

**STATEMENT OF
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VETERANS BENEFITS ADMINISTRATION
U.S. DEPARTMENT OF VETERANS' AFFAIRS
BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS**

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Opening Remarks

Good morning, Chairman Abraham, Ranking Member Titus, and Members of the Committee. Thank you for the opportunity to review with you the Department of Veterans Affairs' (VA) process for ensuring that all Veterans are properly evaluated for Traumatic Brain Injury (TBI). Accompanying me today is Patricia Murray, Chief Officer, Office of Disability and Medical Assessment, and Mary Glenn, Acting Deputy Director, Operations, Compensation Service.

Background

Since 2007, medicine around traumatic brain injuries (TBI) has been a rapidly evolving science. Recognizing that TBI is a signature injury of the conflicts in Iraq and Afghanistan, VA instituted a policy requiring one of four specialists – a psychiatrist, physiatrist, neurosurgeon, or neurologist – to complete initial TBI exams for disability compensation claims when VA does not already have a diagnosis. VA selected these specialists because they have the most experience with the symptoms and effects of TBI, and to take extra steps to ensure that Veterans seeking disability compensation for this complex disability receive the benefits to which they are entitled. VA also updated its rating criteria in 2008 to keep pace with the evolving understanding of TBI. Unfortunately, as more research became available, VA issued a series of guidance documents that inadvertently created confusion regarding the policy.

In October 2014, the Minneapolis VA Medical Center reviewed initial TBI exams for disability compensation claims completed since 2010 and identified approximately 300 Veterans whose exams were not conducted by one of the four designated specialists. Thereafter, the Veterans Benefits Administration (VBA) and the Veterans

Health Administration (VHA) initiated a nationwide review of initial TBI exams for disability compensation claims performed between 2007 and 2015. The results of this review revealed that between 2007 and 2015 approximately 24,000 Veterans received initial TBI exams for disability compensation claims that were not conducted by one of the four designated specialists. Further, the review found that VHA conducted approximately 5,300 of these exams, while VBA contract examiners conducted approximately 19,000. VHA facilities have certified that initial TBI disability compensation examinations are now being conducted by one of the designated specialists. In addition, VBA modified its exam contracts in 2013 and 2014 to clearly state that initial TBI exams must be performed by one of the four designated specialists when no diagnosis is of record. The recently completed national review confirmed that VBA contract examiners have been complying with this requirement under the terms of the modified contracts.

Corrective Actions Taken by VA

VA regrets that these examinations were not completed by a designated specialist the first time. To minimize burden and ensure no financial harm to affected Veterans, the Secretary of Veterans Affairs granted equitable relief to all of the more than 24,000 identified Veterans on May 3, 2016. The relief authorizes VA to offer new TBI exams, conducted by one of the four designated specialists, to all identified Veterans. Equitable relief is a unique remedy that allows the Secretary to correct an injustice to a claimant, where VA is not otherwise authorized to do so within the scope of the law.

This equitable relief further enables VA to take action on any new examinations without requiring Veterans to submit new claims, and allows VA to award an effective date as early as the date of the Veteran's original TBI claim and provide any retroactive benefits due. VBA has contacted all affected Veterans via letter to notify them of the opportunity to receive new examinations and have their claims reprocessed. These Veterans can initiate reprocessing of their claims by either calling a dedicated phone number or otherwise contacting VA.

Affected Veterans have one year from the date they are notified of the grant of equitable relief in which to request new examinations. More than 13,000 of these affected Veterans are already receiving service-connected compensation benefits for TBI at a 10-percent disability evaluation or higher, which means that the diagnosis has already been established.

VA has also clarified its guidance documents that may have created confusion regarding the policy. We have confirmed that TBI policy guidance is now clear and VA is confident that examiners now comply with its TBI compensation examination policy.

Closing Remarks

VA takes very seriously its obligation to care for disabled Veterans, their families, and their survivors. VA understands the importance of an accurate exam to support Veterans' disability claims. VA is committed to improving the medical exam experience and has identified it as one of the Department's 12 MyVA Breakthrough Priorities.

This concludes my testimony, Mr. Chairman. I would be pleased to address any questions you or other Members of the Committee may have.