



TESTIMONY

PRESENTED BY

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BEFORE A FIELD HEARING OF THE

SENATE SPECIAL COMMITTEE

ON AGING



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INTRODUCTION

Chairman Casey, Ranking Member Braun, Senator Scott, and distinguished Members of the Senate Special Committee on Aging, on behalf of the Blinded Veterans Association (BVA) and its membership, we appreciate this opportunity to present our views on *“Issues Facing Veterans: Access to Care, Services, and Economic Opportunity.”* As the only congressionally chartered Veterans Service Organization (VSO) exclusively dedicated to serving the needs of our nation’s blind and low vision veterans, their families, and caregivers, BVA first wishes to highlight “National Blinded Veterans Day,” which occurs March 28. The day coincides with the 79th anniversary of the organization’s 1945 founding by World War II blinded Army service members at Avon Old Farms Army Convalescent Hospital in Connecticut.

SAFEGUARDING OCULAR CLINICAL STANDARDS OF CARE

As the only national VSO chartered by congress exclusively dedicated to assisting veterans and their families coping with blindness and vision loss, ensuring that our nation’s veterans have access to the highest quality eye care remains a top priority. Our organization has strong concerns about the Department of Veterans Affairs (VA) initiative to establish national standards of practice for health professionals within the Veterans Health Administration (VHA) that could lower the standard of care, particularly for eye care services, available to veterans.

One reason we are so concerned about the future of veterans’ surgical eye care is the fact that in September 2022 VA modified its Community Care “Standardized Episode of Care (SEOC): Eye Care Comprehensive” guideline by removing language providing that “only ophthalmologists can perform invasive procedures, including injections, lasers, and eye surgery.” By removing this sentence, VA is implicitly authorizing optometrists to perform ophthalmic surgery on veterans they refer under the Community Care program in the few states where permitted by state licensure laws. VA removed this language without any opportunity for the veteran community and public to comment. BVA is extremely concerned that VA has removed an important patient safeguard posing increased risk to veterans requiring surgical eye care.

Our members know all too well that eye tissue is extremely delicate and, once damaged, it is often impossible to fix. While optometrists play an important role in addressing the eye care needs of veterans, they are not medical doctors who have the training and experience needed to perform invasive surgical procedures. While some procedures are higher risk than others, no invasive procedures are without risk, particularly when attempted by inexperienced providers.

Veterans have benefitted from established, consistent, high-quality surgical eye care for decades because VA has maintained a long-standing policy that restricts the performance of therapeutic laser eye surgery in VA medical facilities to ophthalmologists: medical or osteopathic doctors who specialize in eye and vision care. This policy is consistent with the standard of medical care in the overwhelming majority of states. It also ensures that there is a system-wide quality standard for surgical eye care and that all veterans have access to the eye

care provider with the appropriate education, training, and professional experience needed to perform their eye surgery.

We continue urging congress to mandate that VA immediately reinstate the following language into the SEOC: “Only ophthalmologists can perform invasive procedures, including injections, lasers, and eye surgery.” We also urge VA to be mindful of the appropriate roles of optometry and ophthalmology as it seeks to establish national standards of practice within VA and community based health care systems.

ESTABLISHING CAREGIVER PROGRAM CLINICAL STANDARDS

The current method of determining eligibility for the VA Program of Comprehensive Assistance for Family Caregivers (PCAFC) is governed by 38 U.S.C. § 1720G and based on a subjective standard that requires a veteran to be unable to perform one or more Activities of Daily Living (ADLs), which are basic self-care tasks like cooking, bathing, toileting, and mobility (such as transferring from a bed to a chair). These ADLs are for sighted people and do not take into account the abilities and limitations of blind or severely visually impaired veterans. BVA calls on the ADL standard to be revised to take into account the unique challenges and limitations of blinded veterans.

BVA has concerns about blinded veterans being able to safely take their correct medication in the correct amount at the correct time. Medication management is NOT an ADL. Rather, it is classified as an instrumental ADL (iADL), which requires more complex planning and thinking. Even though it is not an ADL, an inability to independently handle one’s own medication management should be a qualifier for PCAFC benefits (at least at the lower tier level), especially for blinded veterans or veterans with cognitive impairments who are at high risk of committing medication errors.

On March 25, 2022, the U.S. Court of Appeals for the Federal Circuit set aside VA’s definition of “need for supervision, protection, or instruction” in 38 C.F.R. § 71.15 because it determined that VA’s definition was inconsistent with the statutory language. Veterans and caregivers await VA rulemaking to update 38 C.F.R. § 71.15.

VA’s own numbers have shown the denial rate for PCAFC applications to be as high as 90 percent, which most all stakeholders agree is too high. To improve and simplify the PCAFC adjudications process, BVA calls on the creation of an objective clinical standard for PCAFC eligibility for blinded veterans and proposes a “5/200 corrected acuity (or worse) in both eyes, or a field of vision of 5 degrees or less in both eyes,” to qualify blinded veterans for the PCAFC benefit. This proposed clinical standard is the same standard for compensation at the 100 percent rate with Special Monthly Compensation (SMC) L and is far more restrictive than the standard for legal blindness, which requires “20/200 or worse in the better eye, or a field of vision of 20 degrees or less.”

The total number of potentially eligible veterans under this proposed clinical standard is small. VHA's numbers estimate there are 130,000 veterans who are legally blind or worse. However, VA does not report how many of these 130,000 veterans are "5/200 or 5 degrees or worse."

The number of potential eligible blinded veterans with service-connected eye conditions who would qualify for PCAFC benefits under this proposed "5/200 or 5 degrees or less standard," is exceedingly small. According to FY 2022 statistics from the Veterans Benefits Administration (VBA), out of the 25 million service conditions that exist today, only 366,268 are for eye conditions, and a much smaller number, only 3,368 are eye conditions rated at the 100 percent rate.

OVERSEEING COMPLIANCE WITH TRANSPORTATION SERVICES

A common complaint BVA hears from its membership relates to their transportation challenges to get to and from VA medical appointments. VA transportation is often not available, or when it is available, it is inadequate and unreliable. Many VA Medical Centers (VAMCs) require veterans to schedule their Veterans Transportation Service (VTS) accommodations at least 30 days in advance of their medical appointment, which creates a barrier to accessing timely medical care.

Additionally, Special Mode Transportation (SMT) authorizations for VTS eligibility are limited to VA clinicians, currently defined as: Physicians; Physician Assistants; Nurse Practitioners; Certified Nurse Practitioners; Clinical Nurse Specialists; Certified Nurse Midwives; or Psychologists – rather than Blind Rehabilitation Service VIST Coordinators who are responsible for coordinating care and services for severely disabled, visually impaired veterans and service members receiving VA care. BVA believes VIST Coordinators are the most uniquely qualified professionals overseeing the needs of blind and low vision veterans, and therefore should be afforded the authority to authorize SMT.

Although the VTS program is governed by VHA Instruction 1695(1), VAMC staff interpret eligibility requirements differently, leading to a wide variance in eligibility decisions. For example, although the directive authorizes travel due to vision impairment, some VAMC staff require that the blinded veteran also be in a wheelchair or a gurney in order to qualify for VTS travel. These VAMC staff appear to be interpreting the directive too broadly in an effort to disenfranchise blinded veterans.

BVA hears from its members that their VTS travel, which they booked 30 days in advance, is often cancelled the day before their medical appointment due to a shortage of drivers. These veterans are then forced to scramble to find a friend or family member to drive them, or pay for a taxi or Uber, or reschedule or miss their appointment.

Blinded veterans also face inadequate reimbursement for travel to their VA medical care. VA is obligated to reimburse the full cost of travel, but often blinded veterans are only reimbursed the IRS standard of 41.5 cents per mile. Recently, BVA heard from a member who was only

reimbursed \$15 for his \$50 Uber ride to his VAMC. VAMCs should be held accountable for providing the proper reimbursement amount for travel reimbursement claims.

Unfortunately, recent changes to the travel reimbursement process have created additional barriers to blinded veterans. Previously, veterans could receive cash reimbursement at their VAMC cashier's window while at the VAMC. VA now requires all veterans to submit their travel reimbursement online, but the website is not accessible, meaning that blinded and visually impaired veterans are often unable to file for their travel reimbursement claims within the 30-day deadline. When asking for help at their local VAMC cashier's window, blinded veterans are told by staff. "You have to use the website; we can't help you."

To address the travel challenges facing blinded veterans, BVA calls on congressional oversight of the VTS program to identify and document these and other challenges blinded veterans are dealing with when trying to get to and from their VA medical appointments. Additionally, we call for an immediate return to veterans being able to receive their travel reimbursement at their VA facility, and for the 30-day time limit to file VA travel reimbursement claims to be suspended until the travel reimbursement website is brought into full accessibility compliance.

OVERSEEING COMPLIANCE WITH ACCESSIBILITY REQUIREMENTS

BVA thanks congress for its continued support of our nation's blind and low vision veterans, demonstrated by the passage of "S. 3587, the VA Website Accessibility Act of 2019." This bipartisan legislation directed VA to report to congress on the accessibility of VA websites (including attached files and web-based applications) to individuals with disabilities. BVA requests that there continue to be strong oversight and transparency on VA's progress of updating websites, files, and applications that are still inaccessible to such individuals. We remain discouraged by learning that platforms such as SharePoint, used throughout VA enterprise, and other similar platforms, will not be addressed by these reviews, as VA believes they are not websites. Interestingly, Microsoft, the maker of SharePoint, defines it as "a secure 'site' to store, organize, share, and access information from any device enabling 'websites' to function via a web-browser." To the blind and low vision user, SharePoint looks and acts just like a website. Thus, the Department appears to be departing from its alleged goal of becoming world-class promoters of diversity, equity, and inclusion as it intentionally excludes blind and low vision persons.

The Department of Veterans Affairs Office of Inspector General (VA OIG) recently issued the report "VBA's Compensation Service Did Not Fully Accommodate Veterans with Visual Impairments (Report No. 21-03063-04)." VA OIG conducted this review to determine whether the Compensation Service complied with accessibility requirements for communicating benefits-related information to veterans with visual impairments. VA OIG found that VBA's Compensation Service did not fully comply with Section 504 of the Rehabilitation Act of 1973. The review team determined that visually impaired veterans could be excluded from accommodations by the Compensation Service's criteria, and even the legally blind veterans

who meet the criteria are not accommodated through the entire claims process. Although VBA's Adjudication Procedures Manual instructs claims processors to contact visually impaired veterans by telephone to discuss the contents of decision notices, 87 of 100 claims reviewed showed no documentation of processors making such calls. Consequently, some veterans may not have been made aware of adverse claims decisions or their rights to challenge such decisions.

VA OIG concluded that the Compensation Service's continued failure to coordinate with relevant agencies, along with its failure to comply with VA-wide accessibility implementation requirements, will continue to make it more difficult for veterans with visual impairments to participate fully in the disability compensation program.

VA OIG made five recommendations to the undersecretary for benefits: (1) update the process for developing, approving, and issuing guidance for accommodating visually impaired veterans to include steps for consulting with the Office of General Counsel; Office of Resolution Management, Diversity, and Inclusion; and previously, the Department of Justice Civil Rights Division; (2) update the adjudication procedures to comply with federal regulations and VA policies; (3) develop and implement a quality assurance mechanism to ensure compliance with accessibility requirements; (4) assign accessibility coordinators, publicize their names, and conduct a self-evaluation of policies outlined in VA accessibility requirements; and (5) coordinate a process to ensure visually impaired veterans are informed of the availability of accommodations.

While we truly appreciate the efforts of VA OIG, we are tremendously disheartened to learn that VA senior leadership continually resist FY23 MilCon/VA appropriations language encouraging "the Department to explore options, such as a VA Accessibility Office led by a Chief Accessibility Officer, to ensure the accessibility needs of disabled veterans and employees are met." Blind, low vision, and other disabled veterans will continue to face barriers until accessibility becomes a top priority for VA's entire enterprise. The Department's most recent congressional report demonstrated that only 7.8 percent of all 812 VA websites are fully compliant with Section 508 of the same Rehabilitation Act of 1973, uncovering a significant barrier that blind and low vision persons—including veterans and VA employees—have known for decades, having been systematically disenfranchised. These intentional barriers faced by blind and low vision individuals are illegal and must come down.

The 2019 VA Website Accessibility law required that all VA websites, medical center check-in kiosks, and the new Oracle Cerner Electronic Health Record, be fully Section 508 compliant. BVA humbly requests stronger congressional oversight and agency transparency on VA's progress of updating websites, files, and applications that are still inaccessible to blind and low vision individuals, as well as mandating the designation of a Chief Accessibility Officer for accountability purposes.

BVA commends Senator Scott for his leadership in introducing *“The Veterans Accessibility Act of 2023,”* bipartisan legislation establishing a Veterans Advisory Committee on Equal Access at VA. The advisory committee will issue regular reports on VA’s compliance with federal disability laws, including the Americans with Disabilities Act and the Rehabilitation Act. The reports will include recommendations for improving VA’s compliance, and will be shared with Congress, the public, and agencies that oversee the Nation’s disability laws. Veterans with disabilities will be among the advisory committee’s members, ensuring that their voices are heard.

CONCLUSION

Blinded veterans’ rights to quality care, access to care, dignity, and self-worth are under assault by the very agency charged with providing and protecting those rights. The needs of blinded veterans are not being addressed nor prioritized. Changes in standard episodes of care and national standards of practice threaten to once again compromise eye health. Inadequate caregiver standards leave blinded veterans lost in the shuffle, as do inaccessible communications platforms and poorly managed transportation programs. These limitations compromise diversity, equity, and inclusion initiatives, initiatives that should be inclusive of all, not a politically motivated chosen few.

Chairman Casey, Ranking Member Braun, Senator Scott, and all Committee members, thank you for the opportunity to present to you today the views of the Blinded Veterans Association. We look forward to furthering our relationships and working with you productively during these challenging times, and welcome the opportunity to answer any questions you may have.

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