



**STATEMENT FOR THE RECORD
SUBMITTED BY THE SENIOR EXECUTIVES ASSOCIATION
HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEES ON HEALTH AND ECONOMIC OPPORTUNITY
WITH RESPECT TO
DRAFT LEGISLATION TO IMPROVE HIRING AND RETENTION OF PHYSICIANS AND OTHER
EMPLOYEES
MARCH 16, 2016**

The Honorable Jeff Miller
Chairman
House Committee on Veterans' Affairs
335 Cannon House Office Building
Washington, DC 20515

The Honorable Corinne Brown
Ranking Member
House Committee on Veterans' Affairs
333 Cannon House Office Building
Washington, DC 20515

Dear Chairman Miller, Ranking Member Brown, and Members of the Committee:

On behalf of the Association, and of the SEA members who serve at the Department of Veterans Affairs (VA), I write to provide SEA's perspective on the legislative proposal "to improve the authority of the Secretary of Veterans Affairs to hire and retain physicians and other employees of the Department of Veterans Affairs, and for other purposes."

This proposal includes many commendable provisions that should aid the VA's abilities to understand and manage staffing vacancies and shortages, and fill those shortages expeditiously with talented professionals.

Sec. 2 – Appointment and Pay for Directors of Medical Centers and Veterans Integrated Services Networks

On several occasions in the past, SEA worked with Congress and the VA to shift some senior executives within the Veterans Health Administration (VHA), particularly those serving as or equivalents to medical center and Veterans Integrated Service Network (VISN) directors, between Title 5 and Title 38, to ensure the agency was able to retain that talent and compete with the private sector, where compensation is significantly higher than what the VA pays its SES. The shared goal behind those past proposals was to ensure the VA was equipped with the tools it needed to compensate and support its career executive workforce, knowing that in doing so care and services for veterans would benefit.

SEA is pleased that this legislation takes this more targeted and reasonable approach, compared to the recent [proposal](#) from VA Secretary McDonald to move all VA SES from Title 5 to Title 38. In a survey of VA senior executives¹ conducted by SEA about the VA's proposal, some respondents did show support for moving medical health care executives, such as medical and VISN directors into Title 38, provided that the shift also ensured they retained all of the same employment rights and protections as their medical colleagues covered by Title 38.

A key fear of respondents to the survey, as well as for SEA, and the representatives from three Veterans Service Organizations (VSOs) who testified at yesterday's Senate Veterans' Affairs Committee [hearing](#), is that movement of any VA SES employees out of Title 5, for purposes to include avoiding the jurisdiction of the independent Merit Systems Protection Board (MPSB) and the merit based civil service core values, standards and protections included in Title 5, threatened an undo politicization of the VA's career executive workforce, potentially to the detriment of veterans, and should be pursued with great care and careful consideration.

Additionally, as you know, the SES is a government-wide cadre. Consequently, SEA has concerns about creating a distinct framework for a single agency, which balkanizes that government-wide system and creates challenges in maintaining consistency and providing for appropriate oversight by OPM. Further, VA may encounter difficulties attracting talented executives from other agencies with a distinct executive personnel system with unclear exchange and transfer provisions, another concern raised by respondents to the survey.

The VA in its recent proposal wrote, "pay disparity is particularly stark in the health care arena. The Healthcare Compensation Survey conducted by the Hay Group for 2013 reflects individuals holding the position of Chief Executive Officer (CEO) in private sector health care systems received on average \$731,800 annual cash compensation. CEOs of a single facility within an overall system received an average of \$393,100. In that same year, SES pay rates capped annual compensation for senior executives at \$181,500. While cost-of living increases have since increased the maximum rate of SES pay to \$185,100, that increase does little to address the obvious pay disparity."

Respondents to the survey supported the concept of "market pay" but acknowledged, as the VA does, that true market pay is unlikely in the government employment context. "I cannot support a proposal that would remove the few job protections we currently have with essentially only a promise of more \$\$\$. Most of us are not in this business because of the \$\$ - we do what we do for the sake of the mission - specifically for the Veterans and the employees we serve," wrote one VA executive who took the survey. That said, SEA supports the consideration of recruitment and retention needs in setting market pay for these positions and the requirement to adjust pay every two years. Further, SEA believes that transparency in all market pay-setting processes at the VA and ensuring the VA meets its obligation to adjust pay every two years be met is an important management practice to apply to all agency employees.

¹ https://seniorexecs.org/images/VA_SESSurveyReportTitle5toTitle38.pdf

SEA is deeply concerned with the provisions contained in (f) Ancillary Effects of Decreases of Pay. It is our understanding that such decreases in pay are not treated in a similar manner for other Title 38 employees, as long as they stay in the same position, therefore we question why such provisions should apply only to VA executives covered by Title 38. Of greatest concern is limiting the ability of any covered director to appeal a decrease in pay from an involuntary reassignment in connection with a disciplinary action. The potential for political appointees to abuse this unfettered authority could result in negative outcomes, such as harassment, discrimination, or retaliation against whistleblowers.

Sec. 3 – Adjustment of Hours Authorized for Certain Full-Time Employees of Veterans Health Administration

SEA supports this provision to provide flexible work schedule for most “pure Title 38” personnel.

Sec. 4 – Public-Private Contributions for Additional Assistance for Graduate Degrees Relating to Mental Health

The investment in educational assistance for veterans seeking advanced degrees in the field of mental health will help strengthen VA’s talent pipeline for such professionals and better equip the agency to deploy these personnel resources to the places that are underserved or where they can have the greatest impact.

Sec. 5 – Modification to Annual Determination of Staffing Shortages in Veterans Health Administration

The positive enhancement made to 38 U.S.C. § 7412 will ensure the Inspector General collects more specific and targeted information about VHA clinical and nonclinical occupations with staff shortages. Improved information, at not only the Department level but at the level of each VISN, should yield more specific and actionable data for the VA to utilize in managing its workforce and labor shortages.

Sec. 6 – Repeal of Compensation Panels to Determine Market Pay for Physicians and Dentists

It is SEA’s understanding that the provisions of this section could have potential significant adverse effects on the VA’s ability to ensure medical provider pay is competitive with other healthcare systems, the framework of which was supported by Congress on a bipartisan basis over a decade ago through passage of P.L. 108-445. Furthermore, repeal of compensation panels and market pay determination procedures for one group of employees, while offering it anew to another set of employees, could be detrimental to VA’s efforts to compete for quality medical talent at every level of the organization, especially at a time when demand for services from the VA are surging.

Sec. 7 – Executive Management Fellowship Program

Establishment of the Executive Management Fellowship Program, intended to provide eligible Veterans Benefits Administration (VBA) and VHA employees with training and private-sector experience, is a positive sign that Congress values investments in VA's employees and ensuring training and development opportunities are available. However, given VA's expertise in serving veterans, SEA does have some question as to why greater investments for in-house executive and employee development programs are not being considered, especially since learning in the environment of VHA of VBA – the same or a similar environment in which a Fellow will work for the VA – ensures all lessons learned are immediately applicable to the benefits of the VA and veterans. Further, operating such programs internal to the VA would likely be more cost effective and can further foster an environment and culture of continuous learning and improvement at the agency.

As the provisions of the Fellowship Program are contingent upon appropriated funding, it is SEA's hope that this Fellowship Program not become an unfunded mandate, and that instead Members support robust funding for this program. However, Congress must closely monitor the success of the program in meeting its intended objectives.

SEA does have many technical and practical questions which should be addressed, such as how such a Fellowship Program fits in with the VA's comprehensive talent management strategy. It is also unclear if the target population for the Fellowship Program are rising GS-14s and -15s or senior executives. To the extent the focus of the program is the former, 18-30 employees may be too small a number to quickly develop a larger pool of agency talent with this type of experience, whereas if it is the later, taking that many executives out of their roles at a time could strain agency leadership capacity. There are additional technical details that are not addressed – is the Fellowship at a nearby facility? If not, are relocation costs paid? Per diems? Travel pay? Locality pay?

Under the portion of Section 7 on Agreements (e), it appears that an agreement with the Secretary only provides an opportunity for employment with VBA, making no mention of VHA. This appears to be a drafting oversight since (a) makes mention of both VBA and VHA. SEA does feel that it is appropriate that a recipient of this Fellowship Program opportunity has an obligation to the VA to serve at the agency for a designated period of time.

SEA has questions about the report to Congress requirement included in Section (g). It appears that Fellowship Program participants will be mined for their experiences and perceived best practices from their time in the private sector. That is a nice idea, but SEA wonders if it will work in reality. Is the principal purpose of the Fellowship to examine and report on private sector best practices or to focus on training to be a better VA executive? Will Fellows be provided training on assessing these best practices? Is selection of Fellows contingent upon their capabilities to assess and translate best practices from one environment to another and into a report? What is the best manner to capture and translate/transmit best practices? Do best practices via the eyes of one individual in a Fellowship at one place truly apply to an organization as large and diverse as the VA? What if the person finds VA already employs best practices? Etc. Furthermore, if best practices are truly sought, why not commission a study by the Comptroller General, the National Academy of Public Administration (NAPA), or another relevant third party with professional expertise in such evaluations, while simultaneously

bolstering in-house employee development and training programs. Are none of the studies authorized by the Veterans Access, Choice and Accountability Act of 2014 or other laws passed in recent years relevant to this purpose, and if so, is the VA using them to improve practices at the agency?

These questions once again lead SEA to ask whether greater investments in internal programs, or use of existing authorities such as the Intergovernmental Personnel Act (IPA; 5 CFR part 334) to offer employees experience outside of the VA, may better achieve the results intended by the Fellowship as compared to an entirely new program potentially being established in the waning months of an Administration.

Sec. 8 – Accountability of Leaders for Managing the Department of Veterans Affairs

SEA applauds the provisions of Section 8 to ensure the agency's political appointees meet their obligations within VA's employment and performance management system. Political appointees, who oftentimes manage career senior executives, often do not bother to learn the employment rules or procedures that they adhere to, sometimes leading to the incorrect assertion that new power or authorities are needed when in reality existing authority was not being properly enforced and utilized. SEA believes this to be largely the case regarding the VA's execution of Title 5 accountability and compensation authorities. In a 2014 survey² of SEA members across the government about their satisfaction with their agency's performance appraisal system, 62% of VA executives said they were not satisfied. 86% of VA respondents said morale among agency executives was low.

Sec. 9 – Modification to Veterans Preference

SEA supports this provision that makes it easier for reservists to earn veterans' preference by counting *cumulative* service.

Sec. 10 – Reemployment of Former Employees

SEA does have strong concerns about empowering the Secretary to noncompetitively appoint anyone to a career federal employee position, especially at the executive level, because such appointments challenge the foundational value of a merit based civil service that is free from political influence and harkens a return to the cronyism associated with the "spoils system" in place before the Pendleton Act of 1883. The potential abuse for appointing friends or unqualified candidates, at increased salaries, as a result of bypassing competitive hiring, is great. Further, the potential to game the system by leaving the agency and coming back at a higher grade is also of concern if not properly monitored. Authorities already exist to reemploy annuitants and former agency employees.

Sec. 11 – Recruiting Database

² https://seniorexecs.org/images/documents/Deteriorating_Pay_for_Performance.pdf

Establishment of a single database to help the agency track and fill mission critical, hard to fill, or both, positions will assist the agency in staffing important vacancies. The ability to share qualified applicants for similar positions is a positive civil service reform that should also strengthen the agency's ability to quickly and efficiently fill staffing gaps.

Sec. 12 – Human Resources Academy

Ensuring human resources (HR) professionals are adequately trained and prepared to carry out their duties is another important and appropriate area to focus on as the VA works to fill staffing shortages, particularly at VHA. Regardless of the level of federal employee, training is often the first item to be cut when budgets are tight. Shortsighted savings often result in larger problems, therefore it is a positive sign that this legislation acknowledges the importance of training and the requirement of professional certification. Additionally, mentoring, coaching, and on-the-job training have all been found to be effective components of strong training programs.

Sec. 13 – Promotional Opportunities for Technical Experts

SEA supports the establishment within the VA of promotional tracks for technical experts absent supervisory responsibilities. Forcing technical experts who sometimes lack the interpersonal skills or demeanor necessary to supervise others often does not result in a positive workplace environment. By allowing technically focused employees to dedicate their talents and energy there, the VA can select management candidates with aptitude for leadership and supervisory responsibility.

Sec. 14 – Comptroller General Study on Succession Planning

The directive for GAO to examine the VA's succession planning at each medical facility and with VBA and NCA should provide the agency with useful information to improve its workforce management and succession planning efforts. The assessment also could examine VA's compliance with the congressional mandate to "develop a comprehensive management succession program, based on the agency's workforce succession plans, to fill agency supervisory and managerial positions" pursuant to 5 CFR 412.201-202.

Sec. 15 – Information on Hiring Effectiveness

Any additional data and information the VA can collect about its hiring processes can serve to aid the agency in improving those processes. SEA also strongly urges the study on hiring effectiveness include the provisions of Section 13 of S. 1856, providing for a Comptroller General report on performance and accountability of employees of the VA. Respondents to SEA's recent survey of VA executives noted that the provisions of 38 U.S. Code § 713 are contributing to the agency's ability to attract and retain high caliber career executives.

Sec. 16 – Employment of Students and Recent Graduates

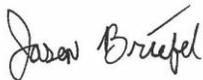
SEA supports efforts to strengthen VA's talent pipeline for students and recent graduates, yet does have some concern that noncompetitive hiring could adversely impact veterans' employment.

Sec. 17 Exit Surveys

Like any employer, it is important for the VA to collect information from employees who leave the department to understand the factors that contribute to their departure. Especially because taxpayers have invested in VA employees, understanding attrition and ways to mitigate attrition can improve the return on investment for well-trained employees to serve veterans.

Overall this legislation contains many features to instill positive management practices at the VA and empower the agency with data and information to better manage its workforce. SEA looks forward to continuing to work with the committee and stakeholders to ensure policies put in place are beneficial not only for the employees of the agency who serve veterans every day, but also that those policies result in an improved VA for those same veterans.

Sincerely,

A handwritten signature in black ink that reads "Jason Briefel". The signature is written in a cursive style with a prominent initial "J".

JASON BRIEFEL
Interim President

CC: Members of the House Veterans' Affairs Committee