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

Thank you for inviting DAV (Disabled American Veterans) to testify at today's hearing on VA Compensation and Pension Exams during the COVID-19 Pandemic: A Path Forward.

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 240 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.

In 2020, veterans and their families represented by DAV, received more than \$23 billion in earned VA compensation benefits. DAV represented veterans and families in more than 160,000 claims and presented over 16,400 appeals before the Board of Veterans' Appeals. Based on our experience, our testimony will discuss the importance of VA Compensation and Pension (C&P) examinations, the effect of the COVID-19 pandemic, and the impact on VA's backlog.

THE IMPORTANCE OF VA C&P 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). Per VA's fiscal year (FY) 2019 annual report updated in July 2020, over 340,000 new veterans and survivors started receiving VA disability compensation.

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 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.

In many cases, the VA exam is the linchpin to establish or deny a claimed benefit. However, if a veteran fails to appear for an 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 Examinations

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 VAROs could participate. These contract exams, originally managed by the Veterans Health Administration (VHA), were expanded from 10 to 15 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% were provided by VA contractors and in FY 2018, 1.4 million veterans received VA C&P exams, of which, nearly 60% were provided by VA contractors. In FY 2020, 1.9 million veterans received VA C&P exams, 77%, over one million, were conducted by contract examiners.

THE PANDEMIC'S EFFECT

The COVID-19 pandemic has negatively impacted VBA's ability to fulfill its mission. In late February 2020, states and local communities began declaring emergencies and issued shelter-in-place directives. On March 13, then-President Trump declared a national emergency in response to the COVID-19 pandemic. By March 24, twenty-seven states including New York and California issued stay-at-home orders, with those numbers increasing each day of this crisis.

VBA quickly pivoted to telemental health exams and reviews of acceptable clinical evidence (ACE). ACE exams are based on a review of medical records and history without an in-person clinical exam or testing but may include a telephone or video interview. While promoting its use, VBA recognized the limitations of telehealth. In March 2020, VBA provided information that all four telemental health exams and 29 of 77 disability benefits questionnaires for diseases and conditions were reported as suitable for telehealth.

Telemental health exams require the use of videoconferencing equipment so the examiner can observe nonverbal cues, but a telepresenter is not required. VA has said that a telepresenter is not required due to veteran privacy. However, exams requiring direct interaction, for example, range of motion testing cannot be completed via telehealth, without a telepresenter.

On April 6, 2020, VBA issued guidance that the COVID-19 pandemic was considered an acceptable cause for veterans failing to report for an exam. It instructed regional office staff to reschedule the exam. This guidance was retroactive to March 1, 2020, based on the presidential proclamation declaring COVID-19 a national emergency effective on that date. On April 24, 2020, VBA assured veterans no final action, including denials of their claims, would be taken when an in-person exam was needed.

In May 2020, VA released its plan for resuming normal operations. *Charting the Course: Maintaining Continuous Services to Veterans and Resuming Normal, Pre-COVID-19 Operations* provided limited information on exams. It stated VBA would work with its contractors to formulate a plan to resume in-person exams. Also in May, VA established the Program Integration Office to oversee disability exams. It was designed to provide new leadership and oversight as VBA has taken on more responsibilities for conducting exams so that VHA can focus on its health care mission and additional demands related to COVID-19.

A press release dated May 28, 2020, announced in-person exams would be restarting in 20 locations at contract exam facilities. VA has since expanded these in-person exams to other locations based on local COVID-19 risk assessments.

In October 2020, VA announced plans to shift a majority of all VA C&P examinations to contract examiners in an effort to allow VHA physicians to focus on the pandemic. This shift means that VHA will be conducting only 10 to 15 percent of all VA exams.

As of March 18, 2021, VA in-person disability medical exams by VBA contractors are now available for scheduling throughout the entire country. Facilities in some areas are performing in-person exams but do not allow removal of personal protective equipment while other areas allow removal during in-person exams as determined by the contract examiner.

Lessons Learned

The enormity of the impact of the COVID-19 pandemic will be felt for years and decades to come with continued lessons learned. In November 2020, the VA Office of the Inspector General (OIG) report “Enhanced Strategy Needed to Reduce Disability Exam Inventory Due to the Pandemic and Errors Related to Canceled Exams” made the following findings:

- VBA Discontinued In-Person Exams to Protect Veterans
- Protective Measures Contributed to VBA’s Exam Inventory Growth
- VBA Prepared for Increased Use of Telemental Health and ACE Exams
- VBA’s Use of Telehealth Was Limited by the Need for a Telepresenter for Some Exams
- VBA Prematurely or Improperly Denied Claims Based on Canceled Exams
- VBA Needs to Further Develop and Test Its Strategy to Address the Inventory of Exams

At the beginning of the pandemic, there were roughly 140,000 pending VA exam requests with an average 21 days to completion. As of February 25, 2021, there were over 350,000 pending exam requests with an average 90 days to completion. These pending exam requests have already impacted the number of pending VA compensation claims and if not aggressively addressed, veterans will be waiting additional months if not years for their earned VA benefits and health care.

VA'S BACKLOG

In 2013, VA's backlog reached historic levels of 611,000 claims pending over 125 days with an average of 282 days to completion and an accuracy determination of 83%. It took VA several years to reduce these numbers. In February 2020, VA had only 70,000 pending claims; however, today there are over 215,000 claims pending over 125 days.

The number of pending claims has tripled in the last year due to the monumental impact of the pandemic. The largest contributor to this increase is the backlog of VA C&P examinations, which is now over 350,000. However, there are other factors that VA must be cognizant of, such as the pending Blue Water Navy claims.

In January 2020, VBA started processing Blue Water Navy claims for diseases related to their now-conceded exposure to Agent Orange. To date VA has received over 82,000 claims and have adjudicated over 47,000 claims but still have almost 35,000 pending claims. In many instances, these have been delayed due to closure of the National Personnel Record Center (NPRC) during the height of the pandemic. The NPRC is responsible for fulfilling VA's request for veterans' service medical and personnel records required for claims processing. These are vital for establishing the veteran's ship location off the coast of Vietnam. NPRC is operational; however, they now have a backlog of records request. Usually, VA will not request C&P examinations for these claims until they have the records requested from NPRC, thus, there are potentially another 35,000 claims awaiting examinations, which will further confound the existing backlog.

Public Law 116-283 added three new diseases, bladder cancer, hypothyroidism, and Parkinsonism, as presumptive conditions to Agent Orange exposure in January of this year. VA has already received thousands of claims for these new conditions; however, they have yet to provide direction for the processing of these claims outside of advising VA adjudicators these must be deferred until guidance is established. Again, VA will need to verify each of these Vietnam veterans' exposure to Agent Orange in-country or aboard ship. These thousands of new claims will also require C&P exams once VA starts developing these claims, again, adding more examinations to the pending backlog and increasing the weight of the already growing backlog of claims.

Although VBA reacted quickly with the use of telehealth, ACE exams, and has recently increased the contractors' workload by 20%, these alone will not aggressively reduce the backlog of exams and in turn, the backlog of VA claims.

DAV is especially concerned that, if not appropriately addressed, the VA examination backlog and the looming Blue Water Navy claims and adding the new Agent Orange presumptive diseases, could lead to the horrendous backlog of pending claims VA faced in 2013.

Veterans and their families deserve a thoughtful, quick and agile response plan from VA. This response needs to address the current backlog of exams, oversight and quality of all exams, veterans' experience in the exam process, VA's tendency to overdevelop, and a response in place to consider future national emergencies and pandemics.

Reducing VA's backlog of exams and claims

VA contract examiners constitute the lion's share of all pending examinations while VHA is currently only conducting telehealth examinations for approximately 10 to 15 percent of those requests. This, coupled with contractors increasing their workload will not quickly reduce the number of pending C&P examination requests. Although contract examiners completed over 1.1 million exam requests in calendar year 2020, during the national emergency, we need a strategy to consider all available means.

In order to attack this problem head-on, we recommend that VHA increase its workload of C&P examinations to their upper capacity levels. This should include in-person examinations as well. While we understand that VHA is under significant stress in providing COVID health care and vaccinations, VBA needs to utilize VHA as an experienced resource to slow down the steadily rising exam requests and address the backlog. We recommend an "all hands on deck" mantra to drive down the backlog.

We further recommend moving forward, that VHA have primary responsibility for all VA C&P exams for initial post-traumatic stress disorder (PTSD) claims, military sexual trauma (MST) claims, traumatic brain injuries (TBI), prisoners of war (POW), amputees and the catastrophically disabled. VHA is a world leader in PTSD, TBI and amputee treatment and these should benefit from VA's unmatched expertise. Examination requests from claims filed through the Benefits Delivery at Discharge (BDD) program and the Integrated Disability Evaluation System (IDES), should also be filtered through VHA.

We recommend that VBA also provide updates and reports on the decisions identified by VA OIG that were prematurely denied without a VA C&P exam. Just as important are the number of claims that have examinations deferred waiting for exams. We recommend that VBA track and provide routine updates on these cases as well.

Oversight and Quality of VA exams

DAV wants to ensure that all veterans receive timely and quality C&P examinations whether they are conducted by contract examiners or VHA. VBA must have oversight and management of all VA examinations which is imperative for quality exams. This has been problematic in the past.

In the 2018 GAO report, “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; VBA did not conduct comprehensive performance analysis; and although auditor verified contracted examiner licenses, VBA did not verify training completion or collect information on training effectiveness.

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 Medical Disability Examination office 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.

In June 2019, the VA 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.

At the September 2019 House Veterans’ Affairs Subcommittee on Disability Assistance and Memorial Affairs hearing, VBA noted that VA contract examination quality is evaluated quarterly and the results are used to identify training needs and feedback to contractors. It also addressed the need to improve delivery and tracking of training requirements for examiners. It was also noted that all vendors were achieving an overall customer satisfaction rating of 90%. VBA designed an examination management system that provides the capability to interface with multiple vendor proprietary systems. VBA continues to make significant progress in the enhancement of the EMS system. Through collaboration with VA’s Office of Information and Technology, additional resources were committed to support a monthly software release schedule that was implemented to address system defects and new functionality.

In recent conversations with VA, DAV was advised that VBA is continually enhancing the EMS system. They are seeking a robust oversight system for contract examiner training and at this time VBA is manually updating all provider training.

Quality examinations are critical in the VA claims process and essential to veterans gaining access to their earned benefits and health care. We recommend that VBA continue its monitoring and oversight of contract examiners, but also believe that all VHA C&P examinations must be included as well. We have recommended to expand their ability to provide more examinations and thus VBA should have the same oversight. VA's Program Integration Office should have the ability to review VHA examinations based on quality and return them when deemed inadequate.

VBA must continue to provide training and information for all examiners and needs a dedicated professional platform to provide, monitor and track this training. Although VBA is currently doing this manually, an online platform will provide better oversight and control.

Veterans' experience in the examination process

Prior to the pandemic, DAV solicited feedback from our over 240 National Service Officers at over 60 locations throughout the country regarding VA contract exams over a six-month period. The feedback yielded the following information:

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

In 2019, VBA acknowledged that their vendors had an overall 90% customer satisfaction rating. As our survey reflects, many veterans had complaints with cancelled exams, rescheduling exams, and long distances to travel to examinations. We recommend that VBA continue to address the customer satisfaction of their contractors, but also include VHA, and conduct surveys or town hall-like events to communicate directly with veterans concerning their satisfaction with VA examinations.

VBA's tendency to overdevelop

Another contributing factor to the backlog of examination requests and claims, is VBA's tendency to overdevelop a claim. For example, if a veteran submits VA or private medical evidence or a completed Disability Benefits Questionnaire (DBQ) that is sufficient for VA to decide the case, in many instances, VBA will still request a VA C&P exam.

When the submitted evidence or DBQ does not contain the required information, we agree that a C&P exam should be requested; however, our service officers often review decisions that could have been rendered based on the evidence without a C&P examination. In some instances, the additional C&P exam is used as a reason to deny the benefits veterans are seeking.

We recommend that VBA create a tracking mechanism for all decisions that have privately completed DBQs and yet an exam is requested. This can provide insight to the examination request culture and even reduce the number of requests, thus aiding in reducing the exam and claims backlogs currently facing VA.

Madame Chair, we believe that all of these recommendations can assist in reducing VA's current backlogs. These and the lessons learned from the pandemic can be used to develop a response by VA for future national emergencies or a resurgence of the current pandemic. In addition, these lessons will help make VBA more efficient beyond the pandemic both in managing workload and better serving hard to reach veteran populations.

In conclusion, the COVID-19 pandemic created over 350,000 pending exam requests and over 215,000 pending claims within VA. If left unchecked, the current backlog of exams and claims, coupled with nearly 35,000 pending Blue Water Navy claims and the incoming claims for the new Agent Orange presumptives, VA's backlog of claims will reach critical mass similar to that in 2013. Veterans need VA to be prepared with a VA-wide approach, a veteran-centric response and a plan for the future. We cannot afford to wait and action must be taken now.

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.