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**STATEMENT OF
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FOR THE RECORD OF THE
SUBCOMMITTEES ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS AND
OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
APRIL 27, 2022**

Chairs Luria and Pappas, Ranking Members Nehls and Mann, and members of both Subcommittees:

Thank you for inviting DAV (Disabled American Veterans) to submit a statement for the record of today's joint oversight hearing entitled "At What Cost?—Ensuring Quality Representation in the Veteran Benefit Claims Process."

As you know, DAV is a non-profit veterans service organization (VSO) comprised of more than one million wartime service-disabled veterans that is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity. We are pleased to offer our views on the administration and oversight of the Department of Veterans Affairs' (VA) Accreditation, Discipline, and Fees Program for agents, attorneys, and VSO representatives who assist veterans in applying for VA benefits. Our testimony will outline the current VA Accreditation Program, VA Fee Agreements, and the need to protect veterans from non-accredited entities.

VA Accreditation Program

Veterans' accredited representatives are individuals accredited by the Office of General Counsel (OGC) at VA. The VA accreditation program exists to ensure that veterans and their family members receive appropriate representation on their VA benefits claims. VA accreditation is for the sole and limited purpose of preparing, presenting, and prosecuting claims before VA.

VA accredits three types of individuals for this purpose: Representatives of VA-recognized VSOs; attorneys (accredited in their individual capacity, not through a law firm); and claims agents (accredited in their individual capacity, not through an organization).

Per title 38, subsection 14.629(a), VSOs are required to be a recognized organization and file with the OGC, VA Form 21, for each person it desires accredited as a representative of that organization. The form must be signed by the prospective representative and the organization's certifying official.

In recommending a person, the VSO is required to certify that the designee is of good character and reputation and has demonstrated an ability to represent claimants before the VA and is either a member in good standing or a paid employee of such organization working for it not less than 1,000 hours annually. VA also accredits attorneys and agents who are not affiliated with VSOs.

Per title 38, subsection 14.629(b), no individual may assist claimants in the preparation, presentation, and prosecution of claims for VA benefits as an agent or attorney unless he or she has first been accredited by VA for such purpose. For agents, the initial accreditation process consists of application to the OGC, self-certification of admission information concerning practice before any other court, bar, or state or federal agency, an affirmative determination of character and fitness by VA, and a written examination. An individual desiring accreditation as an agent or attorney must establish that he or she is of good character and reputation, is qualified to render valuable assistance to claimants, and is otherwise competent to advise and assist claimants.

All accredited representatives approved to represent veterans, survivors, or their dependents are accredited through OGC, are subject to oversight, have completed specific, VA-approved training, have access to claimants' records, and are authorized to upload relevant documentation into VA databases.

Additionally, accredited representatives must adhere to VA's standards of conduct as outlined in title 38, Code of Federal Regulations, subsection 14.632. It includes:

- All persons acting on behalf of a claimant shall faithfully execute their duties as individuals providing representation on a particular claim under subsection 14.630, representatives, agents, or attorneys.
- All individuals providing representation are required to be truthful in their dealings with claimants and VA. An individual providing representation on a particular claim under subsection 14.630, representative, agent, or attorney shall provide claimants with competent representation before VA. Competent representation requires the knowledge, skill, thoroughness, and preparation necessary for the representation. This includes understanding the issues of fact and law relevant to the claim as well as the applicable provisions of title 38, United States Code, and title 38, Code of Federal Regulations; and act with reasonable diligence and promptness in representing claimants. This includes responding promptly to VA requests for information or assisting a claimant in responding promptly to VA requests for information.
- An individual providing representation on a particular claim under subsection 14.630, a representative, agent, or attorney shall not:

- (1) Violate the standards of conduct as described in this section;
- (2) Circumvent a rule of conduct through the actions of another;
- (3) Engage in conduct involving fraud, deceit, misrepresentation, or dishonesty;
- (4) Violate any of the provisions of title 38, United States Code, or title 38, Code of Federal Regulations;
- (5) Enter into an agreement for, charge, solicit, or receive a fee that is clearly unreasonable or otherwise prohibited by law or regulation;
- (6) Solicit, receive, or enter into agreements for gifts related to services for which a fee could not lawfully be charged;
- (7) Delay, without good cause, the processing of a claim at any stage of the administrative process;
- (8) Mislead, threaten, coerce, or deceive a claimant regarding benefits or other rights under programs administered by VA;
- (9) Engage in, or counsel or advise a claimant to engage in acts or behavior prejudicial to the fair and orderly conduct of administrative proceedings before VA;
- (10) Disclose, without the claimant's authorization, any information provided by VA for purposes of representation; or
- (11) Engage in any other unlawful or unethical conduct.

The primary purpose of the OGC for VA-accredited practitioners is to protect veterans. It is their function and duty to enforce VA's standards of conduct, which are the standards for VA-accredited practitioners in the performance of their work as well as in other activities bearing upon their character. If OGC determines that a VA-accredited practitioner has violated VA's standards of conduct, they may take action that will result in the practitioner being privately reminded of VA's standards. If the violation of the standards of conduct is serious, the practitioner's VA accreditation may be temporarily or even permanently taken from him or her.

The OGC process is set up to determine if a VA-accredited practitioner has violated the standards of conduct. It is not a substitute for a civil claim against the VA-accredited practitioner. OGC cannot give legal advice and cannot modify or change the decision on a VA benefit claim. In general, OGC cannot take money or property from the accredited practitioner to return to the claimant.

VA Fee Agreements for Agents and Attorneys

Agents and attorneys may not charge or be paid for services with respect to services provided before the date on which a notice of disagreement is filed with respect to the veteran's case. This provision of law went into effect in June 2007 and applies to all cases where there is a notice of disagreement after June 21, 2007. As the result of the passage of the Veterans Appeals Improvement and Modernization Act of 2017, a veteran is able to hire an attorney or agent after an initial decision on a claim.

Under current law, fees may not be charged by an agent or an attorney for work performed in connection with the filing of a claim for VA benefits. An agent or attorney may assist a veteran or a claimant without charge in the initial presentation of an application for benefits. Once VA makes its initial decision, then a fee may be charged for services provided after filing supplemental claim, a request for a higher level review or a notice of disagreement. After the notice of disagreement is decided by the Board of Veterans' Appeals, if applicable, a fee can also be charged for representation at the Court of Appeals for Veterans Claims (CAVC).

All agreements for the payment of fees for services of agents and attorneys must be in writing and signed by both the claimant or appellant and the agent or attorney. To be valid, a fee agreement must include the specific terms under which the amount to be paid for the services of the attorney or agent will be determined. The payment of fees may be made by VA directly to an agent or attorney from past-due benefits. The total fee payable (excluding expenses) cannot exceed 20% of the total amount of the past-due benefits awarded. Any agreements exceeding 20% must be reviewed and approved by the OGC.

Non-Accredited Entities

In recent years, several entities have emerged that claim to provide veteran resources for a fee. However, these entities are not accredited, as it is argued they do not provide representation and therefore, do not need to be accredited nor do any of the above-reference requirements of VA accreditation apply to them. They charge veterans and their families fees for their resources and these fee agreements are not submitted to or reviewed by OGC. Because they are not considered representatives, veterans cannot seek out their aid and assistance after a claim has been decided. Thus, VA accredited representatives take on these denied or failed claims.

As these groups operate outside of accreditation, they do not fall under the OGC's oversight. Additionally, these entities are not mandatorily required to have their individuals take VA training, follow VA's required code of conduct, nor undergo background checks. We are concerned that the OGC's purpose to protect veterans and their families is being intentionally circumnavigated, thus placing veterans and their families at risk.

DAV welcomes the addition of entities into the world of VA representation; however, the requirements of VA accreditation must apply to each of their representatives. They should not be able to charge fees to prepare a claim, but they would be able to enter into fee agreements after a decision has been rendered as noted above. Additionally, their fee agreements would be submitted and reviewed by the OGC.

In order to ensure that veterans and their families fall under the protection of the OGC, we urge Congress to apply VA accreditation to all entities preparing and advising claimants.

This concludes my testimony and we thank you for the opportunity to provide our comments concerning VA Accreditation, Discipline, and Fees Program for agents, attorneys, and VSO representatives who assist veterans in applying for VA benefits.