

DEPARTMENT OF VETERANS AFFAIRS
ADVISORY COMMITTEE ON DISABILITY COMPENSATION

July 24-25, 2018

MINUTES

Members Present:

Joseph Kirk Martin, Jr., Chairman*
Doris Browne
George R. Fay
Thomas J. Pamperin
Elizabeth Savoca (by telephone)
Michael Simberkoff

Members Not Present:

Warren A. Jones
Jonathan Roberts

Staff Present:

Stacy Boyd, Designated Federal Officer (DFO)
Janice Stewart, Alternate DFO
Laurine Carson, Assistant Director, Compensation Service*
Emilio Fernandez, Assistant Director, Office of Business Process Integration (OBPI)**
Machelle Harrell, Analyst, Compensation Service*
Jocelyn Moses, Chief, Interagency Data Sharing, Compensation Service*
Karida Palmer, Stop Fraud, Waste and Abuse Liaison, Office of Management/Office of
Finance/Office of Internal Controls*
Judy Schafer, Veterans Health Administration (VHA)

Also Present:

David Cleland, Army Medical Command*
L. Duke Dorotheo, Army Medical Command*
David Forgosh, Government Accountability Office*
Jenny Kim, Jefferson Consulting Group
Sherrie Moreira, Army**
Michelle Ramos Domingue, Navy Mutual**
David Spivey, American Legion*
Mike Yedinak, United States Coast Guard*

*July 24 only
**July 25 only

The Advisory Committee on Disability Compensation (ACDC) met in public session on July 24-25, 2018, in the Third Floor Training Room, U.S. Department of Veterans Affairs (VA), 1722 Eye Street, NW, Washington, D.C. 20006.

Tuesday, July 24, 2018

Opening Remarks

Chairman Martin called the Committee to order at 8:36 a.m. He informed members that Compensation Service Director Beth Murphy was stranded in Houston because of the weather and would not be able to brief them at 4:00 p.m. that afternoon, as previously scheduled.

The focus of the meeting will be the 2018 Biennial Report. Chairman Martin reminded ACDC that the final draft was due September 30. He urged members to review their biographies in case there was anything they wished to update.

A new Secretary of Veterans Affairs (SECVA), Robert Wilkie, has been appointed. Chairman Martin said the ACDC would invite Secretary Wilkie to address the Committee at a future meeting.

Housekeeping

Chairman Martin said he would wait to see how the report was going before determining if a meeting in September was necessary.

Ms. Boyd reported that the appointments of new ACDC members had been placed on hold pending a conversation between the SECVA and the Under Secretary for Benefits (USB). Chairman Martin said ACDC's new subcommittee was also on hold pending guidance from the new SECVA.

Dr. Simberkoff mentioned that PBS NewsHour recently had a segment on constrictive bronchiolitis in Veterans. One of the physicians interviewed said it was the second most common disability among Veterans she had seen, after post-traumatic stress disorder. However, according to the VA, only about 140 constrictive bronchiolitis claims had been approved in the past year, so something was amiss. Mr. Pamperin noted that there was no ratings schedule diagnostic code for constrictive bronchiolitis.

The Committee recessed from 8:57 a.m. to 9:38 a.m.

Overview of Fraud, Waste, and Abuse Committee

Ms. Palmer gave the overview. The Prevention of Fraud, Waste, and Abuse Advisory Committee (PFWAAC) was chartered on July 10, 2017 to engage external experts to

provide advice to the Secretary on improving and enhancing VA's efforts to identify, prevent, and mitigate fraud, waste, and abuse across VA in order to improve the integrity of VA's payments and the efficiency of VA's programs and activities. At PFWAAC's first meeting, held on November 7, 2017, it determined community care would be its first area of focus. Subsequent meetings centered on understanding community care in VA and discussing initial recommendations to the SECVA.

The first anticipated recommendation on community care would develop a strategy addressing fraud, waste, and abuse, establishing a risk-based outcomes goal for preventing and recovering fraud, waste, and abuse for the community care program as part of its strategic plan. The goal and related action plans should protect Veterans and taxpayer interests and manage the burden placed on providers. The VA should adopt an industry standard to reduce waste, fraud, or abusive costs by no later than fiscal year (FY) 2023.

The second anticipated recommendation is to reorganize the mission and focus of the Office of Community Care's Program Integrity Office to include the authority to issue a full range of administrative and investigative actions, conduct interviews, audit and investigate providers, stop payment, and disbarment prior to a referral to law enforcement. The recommendation would also call for developing a memorandum of understanding with the VA's Office of the Inspector General (OIG) that outlines procedures and timelines for program integrity administrative actions and OIG acceptance of fraud referrals. Lastly, it would implement an effective case management system and integrate it across VA.

A third recommendation calls for digitizing, centralizing, and improving access to claims data, ensuring all claims and records related to the community care program are submitted in electronic format or could be transferred into an electronic format for use in data analytics and claims reviews, and ensuring all community care claims data be housed in one central data repository, updated on a regular and frequent schedule.

The last recommendation concerns monitoring third party administrators (TPAs), adopting best practices from commercial TPA arrangements between health plans and employer groups, and from federal and state government anti-fraud requirements for Medicare Advantage and Medicaid managed care plans, and incorporating the requirements for fraud and abuse prevention, reflecting these best practices, into its future contracts with TPAs, adjusting as necessary to VA programs.

PFWAAC will finalize its recommendations and provide them to SECVA within the coming months. VA will review and respond to recommendations. The incoming SECVA will shape the future work of the PFWAAC. The next scheduled meeting remains to be determined.

STOP Fraud, Waste, and Abuse Initiatives

Ms. Moses gave the presentation. The Fraud Reduction and Data Analytics Act of 2015 required agencies to establish financial and administrative controls in order to evaluate fraud risks, implement controls, collect and analyze data on detected fraud in order to monitor trends, and use the results of evaluation to improve fraud prevention and detection. VA's Seek to Prevent Fraud, Waste, and Abuse (STOP FWA) initiative defines fraud as obtaining something of value through willful misrepresentation; waste as using or expending

resources carelessly, extravagantly, or to no purpose; and abuse as behavior that is deficient or improper compared to what a prudent person would consider reasonable.

The STOP FWA governing board is charged with developing strategies to improve VA's ability to combat FWA and reduce improper payments, engaging VA's senior leaders to reinforce STOP FWA efforts, driving accountability and progress with payment integrity efforts, ensuring programs provide needed input to enable the mission of the STOP FWA initiative and improper payment reduction, leveraging resources to support solutions to VA's FWA and improper payment challenges, and providing oversight for Improper Payments Elimination and Recovery Act (IPERA) risk assessments and corrective action plans via the IPERA Subcommittee.

The Compensation Service is reviewing its program, policies, and procedures to identify risks and develop mitigation strategies to lessen or eliminate FWA. Classifications of FWA include recipient FWA, identity theft FWA, internal/employee theft FWA, provider FWA, contractor FWA, and program FWA, when the program itself is enabling wasteful spending.

Several mitigation strategies have been adopted for major risks, including fugitive felon automation for Veterans with fugitive felon status, an annual eligibility report for misrepresentation of employment status to receive individual unemployability (IU), direct deposit notification letters for fraudulent changes to direct deposit information, procedures requiring electronic verification of the original for falsifying military documents, computer access restrictions for separation of duties, a private medical records (PMR) quality assurance and surveillance plan for contractor fraud in the PMR program, private provider disability benefits questionnaire (DBQ) fraud prevention for unscrupulous submissions of DBQs and unverified providers, reconciliation standard operating procedures to review and validate billing for inappropriate or incorrect medical disability examination billing, automated solutions for reconciliation in development for inappropriate benefit travel costs and billing, process improvements and report monitoring for performance standards unaligned with program enhancements, automated award adjustment enhancements and resource reallocation for untimely adjustments, and partnerships with financial institutions on returned payments for improper and/or duplicate payments.

The Committee recessed from 11:22 a.m. to 1:00 p.m. for lunch.

Housekeeping

USB Paul Lawrence, who was scheduled to visit with ACDC at that time, was tied up in commitments on the Hill and forced to cancel. The Committee decided to move the public comment period up.

Opportunity for Public Comments

The Committee had received several written comments, many in regards to Agent Orange and bladder cancer issues. Carla Dean, president of the Bladder Cancer Foundation of Florida, wrote that in March 2015 she had provided peer-reviewed scientific studies supporting the assertion that bladder cancer in Vietnam Veterans was the result of chemicals of interest used there, such as Agent Orange. It seemed to her like the government was employing a strategy of "delay, deny until they die." Junious M. (Mel)

Jones of Amarillo, Texas noted that former Secretary David Shulkin expressed support for the addition of bladder cancer to the Agent Orange presumptive list. Lester L. Hanlon, Jr., a Vietnam Veteran diagnosed with papillary urothelial carcinoma of the bladder in 2010, urged ACDC to consider the studies of the National Institutes of Health (NIH) and National Academy of Medicine with respect to bladder cancer as an Agent Orange presumptive. Mary Dell Black of Foley, Alabama requested that ACDC address the status of the expansion of presumptive diseases related to Agent Orange. Frank Rybczyk, a twenty-year Air Force Veteran who served in Vietnam, urged ACDC to act affirmatively on bladder cancer and Parkinson's disease as Agent Orange presumptives, calling the issue a "fiasco which has been pending for a long time." Chairman Martin asked Ms. Boyd to send letters to the commenters thanking them for writing to the Committee and informing them that ACDC was receiving updates on the issue. Ms. Boyd said she had reached out for a speaker to brief the Committee at its next meeting.

Richard G. Narushoff of Monroeville, Pennsylvania wrote about providing better guidelines and instructions within 38 United States Code (U.S.C.) Part 4 on how to use and apply the rating schedule. He believed that too much latitude was given on how raters could perform their review. He suggested VA initiate a logic table for raters to track rating evidence. Mr. Pamperin suggested that Dr. Narushoff's comments be addressed to the assistant director for policy or Dr. Ioulia Vvedenskaya, a medical officer in the Compensation Service.

Roland Roberts resubmitted comments he had provided for ACDC's May 2018 meeting. He quoted an excerpt from the Committee's March 2018 meeting minutes: "...Since the diabetes section of the VASRD was still under consideration and discussion, Chairman Martin felt there was plenty of time to examine and review Mr. Roberts' observations," and asked if there was any timeline to complete this "consideration and discussion," as well as what steps were necessary to advance this discussion on the ACDC meeting docket. Chairman Martin noted that an update on the Veterans Affairs Schedule for Rating Disabilities (VASRD) was scheduled for that day. He added that it might be helpful to refer Mr. Roberts' comments to Dr. Vvedenskaya.

Chairman Martin asked if anyone in the audience had oral comments. David Spivey of the American Legion said that his organization was reviewing a bill proposed by Rep. Charlie Crist of Florida adding various conditions to the Agent Orange presumptive list. The bill would require SECVA to issue periodic reports and extend the period of VA's relationship with the National Academy of Sciences to 2028. Mr. Spivey said the American Legion would probably support the bill. Chairman Martin said the Committee did not advise the VA on diagnosis of presumptive illnesses but was certainly interested in it.

The Committee recessed from 1:41 p.m. to 2:23 p.m.

VASRD Update

Ms. Carson and Ms. Harrell gave the update. VASRD accomplishments from FY2015-17 included proposed rules for the dental/oral, endocrine, gynecological/breast, eye, hematologic, skin, genitourinary, and musculoskeletal systems and a final rule for the dental/oral system. FY2018 has seen final rules for the endocrine, gynecological/breast, eye, and skin systems; an infectious disease proposed rule is expected. Agency goals for FY2019 based on current resourcing and IT planning include a hematologic final rule,

genitourinary final rule, infectious disease final rule, cardiology proposed and final rule, digestive proposed rule, mental disorders proposed rule, respiratory/ear, nose, and throat (ENT) proposed rule, and neurological proposed rule. Goals for FY2020 include a musculoskeletal final rule, digestive final rule, mental disorders final rule, respiratory/ENT final rule, and neurological final rule.

To remain on target, Compensation Service has monthly check-ins with the Office of General Counsel to review the current status of each body system and major issues. Individualized integrated master schedules (IMS) for each of the nine remaining body systems track projected regulatory timelines, intermediate activities, and actual completion dates, and will be analyzed for the next round of VASRD updates to set realistic expectations for review and publication timelines. A new project management plan is in place. Each VASRD policy analyst/medical officer has been designated "project lead" for two body systems. The lead is responsible for tracking deliverables, coordinating next steps, and reporting to the regulations chief and VASRD contract project manager for IMS updates and project risks. Additional staffing and resources of VASRD and regulations staff have been allocated.

In May 2018, VBA began working with the VA Acquisition Academy's Program Management School to develop a VASRD program charter that incorporates all of the efforts to modernize the disability claims process and compensation program and identifies gaps in people, process, and technology; begin development of a VASRD regulatory review project charter, with a specific focus on the working group and review phase, to begin in approximately 2020; and identify next steps for the team and establish a coaching relationship to ensure work continues within VBA.

Closing Remarks

The Committee recessed for the day at 3:37 p.m.

Wednesday, July 25, 2018

Opening Remarks

Mr. Pamperin reconvened the meeting in Chairman Martin's absence at 8:37 a.m. He said the Committee had one briefing in the morning, after which it would go into executive session to try and finalize its recommendations to the Secretary.

Opportunity for Public Comments

Mr. Pamperin announced that ACDC received an additional written comment from Dianne Abernathy that the Vietnam Veterans Agent Orange Relief Act was referred to the House Committee on Veterans' Affairs in 1983 because Congress felt that the concerns of Veterans warranted a timely response. She noted that many Vietnam Veterans had suffered from bladder cancer, and encouraged the Committee to recommend bladder cancer be added to the Agent Orange presumptive list immediately. Mr. Pamperin pointed out that the Committee did not make recommendations on what conditions were Service-connected.

Impact of Fraud, Waste, and Abuse on Disability Claims

Mr. Fernandez gave the presentation. The mission of OBPI counter-fraud operations is 1) to make VBA a hostile space for criminals to operate in and 2) to protect the Veterans' and taxpayers' interests and the integrity of the agency.

The OBPI counter-fraud analytics team statistically models fraudulent payment charges and develops algorithms to proactively identify potential fraud victims through database indicators. Recently implemented methods reduced the number of lost payments due to benefits diversions, preventing the money from leaving the VA and landing in criminal bank accounts. The Salt Lake City VBA incident team investigates all payment cases, resolves issues, ensures the Veteran is made whole, and relays findings back to the analytics team to further develop statistical algorithms. Counter-fraud case analysis is then performed to give OIG lists of related cases to help identify criminally operated fraud rings and prosecute them.

Analytical techniques include data modeling with scatterplots to identify outliers and risk scoring with probability assignments, among others. These techniques result in model data and risk score the database changes to develop the probability of whether or not the change was fraudulent or an input error.

The lifecycle of a fraud identification and remediation case consists of prevention, Veteran contact, public and private sector partnerships, investigation, OIG case analysis, and repayment.

OBPI has completed over 11,000 cases. Just over \$10.1 million in funding is being investigated. \$5,812,993.62 has been recovered for the VBA, essentially self-funding efforts for the next 11 years. The current operating cost for the SLC VBA incident team is \$481,502.65 annually. Counter-fraud operations have led to six arrests, \$2,105,328.00 paid in restitution, 343 total months of incarceration, and 216 months of supervised release. Sixteen generals were confirmed victims of fraud in 2017, which has led to the establishment of preventative measures. OBPI identified a foreign fraud ring and is providing ongoing support to the OIG. \$258,394.91 was identified in connection with this fraud ring. Other accomplishments include helping to resolve a fraud victimizing Richard Overton, a 112-year-old Veteran, in a single day. The operations have helped over 304 special circumstance Veterans, including former POWs, those over 90, media inquiries, the homeless, and more.

Closing Remarks

There being no further comments, Mr. Pamperin adjourned the meeting at 9:56 a.m.

Toby Walter
Neal R. Gross & Company
Preparer of the Minutes

Stacy Boyd

Stacy Boyd, Committee DFO

Joseph Kirk Martin, Jr.

Joseph Kirk Martin, Jr.
Committee Chairman