



**STATEMENT OF
GREG NEMBARD, DEPUTY DIRECTOR
CLAIMS SERVICES
VETERANS AFFAIRS AND REHABILITATION DIVISION
THE AMERICAN LEGION**

BEFORE THE

**SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
HOUSE COMMITTEE ON VETERAN'S AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES**

ON

**THE DEPARTMENT OF VETERANS AFFAIRS DEVELOPMENT AND
IMPLEMENTATION OF POLICY INITIATIVES**

NOVEMBER 29, 2018

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Chairman Bost, Ranking Member Esty and distinguished members of the Subcommittee on Disability Assistance and Memorial Affairs, on behalf of National Commander Brett P. Reistad and the nearly two million members of The American Legion, we thank you for the opportunity to testify on the Department of Veterans Affairs' (VA) development and implementation of policy initiatives. As the largest patriotic service organization in the United States, with a myriad of programs supporting veterans, The American Legion appreciates the committee focusing on these critical issues that will affect veterans and their families.

Background

The Department of Veterans Affairs Office of Inspector General (VAOIG) published three reports about unwarranted medical reexamination for disability benefits, processing inaccuracies involving veterans' intent to file submissions for benefits and denied Post-Traumatic Stress Disorder (PTSD) claims related to Military Sexual Trauma (MST), in July and August 2018.

Congress approved the use of contract examiners within the Veterans Benefits Administration (VBA) in 1996 to expedite the scheduling of disability exams, so the Veterans Health Administration (VHA) can focus resources on treating patients. VA dramatically expanded the size and cost of the program since its inception. On November 15, 2018, the United States House of Representatives Committee on Veterans Affairs Disability Assistance and Memorial Affairs (DAMA) Subcommittee held a hearing regarding VA oversight of contract disability examinations and the use of contractors to provide disability examinations. The Government Accountability Office's (GAO) testimony before the Subcommittee illuminated how VBA has limited information regarding whether contractors who conduct disability compensation medical exams are meeting the VA's quality and timeliness targets.¹ Contracted providers perform approximately half of VA's disability examinations, and their national accuracy rate does not achieve VA's prescribed 92 percent accuracy goal.² These findings raise The American Legion's concerns about numerous factors. Specifically, the accuracy of claims decisions, the adequacy of

¹ [VA DISABILITY EXAMS Improved Oversight of Contracted Examiners Needed, GAO Testimony, November 2017](#)

² [U.S. Department of Veterans Affairs Annual Performance Plan and Report, Accuracy Goals Table](#)

training for contractors, VA's inability to comply with timeliness goals, and whether or not the cost of contracting these services would be considered exorbitant if program oversight and management were factored in, bringing services up to par with VA standards.

The American Legion believes that our nation's heroes should not suffer at the hands of institutions whose existence and mission is to care for them. We believe in quality of care at VA facilities, remain committed to a strong VA, and that VA is a "system worth saving."

System Worth Saving

The System Worth Saving program, created in 2003, by then-American Legion National Commander Ron Conley, focuses on what works best at VA Medical Centers (VAMC), identifies any challenges, and makes recommendations that help veterans. The mission of the System Worth Saving program is to assess the quality and timeliness of veterans' healthcare, the claims process at VA Regional Offices (VARO), and provide feedback from veterans about the care and services offered. We conduct site visits at VAMCs and Regional Offices nationwide. The American Legion compiles the reports from our visits into a publication for distribution to the President of the United States, Congress, VA officials, and members of The American Legion. A copy of which can be found at: <https://www.legion.org/systemworthsaving>. The compressive report provides an understanding of VA challenges, best practices, and offers recommendations based on our observations through our nearly 100 years of experience.

Unwarranted Medical Reexaminations for Disability Benefits

The VAOIG conducted a review to determine whether VBA employees required disabled veterans to report for unwarranted medical reexaminations.³ VBA employees have authority to request reexaminations for veterans "whenever VA determines there is a need to verify either the continued existence or the current severity of a disability," and when there is no exclusion from reexamination.⁴

The VAOIG found that VBA did not consistently follow policy regarding reexamination requests. The Inspector General's office found that VBA required unwarranted medical examinations in 19,800 of the 53,500 cases in the review period (37 percent).⁵ The OIG review team estimated that during the six-month period, VBA spent \$10.1 million on unwarranted reexaminations — \$5.3 million involving VHA clinicians, and \$4.8 million involving VBA contractors.

Intent to File (ITF)

The VAOIG sought to determine whether VBA assigned correct effective dates on claims for compensation benefits with an intent to file (ITF). VA issued guidance to require claims for benefits be filed on standard forms to improve the quality and timeliness of processing veterans' claims in March 2015. VA acknowledged that some veterans might need additional time to

³ VBA also refers to medical reexaminations as routine future examinations.

⁴ 38 CFR §3.327, Reexaminations

⁵ VA OIG 17-04966-201, Page i, July 17, 2018

gather all of the information and evidence necessary in support of their claims; therefore, VA allows applicants to notify them of their intent to file a claim to establish the earliest possible effective date for benefits, if determined eligible.

The VA's Acting Assistant Director for Procedures stated that the absence of granularity in the procedural guidance is a cause for the processing inaccuracies. The Assistant Director also indicated that the ITF process was an initiative with a six-month implementation and delivery period.⁶ VA's effort affected VBA's policy and procedures considerably. VBA asserted that six months was not enough time to produce sound guidance, restructure policies, procedures, and claims processing systems. The VA's Acting Assistant Director for Policy stated that VBA produced a minimally viable product, as related to system functionality because of time constraints. The VA published the proposed rule to implement ITF on October 31, 2013, and finalized it on September 25, 2014. VA bears responsibility for setting the time frame of implementation. They led the initiative and set the deadlines before publishing the proposed rule more than five years ago.

PTSD and MST

MST can lead to PTSD, but VA denies granting MST victims benefits based on a claim of PTSD because they cannot produce the required evidence to support the occurrence of the reported assault. Victims of MST have difficulty providing the necessary evidence because reporting the incident when it occurs is challenging. Victims of MST typically do not report the incident due to concerns about negative implications for performance reports, worries about punishment for collateral misconduct, and the perception of an unresponsive military chain of command. VBA issued guidance in 2011 to ensure consistency, fairness, and a "liberal approach" regarding acceptable types of evidence to support and identify stressors related to MST that can lead to PTSD.⁷

A review team assessed a sample of 169 MST-related claims denied during the review period, according to the VAOIG report dated August 21, 2018. The review found that VBA did not correctly process veterans' denied MST-related claims in 82 of 169 cases. VAOIG estimated that VBA incorrectly processed approximately 1,300 of the 2,700 MST-related claims denied during that time (49 percent) as a result.⁸ This is unacceptable. Finding ways to ensure these veterans receive the services they deserve is one of the highest priorities of The American Legion.

What is The American Legion Doing

The American Legion continues to work directly with veterans to help them overcome challenges associated with access to VA healthcare and the claims process, and through our System Worth Saving program provides first-hand observations and analyses to VA and members of congress

⁶ VA OIG 17-04919-201, Page ii, August 21, 2018

⁷ VBA Training Letter, *Adjudicating PTSD Claims Based on MST*. (Historical)

⁸ VA OIG 17-05248-241, Page ii, August 21, 2018

Recent VAOIG reports cited inaccuracies, timeliness issues, lack of specialization, inadequate training, and overall poor quality of VA examinations completed by contracted medical examiners. The American Legion seeks to protect veterans from these, and other inadequacies. A variety of factors cause these shortfalls, including a lack of funding, understaffed VA facilities, and unscrupulous contracting companies who solely focus on their bottom line—at the veterans’ expense. The American Legion works closely with and urges the VA to take swift corrective action.

Recommendations

VA’s hiring and incentives process need greater emphasis. If VA needs additional resources to secure fulfillment of critical positions to complete tasks associated with exams, The American Legion calls on VA to communicate that need to Congress and urge Congress to allocate the necessary funding to make those critical hires. This will ensure veterans receive the prompt care they need within the system that is designed to treat the unique nature of their wounds.

The American Legion encourages Congress to conduct oversight to ensure veterans receive adequate and comprehensive VA examinations. We also urge the secretary of VA to establish appropriate requirements for examiners and to enforce the use of those requirements. The American Legion also urges the VA secretary, through resolution,⁹ to review the effectiveness of the requirements for examiners, including contracted disability compensation medical exams, and how that effectiveness impacts the appropriate ratings for compensation claims. The American Legion understands VA is working hard to eliminate unnecessary reexaminations, but timeliness and functionality of processing systems associated with ITF must be addressed to avoid additional costs and inconvenience to veterans and their families.

The American Legion continues to advocate for the improved delivery of timely and quality healthcare for women using VA, including specific attention to MST-related claims. The proportion of female servicemembers and veterans is at its highest point in history, with projections for continued growth.¹⁰ The growing numbers of female veterans mean that a system which primarily provided care to male enrollees must now evolve, and adapt, to meet the needs of both male and female veterans. Veterans, regardless of gender, must receive the best possible care from VA, and the system needs to continue to adjust to the changing demands of the population it serves. VA must develop a comprehensive healthcare program for female veterans that extend beyond reproductive issues.

Conclusion

Chairman Bost, Ranking Member Esty, and distinguished members of this veteran-centric committee, The American Legion thanks you for the opportunity to illuminate the positions of the nearly two million veteran members of this organization.

⁹ [The American Legion Resolution No. 87: Establishing and Enforcing Requirements for Contract Examiners Conducting Medical Examinations for VA Compensation Purposes](#)

¹⁰ Department of Veterans Affairs Study of Barriers for Women Veterans to VA Health Care, April 2015

Ensuring those who have selflessly raised their right hand in defense of this nation receive the benefits and care they deserve is a priority of The American Legion, and by the action of this committee, we can see that it is for you as well.

For additional information regarding this testimony, please contact Ms. Lindsay Dearing, Legislative Associate in The American Legion's Legislative Division at (202) 861-2700 or ldearing@legion.org.