

Exploring VA's Oversight of Contract Disability Examinations

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Statement of

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For the Record

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Committee on Veterans' Affairs
Subcommittee on Disability Assistance and Memorial Affairs

With Respect To

“Exploring VA's Oversight of Contract Disability Examinations”

WASHINGTON, DC

Chairman Bost, Ranking Member Esty, and members of the Subcommittee, on behalf of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide our comments on the Department of Veterans Affairs' (VA) oversight of contract disability examinations (CDEs).

Over the last 20 years, VA has more frequently contracted with private health care providers as a way to provide sound medical opinions with the intent to quickly and accurately adjudicate veterans' disability benefit claims. This contracted system has proven to be beneficial to both veterans seeking benefits and VA in ensuring veterans can receive timely and correct benefit decisions. The VFW fully supports VA's efforts to provide veterans with contract disability examination options for a variety of reasons. The most significant of which is that we believe, and veterans confirm, that private providers can furnish a largely objective opinion in evaluating a veteran's claimed medical condition.

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Moreover, we hear frequent positive comments about contract exams and the outcomes for veterans. Unfortunately, since VA executed its latest contract for disability examinations in 2016 and extended work to two new vendors, Logistics Health, Inc. (LHI) and MSLA, a Medical Corporation, the VFW has seen new problems emerge which impelled us to join our partners in the veterans service organization community to call for a hearing so that this subcommittee can better assess the situation.

Under the most recent contract, VA instituted new, incredibly rigid timelines for contractors to complete exams and return records to VA. Though the recent Government Accountability Office (GAO) report notes that VA allows 20 days for vendors to conduct routine exams, in reality the vendors tell the VFW that this leaves them a window of only about one business week in which to conduct the exams. This is an unreasonable expectation. These standards in no way reflect the needs of the veteran, nor are they favorable to VA which has a well-documented shortage of examiners at both the full-time employee and contract levels. When we ask VA about these timelines, the usual response is that VA believes veterans want their benefits completed quickly. We concur. However, VA cannot sacrifice accuracy and a positive customer experience for the sake of speed. It does not matter how quickly a veteran receives a rating decision from VA if the decision is wrong.

Since 2016 -- and amid multiple disputes about the validity of VA's contract; extensions of bridge contracts; termination of one of VA's new vendors; and the solicitation of new bids -- the VFW has seen a growing list of problems with VA's contract exam system. This summer, in light of these problems, we asked VA for a report on quality for the current contract examination system. After dragging its feet for more than a month, VA finally replied that they could not share this information unless the VFW filed a Freedom of Information Act request. After reviewing the GAO report, the VFW believes that the leadership of the Mandatory Disability Exam Office did not want to admit that they had not completed a quality review report for any period in 2018. With all of these factors affecting veterans' access to accurate and timely benefits, this hearing comes at a very critical time.

The VFW can summarize the problems we have seen with the current contract exam system as follows:

- Late notification of exams.
- Lack of options for veterans to reschedule exams.
- Lack of availability of adequate examiners with reasonable distance to the veteran.
- No adequate review of a veteran's claim file prior to the exam.
- Inadequate time with provider due to volume and turnaround.

Late Notification of Exams

The VFW has learned from our field staff and locally in the Military District of Washington about dozens of instances where veterans were not notified in a timely manner that VA had scheduled exams. In one example from Georgia, the veteran was contacted by VA's vendor,

LHI, on a Thursday afternoon for an exam scheduled on Monday morning. When the veteran tried to reschedule with LHI, he was guilted into rearranging his schedule for the Monday appointment and essentially forced into calling out of work and rearranging other health care appointments out of fear that his benefits would be adversely affected. When the VFW reviewed the veteran's claim file, we noticed that not only had VA sent the exam request to LHI less than a week before the exam was scheduled, VA also failed to include accurate contact information for the veteran, which was readily available in the veteran's records.

Under the old contract, veterans were afforded more time to get their affairs in order to attend contract exams. Even the legacy contractors have complained to the VFW that the new contract makes it harder for veterans to attend exams, resulting in higher no-shows and returned exam requests to VA, either further delaying delivery of earned benefits, or worse, resulting in erroneous denial of benefits.

Lack of Options to Reschedule

Given the new compressed timeline, we hear from veterans that if they cannot make the appointments assigned to them by the contractor, they are offered only three options: attend your appointment regardless of conflicts; be reported as a no-show and VA will likely deny your benefits; or have the contractor return the appointment request to VA as a cancellation with the hope that VA issues another exam request soon. Each of these options is bad for veterans. Under the old contract, the legacy contractors were reasonably flexible with veterans, ensuring exams could be completed in a matter of weeks. The VFW received very few complaints before 2016, and even collected positive stories about the contract exam experience.

Unfortunately, under the new contract, we have seen negative outcomes for veterans and some potentially concerning business practices when it comes to rescheduling or cancellation requests. The most glaring example of this came from a veteran in Maryland who is assisted by the VFW staff here in Washington, D.C. According to the veteran's claim file, VA ordered a series of exams from LHI on October 17, 2018. On October 18, 2018, the veteran was listed in the Veterans Benefits Management System as a no-show for her exams. This obviously caught our attention and we contacted the veteran to learn what happened. The veteran told us that she was called by LHI on October 18, and asked if she could reschedule. LHI told her she could not, and they would have to return the exam request to VA. Veterans seeking benefits should not have to be concerned about contractor penalties due to their inability to properly notify them or obtain a timely exam.

In spite of this, what concerns the VFW most about this situation is that the veteran was reported as a no-show. Our understanding of the contract is that this means that LHI is still paid for the exam, even though no exam was ever completed. Again, VA's contract exams office has not been transparent with the VFW on contract exam issues, so we have no way to

verify this, other than posing it as an assumption to the subcommittee in this forum. Regardless, at the very least it seems that contractors are incentivized to cut corners in an effort to meet VA's unreasonable expectations.

Lack of Availability of Examiners

Another persistent issue we have heard from offices around the country is that to meet the timeliness goals of the contract, each of the contractors is forced to schedule veterans wherever they can find an available doctor. This leads to unreasonable travel times and unrealistic appointment expectations for veterans.

In Arkansas, one elderly veteran was scheduled for a contract exam in Oklahoma, more than three hours away from his home. In Washington state, another veteran in the Seattle area was scheduled for an exam more than three hours away in Oregon. In Washington, D.C., we have seen veterans sent to Gettysburg, Pa., for exams.

Another glaring example came from California, where a San Francisco-area veteran was scheduled for one exam at 3:30 p.m., more than 20 miles outside of the city, with a second exam scheduled at 4:15 p.m. back in San Francisco, making it logistically impossible for the veteran to attend both.

Fortunately, in each of these cases, the VFW's service officers have caught these unreasonable requests and worked with VA to resolve the issue. However, we must question the structure of a contract that forces a vendor to make these kinds of decisions.

No Adequate Review of Claim File/Inadequate Time with Provider

The VFW believes the final two issues are linked. We continue to hear concerns about the adequacy of a contract examiner's review of the veteran's claim file and the time that veterans receive with providers. These have been issues that the VFW has raised prior to the 2016 contract, but these problems persist, and we believe they have been exacerbated by the new timeliness requirements of the contract.

When contract providers fill out Disability Benefit Questionnaires (DBQs) for veterans, they must verify whether or not they have fully reviewed the veteran's file. They usually affirm that they have and then go on to render an opinion. However, we have learned that the vendor selects which specific files to share with a provider ahead of the exam, meaning they likely never fully review the file. We have also heard reports that some contract providers solely rely on the claimant's pre-exam worksheet to evaluate the historic record of a condition, rather than the official claim file documents. To the VFW, both scenarios render the exam unacceptable and inadequate.

Next, we have also heard conflicting information from veterans about the time spent with

providers and the attention given to their issues. We hear anecdotes that veterans see providers for only a matter of minutes and that certain required measurements or evaluations are never actually conducted, though they are reported as such on the DBQ. We have no way to verify this independently, but the volume of complaints that we hear from our service officers in the field and directly from veterans once again force us to raise this issue with this subcommittee.

The VFW does support and believe in the contract disability examination concept. We have seen it work. In Wisconsin, we continue to see very positive outcomes for veterans, and our service officer even reports that when it comes to accuracy, he believes contract exams more closely match the veteran's reported experience than exams conducted internally by VA. This reinforces the VFW's core belief that unaffiliated third parties are well suited to render objective opinions. However, even Wisconsin reports that they have seen scheduling problems for veterans they serve. We are very concerned that VA is not adequately tracking quality and customer experience for its contractors, meaning there is no real way for VA to monitor the efficacy of the contract for the veterans they serve. This is why we are left to resort to anecdotes and trends that we see around the country for our clients.

VA has a unique opportunity now as it seeks to enter into a new contract for CDEs. The new contract must factor in veteran experience, measure quality outcomes, and report transparently on these outcomes. Without this, we will continue to see erroneous denials, reported no-shows, and contractors cutting corners to try and meet unrealistic objectives.

Information Required by Rule XI2(g)(4) of the House of Representatives

Pursuant to Rule XI2(g)(4) of the House of Representatives, the VFW has not received any federal grants in Fiscal Year 2018, nor has it received any federal grants in the two previous Fiscal Years.

The VFW has not received payments or contracts from any foreign governments in the current year or preceding two calendar years.