



***STATEMENT FOR THE RECORD***

**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO**

**PROVIDED TO THE**

**HOUSE COMMITTEE ON VETERANS' AFFAIRS**

**OVERSIGHT HEARING**

**"CRITICAL IMPACT: HOW BARRIERS TO HIRING AT VA  
AFFECT PATIENT CARE AND ACCESS"**

**SEPTEMBER 18, 2019**

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Chairman Takano, Ranking Member Roe, and Members of the Committee,

The American Federation of Government Employees, AFL-CIO and its National Veterans Affairs Council (AFGE) appreciate the opportunity to provide our views on how hiring barriers at the Department of Veterans Affairs (VA) affect patient care and access to VA's exemplary, comprehensive and veteran-centric medical and mental health services.

AFGE represents more than 700,000 federal and District of Columbia government employees, 260,000 of whom are dedicated VA employees. AFGE is the largest labor representative of Veterans Health Administration (VHA) providers and support personnel, and represents employees at nearly every VA medical center.

### **Front-Line Employees and Their Labor Representatives: Critical "Change Agents" for VHA Innovations**

AFGE shares the Committee's concerns about the corrosive effect that chronic VHA short staffing has on patient care and access. We applaud the Committee's commitment to spotlight VHA staffing shortages on the eve of the rollout of the new electronic health record (EHR) that will place additional demands on staff.

During most of the past fifty years, AFGE had a front row seat at many of VHA's major information technology (IT) transformations. We are grateful to former Under Secretary of Health, Dr. Ken Kizer for providing AFGE with a meaningful seat at the table when both the first EHR and bar code medication systems were implemented in the 1970s. We feel proud of our essential role in the success of these earlier IT

systems. As the primary users of these systems and recipients of training, the employees we represent must be true partners in all such endeavors.

Sadly, reports by local AFGE officers at VA medical centers indicate that the agency has made little or no effort to include the union in efforts to implement the new EHR.

Therefore, we urge the Committee and VA leadership to work with front-line employees and their labor representatives to implement and improve new technology initiatives. VA asserted in its September 16<sup>th</sup> press release that the VA Innovative Technology Advancement Lab (VITAL) Program selected “key clinical and frontline staff” for end user advanced training. We request that that Committee look into whether any labor representatives were actually among those selected. The agency description of VITAL participants aligns closely with the beneficial role that AFGE represented employees have played in the past, i.e. to “*directly influence a successful EHRM introduction at their facilities by performing as ‘change agents’ who can capitalize on and advance the capabilities and value of EHRM’s transformational innovation.*” (<https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5314>)

## **Compensation**

Provider compensation is a significant barrier to VHA’s ability to recruit and retain a strong health care workforce. The VA does not fully or correctly utilize the many recruitment and retention tools enacted by Congress to make the VA competitive with pay provided by other employers in local markets. The problem is exacerbated for providers covered completely by the Title 38 personnel system, including physicians,

dentists, registered nurses, physician assistants and podiatrists. Due to broad Secretary discretion over Title 38 providers, and the absence of collective bargaining rights, they cannot challenge management violations of pay laws or pay rules. This also prevents pay from being consistent among providers, causing favoritism and unequal application of pay laws that greatly undermine recruitment and retention. However, some VHA facilities have successfully applied existing pay laws to make provider pay more competitive. Therefore, the VA already has the tools it needs to make pay competitive for VHA personnel. The root cause continues to be overly broad Secretary discretion over the pay and working conditions of Title 38 clinicians. Adequate training of managers and human resources (HR) personnel will help ensure that they make proper pay decisions and face greater accountability when they make bad pay decisions. More Congressional oversight of pay setting processes and pay decisions will ensure use of best practices across all VHA facilities.

For physicians, dentists and podiatrists, Secretary discretion over their market pay has resulted in long delays in updating pay, arbitrary decisions over which comparative pay data is relevant and how much to adjust market pay. In 2004, Congress passed the physician-dentist pay law to make the process more transparent. However, in 2016, Congress eliminated the requirement that VA set market pay through compensation panels comprised of providers working in the relevant practice area. As a result, management now makes market pay decisions without any accountability or transparency and it has become much more difficult for providers to know whether they or their colleagues are receiving the proper amount of market pay. We regularly hear reports from the field that senior physicians are paid significantly less than new hires,

and that many providers are making far below market rate. The adverse impact of these poor pay practices is especially felt among specialty physicians and providers in high cost of living areas.

Podiatrists were added to the physician-dentist pay system by the VA MISSION Act. AFGE has received many reports that they are widely disappointed by the market pay determinations they have received. Their frustrating experiences to date further illustrate how a lack of competency and accountability cause good pay tools to be poorly utilized. Many facilities delayed implementation of this pay change; others began implementing the fix, but miscalculated market pay and failed to take into consideration the greater pay needs of podiatrists performing rear-foot surgeries.

Broad Title 38 discretion and a lack of transparency have also limited the ability of registered nurses (RNs) and physician assistants (PAs) (who were added to the RN third party locality pay system in 2017) to challenge improper pay determinations and resulted in delays in making needed pay updates.

RNs also express frustration with the pay determinations made by the nurse professional standards boards (PSB) for new hires and RNs seeking promotions. Many front-line nurses feel that the PSB is plagued by favoritism, denying promotions to many deserving RNs. Our members express frustration that many in the position of Nurse II with extensive experience never get promoted to Nurse III. Similarly, individuals in the position of Nurse I with valuable experience never get promoted to Nurse II because they do not have 4-year degrees and the PSBs fails to properly credit their years of service with the VA.

VA physician assistants (PA) report that it is extremely difficult to be promoted beyond a GS-11, leaving their pay well below the PA pay offered outside the VA. Similarly, PA Leads also have difficulty moving from GS-13 to GS 14. The VA Choice and Quality Employment Act of 2017 required that the VA apply the RN third party locality pay process to PAs but to date, the legislation has been applied very unevenly across facilities.

As previously mentioned, the lack of full bargaining rights among Title 38 providers causes an additional barrier to receiving competitive pay. The VA's Title 38 collective bargaining rights policy, which is based on an extremely narrow reading of Section 7422 of Title 38, prohibits these providers from challenging VHA's violation of pay laws and its own policies. AFGE has fought a long battle to amend Section 7422 to eliminate the compensation exclusion and other exclusions to bargaining. We are very grateful to Chairman Takano for introducing H.R. 1133, the "VA Employee Fairness Act", which will rectify this problem. Without this change, the VA's "7422" policy will continue to undermine the pay laws Congress enacts to keep the VA provider workforce strong.

Hybrid Title 38 providers, including psychologists, social workers and pharmacists are also frustrated by the Hybrid Title 38 Professional Standards Board and the fact that special pay increases are within the discretion of the Medical Center Director. However, they can use their full collective bargaining rights and to grieve over improper applications of pay laws and policies. That is why AFGE strongly opposes efforts to move VHA psychologists from Hybrid to full Title 38 through Section 501 of S.785, the "Commander John Scott Hannon Veterans Mental Health Care Improvement

Act of 2019". One of the reasons offered by proponents for this change is the ability to get higher pay for psychologists under the physician three-tier pay system. In addition to losing full bargaining rights, and the right to use the grievance and arbitration process, or Merit Systems Protection Board to challenge unfair terminations and discipline, or incorrect pay determinations, it is far from certain whether front-line VHA psychologists would receive higher pay under the market pay system.

### **VA Mission Act Vacancy Data**

Adequate data on vacancies within the Department is crucial to fully assessing the true state of VA staffing. When Congress began the process of overhauling the CHOICE program, AFGE was adamant that language be included to provide transparency on staffing levels. As the VA MISSION Act began to develop Section 505 was added, which requires the Department to post data every quarter outlining where vacancies exist. This data is intended to provide the public with information – both at the national and facility levels. This data should be used as an indicator of how the Department is doing with hiring and retaining talented professionals to care for our veterans.

Pushing for vacancy transparency is not a new notion. When Congress passed the CHOICE Act, they included language directing the VA Office of Inspector General (OIG) to provide an annual update on the five occupations with the largest vacancy rates. Congress further amended this part of statute in 2017 with the passage of the VA Choice and Quality Employment Act, which required reporting on the top five clinical and nonclinical occupations with the largest staff shortages. Making this data publicly

available is important so that patients and other stakeholders are able to fully assess the state of their local VA. Looking at wait times only does not tell the full story.

In the CHOICE-mandated reports the OIG routinely found vacancies in mental health and primary care. These two components are the bedrock of VA care, and it certainly raises red flags that the Department is routinely coming up short in these areas. What is also interesting is high number of nonclinical vacancies the Department has, for example in the June 14, 2018, OIG report occupations such as police officer, general engineer, and custodial worker were all in the top eleven (11) of positions that need to be filled.

Section 505 of the MISSION Act was intended to take this occupational data and narrow it down even further. Ideally, this language was drafted to require the department to report by facility how many vacancies exist for each occupation. On June 25, 2019, the OIG released its first report based on the new MISSION Act requirement. While the OIG did not accuse the VA of not complying with the law, they did call into question the extent of VA's reporting. According to the OIG, "VA's initial reporting of staff vacancies and employee gains and losses used alternative aggregation methods and lacked sufficient transparency to permit stakeholders to use this information to track VA's progress toward meeting full staffing capacity."

When Section 505 was included it was clear that the intent of the provision was to provide stakeholders with adequate data to assess VA hiring. We all agree that veterans have earned the world-class care and services provided by the Department, and AFGE stands ready to help the VA bring more fulltime federal employees on board who want to make a career out of serving veterans. We hope that the Committee will

continue to force the VA to be transparent and put forth a serious effort to address staffing challenges.

AFGE thanks the Committee for the opportunity to share our views on VHA hiring practices and vacancy data collection. We welcome the opportunity to share the perspective of AFGE and the front-line employees we represent to ensure increased competency, accountability and transparency in management's application of all VHA pay processes. The VA's refusal to fill the nearly 50,000 positions that remain vacant is a disservice to veterans. We look forward to working with the Committee to ensure that all stakeholders have access to adequate data to assess VA hiring.