



CONGRESSIONAL TESTIMONY

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

PROVIDED TO THE

HOUSE COMMITTEE ON VETERANS' AFFAIRS

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

HEARING ON

"VA DISABILITY EXAMS: ARE VETERANS RECEIVING QUALITY SERVICES?"

JULY 27, 2023

Chairman Luttrell, Ranking Member Pappas, and Members of the Subcommittee:

The American Federation of Government Employees, AFL-CIO (AFGE) and its National Veterans Affairs Council (NVAC) appreciate the opportunity to submit a statement for the record on today's hearing titled "VA Disability Exams: Are Veterans Receiving Quality Services?" AFGE represents more than 750,000 federal and District of Columbia government employees, 291,000 of whom are proud, dedicated Department of Veterans Affairs (VA) employees. These include front-line providers at the Veterans Health Administration (VHA) who perform VA disability exams, including Compensation and Pension (C&P), as well as the VBA claims processors who request claims to help determine a veteran's benefits. AFGE appreciates the opportunity to provide our views at today's hearing that will review the Department of Veterans Affairs (VA) oversight of disability exams conducted by Veterans Health Administration clinicians and contractors.

Background:

There is no need to belabor the history of C&P exam outsourcing over the past three decades. Suffice it to say that disability exams, including C&P exams, used to be performed almost exclusively by VA clinicians. As should be well known by the Subcommittee, in 1996, Congress authorized a limited program allowing only 10 VBA Regional Offices (ROs) to assign C&P exams to outside contractors. The pilot program was later expanded, and gradually allowed all ROs to engage outside contractors starting in Fiscal Year 2017.

The migration of C&P exams from the VA to private contractors has far exceeded what Congress intended when it authorized the VA to use private contractors in a limited and supplemental manner for the provision of C&P exams. Today, approximately 90% of all disability exams are performed by VA contractors. The cost of this privatization of has been

staggering. In 2016, the VA expanded the contracting of C&P exams by awarding 12 contracts to private contractors valued at \$6.8 billion over five years.

AFGE has closely monitored the effect of the VA's reliance on contractors has had on the provision of C&P exams. Based on the growing evidence of deficiencies in contracted C&P exams and feedback from VA employees whom AFGE represents, it is AFGE's judgement that veterans requiring C&P exams – as well as taxpayers would – be far better served if these exams were conducted in-house by VA professionals than by private contractors.

Benefits of VHA In House Exams

No one disagrees that the outcome of C&P exam has a far-reaching impact on a veteran's future. A veteran's economic security and well-being, as well as that of his or her family's, can be decisively affected by the results of this exam. Because so much is riding on it, we all want the VA to get the C&P exam right, and on the first try. Above all, we all want the veteran receiving the exam to have the confidence that his or her exam has been conducted by a highly skilled and experienced clinician whose allegiance is to the VA's mission and values and who is directly accountable to the VA for the quality of the exams performed and the treatment and respect accorded to the veteran.

To achieve this, AFGE believes there should be uniformity and consistency in the clinicians who are charged with this important task. In many ways, a C&P examiner is a judge, expected to render an objective and fair decision that considers the veteran's entire medical history and military service. At the same time, a C&P examiner is a caregiver, expected to treat the veteran before him or her with compassion and sensitivity.

To the extent others share AFGE's conviction, it is hard to understand why we would tolerate an overwhelming volume of C&P exams migrating from VA clinicians to a panoply of private contractors.

Simply put, the most important determinant in the outcome of veteran's exam is the clinician performing the exam. And it logically follows that who employs the clinician has a strong correlation on how the clinicians goes about this important work. Every place of employment, public or private, has its own unique culture and incentives that manifest themselves in how employees are paid, how much flexibility employers give their employees to manage their caseload, and how much opportunity employees are given to practice and perfect their professional trades.

AFGE believes that compared to private contractors, VA has a vastly superior culture and incentive structure for C&P examiners that redounds to the benefit of veterans and their families, with a focus on quality instead quantity driven approach of private contractors.

Workplace Culture and Incentive Structure

C&P examiners work for the VA and are paid fixed salaries for their work. Importantly, this means that their compensation does not vary based on the number of exams they perform each day or week. Consequently, examiners give each veteran before them the time and attention to conduct the exam thoroughly. They have no financial incentive to rush through a disability exam. To the extent examiners do have incentives, they are often harmful. An exam rife with errors or omissions will impair a VA clinician's performance evaluation and result in disciplinary action – one of the most important features of Title 5 and Title 38 governing VA employees that does not apply to private contractors.

Additionally, with no incentive or pressure to rush through their work, VA clinicians can be thorough in their examination. This is particularly important in the administration of the Integrated Disability Evaluation System (IDES), one of the true innovations in the care of veterans in which disability claims examiners play a critical role – and which private contractors, because of the complex nature of the IDDES program, do not. The IDDES program was developed by VA and the Department of Defense to improve the experience of service members facing potential medical discharges. By integrating the VA claims process into the DoD disability evaluation process, IDDES provides participants with a single set of medical exams and a single-source disability rating that serves as the basis for VA’s disability determinations. IDDES ensures consistency in disability determinations and the timely award of VA Disability Compensation Benefits to service members who are medically discharged and is an underutilized method of effectively and efficiently getting veterans their disability rating without filing claims at VBA.

In contrast, private contractors’ focus is time – specifically, how to fit as many C&P exams in the time they allocate for them. There is no getting around the basic fact that private contractors take on C&P exams to make money. Their secondary focus on veterans. The incentive and focus on quantity results in a loss in quality, with less attention being given to the veterans whose exams are at issue, and can lead to more mistakes, the need for additional exams, and a delays in receiving benefits that can last years.

Unique Expertise

It is by now widely recognized that veterans medical care, like pediatrics and gerontology, is a specialty focused on a distinct population. Like VA medical professionals generally, VA C&P examiners exclusively practice veteran medicine. They are constantly acquiring experience and expertise diagnosing health care conditions either unique to or

prevalent among veterans, such as Traumatic Brain Injury (TBI), Post Traumatic Stress Disorder (PTSD), Military Sexual Trauma (MST), Veterans who served as Prisoners of War (POWs), and toxic exposure illnesses covered under the PACT Act. A workforce of clinicians who regularly, if not exclusively, perform disability exams offers veterans a significant benefit for their exam.

Failure of Accountability

At a time when the House Veterans Affairs Committee examined accountability at the VA, the committee must direct that focus on more accountability and oversight of private C&P contractors and their substandard performance.

Numerous studies by GAO and the VA Office of Inspector General in the past few years show that the track record of private contractors performing C&P exams, the VA's oversight of contractors, and the savings promised to taxpayers have fallen far short of expectations. Outsourcing has resulted in problems of cost, quality, overbilling, lack of subject matter expertise, and training of those conducting the exams. Congress must admit and correct these serious problems, not double-down on a privatization model that has failed veterans.

These studies show that the vast and rapid expansion of privatization has not been accompanied by a corresponding increase in VA oversight of private contractors. For example, the department has been slow to adopt clinical quality measurement for, and evaluation of, contractor exams. The VA has also consistently lacked sufficient information on contractors' performance regarding the quality and timeliness for exams. To the extent the VA has been able to rate performance, most contractors' quality scores have fallen below VBA's target score. Even a task as basic as verifying contractors' claims of veterans failing to show up for C&P exam appointments, for which the VA is obligated to pay penalties, has not been carried out by

the VA in a consistent and vigorous manner, potentially resulting in millions of dollars in payments to contractors for false no-shows that could instead be used to insource these exams.

Recommendations:

AFGE recommends that VA's own highly trained, credentialed, experienced, and accountable employees should perform C&P exams, with very few exceptions, and should be the VA's exclusive provider for specialty exams. The continued failures of C&P contractors make the elimination of in-house C&P capacity around the country all the more troubling. AFGE welcomes the opportunity to work with the House Committee on Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs to build on the progress made in the last Congress and craft new legislation to restore VA's internal C&P exam capacity and narrow the VA Secretary's unrestricted authority to contract out these exams. In the near term, AFGE urges immediate action to stop the elimination of C&P examiner positions around the nation and urges the VA to only provide internal C&P exams for mental health and specialty claims to better assist veterans when immediate or emergency treatment is needed.

AFGE appreciates the House Committee on Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs holding this important hearing, and we look forward to working with the Committee to find ways to improve C&P exams for all veterans.