

EMPOWER OVERSIGHT

Whistleblowers & Research



January 18, 2024

Via Electronic Transmission

Secretary Denis R. McDonough
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

RE: Application of VA Mission Act of 2018

Dear Secretary McDonough:

INTRODUCTION

Empower Oversight Whistleblowers & Research (“Empower Oversight”) is a nonpartisan, nonprofit educational organization dedicated to enhancing independent oversight of government and corporate wrongdoing. We work to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seek to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same.

BACKGROUND

From 2013 to 2014, whistleblowers helped highlight unacceptable wait times for veterans at Department of Veterans Affairs (“VA”) medical centers across the country. Continued congressional oversight on this issue resulted in the passage of the VA MISSION Act of 2018. This law established the Veterans Community Care Program (“VCCP”) to ensure veterans were provided access to community care when certain criteria are met, such as having to travel certain distances for VA care or wait longer than 20-28 days for care.

Yet a September 2020 report from the Government Accountability Office highlighted the VA’s failure to develop wait time standards for referring veterans to community care.¹ The issue of veteran access to care is particularly significant in light of questions about the quality of care provided by the VA; for example, a recent investigation by ProPublica concluded “the hospitals and clinics in the VA’s sprawling health care network have fallen short when it comes to treating people with mental illness.”² Meanwhile, significant attention has been paid in recent weeks to

¹ Government Accountability Office, GAO-20-643, “VETERANS COMMUNITY CARE PROGRAM: Improvements Needed to Help Ensure Timely Access to Care,” Sep. 2020, <https://www.gao.gov/assets/gao-20-643.pdf>.

² Kathleen McGrory and Neil Bedi, “How the VA Fails Veterans on Mental Health,” ProPublica, Jan. 9, 2023, available at <https://www.propublica.org/article/how-veterans-affairs-fails-mental-health-patients>.

the VA's role in processing U.S. Immigration and Customs Enforcement reimbursements for community care provided to undocumented immigrants.³

One December 1, 2023 story on that issue reported that VA Under Secretary for Health Dr. Shereef Elnahal had told VA employees in an August 2023 employee town hall to “press the easy button less” with community care, aiming to “reduce our reliance on community care.”⁴ Empower Oversight has obtained audio of you being asked about this news report at a question-and-answer session in Reno, Nevada on December 20, 2023. In the recording, you responded: “I think I saw some reporting about the quote that you read that was attributed to Dr. Elnahal, and I think I'd like to have the whole transcript from that day, and I what Dr. Elnahal was saying is that we need to make sure we're providing clear options to our veterans where they can make assessments with their provider, apples to apples, how long to get care in the community, and how long to get care in the direct care system.”⁵

Empower Oversight has also obtained video of Under Secretary Elnahal's quote, which we are making available on our website.⁶ In the video segment, Under Secretary Elnahal states:

You have the tools to be able to maximize on bringing more and more care into the system, which means when we have to provide care in the community, yes we provide that care with the best service quality and the most timely services that we can. So that's why one of my metrics is to reduce the time to schedule in the community, which veterans tell us is still much too long. But my goal for the next year is to reduce our reliance on community care by maximizing the services that we offer to veterans in every community, which means—let's press the easy button less to community care, and figure out how we can bring more care to veterans in this medical center, and when we can't, leverage medical centers across the VISN [Veterans Integrated Service Network] to be able to provide that external consult. We should be relying on ourselves first and foremost more than anybody else. And that's not just because I love VA. I know that VA is the best option for veterans. We have the best argument to make on this, because our care is superior, and it's superior because of all of you. But unless we maximize the number of veterans we see while also preventing burnout, to the extent that we can, we will not meet the mark for what veterans deserve. And that's not an excusable outcome; it's not an outcome that anybody wants on this call. So, a lot of what we're going to do over the next year has a lot to do with maximizing productivity, again—improving access to care, as we've been trying to do for the last year and even before that, but at the same time working as a system, within every network, in a very strategic and deliberate way, to be able to offer every single VA option that we can to veterans before we default to the community. That's going to be our most important mission in this coming year.

Dr. Elnahal's comments raise clear concerns that the VA is not properly following Congress's intent in passing the VA MISSION Act, which defined *exactly* when the VA must offer community care under the VCCP.

³ Adam Shaw, “VA's role in migrant medical care draws scrutiny from advocates as border crisis intensifies,” Fox News (Dec. 1, 2023), available at <https://www.foxnews.com/politics/vas-role-migrant-medical-care-draws-scrutiny-advocates-border-crisis-intensifies>; Ryan King, “VA ripped for helping pay migrant treatment as over 400K veterans, their families wait,” New York Post (Jan. 10, 2024), available at <https://nypost.com/2024/01/10/news/va-ripped-for-reimbursing-migrant-treatment-as-veterans-wait>.

⁴ Adam Shaw, “VA's role in migrant medical care draws scrutiny from advocates as border crisis intensifies,” Fox News (Dec. 1, 2023), available at <https://www.foxnews.com/politics/vas-role-migrant-medical-care-draws-scrutiny-advocates-border-crisis-intensifies>.

⁵ Available at <https://empowr.us/veterans-affairs-under-secretary-for-health-video>.

⁶ Available at <https://empowr.us/secva-reno-qa>.

RECORDS REQUEST

In order to shed light on Under Secretary Elnahal's comments, Empower Oversight requests the following records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552:

1. The full recording of Under Secretary Elnahal's August 31, 2023 town hall with VA employees.
2. Any and all records discussing the preparation of Under Secretary Elnahal's August 31, 2023 remarks for the town hall with VA employees.
3. Any and all communications between you and Under Secretary Elnahal, after his August 31, 2023 town hall, which reference his comments about community care at the town hall.

DEFINITIONS

"COMMUNICATION(S)" means every manner or method of disclosure, exchange of information, statement, or discussion between or among two or more persons, including but not limited to, face-to-face and telephone conversations, correspondence, memoranda, telegrams, telexes, email messages, voice-mail messages, text messages, Slack messages, meeting minutes, discussions, releases, statements, reports, publications, and any recordings or reproductions thereof.

"DOCUMENT(S)" or "RECORD(S)" mean any kind of written, graphic, or recorded matter, however produced or reproduced, of any kind or description, whether sent, received, or neither, including drafts, originals, non-identical copies, and information stored magnetically, electronically, photographically or otherwise. As used herein, the terms "DOCUMENT(S)" or "RECORD(S)" include, but are not limited to, studies, papers, books, accounts, letters, diagrams, pictures, drawings, photographs, correspondence, telegrams, cables, text messages, emails, memoranda, notes, notations, work papers, intra-office and inter-office communications, communications to, between and among employees, contracts, financial agreements, grants, proposals, transcripts, minutes, orders, reports, recordings, or other documentation of telephone or other conversations, interviews, affidavits, slides, statement summaries, opinions, indices, analyses, publications, questionnaires, answers to questionnaires, statistical records, ledgers, journals, lists, logs, tabulations, charts, graphs, maps, surveys, sound recordings, data sheets, computer printouts, tapes, discs, microfilm, and all other records kept, regardless of the title, author, or origin.

"PERSON" means individuals, entities, firms, organizations, groups, committees, regulatory agencies, governmental entities, business entities, corporations, partnerships, trusts, and estates.

"REFERS," "REFERRING TO," "REGARDS," "REGARDING," "RELATES," "RELATING TO," "CONCERNS," "BEARS UPON," or "PERTAINS TO" mean containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing, or characterizing, either directly or indirectly, in whole or in part.

"INCLUDING" means comprising part of, but not being limited to, the whole.

INSTRUCTIONS

The words “and” and “or” shall be construed in the conjunctive or disjunctive, whichever is most inclusive.

The singular form shall include the plural form and vice versa.

The present tense shall include the past tense and vice versa.

In producing the records described above, you shall segregate them by reference to each of the numbered items of this FOIA request.

If you have any questions about this request, please contact Mike Zummer by e-mail at [REDACTED].

FEE WAIVER REQUEST

Empower Oversight agrees to pay up to \$25.00 in applicable fees, but notes that it qualifies as a “representative of the news media” and requests a waiver of any fees that may be associated with processing this request, in keeping with 5 U.S.C. § 552 (a)(4)(A)(iii).

Empower Oversight is a non-profit educational organization as defined under Section 501(c)(3) of the Internal Revenue Code, which helps insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seeks to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same.

Further, the information that Empower Oversight seeks is in the public interest because it is likely to contribute significantly to the public’s understanding of the Department’s handling of allegations that it or its employees was negligent or engaged in wrongdoing.

Empower Oversight is committed to government accountability, public integrity, and transparency. In the latter regard, the information that that Empower Oversight receives that tends to explain the subject matter of this FOIA request will be disclosed publicly via its website, and copies will be shared with other news media for public dissemination.

For ease of administration and to conserve resources, we ask that documents be produced in a readily accessible electronic format. Thank you for your time and consideration. Please do not hesitate to contact me with any questions.

Cordially,
/Tristan Leavitt/
Tristan Leavitt
President

cc: Inspector General Michael Missal, U.S. Department of Veterans Affairs
Chairman Mike Bost, Committee on Veterans’ Affairs, U.S. House of Representatives
Ranking Member Mark Takano, Committee on Veterans’ Affairs, U.S. House of Representatives
Chairman Jon Tester, Committee on Veterans’ Affairs, U.S. Senate
Ranking Member Jerry Moran, Committee on Veterans’ Affairs, U.S. Senate