STATEMENT OF
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BEFORE THE
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SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

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Good morning Chairwoman Luria, Ranking Member Bost, and Members of the Committee. Thank you for the invitation to speak today on the important topic of VA disability compensation benefits based on military sexual trauma (MST) and H.R. 1092, the *Servicemembers and Veterans Empowerment Support Act of 2019.* With me is Beth Murphy, Executive Director of Compensation Service, and Margret Bell, National Deputy Director for Military Sexual Trauma, Veterans Health Administration (VHA). In this statement, I will provide an update on VA's actions to review and improve MST claims processing and outreach, as well as provide the Department's views on the proposed legislation.

Office of the Inspector General (OIG) Report & Veterans Benefits Administration Actions

Over the past five years, VA has processed approximately 18,000 MST-related claims each year, on average. The VA OIG completed a review in August 2018 to determine if claims adjudicators correctly processed MST-related claims in accordance with VBA policy. VA strives to provide accurate and timely benefits to our Veterans and appreciates the efforts of the OIG to assist us in this regard. As a result of this review, the OIG made six recommendations. VBA acknowledges and concurs with OIG's findings and took immediate steps to ensure MST-related claims are processed

accurately. As of today, VBA has fully implemented two of the six recommendations and these have been closed by OIG. One recommendation is fully implemented but pending closure by OIG. VBA is actively working on the remaining three recommendations.

Review of Previously Denied Claims

OIG's first recommendation was to review all previously denied claims since the beginning of fiscal year (FY) 2017, which consisted of a universe of 9,724 claims. Last year, VBA implemented that review of denied MST-related claims decided between October 1, 2016, through June 30, 2018, and is taking corrective actions as necessary. On November 14, 2018, VBA began the first phase of this review This initial review allowed VBA to ensure the effectiveness of the policies, procedures, and guidance related to the review. In March 2019, VBA began the second and final phase to review the approximately 9,700 remaining claims. As of May 29, 2019, more than 75 percent of reviews have been completed. VBA is finding that approximately 20 percent of claims reviewed have an error that requires additional development. VBA is taking necessary actions on these claims and all affected Veterans will be notified. Once the additional development actions are complete, each of those claims will be re-adjudicated to determine whether the decision to the Veteran changes. The most common development errors that have been identified from this review are:

- The Development Letter did not have the appropriate Department of Defense (DoD) report notification language;
- The MST Coordinator did not attempt to contact the Veteran for any additional reports; and

- The Veteran was not asked whether DoD Forms 2910 or 2911 were completed, nor whether the report was restricted or unrestricted.

Together, these development errors account for over 70 percent of the issues discovered in this review, and many of VBA's actions in providing additional training and guidance to claims processors and outreach personnel are aimed at preventing these errors of inadequate development. The target completion date for this recommendation is September 2019.

Specialized MST Processing

The second recommendation was to focus the processing of MST claims to specialized employees, as would also be required in H.R. 1092, the *Servicemembers and Veterans Empowerment Support Act of 2019.* VBA completed this recommendation, which OIG has now closed, and has designated specialized teams of trained Veterans Service Representatives (VSRs) and Rating Veterans Service Representatives (RVSRs) at every RO to process MST-related claims. These specially trained employees will maintain proficiency by working MST claims on a regular basis. Leveraging this best practice, VBA has proactively designated specialized teams for two other high-priority and often complex claims: amyotrophic lateral sclerosis and traumatic brain injury.

Additional Level of Review

The third recommendation required an additional level of review for all denied MST-related claims. In conjunction with establishing the specialized teams, VA instituted a requirement for 90 percent accuracy on at least 10 cases per employee, with all cases subject to a second-signature review until that accuracy rate is achieved.

Single-signature authority is granted for this specialized group of claims processors once the required accuracy rate has been accomplished. These claims are also subject to VBA's standard quality review process. VBA has requested closure of this recommendation.

Special Focus Review

OIG's fourth recommendation is to conduct a special focus quality improvement review of denied MST-related claims. As such, in the fourth Quarter of FY19 VBA will conduct a special focused review of MST claims that were denied between May 1, 2019 and June 30, 2019. The purpose of this initiative is to assess the impact of the updated guidance and training to improve the overall quality of MST decisions.

Training

With regard to OIG's fifth recommendation to update and monitor the effectiveness of training, VBA has significantly updated and improved the VSR and RVSR training for processing MST-related claims. VBA has updated courses on MST markers and claims development, as well as the overall "PTSD due to MST" course and has mandated this training for all VSRs and RVSRs who handle MST claims. Additionally, VBA will administer a targeted consistency study to assess the effectiveness of the training; this is on track for completion in September 2019.

Development Checklist

VBA fully implemented OIG's sixth recommendation to update the development checklist for MST-related claims in December 2018, and OIG closed this recommendation in January 2019. The updated checklist includes the specific steps claims processors must take in evaluating MST claims.

MST Outreach

Beyond the specific recommendations from the OIG, VBA is dedicated to improving outreach to Veterans affected by MST. VBA maintains two trained MST coordinators in every RO (one male and one female) whose names are posted on VBA's public facing website at https://benefits.va.gov/benefits/mstcoordinators.asp. The coordinators case-manage MST claims and personally reach out to Veterans to ensure they understand the types of information needed to process the claim. MST Coordinators serve as the primary point of contact for all claims related to MST and are expected to be subject matter experts for all Veteran and/or VBA staff questions regarding MST. MST coordinators can assist Veterans during the claims process and connect Veterans to MST-related resources available within the Veterans Health Administration and the local community. Also, two MST program managers in VBA central office provide guidance to the field on MST-related outreach. I have personally engaged MST coordinators and claims processors in the field and am committed to ensuring that MST remains a priority topic for our field leaders.

While it can be challenging to complete outreach for MST due to the sensitivity of the trauma, VBA ensures that all public contact representatives receive training to help them identify indicators of stressors that result from MST and signs of possible MST. VBA conducts routine targeted outreach that includes briefings on MST to inform, educate, and empower Veterans on access to the benefits and resources available to them. This includes information on how to file an MST claim and how to contact an MST coordinator. As of the second quarter in FY 2019, VBA completed 155 hours of

MST-related outreach at over 49 events, reaching 2,067 Veterans, family members, beneficiaries, and other stakeholders.

Additionally, VBA collaborates with VHA on MST counseling and treatment to ensure a warm hand-off and has provided MST-related training to DoD personnel.

Finally, VBA publishes MST-related information across its public-facing web and social media channels, and in November 2018, VA's Under Secretary for Benefits, Dr. Paul R. Lawrence, released a video emphasizing VBA's commitment to supporting those who have experienced MST, providing treatment to help the healing process, and ensuring compensation for those disabled by MST. This video can be viewed at https://www.youtube.com/watch?v=-b6NdB6cMwo.

H.R. 1092 – Servicemembers and Veterans Empowerment and Support Act of 2019

I will now move on to providing the Department's views on H.R. 1092, *Servicemembers and Veterans Empowerment and Support Act of 2019.*

H.R. 1092 would amend several sections of title 38, United States Code (U.S.C) relating to the administration of health care and benefits based on military sexual trauma. VA appreciates the intent of the Committee to enhance the processing of disability claims and treatment of Veterans who may have experienced MST during service. Provided Congress finds corresponding funding offsets, VA does not object to certain provisions of the bill but VA opposes others.

VA does not object to section 2 of the bill, which would add "technological abuse" to the list of definitions provided in 38 U.S.C. § 101. Further, VA does not object to the portion of section 4 of the bill, which would amend 38 U.S.C. § 1154 to include "technological abuse of a sexual nature" within the meaning of the term "MST." "Technological abuse" would include behavior such as cyber bullying, stalking, or

nonconsensual sharing of photographs or videos that may occur via the Internet, social media platforms, mobile devices, etc. VA views this addition and expansion of terminology as reasonable given the prevalence and access of cellular and internet-based communications in society.

Section 3 of H.R. 1092 would amend 38 U.S.C. § 1720D(a)(1) to authorize VA to provide a Veteran with counseling and care and services needed to overcome psychological trauma determined (in the judgment of a VA mental health professional) to have resulted from technological abuse of a sexual nature.

VA does not support section 3, as we believe VA's current authority is adequate in this regard. Under section 1720D, VA is authorized to provide counseling and treatment for trauma resulting from sexual harassment (defined as "repeated, unsolicited verbal or physical contact of a sexual nature which is threatening in character"), and this can include sexual harassment that is conducted through cyber contact, including the use of Internet social media services. Contacts with field staff over the years suggest that many clinicians would currently conceptualize experiences similar to those described in section 2 as falling within the scope of the existing definition of MST, assuming they had a sexual component, and this is consistent with the views of VHA's leadership and subject matter experts.

Section 4 of the bill would amend 38 U.S.C. § 1154 to specify the standard of proof for service connection of mental health conditions related to MST. VA does not object to the provision that would define the term "covered mental health condition" to include posttraumatic stress disorder (PTSD), anxiety, depression, or other mental health diagnoses described in the current version of the Diagnostic and Statistical

Manual of Mental Disorders that VA determines to be related to MST. In doing so, the bill would expand the coverage of the lowered evidentiary standard provided in VA regulation (38 CFR § 3.304(f)(5)), which currently only applies to MST-based claims for PTSD, to also apply to claims for other mental health disorders based on MST.

VA strongly opposes the amendment to section 1154 in section 4 of the bill that would require VA to accept as sufficient proof of service connection a diagnosis of a covered mental health condition by a mental health professional together with satisfactory lay or other evidence of such trauma and an opinion by the mental health professional that such covered mental health condition is related to MST in service. VA acknowledges that the circumstances of service make the claimed MST stressor more difficult to corroborate, and to that end, VA has promulgated regulations in 38 Code of Federal Regulations (CFR) §§ 3.303 and 3.304(f)(5), which establish equitable standards of proof and provide examples of the type of evidence needed to corroborate an in-service injury, disease, or event, for purposes of service connection.

The amended section 1154, as written, would, however, substantively create a new standard for establishing a nexus between a claimed mental health condition and a claimed MST stressor, and verification of stressful events when adjudicating and determining service connection for MST-related conditions. VA is concerned that the bill's language would functionally require VA to accept all allegations of an MST stressor and potentially award service connection based on a single lay statement from the Veteran, without even minimal evidence supporting the existence of an in-service stressor event (such as the supporting evidence and behavioral changes listed in VA regulations). VA views this type of evidence as needed to maintain the integrity of the

claims process. In essence, the bill would require VA to award service connection as long as there is a current diagnosis of a covered mental health condition, and a mental health professional who is willing to speculate that the claimant's symptoms are related to an event in military service reported by the Veteran. This would occur despite the mental health professional's inability to assess whether the claimed in-service stressor or event occurred.

The current statute, in 38 U.S.C. § 1154, emphasizes the importance of considering the time, place, and circumstances of service when evaluating disability claims. Subsection (b) of section 1154 specifically refers to consideration of claims based on engagement in combat with the enemy. Proposed H.R. 1092 mimics this combat language and places MST claims on par with combat related claims. The combat provision is based on acknowledgement of the disruptive circumstances occurring on a battlefield and the resulting incomplete record keeping. This is the reason for a lowered evidentiary standard with acceptance of the combat Veteran's lay statement as sufficient evidence of a combat stressor. It is not clear how the circumstances of MST events are similar enough to those of combat trauma to be placed in the same statute or why there is no necessary threshold evidentiary requirement beyond a lay statement related to MST, as distinguished from lay statements related to combat stressor events. Unlike in-service events related to combat, MST is not linked to the "places, types, and circumstances" of a Veteran's service, but can happen anywhere and at any time during service. Even with this lowered standard under current section 1154 for combat Veterans, VA must obtain threshold evidence that verifies the Veteran engaged in combat before the lay

statement can be accepted. By contrast, the proposed bill, as drafted, would essentially preclude VA from verifying basic information about claimed MST stressors.

Moreover, the proposed amendment would create a conflict with proposed section 1164(f)(3) which, when VA obtains conflicting evidence related to the substantiation of the claim, would require VA to "give more credence to the evidence that is more beneficial to the claimant." An unsupported lay assertion is "evidence" and would thus appear to take precedence over conflicting evidence of any nature. For example, if a claimant alleges that an assault occurred on a military base in Afghanistan, and VA obtains information reflecting that neither the claimant nor the assailant ever served in Afghanistan, VA adjudicators arguably would be required to give more credence to the claimant's allegation despite the provision in proposed section 1154(c)(1) that states "[s]ervice-connection of such covered mental health condition may be rebutted by clear and convincing evidence to the contrary." This conflict may result in disparate treatment of similarly situated claimants in VA adjudications.

Apart from our above-stated concerns regarding section 1164(f)(3), the addition of a new section 1164 to title 38, U.S.C., is unnecessary because such similar provision already exists in VA's regulations (see 38 C.F.R. §§ 3.303 and 3.304(f)(5)). VA has acknowledged the challenge of corroborating a Veteran's account of an MST, which led to the promulgation of regulations that allow decision makers to consider alternative sources of evidence (i.e., markers) when corroborating the MST stressor. These markers include substantially the same evidence listed in the proposed bill such as records from non-military health professionals, behavioral changes, and statements

from other Servicemembers or family members. VA regulations also include the requirement contained in the bill to provide, prior to any denial of a claim based on MST, the proper notice and opportunity for the claimant to supply non-military evidence relating to the MST claim, and the requirement to solicit an opinion from a medical professional as to whether evidence provided by the claimant indicates an MST event occurred.

The proposed section 1164 would also require VA to establish points of contact in letters to claimants and establish trained specialized teams to process MST claims. These statutory requirements would be redundant of requirements that VBA has instituted across all ROs.

VA opposes the provision of section 4 of the bill that adds a new section 1165 to title 38, U.S.C., which would require VA to submit annual reports to Congress on several aspects of MST claims processing through 2027. VA stands ready and willing to provide Congress with available data on MST at any time. However, certain reporting requirements from the bill would be untenable, and the proposed required data and metrics may not be captured by our current information technology/business systems. For example, VA cannot accurately identify the numbers of Veterans who fail to report for an examination annually. In addition, such reporting requirements would not represent a reasonable use of VA full-time equivalent capacity as such resources could be used in adjudicating claims. For example, VA notes the extensive efforts required to meet the bill's requirement to annually report a description of MST-related training, including frequency, length, and content of the training. Training across the 56 regional

offices varies depending on the position (i.e., MST coordinator, Rating Veterans Service Representative, etc.), employee turnover, individual quality review results, etc.

Section 4 of the bill would also require that VA establish specialized teams to process MST claims and to ensure team members are trained to identify markers indicating military sexual trauma. As mentioned, this requirement would be redundant as VA has already implemented specialized teams and ensured robust training for these designated claims processors. VA believes this provision is unnecessary and it reduces VA's flexibility in managing workload appropriately.

Section 5 of the bill would require DoD to provide Servicemembers with information regarding eligibility of services from VA. The Secretary of Defense would be required to ensure that DoD's Sexual Assault Response Coordinators advise members of the Armed Forces who report instances of sexual trauma about their eligibility for services from VA.

While VA defers to the Secretary of Defense on the specific obligations this section would impose, we support this section in principle. VA currently provides counseling for MST to Servicemembers and is pleased to do so. Informing Servicemembers of the benefits for which they are eligible is important to ensuring they receive the care and services they need.

Section 6 of the bill would express the sense of Congress that members of the Reserve and the National Guard should be able to access all VA health care facilities, not just Vet Centers, to receive counseling and treatment relating to MST.

While VA generally defers to Congress in expressing its sense, we note that Active Duty Servicemembers and National Guard and Reserve Component

Servicemembers on Active Duty can receive care at VA medical facilities (VAMC) in emergency situations or upon referral by military treatment facilities. Members of the Reserve and National Guard who are not on Active Duty have the option to purchase TRICARE Reserve Select, which could be a means for them to obtain a TRICARE referral and thus access care at a VAMC. For those members of the Reserve or National Guard who do not have TRICARE coverage, VA's Vet Centers remain an important option for receiving care through VA. Vet Centers are widely available and provide MST-related individual and group counseling, marital and family counseling, referral for benefits assistance, liaison with community agencies, and substance use information and referral. Vet Center counselors are fully trained and licensed mental health professionals who are clinically experienced in treating psychological trauma and associated issues such as anxiety, depression, and substance abuse. Vet Center Client Records are maintained independent of, and governed by, policies different than VA's medical facility records. They are thus completely confidential and unable to be shared with DoD without the permission of the Servicemember. This is in contrast to VA medical facility records, which are available to DoD providers via VA-DoD open record sharing. We further note there are some technical concerns with this section, such as the reference to section 1720D(a)(1) in section 6(b)(1), and we would be happy to work with the Committee to address these concerns.

Benefit costs associated with section 4 are estimated to be $272.6 million in 2020, $3.6 billion over five years, and $9.7 billion over ten years. In addition, significant administrative costs are associated with implementing the benefits proposed in this bill.

Looking Ahead

VA is grateful for the support of this committee and the ongoing efforts of this Congress and OIG in enhancing claims processing, treatment, and outreach for Veterans who have experienced MST.

We will continue to explore other ways to improve and supplement training and outreach for MST-related claims. We have internalized the actions initiated in response to the VA OIG report recommendations to ensure that robust training and quality systems remain in place for MST-related claims and the entire claims process. I look forward to continuing to work with the committee on initiatives to improve the Veteran experience with VA.

Conclusion

The number one priority of VBA is to provide Veterans with the benefits they have earned in a manner that honors their service. Due to the sensitive nature of the events that caused conditions related to MST, VBA must provide compassionate assistance to affected Veterans in gathering evidence necessary to complete their claims. To that end, VBA has ensured these claims are processed by highly skilled and experienced employees who receive specialized training on MST claims, engaged in comprehensive action to improve outreach, and committed to sustaining and enhancing these developments moving forward.

This concludes my testimony. I would be happy to address any questions from Members of the Committee.