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**WOUNDED WARRIOR PROJECT
STATEMENT FOR THE RECORD**

**COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS &
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
U.S. HOUSE OF REPRESENTATIVES**

***"AT WHAT COST? ENSURING QUALITY REPRESENTATION
IN THE VETERAN BENEFITS CLAIMS PROCESS"***

April 27, 2022

Chairwoman Luria and Chairman Pappas, Ranking Members Nehls and Mann, and distinguished members of the House Committee on Veterans' Affairs Subcommittees on Disability Assistance and Memorial Affairs (DAMA) and Oversight and Investigation (O&I) – thank you for inviting Wounded Warrior Project (WWP) to submit this written statement for the record of today's hearing on representation in the veterans benefits claims process. Assisting wounded, ill, and injured veterans with their claims before the Department of Veterans Affairs (VA) is a critical component of our mission to honor and empower wounded warriors and we are pleased to help inform the Subcommittees' exploration of this important topic.

Wounded Warrior Project was founded to connect, serve, and empower our nation's wounded, ill, and injured veterans, Service members, and their families and caregivers. We are fulfilling this mission by providing more than 20 life-changing programs and services to over 200,000 registered post-9/11 warriors and their family members, continually engaging with those we serve, and capturing an informed assessment of the challenges this community faces. Based on insights gathered in our most recent *Annual Warrior Survey*, we can attest that post-9/11 wounded veterans are facing significant financial challenges. 42% of responding warriors indicated not having enough money to make ends meet in the past 12 months. In addition, 13% of respondents reported being unemployed at the time of the survey (summer 2021), compared to 5% of the U.S. general population.

For reasons like these, WWP has a Benefits program comprised of more than fifty VA-accredited National Service Officers that provide free benefits advocacy and counseling to veterans and their families and caregivers to ensure that each receives the benefits that they have earned in a manner that honors their service. Through this team, like many of our peer organizations in the non-profit and veteran service organization (VSO) community, we provide the support of trained specialists to help veterans navigate a diverse range of federal benefit systems that can be confusing or daunting.

DUTY ★ HONOR ★ COURAGE ★ COMMITMENT ★ INTEGRITY ★ COUNTRY ★ SERVICE



Our team assists with VA disability and Veterans Health Administration (VHA) claims and appeals (including the Program of Comprehensive Assistance for Family Caregivers (PCAFC) or Caregivers Program). In addition, we assist with VA insurance programs (e.g., the Servicemembers' Group Life Insurance and the Service-Disabled Veterans Insurance), the VA Home Loan program, and education programs such as Veteran Readiness and Employment (VR&E) and the Post 9-11 GI Bill. WWP also assists veterans and Service members with Department of Defense (DoD) issues related to Physical Evaluation Board guidance, discharge upgrades, correction of military records, and Combat Related Special Compensation (CRSC) claims and appeals.

We provide this service, like every other program we deliver, free of charge.

Using Historical Context to Framing Current Issues in the Veteran Benefit Claims Process: Agents and Lawyers Throughout the Eras

The route to finding reliable and trustworthy support is not always straightforward. For example, WWP was recently approached by a veteran who had signed a contract with a company promising to provide consulting services to assist with his VA disability claim. In short, and like several others, this company charges variable rates for its services based on the percentage of the initial or increased service-connected disability rating awarded to the veteran. In this case, the organization's service was limited to connecting the veteran to a network of medical providers that complete medical examinations that can be used in support of a claim for service connection or an increased disability rating. Among services not included in this instance were professional services related to the preparation, submission, and monitoring of the VA forms associated with the veteran's claim. For their effort in this case, the veteran paid the company \$5,000 after VA provided an increased rating from 70% to 100%.

Corporations and agents providing these types of services are not new. Shortly after the federal government established a system for settling claims for benefits arising from service in the Civil War, some agents and attorneys saw opportunity to take advantage of veteran claimants. Many would travel the country looking to persuade injured veterans to "blame [their injuries] on the war" and accumulate large new client bases in the process.¹ As the eras progressed and Congress revamped the claims process in 1917, programs for compensation and vocational rehabilitation were established. In 1930, the Veterans Administration was created to oversee the programs for veterans that had been under sub-agencies of the War Department. Still, many of the agents and attorneys, by now having powerful lobbying influence, remained able to pursue ethically questionable practices when assisting veterans with their claims for onerous fees. Notably, amidst these circumstances, Congress began chartering VSOs to provide disability claim assistance at no cost. Several are still operating today and providing those same services.

It should be noted that all licensed attorneys are held to a high standard, both professionally and ethically, and most who assist veterans with their VA claims provide good quality service. In fact, attorneys are generally responsible for litigating key issues in court

¹ Peter Blanck & Chen Song, *Civil War Pension Attorneys and Disability Politics*, 35 U. MICH. J. L. REFORM 137, 142 (2001).

where others, including VSOs, cannot. For example, attorneys arguing before the U.S. Court of Appeals for Veterans Claims (CAVC) have delivered countless hours of service in pursuit of cases that can take years to decide and often with life-changing outcomes for those affected.

Claims agents, while accredited, do not typically perform any activities that could be performed by a VSO at no charge to a veteran. Such agents will occasionally outsource a claim for a nexus and records review, but other times they simply charge a fee for the exact same service WWP or another VSO can provide free-of-charge to the veteran.

Current Issues

Issues that arose in the past – most notably excessive fees and false promises – have persisted to the present day, where current circumstances have exacerbated problems for some. Veterans who are now working from home or pursuing online education or training due to the COVID-19 public health emergency are now less likely to go to a VA regional office (VARO) to speak with a local VSO or VA representative about the disability claims process. Information about the process can be found independently; however, a high degree of circumspection may be required. Searching the internet may help a veteran find a VSO that provides VA-accredited professionals to ensure that benefits claims are filed properly and efficiently – and that he or she will never pay a fee for this expert assistance. However, such results may be scattered within numerous “for-profit” organizations. For those unfamiliar with the distinction, predatory tactics and social media campaigns targeted towards the veteran community can further overshadow more trustworthy options (both non-profit and for-profit).

The decisions that follow can have a steep financial impact. A veteran who chooses to be represented by an agent may be obligated to pay substantial fees during the claims process. In some cases, a veteran may pay an initial fee for a records review and nexus statement, and some fee-based companies also assess a contingency fee based on the total retroactive payment if the claim is successful. Twenty percent is a standard contingency fee that can lead a veteran to owe anywhere from \$0 to well over \$100,000. If, for example, a 20% contingency fee is applied to a \$20,000 retroactive payment, a veteran would be responsible for a \$4,000 payment to the claims agent or attorney while keeping \$16,000 for his or herself – before considering any upfront fees and additional charges associated with printing, doctors’ appointments, and various costs accrued during their claim process. In the end, the veteran will take home considerably less than their VA award.

It is worth noting that VA has a role in enforcing these fee agreements and will deduct a contingency fee owed to a claims agent from a retroactive payment prior to the award being released to the veteran. *See* 38 U.S.C. § 5904; 38 C.F.R. § 14.636(h). In the event of a dispute over the fee, a veteran will often be in the position of seeking to recoup money from the agent, who is paid first.

To avoid negative or unforeseen consequences, WWP routinely advises veterans to look for a few warning signs when seeking claims assistance including:

- Promises or guarantees to increase disability ratings and secure “X” amount percentage increases
- Companies advertising services that are done faster or better than a VSO or accredited agents
- Requesting sensitive login credentials to access the veteran’s info through secure VA websites like eBenefits or VA.gov
- Using confusing tactics or ambiguous language in contracts designed to mislead the veteran
- Offering health consultation within their own network of doctors and telling veterans to forego VA exams for a faster decision

These five indicators are red flags that an organization is overpromising. Our advice follows that if a veteran sees any of these red flags, they should immediately ask, “are these organizations accredited with VA?” If the answer is no or somehow ambiguous, or if an organization offers to help warriors with their claim but refuses to go on record with VA as their representative, veterans should work with someone else.

Wounded Warrior Project believes that while VA can never completely eradicate nefarious actors from the claims process, the agency can take additional steps so that a veteran seeking assistance has every option clearly defined to them. For example, given the frequency of direct outreach to veterans in their first year of post-service transition, VA’s Solid Start program can be an extremely useful tool to combat disinformation. This can be an ideal time for VA to direct the veteran to its existing directory of free, accredited representatives. That list updates constantly and is one of the best ways that veterans and families can avoid being scammed or preyed upon. Optimizing the location of this information on the VA website and making it easy to identify would further encourage access to the most reliable sources for claims assistance.

In addition, we support legislation like S. 2678, the *Protect Our Disabled Heroes Act*, which would penalize those who unlawfully solicit, contract for, charge, or receive any fee or compensation for preparing and executing veterans’ disability claims. Under current law, for-profit entities are prohibited from charging a veteran for the preparation of an initial VA claim. These groups (or individuals) can only legally charge fees once an appeal has been initiated. *See* 38 C.F.R. § 14.636(c). While the legislation would not create penalties for unscrupulous acts at the appellate level, it could serve as a deterrent against broader activity to build or maintain businesses using ethically objectionable tactics. In effect, S. 2678 would ensure that the laws protecting veterans are rigidly enforced and help create a more trustworthy marketplace for those seeking claims assistance.

Conclusion

Wounded Warrior Project once again extends our thanks to the Subcommittees for their continued dedication to our nation’s veterans. We are honored to contribute our voice to this important conversation and look forward to finding ways to ensure that those who served this country are provided with the best service and support when pursuing the benefits they have earned. As your partner in advocating for these and other critical issues, we stand ready to assist and look forward to our continued collaboration.