

United States Senate
WASHINGTON, DC 20510

December 15, 2016

VIA ELECTRONIC TRANSMISSION

The Honorable Mike Pence
Vice President-elect
Presidential Transition Office
1800 F Street NW
Washington, DC 20006

Dear Vice President-elect Pence:

Congratulations to President-elect Trump and you. We share your commitment to improving the care our nation's veterans receive and welcome the opportunity to work with the incoming Administration to improve the Department of Veterans Affairs (VA). As you consider priorities for the VA, we write to inform you about how our ongoing oversight of the VA shows an urgent need to improve veteran care, promote accountability, and protect whistleblowing within the VA.

Our veterans deserve the finest care. All too often, unfortunately, we learn of serious allegations of mismanagement and wrongdoing at VA facilities across the country. Whether it is unreasonable wait times at multiple facilities, the widespread over-prescription of highly addictive opioids, veteran suicides, misconduct by VA management, or retaliation against whistleblowers, it is clear that not all veterans are receiving the high-quality care they deserve.¹ The veteran suicide epidemic is particularly troubling and we have strongly urged the VA Inspector General to investigate veteran suicides among Iowa and Wisconsin veterans to determine if the VA failed in its care and, if so, to ensure that these failures never happen again.

Congress has acted to fix some of these problems. In the wake of the wait time scandals at the Phoenix VA, Congress passed the Veterans Access, Choice, and Accountability Act of

¹ *Timeline: The Road to VA Wait-time Scandal*, AZ Central (Oct. 24, 2016, 1:49 PM), <http://www.azcentral.com/story/news/arizona/politics/2014/05/10/timeline-road-va-wait-time-scandal/8932493/>; see also Press Release, S. Comm. on Homeland Sec. & Governmental Affairs, Chairman Johnson Releases 349-Page Report Detailing Committee Investigation Into the Tomah VA Tragedies (May 31, 2016), available at <https://www.hsgac.senate.gov/media/majority-media/chairman-johnson-releases-359-page-report-detailing-committee-investigation-into-the-tomah-va-tragedies>; see also Jim McElhatton, *VA Whistleblower Suspended from Job, Won't be Terminated*, Washington Times (Dec. 30, 2014), <http://www.washingtontimes.com/news/2014/dec/30/va-whistleblower-suspended-from-job-wont-be-termin/>; Letter from Charles E. Grassley, S. Comm. on the Judiciary & Ron Johnson, S. Comm. on Homeland Sec. & Governmental Affairs, to Inspector General Michael J. Missal (August 2, 2016); Letter from Charles E. Grassley, S. Comm. on the Judiciary to Inspector General Michael J. Missal (November 16, 2016); Letter from Charles E. Grassley, S. Comm. on the Judiciary & Ron Johnson, S. Comm. on Homeland Sec. & Governmental Affairs, to Secretary Robert A. McDonald (December 6, 2016).

2014 (Choice Act).² The law established a pilot program in which veterans could seek care outside of the VA if they were unable to schedule an appointment within 30 days, or if they live far away from a VA facility.³ This program has not been implemented according to the letter and intent of the law, making it difficult to use for veterans. We hope that under new leadership, the VA improves and expands the Choice Program for those veterans who wish to seek care from non-VA providers.

We believe the vast majority of VA employees are dedicated and hard-working civil servants. However, the current Administration has shown that it is either unwilling or unable to hold employees accountable for wrongful conduct. The failure to hold officials accountable poisons the entire workforce. The Choice Act authorized the Secretary of the VA to seek the removal or transfer of Senior Executives based on poor performance or misconduct.⁴ To date, the VA has used its authority to fire only six senior executives.⁵ One senior executive, who was removed for his failures at the Tomah VA Medical Center in Tomah, Wisconsin, received a lump sum payment of \$88,000 upon removal from the VA.⁶ Similarly, media reports have also highlighted a trend in which VA leaders who have reportedly engaged in various forms of misconduct are shuffled from one VA facility to another.⁷ These senior employees, by and large, have appeared to avoid any accountability for their actions.

On May 31, 2016, Attorney General Lynch informed the Senate Legal Counsel that the Justice Department would no longer enforce the removal provisions of the Choice Act.⁸ In addition, current VA leadership has vigorously opposed congressional efforts to enact additional accountability measures on non-senior executive VA employees.⁹ Moving forward, we encourage the new VA Secretary to not only use the tools Congress has already provided the Department to hold bad-acting and underperforming VA Senior Executives accountable, but also work with Congress to enact additional accountability measures for all VA employees.

² Veterans Access, Choice, and Accountability Act of 2014, Pub. L. No. 113-146, 128 Stat. 1754 (2014).

³ *Id.*

⁴ Veterans Access, Choice, and Accountability Act of 2014, Pub. L. No. 113-146, § 707, 128 Stat. 1754, 1755 (2014).

⁵ *Tomah VAMC: Examining Patient Care and Abuse of Authority Before S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2016), (statements of Hon. Sloan Gibson, Deputy Sec'y, Veterans Health Admin., post-hearing questions for the record), on file with Comm.

⁶ *Id.*

⁷ Donovan Slack, *Exclusive: VA Shuffles Managers, Declares 'New Leadership'*, USA Today (Oct. 18, 2016, 4:56 PM), <http://www.usatoday.com/story/news/politics/2016/10/18/veterans-affairs-managers-transfer-new-leadership-medical-centers/91965888/>.

⁸ Letter from Loretta Lynch, Attorney General, U.S. Dep't of Justice, to Patricia Bryan, Senate Legal Counsel, U.S. Senate (May 31, 2016), available at http://1yxsm73j7aop3quc9y5ifaw3.wpengine.netdna-cdn.com/wp-content/uploads/2016/06/helman_v_VA.pdf; see also Nicole Ogrysko, *DoJ Says Key VA Choice Provisions for SES Appeals is Unconstitutional*, Federal News Radio (June 3, 2016, 10:25 AM), <http://federalnewsradio.com/workforce-rights/governance/2016/06/doj-says-key-va-choice-provision-ses-appeals-unconstitutional/>.

⁹ *Pending Health Care and Benefits Legislation Before S. Comm. on Veterans' Affairs*, 114th Cong. (2015) (statements of Dr. Rajiv Jain, Assistant Deputy Under Sec'y for Health for Patient Care Sers., Veterans Health Admin.), available at <http://www.veterans.senate.gov/imo/media/doc/VHA%20Jain%20Testimony%206.24.15.pdf>.

In addition, the VA has a cultural problem with whistleblower retaliation. For fiscal year 2015, the Office of Special Counsel (OSC) processed 2,165 cases from the VA.¹⁰ The agency with the next highest case load was the Department of Defense (DOD), with 1,322 cases—despite the fact that the DOD has twice as many civilian employees as the VA.¹¹ OSC testified that the overwhelming volume of VA complaints presented numerous challenges to the agency charged with investigating and enforcing our nation's whistleblower protection statutes.¹²

Our Committees have worked closely with VA whistleblowers across the country. We have been able to identify common challenges that VA whistleblowers face when they take the courageous step to come forward and report wrongdoing. In some instances, VA whistleblowers have been subjected to retaliatory investigations and placed on administrative leave for unreasonable lengths of time. For example, Brandon Coleman, a VA whistleblower who exposed the Phoenix VA's failures to properly care for suicidal veterans, was placed on administrative leave for 460 days and subjected to various forms of retaliation after he reported wrongdoing.¹³ In addition, some VA whistleblowers who receive medical care from the VA have had their private medical records improperly accessed by their coworkers after they report wrongdoing.¹⁴ All too often, it is the whistleblower who faces punishment while retaliating managers avoid any culpability for their actions.

In April 2016, the Senate confirmed a permanent Inspector General for the VA, Michael Missal, who has promised to improve his office's ability to conduct independent investigations and rigorous oversight of the VA.¹⁵ We are hopeful that under new leadership, the VA can embrace these principles to ensure that our nation's veterans receive the care they deserve. We look forward to working with the new Administration to enact meaningful reforms that improve veteran care, expand veteran choice, hold all VA employees accountable, and enhance whistleblower protections.

¹⁰ U.S. Office of Special Counsel, Annual Report to Congress for Fiscal Year 2015, *available at* <https://osc.gov/Resources/FINAL-FY-2015-Annual-Report.pdf>. Cases include prohibited personnel practices (whistleblower retaliation) cases, whistleblower disclosure cases, and USERRA cases.

¹¹ *Id.*

¹² *Improving VA Accountability: Examining First-Hand Accounts of Department of Veterans Affairs Whistleblowers Before S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015), *available at* <http://www.hsgac.senate.gov/hearings/improving-va-accountability-examining-first-hand-accounts-of-department-of-veterans-affairs-whistleblowers> [hereinafter HSGAC Hearing]; *see also Whistleblower Claims at the Department of Veterans Affairs Before Subcomm. on Military Constr., Veterans Affairs, & Related Agencies of the S. Comm. on Appropriations*, 114th Cong. (2015), *available at* <http://www.appropriations.senate.gov/hearings/milcon-va-subcommittee-whistleblower-claims-at-the-us-department-of-veterans-affairs>.

¹³ Letter from Sen. Ron Johnson, Chairman, S. Comm. on Homeland Security and Gov't Affairs and Sen. Charles Grassley, Chairman, S. Comm. on Judiciary to Hon. Robert McDonald, Secretary, Dep't of Veterans Affairs, Feb. 16, 2016. On December 5, 2016, OSC sent a letter to President Obama that vindicated Mr. Coleman and confirmed that the allegations he made were true. Letter from Carolyn Lerner, Special Counsel, U.S. Office of Special Counsel, to Pres. Barack Obama (Dec. 5, 2016), *available at* <https://osc.gov/PublicFiles/FY2017/17-4-DI-15-1267-DI-15-2012/17-4-DI-15-1267%20and%20DI-15-2012%20Letter%20to%20the%20President.pdf>; *see also* Press Release, U.S. Office of Special Counsel, High-Profile VA Whistleblower Settles Retaliation Claim Through Mediation (May 6, 2016), *available at* <https://osc.gov/News/pr16-10.pdf>.

¹⁴ HSGAC Hearing, *supra* note 12.

¹⁵ Office of Public Affairs, U.S. Dep't of Veterans Affairs, Biographies, Michael J. Missal, http://www.va.gov/opa/bios/bio_missal.asp.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Ron Johnson". The signature is fluid and cursive, with the first name "Ron" being more prominent.

Ron Johnson
Chairman
Committee on Homeland Security
and Governmental Affairs

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is cursive and elegant, with the last name "Grassley" being more prominent.

Charles E. Grassley
Chairman
Committee on the Judiciary

cc: The Honorable Thomas Carper
Ranking Member
Committee on Homeland Security and
Governmental Affairs

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary