STATEMENT OF
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THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"ADJUDICATING VA'S MOST COMPLEX DISABILITY CLAIMS: ENSURING QUALITY, ACCURACY AND CONSISTENCY ON COMPLICATED ISSUES"

DECEMBER 4, 2013

According to a February 2013 Congressional Research Service (CRS) report, service members have either suffered or have been diagnosed with the following complex conditions from 2000-2012[1]:

- 131, 341 diagnosed with posttraumatic stress disorder (PTSD)
- 253,330 diagnosed with traumatic brain injury (TBI)
- 1,715 underwent amputations due to service in Iraq and Afghanistan

The Department of Veterans Affairs (VA) states 20 percent of women and one percent of men indicate they suffered military sexual trauma (MST) in service[2]. VA defines MST as "any sexual activity where you are involved against your will." A May 2013 Associated Press article indicates in 2012, more than 85,000 veterans sought treatment due to injuries or diseases resulting from MST; 4,000 sought VA disability benefits as a result of the condition[3].

The nature of conditions such as PTSD, TBI, MST and claims that require special monthly compensation (SMC), are often complex in nature and require a deeper understanding of VA disability benefits than many other types of VA disability claims. In order to achieve Secretary Eric Shinseki's laudable goal of 98 percent accuracy on all claims by 2015, VA needed to take measures to ensure these complex claims were handled by people experienced and expert enough to reduce the risk of error.

To this end VA established segmented lanes in each of its regional offices designed to provide a specialized approach to claims' adjudication depending on the nature of the claim or the manner that the veteran or dependent sought disability benefits. The tough claims would be developed and adjudicated in the "special operations" lane with senior VA raters adjudicating these complex claims.

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[1] CRS Report for Congress, U.S. Military Casualty Statistics: Operation New Dawn, Operation Iraqi Freedom, and Operation Enduring Freedom (Washington, D.C., February 2013), pp. 5-10.
[2] http://www.ptsd.va.gov/public/pages/military-sexual-trauma-general.asp
[3] http://www.nydailynews.com/news/politics/military-sexual-assaults-heavy-toll-veterans-article-1.1349140

In concept, this practice of putting the best, most experienced personnel on the task of adjudicating the most difficult claims is laudable and logical. The American Legion supports and even utilizes the idea of ensuring newer, less experienced employees handle simpler, more straightforward claims while experienced hands do the heavy lifting on the more complicated and sensitive claims.

The American Legion has conducted Regional Office Action Review (ROAR) visits to VA Regional Offices (VAROs) for over 15 years, performing quality review oversight and evaluating work procedures during an intensive weeklong process. Recognizing The American Legion's expertise in this area as the only Veterans' Service Organization with so comprehensive a review process, the White House contacted The American Legion to coordinate an evaluation of the Fully Developed Claims (FDC) program over 2012 and 2013. These visits were performed in conjunction with the White House, Joining Forces, VA Central Office officials, and later with Disabled American Veterans (DAV) as the program expanded.

The American Legion had the opportunity to visit eight VAROs beginning in December 2012 and concluding in June 2013 during the implementation phase of the FDC program. In addition to examining the FDC program, American Legion experts discussed issues surrounding FDC with VA raters and senior staff, to include the implementation of the segmented lanes by VA. As always with ROAR visits, recently adjudicated claims under American Legion Power of Attorney (POA) were reviewed by Legion staff and Legion accredited attorneys contracted through the National Veterans Legal Services Program (NVLSP) to gauge VA's accuracy and check for adjudication and development errors.

Unfortunately, during these visits, it became clear through discussion with senior VARO staff that experienced staff is at a premium. Much of the staff has less than five years experience and may not have either the experience or knowledge base to accurately adjudicate complex claims. While the concept of the "special operations" lanes is still sound, performance in individual VAROs may be inconsistent, because the experience base necessary to implement the plan may not exist.

Developing statistics on VA's current accuracy rating regarding complex claims such as PTSD, TBI, MST, and claims that involve SMC presents a challenge. While VA's Monday Morning Workload Report includes VA's accuracy for claims' adjudication, it fails to include accuracy ratings for the types of claims adjudicated; therefore it is difficult to determine whether this approach is helping improve the adjudication of these special claims.

Furthermore, VA's accuracy statistics from the Monday Morning reports are not consistent with the review of recently adjudicated claims as conducted by the American Legion ROAR teams. When visiting VAROs over the past year, ROAR staff reviewed 260 claims adjudicated by the VAROs. Of those 260 claims, 55 percent were identified as having errors, particularly regarding the development of the claim. This statistic is in stark contrast to the approximate 90 percent accuracy rating in claims' adjudication indicated by VA's Monday Morning workload reports.

For conditions such as PTSD and TBI, it is not simply the accurate adjudication of the individual condition that veterans face but also the conditions that may have either manifested secondary to either PTSD or TBI or were aggravated by the conditions.

Cardiovascular, gastrointestinal and musculoskeletal conditions have been identified as being possibly related to PTSD[4]; yet The American Legion's national appeals representatives at the Board of Veterans' Appeals (BVA) routinely have claims remanded by BVA due to VA's failure to consider the relationship of condition such as hypertension and gastro esophageal reflux disease (GERD) to PTSD. This is particularly frustrating given the support for this link is in VA's PILOT database for PTSD.

When VA is not under-developing claims, they can be prone to over complicating claims that should be simple.

The American Legion's network of over 2,900 accredited service officers often come across claims needlessly delayed while VA continues to seek additional records for conditions already adequately reflected in the record, or orders extraneous exams long after medical examinations have connected a current condition to the veteran's service and displayed the level of disability to a degree sufficient to enable rating the claim. These needless exams and record searches can add months or even years to a veteran's wait times.

In order to achieve 98 percent accuracy, The American Legion believes VA must develop a full understanding of the strengths and weaknesses of its adjudicators and the common errors commitment systemically in the claims system. The American Legion believes through the data able to be tracked in the VBMS system, decisions of the Court of Appeals for Veterans Claims (CAVC), the Appeals Management Center (AMC) and the BVA, VA is sitting on a goldmine of data about where they can work to improve accuracy, yet this goldmine remains untapped. The American Legion would like to see VA develop a system to analyze the vast trove of error information, track it, and use it to develop training to improve results. In short, to ensure the highest reward for the training investment, VA should identify areas that training is required for its raters and provide specific training based upon the nature of the claim or condition and the identified common errors with those types of claims.

When The American Legion asked VA if they were tracking these statistics internally, VA responded: "We currently do not post or provide quality data based solely on diagnostic codes." If VA is collecting data on accuracy of adjudication based upon diagnostic code, it would be helpful for determining the success of programs such as the "Special Operations" lanes if this data was released for public review.

The American Legion believes VA should provide better information regarding VA disability claims in a public venue[5]. Veterans and their families should have the opportunity to know the accuracy of adjudications.

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[4] http://www.ptsd.va.gov/professional/pages/ptsd-physical-health.asp

[5] Resolution 99: *Increase the Transparency of the Veterans Benefits Administration's (VBA) Claims Processing,* - AUG 2012

As the individual conditions treated by the "special operations" lanes are considered, The American Legion is deeply concerned not only about the statistics and effects of MST, but also the manner that claims associated with MST are adjudicated. As disturbing as the statistics regarding MST are, the manner in which the claims are adjudicated is equally disturbing. A fact sheet published by VA states[6]:

> *Department of Defense forms used in reporting incidents of sexual assault or harassment, as well as investigative reports during military service are direct evidence to support these claims. However, VA knows that events involving personal assault or sexual trauma are not always officially reported. Therefore, VA has relaxed the evidentiary requirements and looks for "markers" (i.e., signs, events, or circumstances) that provide some indication that the traumatic event happened, such as*
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> - Records from law enforcement authorities, rape crisis centers, mental health counseling centers, hospitals, or physicians.
> - Pregnancy tests or tests for sexually transmitted diseases.
> - Statements from family members, roommates, fellow servicemembers, clergy members, or counselors.
> - Request for transfer to another military duty assignment.
> - Deterioration in work performance.
> - Substance abuse.
> - Episodes of depression, panic attacks, or anxiety without an identifiable cause.
> - Unexplained economic or social behavioral changes.
> - Relationship issues, such as divorce.
> - Sexual dysfunction.

In July 2010, VA changed its regulations regarding the evidentiary requirements for veterans seeking disability for PTSD. Realizing that veterans were often facing difficulties providing stressor statements that could not be corroborated by VA, VA simplified the adjudication through "eliminating this time-consuming requirement where the claimed stressor is related to 'fear of hostile military or terrorist activity,' is consistent with the places, types, and circumstances of their service, and a VA psychiatrist or psychologist, or contract psychiatrist or psychologist confirms that the claimed stressor is adequate to support a diagnosis of PTSD.[7]"

Considering the negative attention the Department of Defense has received regarding the manner that it investigates and takes appropriate actions regarding MST incidents and the number of incidents unreported to authorities, it is plausible a veteran who was the victim of MST would not have the necessary evidence as indicated in VA's fact sheet regarding the adjudication of these claims to support the granting of a disability benefit associated with MST. Realizing that latitude should be afforded to veterans who were MST victims, The American Legion urges VA to "apply reduced criteria to MST-related PTSD to match that of combat related PTSD.[8]"

[6] http://www.benefits.va.gov/BENEFITS/factsheets/serviceconnected/MST.pdf
[7] http://www.va.gov/PTSD_QA.pdf
[8] Resolution 295: *Military Sexual Trauma,* - AUG 2012

It's time to treat the survivors of this horrible crime the same way we treat the survivors of war.

Developing a plan to improve accuracy is essential because it has a definite and measureable impact on the lives of veterans. It is sometimes difficult to put the importance of accuracy in perspective, and to realize the scope of the impact of accuracy on these claims, consider the following statistics. As previously noted, the February 2013 CRS report indicated 386,386 servicemembers diagnosed with PTSD, TBI, and/or amputations. If each veteran diagnosed with these conditions sought service connection, even utilizing VA's favorable 90 percent adjudication accuracy rating, **38,638** veterans would either not be receiving service connected disability compensation or would be underrated for these conditions. If the accuracy of these claims were closer to the accuracy levels documented by The American Legion in the past 12 months during ROAR visits, over 212,000 veterans – **roughly the size of Reno, Nevada**[9] – would either not be receiving service connected disability compensation or would be underrated for these conditions. **For those veterans, VA's accuracy rate might as well be zero.**

Veterans suffering from PTSD, TBI, amputations, or MST are often the most vulnerable veterans. Mobility, employment, and treatment are just some of the many issues that these veterans may face. With denial of these benefits, the opportunity for VA health care may not exist. Furthermore, denial of these benefits could exclude veterans from additional benefits they are entitled to, such as federal hiring preference and elimination of the VA funding fee for VA mortgages and VA will have failed to honor Abraham Lincoln's call "to care for him who shall have borne the battle and for his widow, and his orphan".

On behalf of our National Commander Daniel M. Dellinger, and our 2.4 million members, The American Legion thanks this subcommittee for their diligent attention to the disability benefits process. The American Legion will be watching closely, and hopes to work closely with both VA and Congress to ensure the ultimate outcome is in the veterans' best interest.

For any questions regarding this testimony please contact Ian de Planque, Deputy Legislative Director of The American Legion at (202) 861-2700 or ideplanque@legion.org

[9] http://quickfacts.census.gov/qfd/states/32/3260600.html