

LAW REVIEW¹ 16001

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Commission on Care Studies Veterans Health Administration

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

11.0—Veterans' entitlements

The Veterans Health Administration (VHA) is part of the United States Department of Veterans Affairs (VA). It is the largest health care system in the United States, and it plays a vital role in meeting the health care needs of many of the men and women who have served our country in uniform. The VHA has an annual budget of more than \$60 billion, and it has 290,000 staff members—one in nine federal civilian employees works for the VHA. Each year, it serves approximately 6.6 million patients at more than 160 VA medical centers and more than 1,000 affiliated health care sites.³

As most readers are well aware, there have been many well publicized complaints about the VHA in the last two years, including complaints about secret waiting lists at VHA facilities, about eligible veterans dying while waiting for needed medical care, and about quality concerns

¹I invite the reader's attention to <https://www.roa.org/page/LawCenter>. You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

³All of these statistics come from the December 4, 2015 Interim Report of the Commission on Care.

regarding the medical care that is provided. Unfortunately, many VHA supervisors have a distressing habit of reprising against internal whistleblowers rather than addressing the serious concerns that the whistleblowers have complained about.⁴

Congress has addressed these concerns in several ways, including by enacting the Veterans Access, Choice, and Accountability Act of 2014 (VACAA), Public Law Number 113-146, 128 Stat. 1754. Section 201 of VACAA required the VA to contract with private sector entities to “conduct an independent assessment of the hospital care, medical services, and other health care furnished in [VHA] medical facilities.” The 4,000-page *Independent Assessment Report* was delivered to the VA on September 1, 2015 and made public shortly thereafter.

Section 202 of the VACAA provided for a Commission on Care (COC) with 15 members appointed by the Speaker of the House of Representatives (David P. Blom, Delos M. Cosgrove, and Darin S. Selnick), the Minority Leader of the House (Michael A. Blecker, Lucretia M. McClenney, and Charlene M. Taylor), the Majority Leader of the Senate (Thomas E. Harvey, Stewart M. Hickey, and Martin R. Steele), the Minority Leader of the Senate (Ikram U. Khan, Phillip J. Longman, and Marshall W. Webster), and the President (Nancy M. Schlichting, David W. Gorman, and Joyce M. Johnson).⁵ The COC met several times in the fall of 2015 and presented its interim report to the President on December 4, 2015. The COC will complete its work and present its final report later this year (2016). We will inform the readers when the final report is issued.

In its interim report, the COC indicated that it will be guided by the following guiding principles:

1. Deliberations and final recommendations of the COC will be data driven and decided by consensus.
2. In formulating prospective recommendations, the COC will consider its stakeholders to include veterans, other VHA beneficiaries, and their respective family members, as well as VA employees and U.S. taxpayers. The COC will also consider the perspectives of Veterans Service Organizations (VSOs), Congress, and interested federal agencies.
3. The COC will focus on ensuring eligible veterans receive health care that offers optimal quality, access, and choice.
4. The COC will use an integrated systems approach.
5. The recommendations will be actionable and sustainable, focusing on creating clarity of purpose for VA health care, building a strong leadership/governance structure, investing in infrastructure, and ensuring transparency of performance.
6. The COC’s recommendations will consider systems related to providing VA health care. The COC will identify ways that the VHA can effectively integrate its services with the Department of Defense (DOD) and community care partners. It will also ensure

⁴Please see Law Review 14097 (December 2014).

⁵Joyce M. Johnson is a retired Rear Admiral of the Public Health Service and a life member of the Reserve Officers Association (ROA).

appropriately defined roles of various VA health care academies (medical, nursing education, and research) in providing quality care.

7. The COC is committed to promoting an employment culture that supports open communication without fear of reprisal within VHA. Recognizing that such a working environment is essential for creating systemic change, the COC's recommendations will be consistent with this commitment.
8. The COC will collaborate as needed with the President, the Secretary of Veterans Affairs, Congress, and VSOs to ensure its recommendations are feasible, advisable, and executable.

The Executive Director of the COC is my good friend Susan M. Webman. Yes, this is the same Susan M. Webman who is mentioned in footnote 2 and in scores of my "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA). As is explained in Law Review 15067 and other articles, Congress enacted USERRA (Public Law 103-353) and President Bill Clinton signed it into law on October 13, 1994 as a long-overdue rewrite of the Veterans' Reemployment Rights Act (VRRA), which was originally enacted in 1940. During the 1980s and 1990s, Susan M. Webman and I served together as attorneys at the United States Department of Labor (DOL). We collaborated on drafting the work product of the interagency task force that studied the VRRA with a view toward updating and improving it. In February 1991, President George H.W. Bush presented the Webman-Wright draft to Congress as his proposal, and that version was enacted in 1994 with only a few changes.

Update – June 2022

The final report can be found at: <https://psnet.ahrq.gov/issue/final-report-commission-care>.

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This article is one of 1800-plus "Law Review" articles available at www.roa.org/page/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established in 1922 by a group of veterans of "The Great War," as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

Indeed, ROA is the *only* national military organization that exclusively supports America's Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce

those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve.

If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

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