



DEPARTMENT OF VETERANS AFFAIRS OFFICE OF INSPECTOR GENERAL

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OFFICE OF INSPECTOR GENERAL, US DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
US HOUSE OF REPRESENTATIVES COMMITTEE ON VETERANS' AFFAIRS
HEARING ON
"A CALL TO ACTION: MEETING THE NEEDS OF THE SPINAL CORD INJURY AND
DISORDERS (SCI/D) VETERAN COMMUNITY"
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Chairman Bost, Ranking Member Takano, and members of the Committee, thank you for the opportunity to testify on the independent oversight conducted by the Office of Inspector General (OIG). The OIG is committed to conducting work that results in clear findings and practical recommendations to help the Veterans Benefits Administration (VBA) promptly and accurately provide veterans, their families, survivors, and caregivers with the benefits and services they have earned.

As of March 31, 2024, more than 5.8 million veterans were receiving disability compensation benefits.¹ Given the significant hardships veterans may face when the disability compensation benefit program does not work as intended, the OIG remains vigilant in its oversight of various aspects of the program. This written statement focuses on improvements that VBA can make in its oversight of the vendors providing medical exams for veterans' disability benefits claims.

When a veteran files a claim, VBA staff may request medical exams to assess the disability before deciding and rating the claim. These exams, most of which are provided by contracted medical professionals, represent a multibillion-dollar investment of taxpayer dollars by VBA since 2017. Exams are typically conducted at the medical examiner's place of business, and those facilities must be accessible, safe, and clean according to contract requirements.² The contracts also mandate that the vendors inspect all facilities where exams are conducted to ensure compliance with the Americans with Disabilities Act (ADA) and Occupational Safety and Health Administration (OSHA) standards.³

¹ VA, "VA Benefits & Health Care Utilization," <https://www.va.gov/vetdata/docs/pocketcards/pocketcard.pdf>, accessed June 3, 2024.

² Medical Disability Examination Contracts, Section 5.1 Place of Performance.

³ Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.; Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; Medical Exam Contract, Section 8.5 Deliverable Tasks Nov 28, 2018.

Starting in 2022, the OIG assessed concerns raised by veterans through customer satisfaction surveys that VA requires be provided to veterans after a disability exam. The OIG review focused on veterans' feedback regarding the accessibility, safety, and cleanliness of the contract exam facilities. The team inspected 135 facilities for compliance with contractual and legal requirements and reviewed key aspects of VBA's oversight of exam vendors. During the review, the OIG team identified one or more ADA and OSHA deficiencies at 114 (about 84 percent) of the exam facilities. This testimony highlights the finding and recommendations detailed in the resulting May 2024 report.⁴ The report focused on three issues related to (1) the lack of oversight over the contract exam facilities, (2) the prevalence of noncompliance with ADA and OSHA standards, and (3) the impact on veterans with mobility issues.

The numerous deficiencies at these locations created needless burdens for veterans, especially those with spinal cord injuries and disorders and those using wheelchairs. Proactive monitoring of contractors' facilities is essential to ensure compliance with laws and regulations for accommodating individuals with disabilities and maintaining an accessible, safe, and clean environment for all veterans seeking exams. VBA has made some progress on remediating these issues. However, additional monitoring is needed to ensure full compliance.

BACKGROUND

Regardless of whether a veteran is seen at a VA medical center or contract exam facility in the community, all exam facilities must comply with ADA and OSHA standards.⁵ The ADA ensures people with disabilities have the same access, opportunities, and rights as everyone else.⁶ In particular, the act mandates that publicly accessible buildings have features to help people using wheelchairs, walkers, or crutches to maneuver safely. OSHA sets and enforces standards and guidance requiring businesses to maintain clean and sanitary workplaces. It also conducts inspections to maintain safe working conditions. Notably, exit routes must be free, unobstructed, and properly labeled.⁷ They also must be reasonably straight and have smooth, solid, and substantially level walkways.

⁴ VA OIG, *Better Oversight Needed of Accessibility, Safety, and Cleanliness at Contract Facilities Offering VA Disability Exams*, May 8, 2024.

⁵ MDE contracts sec. 8.5, "Deliverable Tasks," November 28, 2018; Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (1990); Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq. (1970).

⁶ The OIG's review focused on the ADA's Title III, which applies to businesses serving the public. "Introduction to the Americans with Disabilities Act" (web page), accessed November 8, 2023, <https://www.ada.gov/topics/intro-to-ada/#businesses-that-are-open-to-the-public>; Title III regulations.

⁷ "United States Department of Labor, Occupational Safety and Health Administration: Maintenance, safeguards, and operational features for exit routes. standard 1910.37(a)(3)" (web page), accessed October 23, 2023, <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.37>.

VBA created the Medical Disability Examination Office (MDEO) to oversee contract exams. VBA staff request disability exams from one of the contract exam vendors when the veteran’s nearest VA medical center has reached or exceeded its maximum capacity for conducting these exams.⁸ According to MDEO, during the OIG’s review period from January 1 through December 31, 2022, three contract vendors performed about 88 percent of all exams and a fourth vendor was added.⁹

THE MDEO MUST IMPROVE ITS OVERSIGHT OF CONTRACTORS’ DISABILITY EXAM FACILITIES TO ENSURE ACCESSIBILITY AND SAFETY MANDATES ARE MET

The vendors’ contracts require them to inspect all their facilities or subcontracted facilities for compliance with ADA and OSHA standards.¹⁰ Yet when the OIG team conducted a complete inspection of 99 facilities, and partial inspections for an additional 36, more than 80 percent of them had one or more ADA and OSHA deficiencies.¹¹ These deficiencies reflect problems related to accessibility, cleanliness, or safety, which, in a number of cases, made it difficult to accommodate some veterans who needed exams.

The deficiencies went largely undetected by VBA because MDEO did not provide sufficient oversight to assess the accuracy of vendors’ self-certification of ADA and OSHA compliance. The original vendor contracts required MDEO to conduct site visits both randomly and in response to complaints at exam facilities to assess compliance. However, MDEO modified the contracts in September 2021 to state MDEO “may” conduct both random and complaint-based site visits at contract facilities at VBA’s discretion. In fiscal year 2022 (October 1, 2022–September 30, 2023), MDEO conducted visits at 76 randomly selected sites but did not visit any sites in response to complaints. An MDEO assistant director said sites are selected based on their proximity to exam vendors’ headquarters.

The OIG team’s finding was supported by the following four determinations:

⁸ VA Manual 21-1, “Mandatory Use of the ERRA Tool,” updated May 31, 2022, sec. IV.i.2.A in *Adjudication Procedures Manual*, topic 1c.

⁹ The OIG team conducted inspections at facilities from each of the four vendors. The fourth vendor was added in June 2022; however, that vendor did not complete exams until December 2022.

¹⁰ The applicable 1991 and 2010 building standards (whichever is applicable to the site); Americans with Disabilities Act of 1990 (web page); <https://www.ada.gov/law-and-regs/design-standards/1991-design-standards/> and “2010 ADA Standards for Accessible Design” (web page); 29 C.F.R. Part 1910, <https://www.ada.gov/law-and-regs/design-standards/2010-stds/>, accessed April 19, 2024.

¹¹ Partial inspections generally consisted of examining only facilities’ exteriors. This was due to reasons such as the team finding facilities closed that had unclear operating hours or operational status, or the interior being inaccessible because exam rooms were continuously occupied, and the review team did not want to prolong veteran exam wait times.

MDEO Depended on Vendors for Contract Facility Information

As of the report's publication, MDEO did not have independent access to a current inventory of all contract facilities used to perform disability exams, instead relying on vendors to provide this information. This reliance has limited its ability to conduct site visits. Depending on vendor-provided lists that can be incomplete or weighted toward more compliant facilities affects MDEO's capability to oversee its vendors. If facilities are overlooked, compliance issues may not be found and addressed.

MDEO reported that the "vendor is responsible for developing and recruiting a provider network and therefore, a complete list of all providers they are contracted with would be considered proprietary information that they do not wish us to disclose to their competitors." The OIG contends that VA routinely receives proprietary information from contractors and that necessary controls can be instituted to limit access to those VA personnel who need the information. Particularly where oversight of veteran safety and contract exams are at issue, VA must have accurate information.

Concerningly, two of the four vendors could not provide a definitive number of facilities where their subcontractors conduct exams. One vendor reasoned that facility numbers are fluid and contract facilities are added and removed continually. Another vendor stated that when MDEO requests a list of exam facilities, the vendor provides 10 locations in the geographic area of the facilities where most veterans are likely to be seen. Another vendor reported that it would provide addresses and hours of operation for the facilities in an area upon request from MDEO.

An MDEO chief said site visits are generally within commuting distance of each vendor's headquarters. An assistant director claimed that staff plan to expand site visits throughout the country. Another assistant director also noted it was difficult to provide an exact number of contract facilities, as some examiners practice at more than one location, multiple examiners practice at the same locations, and some examiners have short-term leases. MDEO's executive director said it is working on maintaining its own list and information on contract exam facilities, so staff can conduct site visits and desk audits.¹²

Recommendation

MDEO was asked to submit a plan and documentation of progress to the OIG on implementing VBA's maintenance of an independent, updated list of contract facilities. VBA concurred with maintaining a list of facilities but stated it was unable to independently verify all of a vendor's active subcontracts.

This recommendation, and the other eight discussed below, remain open (not fully implemented) at this time. In accordance with the OIG's routine follow-up process, the first request for an update on all the

¹² Per MDEO, desk audits would include virtual inspections of contract exam facilities through photographs, internet images, and any available information to validate facility compliance.

recommendations is on August 9, 2024.¹³ The OIG will monitor VBA’s progress on its implementation of all recommendations.

MDEO Assigned Exam Vendors the Task of Distributing Satisfaction Surveys Rating Their Own Performance

VBA contracts with a separate survey vendor to work with the four exam vendors to obtain veteran contact and appointment information to provide all veterans with a paper survey card regarding their exam experience, as well as access to other methods such as email or text.

However, the survey vendor reported it distributed the blank customer satisfaction survey forms to the exam vendors, which then mailed them to individual veterans. MDEO confirmed the practice was consistent with its guidance. Consequently, the survey vendor could not monitor how, or if, the customer satisfaction surveys were properly distributed and whether every veteran examined received one. As a result, MDEO lacks assurance it is receiving the full picture of veterans’ experiences. MDEO needs the survey vendor or other distributor with no vested interest in the results to be responsible for mailing the surveys to veterans. Additionally, because the survey vendor’s performance was tied to the survey response rate, MDEO cannot fairly evaluate its performance.

Per its contract, the survey vendor is expected to meet a minimum response rate of 15–20 percent. In 2022, MDEO reported that the overall response rate to the customer satisfaction survey was about 11 percent. VBA’s response to this report noted that in October 2023, a new customer satisfaction survey vendor was onboarded.¹⁴

Recommendation

VBA concurred with the report’s second recommendation to comply with the requirements of the customer satisfaction survey contract by routing exam comment cards directly between the survey vendor and the veteran examined.

MDEO Lacked Formal Standard Operating Procedures and Training for Site Visits to Assess Safety and Accessibility Compliance

MDEO lacked formal, written, standard operating procedures outlining the responsibilities, tasks, and processes for staff conducting exam facility site visits. According to VBA’s contracts with exam vendors, the standard of review for a site visit is based on ADA, the Joint Commission on Accreditation

¹³ At quarterly intervals commencing 90 calendar days from the report issue date, the OIG sends a follow-up status request to the action office asking for an implementation status report. The follow-up staff provides VBA 30 calendar days to respond. Nothing precludes VA from submitting information before target dates or scheduled follow-up.

¹⁴ The rate equals the number of unique responses divided by the number of appointments completed.

of Healthcare Organizations, OSHA, and any applicable state or local standards.¹⁵ VBA does not provide its staff with training on ADA or OSHA compliance. Staff use a checklist with a series of yes/no questions and a space for related comments. These questions are not specific enough to effectively address whether the contractual standards have been met. This was particularly true for questions regarding building and exam room accessibility for veterans using wheelchairs.

Some MDEO employees said they based their site visit checklist responses on simple visual observation, rather than addressing established criteria. When MDEO staff and managers were asked about specific ADA and OSHA requirements, several reported not knowing the specific criteria. For example, parking lots require a minimum percentage of disabled parking spaces, and there are minimum dimensions for wheelchair turning radius, wheelchair ramp slope, and doorframe widths.

Formal training plays an important role in helping staff acquire knowledge, develop skills, and improve performance, especially when employees have different roles and tasks. An MDEO assistant director stated that most training is done on the job for the practical purpose of inspecting facilities; however, MDEO is not opposed to formal training. The MDEO executive director said staff are working on a formal training program and standard operating procedures, and a dedicated team was created to be responsible for providing external training to exam vendors and MDEO staff.

Recommendations

VBA concurred with the report's third recommendation to develop and implement formal standard operating procedures for the contract exam facility site visits detailing roles, responsibilities, objectives, and monitoring. It concurred in principle with the fourth recommendation for MDEO to update the site visit checklist to include a focus on specific ADA and OSHA criteria required by exam vendor contracts. VBA also concurred in principle with recommendation 5 to complete a standardized training plan for site visit staff to include ADA and OSHA compliance.

MDEO Did Not Verify Vendor Compliance with ADA and OSHA Requirements

Exam vendors are required to self-certify annually that they meet all ADA and OSHA requirements for accessibility, safety, and cleanliness, and certify all new facilities in the quarter after they are added. The contracts allow VBA to suspend any facilities for which MDEO has identified concerns regarding health and safety. However, exam vendors generally relied on subcontractors to self-certify, and MDEO did not validate the self-certifications. One MDEO leader said exam vendors should be able to inspect every facility to ensure compliance, while another reported being unaware of any instance in which action was

¹⁵ The OIG did not evaluate whether exam vendors met the Joint Commission's standards for clinical operations.

taken for noncompliance. Further, one of its employees confirmed that tracking individual facilities would not be possible because staff do not receive a list of each facility being self-certified; they received regional certification from the vendor. The vendor’s self-certification process was not comprehensive or reliable because there was no validation, likely contributing to the unresolved ADA and OSHA facility deficiencies.

Veterans can submit complaints about contract exams through avenues such as the OIG hotline, VA regional offices, the White House hotline, veterans service officers, and MDEO. Exam vendors also submit incident reports to MDEO.¹⁶ However, MDEO was not conducting complaint-based reviews even when survey responses identified deficiencies. The OIG found that MDEO should review all sources to determine if a complaint-based site visit is warranted.

The OIG’s report describes two incidents in which veterans were unable to be examined because a contract facility could not accommodate a wheelchair. In one incident, the veteran was injured being transferred from a wheelchair into an audio booth with inadequate space to maneuver a wheelchair.

Recommendations

VBA concurred with the sixth recommendation to conduct complaint-based contract facility inspections, and with recommendation 7 to enforce contractual requirements for vendors to conduct inspections and recertify all facilities for ADA and OSHA compliance. Although VBA requested the latter recommendation’s closure, the OIG will only do so after monitoring MDEO’s contract enforcement.

THE OIG FOUND ADA AND OSHA DEFICIENCIES THAT MAKE EXAM FACILITIES DIFFICULT TO ACCESS AND UNABLE TO ACCOMMODATE SOME VETERANS

Some veterans said their exams were canceled as contract facilities did not comply with ADA or OSHA requirements and could not accommodate their mobility or sensory issues. For example, accessible medical equipment should include adjustable-height exam tables and chairs, wheelchair-accessible scales, adjustable-height radiologic equipment, portable floor and overhead track lifts, and gurneys and stretchers.¹⁷ The OIG review team also found numerous facilities lacking adjustable exam tables.

Examples of survey responses from veterans highlight accessibility, safety, and cleanliness concerns at contract exam facilities:

¹⁶ An incident report is required in instances of physical distress, violent or threatening behavior from the veteran, or natural disaster.

¹⁷“Access to Medical Care for Individuals with Mobility Disabilities” (web page), accessed November 13, 2023, <https://www.ada.gov/resources/medical-care-mobility/>.

- “Wheelchair access is too steep [sic] for handicap with wheelchair.”
- “Not handicap accessible very hard getting a wheelchair in and out of the main entrance door.”
- “No ramp for wheelchair.”
- “The doorway entering the building has a 2–3 inch threshold that a wheelchair or scooter has to be lifted over.”
- “Handicap ramp not wheelchair friendly.”
- “Wasn't able to complete exam due to not being able to get into the exam booth.”
- “Getting in and out of the sound booth was difficult because the wheelchair is too large for the booth. Very unsafe.”
- “Office was dirty with bugs crawling on the floor.”

The OIG team developed a site visit protocol that enhanced the MDEO approach by including ADA and OSHA compliance criteria to be used for 135 sites. This protocol consisted of questions related to seven areas of concern: (1) the facility location, (2) safety and protective equipment, (3) exam rooms, (4) general medical clinical equipment and supplies, (5) audiology clinical equipment and supplies, (6) ophthalmology or dental clinical equipment and supplies, and (7) protections for vulnerable veterans.

Using this protocol, the team first inspected 87 randomly selected facilities (62 complete and 25 partial inspections) that performed disability exams nationwide from January 1 through December 31, 2022.

The OIG found that

- 45 facilities had at least one accessibility deficiency,¹⁸
- 36 facilities had at least one safety deficiency,¹⁹
- eight facilities had at least one cleanliness deficiency, and²⁰

¹⁸ Accessibility deficiencies included a steep ramp or curb, lack of ramps, narrow doorways, an elevated audio booth with no ramp, no adjustable exam tables, and improper door hardware.

¹⁹ Safety deficiencies included expired fire extinguishers, partially blocked exits, and tripping hazards.

²⁰ Cleanliness deficiencies included bugs in fire alarms, stained carpets, inappropriate waste disposal, and no available hand sanitation equipment in designated areas.

- 15 facilities had no deficiencies.²¹

The team then inspected 48 newly added facilities (37 complete and 11 partial inspections) from the four vendors chosen both randomly and based on veteran complaints. The facilities were added between January 1 and March 31, 2023, allowing the OIG review team to ascertain whether newly added facilities complied with ADA and OSHA standards.

The team identified

- 28 facilities with at least one accessibility deficiency,
- 23 facilities with at least one safety deficiency,
- one facility with at least one cleanliness deficiency, and
- six facilities with no deficiencies.²²

Examples of ADA and OSHA Deficiencies

ADA accessibility deficiencies included issues with handicap parking, wheelchair ramps, accessible entrances, bathrooms, exam rooms, medical equipment, and audio booths. For example, the team found the entrance threshold at a facility in California was too high. Facilities in Texas, Wisconsin, and Missouri all had audio booth accessibility deficiencies, ranging from insufficient wheelchair turning radius to higher-than-allowed door thresholds or no permanent or temporary wheelchair ramp access.

Examples of safety deficiencies included blocked stairways, noncompliant handrails, expired or inaccessible fire extinguishers, and blocked exit routes. No materials or equipment may be placed, either permanently or temporarily, in the exit route. Additionally, the exit route must have a smooth, solid, and substantially level walkway. At a facility in Texas, the OIG found a fire extinguisher that was stored in a cabinet under a sink, also with the last evidence of inspection being June 2017. The review team also identified eight facilities from the initial inspection of 12 states with at least one cleanliness deficiency. Some deficiencies included common area cleanliness, lack of personal protective equipment and single-use medical supplies, and lack of available hand sanitation equipment in designated areas.

²¹ Facilities with no deficiencies were based on results from the 62 complete inspections only. Some facilities had more than one type of deficiency; therefore, numbers may not sum to the total number of sites.

²² Facilities with no deficiencies were based on results from the 37 complete inspections only.

EXAMS SCHEDULED AT FACILITIES WITH ADA AND OSHA DEFICIENCIES MAY CREATE DIFFICULTIES FOR VETERANS WITH MOBILITY ISSUES

MDEO told the OIG that vendors are not allowed to cancel an exam specifically because a facility was not ADA-compliant, noting that vendors would need to reschedule appointments if a room, booth, or exam table was not accessible at the time of the scheduled exam for someone who uses a wheelchair. Concerningly, one vendor could not confirm if its scheduling unit asked veterans if they needed accommodations at the time the appointment was set up.

The OIG's inspection confirmed ADA deficiencies may make it unable to accommodate veterans with mobility issues. Rescheduling these exams after veterans have needlessly gone to a facility takes time and may entail traveling long distances. Rescheduling may also delay their disability benefit claims from being processed. The OIG determined MDEO had not been holding vendors accountable to ensure exam facilities are accessible, safe, and clean for veterans attending exams.

Recommendations

VBA concurred in principle with the report's eighth recommendation to analyze all veteran complaints related to facilities received through all entities and perform complaint-based site visits or create action plans, as necessary. It also concurred with the final recommendation for MDEO to develop a plan with its vendors to determine if each veteran requires accessibility arrangements before scheduling an exam.

CONCLUSION

A critical foundation of accountability for any program is effective oversight to detect and resolve issues. This is crucial for medical exams given how critical they are to ensuring veterans receive accurate and timely disability benefits claims decisions. Additionally, the need for VBA to conduct thorough oversight is essential given the billions of taxpayer dollars paid to contractors. The OIG recognizes the challenges with doing so when most of these exams are conducted outside of VA facilities by nongovernmental personnel. As a VBA leader noted, however, while VA does not own contractor exam facilities, they represent the face of VA for veterans applying for benefits.

The deficiencies identified by the OIG persisted because MDEO's oversight was ineffective at detecting and correcting them, particularly in failing to consistently conduct site visits in response to veterans' complaints. VBA and its vendors must continue to take swift corrective action to ensure veterans with spinal cord injuries and disabilities, as well as others requiring accommodations, have prompt access to suitable exams that will help determine their disability benefits. Mr. Chairman, this concludes my statement. I would be happy to answer any questions you or members of the subcommittee may have.