

**TESTIMONY OF
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THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS AND
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"AT WHAT COST? ENSURING QUALITY REPRESENTATION IN THE VETERAN
BENEFIT CLAIMS PROCESS"**

APRIL 27, 2022

Chairman Pappas, Chairwoman Luria, Ranking Member Mann, Ranking Member Nehls, and distinguished members of these Subcommittees, on behalf of National Commander Paul E. Dillard and the nearly two million dues-paying members of The American Legion, we thank you for inviting The American Legion to testify today. The American Legion is directed by the commitment of Legionnaires who dedicate their time and resources to the continued service of veterans and their families. As a resolution-based organization, our position is guided by more than 100 years of advocacy and resolutions that originate at the grassroots level of our organization.

The benefit claims process can be an intimidating venture for veterans seeking compensation for service-connected disabilities. The process is filled with forms and terms that are unfamiliar and sometimes confusing for the uninitiated. Despite this, it is a necessary step in ensuring veterans have access to quality benefits and services. It provides the opportunity for individuals to be treated for conditions that have manifested because of their service and ensure that they receive appropriate care and compensation.

Unfortunately, some unaccredited for-profit enterprises have sought to take advantage of veterans attempting to navigate this complex process, with promises of faster results and more favorable outcomes. This is often done at an unreasonable and exorbitant cost to the veteran while skirting Department of Veterans Affairs (VA) regulations with unethical practices. Veterans seeking treatment for service-connected conditions should have access to quality representation without fear of being preyed upon by unethical for-profit enterprises.

Vital Role for VA-Accredited Veterans Service Organizations

The American Legion provides veterans with assistance in filing disability claims free of charge and with no membership requirement. Veterans will not be charged at any point while filing their claims and will be guided through the process by VA-accredited representatives who oftentimes have many years of experience. With a national network of more than 2,000 accredited

representatives, The American Legion helped veterans secure more than \$14.8 billion in compensation from initial claims in Fiscal Year 2021, with an average monthly payment of \$1,428 per beneficiary. For those veterans who applied for dependency and indemnity compensation (DIC), death compensation and VA pensions, we assisted claimants with 7,400 successful new awards issued during the COVID-19 pandemic in 2020.¹

Additionally, The American Legion employs a team who assist veterans in filing appeals if their claim has been denied. As of December 2021, we helped American Legion-represented appellants to receive more than \$47 million in VA award grants.²

We also have employees who assist veterans and surviving spouses with pension-related issues. Their free services include the filing of original claims and assisting with debt-management issues arising from overpayments. In 2021, our pension management employees assisted more than 2,500 veterans and surviving spouses with processing claims, 606 claimants with debt-management issues, and submitted nearly 10,000 supporting documents on their behalf to VA.³

The actions of VA-accredited representatives are clearly outlined and governed by law to ensure veterans and their families receive quality representation throughout the claims process.⁴ They are not only required to abide by a set of “VA Standards of Conduct”⁵ but must be “of good character and reputation” and demonstrate “an ability to represent claimants before the VA.”

Accredited representatives fall under VA’s Enforcement Authority which allows VA “to investigate and suspend or remove the VA accreditation of any individual who violates the standards of conduct for VA-accredited practitioners.”⁶ Additionally, anyone being represented by an accredited agent can file a complaint by contacting VA’s Office of the Inspector General, VA’s Office of the General Counsel, the Federal Trade Commission, or their State Attorney General.

These protections ensure that veterans and their family members are receiving assistance from accredited individuals in an ethical manner, while protecting VA by providing an enforcement mechanism to go after bad actors with dishonorable intentions. While initial claim services can be relatively simple, more complex cases for veterans at the appellate level can require VA-accredited attorneys and agents who specialize in the appeals process.

¹ Veterans Benefits Administration. The American Legion Power of Attorney Report, September 2021.

² Data reported by The American Legion National Veterans Affairs and Rehabilitation Division, Washington, D.C.

³ Data reported by The American Legion’s Pension Management Center, Minneapolis, Minn.

⁴ “38 CFR § 14.629 - Requirements for Accreditation of Service Organization Representatives; Agents; and Attorneys.” Legal Information Institute, accessed April 20, 2022, <https://www.law.cornell.edu/cfr/text/38/14.629>.

⁵ “Standards of Conduct for VA Accreditation,” Standard of Conduct for VA-Accredited Attorneys, Claims Agents, and VSO Representatives, accessed April 20, 2022, <https://www.va.gov/OGC/docs/Accred/StandardsofConduct.pdf>.

⁶ “Accreditation Program Enforcement Authority,” VA Accreditation Program Enforcement Authority (Department of Veteran Affairs Office of General Counsel), accessed April 20, 2022, <https://www.va.gov/OGC/docs/Accred/EnforcementAuthority.pdf>.

Vital Role for VA-Accredited Attorneys and Agents

The VA-accredited attorneys and agents provide vital services that complement those provided by veterans service organizations (VSOs) and representatives. These individuals and firms often work in close coordination with their VSOs to ensure veterans have qualified representation for more complex cases. They provide critical services to veterans, including assistance in obtaining key information to prevail in a claim or appeal.

These attorneys and agents assist claimants with medical nexus opinions, professional vocational reports, and professional research for missing unit or ship information from federal and state archives. They also use their legal skills and provide the appropriate legal analysis for written arguments, with current citations to recent precedent-setting court opinions, to assist veterans in navigating VA's complex and evolving claims and appeals system.

The actions of these VA-accredited attorneys and agents, including the amounts they are authorized to charge veterans for services, are clearly outlined and governed by law.⁷ U.S. Code provides that fees to attorneys/agents may only be paid from past-due benefits. Only VA-accredited agents and attorneys may receive fees after successful representation.

Additionally, fees that exceed 33 1/3 percent of past-due benefits shall be presumed to be unreasonable. Furthermore, an attorney or agent may elect to have VA withhold and pay them a fee directly if it does not exceed 20 percent of past-due benefits. This means fees cannot be charged for or withheld by VA from future benefits.⁸ This establishes a presumption of reasonable fees, which is a key protection for veterans and their families.

The American Legion has a partnership with the VA-accredited national law firm Bergmann & Moore (B&M), LLC, to provide advanced legal counsel on more complex appeals cases and legal training assistance. They assist in the development of lessons for our semi-annual Department Service Officer (DSO) School that typically has more than 200 individuals enrolled, and provide monthly training for our employees who assist veterans with their claims appeals and representation before the Board of Veterans Appeals in Washington, D.C.

In addition, about 1,000 of our accredited representatives receive updates from B&M via email on topics related to VA benefits, appeals and claims. In these ways, The American Legion's accredited representatives remain well informed in the fluid world of VA regulations and benefits compensation.

B&M's services also include expertise on legal issues ranging from filing of amicus briefs to the representation of appellants before the U.S. Court of Appeals for Veterans Claims. VA-accredited attorneys and agents provide vital services to veterans and ensure they have access to quality representation throughout the claims process.

⁷ "38 CFR § 14.636 - Payment of Fees for Representation by Agents and Attorneys in Proceedings before Agencies of Original Jurisdiction and before the Board of Veterans' Appeals.," Legal Information Institute, accessed April 20, 2022, <https://www.law.cornell.edu/cfr/text/38/14.636>.

⁸ Ibid.

Predatory Claims Companies

Predatory claims companies are exploiting veterans and their dependents by charging fees for assistance in filing claims for VA benefits. A key concern is that VA has no authority to regulate non-accredited companies or agents providing services to clients. This allows unscrupulous actors to charge unreasonable fees without being penalized.

The American Legion receives many complaints from around the country about the treatment and the unreasonable fees they receive from these predatory claims companies. Because employees of these firms are unaccredited, they lie beyond the accountability of VA regulations. They use their “vigilante” status to shirk the responsibilities of legal representation that The American Legion and other VSOs provide for free.

Claimants victimized by these predatory companies include a veteran who was compelled to file a lawsuit, alleging debt collection harassment after receiving at least 20 phone calls from the company;⁹ a widow who was talked into investing her benefits compensation before receiving it; clients being charged for medical opinions that had no supporting medical evidence; and the surviving spouse of a veteran who was charged a fee, but received no services.

These predatory companies make use of contracts that are specifically written to minimize their responsibilities to clients. For example, a contract used by one unaccredited firm charges fees at the rate of 600 percent, and states within the contract, “The fees owed ... are NEVER for claim preparation or assistance. Again, Client is solely responsible for preparing, presenting, or prosecuting any such forms or materials to the VA – [firm name] does NOT assist with that.” One point that is not made in the contract is the fact that such companies are prohibited from submitting claims on behalf of veterans because their employees are not accredited by VA.

Another unlawful practice by unaccredited for-profit enterprises is the request for user ID and passwords to veterans’ My HealtheVet and eBenefits accounts. Other unscrupulous organizations ask veterans to provide them with screenshots of their accounts with the intention of charging additional fees based on new ratings decisions for future benefits. These unauthorized practices create legitimate privacy concerns.

Providing claims assistance should be about veterans and their families and helping them secure compensation benefits for injuries or illnesses related to military service. The American Legion is thoroughly invested in the veterans’ community and has been for more than a century, guided by its mission and its resolutions. Distinguished members of these Subcommittees, we all must work together to protect our veterans from those who seek to profit unjustly from their sacrifices.

CONCLUSION

Last year, at The American Legion’s National Convention, our membership passed a resolution that addresses predatory claims companies. It urges Congress to oppose any legislation that seeks

⁹ See *Alexander W Thurman v. Vet Comp & Pen Medical Consulting, LLC*, filed Sept. 19, 2019. Case No. 9:19,cv 00170.

to elevate the standing of predatory claims companies by legitimizing practices that target veterans and their dependents. It also calls upon VA to work more effectively with the Federal Trade Commission, Department of Justice, state attorneys general and state bar associations to identify and prosecute such predatory claims companies to the fullest extent of the law.¹⁰

Chairman Pappas, Chairwoman Luria, Ranking Member Mann, Ranking Member Nehls and distinguished members of these Subcommittees, the American Legion, thanks you for your leadership and for allowing us to explain the position of our nearly two million members on the issue of quality representation in the veteran benefit claims process. Questions concerning this testimony can be directed to Mr. Advaith Thampi, Legislative Associate in The American Legion's Legislative Division, at (202) 263-2986 or AThampi@legion.org.

¹⁰ See The American Legion Resolution No. 38 (2021): [*Predatory Claims Companies*](#).