



# **CONGRESSIONAL TESTIMONY**

***STATEMENT FOR THE RECORD***

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

**PROVIDED TO THE**

**SENATE COMMITTEE ON VETERANS' AFFAIRS**

**HEARING ON**

**"RECRUITMENT, RETENTION AND BUILDING A RESILIENT VETERANS HEALTH CARE  
WORKFORCE"**

**JULY 1, 2020**

Chairman Moran, Ranking Member Tester, and Members of the Committee, The American Federation of Government Employees, AFL-CIO (AFGE) and its National Veterans Affairs Council (NVAC) appreciate the opportunity to submit a statement for the record on today's hearing titled "Recruitment, Retention and Building A Resilient Veterans Health Care Workforce." AFGE represents more than 700,000 federal and District of Columbia government employees, 260,000 of whom are proud, dedicated Department of Veterans Affairs (VA) employees. In our comments on needed changes to strengthen the VA health care workforce, we discuss how VA policies and practices have undermined recruitment and retention at Veterans Health Administration (VHA) facilities and created unnecessary obstacles for the health care personnel who take care of our nation's veterans. We hope that you find our recommendations constructive and reasonable, and we stand ready to work with the Members of the Committee to make necessary and positive changes.

*Increased VHA Direct Hiring Authority Is Unnecessary and Harmful*

Proposals to increase VHA direct hiring authorities are often promoted as a shortcut to build the workforce, especially for highly trained medical professions such as physicians and nurses. However, these practices are contradictory to merit system principles that the system was built upon and ignores the fact that VHA already has direct hiring authority for the majority of its workforce. Instead, VA should use alternative methods to strengthen the VHA workforce that avoid the unintended negative consequences of direct hiring authorities.

AFGE believes hiring should be done under merit-system principles, with veterans' preference and public notice to guard against cronyism or a federal workforce

comprised of only political appointees. Direct hiring raises concerns about fundamental fairness for both internal and external candidates. It is no secret that direct hire appointments are often used to bypass veterans' preference and merit promotion consideration of current agency employees. Overuse of these appointment authorities unfairly limits competition and dishonors the promises we have made to veterans of military service who continue to serve their nation at the VA. VA has long been a model employer of veterans for the rest of the federal government and should remain so.

Direct hiring authority can also have a negative impact on diversity in federal hiring and simultaneously threatens the merit system principle of open competition for federal jobs, undermining the apolitical, professional civil service. Therefore, we urge the Committee to reject all proposals that increase the use of direct hiring authority and weaken Title 5 rights and merit system principles.

Furthermore, expanding direct hire authority is unnecessary as VHA already has direct hire authority for "full Title 38" personnel, i.e. physicians, registered nurses (RN), and other medical professionals appointed under 38 USC 7401(1). VHA medical center directors have virtually unlimited discretion and flexibility at the local level to hire full Title 38 employees. As the hiring surge during the pandemic has shown, when VHA has the need and the will it can hire quickly. What VHA instead needs is more effective use of existing hiring tools already provided by Congress for human resources (HR) personnel who currently are not adequately trained or supervised.

AFGE has also strongly opposed proposals that invoke the virtues of direct hire authority to weaken Title 5 protections currently afforded to Hybrid Title 38 personnel (Hybrids) such as psychologists and pharmacists and full Title 5 VHA personnel who

provide many essential support services to medical facilities. Here too, greater direct hire authority is unwarranted because medical center directors can already hire Hybrid Title 38 personnel directly at the local level. The VA should not be permitted to remove current requirements to comply with veterans' preference and merit-system principles through direct hire authority when there are many other recruitment and retention tools that Congress has already provided including special pay authorities.

In addition to the loss of Title 5 veterans' preference and merit-based principles, moving Hybrids over to the full Title 38 system would cause them to lose nearly all their collective bargaining rights. AFGE has already shared with the Committee several more effective ways to address psychologists' concerns about compensation and working conditions that do not require them to surrender their critical collective bargaining rights.

AFGE urges the Committee to instead enact S. 462, the "Department of Veterans Affairs Employee Fairness Act of 2019" to restore equal collective bargaining rights to VHA full Title 38 medical professionals. We thank Senator Brown for his leadership on this very important front-line provider issue, and we thank Senators Murray and Sanders for co-sponsoring the legislation.

#### *VHA Recruitment, Retention and Hiring Practices*

**Widespread vacancies:** The VA has been chronically understaffed for years, and COVID-19 has shed light on the scope of the problem. System-wide, the VA has operated with nearly 50,000 positions languishing unfilled. At every opportunity to address this failing, multiple VA Secretaries of both parties have demurred and insisted that the public look the other way. Yet, as soon as a major public health crisis began to

grip our nation, the VA swiftly moved to hire over 10,000 people in the course of a month. It is imperative that VA make the same effort to fill the remaining vacancies across the system with permanent, fulltime professionals.

Since the enactment of the VA MISSION Act, the VA has been required to publish quarterly data on the vacancy rate. In that time, we have seen virtually no movement – except more positions going unfilled – to increase hiring and retention. We now see that the VA is able to hire when it wants to, so Congress must act and insist that the agency continue to prioritize the filling of these positions so that veterans can receive the best care and services possible at the VA.

**Urgency in the hiring process:** Too often VHA loses medical professionals to other more attractive employers either before they come on board or shortly after they come on board (and after the VA has invested significant time and resources to credential and orient them). HR personnel take too long to bring applicants on board and do not keep with their commitments as to start date, compensation and work duties. Here too, if labor and management were working together, the VA could more effectively partner with professional schools to attract new recruits in a timely manner and offer more competitive packages to prospective applicants.

**Credentialing:** It is widely acknowledged that VHA's credentialing process for bringing on new medical professionals is cumbersome and slow. Members tell us that the lack of coordination between HR personnel carrying out the credentialing process, coupled with insufficient training and supervision often cause the process to be chaotic and confusion. One suggestion has been to conduct credentialing in a more condensed process that is offered during non-work hours. More generally, management would

benefit from restoring dialogue with front line providers and their labor representatives to improve credentialing and other aspects of the hiring process. A good starting point would be to determine how VHA was able to credential and hire so many new employees during the pandemic and replicate lessons learned.

**Compensation:** Frustrations over pay continue to be a leading cause of high attrition at VHA. Pay policies during the COVID-19 pandemic confirm VHA's longstanding flawed and unfair pay policies. The Secretary delegated all decisions regarding the provision of additional pay during the pandemic to VISN and medical center directors, including which employees were eligible and the amount of additional pay and duration of the payments. The results were unfair, counterproductive, and demoralizing.

Many facilities provided no additional pay to any of their employees even though they also experienced the additional work and risk of treating a surge of patients impacted by COVID-19. In other facilities, the director provided additional pay to physicians, RNs and other employees based on position and/or whether they were working in a high-risk unit, while denying additional pay to others also facing increased risks such as licensed practical nurses, nursing assistants and medical technologists.

While the COVID-19 Pandemic highlights this fact, this is not a new problem. VHA compensation practices appear to be especially problematic for certain clinicians in the long term as well. Yet, full Title 38 personnel have no recourse when the agency refuses to bargain over violations of pay and policies. Additionally, RNs often have to fight for years to get management to conduct third party locality pay surveys that are mandated by statute. Similarly, physicians, dentists and podiatrists (who are all under the same pay system) entitled to biannual market pay adjustments are forced to go

through secret management-only market pay setting processes that no longer involves a panel of peers, as a result of a change in law during 2016.

The annual performance pay awards for physicians, dentists, and podiatrists have become meaningless to many providers because management fails to comply with requirements to set fair performance criteria or to carry out this annual process in a timely manner. AFGE urges the Committee to examine ways to restore and strengthen the market pay peer panels that were established by Public Law 108-445 that were designed to ensure accountability, transparency and fairness to the pay setting process.

**Lack of support for providers:** VHA does not have enough support personnel (clerks, Nursing Assistants, orderlies) to take care of administrative tasks and other support duties that divert providers from patient care and require them to work many additional hours on a regular basis. AFGE urges the Committee to investigate whether VHA has appropriate staffing models throughout its medical facilities, especially in primary care clinics, mental health clinics, emergency departments and other units that regularly treat large numbers of patients.

**Hiring retirees:** At the outset of the pandemic, VA stated that it wished to bring back retired VHA medical professionals. This makes sense since they already have most or all of the training and orientation they need. Sadly, we have heard from a number of retirees that VA dropped the ball and did not follow up when they expressed interest. AFGE encourages the VA to again consider developing a program for employing former VHA medical professionals to meet staffing and health care delivery needs during the current pandemic. Here too, labor-management cooperation would significantly increase

the effectiveness of such an initiative because the local unions are well acquainted with recently retired personnel.

### *Improvements Needed in VHA Training*

While AFGE commends the VA for filling its long standing 50,000 vacancies by reportedly hiring over 10,000 new VHA employees during the pandemic, management must simultaneously address issues involving personnel training or VHA will continue to lose new hires. Our nurses observe that lack of training is one of the leading reasons that nurses are terminated. When they come on board or are promoted or transferred to a different unit, they cannot do their jobs safely or properly when VA fails to provide proper training. Secretary Wilkie has refused to work collaboratively with federal employee unions representing VHA personnel or recognize our longstanding, productive labor-management partnership. As a result, workers' voices have been ignored by VA leadership during VHA's response to the pandemic, and specifically, the joint labor-management health and safety trainings and committees that have made the VA a model of patient and workplace safety over many decades.

Another long-term training deficiency relates to the lack of continuing medical education (CME) support for VHA licensed professionals. If VHA wants to be a more competitive employer, it must vastly increase the amount of CME financial support and time it allots to its licensed professionals. Currently, only physicians and dentists are



entitled by statute to some financial assistance. Unfortunately, that amount is only \$1,000 per year and has not been adjusted since 2001. Our physicians tell us that the process for obtaining funding is extremely cumbersome and there are often delays to get the funds and the time off, causing them to give up and use their own funds and leave instead. This is surely not the way to compete with other health care employers who offer more time for training and more realistic amounts of CME consistent with current costs.

There is no statutory right to CME reimbursement for RNs, physician assistants, pharmacists and other licensed medical professionals who are already hard to recruit. These employees only get financial assistance and time off if management exercises its discretion to provide it. They are regularly told by management that there are insufficient funds for their CME needs.

AFGE urges the Committee to amend 38 USC 7411 to provide more competitive amounts of CME reimbursement to physicians and dentists and create new statutory entitlements to CME for other licensed professionals that allow for adequate reimbursement and time for training. AFGE further urges the Committee to investigate the significant lack of fairness and objectivity in current pandemic pay policies. We strongly support the HEROES Act pay provisions that would provide the same amount of additional pay to all essential employees facing increased risks.

### *Telehealth*

AFGE strongly believes in the use of telework and telemedicine and believes that the VA's growing and improving telemedicine capabilities can make the VA an attractive workplace for medical professionals, particularly during the COVID-19 pandemic and beyond. As the COVID-19 pandemic has proven, treatment for many different types of conditions can be conducted easily via telehealth, particularly for treatment of conditions that do not require physical contact, including mental health. This has improved safety for veterans and providers alike by reducing the risk of transmission of COVID-19 and other easily communicable diseases, particularly among higher risk individuals, and without the added inconvenience and expense of travel and PPE. With the VA's vast network and number of patients with access to and familiarity with telehealth, the VA's continued development of this ability can serve as a recruitment tool now and in the future.

### *Standard Requirements for All Practitioners Serving Veterans*

AFGE has often raised the inequity of the higher standards, requirements, and risks it places on its own internal providers compared to contractors. It is demoralizing and distressing for VHA providers to see their patients treated through the Community Care Network and other VHA contract care programs, knowing that many of these non-VA providers lack the competencies and veteran-centric medical experience that they and their VA colleagues have. AFGE strongly believes in the quality and care that our VHA members provide, and calls on Congress to force the VA to raise the bar on its contractors to make sure they both have and meet the same requirements and standards that VA providers do.

**The Accountability Act:** One of the greatest obstacles to building a resilient workforce is the continued existence and misuse of the “Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017” (Accountability Act) P.L. 115-41. This severe, unprecedented reduction in due process and collective bargaining rights has allowed the VA to launch an attack on all civil service protections that was allegedly aimed at mismanagement. This law has devastated the rights of every rank and file non-management employee who made no management decisions but who was also a valuable front-line witness to management misdeeds.

Under this statute, shorter timeframes to respond to proposed removals and to file appeals with the Merit System Protection Board, coupled with lower evidentiary standards to review appeals, have resulted in managers terminating employees without an adequate opportunity to respond to management allegations. It has also encouraged managers to fire employees with good records without an opportunity to improve, who would have faced lesser discipline in the past or would have had opportunities to improve their performance or conduct.

Knowing the repercussions of the Accountability Act and the damage it can do to a career has caused medical professionals to leave the VA and served as a deterrent to recruiting new staff. Restoring the due process rights that were eliminated by this law would help with employee morale and ease the concerns of prospective employees.

### *Conclusion*

Long hours, too many administrative duties, broken hiring promises, a hostile workplace, lack of equal bargaining rights for full Title 38 employees, and the ongoing

open attacks on unions that are felt throughout the medical centers demoralize VHA employees on a daily basis. These factors are also considered by others considering VHA employment. AFGE stands ready to work with the Committee on all the steps needed to improve the VHA workplace and the morale of its dedicated employees who have chosen to care for veterans. Thank you.