

United States Senate

WASHINGTON, DC 20510

November 20, 2020

The Honorable Robert Wilkie
Secretary of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Dear Secretary Wilkie,

We write today to express grave concerns regarding the Department of Veterans Affairs' (VA) decision to privatize the Compensation and Pension (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. We were alarmed to learn that VA's vision for the future of the C&P program is to fully utilize private contractors to take over the VA personnel's workload, which we believe has the potential for serious long-term negative impacts on the services and benefits provided to our nation's veterans.

As you know, when Congress established the pilot program to contract C&P exams with non-VA medical professionals, it was done in order to supplement VA's internal capacity to perform exams to help veterans, not supplant it. The lack of candor of Veterans Benefits Administration (VBA) officials who have briefed and testified before Congress on this topic recently is unacceptable.

The cost of VA's privatization of this now multi-billion dollar program is staggering. Worse yet, the outcomes for veterans and taxpayers has not warranted the funds invested. In 2016, VA expanded the contracting of C&P exams by awarding 12 contracts valued at \$6.8 billion over five years to five private firms. We share the well-documented concerns by the independent VA Office of Inspector General (VA OIG), the Government Accountability Office (GAO), and VA itself on the challenges associated with an increased expansion of VA's contracted C&P exam program without a corresponding increase in VA's ability to monitor and effectively oversee contractors' performance for veterans. A few examples highlight the dysfunction, waste, and poor performance characterizing the program VA is now planning to fully expand. In December of 2017^[1], VA responded to an Office of Special Counsel (OSC) Phoenix VA Health Care System whistleblower allegation regarding this program. VA's internal report and OSC's response, which was subsequently summarized and provided to President Trump in August of 2019^[2], reveal troubling findings about this program including that there was no clinical quality measurement for, or evaluation of, contractor exams; that the former Disability Evaluation Management (DEM) contract examiners and the current Medical Disability Examination contract examiners were not reviewing veteran's medical records, as required for the exams; and that the former DEM contract examiners diagnosed conditions without supporting evidence.

^[1] *Office of Special Counsel, Subject Agency Report, U.S. Department of Veterans Affairs, OSC File No. DI-16-3153* (Dec. 19, 2017) (online at <https://osc.gov/Documents/Public%20Files/FY19/DI-16-3153/Redacted%20Agency%20Report%20DI-16-3153.pdf>)

^[2] *Office of Special Counsel, Letter to the President, OSC File No. DI-16-3153* (Aug. 12, 2019) (online at <https://osc.gov/Documents/Public%20Files/FY19/DI-16-3153/DI-16-3153%20Redacted%20Letter%20to%20the%20President.pdf>)

An October 2018 GAO report entitled *VA Disability Exams: Improved Performance Analysis and Training Oversight Needed for Contracted Exams*, found that VBA had limited information on the contractor's performance regarding the quality and timeliness for exams. In addition, GAO's review revealed VBA reported that the vast majority of contractors' quality scores fell well below VBA's target—92 percent of exam reports with no errors—for the first half of 2017 and that VBA does not have accurate information on contractor timeliness. All four of the report's recommendations remain open on GAO's website. A June 2019 report by the VA OIG entitled *Inadequate Oversight of Contracted Disability Exam Cancellations* found that VA paid \$12.3 million in costs to contractors for veteran no-shows or reschedule requests too close to an appointment date. However, the VA OIG found in that same report that VBA did not typically verify those no-shows were accurate before payment, potentially paying contractors millions for false no-shows. Our offices have all heard from veterans directly documenting the red-tape filled process that a veteran must go through when conducting a contracted C&P exam.

The track record of private contractors who perform C&P exams, and VBA's oversight of them is mixed at best, as these and other reports indicate there are problems with cost, quality, overbilling, lack of subject matter expertise, and training of those conducting the exams. These issues must be addressed and sustained improvement must be demonstrated by VA and its contractors before the expansion VA is proposing can even be considered. Based on the data available today, neither the contractors nor the VA have made their case that their approach is benefitting taxpayers or veterans. The changes to privatize a majority of VA's C&P services is impacting veterans and VA employees across the country, in rural, urban, and suburban America. In recent months, C&P service lines across the country are being dismantled and hollowed out, including rural areas like Montana and West Virginia as well as areas with a high veteran population density such as Phoenix, Arizona, and areas concentrated around military hubs like Norfolk, Virginia. Additionally, during the height of the pandemic, VA's C&P personnel were assigned to other duties, while C&P contractors were unable to perform exams out of fear of contracting or spreading COVID-19, compared to VA's clinicians and support staff who were, and remain, readily available to assist veterans with their exams.

Since the start of the pandemic, VA articulated its support for S. 4365 and H.R. 7287, legislation that would allow other contract clinicians besides physicians to perform C&P exams, including audiologists, psychologists, resident nurses, and physician assistants. As part of Congress' deliberations on these topics, the Senate Committee on Veterans' Affairs unanimously passed a revised version of S. 4365 in September as a part of S. 4511, the *Veteran Benefits Enhancement and Expansion Act of 2020*. This bill requires VA to suspend the elimination of C&P personnel positions until the backlog of C&P exams returns to March 1, 2020 levels. Unfortunately, it appears VA responded to this Senate action by intensifying its efforts to eliminate C&P positions before the bipartisan bill is enacted into law. This is evidenced by the temporary re-assignment of C&P practitioners in the Hampton Road VA Medical Center (VAMC) in Virginia and the closure of the C&P clinic in Columbia, Missouri at the end of September. VA's rush to privatize these exams is careless and veterans will suffer from this decision as a result.

Given VA's admission that there is a 350,000 backlog of C&P exams throughout the nation, and more than 480,000 claims are awaiting decisions, we fail to see the logic for continuing to reduce VA's internal capacity to perform these exams as VA already has experienced, qualified, and well-trained personnel ready to perform these duties. Veterans with unique health issues and conditions including Military Sexual Trauma, Post Traumatic Stress Disorder, Traumatic Brain Injury, and health impacts as a result of toxic exposures, benefit greatly from being seen by a VA medical professional compared to someone with less experience with veterans' unique medical and mental health conditions. We have concerns that these external contracted medical examiners, with less experience evaluating veterans' unique health conditions, could contribute to a growth in appeals when non-VA examiners misdiagnose these veterans.

To better understand how VA came to the decision to contract out the C&P process, we ask for your prompt response to the following questions:

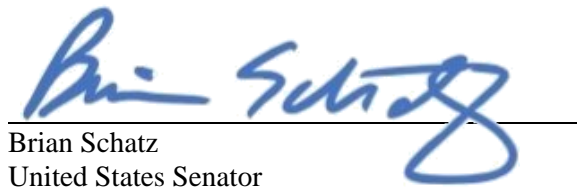
1. By location, how many VA Medical Centers and Full-Time Equivalents are currently performing C&P duties (both permanent and temporary)? Provide a breakdown of clinical and administrative staff.
2. As a result of VA's decision to close VHA's C&P programs, how many VA employees will lose their job from this decision, by location and facility? If the employees will not lose their jobs, to what positions will they be transferred?
3. How much did VA spend to conduct C&P exams in-house for the previous five fiscal years?
4. What is the total cost of all awarded contracts, including option years and extensions, for private C&P exam services for the VA since the first contract after 1996 to present day? Please provide this information by fiscal year, amount awarded, and awardee. Please provide the per exam charge VA incurs for each exam performed. Please also provide the other per service charges for all other activities performed beyond exams.
5. As a result of VA's decision, how much will VA spend in the next five fiscal years on in-house exams? On contract exams?
6. Please provide a detailed description of any new or modified contract(s) VA is planning to or has entered into as a result of the C&P policy change.
7. What are the detailed benefits, improvements, and efficiency gained for VA and the veteran by contracting out the entire program? Please provide the cost-benefit analysis or other analysis used to justify VA's decision.
8. Account for the C&P exam appointments scheduled with VHA personnel when operations were shut down April 2, 2020 due to COVID.
9. What is the method to assess and measure the quality, satisfaction, and expertise of VHA performed C&P exams compared to the contractor performed exams? Does this information include background on the experience of the VA contractor versus VA medical personnel including who is better to perform these functions?
10. Please provide the status of all recommendations to any GAO and IG reports related to the C&P program to include the two reports mentioned above. Please provide the status of the recommendations in the 2017 Office of Special Counsel report File No. 01-16-3153/ TRIM 2017-D-2660.
11. What are the VA C&P exam training and protocol requirements for contract examiners and how often are requirements refreshed by the contract staff? How often is this training updated?
12. For every active or cancelled VA C&P contract in the last four fiscal years, we request VA's C&P contractor performance standards, actual performance results to include Contractor Performance Assessment Reports, contract terms, qualification requirements for examiners, and any disciplinary actions taken against the contractor.

We appreciate your time and attention to these critical issues and look forward to engaging with you and your staff in the immediate future.

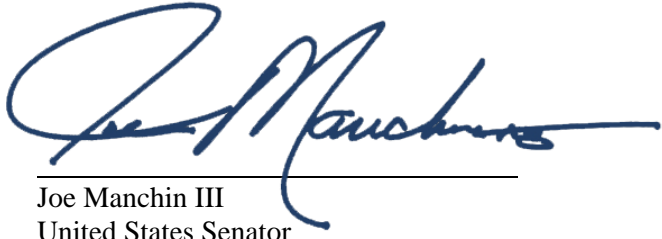
Sincerely,



Jon Tester
United States Senator



Brian Schatz
United States Senator



Joe Manchin III
United States Senator



Sherrod Brown
United States Senator



Richard Blumenthal
United States Senator



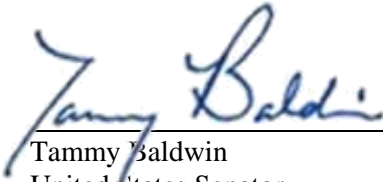
Kyrsten Sinema
United States Senator



Bernard Sanders
United States Senator



Jack Reed
United States Senator



Tammy Baldwin
United States Senator



Elizabeth Warren
United States Senator



Tammy Duckworth
United States Senator