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United States Senate

COMMITTEE ON VETERANS' AFFAIRS
WASHINGTON, DC 20510

February 26, 2018

The Honorable David J. Shulkin
Secretary of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Dear Secretary Shulkin,

We want to express our disappointment with the way that the Department of Veterans Affairs (VA) appears to be implementing the enhanced accountability authorities recently passed in the VA Accountability and Whistleblower Protection Act. In our many conversations leading up to the bill's passage, we discussed utilization of these authorities in cases of egregious conduct but that is not how it currently appears to be executed by your agency. We urge you to look further into how the Department is implementing the law and to report your findings to the committee.

In the January 17 hearing in front of the Senate Veterans Affairs Committee, you agreed that leadership includes working with underperforming employees to make them better at their jobs, rather than simply firing them. In fact, you said that "every good manager works with their employees to make them better, to give them feedback". We agree. Unfortunately, we are hearing reports that not only has VA eliminated the use of performance improvement plans as a result of these new authorities, but you are no longer utilizing the table of penalties, and facilities are receiving guidance from VISNs that there should be no progressive discipline. This is unacceptable and runs counter to Congressional intent and your previous comments.

We have been told of multiple instances in which managers have attempted to remove employees for actions such as missing deadlines or moving slowly after an injury, even when they were first offenses. We are sure you would agree that these are not the types of offenses that rise to the level of immediate termination. They are, however, opportunities for providing the feedback you referenced in the January 17th hearing, or even the use of progressive discipline.

You may not even be aware that leadership at the facilities, VISNs, and midlevel management are executing the law in this way. According to VA's three-page report response to the reporting requirement in the law, VA is not tracking data about utilization. Therefore, your department is unable to tell Congress how frequently these authorities are used, whether they have been utilized disproportionately on lower level employees, or how frequently they are

appealed. Without tracking this data across the agency, how can you be sure that these authorities are being utilized consistently, or in accordance with your stated expectations?


We strongly urge you to appoint someone to review the appropriateness of how individual facilities and staff offices have utilized these authorities. We further ask you to clarify any guidance that may have given the impression that progressive discipline is not to be utilized, and correct the misinterpretation that facilities should not be using long-existing authorities to correct minor behaviors with reprimands, admonishments, or suspensions under 14 days.

Your Department's report, required as part of the law, was delivered two months late, and indicated that VA couldn't begin tracking the required data until an IT system was updated at the end of Fiscal Year 2018. Has VA leadership informed facilities that this type of data should be tracked, at least at the facility level? The unwillingness to request this data from the field in order to comply with a report required in law is disappointing, to say the least. Please provide the committee with the directive or instruction from VA central office to the field, instructing them to track data, and provide it to VACO in order for the Department to successfully comply with the legal reporting requirement.


We further look forward to receiving a White House nominee to be the Assistant Secretary of Accountability and Whistleblower Protection. The law enacted last year codified the Office and mandates that the head of this Office be a Senate-confirmed position. We anxiously await the nomination of a person who has a demonstrated history of support for whistleblowers and does not have a strictly partisan political agenda.

This law was passed by Congress, with the support of the Department, in order to ensure that the Department was able to more quickly remove employees who had behaved in an abhorrent manner and veterans were suffering. We urge you to ensure that these new authorities are not being abused by managers without additional review, or targeted at low level employees rather than those interacting directly with veteran patients. We look forward to your response.

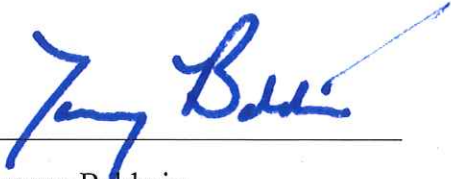
Sincerely,



Jon Tester
United States Senator



Richard Blumenthal
United States Senator



Tammy Baldwin
United States Senator



Sherrod Brown
United States Senator



Mazie Hirono
United States Senator



Patty Murray
United States Senator