageous step of coming forward. A September 2015 report from the Committee on Homeland Security and Governmental Affairs stated the Office of Special Counsel has received 35% of its entire retaliation case load from VA employees. Despite its efforts to prioritize investigations, Special Counsel Carolyn Lerner testified before Congress in August of this year that the volume of incoming VA complaints remains overwhelming. This clearly demonstrates the severe, dysfunctional culture within the VA that encourages retaliation against the very individuals who expose harm to the veteran and attempt to improve the health care delivery process.

There are many journeys we all participate in during the course of our lifetime. Some are arduous, many are attainable, but none has been more agonizing and unfulfilling than the current process of obtaining justice for the men and women who have fought for our freedom. I realize that not every complex situation in life presents itself with moral clarity, however this is not one of them. Caring for our veterans should be elementary. There should never be a single instance where a physician must choose between self-preservation and the life of a patient. Or suffer an assault to their character in order to obtain accountability for criminal and inhumane acts against patients and fraudulent behavior toward the taxpayer. The amount of bureaucratic gymnastics coupled with agency corruption can render the strongest individual forlorn and exhausted. Knowing when to lose with grace is an honorable skill and one that requires precise timing—this is not that time. Armed with voracity for equity, an insatiable appetite for the truth and a colossal amount of evidence, I am prepared to continue this battle until there is responsibility from leadership and transformative action which will hold those at fault accountable.

My personal journey began over 4½ years ago with exposure to the corruption at Hines VAMC regarding patients who died of cardiac complications while awaiting their cardiac ultrasound to be read. Unfortunately for them the tests were hidden in bankers boxes and left unread for a year. The mere questioning of such an egregious act resulted in significant retaliation, which went unabated the entire two years I was employed at Hines. But hell hath no fury like a VA administration scorned, and the retaliation continued even after I resigned, with the Office of Inspector General (OIG) and its pervasive culture of disparaging the truth teller. Multiple allegations regarding deficiencies in cardiovascular care were made including, but not limited to: patient's having their chest sawed open for unnecessary procedures, disparities in care based on ethnicity, procedural diagnostic errors resulting in harm and pervasive billing fraud. These allegations have resulted in an initial deficient OIG investigation, a subsequent OSC investigation, a second contemptible OIG investigation, insistence from the OSC for an authentic and thorough investigation, and culminating with an ongoing Office of Medical Inspector's (OMI) investigation. It is a mind numbing process to not only keep track of the endless agency acronyms, but also calculating the amount of wasted taxpayer dollars consumed by these ineffectual inquiries. They are not true investigations for they lack experienced subject matter experts and have a pre-determined conclusion, which maintains the status quo.

The path this case has taken over the last four years has been objectively obfuscated, and its bureaucratic oscillations can only be the result of stunning deficiencies at all levels of the VHA leadership. The task has become the exercise within itself. To engage in multiple investigations by varying internal agencies which have substantiated patient harm as well as criminal activity, and to never mention one, single word regarding accountability—one can only conclude this maladjusted behavior is designed to serve the agency itself, and not the veterans. It is the VHA leadership attempting to gain credit for oversight that the agency has failed to provide. Duplicitous. No other word describes it. The OMI report from July 2015 substantiated some of my allegations regarding deficiencies in cardiovascular care, deficiencies in echocardiogram processing, failure to disclose deficiencies in care and harm to patients, inflated productivity measures by cardiologists and evidence that Veterans were inappropriately charged copayments for care they never received, otherwise known as billing fraud. In regards to this billing fraud, the report states, "We found that these actions possibly violate 18 US Code 208—Acts affecting a per-

sonal financial interest." The OMI referred this criminal matter to the OIG who has **declined** to open a criminal investigation.

Interestingly the bulk of the report is dedicated to the fraudulent billing practices, including in depth statistical analysis, diagrammatic explanations and extensive billing pattern documentation. This provides a glaring contrast to the lack of investigative fervor and expertise when dealing with patient morbidity and mortality. However all this effort is for naught as the end result once again allows the documented criminal activity to go unpunished. For the agency to demand an OMI investigation yet deny the credibility of criminal findings is administrative misconduct. The OIG must adhere to the Quality Standards for Investigations issued by Council of Inspector General on Integrity and Ethics (CIGIE) and the Attorney General Guidelines for OIG with Statutory Law Enforcement Authority. You don't get to be above the law just because you work for the VHA. Or do you? An equally compelling question is, if the OMI substantiated findings and then those are ignored, why do we need any of these investigative arms within the VA? They are redundant and wasteful and should be restructured.

To sum up the totality of all the reports to date is to call them a mismatch between words and deeds. A failed promise to treat and protect the veterans, while instead protecting hundreds of useless report generators who will then retire with benefits. The investigators have gone so far out of their way to protect the VHA leadership that it has rendered every investigator impotent and every investigative finding ineffectual. They are highly skilled at one part of their job, generating a paper trail designed to justify their professional existence. But they have failed at their original mission statement and severely compromised the health care of the men and women who have fought for our freedom. In order for any type of transformative action to begin to take shape and halt systemic corruption, there must be protection for truth tellers, accountability for those who fail at their duties and transparency to illuminate both operational deficiencies but also properly analyze collected data. These are far from novel concepts and are most certainly codified in policy and procedure. Chairman Kirk's VA Patient Protection Act will demand accountability for those who retaliate against truth tellers and empower those who can begin to make a positive impact on the outcomes of patient care. Preventing retaliation in the current defective culture of the VA requires deterrents, which should be timely, formidable and indelible. This bill would properly punish VA supervisors who have been found to take retaliatory actions against whistleblowers. There can be no saving of an agency as large as the VHA if the employees operate from a constant position of fear, rather than conviction and collaboration.

An additional step toward agency accountability, which should be addressed by Congress, is extending legislative authority to the OSC in two arenas. 1. Allow the agency to embark on a criminal investigation or partner with the Department of Justice if the preponderance of evidence suggests illegal activity and 2. Grant the OSC the necessary authority to determine the corrective action and punishment once the allegations are substantiated. They have independent authority to determine if conduct constitutes a violation of law, rule, gross mismanagement and a substantial and specific danger to public health. If they can determine the crime, they should be allowed to determine the punishment.

Many people have asked me why I continue to fight for the veterans even though I have left the VA. "What can you do?" I want the American public to contemplate that question for a moment and then consider an alternative perspective, and perceive it as "What should I do?" With that, the only acceptable response would be to strive for social justice and search for the truth.

Which brings us to the truth. A glorious, unadulterated supreme reality, holding the ultimate meaning and value of existence, corroborated by evidence. It does not change over time, as it never has to rely on anybody else's interpretation. As a Nation, we can achieve this goal for the genuine protectors of truth, our veterans.

PREPARED STATEMENT OF CAROLYN N. LERNER, SPECIAL COUNSEL, UNITED STATES OFFICE OF SPECIAL COUNSEL

Written Testimony of Special Counsel Carolyn N. Lerner
United States Office of Special Counsel

Senate Committee on Veterans' Affairs

Hearing on Pending Legislation

November 18, 2015

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee:

Thank you for the opportunity to submit written testimony on behalf of the Office of Special Counsel (OSC). OSC protects the merit system for over 2 million civilian employees in the federal government, with a particular focus on investigating and prosecuting allegations of whistleblower retaliation. We appreciate Senator Kirk's and the Committee's efforts to support whistleblowers at the Department of Veterans Affairs (VA), and offer the following views on the "Veterans Affairs Retaliation Prevention Act" of 2015 ("the Act").

The Act establishes a new process for VA employees to report concerns about misconduct. This new process directs employees to report concerns, on a designated form, to their immediate supervisor, and creates conditions under which an employee may elevate a complaint up the chain of command. It is often appropriate and practical for an employee to disclose information to their immediate supervisor. However, existing whistleblower protections do not require chain of command reporting, and also do not require that disclosures be made on a prescribed form. Accordingly, the process is more cumbersome, but also duplicative of existing protections. However, if Congress believes a new statutory process for reporting concerns is needed, to avoid confusion with existing law, employees should be clearly notified that the outlined procedure is not the exclusive process by which they may report a concern.[1]

The legislation also requires the VA to evaluate supervisors on "whether the supervisor treats whistleblower complaints in accordance" with the new reporting process described above. We believe the Act's process is overly-prescriptive for employees and supervisors, and may not be practical in many instances, especially for low level supervisors who are not best-positioned to respond to their subordinates' concerns. This specific approach, therefore, is not the best method for evaluating management efforts to support and protect whistleblowers.

Nevertheless, OSC strongly supports the concept of including whistleblower protection and promotion criteria in management performance appraisals. The Labor Department's Whistleblower Protection Advisory Committee (WPAC), on which OSC is a non-voting member, recently recommended this as a best practice for all employers in the public, private, and non-profit sectors. Specifically, WPAC recommends that businesses "incorporate anti-retaliation measures (e.g. constructively addressing concerns, attending training, and championing compliance initiatives) in management performance standards and reviews." The

[1] In addition, because the process is primarily intended as an avenue for reporting concerns about waste, fraud, and abuse (and not to address complaints about retaliation), it may be helpful to use the term "whistleblower disclosure" rather than "whistleblower complaint" throughout this section.

goal of using these criteria is to provide management incentives for responding constructively to employee concerns, fostering an environment that promotes disclosure and prevents retaliation.

Rather than limiting the performance criteria to those specified in the Act, we recommend that the Committee seek the VA's views on what criteria would be a better fit for VA supervisors, and modify the legislation accordingly. Performance criteria to hold managers accountable for constructively resolving employee concerns can play a critical role in fostering an anti-retaliation culture in the VA.

The Act also establishes a VA "Central Whistleblower Office," which is responsible for investigating all whistleblower disclosures made by employees in the Department. To the extent that this office will act as a de facto depository of all VA whistleblower information and identities, it is critical that there are clear rules and expectations on confidentiality and the release and use of names and information. VA employees should also receive clear guidance that this office is in addition to other available channels for reporting concerns, such as OSC and the Inspector General.

OSC supports additional mandatory training on whistleblower protections for all employees, and would be pleased to work with the VA to carry out specific training requirements.

Finally, OSC supports the Act's expansion of the definition of a personnel action in section 2302 of title 5 to include performance evaluations under title 38. This covers a gap in OSC's enforcement authority for title 38 VA employees. Under current law, a title 38 employee may file a whistleblower retaliation complaint with OSC, and we may review and correct other personnel actions such as a termination, demotion, or suspension, but we are technically barred from seeking to correct a retaliatory performance review for these workers. The Act would address this concern, without adding considerably to OSC's caseload.

We thank you for the opportunity to submit these views.

Prepared Statement of Paralyzed Veterans of America

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to submit our views on legislation pending before the Committee. We appreciate the Committee focusing on these critical issues that will affect veterans and their families.

S. 2106, the "Wounded Warrior Employment Improvement Act of 2015"

PVA supports S. 2106, the "Wounded Warrior Employment Improvement Act of 2015," which would require the Department of Veterans Affairs (VA) to develop and publish an action plan for improving services and assistance provided through VA's Vocational Rehabilitation and Employment (VR&E) program (Chapter 31). Returning to the workforce is a critical aspect of recovery for many catastrophically disabled veterans. This legislation would require VA to evaluate barriers to participation in VR&E and implement efforts to improve counselor training. It would also seek to improve counselor workload requirements.

A client to counselor ratio of 1:125 is recognized as a full workload in the field of vocational rehabilitation counseling. In January 2014, the Government Accountability Office issued a report calling on VA's VR&E program to implement performance and workload management improvements. At that time, caseloads for VR&E counselors ranged up to 1:139.[1] When counselors are required to work with more than 125 clients, the employment counseling process is delayed. This is particularly true when counselors are working with veterans who have significant disabilities and increased barriers to employment.

Although not part of this legislation, efforts to decrease counselor caseloads and encourage more veterans to participate in the VR&E program must be supported through increased funding. Congress must invest in this program to ensure that

[1] Government Accountability Office, "VA Vocational Rehabilitation and Employment: Future Performance and Workload Management Improvements Are Needed," GAO–14–61, January 2014.

counselors have the tools and resources needed to return veterans with disabilities to work. Otherwise, veterans with significant disabilities, who with proper supports and services can return to employment, are in danger of falling out of the workforce.

S. 2134, THE "GROW OUR OWN DIRECTIVE: PHYSICIAN ASSISTANT EMPLOYMENT AND EDUCATION ACT OF 2015"

PVA supports S. 2134, the "Grow Our Own Directive: Physician Assistant Employment and Education Act of 2015." This bill would set up a five year pilot program to provide education assistance to veterans training as physician assistants (PAs) in the Department of Veterans Affairs. The goal is to train veterans with medical or military health experience to be readily employable physician assistants at VA. Section 2 of the bill explains the prioritization of veteran participants who are in the Intermediate Care Technician Program and those individuals who plan to work in medically underserved states with a high population of veterans. To meet these goals the bill provides funding and support staff to the Office of Physician Assistance Services. It would also require VA to establish a strategic plan to recruit and retain PAs and adopt the standards leading to competitive pay for PAs employed by VA. Currently the vacancy rate of PAs at VA is 25%, the third largest shortage throughout the health care system. Recruiting and retaining PAs at VA is critical to improving access to high quality care. Further, this bill will provide job opportunities for veterans with medical work histories that are hard to translate to the civilian sector.

S. 2170, THE "VETS ACT OF 2015"

PVA supports S. 2170, the "VETS Act of 2015." This bill would improve access to telemedicine services from the Department of Veterans Affairs. Under current law, VA may only provide at-home tele-health to a veteran if the physician and veteran are in the same state. This requirement can be a particularly troubling barrier for veterans who have specific medical or mental health needs, have moved, or live in rural communities without providers. This bill would alleviate some of these pressures by waiving the instate requirement, allowing VA health professionals to operate across state lines.

S. 2253, "DEPARTMENT OF VETERANS AFFAIRS VETERANS EDUCATION RELIEF AND RESTORATION ACT OF 2015"

PVA supports this legislation as written. Veterans entitled to education benefits should not be robbed of those benefits due to external factors beyond their control. A school closure sets an enrolled veteran back due to the lost time and effort invested without ultimately earning course credit. This legislation ensures that the effects of this inconvenience and loss are not amplified by the additional loss of a semester's worth of benefits eligibility.

THE "VETERANS AFFAIRS RETALIATION PREVENTION ACT OF 2015"

PVA has no official position on the "Veterans Affairs Retaliation Prevention Act of 2015" at this time. We acknowledge that ensuring whistleblowers receive a level of protection adequate to encourage government employees to come forward and expose fraud, waste and abuse within the government sphere will always be an important issue. We appreciate and support the initiative Congress is taking to address these issues both within the VA and across the broader government sector.

Once again, we thank you for the opportunity to submit for the record. We look forward to working with the Committee to see these proposals through to final passage. We would be happy to take any questions you have for the record.

VA TRUTH TELLERS, UNITED STATES OF AMERICA,
Shreveport, LA, November 18, 2015.

Hon. JOHNNY ISAKSON,
Chairman,
U.S. Senate Veterans' Affairs Committee
Washington, DC.

My personal story begins when I returned to the Mental Health Department at the Overton Brooks Veterans Administration Medical Center in December 2011 as the Local Recovery Coordinator (LRC). As the LRC, my job was to consult directly with the Chief of Mental Health to convert all existing programs to and to assure all new programs were operating under the Recovery Model of Care. Thus, my position was considered part of the Mental Health Leadership team.

It was early in my time as LRC that I started to notice questionable practices within Mental Health. The first were hiring practices, treatment of employees and issues with group therapy. It was obvious that certain persons were given special privileges over other employees and that certain employees were targeted by members of leadership. As I began to learn the processes of the VA in more detail, my role expanded. I took on a performance measure responsibility for the service (OEF/OIF Performance Measure), attended director staff meetings, and worked on special projects.

I saw leadership use cronyism in the hiring of a Mental Health Service Chief that had absolutely no experience and was totally incompetent. There were several other applicants with 20+ years of experience, but instead they picked a good ole' boy over the most qualified. I again watched cronyism rear its head as the hiring process for the Assistant Chief of Mental Health was manipulated. This time I decided to report the situation to Human Resources (HR). After speaking to H.R. and bringing to their attention possible faulty hiring practices, I was approached by Mental Health leaders and asked to be the acting PTSD Clinic Coordinator.

A day later I was contacted by telephone by a Mental Health leader (Operations Manager) who explained that the permanent PTSD coordinator position would be coming open and it would be a highly competitive position. My response was "really that's cool." The individual continued asking if I wanted the position. My response was "I'd have to discuss a decision like this one with my wife." The Operations Manager quickly responded "no don't tell anyone about this." Mental Health leadership made it very clear that if I would back off the hiring practices of the Assistant Chief of Mental Health, I would be awarded the PTSD Clinic Coordinator position. I was offended by such an offer as I had just turned the service in for faulty hiring practices and now they had the audacity to ask me to do such an unethical act.

Once the leaders of Mental Health learned that I was not going to accept their offer, the first attempt of reprisal came. The Mental Health Chief and Operations Manager went to the Administrative Officer to the Chief of Staff and the Chief of Human Resources and complained that I had lied on a Learning Development Institute application. Luckily, I was able to fight this retaliation attempt off. I had kept cell phone text of conversations between myself and Mental Health leaders that proved that I had not lied on my application. This reprisal attempt quietly went away.

Eventually the incompetent Chief of Mental Health stepped down and the service went without permanent leadership for an extended period of time. During this time I took on many hats and at one point served as Acting Assistant Chief of Mental Health. I completed projects for the Director, Chief of Staff, and developed key ideas that are still being used in Mental Health today. It was during this time that I started to learn of number manipulation, scheduling manipulation, and other unethical acts. I addressed these acts in Mental Health leadership meetings, with the Chief of Staff, and others, but very little was done to correct the issues.

Early in 2013 a VA Office of Inspector General (OIG) report was released concerning unethical acts at the Atlanta VAMC. At this point I had become totally frustrated with trying to address the corruption through the internal channels of the Overton Brooks VA system. However, I decided to give the Chief of Staff one last chance to address the issues of manipulation of scheduling and numbers.

I reported my concerns one last time to the Deputy Chief of Staff (COS) (acting COS at the time) about hiring practices, manipulation of scheduling, and manipulation of numbers. I was blown off by the Deputy Chief of Staff. It should be noted that later became the permanent COS. After waiting a month, I decided it was time to report the wrongdoings to the VA Office of Inspector General. In June 2013, I made an official VA OIG report related to issues concerning faulty hiring practices (Chief of Mental Health), manipulation of numbers related to performance meas-

ures, and scheduling manipulation within Mental Health Service. I never heard one word of response from the VA OIG.

It has now become apparent that the fact that I reported information to the VA OIG June 2013, was relayed back to the facility. Looking back it was from that point forward things began to change for me, not only in Mental Health, but throughout the hospital.

It turned out that the individual that was selected for the position of Chief of Mental Health was a friend of the Deputy COS. Again, cronyism was evident—the same manipulation of hiring practice that I had reported to the VA OIG. By the fall of 2013 I was being billed as the problem child, trouble maker, and unstable employee. This was for nothing more than telling the truth. I was approached by leaders and told to let unethical acts, such as illegal access to my medical and employment records, go and that I should move forward.

It was apparent that new leadership was not going to address the unethical activity, but rather it would be allowed to continue and those unethical persons would be allowed to continue to hold leadership positions. I would not back down from unethical leaders and I continued to bring up issues and fight to block unethical acts. This infuriated those above me and I became a target.

I was called by the Chief of Mental Health to meet with him in his office. In the meeting, he asked me if I had ever been seen by a particular Mental Health provider in Mental Health Service. I explained I had seen the doctor after returning from Afghanistan. The Chief of Mental Health continued by saying that a colleague had told him I was unstable and unfit to lead. I explained to him that was interesting because I was currently the HHD Commander for a USAR Multi-functional Medical Battalion. I continued by saying that it was obvious that someone had been in my records. The Chief of Mental Health quickly stated that he could not remember who told him about my seeing the particular doctor. I went to the privacy officer after the meeting and obtained a copy of who had been in my record. I found numerous persons that had illegally accessed my personal information. The hospital conducted an investigation but claimed that they had found nothing.

My fate was sealed in the Mental Health Service when I started questioning compensation time/overtime issues. Around the end of 2013, I began to suspect fraud related to comp time/overtime. The operations manager, that offered me the PTSD Coordinator Position to shut up about the hiring practices, was constantly disapproving everyone's request for comp time and overtime except for a select few. I started to pay closer attention to this area of discussion in meetings. The issue hit a boiling point when the Operations Manager denied my assistant legitimately earned 3 hours of comp time. The Operations Manager denied the comp time due to her not being there to approve it before it was earned. When I inquired as to why there was no other person that could approve comp time, I was warned by the Chief of Mental Health to let the issue go. I explained that we would take the issue to higher levels if need be to obtain the three hours comp time.

At this point there were too many red flags surrounding the issue for me not to investigate the possible issue more. I later put in a FOIA request (after leaving Mental Health early 2014) for all Mental Health leadership's comp time and overtime earned. I discovered the Operations manager had an extreme number of earned comp time hours and other certain individuals in the service had extremely high hours of paid overtime.

I reported my findings through the VA OIG Hotline and had to argue with the person on the hotline about taking my compliant. At first, I was told by the hotline that this was a facility problem. I insisted that it was possible comp time and overtime fraud and my compliant was ultimately taken by the hotline.

I later learned that the OIG referred my compliant to the Faculty Director for a response. My understanding is that the issue was passed on to Chief of Staff, who in turn had Mental Health Leaders provide a report. In other words, nothing happened.

When speaking with Office of Special Counsel months later, I explained the comp time/overtime issues. The following week I was contacted by VA OIG and told the issues were under investigation. I understand at some point VA OIG was at the facility investigating the issue but I never spoke to them in person. I later sent a FOIA request to the VA OIG for information related to the case but was told the case was still open.

I was systematically removed from Mental Health leadership through a well-organized manipulated hiring process. The Local Recovery Coordinator (LRC) position I held was eliminated and a Recovery Supervisor position was created. The position was an upgrade from GS–12 to GS–13. I had received outstanding and excellent performance evaluations during my time in the LRC Position. Since the position was upgraded, I had to reapply. Once again, I was offered the "hook-up" but, once again,

I declined and insisted that the job needed to be announced and the hiring process should be completed properly.

The hiring process was completed and I was by far the most qualified for the position, but was not selected. It was easy to see that the hiring practices had been manipulated through screening tools. At this time I knew that I had to get out of Mental Health as the only positions I was offered were frontline positions under the very people that I had turned in for unethical acts. I knew that, if I stayed, I would face the same horrible retaliation from leaders, that I had witnessed other employees face.

At this point I went through my NFFE Union President to ask the Director for a transfer out of Mental Health as soon as possible. There was arguing back and forth about the FTE, but the Director stepped in prior to her retirement and ordered Mental Health to give up the FTE to Primary Care so that I could be moved out. In my request, I mentioned that I would like to move to the OEF/OIF Team, but that I had experience in numerous areas.

I was moved to the OEF/OIF Care Team which was located on the 10th floor. My office was located at the opposite end of the 10th floor away from the OEF/OIF Care Team. My office was a large storage room type office with no windows. The hospital air conditioning unit was above the office and made a constant sound of metal grinding. I placed a work order with engineering which informed me there was no real way to stop the grinding sound. When I originally moved into this office I was informed I would only be in office for a month and not to unpack my boxes. That month turned into several months and I sat in the office away from my new team members, packed boxes sitting in the corner. The position created in OEF/OIF was developed to see Veterans but as an extra staff member with no case management load and few referrals, it was difficult to meet the expected numbers.

In April 2014 the story of the wait-list at the Phoenix VAMC surfaced in the media. I had sat in meetings where wait-lists were discussed and had seen wait-lists during my time in Mental Health Department. As mentioned, I had already reported wait-time issues and knew that the scheduling practices were manipulated so that it would make wait-times look better. Bottom line is I knew from my time in leadership that several methods were being used to make the 14 day measure numbers look tremendously better than they were.

After watching the Phoenix VAMC story develop, I decided that I could not wait any longer for VA OIG to take action on my June 2013 complaints. I contemplated what to do next and felt I had exhausted all internal options to report the wrongdoings, so I hesitantly decided to take my story to the media.

I went to the *Shreveport Times* in May 2014 and worked with a *Times* Reporter for 2–3 weeks on the story. As the story develop and it was close to being released I was told that TV was probably going to contact me as well as other media sources. I explained that I was not really wanting to speak with a lot of media, but I would be happy to speak with one TV media source as long as the story was focused on Veterans Care issues and not me.

As the time drew closer I feared that once the story was published that the lists in Mental Health would disappear. I also knew once the article ran in the media, my life would change forever, especially my career with the VA. I had seen firsthand how persons who brought issues forward were treated, but I also knew I could no longer look away as Veteran received substandard care.

I decided at this time that I needed to secure a copy of any and every wait-list in Mental Health I could get my hands on. I enquired from Mental Health colleagues I had worked with previously and learned that the numerous list had been joined to form one list. Despite fear of retaliation, with the help of other employees, I was able to obtain a copy of the lists and other evidence of the lists existence.

The *Shreveport Times* story on the issues at the OBVAMC ran on Sunday June 1, 2014. I met for a TV interview on Tuesday, June 3, 2014. Around the same time I, yet again, filed a report with VA OIG that I now had a wait-list in my possession and that I knew the hospital was manipulating numbers and scheduling throughout the hospital. When the story hit the news, as I anticipated, the list was removed from the share drive and replaced with a different list that was posted and password protected.

I sat patiently and waited for VA OIG response, but received nothing. I watched as the good ole' boy leaders of our facility circled the wagons and started developing their cover-up stories. I was told by my frontline supervisor that her boss, the Chief of Primary Care, had made a visit to her office and was not happy. She explained that he told her that what I did was wrong and that when things were all said and done I would be standing here like the officer in the movie "Bridge Over the River Kwai" stating "What have I done, what have I done." Emails were sent out by the

Mental Health Service Chief calling the allegations lies and stating that I was trying to destroy Mental Health.

He began circulating the story that the list was not a secret wait-list but a list to help find Veterans that may have slipped through the cracks. Numerous persons working in Mental Health approached me. They complained that it was as if Mental Health leaders were trying to brainwash them into believing their concocted story. But everyone knew the truth, they knew that the lists were lists of patients who needed appointments.

For over a month the VA was allowed to develop its story and propaganda. The hospital even brought in public relations personal from other facilities and prepared a dog and pony show in which they denied everything. Several Veterans heard the VA's story of what was going on and called the TV station and backed up what I was saying. One Veteran did an interview and explained the exact procedures that were occurring. He even revealed that he had indeed personally seen the wait-list.

After patiently waiting for VA OIG to come in and investigate I decided I could wait no more because the corrupt good ole' boys continued to cover their tracks. I knew the longer it took investigators to get to the facility the less they would find. I contacted Senator Mary Landrieu who sent a letter to Acting Secretary Sloan Gibson. I also contacted Senator David Vitter's office in an effort to get OIG to OBVAMC. Senator Vitter office sent a letter to the VA OIG Director Richard Griffin demanding that the list be investigated. The next day after the letter was sent I received a call from a VA OIG Special Agent. The agent explained that he and another agent were headed to Shreveport from New Orleans and that they wanted to meet with me. I was excited that finally VA OIG was coming to investigate.

Due to the timing, I originally believed that the OIG's call was in response to the request from Senator Vitter. It appeared that after a year of trying to get the VA OIG's attention, that the existence of the wait-list and other methods of scheduling manipulation were finally going to be investigated.

A few hours after I received the first call from the OIG Special Agents, I received another call from them explaining they had arrived in Shreveport. They explained that they needed the list and asked if I wanted to meet them somewhere off station.

I explained that I did not feel comfortable taking the wait-list off hospital grounds and that one copy of the wait-list was on the computer's hard drive. The OIG Special Agents agreed to meet me in my office on the 10th floor.

When the OIG Special Agents arrived at my office we sat down and I signed a release and we began discussing the issues related to the wait-list and other scheduling practices used to manipulate performance measure numbers. I showed the agents the wait-list on the hard drive and explained how I got to the list on the share drive. The OIG Special Agents asked about copies of the list and I provided them the two hard copies I had. The agents then took the hard drive from my computer. The agents left telling me they were headed to Mental Health to speak with other employees. I took the rest of the day off to settle my nerves.

The next day the OIG Special Agents came back to speak with me. I signed another waiver and we began to discuss the list again. At this point I realized that their questions were related more toward how I obtained the wait-list and not about why the wait-list existed. I also realized that they were unaware of the request by Senator Vitter or of the recent news article and television interviews.

Later that evening I spoke to a person whose name I had given to the OIG, who explained that OIG Special Agents had explained to her that if she had provided me access to the list that she could be an accomplice to a crime. She explained to my attorney and I that she was trying to get find a lawyer. At this time she also explained to my attorney and I how the list was created and how it was used because there were not enough providers to see everyone. My attorney made some telephone calls and obtained her legal counsel.

My attorney contacted the OIG Special Agents and asked them if I was under criminal investigation. The OIG Special Agents explained to my attorney that they were criminal investigators and that they were investigating the issue of how I obtained the list. My attorney at this time told the OIG Special Agents that all communication should go through him. The damage had already been done.

The OIG had come to Shreveport not to investigate the wait list and other scheduling issues. The OIG had come to perform damage control, intimidate other potential whistleblowers, and to investigate me, the whistleblower. The investigation they conduct was shoddy at best and they only interviewed Mental Health persons that would stand to face discipline if there was a list. They intimidated the other employee whose name I had given them. Her story totally changed from what she had explained to my attorney and I for fear that she would be charged with a crime.

A few weeks later the OIG Special Agents contacted my attorney. They explained they were headed to Shreveport and asked if they could speak to me. My attorney

explained to the inspectors that he would let the investigators talk to me about everything except how I obtained the list. The OIG Special Agents met with my attorney at his office. The two agents were accompanied by a polygraph tester. My attorney again reiterated to the OIG Special Agents that he would allow them to speak to me about anything except how I obtained the list. The agents said that they didn't need to talk to me about anything else.

They also told my attorney that there was nothing to the list. My attorney questioned why they had only talked to select persons in Mental Health and not others that wished to talk. The agents then turned to the fact that I had brought up that other scheduling procedures were being used to manipulate the performance measures. The agents asked my attorney for names and I provided my attorney with names of schedulers in other areas of hospitals that had explained to me they were instructed to schedule in such a way that numbers would look better on performance measures.

It was at this point that I became totally discouraged and had to shift focus into a mode of protecting myself against possible criminal charges instead of advocating for Veterans' care. Over the next several months I experienced the weight of an investigative agency of the Federal Government. The pressure from having the burden of a criminal investigation hanging over me was tremendous. I was also experiencing pressure from OBVAMC leadership. I became extremely frustrated that neither the OIG nor the VA leaders cared enough about the Veterans' care to do a complete investigation into reported wrongdoings. It was literally heartbreaking for me as an individual who has only wanted to do two things in my life: to be a soldier and to help Veterans. Despite my whistleblowing I continued to witness poor care being provided to Veterans. I had put my career and livelihood on the line and all I gained by doing so was being purposely isolated by the VA and hung out to dry by the OIG.

There is no doubt in my mind the OIG's sole purpose of coming to Shreveport was to intimidate myself and other potential whistleblowers for coming forward. Their main purpose was intimidation and damage control. The investigation was half-assed and shoddy at best. The OIG showed no interest investigating the wrongdoings in the hospital. Rather they interviewed select persons with the intention of intimidating them and others not to come forward with information about how and why the wait-lists existed. I had given the OIG Special Agents the names of numerous witnesses who could substantiate my claims of wrong doing. They did not take the time to interview most of them.

For coming forward and telling the truth I was now in a job way below my ability level. I was asked to complete a training that I explained to my leaders I was ethically unable to complete. I was told I needed to do the training because the COS wanted 100% compliance. I explained I was not going to complete the training because it placed my integrity in jeopardy. I was given a letter of admonishment for not completing the training. I filed a grievance concerning the letter of admonishment which turned out to be a joke due to the fact that Step 1 went to the Service Chief that was ordered by the COS to discipline me and Step 2 of the process was assigned to the COS who ordered the Chief of Primary care to discipline me. I complained that this was a conflict of interest to no avail. Thus, I withdrew my grievance in order to file with the Office of Special Counsel. After filing a retaliation claim for the letter of admonishment against my supervisor, Chief of Primary Care, and COS things became more tense for me in the OEF/OIF team. My supervisor and I were not getting along so I distanced myself. My supervisor took a position at another facility. Prior to leaving she gave me an unacceptable performance appraisal for not following directions concerning the training and left the next day.

As I languished for a year under investigation for obtaining a list that wasn't supposed to exist I began to contact other whistleblowers. My anger started to increase as it became apparent the OIG had used the same scare tactics all over the country to intimidate other whistleblowers. To make matters worse the OIG began time and time again whitewashing reports and attacking whistleblowers in these same reports. This solidified my belief that the OIG was not going to help solve the problem, but that it in fact was part of the overall problem with the VA System. After living a VA nightmare the last year it has become very apparent and saddens me to say that I see no real change in how VA operates. I believe that the problems with the VA are endemic to its structure. There will be no real reform until there is an independent agency that is willing to conduct thorough investigations and the system starts hold individuals at every level accountable.

The VA has become a bloated bureaucratic system in which its leadership is more interested in perpetuating their own careers rather than caring for our veterans. When given a performance measure, leaders don't look at how they can adapt their programs to meet the measure, rather they look at the performance measure and

try to figure out a way to manipulate it to make it look like they have met the expected goal. The system needs true reform and its leadership needs to be held accountable for its failures.

It is my belief that until we are able to protect whistleblowers and potential whistleblowers the true depth of the corruption within the VA will not be known. The years of cronyism and lack of accountability have allowed least two generations of poor incompetent leaders to plant themselves within the system. These poor leaders have trained other poor leaders and they have isolated the VA from the real world of efficient and effective medical treatment. The VA's continued inability to tell the truth has caused generations of Veterans to lose trust in their services. It is apparent that until the VA is absolutely with no exception forced to change, it will not do so.

Very Respectfully,

CHRISTOPHER SHEA WILKES.

PREPARED STATEMENT OF LINDA A. HALLIDAY, DEPUTY INSPECTOR GENERAL, U.S. DEPARTMENT OF VETERANS AFFAIRS, OFFICE OF INSPECTOR GENERAL

DEPARTMENT OF VETERANS AFFAIRS
Office of Inspector General
Washington DC 20420

DEC - 9 2015

The Honorable Johnny Isakson
Chairman
Committee on Veterans' Affairs
U.S. Senate
Washington, DC 20510

Dear Mr. Chairman:

This is in response to your November 17, 2015, letter requesting the Office of Inspector General's (OIG) views on the draft bill, S. __, VA Patient Protection Act. Enclosed are comments on the overall bill.

We would like to advise the Committee that Section 3 of the draft bill is unnecessary as our standard distribution list for all final reports includes all OIG oversight committees, the requesting office, and it is immediately posted on the OIG's website as allowable under the Privacy Act and other provisions of law. Moreover, there are several bills in Congress addressing this issue for all OIGs. We believe that is the proper avenue to address this issue across the IG community.

If the draft bill moves forward we request the insertion of the word, "final," on page 19 line 11, so the new wording would be –

> "(c)(1) Whenever the Inspector General, in carrying out the duties and responsibilities established under the Inspector General Act of 1978 (5 U.S.C. App), issues a **FINAL** work product that makes a recommendation or other suggests corrective action, ..."

This clause would allow the OIG to continue to provide draft reports to VA for comments and implementation plans without influence from outside sources.

Thank you for your interest in veterans and the Department of Veterans Affairs.

Sincerely,

Linda A. Halliday
LINDA A. HALLIDAY
Deputy Inspector General

Enclosure

Copy to The Honorable Richard Blumenthal, Ranking Member

OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF VETERANS AFFAIRS COMMENTS TO DRAFT BILL, S. __, VA PATIENT PROTECTION ACT

Overall the draft bill creates new processes for the Department of Veterans Affairs which are inconsistent with the current Whistleblower Protection Act. It also places additional responsibilities on supervisors and all those in the chain of command up to and including the Secretary.

Section 2: Treatment of Whistleblower Complaints in the Department of Veterans Affairs

Subchapter II: Whistleblower Complaints

- Section 731 defines a "whistleblower complaint" as "disclosing, or assisting another employee to disclose "a potential violation...." This term is overly broad and ambiguous. More importantly, it seems inconsistent with the requirement in Section 732 that seems to define a whistleblower complaint as one in which there is a "reasonable likelihood" that the complaint discloses a violation of any law, rule, regulation, gross waste of funds, abuse of authority or substantial and specific danger to public health and safety.

  We recommend that the definition of a "whistleblower complaint" be consistent with that in the Whistleblower Protection Act. The term "whistleblower complaint" is not a term used in the Whistleblower Protection Act or other statutes. The term is "disclosure" or "protected disclosure." For consistency, the term "disclosure" should be used. Not all individuals who make disclosures make "protected disclosures" as defined under the Whistleblower Protection Act and applicable case law.

- Section 732 is confusing. Subsection (a) (1) states that "in addition to any other method established by laws in which an employee may file a whistleblower complaint, an employee of the Department *may* file a whistleblower complaint in accordance with subsection (g) with a supervisor of the employee." This seems inconsistent with Subsection (a)(2) which mandates that the employee file the initial complaint with the employee's supervisor.

- Although the employee has the option under Subsection (d)(1) to file with the second level supervisor, what is the recourse if both individuals are involved in the complaint? Subsection (d)(2) only allows the employee to make a complaint with the Secretary if the employee has filed a complaint to each level of supervisors between the employee and the Secretary. This may be an issue in large organizations such as the Veterans Health Administration and Veteran Benefits Administration when there are many levels of supervision (through the Under Secretary for each administration) that the employee may or may not be

aware of and the subsection appears overly restrictive to ensuring complaints are raised and addressed.

- Section 732(e) allows the employee to transfer after making a complaint. This may not be feasible if there are no comparable positions that the employee is eligible to transfer into. There may not be positions for which the employee is eligible at the facility or office where the employee is located and the employee may not be able to relocate, e.g., family matters. If the transfer involves relocation, the costs the Government will incur to move employees and budget limitations must be considered. The draft legislation does not appear to take into consideration significant factors such as whether the employee files a complaint after being notified of performance deficiencies and placed on a Performance Improvement Plan (PIP), if the employee has failed a PIP and has been proposed for removal, or has been notified of a disciplinary action. Allowing employees with such performance issues to transfer for merely filing a complaint has the potential to limit and/or restrict VA from holding employees accountable. The draft legislation cites Title 5 USC Section 3352, which only applies if the person was found to have been retaliated against. In comparison, the draft bill requires the offer of a transfer for just filing a complaint. Section 732 focuses solely on the mere filing of a complaint and the investigation of such as opposed to retaliation for making a protected disclosure.

- Section 733, Adverse Actions, discusses actions against individuals who engaged in retaliation; however, the draft bill does not address how this determination will be made. The mandatory actions and the established time frames appear to deny the accused official of due process. For example, the draft bill does not state what evidence needs to be given to the employee to support the charge and appears to put the burden on the accused to provide evidence rebutting the charges. The draft bill puts the burden on the accused, not the Government, which is inconsistent with the basic constitutional right of the presumption of innocence until proven guilty. We also believe that imposing administrative action based on a finding in a report issued by the Inspector General is inconsistent with provisions in the IG Act stating that IGs are responsible for oversight of programs and operations. Taking an adverse action based on an IG finding, as opposed to the supervisor or manager weighing the underlying evidence, giving the employee the opportunity to respond to charges, and considering the *Douglas* factors would be found to be unconstitutional for the failure to provide due process.

- Paragraph (b) of Section 733 appears to allow the agency to charge an employee twice for the same conduct which is a violation of existing laws.

- Paragraph (c) of Section 733 defines prohibited personnel actions. The section cites 5 U.S.C. Section 2302 but the provisions in the draft legislation are not consistent with the cited statute. Therefore, it is not clear if Congress is adding to or limiting the provisions of Section 2302.

- Section 734 relates to criteria for bonuses. The language is vague and ambiguous and would need to be more specific to ensure consistent enforcement.

Section 3. Requirement that the Inspector General of the Department of Veterans Affairs Submit and Make Available to the Public Certain Work Products

While we believe this section is unnecessary, we offer the following edit for clarification and allow the OIG to continue to conduct reviews, inspections, audits, and other work.

On Page 19, line 11 – **final** work product. In order to for the OIG remain independent and objective, we must have the ability to share a draft reports with VA to obtain comments and action plans to recommendations without influence from outside sources.

PREPARED STATEMENT OF WALTER OCHINKO, POLICY DIRECTOR, VETERANS EDUCATION SUCCESS

STATEMENT FOR THE RECORD

LEGISLATIVE HEARING ON THE
VETERANS EDUCATION RELIEF AND RESTORATION ACT (S. 2253)

BEFORE THE

COMMITTEE ON VETERANS AFFAIRS

U.S. SENATE

NOVEMBER 18, 2015

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee:

Veterans Education Success (VES) appreciates the opportunity to share its perspective on VERRA, the Veterans Education Relief and Restoration Act (S. 2253). VES is a non-profit organization focused on protecting the integrity and promise of the GI Bill and other federal educational programs for veterans and servicemembers.

VES supports this important, bipartisan bill, which provides relief to veterans when the school they are attending closes through no fault of their own.

Currently, the Department of Veterans Affairs (VA) lacks the authority to provide relief to veterans at closed schools and, as a result, veterans lose some or all of their GI Bill benefits—a benefit that they earned by service to their country.

School closures are not an abstract concept. The abrupt closure of 28 Corinthian campuses in April 2015 represented a setback to the career goals of more than 400

veterans who were using their Post-9/11 GI Bill educational benefits as a bridge to a better future.

- As required by statute, veterans housing benefits were terminated the very day Corinthian declared bankruptcy and closed it doors. The housing benefit is an indispensable component of the GI Bill, providing the resources for veterans to cover essential living expenses. In many cases, the housing benefit enables veterans to attend school full-time and to focus on their classes without having to worry about how to pay the rent, afford childcare, or put food on the table. Losing the housing benefit on the very day the school closed left some student veterans facing homelessness.

- Because the closure occurred in the middle of a school term, Corinthian veterans received no credit for the courses they were taking. And, most significantly, any credits that they had already earned were rendered worthless. Few if any colleges or universities accept transfer credits from Corinthian.

VA's lack of authority to restore benefits at closed schools leaves veterans with no credits, no degrees, and the real possibility that they will exhaust their benefits if they choose to start over at a new school.

The Veterans Education Relief and Restoration Act provides veterans with an assurance that starting over will not leave them without the necessary benefits to earn a degree. It represents an important first step in helping such veterans realize the full potential of their Post-9/11 benefit. The legislation would provide VA with the authority to:

- Restore entitlement for individuals who pursued a program of education with Post-9/11 educational assistance and failed to receive credit—or lost training time—toward their degree or certificate. It would retroactively apply to veterans at the closed Corinthian campuses.

- Continue monthly educational assistance payments—including the housing allowance—through the end of the term, quarter, or semester in which the school closes, or up to 4 months from the date of the school closure (whichever is sooner), without charge to entitlement, thereby ensuring a student veteran does not suddenly face homelessness.

Moreover, the impact on federal expenditures is likely to be small. VA only incurs additional costs if veterans affected by a school closure do, in fact, reach a point where they run up against the cap on their educational benefits (up to 36 months for veterans who served at least 3 years after September 10, 2001). VA estimates that only 3 percent of Post-9/11 beneficiaries actually exhaust their benefit.

Enactment of VERRA will afford veterans a plan forward if their school suddenly closes.

Thank you for considering the views of Veterans Education Success on this important topic.

Walter Ochinko
Policy Director
Walter@VeteransEducationSuccess.Org

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