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BEFORE THE  
HOUSE COMMITTEE ON VETERANS' AFFAIRS  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS  
NOVEMBER 29, 2017**

Good morning, Chairman Bergman, Ranking Member Kuster, and Members of the Subcommittee. Thank you for the opportunity to discuss our medical centers' clinical competency reviews, compliance with reporting to State Licensing Boards (SLBs) and the National Practitioner Data Bank (NPDB), and the related Government Accountability Office (GAO) report. I am accompanied today by Dr. Shereef M. Elnahal, Assistant Deputy Under Secretary for Health, Quality, Safety, and Value.

**Introduction**

VA has an ethical and moral obligation to our Veterans, agency, and community to report certain providers to the National Practitioner Data Bank and State Licensing Boards. We are taking three major steps to improve clinical competency and reporting: improving oversight to ensure that no settlement agreement waives VA's ability to report providers to NPDB or SLBs; reporting more clinical occupations to the NPDB, instead of just physicians and dentists; and improving the timeliness of reporting. We are also rewriting and updating policies in response to the GAO's report. We are constantly striving for improvement in these areas to make sure our Veterans receive the highest quality of care, which they have earned and deserve.

**Reliability of Medical Centers' Clinical Competency Reviews**

If a privileged provider delivers care that triggers concern (from sources including Quality Assurance reviews, patient complaints, coworker concerns, or outcome reviews), VA conducts a review to assess the provider's performance in the area of concern. The purpose of this review is for fact-finding to substantiate if there is a concern related to the provider's clinical practice and to determine any appropriate next steps, while ensuring patient safety throughout the process. Care providers of the same specialty provide an objective review of randomly selected patients that the provider has seen previously. Reviewers are often from other VA medical centers to ensure objectivity of the review. If the information that caused the trigger raises a concern of imminent danger for patients, the provider may be removed from patient care by the Director until the review is complete. The clinical service chief and the executive committee of the medical staff analyze the results of the review. Then, one of three outcomes occur: (1) The concern is not substantiated and no action is taken; (2) There is no egregious finding but the service chief will closely monitor the provider through a Focused Professional Practice Evaluation (FPPE) for Cause to ensure improvement in a noted area; or (3) Take a "privileging action" such as reduction or revocation of privileges to practice in the facility. If a privileging action is recommended, the Medical

Center Director reviews and is the final authority on that decision. These reviews are filed in the provider's profile with their ongoing professional evaluation documents.

If the Medical Center Director takes a final privileging action, the clinician is afforded a fair hearing opportunity. There, a panel determines if privileging action was due to substandard care, professional misconduct, or professional incompetence. If the panel determines the privileging action was "for cause," the Director is responsible for ensuring the privileging action is entered into the NPDB reporting database. Clinicians who resign or retire while the investigation is ongoing must still go through a limited hearing process.

### **VA's Compliance with Reporting clinicians to SLBs and NPDB**

VA currently reports providers to the NPDB in the following three circumstances:

1. Physicians and dentists, when a privileging action (as described above) has been taken due to substandard care, professional misconduct, or professional incompetence.
2. Physicians and dentists, when they resign or relinquish privileges while under investigation.
3. Any licensed provider (other types of clinicians that are licensed to see patients independently, such as psychologists or podiatrists, in addition to physicians and dentists) that is named during the review process for tort claims paid by the agency for any issue with clinical care that they provided.

NPDB only requires the health care industry to report physicians and dentists for adverse privileging actions and resignation while under investigation. VA is voluntarily expanding the range of clinical occupations that we will report. We are doing this because we feel it is the right thing to do for Veterans. Specifically, we will report:

1. All privileged providers to the NPDB for privileging actions resulting from substandard care, professional misconduct, or professional incompetence;
2. All privileged providers to the NPDB for resignation or relinquishing of privileges while under investigation for substandard care, professional misconduct, or professional incompetence.
3. Licensed providers who were terminated from a VA facility for substandard care, professional misconduct, or professional incompetence to the NPDB, thus excluding them from future participation in VA's Community Care programs.

It has always been against VA policy for any management official to negotiate or settle employee grievances such that an explicit decision is reached to not report a provider to NPDB or SLBs when their actions should be reported. VA will improve our management controls to the greatest extent possible to enforce this. At the direction of the Secretary, VA has already begun to require that all employment dispute settlements involving payments of more than \$5,000 be approved by top VA officials in Washington, rather than officials at the regional level. We will expand this review process by including confirmation that there is no negotiation of reporting the provider to NPDB or

SLBs if they meet the requirements for reporting. Any VA employee who enters into a settlement agreement waiving VA's ability to report to NPDB or SLBs will be subject to discipline.

In addition to expanding the types of providers that can be reported, VA will improve the timeliness of both the decision-making on whether to report providers and the process of reporting providers to the SLBs, shortening the timeframe of the entire reporting process.

If a clinician is identified as being involved in care resulting in a paid or settled tort claim, they are may submit a written statement about that care. That care and the involvement of all respective licensed practitioners (defined above) are reviewed through the Office of Medical Legal Affairs' (OMLA) paid tort claim review process. The OMLA Review Panel identifies any licensed practitioner who provided substandard care, professional misconduct, or professional incompetence in that care. OMLA notifies the VA facility of the involved providers who must be reported to NPDB. The Medical Center Director is responsible for reporting the named providers to the NPDB within 30 days of the notification from OMLA. Below are statistics on the reports filed with NPDB since FY 2015:

FY	Number	Number Reversed	NPDB Reports required	NPDB Reports Filed	Still within 30 days of notification	Overdue
2015	260	33	227	223 (98%)		4
2016	254	17	237	230 (97%)	2	5

For the time period of October 1, 2016 through June 30, 2017, 236 NPDB reports were required. Of these, 200 reports (82%) have been filed, with the majority of the outstanding reports still within their 30 days for sending of the filed report to OMLA.

### GAO Report

GAO's recently-released report, VA Health Care: Improved Policies and Oversight Needed for Reviewing and Reporting Providers for Quality and Safety Concerns, made four recommendations and VA concurred with each of them.

In response to the first recommendation, VA's Office of Quality, Safety, and Value (QSV) will rewrite VA policy to formalize guidance on focused management reviews and incorporate existing documents relating to the process of addressing clinical care concerns. This is in progress, with a target completion date of September 2018.

For the second recommendation, QSV will rewrite policy to include timeline expectations for the above-mentioned review. The Assistant Deputy Under Secretary for Clinical Operation will issue interim guidance by December 2017, with a target completion date of September 2018.

To respond to GAO's third recommendation, QSV will update the standardized auditing tool to include monitoring of appropriate action taken when clinical care concerns are identified. This update will include a reporting structure to facilitate aggregation of reports to identify trends. This response is in progress, with a target completion date of October 2018.

In response to the fourth recommendation, QSV will update the standardized auditing tool to include monitoring of timely reports to the NPDB, specifically for privileging actions and resignation while under investigation. The tool will also include monitoring of timely reporting of substantial evidence of a failure to meet the generally accepted standard of care. This update will include a reporting structure to facilitate aggregation of reports to identify trends. This response is in progress, with a target completion date of October 2018.

### **Conclusion**

Mr. Chairman, VA is taking three major steps to improve clinical competency and reporting: reporting more clinical occupations to the NPDB; improving the timeliness of reporting; and enhancing oversight to ensure that no settlement agreement waive VA's ability to report NDPB and SLBs. We are also rewriting and updating our related policies in response to the GAO's report. I am proud of the health care our facilities provide to our Veterans and we look forward to upholding that high level of care. Thank you for the opportunity to testify before this subcommittee, I look forward to your questions.