

“Official Time” and the Veterans Affairs Scandal

Sick veterans languish on waiting lists while VA employees work full-time for unions

By Alec Torres

Summary: *The Veterans Affairs scandal shocked the nation, and as further revelations of widespread corruption and failure became public, they showed the natural failure of socialized medicine. But one part of the scandal has not received the attention it deserves: the role of special privileges for union officials, who spend their time serving their self-interest, rather than serving the nation’s ailing veterans.*



As bad as the VA scandal seems, it’s actually worse. While veterans of the U.S. armed forces wait for health care, the Department of Veterans Affairs (VA) is paying hundreds of its employees to work full-time for labor unions.

First, a summary of the facts behind the scandal:

The VA boasts that it “operates the nation’s largest integrated health care system, with more than 1,700 hospitals, clinics, community living centers, domiciliaries, readjustment counseling centers, and other facilities.” Yet officials at as many as 42 VA facilities have come under investigation for allegedly keeping two sets of books, apparently in order to hide long wait-times (and protect bonuses that are paid if wait-times are short). After a patient requested an appointment, administrators would wait to enter the request into the electronic records system until the point at which a doctor would be available within 14 days.

After the scandal broke, first reported by CNN, the VA conducted an internal audit that found that over 57,000 patients had to wait more than three months for their initial appointments at the VA. Around 70 percent

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of all VA facilities had used an alternative to the official appointment schedule in order to deceptively minimize the reported wait-times.

When the scandal became public, Veterans Affairs Secretary Eric Shinseki declared himself “mad as hell,” while President Obama declared himself “madder than hell.” Shinseki was fired and replaced by former Procter & Gamble CEO Robert McDonald.

The scandal takes on added significance because the VA has been cited in the debate over health care. As members of Congress considered the so-called Patient Protection and Affordable Care Act, aka “Obamacare,” the VA system was often cited as a model for healthcare in America. [See the sidebar on page 4.] As reported in the November 2013 *Labor Watch*, unions took the lead in pushing Obamacare through Congress, but later attempted to shield themselves from many of the program’s worst aspects.

The VA scandal would seem to confirm

key criticisms of Obamacare: government-run health care means rationing by deferral, delay, and denial, and by “death by queue,” the practice of keeping people on waiting lists until they no longer need health care because they are no longer alive.

The scandal also raises a key point with regard to “official time,” the practice under which federal employees do union work while on the taxpayers’ payroll. The VA actually has more employees doing union work full-time than it has staff members working under its Inspector General (IG), who is supposedly the VA’s watchdog.

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By the time they get to you in Phoenix...

In Phoenix alone, some 1,400 to 1,600 sick veterans were forced to wait months to see a doctor. At least 40 died while waiting for care, and dozens suffered from “clinically significant delays” or “troubling lapses” in the quality of care, according to a report by the VA’s Office of the Inspector General.

The IG report claimed that inspectors are “unable to conclusively assert that the absence of timely quality care caused the deaths of these veterans.” But as the *Arizona Republic* notes, that sentence was added to the report “after Veterans Health Administration officials reviewed a draft”—and in any event, “untimely care is not recognized in the medical profession as a cause of death.”

CBS News reported:

According to one whistleblower who spoke to CBS News, . . . the Inspector General added the line about how wait times did not cause the deaths at the last minute. Our source, who works at VA headquarters and who spoke exclusively to CBS News, said officials inside the agency asked for a revision of the first draft. That’s standard practice, but in this case the source said it amounted to pressure on Inspector General Richard Griffin to add a line to water down the report. “The organization was worried that the report was going to damn the organization,” the whistle-blower said. “And therefore it was important for them to introduce language that softened that blow.”

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On September 18, the *Washington Times* reported that “The VA’s internal auditor admitted [yesterday] that it didn’t review the cases of 5,600 veterans who were on waiting lists for appointments, so it’s possible some of them could have died as the result of the botched care.”

Also on September 18, CNN reported: “In a stunning reversal, the VA’s acting inspector general now says that long wait times at VA health care facilities in Phoenix did contribute to a number of veterans’ deaths.”

Michael Tanner of the Cato Institute wrote in the *New York Post* that “VA employees at an outpatient clinic in Fort Collins, Colo., falsified appointment records to hide the fact that as many as 6,300 veterans treated at the outpatient clinic waited months to be seen for treatment. In Wyoming, whistleblowers have accused officials of manipulating records to hide wait times.” There were similar efforts to hide wait-times in Austin and San Antonio, and officials in Pittsburgh allegedly attempted to cover up deaths from bacteria-tainted water.

The case-processing backlog at the VA was more than 344,000 claims, Tanner noted in May, with an average wait of 160 days for veterans to gain access to health benefits (with at least a 9 percent error rate, the department admits). According to a 2013 calculation, appealing a VA decision all the way up the chain takes an average of 1,598 days. That’s despite a 76 percent increase in the department’s budget between 2007 and 2012 (a period when enrollment rose 13 percent).

It may even be difficult to conduct a thorough investigation of the scandal. The VA, lacking sufficient personnel among its professional investigators, is relying largely on survey research. For example, the *Walla Walla* [Washington] *Union-Bulletin* reported on May 15:

Veterans Affairs Secretary Eric Shinseki ordered “face-to-face” audits of every Veterans Affairs clinic earlier this month, and Walla Walla’s turn came Wednesday, officials said. . . .

However, instead of the expected investigators from the Office of Inspector General, employees at Jonathan M. Wainwright Memorial Veterans

Affairs Medical Center told union officials the audit was done by employees from other VA networks, not trained investigators.

That was seconded in a Veterans Affairs Committee hearing today by Sen. Jerry Moran, R-Kan., who told Shinseki it is unrealistic to “conduct a systemwide audit review of the VA using 220 VA employees” looking at 153 facilities. “That seems more damage control than solving the problem,” Moran said in the congressional hearing.

At the center in Walla Walla, the internal investigators reportedly conducted 12 interviews of employees selected by administrators, out of some 200 total employees at the facility. The interviews consisted of 52 scripted questions, most with yes-or-no answers.

Official time—for union business

In a practice known as “official time,” federal employees are often allowed to work on union business while being paid by the taxpayers. (When the practice involves employees of state or local governments, it’s usually called “release time.”)

At the Phoenix VA, although 1,700 veterans sat for months on a secret wait list, three VA employees never showed up to the health center and yet still received full, taxpayer-funded salaries. Where were these employees as veterans waited without care? Working full-time for the American Federation of Government Employees (AFGE). The employees—Nathaniel Payne Jr., Cari James, and Louis Curry—did not do any work for the VA as they collectively earned \$186,276, paid by taxpayers in 2011.

It’s not just Phoenix. The Baltimore Veterans Health Center has the longest wait times in the nation, yet in 2012 it paid \$372,674 for employees to work for unions. That included a clinical dietetic technician, a patient services assistant, a health technician, a medical support assistant, and two nurses. Of these employees, two worked full time for the National Association of Government Employees (NAGE), and the other four spent their time in the service of AFGE.

In Wilmington, Delaware, two nurses, a food service worker, and a nurse practitioner were paid a total of more than \$311,000 in 2012, even while the three nurses worked for the Laborers' International Union of North America (LIUNA), and the food services worker worked for the AFGE.

At the VA facility in Tucson, two nurses and a medical support assistant worked for the AFGE for a total of almost \$205,000.

Many times, VA workers are paid six-figure salaries as they work for the unions.

► For example, Bethany McIvor, a nurse in Massachusetts, was paid \$120,395 by taxpayers to work for the AFGE.

► Janice Perry, trained as a pharmacist and supposed to work in Martinsburg, WV, was instead paid \$126,571 to work for the National Federation of Federal Employees (NFFE).

► Joseph Simon, another pharmacist, was actually paid \$120,544 to work for the SEIU instead of at the VA hospital in Jackson, Mississippi.

► A nurse with the VHA in San Francisco, Patricia LaSala, worked full-time for the NFFE while earning a government salary of \$131,849.

Official time at the VA is no secret. In June 2013, Senators Rob Portman (R-Ohio) and Tom Coburn (R-Okla.) wrote then-Secretary Shinseki to express their concern that 257 VA employees working on "official time" were busy doing work for the unions rather than for veterans. Some 188 of those employees on 100 percent "official time"—effectively, full-time employees of the unions—would typically be fulfilling roles in direct support of veterans in areas such as health care and security.

They wrote: "Documents from your department list 188 VA employees serving in 100 percent official time capacity during the time period spanning January 1, 2012 through February 2013. During this time of sequestration and tight budgets, it is important to know how so many employees can be spared to serve the interest of outside groups, instead of carrying out jobs that are essential to the health, safety and transition of our nation's veterans."

Portman and Coburn noted that at least 85 VA nurses, some with six-figure salaries, "were in 100 percent official time status" even as the VA sought "to fill open nursing positions," while VA personnel on 100 percent "official time" included four addiction specialists, nine pharmacists and pharmacist technicians, a rehabilitation specialist for the blind, five social workers, 11 health technicians, 12 medical support assistants, two psychologists and six police officers.

How bad is the problem?

The Office of Personnel Management (OPM), the federal government's human resources office, is charged with collecting data on official time. According to OPM, federal employees logged an estimated 3.4 million hours in official time from 2008 to 2011. The cost of federal official time rose from \$121 million to \$155 million, a 28 percent increase in only 3 years. (The cost of this practice is even higher at the state and local level—up to \$1 billion a year as of 2011. See the February 2013 issue of *Labor Watch*.)

In the Social Security Administration, employees used more than 229,000 official time hours in 2011. The Defense Department paid for more than 335,000 hours in 2011. The Environmental Protection Agency logged more than 39,000 official time hours at a cost of more than \$1.6 million. The Department of Transportation logged 265,000 hours, with some full-time union workers making over \$170,000 a year each. The Department of Health and Human Services used almost 29,000 hours, and the Department of Labor almost 73,000.

Almost every agency uses official time, although agencies and departments have not been forthcoming in providing information on the extent. According to Mark Flatten, a senior reporter for Watchdog.org, even those agencies that provided records did not provide a full accounting. For example, the Office of Personnel Management reports that the Treasury Department, including the IRS, uses 626,000 hours, through Treasury's records list a mere 15,275 hours. The IRS and the Departments of Defense, Justice, and Agriculture all failed to produce any data at all. AFGE is the largest federal employee union cash-

ing in on official time. Others include the National Federation of Federal Employees, National Nurses United, and the Service Employees International Union (SEIU). Of the 62 agencies and departments listed by OPM, 57 use official time. As for the agencies that refused to respond, the OPM reports that those agencies used 734,000 combined hours of official time at a cost of more than \$30 million to the taxpayers, according to the Watchdog.org report.

Understaffing or too much bureaucracy?

People on the Left, including AFGE president J. David Cox Sr., blamed the VA wait times on understaffing. "When we look deeper into this issue of extended wait times for veterans to receive an appointment, we have to recognize that understaffing is a major culprit," Cox said in an AFGE statement on May 21. "All around the country, medical facilities are understaffed, with numerous frontline care positions going unfilled. How can the VA expect to keep up with the growing needs of our nation's heroes if it doesn't properly staff its facilities?"

AFGE opposes allowing vets access to non-VA healthcare, attacking the idea as "privatization." According to an AFGE press release during the scandal, the AFGE had "grave concerns, however, regarding provisions that expand contracting out of VA medical care to private facilities. As many Veterans Service Organizations have expressed, such a move could jeopardize the quality of patient care since veterans will be left largely on their own to navigate care between providers lacking specialized knowledge of this population, without the critical care coordination for their complex medical needs that only the VA can provide."

Instead of allowing veterans to seek care from outside providers, AFGE calls for another increase in VA funding.

But funding doesn't appear to be a problem. Veterans groups like the Veterans of Foreign Wars and Veterans of Iraq and Afghanistan agree that the VA does not need more funding. Even a few Democrats, like Representatives John Barrow of Georgia, Ed Pastor of Arizona, and Joe

Garcia of Florida agree that the VA has not suffered from a lack of money. From 2003 to 2013, funding to the VA soared from \$27.7 billion to \$57.3 billion, a 106 percent increase. Yet in that same period, the number of VA patients increased only 30 percent.

From 2000-2013, the number of veterans actually declined by 4.3 million, according to *Investor's Business Daily*. During 2008-2012, the VA's per-patient spending rose 27 percent, compared to a 13 percent rise in per capita health care spending nationally. Contrary to the statements of some politicians, the VA's problems can't be traced to an influx of veterans from the Iraq and Afghanistan wars. Those veterans cost \$4,800 each in 2010, compared to \$8,800 for other veterans, and increased enrollment was mainly due to changes initiated during the Clinton administration. Why does the VA seem to be getting less efficient over time? One reason is that,

while funding for the VA increases, so does waste. The highest level senior officials awarded themselves tens of thousands of dollars in bonuses each, despite poor performance across the VA. Phoenix alone shelled out \$10 million in bonuses over the last three years even while veterans died waiting for care. During that time, the agency spent almost \$98,000 on promotional items like bags, pens, and water bottles.

According to the *Daily Caller*, the VA spent more than \$3.5 million on furniture the day before the partial government shutdown last year. That included more than \$16,000 for ergonomic chairs from a company called Ergogenesis and an order for \$87,725 in "lounge seating and tables" from Arcadia Chair Company in La Palma, California. The *Caller* reported:

Federal government agencies faced a "spend it or lose it" scenario on that day, the last day of the 2013 fiscal year, prompting excessive spending binges

as the White House and Congress failed to reach a continuing resolution agreement. . . .

VA also spent \$828,176 on office supplies, \$296,484 on cabinets, lockers, bins and shelving, \$122,739 on draperies, awnings, and shades, \$73,225 on books and pamphlets, and more than \$2.5 million on other miscellaneous purchases. The department spent less than \$4,000 on artwork, having already purchased \$562,000 in artwork the previous week.

In *National Review Online* Jonah Goldberg commented that "everything they need to make the VA work is available to them. And yet, it's a mess and has been a mess for decades. Why? Maybe it's a mess because such messes come with the territory when you put bureaucrats in charge. Criminality, as alleged, may not be inevitable (though I'm not so sure).

Veterans' healthcare a model for Obamacare

Over the years, the Department of Veterans Affairs' health care system has been put forth as a model for healthcare reform. In 2009, Ezra Klein of the *Washington Post* said "expanding the Veterans Health Administration to non-veterans" is "one of my favorite ideas."

Nicholas Kristoff of the *New York Times* wrote in 2009: Take the hospital system run by the Department of Veterans Affairs, the largest integrated health system in the United States. It is fully government run, much more "socialized medicine" than is Canadian health care with its private doctors and hospitals. And the system for veterans is by all accounts one of the best-performing and most cost-effective elements in the American medical establishment. . . . "If other health care providers followed the V.A.'s lead, it would be a major step toward improving the quality of care across the U.S. health care system," [the Rand Corporation] reported.

Uwe Reinhardt of Princeton wrote in the *Times* in 2013: Americans of all political stripes have long reserved for our veterans the purest form of socialized medicine, the vast health system operated by the U.S. Department of Veterans Affairs (generally known as the V.A. health system). If socialized medicine is as bad as so many on this side of the Atlantic claim, why have both political parties ruling this land deemed socialized medicine the

best health system for military veterans? Or do they just not care about them?

New York Times columnist and former Enron advisor Paul Krugman wrote in 2006:

If US politicians could be persuaded of the advantages of a public health insurance system, the next step would be to convince them of the virtues, in at least some cases, of honest-to-God socialized medicine, in which government employees provide the care as well as the money. Exhibit A for the advantages of government provision is the Veterans' Administration, which runs its own hospitals and clinics, and provides some of the best-quality health care in America at far lower cost than the private sector. How does the VA do it? It turns out that there are many advantages to having a single health care organization provide individuals with what amounts to lifetime care.

Krugman in 2006 also cited the British system (the National Health Service) as a model for healthcare reform. Later, when Obamacare was proposed, Dr. Donald Berwick, a prime designer of the President's plan, stated proudly that it was modeled on Britain's NHS.

The British government reported that, as of August 2014, five percent of the British population was on the wait-list for surgery.

—SJA

But rationing, incompetence, bloat, waste, rent-seeking, and a sort of legal corruption certainly are.”

Greg Corombos of *WorldNetDaily* agreed:

The crisis of delayed care through the Veterans Administration is triggering close examination of the federal bureaucracy and the competence of VA management, but some senators and other taxpayer advocates fear the influence of organized labor is also adding to the time veterans must wait for treatment or to have their claims processed. . . .

[Fred Wszolek of the Workforce Fairness Institute] believes it's outrageous for taxpayers to be funding union labor for any length of time, but he said the problem is most likely worse than the unions will admit.

“We're not even sure that they're properly reporting all of the official time that they're taking,” Wszolek said. “They might be putting down that they did three hours of union business, but really it was an entire day. . . .

“Many of these employees are also covered by civil service. So they have two levels of protection,” he said. “That may be why some of these VA employees were so ambivalent about the whole thing and were providing substandard care. They're almost impossible to fire under civil service rules, and then they've got a union going to bat for them as well.”

Is change coming?

Public officials and local activists have not sat by while official time and release time continue. Shortly after sending their letter about the VA's official time problems, Senators Portman and Coburn introduced the Federal Employees Accountability Act, which would have reduced the amount of official time. “Federal Agencies like the VA need to make sure that they have all hands on deck to fulfill their missions,” said Portman. “Unfortunately, however, many agencies allow their taxpayer-funded employees to focus their time and energy on full-time political, union activities that don't have anything to do with the

official task at hand. At a place like the VA, taxpayer dollars should be funding employees to tackle the challenges of the claims backlog and providing necessary medical care to our veterans.”

Coburn echoed the sentiments: “Using taxpayer dollars to finance what is often highly partisan and political full-time union work is a grievous violation of the public's trust.” The bill stagnated in Harry Reid's Senate and never left committee, but it attracted 13 other co-sponsors, perhaps an indication that it will fare better with a future Senate.

Representative Phil Gingrey (R-Ga.) introduced the Federal Employee Accountability Act of 2011, which would have limited official time by stopping federal employees from doing arbitration, collective bargaining, or compiling lists of grievances during their working hours. Unfortunately, the bill died after introduction.

However, the fight against release time (or official time at the state and local level) has taken a positive turn outside of the federal government. Back in Phoenix, the Goldwater Institute, a state think tank, joined two taxpayers in suing the city and the Phoenix Law Enforcement Association (PLEA) to demand the end of release time.

The case, *Cheatham v. DiCiccio*, started in 2012. The Goldwater Institute won a major victory in January 2014, when the trial court issued a permanent injunction against release time in Phoenix. In that city, PLEA receives some \$1 million worth of release time each year, including the services of six officers who, for 12-15 years, have worked full-time for the union. Their tasks while on the taxpayers' dole included collective bargaining, lobbying the city government, and filing grievances against the city. The officers working full-time for the union were so accustomed to performing union duties that, when they returned to the police force, they were sent back to the police academy to relearn law enforcement skills.

Though the Phoenix decision is under appeal, the city government has asserted itself against the unions and, for the first time in its history, imposed labor contracts on unions that disallow release time and pension spiking (i.e., temporarily boosting

workers' pay at the end of their careers in order to increase their pensions). The rules went into effect July 1, so even if the appeals court allows release time again, the unions would have to renegotiate with the city to bring release time back.

The trial judge's decision against release time is based on the Arizona constitution's gift clause, which prohibits public funds from being used for private purposes. “Basically, this is a classic gift-clause violation because it is a diversion of funds from one of the most important functions that government provides to a private organization to use for its own purposes,” explains Clint Bolick, the lead attorney representing the plaintiffs. The broader goal behind the *Cheatham* case is to set a precedent that other states can use against release time. Currently, 47 states have a gift clause in their constitutions. Only Kansas, Maine, and Montana lack the provision.

Across the nation, unions are growing weaker and weaker as membership diminishes and power dries up. In Right to Work states union membership is declining even more rapidly. A lawsuit like *Cheatham v. DiCiccio* may or may not be a silver bullet that will end release time in most states, but it is a powerful weapon.

Of course, release time and official time exist only because elected officials at the city, state, and federal levels have agreed to contracts that allow it. While the constitutionality of release time is questionable in the face of gift clauses, the unions first received this taxpayer-funded privilege because the people granted it to them through the contracts negotiated between the unions and the people's elected representatives.

Ultimately, the most sure fire way to end release time and official time is to elect representatives who will negotiate contracts that require public employees to work for the public, not for the unions.

Alec Torres is a communications aide and speechwriter for House Majority Leader Kevin McCarthy. The opinions expressed are his own.

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LaborNotes

Some people have no shame. Imagine stealing from the effort to clean up the site of the **World Trade Center!** *Union Corruption Update* reports that brothers **Gerardo and Vincent Fusella**, owner-operators of a **New Jersey**-based trucking company, and **Willie Spikes**, a steward for **International Brotherhood of Teamsters Local 282**, pleaded guilty in **Brooklyn, N.Y.** federal court for their roles in diverting more than \$1 million in union member wages and benefits from the project to themselves.

The website **Watchdog.org** notes that, “While unions call for tax and minimum-wage increases to fix ‘income inequality,’ reports to the **U.S. Department of Labor** reveal 472 union officers and employees were paid more than \$250,000 in 2013. In all, **America’s** 100 highest-paid union officers and employees received \$54.8 million taken from workers last year.”

Your local **McDonald’s** or **Subway** sandwich shop is probably a franchise operation. It may be a family business or run by an immigrant seeking the American Dream. Perhaps the franchisee running such a small business expected to be exempt from the new regulations, including onerous “minimum wage” laws, now being imposed on larger businesses by local governments across the country. But those governments are beginning to classify the parent companies as “joint employers” of the local franchise’s workers. Now the general counsel of the **National Labor Relations Board (NLRB)** has given that effort a push, declaring that complaints against McDonald’s franchisees would be considered complaints against McDonald’s USA.

“Suddenly every McDonald’s franchisee is worth suing” for alleged violations on such matters as overtime, writes **Diana Furchtgott-Roth** of the **Manhattan Institute**. The NLRB wants “McDonald’s USA to encourage unionization at its franchises” as a way to avoid trouble with the Board. If unionized, McD’s employees, most of whom leave within three to four months, would pay the union two percent of their paychecks in dues, plus initiation fees of \$50 to \$100 each. If half of the McDonald’s workforce were unionized, it would mean an annual \$155 million windfall for unions.

Rhode Island State Treasurer Gina Raimondo is a Democrat who stood up to public employee unions in an effort to reform her state’s pension system, which was less than half-funded. As the *Wall Street Journal* notes, she persuaded her state’s legislature to raise the retirement age to 67 from 62, suspend retirees’ cost-of-living adjustments, and shift workers to retirement plans that included a “defined contribution” component (rather than consist entirely of a “defined benefit,” in which the state is on the hook for specific payouts, regardless of how much money is actually in the pension fund). When she ran for governor, the unions went after her. But she won her September primary by 13 points, proving that a Democrat can stand up to the unions and fight for reform in a liberal state.

Federal government logic at work: It’s illegal to hire illegal aliens, but it’s also illegal to “discriminate” against illegal aliens. **CNS News** reports: “At a signing ceremony on [August 29, the 50th anniversary of the Civil Rights Act], the U.S. government, through the **Equal Employment Opportunity Commission (EEOC)**, entered into a Memorandum of Understanding (MOU) with the **Mexican** government to allow Mexican Nationals—regardless of immigration status—to ‘exercise their workplace rights.’” Mexican **Ambassador to the United States Eduardo Medina Mora Icaza** said that, “regardless of national origin or immigration status, all workers have rights and there are processes to safeguard them.” He added: “This is what makes this country so great.”

“Just two months after **Florida** became the second state to enact education savings accounts, the state’s largest teachers union has sued to stop the program, which serves children with special needs,” according to **Brittany Corona** of the **Heritage Foundation**. “Florida’s Personal Learning Scholarship Accounts help families of children with special-needs—defined in the statute as those with autism, cerebral palsy, Down syndrome, Prader-Willi syndrome, spina bifida, Williams syndrome or Intellectual Disability (severe cognitive impairment), along with some kindergarten students deemed ‘high risk’ because of developmental delays—fully tailor their child’s education. Modeled after [an **Arizona** plan], the state deposits an amount equal to 90 percent of its per-pupil spending statewide into an education savings account parents then can use to pay for private school tuition, tutoring, curricula for home schooling, therapy, textbooks and special-education services.”