

**STATEMENT OF
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BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS**

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Good morning, Chair Luria, Ranking Member Nehls, and Members of the Subcommittee. Thank you for the opportunity to speak today on the Veterans Benefits Administration (VBA) Contract Medical Disability Examination (MDE) Program. I will provide an update on how VBA is delivering contract examination services to Veterans during the COVID-19 pandemic and how VA is addressing the workload of Compensation and Pension (C&P) examinations. Accompanying me today is Toby Mathew, Chief Officer, Office of Disability and Medical Assessment, Veterans Health Administration (VHA).

Statutory Authority

VBA orders an examination and/or medical opinion when adjudicating a disability C&P claim. This occurs when there is insufficient medical evidence of record to decide the claim. Prior to 1996, VA ordered C&P examinations exclusively through VHA. However, VA's contract examination program is its current, primary source for these examinations.

Congress first authorized VA to contract for C&P examinations in 1996 due to concerns about VHA capacity and timeliness in 10 heavily Veteran-populated locations. Specifically, Public Law (P.L.) 104-275, *Veterans Benefits Improvements Act*, authorized the Secretary of Veterans Affairs to contract through VBA using mandatory funds for examinations from non-VA sources. VBA began utilizing contract vendors to complete examinations in 1996, with the authority limited to 10 regional offices (ROs) requesting examinations through contracts. Congress expanded VA's authority to use contractors to complete C&P exams in 2003, specifically to allow VBA to utilize its appropriated funds to support additional locations. Public Law 113-235, *Consolidated and Further Continuing Appropriations Act, 2015*, authorized the Secretary to incrementally expand the use of contract examinations, to 12 ROs in fiscal year (FY) 2015, 15 ROs in FY 2016, and to as many ROs as the Secretary considered appropriate beginning in FY 2017. As authorized, VA implemented the law through contracts that cover all areas of the Continental United States and 37 territories and foreign countries. The expansion has afforded VBA a greater opportunity to complete a larger volume of examinations with greater flexibility in a more efficient manner. The contracts are the primary source for examinations, but VHA continues to provide supplemental examination capacity. As a result, the model authorized by Congress has

enabled VBA to provide more timely benefits decisions to Veterans. Additionally, the contracts enable VBA to request examinations for Veterans and Service members in certain overseas locations, which was not an option previously provided through any source. Almost 15,000 examinations were completed for overseas Veterans in FY 2020.

Through these statutory authorities, all ROs now have the flexibility to request an examination or medical opinion from VHA facilities or designated contract providers closest to where the Veteran lives or receives regular medical treatment. Claims processors at ROs use an online tool enabled by real-time VHA examiner availability data and by examination type to determine whether VHA has the internal capacity to complete an examination request or whether to direct the examination request to a contract vendor.

COVID-19 Pandemic

In April 2020, in response to the COVID-19 pandemic, VHA elected to transition all C&P examinations to contract vendors in order to focus on health care, and VBA suspended all in-person examinations. When recognizing that in-person examinations would not be possible due to the COVID-19 pandemic, VA took steps to keep Veterans and examination providers safe and minimize the impact on its processing of Veterans' claims to the extent possible.

VBA instructed its vendors to maximize the use of Acceptable Clinical Evidence (ACE) and Tele-C&P appointments. ACE exams are a collaborative process between VBA and VHA to expand the types of examinations that could be completed virtually. In May 2020, VHA resumed completing C&P examinations through ACE and Tele-C&P examinations at 82 facilities. Additionally, VBA authorized its vendors to resume in-person examinations where local risk assessments indicated it was safe to do so and only after each vendor submitted a plan for resuming examinations according to Centers for Disease Control and Prevention COVID-19 safety protocols. From April 11, 2020 through March 14, 2021, VA completed 102,189 examinations through ACE and 99,901 Tele-C&P examinations.

While in-person C&P examinations have resumed in most locations, there are understandably some Veterans who will decline in-person examinations due to the pandemic. If the examination is one of the 29 types of exams currently authorized for Tele-C&P or ACE, or if the examiner determines that Tele-C&P or ACE is clinically feasible, Veterans with a previously scheduled in-person examination are offered this option. VBA provides Veterans the opportunity to wait for an in-person examination, and they are assured that no final action, including a denial, will be taken on their claim until an in-person examination can be completed.

The changes VA has made to virtual services are enduring and intended to go beyond COVID-19. VA continues to work closely with the medical contractors and VHA medical centers to schedule examinations in a timely and safe manner under these extremely unusual conditions.

Training

In order to best serve Veterans and provide consistent results, contract examiners, who have the same professional qualifications and undergo the same specific C&P training and certification program that VHA examiners complete, are utilized. There are approximately 12,000 contract examiners, all of whom have completed the C&P certification training. Certification training includes topics specific to Veterans, such as toxic exposures related to Gulf War Illness, military sexual trauma (MST), and traumatic brain injuries. In addition to the required C&P certification training, contract examiners complete additional training, such as the *MDE Understanding Military Culture and Veterans* and the *MDE Suicide Awareness and Prevention* courses.

Contract examiners also receive privacy training to ensure all Veteran medical information is protected under the Health Insurance Portability and Accountability Act. Contract examiners and VHA examiners conduct identical disability evaluations according to the requirements of the same VA Disability Benefits Questionnaires. Contract examiners must complete recertification every three years or prior to being assigned an examination if they have not conducted an examination within the previous 12 months.

Quality

VBA's medical disability examinations assess disability for purposes of medical evidence in a benefit claim according to a standard protocol used by VA's contract vendors and VHA. All contract examiners must hold an active state license to practice medicine, with no previous or pending disciplinary proceedings involving professional conduct. VBA has a contract with a third-party vendor to audit and ensure that providers have current and appropriate licenses to practice within their health care specialty. Moreover, whether conducted by a contract examiner or VHA examiner, examination results are given the same weight and consideration in the initial VBA disability compensation claim process, VBA decision reviews, appeals to the Board of Veterans' Appeals, and appeals to the Federal courts.

VBA also conducts oversight audits on examination reports completed by contract examiners. A sample is reviewed for each contract using standardized audit criteria, resulting in approximately 1,100 quality reviews conducted each month. The quality review confirms the examiner complied with all government instructions and addressed all questions completely, and that the examination report aligns with information of record and includes explanations when it does not. VBA provides feedback to its vendors on quality in various ways, to include error citation reports for each contract each month, vendor-specific monthly quality calls, vendor-specific monthly clinician calls, and ad hoc questions and answers. Additionally, VBA conducts special focused reviews on specific examination types, providers, or based on error trends to provide additional oversight and feedback.

Workload

It is important to differentiate the term “backlog” (i.e., claims that are 125 days or older) from excess examination inventory when discussing the C&P examination process. The claims backlog cannot be correlated on a one-to-one basis with the number of examinations pending with the contract vendors because there are claims in the backlog that do not have corresponding pending examinations, and there are other factors that affect reduction of the claims backlog. Examination inventory is considered excess or extra if it is greater than the normal working inventory of 140,000.

Despite a two-month suspension of in-person C&P examinations beginning in March 2020, which caused over 200,000 extra examinations to accumulate, VA incrementally resumed exams where it was safe to do so and stopped the growth of the examination inventory by the end of FY 2020. Currently, there are 212,000 excess examination requests. During the pandemic, the average days pending for an examination request increased by 69.8 days. This year, VBA’s vendors have already increased their examination capacity beyond pre-pandemic levels by more than 20 percent and the average days pending for an examination request has dropped by almost 4 days. VBA’s vendors will continue this progress until VA eliminates the excess inventory of examinations. Vendors are prioritizing examination scheduling based first on VBA priorities such as homeless Veterans and secondly by the examination request with the oldest date of claim.

While there are many benefits to Congress’ expansion of VA’s contract examination authority, to include having a ready international provider network that can fully support modern claims processing, VA does not intend to contract out the entire C&P examination program. In fact, during the pandemic, VHA is expanding its contribution to resolution of the excess pandemic-related examination inventory by collaborating with VBA to target certain high-volume in-person examinations needed for audiology, musculoskeletal and mental health conditions. VHA will continue to maximize the completion of other exams using its telehealth technology, and the ACE procedure and VBA’s contract vendors will continue to focus on other types of pending in-person examinations. VA anticipates that this strategic approach to addressing the excess examination inventory will ensure that it meets its goal of returning to a normal examination inventory by the end of FY 2021.

Conclusion

In summary, after having to cease all in-person exams for two months and then running at less than full capacity for another four months, we are now positioned to expand capacity and reduce the excess C&P exam inventory. MDE contract vendors continue to provide C&P examinations in those instances where VHA does not have the capacity. VA appreciates the authority provided by Congress to obtain contract examinations for Veterans and transitioning Service members. VA also appreciates the patience and understanding of our Veterans as we resolve the extra inventory created

by the global health emergency. Continuous oversight and enhancement of the MDE Program remain priorities as well as looking for opportunities to further streamline the examination process.

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