AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO
AND
THE AFGE NATIONAL VETERANS' AFFAIRS COUNCIL

STATEMENT FOR THE RECORD

HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS SUBCOMMITTEE ON THE EFFICIENCY AND EFFECTIVENESS OF FEDERAL PROGRAMS AND THE FEDERAL WORKFORCE

UNITED STATES SENATE

IMPROVING FEDERAL HEALTH CARE IN RURAL AMERICA: DEVELOPING THE WORKFORCE AND BUILDING PARTNERSHIPS

MAY 23, 2013

Introduction

American Federation of Government Employees and the AFGE National VA Council (hereinafter "AFGE") appreciate this opportunity to provide a statement for the record on Veterans Health Administration (VHA) workforce development policies and their impact on the ability of veterans in rural communities to access VA medical and behavioral healthcare services.

AFGE is the largest labor representative of VA health care employees; in every Veterans Integrated Service Network (VISN), AFGE represents the vast majority of VHA employees hired under the Title 38 personnel system (including primary care physicians, psychiatrists, registered nurses (RN) and physician assistants (PA)) and Hybrid Title 38 personnel system (including psychologists, social workers, other therapists and licensed practical nurses.)

AFGE's statement focuses primarily on VA physicians. Many of the issues addressed in this statement also apply to physician assistants and nurse practitioners working as independent providers. AFGE's statement draws from numerous member reports, including reports from members providing medical and mental health care services to veterans in rural communities in Montana, Alaska, Arkansas, Missouri, North Dakota and Wisconsin.

Summary of AFGE Recommendations

- Hold managers accountable for retaliation against providers who raise concerns about patient care and working conditions.
- Expand VHA Recruitment/Retention Data Collection
- Provide Title 38 providers with equal rights to bargain over working conditions

- End management abuse of the 24/7 physician duty hour rule and enact statutory limits on excessive work hours.
- Conduct oversight of overwhelming provider administrative duties and their impact on recruitment/retention and patient care.
- Reform policies on psychiatrist base pay and market pay to ensure more competitive salaries.
- Reform policies on physician/dentist performance pay to achieve more appropriate performance measures, and increase timeliness and consistency in pay setting process.
- Conduct oversight of VHA hiring and promotion policies, including offers for salary and loan assistance; increase labor and management training on professional standards boards and increase transparency of boarding process.
- Extend VEOA protections to veterans appointed to Title 38 positions.
- Increase reimbursement for professional education expenses to competitive levels.
- Increase VA police coverage at all medical facilities.

Barriers to Effective Congressional Oversight of VHA Workforce Development Policies

I. Retaliation Against Employees Who Voice Concerns About Patient Care and Working Conditions

Due to widespread fears of management retaliation, AFGE members who provided feedback for this statement requested that identifying information be omitted (with the exception of union officials and former employees). In general, employees who voice concerns about patient care or working conditions regularly face harassment through inappropriate Peer Reviews, and unwarranted Administrative Investigation Board reviews, and allegations of patient abuse and privacy violations.

VHA's track record of retaliation has clearly had a chilling effect on the VHA workforce. They are painfully aware that managers who engage in retaliation are not held accountable for their actions at the local, VISN or national levels. For example:

- The Wilmington, Delaware VA psychologist who testified for AFGE before the Senate Committee on Veterans' Affairs in November 2011 faced intense retaliation despite strong warnings by the VA Committee Chair and members; she still has not had her duties as a PTSD Coordinator fully reinstated or her personnel evaluation rating properly restored.
- In February 2013, three months after President Obama signed into law the Whistleblower Protection Enhancement Act, P.L. 112-199, that specifically protects communications with Congress, a Pittsburgh VA registered nurse faced intimidation and now fears retaliation as a result of her testimony before the House Committee on Veterans' Affairs about management's cover up of a deadly Legionella outbreak. One manager suggested she could feign illness in order to avoid testifying. Again, management at her facility and VISN faced no consequences for these acts of reprisal.
- A Wilmington, Delaware neurologist who testified before the Senate Committee on Veterans' Affairs in 2011 faced retaliation.

- Two RNs who testified before the Senate VA Committee (2008 and 2009) faced retaliation.

Recommendation: VA managers at the national, VISN and facility levels who engage in or fail to respond to acts of retaliation against employees who make protected disclosures to Congress should be held accountable through discipline, performance ratings, withholding of performance awards and revised duties.

II. VHA Workforce Data Fails to Capture Key Factors Affecting Recruitment and Retention

VHA workforce data collection is too limited and infrequent to capture the key factors that health care professionals consider in deciding to work for or stay with the VA. The succession planning document that VA issues approximately every two years has limited survey questions. AFGE has never been asked to provide input into questions addressing front line employee concerns.

Recommendation: Conduct oversight of VHA's current workforce data collection process to identify additional data needed to address barriers to provider recruitment and retention, in consultation with employee representatives and veterans' groups.

III. VA's Title 38 Bargaining Rights Policy Silences Health Care Professionals, Hinders Workforce Development and Harms Patient Care

During the past decade, the VA has singled out employees covered by Title 38 bargaining rules for unequal treatment. At both the national and local level, the Department continues to use its "7422" policy (based on 38 USC § 7422) to deny Title 38 employees the right to collectively bargain over routine workplace issues, pay surveys and assignment of overtime duties. VHA's Title 38 bargaining rights policy impacts most workplace matters, and is a major barrier to the recruitment and retention of a strong workforce.

Silencing one group of VA clinicians weakens morale and limits lawmakers' opportunities to address issues impacting patient care, such as clinician exhaustion and inadequate training. On the behavioral health front, VA's "7422" policy results in the demoralizing situation where psychiatrists with very limited bargaining rights work alongside psychologists and social workers with full bargaining rights.

One of the reasons that VA psychiatrists and other Title 38 employees transfer to jobs with full Title 5 bargaining rights at military hospitals and other federal facilities is the desire to escape this oppressive workplace and regain an equal voice over routine issues such as administrative support, excessive duty hours and pay surveys.

Recommendation: Enact legislation to restore equal bargaining rights to Title 38 clinicians. AFGE thanks Chairman Tester, and Senators Begich, Pryor and Baldwin for their past support for Title 38 bargaining rights legislation.

Physician Duty Hours: Management Abuse of the "24/7" VA Regulation is Driving Physicians Away from the VA and Putting Patients at Risk

At every facility that AFGE surveyed, the number one concern of physicians (including psychiatrists, and physician assistants and nurse practitioners working as independent providers) was excessive duty hours. Many providers are regularly working up to three to four additional hours each evening to catch up on ever increasing administrative responsibilities (discussed in more detail below). Their patient caseloads ("panel sizes") are frequently double or triple VHA's own ceilings; responsibility for unassigned patients and coverage of panels for coworkers on leave further increase their caseloads. In addition, an increasing number of providers work seven days a week on a regular basis covering weekend rounds and on call duty. Time and attendance records are maintained by managers and rarely reflect the true hours actually worked.

Since VA physician duty hours are not regulated by statute and are entirely subject to management discretion, physicians have very little recourse against unsafe and unreasonable schedules. "I can work you 24/7" is a common refrain that VA physicians hear from management. VHA Directive 5011 requires full-time physicians to be subject to duty "24/7"; at management's discretion, they "may be granted scheduled days off during the administrative workweek." Similarly, this directive authorizes up to 24 hours of leave for physician "rest and relaxation" but is only a "guide" also subject to management discretion, and is rarely allowed.

Generally, VA physicians find it increasingly difficult to take leave for any reason, including continuing education courses, due to work pressures. Ironically, Directive 5011 also requires that they take a full day of leave, even if they only need an hour or two of leave for medical appointments; once again, exceptions are completely up to management discretion (and personnel directives urge otherwise).

Chronic short staffing (which results in part from management incentives to reduce spending and in part from the VA's increasing inability to recruit providers, especially in rural areas) contributes significantly to excessive duty hours. In addition, VA facilities have significantly reduced their reliance on residents to cover weekend rounds in recent years. VA has still not complied with a 2002 Congressional mandate (P.L.107-135) to implement a policy on physician staffing levels, according to a 2012 VA Inspector General report that focused on psychiatry and other specialty areas.

VA physicians are dedicated to their patients and fully committed to providing after hours care as needed. However, as salaried employees, it is unfair to require them to work every weekend, or be deprived of adequate rest between 18-hour work days.

Extreme overuse of the 24/7 rule on a long term basis also puts patients at risk. Volumes of research have confirmed that patient safety is adversely impacted by excessive work hours. Fourteen states have set statutory limits on nurse overtime. Congress has enacted two sets of limits on VA nurse overtime (Public Laws 108-445 and 112-163) and the Accreditation Council on Graduate Medical Education has limited resident physician duty hours for over two decades. The adverse impact of excessive physician duty hours on patient care also has been addressed

by the Agency for Healthcare Research and Quality, Joint Commission (Sentinel Event Alert #48) and the VA Office of Inspector General (Report No. 11-02637-90).

RECOMMENDATION: Conduct a Congressional investigation of current VA physician duty hour policies and limits set by other public and private health care employers; Enact statutory limits on physician duty hours that ensure quality care and strong recruitment and retention, in consultation with labor representatives, veterans' groups, and researchers.

Exponential Increase in Administrative Duties Weakens VA's Ability to Recruit and Retain Physicians and Other Independent Providers

As previously noted, many VA physicians and other independent providers are required to work several additional hours every day in order to keep up with a rapidly growing list of nonclinical duties. Even though many of these administrative tasks directly impact patient care and provider performance measures, providers are not given any administrative time to complete them during duty hours.

Providers rarely have sufficient administrative staff to assist in these tasks. Rural providers are especially likely to work without any support staff. As one psychiatrist in a rural facility stated: "I do everything from A to Z including vital signs, patient appointments, triage and medication refills."

A recent AFGE member survey revealed the enormous volume and range of administrative duties that VA independent providers face, and the tremendous pressure they feel having to complete these tasks without any additional nonclinical hours. Comments such as ""daily there is a feeling of drowning" or "there is literally NO WAY to keep up" capture the sentiments of many respondents. These pressures are having a direct impact on retention: "Our most recent provider to depart primary care is doing so because of the overwhelming demand of reminders and other administrative tasks…When we are losing good people because of our inability to make the systems more conducive to provider productivity, we've got a real problem."

The following represents only a small percentage of the full list provided by AFGE members:

- Computer view alerts (including alerts for lab results, no-shows, appointment changes, consult interpretations, nurse notes, daily notes on patients at outside facilities, medication refills): **Most members report having to respond to 100 or more alerts every day!**
- Phone calls to patients
- Faxing
- Stocking their own rooms
- Replacing patient educational materials
- Outlook messages
- Secure mail messages
- Paper messages
- Outside medical records

- Completing paperwork for aid and attendance, disability insurance, etc.

Recommendation: Conduct Congressional study of current administrative duties, to identify strategies for reducing time demands on providers while ensuring timely and quality patient care, with ongoing input from representatives of front line employees and veterans' groups.

VA Psychiatrist Base Pay and Market Pay Policies Are Broken

VA psychiatrists across the board are not receiving competitive salaries; this pay gap is often worse in rural areas. When Congress enacted P.L. 108-445 to establish three components of pay for VA physicians and dentists (base, market and performance pay), the VA placed psychiatrists on the lowest base pay table (Table 1) along with primary care physicians and hospitalists. Even though VA Central Office has issued a blanket exception to increase psychiatrist pay, local management is often unwilling to exercise its discretion to raise pay above the Table 1 limit.

The market pay component also contributes to psychiatrist pay gaps at many medical centers, especially in rural areas where there are few comparable employers to survey. For example, in Ft. Harrison, Montana, the new behavioral health unit is almost empty; management can only fill one of the two psychiatrist slots due to low wages; psychiatrists who leave to work at other facilities in that area can increase their salaries by $100,000 or more.

Recommendation: Conduct analysis of psychiatrist base pay and market pay practices to determine appropriate base pay table and market pay survey process for psychiatrists in different geographic areas.

Widespread Violations of Physician Performance Pay Law Hurt Recruitment/ Retention

VA physicians in almost all practice areas report problems with management's failure to abide by the performance pay requirements in P.L 108-445. The Secretary failed to exercise his obligation under the law to prescribe specific goals and performance objectives, and gave facilities full discretion over the process. As a result, many physicians receive their annual performance standards very late in the year; others never receive them. Local facilities rarely accept the input of front line clinicians into the content of the standards. The result is a range of standards that do not properly measure individual physician performance, for example, performance is typically based in part on measures beyond the physician's control such as missed appointments, use of the emergency room, and facility wide customer satisfaction.

In addition, managers in many facilities arbitrarily lower the maximum award and offer one-size-fits-all small awards or no awards, in violation of the statutory requirement to reward good performance in an amount up to $15,000 per year or 7.5% of pay. Overall, management's disregard of this important retention pay tool is demoralizing to VA physicians and dentists and directly contrary to Congressional intent behind P.L. 108-445 to attract and retain a strong professional workforce and reduce reliance on contract care.

Recommendation: Conduct Congressional study of whether current practices comply with P.L 108-445, and require facility directors to work with representatives of front line physicians to develop appropriate measures and policies for setting and awarding performance pay.

VHA Hiring and Promotions Plagued by Delays and "Bait and Switch" Practices

AFGE member reports about VHA hiring process are a guide to what not to do to recruit and retain a strong health care workforce to care for our veterans.

For example, VHA loses providers with years of valuable experience because they are frequently hired with the promise of one salary, but are told at the end of the professional standards board (PSB) process, that their salaries will be lower. (Some members have been asked to repay part of the higher salaries that they initially received.) Managers also often pull a bait and switch by breaking promises to provide educational loan assistance. For new hires who uproot their lives to relocate to VA jobs in rural areas with limited employment opportunities, this "bait and switch" causes particular hardship.

The adverse impact of management's practice of "hiding behind the board", in the words of one VHA employee, and other broken promises discourages good candidates from accepting VA employment; these practices lower the morale of current employees and discourage them from seeking promotions.

Others report that they feel "jailed in their unit" by managers who impede their promotions because they do not want to have to replace them.

The VA also loses good applicants to long delays in the VetPro credentialing process.

Recommendation: Increase the transparency of VHA boarding processes. Investigate bait and switch practices. Increase management training on the hiring and boarding processes for Title 38 and Hybrid Title 38 employees.

Veterans seeking VHA employment deserve equal protections against discrimination

Virtually all VHA employees involved in direct patient care are now appointed under the Title 38 personnel system, including the many medics and corpsmen who come to work at VA medical facilities. Due to a loophole in current law, if a federal employee with veterans preference points is passed over for VHA employment (initially or as a current employee seeking a higher level position after receiving additional education), he or she is not protected by the Veterans Employment Opportunities Act. In contrast, veterans working for military facilities and other federal health care systems covered by Title 5 can appeal violations of their veterans preference to the Labor Department and Merit Systems Protection Board. ,

Recommendation: Enact legislation to extend VEOA protections to employees appointed to VHA employment under Title 38.

OTHER RECRUITMENT/RETENTION ISSUES:

- Continuing Medical Education Costs: Reimbursement for physician and dentist continuing education expenses has not been increased for 22 years, and falls far below amounts offered by other health care employees.
- Violent Workplaces: Many rural providers receive no VA police protection against violent incidents that occur at or near the facility.
- Physician market pay panels frequently set pay for new hires at levels that exceed the pay provided to current employees with many years of valuable experience. Additional VA Central Office guidelines for the market pay process should be provided to address this adverse impact on retention.