

June 5, 2009 at 14:39:40

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Crisis at the VA as Benefits Claims Backlog Nearly Tops One Million

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During the past four months, the Department of Veterans Affairs (VA) backlog of unfinished disability claims grew by more than 100,000, adding to an already mountainous backlog that is now close to topping one million.

The VA's claims backlog, which includes all benefits claims and all appeals at the Veterans Benefits Administration (VBA) and the Board of Veterans Appeals at VA, was 803,000 on January 5, 2009. The backlog hit 915,000 on May 4, 2009, a staggering 14 percent increase in four months.

The issue has become so dire that veterans now wait an average of six months to receive disability benefits and as long as four years for their appeals to be heard in cases where their benefits were denied.

Rep. Tim Walz (D-Minnesota), a member of the House Veterans Affairs Committee, said during a hearing in March that the VA is "almost criminally behind in processing claims."

Overhauling the VA represents one of the most daunting challenges facing the Obama administration after years of mismanagement and neglect by the Bush administration, which stacked the agency with political cronies and kept the agency underfunded, wrapped in bureaucratic red tape and placed the interests of veterans last on a list of priorities.

Indeed, one of the VA's biggest failures during the Bush administration's tenure was its inability to fully implement critical components of the Mental Health Strategic Plan (MHSP) at regional offices throughout the country.

The MHSP, unveiled in 2004, would have provided veterans who show signs of being at risk of suicide or are suffering from post-traumatic stress disorder (PTSD) with immediate mental health care and eliminated the waiting period for receiving treatment.

But according to a November 2006 report by the Government

Accountability Office (GAO), spending for the program was substantially less than what the VA had proposed - leaving untreated tens of thousands of veterans who were at risk of suicide.

In June 2007, in response to a VA inspector general's report that also criticized the VA's failure to implement the MHSP, William Feeley, the VA's undersecretary for health, operations and management, issued a memo requiring VA hospitals and outpatient treatment centers to provide urgent mental health care within 24 hours and nonurgent care to veterans within 14 days.

But Feeley, who was one of a handful of VA officials who received lucrative bonuses in 2006, admitted in a deposition last year that he never conducted any oversight to ensure his directives were being adhered to. In that deposition, Feeley said an uptick in veterans suicides and suicide attempts did not mean VA failed to provide proper care to veterans.

"A suicide does not mean negligence on the part of a medical center director or a network director," Feeley said. "Suicide occurs just like cancer occurs."

In his prior position as director of the Veterans Integrated Services Network in upstate New York, Feeley was required to implement several elements of the MHSP at the network's community-based outpatient clinics with a population of at least 1,500 veterans. But Feeley said in his deposition that he only read an executive summary of the MHSP after it was released in June 2004 and had no idea whether the clinics adopted the proposals.

Secretary of Veterans Affairs Eric Shinseki recently named Feeley, who veterans groups had long demanded be fired, as the director of the VA's West New York Healthcare System in Buffalo, New York, removing him from a top position in Washington, yet leaving him employed with VA due to his prior civil service career with the agency.

To date, beyond a suicide hotline set up last year and thousands of newly hired mental health employees, the VA has failed to adopt a comprehensive suicide prevention program as outlined in the Feeley memo and the VA's 2004 MHSP.

In January and February, for the first time in military history, the number of battlefield suicides was higher than the number of combat deaths in the war zones, according to the Pentagon.

Last year, 140 US soldiers committed suicide, a record high, and during the first four months of 2009, 64 US soldiers have committed suicide. Military officials said a US soldier is now more likely to commit suicide than a civilian and the Army has recently commissioned a \$50 million study to explain the suicide epidemic.

It's a "very disturbing" trend, said Army Vice Chief of Staff Gen. Peter Chiarelli during a recent conference call with reporters.

Chiarelli said trying to reduce suicides "is one of the hardest problems" he's witnessed in his three-decade military career. He added, "There is no single solution ... suicide is a multi-dimensional problem that requires a multi-disciplinary approach to tackle it."

Chiarelli, and other Army officials, however, fail to address one of the obvious causes behind the spike in suicides: Multiple deployments in Iraq and Afghanistan are taking a toll on soldiers. Chiarelli did say that he believed if soldiers had better access to mental health care providers it might reduce the number of suicides.

Although President Obama has proposed increasing the VA's budget by 10 percent to \$15 billion and as much as \$113 billion for fiscal year 2010 as a way of meeting these challenges, the administration still lacks the manpower, data and analysis to properly plan for the funding increase, according to a recent report by the GAO.

Shinseki, a staunch advocate of veterans, promised recently that he would take "on the issue of the backlog," but he also admitted that he doesn't understand how it turned into a full-blown crisis.

While veterans groups say they are pleased with Obama's choice of Shinseki and other veterans' advocates to lead the VA, they said they could no longer sit by and wait for relief.

Earlier this year, two veterans advocacy groups asked a federal appeals court to step in and force the VA to immediately tackle the massive benefits claims backlog and implement mental health care plans.

The organizations, Veterans for Common Sense and Veterans United for Truth, which represent the interests of more than 12,000 veterans, said in court documents filed May 1 with the Ninth Circuit Court of Appeals that, in some cases, the VA's failure to provide timely mental health care treatment for veterans "resulted in suicide."

The problems persist because "VA has not implemented critical provisions, involving suicide prevention, required by its own plans, the veterans advocacy groups alleged in court papers. "As such, services to which VA acknowledges veterans are entitled are being unreasonably delayed, in some instances denied entirely because the delay leads to the death by suicide of individual veterans."

"An injunction compelling VA to implement its own directives is both appropriate and required," the advocacy groups said in an appeal brief. "At a minimum, a remand is necessary to remedy the district court's erroneous discovery rulings and 'systemic' evidentiary standard."

Two years ago, Veterans for Common Sense and Veterans United for

Truth sued the VA, alleging some war veterans were turned away from VA hospitals after they sought care for PTSD and later committed suicide.

The veterans groups sought a preliminary injunction to force the VA to immediately treat war veterans who showed signs of or were already suffering from PTSD. In addition, they wanted a federal judge to force the VA to overhaul its internal systems that handles benefits claims and medical services.

But US District Court Judge Samuel Conti ruled last summer that he lacked the legal authority to implement those measures. However, Conti did say in an 82-page ruling that it was "clear to the court" that "the VA may not be meeting all of the needs of the nation's veterans."

Conti wrote that the veterans groups should get "Congress, the Secretary of the Department of Veterans Affairs, the adjudication system within the VA, and the Federal Circuit" to address the matter.

The veterans' groups appeal to the Ninth Circuit said Conti's ruling was legally flawed and that he "erred in denying relief to remedy both VA's mental health care delays and the lack of procedural safeguards to challenge those delays."

Gordon Erspamer, a San Francisco attorney representing the veterans groups, said in an interview that the case is "odd" because Conti's "findings of fact departed from his ultimate ruling."

Paul Sullivan, executive director of Veterans for Common Sense, said in an interview that the motivation for the appeal to the Ninth Circuit was VA's failure to fully implement its Mental Health Strategic Plan and to conduct oversight of it. He said he has received reports about veterans packing parking lots to wait for medical care.

Internal VA memos that surfaced during the trial last year showed that VA officials were aware that more than 1,000 veterans had attempted suicide per month, which attorneys representing the veterans advocacy groups argued could have been avoided if the MHSP, which called for the development of a "national, systemic program for suicide prevention," was implemented.

"The VA has provided no documentation that they implemented any aspect of their strategic plan," Sullivan said. "From our point of view, although it appears VA is taking some steps in the right direction VA's system still remains in deep crisis."

A VA spokesperson would not answer specific questions about claims made in the lawsuit, specifically, whether the agency has conducted any oversight to ensure its mental health directives are being followed by its health care facilities around the country.

Sullivan added that the number of suicides and PTSD cases will likely

increase "with the escalation in Afghanistan and the increasing use of multiple deployments."

Secretary of Defense Robert Gates said earlier this year the Pentagon would end the so-called "stop loss" program sometime in 2010 - the program that orders soldiers to remain in the military for months, and in some cases longer, after their enlistment contract had expired. News reports said that 40 percent of the nearly two million US service members sent to the Iraq and Afghanistan wars have already been deployed twice or more.

Lawmakers have proposed several pieces of legislation aimed at streamlining the backlog of benefits claims associated with mental health diagnosis. Rep. John Hall, chairman of the House Veterans' Affairs Disability Assistance and Memorial Affairs Subcommittee introduced one such bill, HR 952, the "Combat PTSD Act" in February. The legislation, which has 85 cosponsors, would streamline claims for PTSD, some of the most difficult and time-consuming claims VA processes.

In addition, Hall and House Veterans Affairs Committee Chairman Rep. Bob Filner introduced and passed a comprehensive package of pilot programs to start repairing the VA's broken claims system.

But without immediate intervention by Shinseki on the benefits claims backlog, the VA will continue to be mired in controversy.

"This is an unmitigated disaster, and grounds for the removal of top [VBA] and [Board of Veterans Appeals] officials," Sullivan said. "President Obama and Secretary Shinseki need to clean house at the Veterans Benefits Administration now, before VA's claim system collapses. Although hiring more claims processors will help, the VBA also desperately needs new leaders and new policies.

"The wars and economic devastation continue to generate a flood of new patients and claims for VA. However, the Captain of the ship has changed at VA, and a new course has been plotted. Only time will tell if Secretary Shinseki can turn the ship around without additional damage to VA or harm to our veterans."

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