EXECUTIVE SUMMARY OF RICHARD DUMANCAS, DEPUTY DIRECTOR
VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
BEFORE THE
HOUSE VETERANS' AFFAIRS COMMITTEE
ON
"RECLAIMING THE PROCESS: EXAMINING THE VBA CLAIMS TRANSFORMATION PLAN AS A MEANS TO EFFECTIVELY SERVE OUR VETERANS"

JUNE 19, 2012

The American Legion is concerned that despite an overpowering array of pilots, initiatives and technological improvements to the claims processing system, VA may be no closer to actually solving the issue of the claims backlog. While improvements must be made to a system that is allowing veterans' disability claims to languish far longer than is necessary for proper processing, it is becoming increasingly difficult to determine which programs offer the most hope for improvement. VA has placed a great amount of weight on the ability of the Veterans Benefits Management System (VBMS) to transform the working environment and fix the problems of the claims system. However VBMS and other programs may carry with them their own inherent faults and flaws which will only perpetuate ingrown cultural problems which continue to stymie efforts to improve the system.

Key concerns include:

- VBMS – Even though the program is in limited pilot implementation, employees are already resorting to work around solutions for flaws in the system. How much worse will this be when the system goes wide?
- VBMS – Lag and latency issues are delaying work time. Even a few minutes per document can turn into hours magnified over the hundreds of documents that must be viewed in a day.
- VBMS – The ease of data sharing may lead to increased reliance by VA on consolidation and brokering, which have had detrimental effects on performance in the past.
- DBQ – Disability Benefits Questionnaires while positive in intent, often lead to redundant VA ordered exams by doctors. This may be related to poor form design and a lack of direction for nexus opinions.
- I-Lab – Core claims "lanes" are backing up and showing slow performance, even if some of the specialty "lanes" have sped up performance.
- Fully Developed Claims – In some offices, fully developed claims are taking as long or longer than traditional claims, thus voiding any benefit to the veteran of signing away due process rights.
- Appeals – The Appeals Pilot in Houston may be denying some veterans appellate rights without benefit of proper counsel and explanation.

Ultimately, these problems may require culture shift within VA to fix. Technological fixes may not be as helpful as changing the VA mindset

STATEMENT OF
RICHARD DUMANCAS, DEPUTY DIRECTOR FOR CLAIMS
VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
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Chairman Jeff Miller, Ranking Member Bob Filner and distinguished Members of the Committee:

Thank you for this opportunity to come before you today to discuss the Department of Veterans Affairs (VA) efforts to transform the claims processing system for the 21st century and beyond. The much beleaguered claims system has been under harsh criticism for quite some time as VA has struggled under a massive backlog of claims and tried to work towards a system that could deliver earned benefits to veterans in the timely manner they deserve.

Not so long ago, in the summer of 2010, VA Secretary Shinseki boldly promised "This is the year we break the back of the backlog" and set forth the admirable goal of 98 percent accuracy and no claim pending more than 125 days; all in a timeline achievable by 2015.

Yet here we are, two years later, and seemingly little closer if at all to solving the problems which plague VA and foster the backlog. Is VA meeting their benchmarks? In the summer of 2010, VA had 551,131 claims pending, 197,831 of those longer than 125 days. Therefore 35.9 percent of claims fell within VA's internal definition of "backlog". Fast forward to this summer, as of the June 11, 2012 Monday morning workload report, VA is now struggling under 911,450 claims, a whopping 597,237 of those are pending over 125 days. Over 65 percent of their workload now is in backlog.

Though it is more difficult to measure, VA's accuracy figures do not appear to be going in a positive direction either. Whether VA's internal Statistical Technical Accuracy Review (STAR) figures are used or outside audits such as The American Legion's Regional Office Action Review (ROAR) figures, VA is still clearly far from achieving the stated goal of 98 percent accuracy on their claims processing.

For many years now we have heard promises of changes to the system which will revolutionize claims processing. Time and time again VA has stated a strong commitment to ending this backlog, yet are we close to turning a corner or still stuck in the mire?

In order to break the backlog VA has unleashed what must be an unprecedented number of pilot programs and initiatives to tackle the Herculean task of taming the claims quagmire. The American Legion remains concerned at the lack of clear direction from VA as to how the best performing measures of the pilot programs will be implemented and standardized across the entire benefits system.

VA's Veterans Benefits Management System (VBMS) promises to be a great boon to VA in terms of the benefits of leveraged technology it offers, yet roll out has been slow; it is still unclear if it will be the panacea to the myriad ills of the claims system VA's IT professionals have been promising. Certainly there are still many questions in that area.

There have been areas of improvement in some of these programs, yet The American Legion is concerned many positive gains will be lost in the sheer volume of data VA is compiling on the success or failure of the multitude of projects and programs. It is important to recognize the achievements and problems posed by many of these programs individually, then hopefully move towards an overall model that incorporates the positive features and overcomes the negatives to ensure VA is not working from a handicap in their fight to end the backlog.

VBMS

Perhaps the most heralded and lauded method of attacking the backlog VA has put forth is the Veterans Benefits Management System or VBMS. VBMS has been the answer to most questions regarding the backlog for the last couple of years. VBMS will help VA manage their case load with greater speed, and will move the operations into a truly paperless environment. If VBMS ever ultimately delivers what is promised, it could solve a number of problems and be a great boon. However, promises that VBMS would be fully implemented by the end of 2012 have been pushed back to the end of 2013 and with only four locations currently utilizing the system; red flags have been raised about how soon we can expect an impact on reducing the backlog.

There are many benefits VBMS offers. As a web based application, the data is supposed to be accessible anywhere within the system by multiple parties if need be. This facet alone can help with communication speeds and also allow simultaneous work by VSOs and VA personnel alike, and will potentially eliminate lost files and issues with VA's COVERS system. Initial experience is showing some lag issues and delays in opening files that, while perhaps minor in terms of a single file, could represent work delays over the course of multiple files in the course of a day's work. Furthermore, these lag issues are showing up with a relatively small number of users in pilot sites, and when the whole system goes nationwide, system demands will presumably be far greater. These speed of communication issues may be hardware related. Technical problems are not uncommon in tech beta testing, and ultimately they should be able to be resolved.

Within the operating system there are errors that may or may not be fixed as more familiarity is gained with the system. When asked to comment on using the system, one of our American Legion contacts in an office where VBMS was in use made the following comment:

- *"Despite recent hardware upgrades VBMS continues to take between 15 and 20 seconds to load each page of an electronic record. When a VSR is potentially reviewing hundreds of records this delay can amount to hours of daily lost productivity in claims processing. Within VBMS, testing is taking approximately three times longer and development is taking approximately four times longer…Additionally since we are back scanning entire multiple volume claim folders every old document from the claims folder shows as a new mail indicator; thus, supplemental development cannot be effectively managed. The only way to remove the new mail indicator is to singularly open each and every document in the e-folder, with a 15 to 20 second delay for each page, again resulting in hours of lost productivity."*

The ease with which claims data can be shared nationwide is touted as a positive in that it better facilitates the brokering of claims without substantial shipping costs, delays, or the potential to lose a veteran's claims file in the mail. However, The American Legion is not relieved by a potential "feature" of improved ease of brokering claims. Brokering claims and the consolidation that often accompanies shifts in work have proven problematic in most cases in the past. Pension claims were consolidated in 2009 and since that time the number of claims has risen by 70 percent and the backlog of those claims has more than doubled. Consolidated Call Centers have unleashed new problems. The Appeals Management Center (AMC) is only now beginning to turn around a long history of possibly making the problem worse that had led many to speculate it would be shut down only a few short years ago.

The American Legion is wary the ease of data transfer will only encourage the process of consolidation and specialization that has proved disastrous for VA in the past. Furthermore, brokering and consolidating has usually had the end effect of utilizing a good office to cover for the mistakes and mismanagement of a poor performing office, without ever fixing the root causes at the poorly performing office. In the end, the top performing offices do not see their best practices shared as an example for others, but simply get another heaping pile of work for their troubles.

Further troubling in the implementation of VBMS is the lack of change of work culture accompanying the new operating system. In several offices where VBMS is in use, American Legion service officers have noted VA end users already spending excessive amounts of time using "work around" methods to facilitate getting through the day's business. If the program is only in pilot stages, in limited use, and already the "work around" mentality has taken root, this must be recognized as a key concern.

Finally, perhaps the largest concern looming for the full implementation of VBMS is the issue of scanning existing claims files to an electronic format. As of right now, there are far more questions about this aspect of VBMS than there are answers. Is VA prepared for the massive volume of scanning, with attendant Optical Character Recognition to ensure the new electronic files are truly searchable and useful in an electronic operating environment? Which files are to be scanned? Will only new files be electronic? Will files be converted to electronic when new actions are initiated on that file? Who will provide that scanning? Will there be a scanning

division set up in every regional office, or will it be centralized? Will there be hybrid files, combining electronic and paper documents, and how will those files be handled?

The problem, with so many questions looming, is there has been little in terms of a definitive response from VA as to the long term plan that would answer these questions. In April VA announced a partnership with NARA to accommodate scanning needs, but as The American Legion understands it, NARA is unclear as to their role beyond the 2012 fiscal year. Furthermore there appears to be some confusion regarding the scope of NARA's involvement. The American Legion is hopeful testimony from both NARA and VA will help clarify these areas of confusion so concerned stakeholders can be reassured there is a comprehensive plan going forward for this lynchpin issue. A lot of weight is riding on getting the electronic scanning portion of this system done right, so ambiguity in this area is deeply distressing.

Disability Benefits Questionnaires

After many years of complaints from veterans service organizations about the lack of acknowledgment by VA of private medical opinions, VA has been working to implement an attempted fix to this issue. The Disability Benefits Questionnaires (DBQs) are standardized forms a veteran can bring to a private physician that clearly outline the necessary information needed by VA so the physician can provide all the information needed to be adequate for VA purposes. Given the problems and delays often involved in scheduling VA compensation and pension exams, these have the potential to help unclog the system for VA by allowing the private sector to share some of the burden.

However, early implementation indicated additional VA exams were almost universally being ordered even when the private physicians had filled out the DBQ forms. While at first there were concerns about long standing cultural views within VA towards private medical opinions, the redundant exams may be based on a simple error in the layout of the forms. There is no clear place on any of the 71 forms for a doctor to state a critical nexus opinion, an expert assessment of the likelihood any present disability is related to a veteran's service experience that is a critical and necessary component for service connection. Without a stated nexus opinion, the DBQ forms are useful only for increased rating claims, and not helpful at all in initial disability claims.

Thankfully, the simple addition of a clearly marked area for such opinions on each form could help make these forms a beneficial tool and The American Legion hopes VA will examine the possibility of refining the forms to include such information in the future.

I-Lab

In Indianapolis, VA has been working on an "I-Lab," an experimental process designed to maximize work from staff by directing case flow into multiple streams best suited for the type of claim being worked. Essentially, by shunting work to special productivity teams, VA can achieve a better work rate by allowing specialization on easy claims such as those with few issues or claims not requiring ratings, while more complicated claims would be developed and worked by teams with slightly lower goals but able to take the time necessary to do the

complicated claims at the more deliberate pace necessary. There were separate "lanes" for the claims, such as Express, Core, Special Ops and "non-rating" for example.

While it is still too early to tell the overall success of the program, the initial feedback from our employees working in the Indianapolis regional office was that initially there was a lot of confusion and many of the claims started backing up when the system was implemented. However, once things got sorted out, some of the easier lanes started improving a good deal, with times on non-rating issues and the simple claims moving a bit faster. The "Core" claims lane is apparently still running way behind the other lanes however. The personnel in the office did feel encouraged VA was taking steps to work "smarter" in this case, rather than simply juggling numbers.

Fully Developed Claims

The potential problems being experienced in the Core claims "lane" of the I-Lab project are mirrored in some ways by problems beginning to emerge from one of the programs everyone has been supportive of, the Fully Developed Claims program. The idea behind the program was simple. If a veteran was willing to do all the hard work for the VA up front, and sacrifice a little of their due process, they would get a faster turnaround on their claim and a faster decision in return for VA having a greatly reduced burden of work to get the information necessary to decide the claim. Essentially, by doing VA's job for them, tracking down all the key information and submitting it at the outset of a claim, a veteran could expect a rapid decision because VA would not have to spend all that time developing the claim and doing the necessary research.

Unfortunately, anecdotal reports are currently indicating Fully Developed Claims veterans may be waiting *longer* than the standard claims process for their decisions. This could not be further from the intent of the program. Why would a veteran sacrifice their own time and energy to provide all the necessary research and voluntarily give up some of their due process rights for a claim that takes more time to process?

While it is unclear what is causing the delays, it could be as simple as the management of the "lanes" for processing. If VA only budgeted a certain number of employees to process these claims, and the volume of claims is exceeding their capacity, then it is no longer helpful to the process. Much like in traffic, when all the cars shift into the "Express Lane" it ceases to be the express lane.

Appeals

The Houston regional office currently houses an Appeals Pilot tasked with experimenting to provide a better appeals process. The most important wrinkle of the new process is the early and up front involvement of a Decision Review Officer (DRO) in the process. The DROs, some of the most experienced VA employees who review the claims and provide decisions at this first stage of the appellate process, contact the veterans right off the bat to provide a better picture of the appeal.

This informal contact with the veteran has the potential to help clarify the issues under appeal and also can help determine whether or not additional evidence is needed before the *de novo* review process.

The project is still in early stages, however there have been some troubling concerns raised by Legion staff working in the Houston office. The largest concerns circulate around possible encroachments on appellate rights of the veterans. We are hearing reports that some of these contacts with the veterans may be encouraging the veterans to waive the right to submit new evidence in their appeal. As new evidence is sometimes a key component to winning a claim on appeal, this would be a concern if veterans are being advised against its submission without proper counsel and guidance. Also, there are indications veterans are being told their DRO review would not be a *de novo* review. At every level of the appellate process a veteran is entitled to a *de novo,* or complete from scratch review of the evidence without concern for previous decisions. This is essential and important to ensure previous decisions which may have been flawed or faulty are not simply rubber stamped at every level. It should not even be in questions. It's simply what's right for the veteran.

If these concerns about appellate rights can be clarified, it's likely some positive moves can come out of looking at the appeals process. Even in a location as notoriously challenged as the Appeals Management Center (AMC) there are steps forward being made that are benefiting the veteran. The AMC was much maligned, and rightly so for a good portion of its history. In 2008 the AMC was taking nearly 400 days on average to complete a claim, and those claims had a remand rate of approximately 30 percent, meaning the accuracy was so poor nearly a third of the claims were continually sent back to be redone properly. The average days required to work a claim has been cut in half and the remand rate has dropped to just under 7 percent. The AMC is working with veterans' organizations to identify claims with multiple issues in which one or more issues can be rated even though others may still require further development. When these claims are identified, the AMC issues a partial rating for the completed issues and continues to work the remaining issue. The important step is the veteran gets some measure of relief with a decision letter and benefits money beginning to flow.

This is what happens with a mindset and dedication to turning a badly performing process around. The American Legion strongly encourages allowing that mindset to spread.

Summary

The VA is struggling with a massive backlog of earned benefits claims. In order to fix the backlog VA is introducing a wide assortment of pilots, projects and programs. With the raw volume of such measures, it is becoming increasingly difficult to separate the wheat from the chaff and determine which measures are truly improvements. But is it the techniques and technology, or is it a mindset problem?

Ultimately we will hear many promises from VA about the benefits of this technology or that pilot. We will hear the virtues extolled of what will finally happen when some specific tool or program is put into place. It may be a culture issue, and VA may have to look itself hard in the mirror and ask "Is failure an option?"

What The American Legion remembers however, is that America managed to put men on the Moon in under a decade's time, using rooms full of men working feverishly with basic slide rules and determination to make that happen. It's not always the modern technology that solves the problem; it's the will to take on a task and the refusal to accept alternatives to your goal. As the great NASA Flight Director Gene Kranz was fond of saying "Failure is not an option."