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DOD AND VA

**Systematic Data Sharing
Would Help Expedite
Servicemembers' Transition
to VA Services**

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Highlights of [GAO-05-722T](#), a testimony before the Subcommittee on Oversight and Investigations, Committee on Veterans' Affairs, House of Representatives

Why GAO Did This Study

Since the onset of Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF), the Department of Defense (DOD) reported that more than 12,000 servicemembers have been injured in combat. While many return to active duty, others with more serious injuries are likely to be discharged from the military. To ensure the continuity of medical care and access to all other Department of Veterans Affairs' (VA) benefits, such as vocational rehabilitation, VA formed its Seamless Transition Task Force.

In January 2005, GAO reported that VA had given high priority to OEF/OIF servicemembers, but faced challenges in identifying, locating, and following up with seriously injured servicemembers. GAO recommended that VA and DOD reach an agreement for VA to obtain systematic data from DOD, and the departments concurred. However, DOD raised privacy concerns.

GAO was asked to review VA's efforts to expedite vocational rehabilitation services to seriously injured servicemembers and to determine the status of an agreement between DOD and VA to share health data. GAO relied on its prior work; interviewed VA and DOD officials; and reviewed the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA Privacy Rule, which govern the sharing of individually identifiable health data.

www.gao.gov/cgi-bin/getrpt?GAO-05-722T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Cynthia A. Bascetta at (202) 512-7101.

DOD AND VA

Systematic Data Sharing Would Help Expedite Servicemembers' Transition to VA Services

What GAO Found

While VA has taken steps to expedite services to seriously injured servicemembers, VA does not have systematic data from DOD on seriously injured servicemembers who may need VA vocational rehabilitation and other benefits. As a result, VA has had to rely on its regional offices to develop informal data sharing arrangements with local military treatment facility (MTF) staff to identify servicemembers who may need vocational rehabilitation services. However, VA staff have no official data source from DOD from which to confirm the completeness and reliability of the data they obtain. Furthermore, they cannot provide reasonable assurance that some seriously injured servicemembers who may have benefited from vocational rehabilitation services have not been overlooked. Although several VA headquarters officials and regional office staff GAO interviewed said that systematic data from DOD would provide them with a way to reliably identify and follow up with seriously injured servicemembers, DOD and VA have not developed a data sharing agreement. Additionally, VA officials said these data would help VA plan for projected increases in the need for services for newly returning OEF/OIF servicemembers. VA has requested that DOD provide systematic data on seriously injured servicemembers who may need vocational rehabilitation.

DOD and VA have been working on a data sharing agreement for over 2 years, but have not reached an agreement. DOD and VA differ in their understanding of HIPAA Privacy Rule provisions that govern the sharing of individually identifiable health data for servicemembers currently receiving treatment at MTFs, and the extent to which the Privacy Rule would permit that exchange. DOD's and VA's inability to resolve these differences has impeded coming to an agreement on exchanging seriously injured servicemembers' individually identifiable health data. Despite being unable to agree on an exchange of individually identifiable health data, DOD and VA are reviewing a draft memorandum of understanding, which the departments believe will move them closer to a data sharing agreement. However, GAO found that the draft memorandum restates many of the legal authorities contained in the Privacy Rule for the use and disclosure of individually identifiable health data. As a result, even if the memorandum of understanding is finalized, DOD and VA will still have to agree on what types of individually identifiable health data can be exchanged and when the data can be shared. DOD and VA generally agreed with GAO's findings.

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to share our perspectives on seriously injured servicemembers who could benefit from services offered by the Department of Veterans Affairs (VA), such as vocational rehabilitation, disability compensation, and health care, as they transition from servicemember to veteran status. Since the onset of Operation Enduring Freedom (OEF) in October 2001 and Operation Iraqi Freedom (OIF) in March 2003, the Department of Defense (DOD) has reported that more than 12,000 servicemembers have been injured in combat. While many return to active duty after they are treated, others who are more seriously injured are likely to be discharged from their military obligations and return to civilian life with disabilities. To ensure the continuity of medical care as a first priority as well as to coordinate efforts to ensure access to all other VA benefits, such as vocational rehabilitation, VA formed its Seamless Transition Task Force in August 2003.

In January 2005, we reported that while VA has given high priority to providing services to OEF/OIF servicemembers, it was challenged in its efforts to identify, locate, and follow up with seriously injured servicemembers.¹ One key problem has been the lack of systematic data from DOD about who is seriously injured, the nature of their injuries, and where the servicemembers received treatment. As DOD and VA have worked toward a seamless transition, DOD raised concerns about privacy issues and the sharing of individually identifiable health data. We recommended that VA and DOD collaborate to reach an agreement for VA to have access to DOD data for seriously injured servicemembers that both departments agree are needed to promote recovery and return to work and both departments concurred.

You asked us to testify on VA's and DOD's efforts to provide a seamless transition for seriously injured OEF/OIF servicemembers. Specifically, we (1) reviewed VA's efforts to expedite vocational rehabilitation services to seriously injured servicemembers and (2) determined the status of an agreement between DOD and VA to share health data. My comments today highlight the findings of our earlier work on VA's vocational rehabilitation

¹GAO, *Vocational Rehabilitation: More VA and DOD Collaboration Needed to Expedite Services for Seriously Injured Servicemembers*, [GAO-05-167](#) (Washington, D.C.: Jan. 14, 2005).

services for seriously injured servicemembers returning from OEF/OIF and our ongoing work on DOD's and VA's data sharing agreement.²

Our January 2005 report on VA's efforts to expedite vocational rehabilitation services to OEF/OIF servicemembers was based on interviews with officials at VA headquarters and at 12 of VA's 57 regional offices. Five of the 12 regional offices are located near the five major Army military treatment facilities (MTF) treating the majority of seriously injured OEF/OIF servicemembers during our review. We visited Walter Reed Army Medical Center where most seriously injured Army servicemembers are initially treated. To do our work on the status of DOD's and VA's data sharing agreement, we reviewed a draft memorandum of understanding for the sharing of data between DOD and VA, pertinent provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA Privacy Rule, which govern the sharing of individually identifiable health data.³ We also spoke with officials responsible for the implementation of the Privacy Rule at DOD and VA. We discussed the information contained in this statement with DOD and VA officials who agreed with our findings. We did our work from March through May 2005 in accordance with generally accepted government auditing standards.

In summary, while VA has taken steps to expedite services to seriously injured OEF/OIF servicemembers, VA does not have systematic data from DOD on those servicemembers who may need vocational rehabilitation and other benefits from VA. As a result, VA has had to rely on its regional offices to develop informal data sharing arrangements with local MTF staff to identify servicemembers who may need vocational rehabilitation services. However, VA staff have no official data source from DOD from which to confirm the completeness and reliability of the data obtained through these informal, local arrangements. Furthermore, VA staff cannot provide reasonable assurance that some seriously injured servicemembers who may have benefited from early intervention by a vocational rehabilitation counselor have not been overlooked. Unresolved issues between DOD and VA continue to delay the systematic sharing of data. To obtain systematic data from DOD on seriously injured OEF/OIF servicemembers who may need VA services, DOD and VA have been working on an agreement to exchange servicemembers' health data for

²See related GAO products listed at the end of this testimony.

³Pub. L. No. 104-191, § 264, 110 Stat. 1936, 2033-34; 45 C.F.R. § 164.500, *et seq.* (2004).

over 2 years. DOD and VA differ in their understanding of HIPAA Privacy Rule provisions that govern the sharing of individually identifiable health data for seriously injured servicemembers receiving treatment in MTFs, and the extent to which the Privacy Rule would permit that exchange. DOD's and VA's inability to resolve these differences has impeded coming to an agreement on exchanging seriously injured servicemembers' individually identifiable health data. We continue to believe that an agreement between DOD and VA to share health data would expedite the delivery of VA services to OEF/OIF servicemembers, as well as help ensure a seamless transition.

Background

Servicemembers deployed to Afghanistan and Iraq are surviving injuries that would have been fatal in past conflicts due, in part, to advances in battlefield medicine and protective equipment. However, the severity of their injuries can result in a lengthy transition from injured servicemember to veteran. Initially, most seriously injured servicemembers are brought to Landstuhl Regional Medical Center in Germany for treatment. From there, they are usually transported to major MTFs in the United States. According to DOD officials, once stabilized and discharged from MTFs, servicemembers usually relocate closer to their homes or military bases and are treated as outpatients. At this point, the military generally begins to assess whether the servicemember will be able to remain in the military, a process that could take months to complete.

Faced with the need to provide benefits and services to a new generation of veterans with disabilities, VA formed an internal task force—the Seamless Transition Task Force—in August 2003 to develop and implement policies to improve the transition of injured servicemembers back to civilian life. Although the task force's initial priority was to ensure the continuity of medical care for injured servicemembers as they transitioned from military to VA health care, it also coordinated efforts to ensure access to all other VA benefits, including vocational rehabilitation.

DOD has also supported transition assistance in various ways. For example, the VA/DOD Joint Executive Committee was established in February 2002 to promote collaboration between the two departments, including resolving obstacles to information sharing. The committee is chaired by the Deputy Secretary of Veterans Affairs and the Under Secretary of Defense for Personnel and Readiness. In addition, the Army—in cooperation with VA—established the Disabled Soldier Support System in April 2004 as an advocacy group and information clearinghouse to clarify the services available to disabled soldiers as they transition to

civilian life. In addition, DOD participated at times on VA's Seamless Transition Task Force.

Separation from the military and return to civilian life often entail the exchange of individually identifiable health data between DOD and VA. The exchange of these data must comply with the HIPAA Privacy Rule, which became effective April 14, 2001.⁴ The Privacy Rule permits VA and DOD to share servicemembers' health data under certain circumstances.

VA Has Taken Steps to Expedite Vocational Rehabilitation Services, but Lack of Systematic Data from DOD Poses a Challenge

VA has given priority consideration and assistance to seriously injured servicemembers returning from Afghanistan and Iraq. In a September 2003 letter, VA asked its regional offices to coordinate with staff at MTFs in their areas to ascertain the identities, medical conditions, and military status of the seriously injured OEF/OIF servicemembers. VA specifically instructed regional offices to focus on servicemembers whose disabilities were definitely or likely to result in military separation. Minimally, this included servicemembers with injuries that had been classified as "very serious," "serious," or in a "special category."⁵ In this letter, VA instructed its regional offices to assign a case manager to each seriously injured servicemember who applied for disability compensation. In addition, VA noted the particular importance of early intervention for those who were seriously injured and emphasized that seriously injured servicemembers applying for vocational rehabilitation should receive the fastest possible service. Moreover, VA reminded vocational rehabilitation staff that they

⁴The Privacy Rule applies to covered entities and specifies how individually identifiable health data may be used and disclosed by covered entities. See 45 C.F.R. §§ 164.500(a), 164.502 (2004). Covered entities are defined in the Privacy Rule as health plans, clearinghouses, and certain health care providers. Both the DOD health care system and the VA health care system are covered entities. See 45 C.F.R. § 160.103 (2004). All covered entities had to comply with the Privacy Rule by April 14, 2003, with the exception of small health plans.

⁵Army regulations classify illnesses and injuries as "very serious" when life is imminently endangered; as "serious" when there is a cause for immediate concern but there is no imminent danger to life; and as "special category" when the patient has a particular condition, such as loss of limb or sight, a psychiatric condition, paralysis, or a permanent disfigurement.

can initiate evaluation and counseling and, in some cases, authorize training before a servicemember was discharged.⁶

Since most seriously injured servicemembers are initially treated at major MTFs, VA has detailed staff to these facilities to identify and educate these servicemembers about VA services.⁷ These staff include VA social workers and disability compensation benefits counselors. At Walter Reed Army Medical Center, where the largest number of seriously injured servicemembers has been treated, VA's Washington, D.C. regional office has since 2001 also provided a vocational rehabilitation counselor to work with hospitalized patients, specifically to offer and provide vocational counseling and evaluation. The counselor reported attempting to contact all patients within 48 hours of their arrival and visited them routinely thereafter to establish rapport. Her primary mission is to work with servicemembers who will need to prepare for civilian employment, although she told us that her early intervention efforts could also help servicemembers who are able to remain in the military.

Staff at another regional office noted that they also advocate early intervention. These staff said that they try to contact servicemembers as soon as possible to establish rapport and provide vocational rehabilitation program information even before the servicemembers are physically ready to begin vocational rehabilitation. We previously reported on the importance of early intervention to maximize the work potential of individuals with disabilities. We reported, for example, that rehabilitation offered as close as possible to the onset of disabling impairments has the greatest likelihood of success.⁸

⁶Servicemembers can receive vocational rehabilitation services prior to separation from the military under certain circumstances. For example, hospitalized servicemembers pending discharge may receive all VA vocational rehabilitation benefits—such as counseling, evaluation, and training—except for the monthly subsistence allowance. 38 U.S.C. §§ 3102, 3104, and 3113.

⁷In our January 2005 report, we focused on five MTFs, which treated the majority of seriously injured OEF/OIF servicemembers: Brooke Army Medical Center in Texas; Walter Reed Army Medical Center in Washington, D.C.; Madigan Army Medical Center in Washington; Eisenhower Army Medical Center in Georgia; and Darnall Army Community Hospital in Texas. VA also has placed staff at Evans Army Community Hospital in Colorado and Bethesda Naval Medical Center in Maryland.

⁸GAO, *Vocational Rehabilitation: VA Has Opportunities to Improve Services, but Faces Significant Challenges*, [GAO-05-572T](#) (Washington, D.C.: Apr. 20, 2005), and *SSA Disability: Program Redesign Necessary to Encourage Return to Work*, [GAO/HEHS-96-62](#) (Washington, D.C.: Apr. 24, 1996).

Despite efforts by VA's regional offices to identify and obtain medical information on seriously injured OEF/OIF servicemembers, lack of systematic data from DOD poses a challenge. Although VA requested in the spring of 2004 that DOD provide on a systematic basis personal identifying data, medical data, and DOD's injury classification for seriously injured servicemembers, DOD and VA have not developed a data sharing agreement. In the absence of a data sharing agreement with DOD, VA cannot reliably identify all seriously injured servicemembers or know with certainty when they are medically stabilized, when they may be undergoing evaluation for a medical discharge, or when they are discharged from the military. As a result, VA cannot provide reasonable assurance that some seriously injured servicemembers who may benefit from vocational rehabilitation services have not been overlooked.

In our review of 12 VA regional offices, we found that the nature of the local relationship between VA staff and MTF staff was a key factor in the completeness and reliability of the information that the MTF provided on seriously injured servicemembers. For example, at one location, the MTF staff provided VA regional office staff with the names of new patients but no indication of the severity of their conditions or the combat theater from which they were returning. Another regional office reported receiving lists of servicemembers for whom the Army had initiated a medical separation in addition to lists of patients with information on the severity of their injuries. Some regional offices were able to capitalize on long-standing informal relationships. For example, the VA coordinator responsible for identifying and monitoring the seriously injured servicemembers at one regional office had served as an Army nurse at the local MTF and was provided all pertinent information.

VA staff at the 12 regional offices generally expressed confidence that the data sources they developed enabled them to identify most seriously injured servicemembers. However, we noted that informal data sharing relationships could break down with changes in personnel at either the MTF or the VA regional office. Several VA headquarters' officials and regional office staff we interviewed said that systematic data from DOD would provide them with a way to reliably identify and follow up with seriously injured servicemembers. Additionally, VA officials said these data would help them plan for projected increases in services for newly returning OEF/OIF servicemembers.

Unresolved Issues Continue to Delay a Data Sharing Agreement

After more than 2 years of discussion, DOD and VA have not developed a data sharing agreement. Although DOD and VA officials agree that the HIPAA Privacy Rule permits the exchange of individually identifiable health data if the individual signs a proper authorization, the departments have not pursued this as an alternative to a data sharing agreement. DOD and VA officials said the departments want to pursue options under other provisions of the Privacy Rule that may permit them to exchange data without individual authorizations. However, DOD and VA differ in their understanding of HIPAA Privacy Rule provisions that govern the sharing of individually identifiable health data for servicemembers currently receiving treatment in MTFs without an authorization, and the extent to which the Privacy Rule would permit that exchange. DOD's and VA's inability to resolve these differences has impeded coming to an agreement on exchanging servicemembers' individually identifiable health data.

Two examples help illustrate the different views of DOD and VA regarding the HIPAA Privacy Rule. First, the Privacy Rule permits covered entities that are also government agencies providing public benefits to disclose individually identifiable health data to each other when the programs serve the same or similar populations, and the disclosure is necessary to coordinate the covered functions of such programs or to improve administration and management related to the covered functions of the programs.^{9,10} VA officials have said they believe that this provision allows DOD to share servicemembers' health data with VA because the departments serve the same or similar populations—active duty servicemembers who transition to veteran status. VA officials also said they believe that DOD and VA provide public benefits. In contrast, a DOD official who is responsible for implementation of the Privacy Rule does not agree that DOD and VA serve the same or similar populations or that DOD provides public benefits. This official said he believes that serving the same or similar populations means that servicemembers have a dual eligibility for both DOD and VA services. Although the official said that while some former servicemembers are dually eligible for DOD and VA services, not all qualify for both services simultaneously. This official also said that the services that DOD provides are not public benefits because they are unlike the examples of public benefits programs provided in the

⁹See 45 C.F.R. § 164.512(k)(6) (2004).

¹⁰Covered functions in general are a health plan's or health care provider's activities of providing or arranging for health care services. See 45 C.F.R. § 164.103 (2004).

preamble to the Privacy Rule.¹¹ The Privacy Rule does not define public benefits.

In the second example, the Privacy Rule explicitly permits the disclosure of individually identifiable health data by DOD to VA upon the separation or discharge of a servicemember in order to determine eligibility for VA benefits.¹² DOD views “upon the separation or discharge” as referring to the separation process that varies by servicemember, but which begins with the decision by DOD that the servicemember will separate. According to VA officials, the HIPAA Privacy Rule would allow DOD to share data sooner than the decision by DOD that the servicemember will separate. However, DOD is reluctant to provide individually identifiable health data to VA until DOD is certain that a servicemember will separate from the military. DOD is concerned that VA’s outreach to servicemembers who are still on active duty could work at cross-purposes to the military’s retention goals. According to DOD officials, it would be premature for VA to begin working with servicemembers who may eventually return to active duty. VA contends that DOD could define the specific point of separation or discharge earlier in the process. In commenting on our January 2005 report, VA said that a memorandum of understanding was then being negotiated that would allow VA to obtain from DOD the servicemember’s medical information prior to discharge from military service. VA added that its Office of General Counsel was confident that there are exceptions in the Privacy Rule that would permit military service medical information to be disclosed for VA benefits purposes and that it had pressed the case with DOD’s General Counsel. As of May 17, 2005, the memorandum of understanding between DOD and VA has not been finalized.

Despite being unable to agree on an exchange of individually identifiable health data, DOD and VA are currently reviewing a draft memorandum of understanding. DOD and VA officials told us they believe that the memorandum of understanding will move the two departments closer to a data sharing agreement. However, we found that the draft memorandum of understanding restates many of the legal authorities contained in the Privacy Rule for the use and disclosure of individually identifiable health data. For example, the draft memorandum of understanding does not specify that individually identifiable health data of OEF/OIF servicemembers shall be disclosed and restates that data will be shared

¹¹See 65 Fed. Reg. 82462, 82541-42 (2000).

¹²See 45 C.F.R. § 164.512(k)(1)(ii) (2004).

upon separation or discharge without further defining the specific point during the separation or discharge process when data can be shared. As a result, even if the memorandum of understanding is finalized, DOD and VA will still not have a data sharing agreement that specifies what types of individually identifiable health data can be exchanged and when the data can be shared.

Mr. Chairman, this completes my prepared remarks. I will be pleased to answer any questions you or other Members of the Subcommittee may have at this time.

Contact and Acknowledgments

For further information, please contact Cynthia A. Bascetta at (202) 512-7101. Also contributing to this statement were Mary Ann Curran, Marcia Mann, Kevin Milne, and Janet Overton.

Related GAO Products

Vocational Rehabilitation: VA Has Opportunities to Improve Services, but Faces Significant Challenges. [GAO-05-572T](#). Washington, D.C.: April 20, 2005.

VA Disability Benefits and Health Care: Providing Certain Services to the Seriously Injured Poses Challenges. [GAO-05-444T](#). Washington, D.C.: March 17, 2005.

Vocational Rehabilitation: More VA and DOD Collaboration Needed to Expedite Services for Seriously Injured Servicemembers. [GAO-05-167](#). Washington, D.C.: January 14, 2005.

Health Information: First-Year Experiences under the Federal Privacy Rule. [GAO-04-965](#). Washington, D.C.: September 3, 2004.

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