

First step taken to relax 40-mile rule

BY TOM PHILPOTT

Three months after VA issued Choice Cards to unlock private-sector health care for more veterans – those who face waits longer than 30 days for VA care or who reside more than 40 miles from VA medical facilities – the number of veterans using the program was “almost microscopically low,” American Legion Legislative Division Director Ian de Planque told a joint hearing of the Senate and House Veterans’ Affairs committees in late February.

His complaint was echoed by other VSOs whose members are frustrated that the cards don’t work as they envisioned. Cardholders have been particularly irked by how the 40-mile rule was defined in ways that restricted access and clearly held down VA costs.

Lawmakers are fielding complaints, too, which is why Sen. Johnny Isakson, R-Ga., new chairman of the Senate Veterans’ Affairs Committee, along with his House counterpart, Rep. Jeff Miller, R-Fla., promised changes. By late March, VA had taken its first step to modify the 40-mile rule and promised to work with Congress to relax it even more.

To qualify for private-sector care using a Choice Card, a veteran can’t reside within 40 miles of a VA medical facility. Guidance in a House-Senate conference report on the law, however, advised VA to use “geodesic” or as-the-crow-flies distance. So veterans who faced drives longer than 40 miles using roads to reach VA care were still to be denied access to nearer private-sector doctors and hospitals.

With VA and Congress under pressure from irate veterans to apply more common sense to Choice Card rules, VA announced March 24 that eligibility would be defined by driving mileage rather than “straight line” distance. VA Deputy Secretary Sloan Gibson told a Senate committee that day that, in implementing the law, VA should have ignored conference report language and the obvious “intent of Congress” and “done what we thought was the right thing for veterans” from the start: “I guarantee you we would have been criticized for doing it, but at least I could have looked myself in the mirror and said, ‘Well, we did the right thing for vets in the process.’”

Removing a second quirky aspect of the rule will

require legislation, Gibson said. That part leaves veterans ineligible for the card if they live within 40 miles of any nearby VA health-care facility, regardless of whether it offers the type of care they need. So a heart patient is still denied access to outside care if there’s a VA clinic nearby, even if the nearest VA cardiologist is 100 miles away.

Miller acknowledged that during last summer’s negotiations he had accepted the rigid language on the 40-mile rule to keep the cost of the program “manageable” during its three-year run. Otherwise, the Congressional Budget Office (CBO) estimated the cost could be \$50 billion over three years, he said.

In releasing the VA budget request for fiscal 2016, however, VA Secretary Robert McDonald asked for authority to reprogram some of the \$10 billion fenced for Choice Card to other VA needs. Rather than allow that, Miller and Isakson have told McDonald they intend to further soften restrictions on the 40-mile rule.

Congress “should have no problem expanding that program to take advantage of those excess funds,” said Louis Celli, the Legion’s Veterans Affairs & Rehabilitation director.

That \$10 billion should be spent to ensure that veterans receive more timely and convenient access to health care, whether they use the Choice Card or some other VA program that delivers private-sector care, Celli added, and Congress shouldn’t need to find more money to accommodate changes.

“They could go back to CBO and ask them to reconsider” its budget projections “now that we’ve had six months of existing authority under the Choice program,” Celli said. “It seems the VA medical system has been able to take care of a lot of more veterans with existing resources than CBO predicted. It might have been we overpaid for this program, and we can use those already-committed funds” to further relax the 40-mile rule, he added.

If that happens, thousands more veterans would secure routine access to government-paid health care in the private sector.



VA's narrow interpretation of the Choice Card's 40-mile rule was said to exclude too many veterans, including those needing specialty care.

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Tom Philpott has been covering military personnel and veterans issues for more than 30 years.