



DEPARTMENT OF VETERANS AFFAIRS  
**OFFICE OF INSPECTOR GENERAL**

*Office of Audits and Evaluations*

VETERANS BENEFITS ADMINISTRATION

# VA Policy for Administering Traumatic Brain Injury Examinations

REVIEW

REPORT #16-04558-249

SEPTEMBER 10, 2018



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## Executive Summary

### Why the OIG Did This Review

The VA Office of Inspector General (OIG) conducted this review at the request of the Subcommittee on Disability Assistance and Memorial Affairs, House Committee on Veterans' Affairs. On July 26, 2016, the subcommittee asked the OIG to answer questions related to VA policies and practices related to the qualifications of examiners who conduct initial traumatic brain injury (TBI) medical examinations.

The questions generally addressed VA's implementation of adequate initial TBI medical examinations based on updated policy, equitable relief for those determined to have had inadequate initial TBI medical examinations, as well as some contract provisions related to initial TBI medical examinations. The specific questions are listed in the introduction section of this report.

VA recognizes TBI as a signature injury of the Iraq and Afghanistan conflicts. The Veterans Benefits Administration (VBA) defines a TBI as residual disability from an event of external force causing an injury to the brain. The residual effects of TBI may present themselves as physical, cognitive, and behavioral disabilities.

### What the OIG Found

In 2008, VA revised the criteria used to evaluate TBI. However, VA failed to implement procedures then to ensure veterans received adequate initial TBI medical examinations. Subsequent VBA and Veterans Health Administration (VHA) policies regarding initial TBI medical examinations were not consistent, and VBA and VHA were independently responsible for administration of the policy. From September 2007 through July 2015, VBA updated its policy relating to TBI medical examinations five times while VHA changed its policies four times. The variance between VBA and VHA policies covered effective dates of policy changes and the qualifications of examiners who could conduct TBI medical examinations. This led to an inconsistent implementation of TBI medical examination policies and contract requirements.

In 2008, VBA revised its policy for the TBI medical examination to designate that physicians who were specialists in psychiatry, neurology, neurosurgery, and psychiatry may conduct the TBI medical examination. However, the policy also allowed qualified nurse practitioners, clinical nurse specialists, and physician assistants to conduct the examinations under the close supervision of a psychiatrist, psychologist, or neurologist. Appendix C contains definitions for the various types of clinicians discussed in this report.

In 2010, because the need for initial examinations exceeded VA's capacity, VBA modified its medical examination policies to allow examiners other than the designated specialists to conduct TBI medical examinations. It was not until 2011 that guidance was changed requiring the diagnosis be made by one of the four specialists. In 2015, procedures were updated to include that a generalist clinician could conduct review TBI medical examinations only if a TBI diagnosis was on record completed by one of the four specialists.

VHA's 2008 guidance did not address examiner qualifications for TBI examinations. In 2012, guidance allowed for a generalist clinician to perform the exam only after the initial diagnosis by one of the four designated specialists. A 2013 directive stated only that clinicians must complete "TBI Evaluations" training and pass a related test to perform TBI medical examinations.

In December 2014, the Director of the Minneapolis, Minnesota, VA Medical Center found in an internal review that 317 veterans did not receive initial TBI medical examinations by one of the four required specialists. A VHA contracting officer had earlier identified 580 veterans from 2011 through 2013 who received initial TBI medical examinations conducted by someone other than one of the four specialists.

As a consequence of the finding in Minnesota, in May 2016, VBA initiated a nationwide review of initial TBI medical examinations and identified more than 24,000 additional veterans who may have received initial medical examinations by someone other than one of the four designated specialists. This led to the VA Secretary granting equitable relief to 24,842 veterans. Equitable relief is a unique legal remedy the VA Secretary can use to correct an injustice to a claimant, where not otherwise authorized to do so within the scope of the law.

In July 2016, VBA sent letters to affected veterans informing them of the opportunity to undergo a new TBI medical examination and TBI disability determination, and their entitlement to equitable relief. Veterans had one year from the date of their notification letter to contact VBA and request a new TBI medical examination.

However, it is not clear that all eligible veterans were contacted, and some veterans were offered equitable relief who were not eligible. This confusion was because TBI medical examination worksheets changed over the years and they did not always differentiate between initial and review TBI medical examinations, or they did not state examiner credentials. Therefore, VBA and VHA could not identify all initial TBI medical examinations completed from 2007 through 2015. In order to identify veterans who had been excluded from equitable relief, VBA issued a policy that allowed for the subsequent identification and tracking if it was discovered that a claim for service connection for TBI did not have a proper initial TBI medical examination.

In the process of tracking down eligible veterans, VBA also offered equitable relief to ineligible veterans. The OIG reviewed 120 completed TBI claims as of September 30, 2016, for veterans that VBA identified as being entitled to equitable relief. The OIG found that 58 veterans were

scheduled for TBI medical reexaminations even though an appropriate examiner had conducted the initial TBI examination.

In response to the Subcommittee's questions related to TBI examinations contract provisions, the OIG found that VBA did use contract terms to impose a 50 percent invoice deduction when the contractor completed an examination deemed to be inadequate for disability rating purposes. VBA also used contract terms that offered quarterly bonuses to contractors with good performance and imposed penalties on those performing insufficient medical examinations.

Finally, in response to the Subcommittee's questions regarding a 2013 or 2014 nationwide review, the OIG determined VBA did not conduct a nationwide review of initial TBI medical examinations during that period because senior leaders were not aware of any discussion or need that would have resulted in such a review.

During the course of this review, the OIG Office of Healthcare Inspections (OHI) published a report that assessed TBI Compensation and Pension examinations completed by VHA and contract examiners in 2015. OHI inspectors assessed compliance with stipulations for examiners who conduct TBI Compensation and Pension examinations. Although the reports have similarities, the OHI report focused on TBI Compensation and Pension examinations conducted in 2015, whereas the scope of this report encompassed the period of equitable relief for initial TBI Compensation and Pension examinations completed from January 2007 through December 2015.

## **What the OIG Recommended**

The OIG recommended the Under Secretary for Benefits coordinate with the Under Secretary for Health to determine whether any veterans who had received initial, VHA-contracted, TBI medical examinations completed by someone other than the four designated specialists were unintentionally excluded from entitlement to equitable relief. The OIG also recommended the Under Secretary for Benefits confirm that a list was provided to the current VA Secretary for consideration of equitable relief for veterans identified since the then Secretary's initial approval of equitable relief in May 2016.

## **Management Comments**

The Under Secretary for Benefits concurred with both recommendations. VBA coordinated with VHA to determine whether additional veterans who had initial TBI medical examinations conducted by VHA-contracted examiners were unintentionally excluded from equitable relief. Therefore, the OIG considers Recommendation 1 closed. The Under Secretary for Benefits provided an acceptable action plan for Recommendation 2. The OIG will monitor VBA's progress and follow up on implementation of Recommendation 2 until all proposed actions are completed.

Although both recommendations were addressed to the Under Secretary for Benefits, the Under Secretary for Health also provided technical comments related to this report. The OIG considered those comments and made clarifications where applicable.

A handwritten signature in blue ink, reading "Larry M. Reinkemeyer". The signature is written in a cursive, flowing style.

LARRY M. REINKEMEYER  
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# Contents

Executive Summary .....	i
Abbreviations .....	vii
Introduction .....	1
Results and Recommendations .....	4
Question 1: Why VA failed to implement procedures in 2008 to ensure veterans received adequate TBI examinations in accordance with policy, including why VA failed to modify VBA and VHA contract requirements for initial TBI disability examinations. ....	4
Question 2: Why, contrary to VBA policy, the Compensation and Pension Examination Program issued guidance in 2010 that allowed a generalist with DEMO TBI certification to conduct initial TBI examinations, and the steps VA should take to hold the employees responsible for issuing such guidance accountable.....	5
Question 3: Why VBA’s contracts, awarded in 2010, stipulated that initial TBI disability exams must be conducted by one of the four specialists, but were modified shortly after to allow generalists with DEMO certification to conduct them. ....	6
Question 4: Why VBA did not initiate a nationwide review of initial TBI examinations in 2013 or 2014, when they modified contracts to require that only designated specialists perform initial TBI examinations. ....	7
Question 5: Did VBA or VHA ever utilize contract terms providing for an immediate 50 percent invoice deduction for any inadequate examination? .....	8
Question 6: Did VBA or VHA ever utilize contract terms providing for quarterly bonus payments for exceptional performance? If so, did VHA or VBA offset these bonus payments with subsequent invoice deductions upon discovering inadequate examinations?.....	9
Finding 1: VBA Did Not Offer Equitable Relief to All Eligible Veterans and Offered Equitable Relief to Some Ineligible Veterans .....	11
Recommendations 1–2 .....	16
Management Comments and OIG Response .....	16

Appendix A: Background .....17

Appendix B: Scope and Methodology.....18

Appendix C: Glossary.....20

Appendix D: Timeline for VBA Policies Related to TBI Examinations.....21

Appendix E: Timeline for VHA Policies Affecting Examiner Qualifications .....22

Appendix F: Management Comments Veterans Health Administration .....23

Appendix G: Management Comments Veterans Benefits Administration.....25

OIG Contact and Staff Acknowledgments .....27

Report Distribution .....28



## Abbreviations

C&P	Compensation & Pension
DEMO	Disability Examination Management Office
DMA	Disability and Medical Assessment
FY	Fiscal Year
OHI	Office of Healthcare Inspections
OIG	Office of Inspector General
QTC	QTC Medical Services, Inc.
TBI	Traumatic Brain Injury
VA	Department of Veterans Affairs
VBA	Veterans Benefits Administration
VES	Veterans Evaluation Services, Inc.
VHA	Veterans Health Administration



## Introduction

### Objective

On July 13, 2016, the House Committee on Veterans' Affairs Disability Assistance and Memorial Affairs Subcommittee (the subcommittee) held a hearing to review the Department of Veterans Affairs' failure to provide adequate traumatic brain injury (TBI) examinations. Following the hearing, on July 26, 2016, the subcommittee requested the Office of Inspector General (OIG) review and respond to seven questions, six of which are being addressed in this report, in this order:

1. Why VA failed to implement procedures in 2008 to ensure veterans received adequate TBI examinations in accordance with policy, including why VA failed to modify Veterans Benefits Administration (VBA) and Veterans Health Administration (VHA) contract requirements for initial TBI disability examinations.
2. Why, contrary to VBA policy, the Compensation and Pension Examination Program issued guidance in 2010 that allowed a generalist with Disability Examination Management Office (DEMO) TBI certification to conduct initial TBI examinations, and the steps VA should take to hold the employees responsible for issuing such guidance accountable.
3. Why VBA's contracts, awarded in 2010, stipulated that initial TBI disability exams must be conducted by one of the four specialists, but were modified shortly after to allow generalists with DEMO certification to conduct them.
4. Why VBA did not initiate a nationwide review of initial TBI examinations in 2013 or 2014, when they modified contracts to require that only designated specialists perform initial TBI examinations.
5. Did VBA or VHA ever utilize contract terms providing for an immediate 50 percent invoice deduction for any inadequate examination?
6. Did VBA or VHA ever utilize contract terms providing for quarterly bonus payments for exceptional performance? If so, did VBA or VHA offset these bonus payments with subsequent invoice deductions upon discovering inadequate examinations?

The subcommittee added a seventh question, which was addressed separately by the OIG Office of Healthcare Inspections (OHI). It concerned the training examiners receive for DEMO certification and whether it adequately prepares generalists to perform TBI examinations. OHI conducted work that assessed compliance with stipulations for examiners who perform TBI

Compensation & Pension (C&P) examinations.<sup>1</sup> Although the reports have similarities, the OHI report focused on TBI C&P examinations conducted in 2015, whereas the scope of this report encompassed the period of equitable relief for initial TBI C&P examinations (TBI medical examinations) completed from January 2007 through December 2015.

As part of a more comprehensive review, the OIG reviewed VA's changes in policy and contract terms for initial TBI medical examinations, and VA's efforts to identify veterans entitled to equitable relief.

## **Equitable Relief**

Equitable relief is a unique legal remedy the VA Secretary can use to correct an injustice to a claimant, where not otherwise authorized to do so within the scope of the law. On May 3, 2016, the then VA Secretary, Robert McDonald, offered equitable relief to 24,842 veterans because VA reported that some examiners conducting initial TBI medical examinations from 2007 through 2015 lacked the qualifications to do so.<sup>2</sup> VBA provided the OIG with a list of 24,588 veterans identified as being entitled to equitable relief, which a VBA Compensation Service staff representative reported were processed under VBA Policy Letter 21-16-03.<sup>3</sup> A VBA Compensation Service staff representative also reported that the remaining 254 veterans offered equitable relief were among those identified by the VA medical center located in Minneapolis, Minnesota. However, because of insufficient record keeping, the OIG found that VBA had excluded veterans entitled to equitable relief and offered equitable relief to ineligible veterans.

VBA-contracted examiners completed 19,237 of the 24,588 initial TBI examinations for the veterans identified as entitled to equitable relief. VHA medical examiners conducted 5,351 of these 24,588 examinations. Neither VBA nor VHA could provide the OIG with the total number of initial TBI medical examinations completed for the entire period from January 2007 through December 2015. However, VBA provided data for initial TBI medical examinations completed from FY 2013 through FY 2015. Both VBA's Compensation Service staff representative and VHA's Disability and Medical Assessment (DMA) representative stated they could not provide the total number of initial TBI medical examinations because examination worksheets changed over the years and these worksheets did not differentiate between initial and residual TBI medical examinations.

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<sup>1</sup> OIG Healthcare Inspection report, *Review of Montana Board of Psychologists Complaint and Assessment of VA Protocols for Traumatic Brain Injury Compensation and Pension Examinations* (Report No. 15-01580-108, February 27, 2018).

<sup>2</sup> Includes VHA medical examinations and VBA contracted examinations.

<sup>3</sup> VBA Policy Letter 21-16-03, dated June 6, 2016, provided information regarding equitable relief for affected veterans and instructions for processing requests for review of prior TBI claims.

As of November 21, 2017, according to a VBA Compensation Service staff representative, VBA received 2,344 requests for equitable relief. Of these, VBA completed actions on 2,240 and 104 were still pending VBA's review. As a result of requests for equitable relief, VBA offered service-connection for TBI or increased TBI benefits to 580 veterans. This resulted in 288 veterans receiving an average monthly monetary increase of \$706 each. In addition, VBA reduced TBI evaluations for 89 veterans, which resulted in reduced monthly benefits to 14 veterans averaging \$505 per veteran. The OIG could not determine the total monetary amount attributable to equitable relief because, as of November 21, 2017, VBA had not completed its reviews of all claims.

According to the former VA Secretary, Dr. David Shulkin, who was previously VA's Under Secretary for Health, VBA was responsible for—starting in FY 2017—any workload that required the use of a contractor for medical examinations. Previously, both VBA's Compensation Service and VHA's DMA office (previously DEMO) managed contract examination programs. Appendix A provides additional information about VA's program administration for C&P examinations.

## Results and Recommendations

**Question 1: Why VA failed to implement procedures in 2008 to ensure veterans received adequate TBI examinations in accordance with policy, including why VA failed to modify VBA and VHA contract requirements for initial TBI disability examinations.**

### Policy Implementation

VA failed to implement procedures in 2008 to ensure veterans received adequate TBI medical examinations because of a lack of centralized authority with the responsibility to establish and maintain consistent policy implementation on initial TBI medical examinations within and between VBA and VHA. The former VBA Executive in Charge, Thomas Murphy, and the Chief Officer of VHA's DMA office since August 2015, Patricia Murray, did not sufficiently coordinate consistent implementation of VA's TBI medical examination policies. Although VBA issued policy for initial TBI medical examinations, VBA and VHA were independently responsible for establishing contract terms and administration. This led to an inconsistent implementation of TBI medical examination policies and contract requirements.

From September 2007 through July 2015, VBA updated its policy on TBI medical examinations five times while VHA policies changed four times. VBA and VHA revised their policies on the qualification of examiners allowed to conduct TBI medical examinations at different times, with effective dates that did not match each other. For example, in 2011, VBA updated its policy to require that a designated specialist—physiatrist, psychiatrist, neurologist, or neurosurgeon—must first make a diagnosis of TBI before allowing a generalist clinician with DEMO certification to conduct TBI medical examinations.<sup>4</sup> VHA did not update its policies to match VBA's 2011 policy change until 2012.

### Contract Requirements for TBI Medical Examinations

In October 2008, VBA issued Fast Letter 08-34, *Revised TBI Worksheet*, allowing (in addition to the four specialists) a generalist clinician to conduct TBI medical examinations, provided they were trained, demonstrated experience with TBI, and were under the supervision of one of the four board-certified or board-eligible specialists. VBA did not update its TBI medical examination contracts—in place since 2003—to match its 2008 policy, which allowed generalist

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<sup>4</sup> Appendix C contains definitions for the various types of clinicians discussed in this report.

clinicians to conduct TBI medical examinations, until it solicited a new contract in 2010 with the requirement that one of the four specialists conduct TBI medical examinations.

Although VBA policy allowed generalist clinicians to conduct certain TBI medical examinations, in May 2016, the then VA Secretary deemed all veterans with initial TBI medical examinations conducted from 2007 through 2015 to be eligible for reexamination if one of the four designated specialists had not conducted the initial TBI medical examinations. For those veterans, the then VA Secretary provided equitable relief.

In contrast, VHA contracts always included a requirement for designated specialists to conduct initial TBI medical examinations. VHA never modified its contracts to allow additional examiners to conduct initial TBI medical examinations, other than one of the four specialists.

**Question 2: Why, contrary to VBA policy, the Compensation and Pension Examination Program issued guidance in 2010 that allowed a generalist with DEMO TBI certification to conduct initial TBI examinations, and the steps VA should take to hold the employees responsible for issuing such guidance accountable.**

The OIG determined that VBA, having identified an upward trend of TBI medical examinations that exceeded VA's capacity, in 2010 updated its TBI medical examination policy to expand its pool of medical examiners by including generalist clinicians. OIG's analysis of VBA data showed an increase in disability compensation claims from FY 2007 through FY 2010, which likely caused an increase in medical examination requests. Despite good intentions, VBA unintentionally issued conflicting policy.

According to an April 28, 2016, memo signed by a former Acting Under Secretary for Benefits, Danny G. I. Pummill, to former VA Secretary, Robert A. McDonald, multiple policy changes led to an inconsistent application of the requirement that all initial TBI medical examinations be conducted by a physiatrist, psychiatrist, neurologist, or neurosurgeon. The memo also acknowledged that VBA's 2007 guidance failed to articulate VBA's intent that a specialist was required for all initial TBI medical examinations when a diagnosis of TBI had not previously been established.<sup>5</sup>

VBA's 2008 policy included provisions for generalist clinicians to conduct initial TBI medical examinations under the supervision of one of the four designated specialists. The expectation was that the designated specialists would have demonstrated expertise, regardless of specialty,

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<sup>5</sup> VBA Fast Letter 07-21, *Traumatic Brain Injury (TBI) Worksheet*, dated September 11, 2007, included the TBI medical examination worksheet that was released for use to VA medical facilities. This worksheet made no mention of the requirement for a specialist to conduct the TBI medical examination.

through baseline training (residency) and/or subsequent training and demonstrated experience. In 2010, the former Director of VBA's Compensation and Pension Service, Thomas Murphy, issued the updated TBI medical examination policy to allow generalist clinicians who successfully completed a one-hour computer-based TBI training certification through DEMO to conduct TBI medical examinations. In 2011, VBA updated its guidance once again to require a psychiatrist, psychologist, neurologist, or neurosurgeon must make the diagnosis of TBI. Table 1 in Appendix D contains a timeline for VBA policies related to TBI medical examinations.

An OIG Healthcare Inspection report published in February 2018 determined that, given the complexity of TBI assessment, a one-hour DEMO TBI training module appeared inadequate to train providers to properly conduct C&P exams unless the provider had prior experience assessing and treating TBI. OIG healthcare inspectors recommended VA ensure that personnel performing the TBI medical examinations have comprehensive training on the evaluation of traumatic brain injury.<sup>6</sup>

### **Question 3: Why VBA's contracts, awarded in 2010, stipulated that initial TBI disability exams must be conducted by one of the four specialists, but were modified shortly after to allow generalists with DEMO certification to conduct them.**

A VBA contract specialist reported that VBA modified its examination contracts to match changes made to VBA's examination policies. In March 2011, VBA modified its contract with QTC Medical Services, Inc. (QTC) to allow nonspecialists to complete TBI medical examinations, as long as they were DEMO certified. This was in accordance with the TBI medical examination worksheet, which VBA updated in August 2010. The OIG determined that VBA expanded its pool of medical examiners to include generalist clinicians with DEMO certification; this expansion was due to the number of TBI medical examinations exceeding VA's capacity. Before that change, VBA's contract with QTC stipulated that one of the four specialists must conduct initial TBI medical examinations because VA deemed these specialists to be more experienced with the symptoms and effects of TBI and, therefore, qualified to conduct TBI medical examinations.

The OIG could not determine whether allowing DEMO-certified generalists to conduct TBI medical examinations negatively affected the quality of TBI medical examination reports and associated disability decisions. The OIG reviewed a sample of VBA's claims reprocessed under equitable relief and while some of the reexaminations resulted in a change in the veteran's TBI

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<sup>6</sup> See Healthcare Inspection report, *Review of Montana Board of Psychologists Complaint and Assessment of VA Protocols for Traumatic Brain Injury Compensation and Pension Examinations* (Report No. 15-01580-108, February 27, 2018).

disability evaluation, VBA based the new evaluations on the veteran's current symptoms, which might have improved or worsened since the initial TBI medical examinations.

## **The QTC Contract**

The QTC contract, effective December 31, 2010, included a requirement allowing one of the four specialists to conduct initial TBI examinations but did not include a stipulation allowing generalist clinicians to perform the examinations. In March 2011, VBA modified the QTC contract to allow DEMO-certified generalist clinicians to conduct the examinations. In May 2014, VBA modified the QTC contract once more to include the information from its September 2011 updated examination worksheet stipulating that one of the four specialists must make a diagnosis of TBI before allowing a generalist clinician to conduct the TBI examination.

### **Question 4: Why VBA did not initiate a nationwide review of initial TBI examinations in 2013 or 2014, when they modified contracts to require that only designated specialists perform initial TBI examinations.**

VBA did not initiate a nationwide review of initial TBI examinations performed in 2013 or 2014 because VBA officials did not identify a need for such a review. The OIG interviewed the former Deputy Under Secretary for Disability Assistance, David McLenachen, who confirmed being the Director of Pension and Fiduciary Services at that time; he stated that he was not involved in any discussions regarding a national review. In his testimony before the House Committee on Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs in July 2016, Mr. McLenachen stated, "there were no red flags at that point to indicate that these exams were being done incorrectly."

VBA updated the QTC medical examination contract in 2013 to match its policy allowing generalists who had completed DEMO training to conduct initial TBI medical examinations. VBA also updated the QTC medical examination contract in 2014 to match its policy requiring one of the four designated specialists perform initial TBI medical examinations, unless the veteran already had an established diagnosis of TBI.

The OIG also interviewed the former Principal Deputy Under Secretary for Benefits, Thomas Murphy. Mr. Murphy, the Director of Compensation Service from August 2010 to February 2016, stated that he was not involved in any decisions regarding a national review of TBI medical examinations in 2013 or 2014.

Although VBA did not immediately conduct a nationwide review, in May 2016, the VA Secretary authorized equitable relief for all veterans deemed to have had an inadequate initial TBI medical examination. VA initiated this review after learning from Kim Graves, the Director of VA Regional Office St. Paul, and from Robert Granstrom, the Midwest District Director, that



the VA Medical Center Director in Minneapolis, Minnesota, in December 2014 had notified Ms. Graves that required designated specialists had not completed more than 300 initial TBI medical examinations at the Minneapolis VA Medical Center between 2010 and 2014.

In May 2015, the Midwest District Director reportedly collaborated with VBA's Office of Field Operations about the course of action to take concerning this discovery. An April 2016 memo issued by the former Acting Under Secretary for Benefits, Danny G. I. Pummill, recommended that the VA Secretary authorize equitable relief for all affected veterans at the Minneapolis VA Medical Center.

He also stated that both VBA and VHA were conducting a nationwide review to identify any veterans whose initial TBI medical examinations had not been conducted by an appropriate specialist. Ultimately, the nationwide review resulted in the VA Secretary authorizing equitable relief for 24,842 veterans identified as having had an inadequate initial TBI medical examination.

### **Question 5: Did VBA or VHA ever utilize contract terms providing for an immediate 50 percent invoice deduction for any inadequate examination?**

VBA used contract terms that triggered a 50 percent invoice deduction for insufficient examinations. The terms for VHA examination contract vendors did not include invoice deductions for inadequate examinations. Rather, VHA contract terms stipulated that VA staff review for sufficiency 100 percent of all examinations performed by a contractor. The number of inadequate examinations caused by the examination provider's actions, or lack of actions, could not exceed 3 percent of all examinations performed by the contractor. VHA contracts did not specify a performance period for the 3 percent requirement. However, the total duration of the contracts was not to exceed five years.

The OIG reviewed performance measurements for VBA and VHA contractors from May 2008 through June 2015—with some vendors having contracts with both VBA and VHA. VBA's contract terms with three vendors provided for a 50 percent invoice deduction for inadequate examinations.

### **Examples of VBA's Use of Invoice Deductions**

VBA used contract terms that provided for a 50 percent reduction when, in 2008, QTC did not return one of 384 medical examination reports reviewed for quality from August through October within the required time frame. As a result, VBA withheld \$509.30, which represented 50 percent of the invoice cost for the examination. In addition, from January through March 2012, out of 148 examinations reviewed for quality and timeliness, QTC failed to return

eight to VA within the required time limit. Therefore, QTC was penalized \$1,877.90, which is 50 percent of the invoice costs for those examinations.

VBA prepares quarterly reports that provide quality assessments of the contracted examinations reviewed; this includes invoice deductions related to the adequacy of examinations and the return of inadequate examinations. If VBA deems the vendor's performance to be unsatisfactory, the contractor must return an amount equal to one percent of the total invoiced amount for that quarter. From 2008 to 2015, VBA provided evidence that it penalized contractors in the form of invoice deductions over \$1,000,000 for not meeting quality and timeliness requirements. This practice is not limited to TBI medical examinations and represents less than one percent of the approximately \$226,000,000 invoiced during that same period. For example, from October through December 2014, VBA penalized QTC a total of \$375,514.44 for not meeting quality requirements. From April through June 2015, VBA penalized Veterans Evaluation Services (VES) \$110,004 for not meeting quality and timeliness requirements from January through March 2015, and penalized VetFed a total of \$52,464.59 for not meeting quality requirements.

## **VHA Contract Terms**

Unlike VBA's contract that provided for a 50 percent invoice deduction for inadequate examinations, the contract terms for VHA's five vendors did not include specific terms requiring invoice deductions for inadequate examinations. For example, the contract between VHA and VES stated, "the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services." If an examination was insufficient, contract terms required VES to return a corrected examination within five calendar days, with no additional charge. The OIG's review of VHA's documentation of the quality assessments it conducted for contracted medical examinations did not identify any significant issues.

### **Question 6: Did VBA or VHA ever utilize contract terms providing for quarterly bonus payments for exceptional performance? If so, did VHA or VBA offset these bonus payments with subsequent invoice deductions upon discovering inadequate examinations?**

VBA used contract terms that offered quarterly bonuses and offset them with deductions based upon insufficient examinations. To qualify for the quarterly incentive, the contractor had to meet exceptional standards in all areas in a single measured quarter. A contractor who met exceptional quality standards would be entitled to a \$15,000 bonus for that measured quarter. From May 2008 through January 2011, under VBA's examination contracts, QTC qualified for a total of \$45,000 in bonus awards for meeting quality and timeliness standards. The VHA VES contract did not provide terms for quarterly bonus payments or invoice deductions upon discovering inadequate examinations.

The OIG identified one instance in which VA offset a bonus payment for an inadequate examination. In 2008, QTC was eligible for a quarterly bonus for exceptional performance because they had exceeded the contract's requirements under one of the performance measures, which entitled them to a positive incentive of \$15,000—the maximum allowed per quarter. However, because QTC did not return an examination in a timely manner, QTC was penalized 50 percent of the invoice amount for that examination. Therefore, the total incentive paid to QTC for that quarter was \$14,490.70, which is \$15,000 minus 50 percent of the invoice cost for the examination.

## **Finding 1: VBA Did Not Offer Equitable Relief to All Eligible Veterans and Offered Equitable Relief to Some Ineligible Veterans**

The OIG identified 570 veterans who had received initial TBI medical examinations conducted by examiners employed by VHA's medical examination contractor, VES. The 570 TBI medical examinations were conducted from December 2011 through March 2013. These veterans were not part of the 24,588 entitled to equitable relief and were not included in the list of veterans the OIG obtained from VBA. The 24,588 entries on that list were of veterans who had received inadequate initial TBI medical examinations from January 2007 through December 2015. This under identification occurred because VA did not have mechanisms in place to identify veterans whose initial TBI medical examinations had been inadequate. VBA and VHA relied on contracted medical examination and medical center staff to provide them with the names of veterans who had received inadequate initial TBI medical examinations. Because of changes to TBI medical examination worksheets that led to insufficient record keeping capabilities, the OIG cannot determine whether additional veterans were entitled to equitable relief.

Meanwhile, VBA offered equitable relief to ineligible veterans. This occurred because, again, VA did not have mechanisms in place to identify veterans who received either adequate or inadequate initial TBI medical examinations. In an effort to be overinclusive, Compensation Service Director, Beth Murphy, stated veterans who had their initial TBI medical examinations performed by one of the designated specialists were inadvertently included. The OIG reviewed 120 completed equitable relief claims and found that 58 veterans had been scheduled for TBI medical reexaminations despite evidence showing that an appropriate medical examiner had conducted their initial TBI medical examination as required. As a result, VA reportedly spent \$36,519 for unnecessary TBI medical reexaminations. However, the OIG could not independently validate or attest to the accuracy of these costs.

The OIG determined that VA did not ensure consistent implementation of TBI medical examination policies between VBA and VHA—both updated their policies on TBI medical examinations multiple times from September 2007 through July 2015. In fact, VBA and VHA revised their guidance on the qualification of examiners allowed to perform initial TBI medical examinations at different times and with effective dates that did not match each other. This occurred because VA did not have a centralized authority to ensure both VBA and VHA consistently followed TBI medical examination policy. Consequently, VA lacked the appropriate accountability and oversight of the TBI medical examination process that resulted in some veterans receiving initial TBI medical examinations by unqualified medical examiners.

### **Eligible Veterans Excluded from Equitable Relief**

In early 2013, the VA Eastern Colorado Health Care System Medical Director and Chief of C&P notified VHA's DMA office that designated medical examiners may not have been conducting

TBI medical examinations under VHA's VES contract. DMA determined that VES had violated terms of its examination contract by allowing unqualified examiners to complete 580 initial TBI medical examinations from December 2011 through March 2013. The OIG obtained a list of 580 veterans from VHA and compared it to the VBA-provided list of 24,588 veterans entitled to equitable relief. The OIG determined that 570 of those veterans were not included on VBA's list. For that reason, OIG opined it is likely that some veterans who had received initial TBI medical examinations by inappropriate examiners were not offered equitable relief when they should have been, based on VA's criteria for granting equitable relief. According to VBA's Policy Letter 21-16-03, if a VA Regional Office employee were to discover evidence that a veteran's initial TBI examination for a service-connection claim was not performed by one of the four designated specialists, and the claim was not already being tracked by VBA's Central Office, an inquiry would ensue. This inquiry would include the veteran's name and file number, and be sent to a dedicated Compensation Service Policy Staff mailbox. Compensation Service staff would then determine whether those cases warranted the submission of a request for equitable relief.<sup>7</sup>

As a result of VES violating the terms of its contract, VHA requested that VES repay \$74,650. VHA determined this amount represented 30 percent of the examination costs, which they arrived at by determining the cost difference between general medical examinations and specialist TBI medical examinations, as well as administrative overhead.

In April 2013, after being notified of the violation, VHA's DMA contracting officer notified VBA's Medical Director of Contract Examinations about these inadequate TBI medical examinations. However, the OIG could find no evidence that the veterans received new examinations or had their prior claims reconsidered using reexaminations completed by qualified providers.

The OIG interviewed VBA program officials and other Compensation Service staff to determine what actions they took on the 580 veterans affected by VES's breach of contract. VBA staff responses follow.

- The former Principal Deputy Under Secretary for Benefits, Thomas Murphy, told OIG staff that he was not involved in any decisions regarding the reexamination of these cases although he was the Director of Compensation Service from August 2010 to February 2016. He suggested the OIG contact the current Compensation Service Director, Beth Murphy, for information on this issue.
- VBA's current Compensation Service Director since July 2016, Beth Murphy, stated that she was unaware of these events because she was the Central Area Director at the time this

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<sup>7</sup> VBA Policy Letter 21-16-03, dated July 1, 2016, and revised July 20, 2016 and August 10, 2016, *Review of Traumatic Brain Injury (TBI) Claims*, provided instructions on steps to take should other TBI cases be identified by VA Regional Office personnel.

occurred and would not have been involved in any decisions regarding these reexaminations. Ms. Murphy reported that, prior to her current position, she had been the Director of VBA's Central Area office from March 2011 to June 2013. From June 2013 to October 2014, she had served as the Assistant Deputy Under Secretary for Field Operations, then as VBA's Deputy Under Secretary for Field Operations from October 2014 to July 2016.

- A Compensation Service representative reported that current VBA staff were unable to locate any records or emails related to the 580 cases of initial TBI examinations not conducted by designated specialists under VHA's VES contract in 2013.

VBA senior leaders reportedly were not aware that inappropriate medical examiners conducted initial TBI medical examinations under VHA's VES contract in 2013 and, therefore, did not conduct any type of special review of VBA's contracted TBI medical examinations at that time. Before October 2016, both VBA's Compensation Service and VHA's DMA office managed their contract examination programs independently of each other. However, VBA's medical examination quality review process included a step to determine whether the correct examiner conducted the medical examination. The OIG reviewed VBA's Quality Performance Reports for contracted medical examinations completed in October, November, and December 2013, as well as April, May, and June 2015 under VBA's VES contract. VBA's Medical Director of Contract Examinations cited errors and made recommendations to VES because medical examiners' credentials were missing from the medical examination reports. VBA's Medical Director of Contract Examinations made similar recommendations to VBA's medical examination contractor VetFed.

In February 2014, VHA determined that new examinations would not be requested because the completed examinations otherwise met VBA's medical examination criteria for examiner qualifications. This meant that the examinations were allowed to be conducted by generalist clinicians with one-hour DEMO training with subsequent examination report review by one of the designated four specialists. VHA's VES contract stipulated that only one of the four designated specialists could conduct initial TBI medical examinations.

In August 2017, the OIG gave VBA's Compensation Service a list of 570 veterans whose names were not—but should have been—included among VBA's 24,588 veterans who had been offered equitable relief.

## **Ineligible Veterans Offered Equitable Relief**

VBA data showed 410 completed claims for TBI equitable relief as of September 30, 2016. According to a VBA policy letter, in July 2016, VBA sent letters to affected veterans and offered

them an opportunity to request reexamination and reprocessing of their prior TBI claims.<sup>8</sup> Veterans had one year from the date of their notification letter to contact VBA and request a new TBI medical examination. The OIG reviewed a sample of 120 of these 410 completed claims to determine whether they met the equitable relief eligibility requirements set forth by VA. The OIG determined 58 of 120 veterans, or 48 percent, to be ineligible for equitable relief.

For these cases, the medical evidence found in the veterans' electronic claims files revealed an initial TBI medical examination had been completed by one of the four qualified medical examiners, or the veterans had been previously diagnosed with TBI before their VA medical examinations. VBA and VHA reported that the reexamination costs for the 58 veterans were over \$36,000. However, neither VBA nor VHA provided individual examination-level source documents to support the reported examination costs, so OIG staff could not independently validate or attest to the accuracy of these costs.

## **Unreliable Tracking System for TBI Medical Examinations**

VBA gave the OIG a list of 24,588 veterans who had received inadequate initial TBI medical examinations from 2007 through 2015. VBA relied on medical examination contractors to provide them with a total of 19,237 veterans while VHA, according to VHA's Executive in Charge, Richard A. Stone, M.D., relied on a review of electronic records and medical center staff to identify the additional 5,351. The OIG determined, through interviews with VBA's Compensation Service staff and VHA's DMA contracting office staff, that VA relied on separate methodologies to identify veterans who had received inadequate initial TBI medical examinations.<sup>9</sup> This occurred because the electronic records for medical examinations were unreliable. Although VA could identify veterans who had initial TBI examinations, data fields associated with those examinations contained missing, incomplete, or erroneous entries. As a result, neither VBA nor VHA could give the OIG the total number of initial TBI medical examinations completed from January 2007 through December 2015. Nevertheless, VBA was able to provide data for initial TBI medical examinations completed from FY 2013 through FY 2015.

VBA management reportedly was aware that some veterans would not be entitled to equitable relief: VBA's former Deputy Under Secretary for Disability Assistance, David McLenachen, as well as VA's Compensation Service's Chief of Procedures and Development, Voncelle James, stated that VA was overinclusive when identifying affected veterans; both acknowledging that their methodology to obtain the number of veterans was unreliable.

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<sup>8</sup> VBA Policy Letter 21-16-03, dated July 1, 2016.

<sup>9</sup> The OIG attempted to replicate VA's universe of eligible veterans but was unable to do so because of the incomplete methodology provided by VBA and VHA.

Recommendation 1 addresses the need for VBA to coordinate with VHA to determine whether any veterans who had received initial TBI medical examinations conducted by VHA-contracted examiners and not by one of the four designated specialists, were unintentionally excluded from entitlement to equitable relief.

Recommendation 2 addresses the need for VBA to confirm whether any additional veterans not on the list of veterans entitled to equitable relief and later identified by VBA staff and referred for potential entitlement to equitable relief were provided to the VA Secretary for consideration of equitable relief.

## **Inconsistent Policy**

Beginning in September 2007 and through July 2015, VBA updated its policy relating to TBI medical examinations five times and VHA policies changed four times.<sup>10</sup> These policies varied regarding effective dates of policy changes and in the qualifications of examiners required to conduct TBI medical examinations. Despite several changes in policy, there was no centralized authority to ensure both VBA and VHA followed these policies consistently.

The involvement of both VBA and VHA in the TBI medical examinations process blurred responsibility and accountability. Having a centralized authority responsible for both policy and operational oversight of traumatic brain injury disability examinations completed by VHA employees and contracted providers would have ensured consistent policy and accountability for oversight of TBI medical examinations. Although VA established equitable relief for veterans who received inadequate TBI medical examinations in May 2016 and acknowledged the inconsistent policies created confusion, according to Compensation Service Director, Beth Murphy, VBA it did not put in place a remedy to prevent recurrence until October 2016 when VBA became responsible for any workload that required the use of a contractor for medical examinations. Since there is now one entity providing oversight for all contracted medical examinations, the OIG made no recommendation for improvement in this area.

## **Conclusion**

Changes to TBI examination worksheets led to insufficient record keeping capabilities, which made it challenging for VA staff to differentiate between initial and residual TBI medical examinations. Furthermore, VBA and VHA relied on different methodologies to identify veterans who had received inadequate initial TBI medical examinations.<sup>11</sup> As a result, VBA

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<sup>10</sup> See Appendix D for a timeline of significant VBA policy changes and Appendix E for a timeline of significant VHA policy changes.

<sup>11</sup> The OIG attempted to replicate VA's universe of eligible veterans but was unable to do so because of the incomplete methodology provided by VBA and VHA.



excluded veterans eligible for equitable relief while granting equitable relief to ineligible veterans—incurring unnecessary reexamination costs. In addition, inconsistent policies for the qualifications examiners needed to conduct initial TBI medical examinations compromised the accuracy of disability examinations. This occurred because VA did not have a centralized authority governing both VBA and VHA, to ensure consistent implementation and oversight of the requirements for examiners conducting initial TBI medical examinations. The dual involvement of VBA and VHA in the TBI medical examination process blurred responsibility and accountability.

## **Recommendations 1–2**

1. The Under Secretary for Benefits coordinate with the Under Secretary for Health to determine whether veterans who had received initial TBI medical examinations by VHA-contracted examiners and not by one of the four designated specialists, were unintentionally excluded from equitable relief. If additional veterans are identified, the OIG requests that those cases be referred to the VA Secretary for consideration of equitable relief.
2. The Under Secretary for Benefits confirm whether the names of veterans who were not on the initial list of veterans entitled to equitable relief and later identified by VBA staff and referred for potential equitable relief were submitted to the VA Secretary for consideration. The OIG requests an update of the current status and disposition of those cases.

## **Management Comments and OIG Response**

The Under Secretary for Benefits concurred with and provided acceptable action plans for both recommendations. To address Recommendation 1, VBA coordinated with VHA to determine whether additional veterans who had initial TBI medical examinations conducted by VHA-contracted examiners were unintentionally excluded from equitable relief. A VHA representative confirmed that VHA's DMA office collaborated with VBA on its response to Recommendation 1. The OIG considers Recommendation 1 closed. In response to Recommendation 2, VBA indicated four cases were in the concurrence process for submittal to the VA Secretary for a decision on equitable relief consideration. VBA planned to provide the OIG the status and disposition of these cases by December 31, 2018. Although both recommendations were addressed to the Under Secretary for Benefits, the Under Secretary for Health also provided technical comments related to this report. The OIG considered those comments and made clarifications where applicable.

The OIG will monitor VBA's progress and follow up on implementation of Recommendation 2 until all proposed actions are completed.

## Appendix A: Background

### Program Administration for Compensation and Pension Examinations

The Compensation and Pension Examination Program Office was established in 2001 as a collaborative effort between VBA and VHA to improve the quality and timeliness of the C&P examination process. This office transitioned into DEMO in 2010. Effective March 2011, DEMO became part of DMA. In March 2012, DEMO's name was officially changed to DMA.

Beginning in FY 2017, VBA became responsible for any workload that required the use of a contractor for medical examinations. VBA's Compensation Service facilitates and monitors several multi-million-dollar contracts to obtain medical disability examinations and support Compensation Service initiatives. Compensation Service staff are responsible for monitoring and overseeing contractor performance, coordinating training and developing informational materials to assist users with the contract examination process, and reviewing completed contract examinations to ensure they are adequate to support VA disability rating decisions.

### Traumatic Brain Injury

VBA defines a TBI as a physical, cognitive and/or behavioral/emotional residual disability from an event of external force causing an injury to the brain. The major residual disabilities of TBI fall into three main categories—physical, cognitive, and behavioral.

VA amended its Schedule for Rating Disabilities in order to provide detailed and updated criteria for evaluating residuals of TBI.<sup>12</sup> VA said this change was necessary as VA recognized that TBI was a signature injury of the Iraq and Afghanistan conflicts. Until a regulation appeared in the *Federal Register* in September 2008 revising the rating criteria used to evaluate TBI disabilities, VA had not updated its rating criteria for brain disease due to trauma since 1961.<sup>13</sup>

### Recent VA Changes

During the House Committee on Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs hearing on July 13, 2016, VBA's then Deputy Under Secretary for Disability Assistance, David McLenachen, said that Compensation Service was setting up a new staff with oversight over the entire contract examination process, including expanded quality review and contract administration. Those staff would collaborate with VHA on policy and procedures.

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<sup>12</sup> 38 Code of Federal Regulations §4.1 – The Schedule for Rating Disabilities is primarily a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service.

<sup>13</sup> 38 Code of Federal Regulations §4.124 (a), *Schedule of ratings—neurological conditions and convulsive disorders*; 73 *Federal Register* 54705, September 23, 2008.

## **Appendix B: Scope and Methodology**

### **Scope**

The OIG conducted this review from October 2016 to June 2018. The scope of this review included veterans who were offered equitable relief by the then VA Secretary because their initial TBI examination had not been completed by an appropriate medical specialist from January 2007 through December 2015.

### **Methodology**

The OIG reviewed applicable laws, regulations, and contracts governing TBI medical examinations and disability claims. OIG staff interviewed individuals from VA's Office of General Counsel, VBA and VHA managers and staff, disability examination contractors, and members of several Veterans Service Organizations.

The OIG randomly selected and reviewed 120 of 410 TBI completed claims as of September 30, 2016, for veterans whom VBA identified as being entitled to equitable relief. OIG staff reviewed these cases to determine whether an appropriate examiner conducted the initial TBI medical examination.

### **Fraud Assessment**

The OIG assessed the risk that fraud, violations of legal and regulatory requirements, and abuse could occur during this review. The OIG exercised due diligence in staying alert to any fraud indicators by taking actions such as:

- Soliciting the OIG's Office of Investigations for indicators
- Reviewing OIG Hotline complaints and concerns for indicators

The OIG did not identify any instances of fraud during this review.

### **Data Reliability**

The OIG used computer-processed data from VBA's corporate database obtained by the Austin Data Analysis Division. To test for reliability, OIG staff reviewed the data to determine whether any data were missing from key fields, included any calculation errors, or were outside the period requested. The OIG also assessed whether the data contained obvious duplication of records, alphabetic or numeric characters in incorrect fields, or illogical relationships among data elements. Moreover, the OIG compared veterans' names, file numbers, Social Security numbers,

VA regional office numbers, dates of claim, and decision dates as provided in the data received with information contained in the 120 claims folders OIG staff reviewed.

The testing of the data disclosed that they were sufficiently reliable for the review objectives. Comparison of the data with information contained in the veterans' claims folders reviewed in conjunction with the OIG review of completed TBI reexaminations and subsequent disability determinations did not disclose any problems with data reliability.

## **Government Standards**

We conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

## Appendix C: Glossary

This list provides definitions for the various types of clinicians discussed in this report.<sup>14</sup>

### *Clinical Nurse Specialist*

An expert at diagnosing and treating illness in their area of expertise

### *Generalist Clinician*

A person whose knowledge, aptitudes, and skills are applied to a field as a whole or to a variety of different fields (opposed to specialist)

### *Neurologist*

A medical doctor who specializes in treating disease of the nervous system, which includes the brain and spinal cord

### *Neurosurgeon*

A physician who specializes in the diagnosis and surgical treatment of disorders of the central and peripheral nervous system including congenital anomalies, trauma, tumors, vascular disorders, infections of the brain or spine, stroke, or degenerative disease of the spine

### *Nurse Practitioner*

A registered nurse who has received special training for diagnosing and treating routine or minor ailments

### *Physiatrist*

A physician who treats a wide variety of medical conditions affecting the brain, spinal cord, nerves, bones, joints, ligaments, muscles, and tendons

### *Physician Assistant*

A person trained to perform under the supervision of a physician many clinical procedures traditionally performed by a physician, such as diagnosing and treating minor ailments

### *Psychiatrist*

A medical doctor who specializes in mental health, including substance use disorders; psychiatrists are qualified to assess both the mental and physical aspects of psychological problems.

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<sup>14</sup> The definitions came from *Discovernursing.com*, *Dictionary.com*, *healthline.com*, *urmc.rochester.edu*, *psychiatry.org*, and *aapmr.org*, © 2017.

## Appendix D: Timeline for VBA Policies Related to TBI Examinations

**Table 1. VBA Policies Related to Traumatic Brain Injury Disability Examinations**

Date	Source	Summary of Examiner Requirements
4/24/2007	<i>Compensation and Pension Bulletin</i> , Volume 1, Issue 5	Bulletin provided VBA decisionmakers guidance for assigning disability evaluations for residuals of TBI, it also mentioned a consult with VHA would be made regarding whether an examination conducted by a specialist in neurology should be mandatory in claims based on TBI.
8/31/2007	Training Letter 07-05, Bradley Mayes, Director, Compensation and Pension Service	Training letter served as a follow-up to Training Letter 06-03 and provided additional information about the specifics of rating TBI. There was no mention of the need for specialists or generalists to conduct examinations.
9/11/2007	Fast Letter 07-21, Bradley Mayes, Director, Compensation and Pension Service	Fast letter introduced the first TBI examination worksheet. There was no mention of the need for a specialist to conduct the examinations.
10/10/2008	Fast Letter 08-34, Bradley Mayes, Director, Compensation and Pension Service	Fast letter revised the TBI disability examination worksheet to include physicians who were specialists in physiatry, psychiatry, neurology, and neurosurgery, and who had training and experience with traumatic brain injury may conduct TBI examinations.  Also, a nurse practitioner, a clinical nurse specialist, or a physician assistant, if they were clinically privileged to perform activities required for TBI examinations, and had evidence of expertise through training and demonstrated experience, may conduct TBI examinations under close supervision of a board-certified or board-eligible physiatrist, psychiatrist, or neurologist.
8/3/2010	Fast Letter 10-28, Thomas Murphy, Director, Compensation and Pension Service	Fast letter added generalist clinicians, who successfully completed the C&P TBI training module, were permitted to perform TBI residual disability examinations. This was in addition to the other nonspecialists who may also conduct TBI examinations.
9/15/2011	TBI Disability Benefits Questionnaire	This examination template added guidance to include that a physiatrist, psychiatrist, neurologist, or neurosurgeon must make the diagnosis of TBI.
7/22/2015	M21-1, <i>Adjudication Procedures Manual</i> , Part III, Subpart iv, Chapter 3, Section D, Topic.2.j	VBA procedures manual updated to show that a physiatrist, psychiatrist, neurologist, or neurosurgeon must make the initial diagnosis of TBI. A generalist clinician who had successfully completed the DEMO TBI training module may conduct a TBI examination only if a TBI diagnosis was of record and was established by one of the aforementioned specialty providers.

Source: VA OIG analysis of VBA policies

## Appendix E: Timeline for VHA Policies Affecting Examiner Qualifications

**Table 2. VHA Policies Related to Examiner Qualification Requirements for Completing Traumatic Brain Injury Disability Examinations**

Date	Source	Summary of Examiner Requirements
1/29/2008	VHA Directive 2008-005, Michael Kussman, MD, MS, MACP, Under Secretary for Health	Directive did not address examiner qualifications to conduct TBI examinations; however, it determined a need for a training and certification program for all clinicians performing C&P examinations.
2/2/2012	DMA-12-003, Revised Fact Sheet, TBI Disability Examination Providers	Fact Sheet updated guidance that a generalist clinician could perform TBI disability examinations after a diagnosis of TBI was made by one of the four specialists.
1/14/2013	VHA Directive 2013-002, Documentation of Medical Evidence for Disability Evaluation Purposes, Robert A. Petzel, MD, Under Secretary for Health	Directive defined the policy for the use of Disability Benefit Questionnaires and added that the professional qualifications required to assess TBI disabilities were not changed by this document.
4/22/2013	VHA Directive 1603, Certification of Clinicians Performing VA Disability Evaluations, Robert A. Petzel, MD, Under Secretary for Health	Directive outlined certification for all clinicians performing VA disability evaluations. Clinicians who perform TBI evaluations must complete the training module titled "TBI Evaluations" and successfully complete its post-test.

*Sources: VA OIG analysis of VHA and DMA policies*

## **Appendix F: Management Comments**

### ***Veterans Health Administration***

#### **Department of Veterans Affairs Memorandum**

Date: July 26, 2018

From: Executive in Charge, Office of the Under Secretary for Health (10)

Subj: OIG Draft Report, VA Policy for Administering Traumatic Brain Injury Examinations (VIEWS 00084214)

To: Assistant Inspector General for Audits and Evaluations (52)

1. Thank you for the opportunity to review the Office of Inspector General (OIG) draft report, VA Policy for Administering Traumatic Brain Injury Examinations. The Veterans Health Administration (VHA) concurs with the draft report and provides technical comments for your consideration.
2. VHA collaborated with the Veterans Benefits Administration on the response to recommendation 1.
3. If you have any questions, please email Karen Rasmussen, M.D., Director, Management Review Service at [VHA10E1DMRSAction@va.gov](mailto:VHA10E1DMRSAction@va.gov).

*(Original signed by)*

Richard A. Stone, M.D.

Attachment



Attachment

**Veterans Health Administration (VHA) Technical Comments**  
**OIG Draft Report: VA Policy for Administering Traumatic Brain Injury Examinations**  
**Date of Draft Report: July 3, 2018**

**Comment 1**

**Draft location:** n/a

**Current language:** n/a

**Proposed change:** Add language at the beginning of the report, not just in the Appendix A, to state the VHA “Disability Examination management Office (DEMO)” is now the Office of Disability and Medical Assessment (DMA).

**Justification:** To provide clarification that VHA DEMO was incorporated into DMA in March 2011. As the document is currently written, it is unclear these are the same office until you get to Appendix A.

**Comment 2**

**Draft location:** Page iii; paragraph 2, line 5

**Current language:** Due to poor recordkeeping, neither VBA nor VHA could readily identify these veterans.

**Proposed change:** Due to limitations in the electronic IT recordkeeping systems, neither VBA nor VHA could easily identify Veterans who had initial TBI exams and the credentials of the examiner using VA centralized data repositories.

**Justification:** VA systems were built to process claims and record examinations individually. The electronic recordkeeping goal was to ensure the individuals’ record was accessible; however, all discreet elements of the medical examinations are not captured in a way that could easily be queried through central data repositories to identify Veterans examined for initial TBI. VHA deployed multiple methods to help identify these Veterans.

**Comment 3**

**Draft location:** Page 4, paragraph 1, line 4

**Current language:** The former VBA Executive in Charge, Thomas Murphy, and the Chief Officer of VHA’s DMA office since August 2015, Patricia Murray, did not ensure consistent implementation of VA’s TBI medical examination policies. Although VBA issued policy for initial TBI medical examinations, VBA and VHA were independently responsible for establishing contract terms and contract administration. This led to inconsistent implementation of TBI medical examination policies and contract requirements.

**Proposed change:** For VHA, definitive policy was issued in February 2012 establishing the requirement for an initial diagnosis by a designated specialist--physiatrist, psychiatrist, neurologist, or neurosurgeon. However, a VHA contractor and some VA medical centers did not follow the contract requirements and policy, respectively. DMA Chief Officer took immediate actions when she became aware of the infractions.

**Justification:** To clarify that implementation of DMA policy falls under the responsibility of the local Medical Center leadership.

**Comment 4**

**Draft location:** Page 20, Appendix C: Glossary

**Current language:** [for the physician specialist definitions]

**Proposed change:** Consider starting each definition with the phrase “a licensed physician who has a completed a residency training program and has expertise in treating...”

**Justification:** To provide clarity.

## **Appendix G: Management Comments**

### ***Veterans Benefits Administration***

#### **Department of Veterans Affairs Memorandum**

Date: July 30, 2018

From: Under Secretary for Benefits (20)

Subj: OIG Draft Report, – Review of VA Policy for Administering Traumatic Brain Injury Examinations  
[Project Number 2016-04558-BI-0223]

To: Assistant Inspector General for Audits and Evaluations (52)

1. Attached is VBA's response to the OIG Draft Report: Review of VA Policy for Administering Traumatic Brain Injury Examinations.
2. Questions may be referred to Renetta Johnson, Chief, Office of Program Integrity & Internal Controls at (202) 632-8699.

*(Original signed by)*

Paul R. Lawrence, Ph.D.

Attachment

Attachment

**Veterans Benefits Administration  
Comments on OIG Draft Report  
Review of VA Policy for Administering Traumatic Brain Injury Examinations**

The Veterans Benefits Administration (VBA) concurs with the findings in OIG's draft report and provides the following comments in response to the recommendations.

Recommendation 1: The Under Secretary for Benefits coordinate with the Under Secretary for Health to determine whether veterans that received initial TBI medical examinations completed by VHA contracted examiners, that were not conducted by one of the four designated specialists, were unintentionally excluded from equitable relief. If additional veterans are identified, the OIG requests those cases be referred to the VA Secretary for equitable relief consideration.

VBA Response: Concur. When determining the initial population eligible for equitable relief and entitled to a new traumatic brain injury (TBI) examination, VA considered examinations conducted by Veterans Health Administration (VHA) examiners, VHA contracted examiners, and VBA contracted examiners. For the 570 Veterans identified in the draft report, who were not referred for, nor granted, equitable relief, the examinations were conducted by a VHA contracted examiner. These Veterans were first identified in 2013 because of a vendor's failure to meet a VA contract requirement. After thorough reviews, a final VA decision was made in early 2014, acknowledging that a request for re-examination by VBA would not be required for these Veterans. The contracting officer closed the issue by requesting a refund from the vendor. Based on this previous decision on these Veterans, they were not included in the equitable relief request completed for the 24,588 Veterans identified in the draft report.

Recently, VBA conducted a second review of 25 percent of these claims and found that they were either conducted by, or the initial diagnosis was approved by, one of the four designated specialists (physiatrist, psychiatrist, neurologist, or neurosurgeon). Although none of these 570 cases require referral for extraschedular consideration, VA will continue to utilize the mechanisms described in recommendation two to identify and refer any claims appropriate for equitable relief. VBA requests closure of this recommendation.

Recommendation 2: The Under Secretary for Benefits confirm whether veterans not on the initial list of veterans entitled to equitable relief, whom were later identified by VBA staff and referred for potential equitable relief, were provided to the VA Secretary for consideration. The OIG requests the current status and disposition of cases not on the initial list of veterans entitled to equitable relief that were later referred for equitable relief.

VBA Response: Concur. Compensation Service currently has procedures in place to identify and refer TBI cases for potential equitable relief. Policy Letter 16-03 provides guidance for VA staff to identify and refer TBI cases where a TBI examination has not been conducted by one of the four designated specialists (physiatrist, psychiatrist, neurologist, or neurosurgeon) to determine if a TBI diagnosis exist. As of July 18, 2018, Compensation Service has referred four cases, which are in the concurrence process for submittal to the VA Secretary for a decision on equitable relief consideration. VBA will provide the status and disposition of these cases by the end of December 2018.

Target Completion Date: December 31, 2018

<p style="text-align: center;"><i>For accessibility, the original format of these appendixes has been modified to comply with Section 508 of the Rehabilitation Act of 1973, as amended.</i></p>
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## OIG Contact and Staff Acknowledgments

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<b>Contact</b>	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
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<b>Review Team</b>	Nora Stokes, Director Kristine Abramo Christopher Beltz Robert Campbell Casey Crump Bryan Shaw
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