



National Veterans Affairs and Rehabilitation Commission

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**STATEMENT OF  
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VETERANS AFFAIRS AND REHABILITATION COMMISSION  
THE AMERICAN LEGION  
BEFORE THE  
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS  
COMMITTEE ON VETERANS' AFFAIRS  
UNITED STATES HOUSE OF REPRESENTATIVES  
ON  
"EXAMINING VA'S FIDUCIARY PROGRAM: HOW CAN VA BETTER PROTECT  
VULNERABLE VETERANS AND THEIR FAMILIES?"**

**APRIL 22, 2010**

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to provide The American Legion's views on the Department of Veterans Affairs (VA) Fiduciary Program and improvements VA can make in providing quality health care and benefits for those veterans with mental health injuries or disease. As a majority of World War II and Korea veterans are aging, improvements to the VA's Fiduciary Program is needed to ensure they receive their benefits in a timely manner. Additionally, veterans that are filing claims for Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI) as well as other geriatric illnesses such as Alzheimer's or Dementia may require use of a Fiduciary and without effective oversight, coordination and management, these veterans will continue to experience delays and/or financial hardship in accessing their earned benefits.

Title 38, Code of Federal Regulations (CFR), Sections 13.1 to 13.111 provides the guidance for VA to manage the Fiduciary Program. VA defines a fiduciary as a person or an institution responsible for managing money or property for another and exercising a standard of care imposed by law or contract in such management activity. VA is charged with appointing a fiduciary to manage and handle the veteran's VA Compensation and Pension (C&P) benefits, if a veteran is deemed mentally incompetent.

A recent VA Office of the Inspector General (OIG) report, Audit of the Fiduciary Program’s Effectiveness in Addressing Potential Misuse of Beneficiary Funds, found that the “Veterans Benefits Administration (VBA) lacks elements of an effective management infrastructure to monitor program performance, effectively utilize staff, and oversee fiduciary activities.” In addition, in VA’s Fiscal Year (FY) 2009 Performance and Accountability Report, VA achieved an 82 percent result out of an 88 percent goal, due to challenges with reorganization of workflow and the training of 20 new Legal Instruments Examiners. FY 2009 was the first year that all fiduciary activities for regional offices in the Western Area were consolidated to the Western Area Pilot Fiduciary Hub in Salt Lake City. Additionally, VA transitioned all fiduciary activities to paperless processing in an effort to increase its targeted goal for the next fiscal year.

The Government Accountability Office (GAO) also released a report in February 2010, “Improved Compliance and Policies Could Better Safeguard Veterans’ Benefits,” which recommended VA “strengthen Fiduciary Program policies for monitoring fiduciaries, improve staff compliance with program policies, evaluate alternative approaches to meet electronic case management system needs and evaluate the effectiveness of consolidating 14 western Fiduciary Program units.” VA has consolidated the Fiduciary Program to ensure that these policies are streamlined and have better centralization of management.

While VA is moving forward with the Fiduciary Hub in Salt Lake City and is taking actions to rectify their Fiduciary Program problems, based on the recommendations from OIG and GAO. The American Legion, however, continues to have several concerns. These concerns include the difficulty and delay in processing the appointed fiduciary, VA’s national centralization model and feedback from American Legion Department (State) Service Officers and Pension Management Center staff.

In researching fiduciary forms required by VA Regional Offices, the number of forms, the accompanying delay in processing and the stress it places on veterans and their family members is monumental. In fact, as noted in the chart below from VA Pamphlet 21-05-1: Federal Fiduciary Program Pocket Folder, 21 different VA forms are required to appoint a fiduciary.

1. VA Form 21-0509: Notice of Fiduciary Commission
2. VA Form 21-0520: Certificate of Commissions Approval
3. VA Form 21-555a: Designation of Payee
4. VA Form 21-555: Certificate of Legal Capacity to Receive and Disburse Benefits
5. VA Form 21-592: Request for Appointment of a Fiduciary, Custodian or Guardian
6. VA Form 21-0792: Fiduciary Statement in Support of Appointment
7. VA Form 21-3045: Estate Action Record
8. VA Form 21-3190: Minor Beneficiary Field Examination Request and Report
9. VA Form 21-3537a: Field Examination Request
10. VA Form 21-3537b: Field Examination Report
11. VA Form 21-4703: Fiduciary Agreement
12. VA Form 21-4706: Court Appointed Fiduciary’s Accounting
13. VA Form 21-4706b: Federal Fiduciary Account

14. VA Form 21-4706c: Court Appointed Fiduciary's Accounting
15. VA Form 21-4707: Estate Summary
16. VA Form 21-4709: Certificate as to Assets
17. VA Form 21-4716a: Adult Beneficiary Field Examination Request and Report
18. VA Form 21-4718: Account Book
19. VA Form 21-4718a: Certificate of Balance on Deposit and Authorization to Disclose Financial Records
20. VA Form 21-8473: Withdrawal Agreement
21. VA Pamphlet 21-05-1: Federal Fiduciary Program Pocket Folder

Second, The American Legion has been concerned about VA's centralization policies and that Veterans' Service Organizations (VSOs) are not included in these processes. For example, when VBA consolidated general inquiry telephone calls from individual regional offices to eight national call centers (NCCs), claimants, beneficiaries and VSOs, who had general questions concerning VA benefits programs, were routed to one of the eight call centers, rather than being able to call the local Regional Office (RO). The American Legion continues to urge VA to provide internal access phone numbers for accredited VSO representatives, so the representative could bypass the consolidated call centers and contact the RO directly in order to access information in a timelier manner to provide better service to their clients. VA commented on this recommendation stating, "providing direct internal telephone access to VSO representatives at each Regional Office (RO) would require the redirection of resources currently dedicated to disability claims processing."

Mr. Chairman and Members of the Subcommittee, The American Legion recommends authorizing personnel solely to administer the Fiduciary Program to ensure this program remains their priority and expertise.

VA has successfully demonstrated that the Consolidated Patient Account Centers (CPACs) model has helped mitigate problems with veterans' third-party insurances being improperly billed. The American Legion understands the importance of collecting data at VA's national level so that trends can be analyzed in order to develop best practices. The only recommendation The American Legion has is that this Subcommittee is to exercise oversight over VA's centralization plans. We urge this Subcommittee to monitor the progress to ensure that VSOs are given internal access phone numbers to better represent their clients.

The American Legion has approximately 2,000 accredited Department (State) Service Officers and County Veterans' Service Officers (CVSO) nationwide that help veterans file claims for VA benefits. Several of these service officers have witnessed firsthand some of the difficulties experienced with the Fiduciary Program. For example, a service officer reiterated the concern that, "*it's difficult for veterans to contact anyone in the Fiduciary Hub because they do not have a 'public contact' number dedicated solely to fiduciary issues and the general VA public contact line can only provide limited information.*" Other service officers commented that the ROs and Pension Centers are not always notifying the Hub by way of the VA Form 21- 592 (Request for

Appointment of a Fiduciary, Custodian or Guardian) that an appointment of a fiduciary is required until someone such as a VSO makes an inquiry.

The third problem American Legion Service officers have encountered with the Salt Lake City Hub was that the center inherited a huge backlog when they consolidated 14 Western Fiduciary Program units in January, 2008. In most cases, the center has improved, to 45 days, the backlog of initial visits to appoint fiduciaries. However, the large backlog of follow-up visits (over 120 days) remains. The Salt Lake City Hub currently is authorized 112 positions, 56 of which are field examiners. Although the center is considered to be fully staffed, the current staffing level does not appear to be sufficient in light of the backlog that still needs to be addressed.

Additionally, The American Legion has national representatives at the three Pension Management Centers (PMCs) in Minneapolis, Philadelphia and Milwaukee. American Legion representatives at these locations have unanimously voiced their concerns in one area -- improving the coordination between the Regional Offices of jurisdiction, Pension Centers and Fiduciary Hubs. For example, one of our service officers helped a veteran file for benefits in August 2009 and the rating decision was completed on February 2010 proposing incompetency. On March 2010, a letter was sent to the veteran in regards to incompetency. The veteran waived due process later in March 2010, which enabled VA to act on the claim prior to waiting the 65 days. Waiving the due process helped speed up the process. The award letter was sent in early April stating the first payment was sent in May, but the retroactive benefits will be withheld until the Guardianship Unit can make their visit. After all this process is complete, the Pension Management Center sends VA Form 21- 592 (Request for Appointment of a Fiduciary, Custodian or Guardian) to the Hub in Salt Lake City. The Hub then notifies the Guardianship unit in the particular RO which can take months. Once the field exam is completed, the VA Form 21-555 (Certificate of Legal Capacity to Receive and Disburse Benefits) is sent back to the PMC for authorization of the retro benefits.

In another case, the Fiduciary process took four years which made the family bear the cost of this delay. The American Legion service officers also reiterated that there is not a dedicated phone number for the Fiduciary Hub that a family member or VSO representative can contact to check on the status of claim. The American Legion is concerned that other veterans are experiencing the same delays, financial hardships and inability to reach the Fiduciary Hubs because of the lack of seamless coordination between ROs, PMCs, Guardianship Units and Field Exams.

Prior to October 2009, it was VA's policy to withhold benefits payable to a beneficiary while competency is considered, and during the period required to appoint a fiduciary. VA issued Fast Letter 09-41 in October 2009 providing revised procedures for VA to pay all monthly and recurring benefits, then withhold only retroactive benefits pending appointment of a fiduciary. However, many beneficiaries continue to suffer hardships as a result of the delays. The American Legion Service Officers have stated that VA workers receive credit for processing the case within the 45-day period. If a case is not completed during the 45-day period, there are not any work credits or staff initiative to get the case finalized. In one office, there are over 100 cases over three months to one year. Additionally, a service officer in a Pension Management

Center helped schedule a fiduciary field exam because the veteran had been waiting for over four years.

Mr. Chairman, this is unconscionable that a veteran's claim can be delayed for this period of time and that the veteran's family member or appointed VSO representative cannot access the system through VA's computer system or an internal phone number. Our nation's veterans and their beneficiaries deserve better.

In closing, The American Legion has six recommendations:

1. The American Legion recommends an additional Full Time Employee (FTE) be funded and authorized within each RO and PMC solely dedicated to Fiduciary Program management and oversight.
2. The American Legion recommends Congress appropriate funding to VBA's Information Technology (IT) budget to set up an IT software package within all of the RO's Fiduciary Program Units, PMCs, and Salt Lake City Fiduciary Hub to enhance communications between each of these offices.
3. The American Legion recommends that part of the software package include reminders or alerts throughout the process to ensure that no paperwork is lost or falls through the cracks.
4. The American Legion recommends that Congress assure VSO representatives are given an internal access phone number for each of the facility's Fiduciary Program Units to improve the timeliness, quality and full coordination of the program.
5. The American Legion recommends that Congress assure VA creates a Fiduciary national toll-free number for family members and the general public. The American Legion recommends that Congress direct VA to establish a VA Voluntary Service (VAVS) Pilot Program to train volunteers on how to become VA Fiduciary Volunteers.

Mr. Chairman, The American Legion has over 6,000 volunteers that serve veterans every day in the community that help veterans in VA Medical Centers, Community-Based Outpatient Clinics, Vet Centers, Fisher Houses, Domiciliaries and State Veterans Homes. Each year, Legionnaires serve over 916,000 hours of service to help veterans. The VAVS Program is the largest volunteer program in the Federal government, providing over 64 years of voluntary service to the nation's veterans. In 2008, the VAVS Program developed a pilot program for Caregivers and The American Legion is assured that if given the necessary training and supervision by the Voluntary Service Program Managers at each VA Facility, a program could be similarly developed for these volunteers. Additionally, the current Fiduciaries for these veterans within the program would receive standardized training and evaluation.

As the nation's veterans experience mental health trauma or diseases, they or their family members should not have to worry about receiving their earned benefits. Mr. Chairman and Members of the Subcommittee, The American Legion sincerely appreciates the opportunity to submit testimony. Thank you.