

April 23, 2024

The Honorable Denis R. McDonough
Secretary of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420

Dear Secretary McDonough:

I write in regard to a series of disturbing reports of inadequate and unprofessional treatment of Massachusetts veterans by private vendors during Department of Veterans Affairs (VA) compensation and pension (C&P) examinations. I seek a review by your office of the waiting times for C&P exams, the quality of service that veterans receive during these exams, and the Department of Veterans Affairs' oversight of C&P vendors.

Veterans Face Delays and Denials of Benefits due to Inadequate Exams

Disability claims, including C&P exams, were, until 1996, performed almost exclusively by the VA physicians, employed by the Veterans Health Administration (VHA).¹ "In 1996, Congress authorized a limited program allowing 10 Veterans Benefits Administration (VBA) Regional Offices (RO) to assign C&P exams to outside contractors."² The pilot program was later expanded and by 2017 all ROs were allowed to contract for C&P.³ The goal of this privatization was to improve the C&P process, provide some relief to a strained VA system—evidenced by growing

¹ Congressional Testimony provided to the House Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs, "VA Disability Exams: Are Veterans Receiving Quality Services?" hearing, July 27, 2023, American Federation of Government Employees, AFL-CIO, p.1, <https://www.congress.gov/118/meeting/house/116269/documents/HHRG-118-VR09-20230727-SD007.pdf>.

² Congressional Testimony provided to the House Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs, "VA Disability Exams: Are Veterans Receiving Quality Services?" hearing, July 27, 2023, American Federation of Government Employees, AFL-CIO, p.1, <https://www.congress.gov/118/meeting/house/116269/documents/HHRG-118-VR09-20230727-SD007.pdf>; See also Veterans' Benefits Improvements Act of 1996, Pub. L. 104-275, Section 504, October 9, 1996, (authorizing VA to enter into nongovernment contracts to supplement VHA's internal capacity to conduct disability exams), <https://www.congress.gov/104/plaws/publ275/PLAW-104publ275.pdf>. Considered a pilot program, Pub. L. 104-275 stipulated that no more than 10 Veterans Affairs Regional Officers (VARO) could receive services under the contracts. *Id.*

³ Congressional Testimony provided to the House Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs, "VA Disability Exams: Are Veterans Receiving Quality Services?" hearing, July 27, 2023, American Federation of Government Employees, AFL-CIO, p.1, <https://www.congress.gov/118/meeting/house/116269/documents/HHRG-118-VR09-20230727-SD007.pdf>.

exam workloads and backlogs⁴—and ultimately provide better outcomes for veterans.⁵ Over time, the VA shifted its disability exams casework almost completely to contractors.⁶ VHA facilities simultaneously “reduced their examiner staffing levels by about 36 percent from fiscal years 2017 through 2020.”⁷ Currently, almost “90% of all disability exams are performed by VA contractors.”⁸

The increased reliance on contracted C&P exams has addressed the backlog, increasing the number of completed Examination Scheduling Requests (ESR) by 69%, from 1.2 million in FY 2016 to over 2 million in FY 2022.⁹ However, my office has received multiple complaints and concerns about the quality of the contracted exams conducted in Massachusetts and across the country.

For example, constituents have reported to my office that contractor examiners failed to review service treatment records of veterans prior to their appointments, and shredded medical questionnaires instead of adding them to medical files as evidence because they could not be added.¹⁰ They have indicated that contractors directed veterans to meet them for exams outside of medical facilities, including co-working offices, broom closets, and hotel rooms.

I have also received reports that some contractor exams have taken about 30-45 days or longer to complete, compared to about 10 days for exams conducted by VA doctors at VA Boston, and that these exams may require the veteran to travel to multiple locations on different days to complete

⁴ Government Accountability Office, VA Disability Exams: Opportunities Remain to Improve Program Planning and Oversight, July 26, 2023, p. 2, <https://www.gao.gov/assets/gao-23-106939.pdf>.

⁵ See Consolidated And Further Continuing Appropriations Act, 2015, Pub. L. 113-235, Section 241, December 16, 2014 (providing VA the authority to expand the number of VAROs authorized to use Disability Exam Management (DEM) contracts from 10 to 15 by September 2016, and authorizing the Secretary of VA to expand the use of medical disability contracts beginning fiscal year 2017 and each fiscal year thereafter, at as many VAROs as the Secretary considered appropriate), <https://www.congress.gov/113/plaws/publ235/PLAW-113publ235.pdf>.

⁶ Congressional Testimony provided to the House Committee on Veterans’ Affairs, Subcommittee on Disability Assistance and Memorial Affairs, “VA Disability Exams: Are Veterans Receiving Quality Services?” hearing, July 27, 2023, American Federation of Government Employees, AFL-CIO, p. 1, <https://www.congress.gov/118/meeting/house/116269/documents/HHRG-118-VR09-20230727-SD007.pdf>.

⁷ Government Accountability Office, “VA Disability Exams: Opportunities Remain to Improve Program Planning and Oversight,” July 26, 2023, p. 3, <https://www.gao.gov/assets/gao-23-106939.pdf>; U.S. Department of Veterans Affairs, “Report on the Provision of Medical Disability Examinations,” July 2021.

⁸ Congressional Testimony provided to the House Committee on Veterans’ Affairs, Subcommittee on Disability Assistance and Memorial Affairs, “VA Disability Exams: Are Veterans Receiving Quality Services?” hearing, July 27, 2023, American Federation of Government Employees, AFL-CIO, p. 1, <https://www.congress.gov/118/meeting/house/116269/documents/HHRG-118-VR09-20230727-SD007.pdf>.

⁹ Congressional Testimony provided to the House Committee on Veterans’ Affairs, Subcommittee on Disability Assistance and Memorial Affairs, “VA Disability Exams: Are Veterans Receiving Quality Services?” hearing, July 27, 2023, Jeffrey London, Executive Director, Medical Disability Examination Office, Veterans Benefits Administration, Department of Veterans Affairs, p. 2, <https://www.congress.gov/118/meeting/house/116269/witnesses/HHRG-118-VR09-Wstate-LondonJ-20230727.pdf>.

¹⁰ VA does not allow examiners to add anything to the veteran’s medical file as evidence other than a Disability Benefits Questionnaire (DBQ). Additional documents must be submitted by veterans or VSOs to their medical records. Late 2023, VA updated its modality of records transfer to compensation and pension examiners from an antiquated PDF file of hundreds of scanned documents to a virtual data file designed to increase efficiency. Senate Veteran Affairs Committee, March 25, 2024, on file with Senator Elizabeth Warren’s office.

the exam. Additionally, my office has heard numerous heart-breaking reports from veterans who described the financial hardship and emotional pain and stress that they endured when they experienced a denial or a slow-moving appeal in cases where their exam was inadequate. These veterans would have been spared such hardship if the contracted exam was conducted correctly the first time.

GAO and VA Inspector General Reports Reveal Concerns about Contractor C&P Exams

There are serious concerns about the quality of contractor C&P exams. In 2019, a VA Office of Inspector General (OIG) report identified several challenges the “[medical disability examination] staff faced in overseeing the contract C&P program,” which included limitations with VBA’s electronic management systems, a lack of reliable data, inadequate staffing, and inability to validate the completion of contractor’s requirements.¹¹ While VBA concurred and addressed most of the OIG recommendations by “transition[ing] the electronic management system into the overall Veterans Benefits Management System to allow for scheduling and cancellations to be tracked as a standardized data,” VBA failed to address the quality of contract C&P examiners.¹² A May 2021 Government Accountability Office (GAO) report found that VBA experienced “challenges in processing certain complex claims due, in part, to problems with the [contractor] disability exam reports for these claims.” The GAO also found that “[m]istakes with these claims—either by claims processors or due to inconsistency in exam reports—could have led to incorrect decisions on veterans’ claims.”¹³ Exam reports for traumatic brain injuries, military sexual trauma, and Gulf War Illness were returned for corrections and clarifications at about “twice the rate as exam reports overall.”¹⁴ Although VBA implemented many of GAO’s recommendations to develop “specialized training for claims processors and medical examiners,”¹⁵ the VBA has failed to assess the “quality of exam reports completed by contractors for complex claims.”¹⁶

The Inspector General (IG) identified numerous problems with VA contracts that limited the agency’s ability to hold contractors accountable for problems. According to the IG, “Wording in

¹¹ *Id.*

¹² *Id.*

¹³ Government Accountability Office, “VA Disability Exams: Actions Needed to Improve Program Management,” Statement of Elizabeth Curda, Director, Education, Workforce and Income Security, Testimony Before the Committee on Veterans’ Affairs, U.S. Senate, May 12, 2021, p. 8, <https://www.veterans.senate.gov/services/files/4AD8EF40-2AFE-46D2-BF6D-A166818D4F73>.

¹⁴ Government Accountability Office, “VA Disability Exams: Actions Needed to Improve Program Management,” Statement of Elizabeth Curda, Director, Education, Workforce and Income Security, Testimony Before the Committee on Veterans’ Affairs, U.S. Senate, May 12, 2021, pp. 8-9, <https://www.veterans.senate.gov/services/files/4AD8EF40-2AFE-46D2-BF6D-A166818D4F73>.

¹⁵ Government Accountability Office, “VA Disability Exams: Actions Needed to Improve Program Management,” Statement of Elizabeth Curda, Director, Education, Workforce and Income Security, Testimony Before the Committee on Veterans’ Affairs, U.S. Senate, May 12, 2021, p. 8, <https://www.veterans.senate.gov/services/files/4AD8EF40-2AFE-46D2-BF6D-A166818D4F73>.

¹⁶ Government Accountability Office, “VA Disability Exams: Actions Needed to Improve Program Management,” Statement of Elizabeth Curda, Director, Education, Workforce and Income Security, Testimony Before the Committee on Veterans’ Affairs, U.S. Senate, May 12, 2021, p. 8, <https://www.veterans.senate.gov/services/files/4AD8EF40-2AFE-46D2-BF6D-A166818D4F73>.

exam contracts limited VBA's ability to hold vendors accountable the contract wording was not specific regarding the application of monetary disincentives... Additionally, VBA could not accurately track vendors' timeliness in the system used to process claims, limiting its ability to measure performance. Without complete timeliness data, the [Medical Disability Program Office] could not accurately and consistently demonstrate whether vendors met the criteria for an incentive or a disincentive."¹⁷

These are ongoing problems: Testimony by Jeffrey London, VA's Executive Director of the Medical Disability Examination Office, indicated in July 2022 that there is still no such quality assurance system in place to measure the clinical quality of exams.¹⁸

As recent as February 2024, VA OIG found that VA officials did not follow requirements to ensure contractor employees were properly vetted.¹⁹ The IG review found that 94% of the contract files "did not have the required position designation records that established the background investigation requirements for each contracted employee, [about 75 %] of the contracts did not include the required contract language identifying the position risk and sensitivity designation, and did not have evidence of a completed fingerprint check [or background investigation]."²⁰ As the IG noted, "Unvetted contractor employees may increase risks to health, safety, and well-being of veterans and VA employees, as well as the efficiency and integrity of VA services, government property, and information."²¹

VA Ignored Warnings about the Impact of Increased Reliance on Contracted Examiners

I along with ten other Senators raised these concerns in our November 2020 letter to VA that addressed VA's decision to expand "privatiz[ation] of C&P programs within the Veterans Health Administration (VHA), eliminating the associated VA personnel conducting these exams and leaving the examination of veterans' disabilities in the hands of private contractors at a potentially enormous cost to American taxpayers."²² We warned that the transition to fully utilize private contractors could have "serious long-term negative impacts on the services and benefits provided

¹⁷ Department of Veterans Affairs Office of the Inspector General, Office of Audits and Evaluations, "Contract Medical Exam Program Limitations Put Veterans at Risk for Inaccurate Claims Decisions," June 8, 2022, p. iii, <https://www.oversight.gov/sites/default/files/oig-reports/VA/VAOIG-21-01237-127.pdf>. The Medical Disability Program Office (MDEO) administers the Medical Disability Exam (MDE) contract program; MDEO contracts allow vendors to provide examinations to Veterans and service members who are seeking disability benefits from VA. *Id.*

¹⁸ Congressional Testimony provided to the House Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs, "VA Disability Exams: Are Veterans Receiving Quality Services?" hearing, July 27, 2023, Jeffrey London, Executive Director, Medical Disability Examination Office, Veterans Benefits Administration, Department of Veterans Affairs, p. 5, <https://www.congress.gov/118/meeting/house/116269/witnesses/HHRG-118-VR09-Wstate-LondonJ-20230727.pdf>.

¹⁹ Department of Veterans Affairs Office of the Inspector General, Office of Audits and Evaluations, "Noncompliance with Contractor Employee Vetting Requirements Exposes VA to Risk," February 8, 2024, p. 8, https://www.vaog.gov/sites/default/files/reports/2024-02/vaog-21-03255-02_1.pdf.

²⁰ *Id.*

²¹ *Id.*

²² Letter from Senator Jon Tester to VA Secretary, Robert Wilkie, November 20, 2020, <https://www.manchin.senate.gov/imo/media/doc/2020-11-20%20Letter%20to%20Wilkie%20re%20Contract%20CP%20Exams%20FINAL.pdf?cb>.

to our nation’s veterans,”²³ and that the VA had “no clinical quality measurement for, or evaluation of, contractor exams.”²⁴ Despite these warnings, problems do not appear to have been prevented or resolved by VA.

In order to address our longstanding concerns and determine how the privatization of C&P exams has impacted veterans in Massachusetts and around the country, I ask that you provide answers to the following questions by May 14, 2024:

1. What are the eligibility requirements for C&P exam contractors? How does this compare to the requirements for VA C&P examiners?
2. What steps does the VA take to ensure the licenses of health professionals who conduct contracted C&P exams are current and valid?
3. How will the VA ensure thorough background checks for all health professionals who conduct contracted C&P exams?
4. What training and resources does VA provide to health professionals who conduct contracted C&P exams?
5. How are contracted C&P examiners assessed? What is the method to measure the contractors’ quality of service, satisfaction of the veteran, or relevant experience to conduct C&P exams?
 - a. Are the national VHA C&P satisfaction surveys²⁵ mandatory or voluntary?
 - b. Who collects and stores this information (survey results)?
 - c. How is the feedback from the surveys implemented?
6. What is the average wait time for a contracted C&P exam to:
 - a. Schedule an exam with a veteran once it has been requested or directed?
 - b. Perform a C&P exam?
 - c. Submit results of a C&P exam?
 - d. Determine a veteran’s disability rating?
 - e. How do these wait times compare to exams conducted by VA doctors at VA facilities?
7. How are veterans able to submit complaints or feedback regarding the contracted C&P exam?
 - a. Are all veterans provided with the national VHA C&P satisfaction survey?
 - b. How many veterans participate in the survey?
 - c. How are the survey results reviewed and implemented?
8. Are veterans aware that they have a right to request their C&P exam be conducted by VHA personnel in a VA facility?

²³ Letter from Senator Jon Tester to VA Secretary, Robert Wilkie, November 20, 2020, <https://www.manchin.senate.gov/imo/media/doc/2020-11-20%20Letter%20to%20Wilkie%20re%20Contract%20CP%20Exams%20FINAL.pdf?cb>.

²⁴ Letter from Senator Jon Tester to VA Secretary, Robert Wilkie, November 20, 2020, <https://www.manchin.senate.gov/imo/media/doc/2020-11-20%20Letter%20to%20Wilkie%20re%20Contract%20CP%20Exams%20FINAL.pdf?cb>.

²⁵ Congressional Testimony provided to the House Committee on Veterans’ Affairs, Subcommittee on Disability Assistance and Memorial Affairs, “VA Disability Exams: Are Veterans Receiving Quality Services?” hearing, July 27, 2023, Jeffrey London, Executive Director, Medical Disability Examination Office, Veterans Benefits Administration, Department of Veterans Affairs, p. 2, <https://www.congress.gov/118/meeting/house/116269/witnesses/HHRG-118-VR09-Wstate-LondonJ-20230727.pdf>.

- a. How is VA disseminating that information to the public and veterans' community?
 - b. What is the wait time for in-house C&P exams by VHA personnel?
9. How often are veterans re-examined by VHA personnel after C&P contractors have performed the exam?
10. How often are contracted exams returned for rework by VA? How does that compare to exams conducted by VHA personnel?
11. How often are disability ratings appealed and changed after contractors conducted the C&P exam? How does this appeal and change rate compare to exams conducted by VA doctors at VA facilities?

Sincerely,



Elizabeth Warren
United States Senator