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**STATEMENT OF
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OF THE DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
SEPTEMBER 19, 2019**

Chairwoman Luria, Ranking Member Bost, and Members of the Subcommittee:

Thank you for inviting DAV (Disabled American Veterans) to testify at today's hearing on Department of Veterans Affairs (VA) Contracted Exams, Quality Review Process, and Service to Rural Veterans.

DAV is a congressionally chartered national veterans' service organization of more than one million wartime veterans, all of whom were injured or made ill while serving on behalf of this nation.

To fulfill our service mission to America's injured and ill veterans and the families who care for them, DAV directly employs a corps of more than 260 National Service Officers (NSOs), all of whom are themselves wartime service-connected disabled veterans, at every VA regional office (VARO) as well as other VA facilities throughout the nation. Together with our chapter, department, transition and county veteran service officers, DAV has over 4,000 accredited representatives on the front lines providing free claims and appeals services to our nation's veterans, their families and survivors.

We represent over one million veterans and survivors, making DAV the largest veterans' service organization (VSO) providing claims assistance. This provides us with an expert understanding and direct knowledge in navigating the VA claims and appeals process. Recently, we reached out to our 260 DAV National Service Officers for their feedback and veterans' perceptions regarding VA contract exams.

Based on our collective experience, our testimony will discuss the impact of VA examinations, VA contract exam oversight and quality reviews, the service to rural veterans, and the feedback from our service officers.

THE IMPACT OF VA EXAMINATIONS

In order for veterans to receive their earned benefits, a claim must be established with the VA seeking service connection for specific conditions. Those claims are developed and adjudicated by the Veterans Benefits Administration (VBA). In fiscal year (FY) 2018, VBA decided 1.4 million disability claims in an average of less than 100 days with 95 percent quality.

As a part of the development process, a VA veterans' service representative (VSR) determines if a VA exam is required for the specific claimed condition. The VA Compensation and Pension (C&P) examination process is a vital part of the claims process as it can be determinative of the existence of a current condition, or if the veteran's illness or injury is related to their active military service or specifically, the severity of that condition.

VBA has created a new tool that provides the VSR, in real time, with information to determine whether the Veterans Health Administration (VHA) has the internal capacity to conduct the C&P exam. When VHA has the capacity, the exam request is then sent to the VA medical center nearest the veteran to schedule the exam. If VHA does not have the capacity, the exam request is sent to the Medical Disability Examination (MDE) program to be assigned to a VA contractor. If the request is accepted by the contractor, they contact the veteran to schedule the exam with a contract medical exam provider.

In many cases, the VA exam is the linchpin to establish or deny a claimed benefit. However, if a veteran fails to appear for exam or it is cancelled and not rescheduled, this can result in denial of benefits. For example, if a scheduled examination is not completed, it will be returned to VBA for review by a VSR to determine if the case is ready to rate. It is then assigned to a rating veterans' service representative (RVSR) for review and a decision. In this instance, the case would be decided based on the evidence of record without the benefit of medical evidence from a completed exam, which will usually result in a denial of the claimed benefit.

In other instances, a missed or cancelled exam can lead to a reduction of benefits. A re-examination or routine future examination (RFE) will be requested whenever VA determines there is a need to verify either the continued existence or the current severity of a disability. Veterans for whom reexaminations have been authorized and scheduled are required to report for such reexaminations. If a veteran does not report for the exam or it is cancelled and not rescheduled, VBA will issue a decision proposing to reduce the disability in question.

VA C&P exams are of a unique importance and missed or cancelled exams can negatively impact a veteran's claim and disability rating. If a negative decision is rendered based on a missed or cancelled exam, the veteran cannot simply request to reschedule the exam. At this point, the veteran is required to submit a supplemental

claim requesting a new exam for the claimed conditions, thus requiring additional time, development, and a new scheduled exam for a new VA rating decision.

VA CONTRACT EXAMS

Starting in 1996, as part of a pilot program, VA was authorized to complete disability exams from non-VA medical sources to increase its capacity and improve timeliness, but stipulated no more than ten VA Regional Offices (VAROs) could participate. These contract exams, originally managed by the VHA, later to be called the Disability Exam Management (DEM) contract exams, were expanded from ten to fifteen VAROs between 2014 and 2016.

In 2016, VHA officially transferred to VBA the national compensation and pension disability exam contract and program management. VA established VBA's Medical Disability Examination (MDE) program to manage and oversee contractors, monitor their performance, and ensure that they meet contract requirements, while enhancing the prompt delivery of disability benefits claims and improve the disability exam experience for veterans. The disability contract exam program was also expanded to allow all VAROs access to use the mandatory contract exam program starting in FY 2017.

The contracts for the vendor-provided VA examinations require a specialized focus on three areas: quality, timeliness and customer satisfaction. The examiners for the vendors are required to complete the same training as provided to VHA examiners. In reference to the timeliness, the contract exams are required to be completed within 20 days generally, or within 30 days for specialized exam requests outside of the vendor's network.

The use of VA contract exams has vastly increased since October 2016. In FY 2017, 1.3 million veterans received C&P examinations, of which 45 percent were provided by VA contractors at a cost of \$765 million and in FY 2018, 1.4 million veterans received VA C&P exams, of which, nearly 60 percent were provided by VA contractors at a cost of \$896 million. This increased reliance on VA contract exams, in addition to the importance of a VA examination for a veteran's claim, requires close monitoring and oversight of the VA contract exam program.

October 2018 Government Accountability Office Report

In its report, VA Disability Exams "Improved Performance Analysis and Training Oversight Needed for Contracted Exams," GAO found the following: VBA reported contractors missed exam quality targets and VBA could not accurately measure performance on timeliness targets; delayed quality reviews and performance reports and data limitations hinder VBA's monitoring of contractors; VBA's data limitations hinder its ability to oversee certain contract provisions, and VBA has not conducted comprehensive performance analysis; auditor verifies contracted examiner licenses, but

VBA does not verify training completion or collect information on training effectiveness. The report's recommendations are listed below:

1. The Under Secretary for Benefits should develop and implement a plan for how VBA will use data from the new exam management system to oversee contractors, including how it will capture accurate data on the status of exams and use it to (1) assess contractor timeliness, (2) monitor time spent correcting inadequate and insufficient exams, and (3) verify proper exam invoicing.
2. The Under Secretary for Benefits should regularly monitor and assess aggregate performance data and trends over time to identify higher level trends and program-wide challenges.
3. The Under Secretary for Benefits should document and implement a plan and processes to verify that contracted examiners have completed required training.
4. The Under Secretary for Benefits should collect information from contractors or examiners on training and use this information to assess training and make improvements as needed.

November 2018 Disability Assistance and Memorial Affairs Subcommittee Hearing

In November 2018 at the House Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs hearing, Exploring VA's Oversight of Contract Disability Examinations," VBA acknowledged the problems outlined by the GAO report and concurred with it.

VBA noted its electronic management system (EMS) for managing, data capturing, and overseeing the contract vendors was fully operational. The staffing of MDE was noted to be at 17 FTEE and VBA noted it was sufficient to maintain the program and provide proper quality review of the contract vendors and examinations.

At the hearing, VBA announced that the new vendor contracts had been awarded. The contracts contain required standards based on performance measures:

- The quality standard is a 92 performance rating after six months.
- The timeliness standard is 75 to 85 percent of the inventory exam requests must be within 20 days for C&P exams.
- The customer satisfaction standard is a 90 to 94 percent rating, which is a new standard on all contracts.

The contracts also contain financial incentives as well financial disincentives concerning the standards set for quality, timeliness and customer satisfaction.

Subsequent to the hearing, it was announced that the new MDE program contracts were awarded to the following contractors: Logistics Health Inc. (LHI); QTC Medical Services Inc. (QTC); Veterans Evaluation Services (VES); VetFed Resources Inc. (VetFed).

June 2019 Office of Inspector General Report

In June 2019, OIG released its report, “Inadequate Oversight of Contracted Disability Exam Cancellations.” This report was based on essentially the same time period as the 2018 GAO report and identified similar issues with the oversight of the VA contract examination process.

The OIG report did include a new concern not specifically addressed by the GAO report; disability exam cancellations. The number of contracted exam requests has increased since 2017. The contracting officer overseeing the MDE contracts stated that VBA anticipated these numbers would continue to increase as the overall volume of claims was expected to rise.

Claims processors requested 1,342,123 DBQ exams from November 1, 2017 through April 30, 2018—an approximate 19 percent increase over the previous six-month period (May 1, 2017 through October 31, 2017). The OIG team determined that during these same time frames, cancellations increased by 74 percent.

If a contractor reports a cancellation reason, such as a veteran was a no-show for an exam, the case will be decided based on the evidence of record without the benefit of medical evidence from a completed exam. This type of situation usually leads to a denial of the benefits sought. As we previously noted, if VBA issues an adverse decision as the result of an improper exam cancellation and the veteran then disputes it, the veteran must submit a supplemental claim to have the exam rescheduled, which will cause further delays.

One factor that may be contributing to the increase in exam cancellations, is the contractually required 20-day time period for exam completion. As we will reveal further in the testimony, contractors are not allowing veterans to reschedule exams that may place them outside of the 20-day time period. Of further concern is that contractors struggling to meet this standard may be improperly cancelling exams to protect their reported timeliness.

Another factor that may be adding to the increased exam cancellation may be a contractor’s pursuit of the additional incentives for timeliness. To be eligible for incentives for timeliness, the other standards must also be met. The new contracts contain financial incentives that allow for a five percent bonus if the examinations are completed in 15 days or less. A five percent bonus, when considered with \$896 million spent on VA contract exams last fiscal year, could be motivation to find means to reduce exam timeliness for financial gain.

Recommendations

Given the recent increases in contracted disability exam cancellations and the number of veterans involved, we are greatly concerned over improperly cancelled examinations and the impact on veterans trying to establish service-connected disabilities and increased evaluations and thus make the following recommendations:

- Require VBA, through the MDE, to track all cancelled VA contract exams with specific reasons for the cancellations and provide a quarterly report to Congress.
- Require all existing and future VA exam contracts to add cancelled exams as a performance measure with a base standard and incentives as well as disincentives.

Cancelled VA contract exams need to be closely monitored as part of the ongoing quality reviews as these can have detrimental effects for all veterans but specifically rural veterans, as their access to VA or VA contract exams is much more limited.

SERVICE TO RURAL VETERANS

For rural veterans, improperly cancelled exams have an even more profound effect given the limited number of health care resources and the large geographical distances between veterans and basic levels of health care. VHA recognizes the challenges of providing accessible care to rural veterans and currently allocates 32 percent of its health care budget to rural veteran care.

In rural areas, basic levels of health care or preventative care may not be available to support long-term health and well-being. Compared to urban areas, rural communities tend to have higher poverty rates, more elderly residents, residents with poorer health, and fewer physician practices, hospitals and other health delivery resources.

As noted by the VHA Office of Rural Health, there are 4.7 million rural and highly rural veterans with 2.8 million enrolled in VHA. Rural veterans experience rural health care challenges that are intensified by combat-related injuries and illnesses.

VA's Annual Benefits Report for FY 2018 shows the most prevalent service-connected disabilities of new compensation recipients were three different neurological disabilities, hearing loss, and post-traumatic stress disorder. These all have special requirements for testing for VA examinations which may not be readily available in rural and highly rural areas. As noted above, rural communities have fewer physicians available; this, coupled with the most prevalent service-connected disabilities of new compensation recipients in 2018, clearly places rural veterans at a disadvantage to

receiving timely VA examinations from qualified health care professionals even when utilizing VA contract exams more frequently.

Enacted in 2016, Public Law 114-315, section 109, "Improvements To Authority For Performance Of Medical Disabilities Examinations By Contract Physicians," notes that a physician may conduct an examination pursuant to a contract, at any location in any state, the District of Columbia, or a Commonwealth, territory, or possession of the United States, so long as the examination is within the scope of the authorized duties under such contract. A physician is defined as one who has a current unrestricted license to practice the health care profession of physician.

The above public law allows contract exam vendors to provide examining physicians to rural areas that may not have examining physicians available in their state or territory. This also provides MDE with more options to get VA contract exams in areas with potential backlogs of scheduled exams and limited resources. However, the law speaks only to physicians and psychiatrists; however it does not include other licensed health care professionals such as nurse practitioners, clinical psychologists, and other clinical health care professionals that are qualified to conduct VA examinations.

Recommendation

Rural and highly rural veterans are in areas with limited medical and health care resources. Thus, providing them with timely and quality VA contract examinations for their VA claims can be challenging and all avenues to provide them the same options as veterans in urban areas are a necessity and we make the following recommendation:

- Amend Public Law 114-315, section 109, to include licensed health care professionals such as nurse practitioners, clinical psychologists, and other clinical health care professionals, to conduct VA contract examinations at any location in any state, in the same manner as physicians. This should include all non-physician health care professionals that the VA currently accepts as examiners.

As we will discuss below, our feedback from our National Service Officers provides us with an insight to the VA contract exam issues facing veterans and specifically rural veterans. Our office in North Dakota reported that there are only two contact examiners available to them, requiring them to drive over 70 miles and in some instances, veterans are being asked to travel over 3 hours one way for a VA contract examination.

Access to VA health care for rural veterans is challenging, but receiving VA C&P examinations to receive their earned compensation benefits should not be. This recommendation will enhance the MDE and contract vendors to provide timely and quality examinations to the men and who served and reside in rural and highly rural locations.

FEEDBACK FROM DAV'S NATIONAL SERVICE OFFICERS

Finally, we recently solicited feedback from our 260 DAV National Service Officers at over 60 locations throughout the country regarding VA contract exams over the last six months. The feedback yielded the following information:

- Almost 70 percent of our NSO offices reported that contractors cancelled exams when veterans were willing and able to report for the exam and more than 80 percent reported that veterans whose exams were cancelled were unable to reschedule with the contractors. Also of importance is that 75 percent of NSO offices reported that it was easier to reschedule exams with VA examiners; while just 12.5 percent said it was easier with contractors.

This is consistent with contractors not being willing to schedule or reschedule outside of the 20-day period. While we understand that is part of the requirements of the contracts, this is not providing service to veterans but providing service to the contractual obligations.

- NSO offices reported that the number one complaint from veterans regarding contractor exams by far was that felt the exams were not thorough (43 percent); next was that examiners were not knowledgeable (20 percent) about the veteran's claim at the time of the exam.

While these two complaints may not speak to the actual quality and thoroughness of the VA contract exams, as required by VA; they do speak to the perception of veterans about the quality and satisfaction of VA contract exams.

- Approximately 40 percent of NSO offices reported that some veterans were not receiving beneficiary travel pay after their contract exams.

In conclusion, VA disability exams are essential for substantiating veterans' disability claims. If VHA does not have the capacity for the exams, then VA contract exams must fill in the gaps. Due to the increased quantity of VA contract exams and their impact on disability claims, it is imperative that VA conduct monitoring for quality and timeliness. Improperly canceled exams can cause preventable delays and denials in awarding earned benefits to, regardless of where they reside. We need to ensure that the VA contract examination process serves the needs and best interests of the men and women made ill or injured by their service, and not that the VA contract examination process serves only the obligations and requirements of the contracts.

Madame Chair, this concludes my testimony on behalf of DAV. I would be happy to answer any questions you or other members of the Subcommittee may have.