



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

The Honorable Jack Reed
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

MAR 28 2024

Dear Mr. Chairman:

The Department's response to section 711 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117-263), "Accountability for Wounded Warriors Undergoing Disability Evaluation," is enclosed.

The report discusses policies implemented to ensure accountability for actions taken under the authorities of the Defense Health Agency and the Armed Forces, respectively, concerning wounded, ill, and injured members of the Armed Forces during the Integrated Disability Evaluation System process.

Thank you for your continued strong support for the health and well-being of our Service members. I am sending a similar letter to the House Armed Services Committee.

Sincerely,



Ashish S. Vazirani
Acting

Enclosure:
As stated

cc:
The Honorable Roger F. Wicker
Ranking Member





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UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

The Honorable Mike D. Rogers
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

MAR 28 2024

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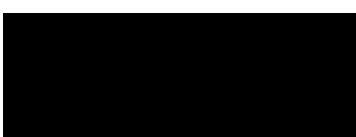
Sincerely,



Ashish S. Vazirani
Acting

Enclosure:
As stated

cc:
The Honorable Adam Smith
Ranking Member



Report to the Committees on Armed Services of the Senate and House of Representatives



Accountability for Wounded Warriors Undergoing Disability Evaluation

March 2024

The estimated cost of this report for the Department of Defense is approximately \$17,000 for the 2023 Fiscal Year. This includes \$6,500 in expenses and \$11,000 in DoD labor.

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EXECUTIVE SUMMARY

In 2007, the Department of Defense (DoD) and the Department of Veterans Affairs (VA) jointly piloted an integrated disability evaluation process, which became a permanent program in 2011 and thus named the Integrated Disability Evaluation System (IDES). The IDES integrates some of DoD's and VA's disability evaluation processes to provide wounded, ill, and injured Service members a single set of VA physical examinations and disability ratings, resulting in an appropriate disposition (i.e., return to duty, separation, or retirement due to medical disability) and appropriate VA benefits. Originally, the goal was to provide a fitness and benefits disposition within 295 days for Active Component and 305 days for Reserve Component personnel from referral to delivery of VA benefits. Since then, DoD and VA have refined the IDES so that a fitness decision is ideally provided, and a Service member transitions to veteran status or is returned to duty, within 180 days of referral.

The IDES consists of four phases after medical referral: Medical Evaluation Board (MEB), Physical Evaluation Board (PEB), Transition, and the VA benefits phase. Service members are made aware of their right to have legal counsel throughout the IDES process to ensure a Service member's due process rights stay intact.

Section 711 of the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Public Law 117-263), requires that:

Not later than April 1, 2023, the Secretary of Defense, in consultation with the Secretaries concerned, shall establish a policy to ensure accountability for actions taken under the authorities of the Defense Health Agency and the Armed Forces, respectively, concerning wounded, ill, and injured members of the Armed Forces during the integrated disability evaluation system process.

This mandate included two subsections, sections 711(a) and (b). Note that section 711 uses the term, "Armed Forces," which includes the U.S. Coast Guard.

Section 711 also states that:

Not later than February 1, 2023, the Secretary of Defense shall provide to the Committees on Armed Services of the House of Representatives and the Senate a briefing on the status of the implementation of subsections (a) and (b).

To fulfill the congressional briefing requirement, DoD provided an interim briefing on January 31, 2023, with the intent of providing a more detailed brief and report by December 2023. This final report satisfies the promise made in the interim briefing.

Prior to the enactment of section 711, the Department was clarifying and updating its IDES policy. Department of Defense Instruction (DoDI) 1332.18, "Disability Evaluation System," November 10, 2022,¹ and Department of Defense Manual (DoDM) 1332.18, Volume 1,

¹ <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/133218e.PDF>.

“Disability Evaluation System Manual: Processes,” February 23, 2023,² were published in advance of, or near enactment of the NDAA for FY 2023. Many of the requirements in section 711 have been addressed in those issuances (except the feasibility study on adding additional MEB due process steps). Prior to the implementation of this legislation, DoD policy already required the Defense Health Agency (DHA) to provide clinical support to the IDES by providing physicians and medical administration, which is in the form of MEB support for the Secretaries of the Military Departments. The Secretaries concerned have title 10, U.S. Code, responsibility to ensure their forces are ready to perform wartime missions from both a readiness and duty performance standpoint. Title 10, U.S. Code, Chapter 61, requires the Secretaries concerned to determine fitness for duty for Service members in their respective Departments.

² <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/133218v1.PDF>.

REPORT TO CONGRESS

America has recognized the nation's responsibility to care for injured soldiers ever since the early days of the War of Independence. More than 80 years later, near the end of the Civil War, Abraham Lincoln reaffirmed that responsibility, admonishing the country to strive "to care for him who shall have borne the battle . . ." And, today, a huge and generally well-regarded infrastructure has developed to sustain this commitment to our service members, veterans, and their families.³

There have been statutory changes to the military disability evaluation process over the years, and most recently, it has evolved to the IDES. The IDES is the mechanism to evaluate, return to duty, separate, or retire Service members due to medical disability. The Department, in conjunction with the VA, piloted the current IDES process in November 2007⁴ and then implemented the IDES worldwide on December 19, 2011.⁵

From 1947 until 2007, Service members deemed unfit due to physical disability were processed through separate DoD and VA disability evaluation systems. This resulted in long wait times for VA compensation examinations, and a lack of transition collaboration between the two agencies.

The IDES integrates some of DoD's and VA's disability evaluation processes to provide wounded, ill, and/or injured Service members. In the IDES, the VA conducts the physical examinations for use by the DoD and VA, and recommends a proposed disability rating for use by DoD. The Secretaries concerned retain their statutory responsibility under 10 U.S.C. Chapter 61 to make fitness determinations of Service members under their jurisdiction.

The IDES consists of four phases after medical referral by a medical provider: MEB, PEB, Transition and VA benefits phase. The Secretaries concerned are statutorily required to determine whether a member of the Armed Forces under their jurisdiction is fit to perform the duties of their office, grade, rank, or rating because of physical disability and whether the member will be medically separated or retired as a result of being found unfit due to physical disability.

- As part of the IDES, the VA conducts the medical examination for conditions referred to it by the Department of the Defense or claimed by the service member, when enrolled in the IDES, and provides proposed disability ratings for use by both Departments, and

³ United States President's Commission On Care For America's Returning Wounded Warriors. (2007) "Serve, support, simplify: report of the President's Commission on Care for America's Returning Wounded Warriors." [Washington, D.C.: President's Commission on Care for America's Returning Wounded Warriors] [Web.] Retrieved from the Library of Congress, <https://lccn.loc.gov/2007467172>.

⁴ Policy and Procedural Directive-type Memorandum (DTM) for the Disability Evaluation System (DES) Pilot Program, November 21, 2007.

⁵ Directive-type Memorandum (DTM) 11-015 – Integrated Disability Evaluation System (IDES), December 19, 2011, as amended.

- The Secretaries concerned and the VA determine eligibility of benefits under their jurisdiction.

The IDES was revolutionary. The IDES reduced inefficiencies in the previous linear system, which included an average 240-day gap in benefits between separation from service and the commencement of VA benefits.

DoDM 1332.18, Volume 1 contains a depiction of the current IDES process.⁶ While time and process accuracy are important, at no time are Service member due process options impinged. Throughout the IDES process, members of the Armed Forces are made aware of their due process rights and have access to legal counsel. This is longstanding DoD policy.⁷

The Secretaries concerned, as supported by the Director, DHA, and in accordance with 10 U.S.C. Chapter 61, operate their respective IDES processes, through but not limited to, fulfilling the following responsibilities:

- Maintain command and control of Service members processing through the IDES;
- Serve as approval authority for IDES determinations regarding unfitness and entitlements to disability severance and retired pay;
- Approve the separation or retirement of a member based on physical disability;
- Use the VA Schedule for Rating Disabilities (i.e., VA proposed rating) to determine DoD entitlements, as appropriate;
- Publish Department-specific IDES implementing guidance and performance monitoring; and
- Resource, train, and equip IDES personnel under their jurisdiction.

The transition of military medical treatment facility (MTF) management from the Secretaries concerned to DHA was directed in phases with the majority of United States-based MTFs transferring in 2021 and the overseas MTFs transferring in 2022. In accordance with 10 U.S.C. § 1073c,⁸ the Director, DHA is responsible for the day-to-day and strategic management of the MTFs and their staff, including budgetary matters, information technology, healthcare administration and management, military medical construction, and administrative policy and procedure for matters under the purview of the Director, DHA. Section 1073c further states that DHA is responsible for ensuring the medical readiness of the members of the Armed Forces as determined by the military operational commander, through the provision of healthcare and medical treatment.

⁶ Paragraph 3.2., Figure 1 of DoDM 1332.18, Volume 1.

⁷ Section 4 of DoDI 1332.18.

⁸ [https://uscode.house.gov/view.xhtml?req=\(title:10%20section:1073c%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:10%20section:1073c%20edition:prelim)).

DHA and the Secretary of the Military Department concerned (hereinafter, Secretary concerned) are aligned in terms of responsibility because each knows that the end mission is the result of synergistic tasks. Simply put, DHA is a joint, integrated Combat Support Agency which supports the Secretary concerned, in the case of the IDES, by administering MEBs. The Secretary concerned, using a personnel determination informed by medical and personnel factors, determines fitness for duty. Specifically, fitness determinations seek to address whether a Service member's condition(s) render them unfit to perform the functions of their office, grade, rank, and/or rating. DHA provides clinical support to these important decisions required of the Secretary concerned to enable them to fulfill their statutory obligations under 10 U.S.C. Chapter 61.

To achieve the requirements of section 711, the Department sought input from DoD stakeholders, including the Military Services, Office of the Assistant Secretary of Defense for Health Affairs, and DHA. In response, the Assistant Secretary of Defense for Health Affairs (ASD(HA)) published a coordinated memorandum to the Armed Forces and DHA, which addressed subparagraphs (a)(1)-(2), (4), and (7)-(8) of the legislation.

A. Implementation of Section 711(a)

Section 711(a)(1), (4), and (7)-(8)

On June 16, 2023, the ASD(HA) signed a memorandum to the Armed Forces and DHA restating and emphasizing DoD policy regarding matters in these subparagraphs. The memorandum was issued pursuant to the requirements of section 711(a), which required "SECDEF, in consultation with the Secretaries concerned, to establish a policy to ensure accountability for actions taken under the authorities of DHA and the Armed Forces, respectively, concerning wounded, ill, and injured members of the Armed Forces during the IDES process." Specifically, the memorandum restated the longstanding policy that the fitness for duty determination of Service members is the sole responsibility of the Secretary concerned. The ASD(HA) emphasized that Service members referred to the IDES are to be kept informed about their case, including their due process rights, in accordance with DoD policy.^{9,10} The full restatement memorandum from the ASD(HA) is at Appendix A.

It is important to note that DoD published DoDI 1322.18 and DoDM 1332.18, Volume 1, near the passage of the NDAA for FY 2023. Most of the policy items in section 711(a), except for subparagraph (6) regarding the feasibility of additional due process steps, were addressed in these recent publications. The Director, DHA, is committed to the continuous process improvement model for the entire IDES with a special emphasis on DHA's MEB responsibility. The ASD(HA) chartered the DES DHA-Procedural Instruction (PI) Advisory Council (AC) (DES DHA-PIAC) to assist the Director in the development of the DES DHA-PI. The charter is at Appendix B.

Finally, the ASD(HA) also emphasized Paragraph 2.6.u. of DoDI 1332.18, whereby the Secretaries concerned are to coordinate with the Director, DHA, to identify the appropriate military medical personnel to assign to each MTF to achieve IDES timeliness goals.

⁹ Paragraph 2.6.d. of DoDI 1332.18.

¹⁰ Paragraph 2.6.e. of DoDM 1332.18, Volume 1.

Section 711(a)(2)-(3) and (5)

Section 711(a)(2). This subparagraph requires a description of the role of the Director, DHA, in supporting the Secretaries concerned in carrying out determinations of fitness for duty as stated in 10 U.S.C. Chapter 61. DHA issued supplemental guidance to the MTFs regarding the recently published IDES DoD policy (Appendix C).¹¹ The guidance and direction makes it clear that the IDES is the mechanism for determining fitness for duty because of disability and that the Secretary concerned determine whether a Service member is found unfit for duty due to disability. The guidance clearly states that the IDES falls under the decision authority of the Secretaries concerned. The DHA guidance further states that DHA personnel, however, do advise and provide a medical recommendation through the MEB process. Therefore, DHA has a significant role in the IDES, with regard to the MEBs, because of its direction, and control of MTFs and the clinicians conducting MEBs.

It is clear in policy, and the recently published DHA IDES guidance to the MTFs, that the primary role of DHA within the IDES is to support the Secretary concerned through medical examinations, medical advice through the provision of MEBs, and staffing of MEBs.¹² DHA intends to facilitate increased process improvements and standardization of MEBs, in coordination with the Secretary concerned, and collect and share best practices relating to MEB processes.

The Director, DHA, adheres to section 1612 of the NDAA for FY 2008 (Public Law 110–181),¹³ by ensuring that, upon a Service member’s request, an impartial physician, or other appropriate health care professional, will be assigned to conduct Impartial Medical Reviews (IMRs)¹⁴ under DHA authority. In the DHA DES interim guidance to the DHA Network and MTF directors, DHA made it abundantly clear that MEB rebuttals will be fully adjudicated and forwarded to the appropriate PEBs in accordance with DoD policy.

Section 711(a)(3). This subparagraph requires DHA to provide a description of how the MEB processes of the Armed Forces are integrated within DHA, including with respect to case management, appointments, and other relevant matters.

MEB Processes. The primary role of DHA within the IDES is clinical support and providing MEB support, to include IMRs and MEB rebuttals. DHA will ensure adequate staffing and resourcing of MEBs, to include providers required to support IMRs and MEB rebuttals, provision of surrebuttals, as appropriate. Additionally, DHA will drive standardization

¹¹ Deputy Director, DHA Memorandum, “Defense Health Agency Roles and Responsibilities in the Execution Support of Disability Evaluation System Medical Evaluation Board Processes,” October 17, 2023.

¹² This is described in policy at Paragraph 2.4. of DoDI 1332.18.

¹³ “(i) upon request of a recovering service member being considered by a MEB, a physician or other appropriate health care professional who is independent of the MEB is assigned to the service member; and (ii) the physician or other health care professional assigned to a recovering service member under clause (i)— (I) serves as an independent source for review of the findings and recommendations of the MEB; (II) provides the service member with advice and counsel regarding the findings and recommendations of the MEB; and (III) advises the service member on whether the findings of the MEB adequately reflect the complete spectrum of injuries and illness of the service member.”

¹⁴ Paragraph 3.2.e.(4) of DoDI 1332.18.

of MEBs by publishing the DES DHA-PI and measuring success using the quality assurance program (QAP). As DHA, in coordination with the Secretary concerned, develops additional MEB and clinical support process refinements, using the DES DHA-PI, measures will be adjusted. As directed in the DHA DES interim guidance:

- The MTF director will appoint MEB convening authorities in accordance with DoD and respective Military Department policy. These senior medical officers will:
 - Assemble an MEB;
 - Ensure the MEB staff completes their deliberations and documents their recommendation; and
 - Ensure that MEB rebuttal and/or IMR procedures include the necessary components, as outlined in Paragraph 4.6. of DoDM 1332.18, Volume 1, as applicable.
- MTF directors, or their designees, will coordinate with the Secretary concerned to ensure the training of DES personnel, in accordance with Paragraph 3.8. of DoDI 1332.18, prior to performing IDES duties, and report verification of IDES personnel training on an annual basis to the Deputy Assistant Director, Medical Affairs (DAD-MA).
- MTF directors will ensure the appropriate allocation, use, and provision of health care resources for IDES operations, including personnel, supplies, available appointments, facility space, equipment, and online resources, sufficient to execute the requirements set forth in DoD issuances and Military Department regulations.
 - The MTFs will execute the backfill of personnel to maintain adequate staffing. To the extent operationally feasible, this includes ensuring DHA-appointed designated DES positions are protected from detailing to other, or collateral, duties;
 - Military personnel supporting the DES mission at MTFs are assigned by the Secretary concerned, consistent with joint manpower documents, Military Department policy, and resourcing guidelines;
 - DHA IDES civilian and contractor personnel who are operationally aligned under DHA will remain in dedicated IDES billets as their primary responsibility. Exceptions to those responsibilities must be co-approved by DHA, Personnel and Manpower (J1), and the DHA DAD-MA;
 - In accordance with section 1612 of the NDAA for FY 2008, upon a Service member's request, an impartial physician, or other appropriate healthcare professional, will be assigned to conduct IMRs; and

- As supported and provided by DHA Information Technology (IT)/J-6, the MTFs will ensure each MEB has IT support and access to programs and systems used for IDES processing purposes.

Case Management, Appointments, and other Relevant Matters. DHA's roles and responsibilities with regard to facilitating the management of IDES cases and Service member appointments are primarily the provision of MEBs clinical, and Convening Authority support, to include IMRs and MEB rebuttals. DoDI 1332.18, as well as the DHA DES Interim Guidance, specifically addresses:

- Methods for referral of Service members into the IDES for an evaluation by an MEB;
- That DHA supports all disability examinations (to include any supporting appointments not performed by VA) and administrative activities, through the roles and responsibilities of the Physical Evaluation Board Liaison Officers (PEBLOs), associated with IDES case management from the point of referral by a military medical care provider to the point of return to duty or completion of both DoD and VA benefits decision determinations; and
- That PEBLOs, provided by DHA, are to inform the Service member of the IDES process, assemble the IDES case file, enter the Service member into the designated IDES electronic tracking system, and refer the Service member to a VA Military Service Coordinator case manager for VA processing. The PEBLO also ensures the Service member is scheduled to receive or receives the multi-disciplinary brief (MDB)¹⁵ and is referred to a VA vocational rehabilitation counselor to determine entitlement to the VA's Veteran Readiness and Employment Program.

DHA will work with the Secretary concerned to ensure case management, to include MEB "relevant matters" are performed at the highest caliber and in the "proper performance of duty" through the establishment of the DHA DES QAP MEB Consistency Review Program.

Section 711(a)(5). This subparagraph requires DHA to provide a description of how the Director, DHA adheres to the medical evaluation processes of the Armed Forces, including an identification of each applicable regulation or policy to which the Director is required to so adhere. As previously discussed, the Director, DHA, has roles and responsibilities within the IDES process as established in the recently updated DoDI 1332.18 and supporting manuals. DHA adheres to Military Department-specific regulations regarding IDES.^{16,17,18,19,20}

¹⁵ Paragraph G.2. of DoDM 1332.18, Volume 1, definition of MDB: "A briefing that consists of, at a minimum, PEBLOs, MSCs, and legal counsel, and establishes Service member expectations, prepares Service members for each stage of the DES process, and informs Service members of what is expected of them during the DES process."

¹⁶ https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/ARN6811_AR635-40_ADMIN_WEB_Final.pdf.

¹⁷ www.secnnav.navy.mil/doni/Directives/01000%20Military%20Personnel%20Support/01-800%20Military%20Retirement%20Services%20and%20Support/1850.4F.pdf.

¹⁸ <https://www.med.navy.mil/Portals/62/Documents/BUMED/Directives/Instructions/6000.19.pdf>.

¹⁹ https://static.e-publishing.af.mil/production/1/af_sg/publication/dafman48-108/dafman48-108.pdf.

²⁰ https://static.e-publishing.af.mil/production/1/af_a1/publication/dafi36-3212/dafi36-3212.pdf.

In addition, DHA is leveraging the DES DHA-PIAC established under the direction of the ASD(HA), to ensure adherence to MEB processes, policies, and regulations. The DES DHA-PIAC operates under the authority and policy guidance of ASD(HA) and the Director, DHA, as chartered in November 2021. The DES DHA-PIAC's main objective is to ensure the proper and timely integration of 10 U.S.C. § 1073c and 10 U.S.C. Chapter 61. The DES DHA-PIAC provides a forum for Office of the ASD(HA), DHA, and Military Department stakeholders to offer advice in establishing enterprise-wide guidance and create a DES DHA-PI that supplements and compliments existing IDES policy with operational guidance. This council will continue to be the main coordination group between the Secretary concerned and DHA in the execution of MEB support at the MTFs for the Military Department policies. The DHA-PIAC will discuss items such as:

- Prioritization of clinical work in support of the IDES through the MEB phase, including timely retrieval of Service Treatment Records for MEB provider review and transfer to the VA;
- Appropriate personnel resourcing to DHA for examinations;
- Standardization of position descriptions, duties, and responsibilities of the IDES staff; particularly, personnel in support of the MEB;
- Access to care for Service members identified as wounded, ill, and/or injured;
- Making recommendations to the Director, DHA, and ASD(HA) that may enhance services;
- Delivering recommendations to the ASD(HA), through the DHA Patient-Centered Care Operations Board, regarding the implementation of changes to DHA and DoD policies and issuances;
- Providing advice to ensure consistency and clarity of guidance for training DHA/Military Department personnel working in the MTFs, as applicable;
- Discussing facility and logistical support for field-level IDES stakeholders at DHA facilities; and
- Establishing a forum for implementing process improvements and other improvement initiatives.

Section 711(a)(6)

This subparagraph requires an assessment as to whether members of the Armed Forces undergoing the MEB process should be afforded additional due process protections.

Currently, during the MEB process, the Service member is afforded an opportunity to request an IMR of those findings from someone not affiliated with the member's MEB. The

IMR is to “[s]erve as an independent source of review of the MEB findings and recommendations; [a]dvice and counsel the Service member regarding the findings and recommendations of the MEB; and [a]dvice the Service member on whether the findings adequately reflect the complete spectrum of their injuries and illnesses.”²¹ The Service member is also afforded the opportunity to submit a personal impact statement and any other material evidence that enables the individual to contribute to the record of evidence that is considered by the PEB. The service member may also rebut the findings of the MEB.

As the Department has indicated, MEB appeals, which are currently defined as IMR and/or MEB Rebuttals for reporting purposes, are at a steady pace in terms of Service member-initiated actions. In FY 2022, the proportion of Service members electing a MEB appeal has been consistent at 13 percent over time. Soldiers were the most common users of MEB appeals (17 percent), compared to the Navy (9 percent), Marine Corps (6 percent), and Air and Space Forces (6 percent combined). It is important to note that no Military Department met 7-day average timeliness goals for MEB appeals (average performance—Army (10 days), Navy (13 days), Marine Corps (19 days), and Air Force/Space Force (10 days)).²² While this might indicate a process challenge to some, DoD perceives this extended period of review to be indicative of Service members availing themselves of their right to request an IMR to consult with an independent healthcare provider, thereby ensuring the medical record presented to the PEB is complete. This process ensures transparency to the Service member and PEB.

Through a collaborative review with the Armed Forces, the Department concluded that adding additional due process steps, while feasible are not warranted. It is important to note that there is no indication that service members are experiencing due process challenges while processing through the IDES. Additionally, it is unclear what benefit, if any, additional due process steps would add yield to the service member that is not currently available under the existing IDES framework. There is no indication that adding more due process would change the final IDES outcomes demonstrably (in favor of the Service member). Moreover, DoDI 1332.38, already gives the Military Departments discretion to “[p]rovide Service members with additional levels of review within the Military Department concerned subsequent to the FPEB appeal process outlined in this section, if appropriate.” Rather, prudence dictates the Armed Forces and DHA spend time and resources refining current MDBs, increasing access to well-trained IDES entities²³ (to include counsel) and direct efforts to optimize overall process efficiency.

B. Implementation of Section 711(b)

This subsection required clarification of the responsibilities of DHA regarding MEBs.

The Secretary concerned, and DHA, routinely collaborate with each other to ensure Service members are provided quality service as they progress through the IDES and that the Secretaries concerned are appropriately supported to make fitness and rating determinations as

²¹ Paragraph 3.2.e.(4) of DoDI 1332.18.

²² Fiscal Year 2022 Disability Annual Report (16th annual edition), published internally by the Office of the ASD(HA)

²³ As defined in Section 4 of DoDM 1332.18, Volume 1.

required by title 10. DoDI 1332.18 and DoDM 1332.18, Volume 1, expanded the roles and responsibilities of DHA in support of the IDES, which now includes DHA providing MEB support.^{24,25} The recently published DHA DES interim guidance supplements and complements DoD policy established in DoDI 1332.18 and DoDM 1332.18, Volume 1, but does not supersede DoD policies or law.

As stated previously, DoD will continue to focus on future refinements through the collaborative DES DHAPIAC by addressing process provisions, administration, and management of MEBs, as well as other IDES support.

²⁴ Paragraph 2.4. of DoDI 1332.18.

²⁵ Paragraph 2.4. of DoDM 1332.18, Volume 1.

LESSONS LEARNED AND CONCLUSION

The following is a summary of this report and lessons learned gleaned from implementing the requirements of section 711.

- Doctrinally, the IDES is a readiness and personnel utilization program supported by medical personnel and forensic examination²⁶—a fact that must always be in the forefront.

The IDES determines if Service members are fit to continue performing the duties of their office, grade, rank, or rating. If the member is declared to be unfit, designated Military Department personnel determine if the member will be medically separated, medically retired, or returned to duty, sometimes in a limited duty status. The determination is subject to due process and a final decision by the Secretary concerned or designated representative.

- Transition of MTFs to DHA administration presented unique challenges that took time to identify and address. A lack of sufficient DoD DES policy is not the problem to address; execution and mission refinements of DHA and the Secretary concerned with regard to IDES are what need to be collaboratively addressed.

In 2021, the ASD(HA) chartered the DHA-PIAC to address needs to standardize support and identify other areas that require consistent, clear, and specific delineated roles for DHA in support of the Military Departments IDES processes. DHA leads this Council, which includes representatives from the Secretaries concerned, the Office of the Secretary of Defense, and other stakeholders. DHA leadership will continue to actively work with Military Department leaders to ensure that they have the MEB support they require to efficiently operate their IDES processes in accordance with law and policy.

- Due process remains an integral part of the IDES.

In terms of the IDES, as stated in the report, specific policies and procedures have been put into place to protect the Service members who have sacrificed so much during their service to their country. The Department will continue to make this an error of focus for the quality assurance program and oversight reviews.

Conclusion

In summary, prior to the enactment of section 711, the Department was clarifying and updating its IDES policy. DoDI 1332.18 and DoDM 1332.18, Volume 1, were published in advance of, or near enactment of the NDAA for FY 2023. Many of the requirements have been addressed in those issuances (except the feasibility study on adding additional MEB due process steps). Prior to the implementation of this legislation, DoD policy already required DHA to

²⁶ In the context of the IDES, forensic exams are used to document evidence of potential medical disability versus a medical care exam. These exams might inform care but that is not the primary purpose of the encounter.

provide clinical support to the IDES by providing physicians and medical administration, which is in the form of MEB support for the Secretaries concerned.

The Secretaries of the Military Departments have title 10 responsibility to ensure their forces are ready to perform wartime missions from both a readiness and duty performance standpoint. Title 10, U.S.C., Chapter 61, requires the Secretaries concerned to determine fitness for duty for Service members in their respective Military Department. To make such determinations, DHA performs a supporting function to the Military Departments by providing the resources and expertise to conduct an MEB and provide for an IMR and/or MEB rebuttal when requested. DHA facilitates the case management of Service members being processed through the IDES by ensuring PEBLOs are available to schedule appointments, facilitate consultations, and other administrative matters for the service member undergoing IDES processing. DoD, DHA, and Military Department DES leaders will work collaboratively with a continual improvement mindset and process, to seek the most efficient and effective for supporting the IDES process and its Service members, who have sacrificed in the service of our country. The most effective use of that focus will be to emphasize resourcing in the process as it exists today and constantly working together across the DoD, DHA, and Military Departments, synergistically, to identify process improvements and standardizations to maximize readiness and efficiency while protecting the Service members served through the IDES.

Appendix A

**Assistant Secretary of Defense for
Health Affairs Memorandum,
“Implementation of Section 711 of
the National Defense Authorization
Act for Fiscal Year 2023 (Public
Law 117–263),” June 16, 2023**



THE ASSISTANT SECRETARY OF DEFENSE

1200 DEFENSE PENTAGON
WASHINGTON, DC 20301-1200

MEMORANDUM FOR ASSISTANT SECRETARY OF THE NAVY, MANPOWER AND
RESERVE AFFAIRS, NAVY
ASSISTANT SECRETARY OF THE ARMY, MANPOWER AND
RESERVE AFFAIRS, ARMY
ASSISTANT SECRETARY OF THE AIR FORCE, MANPOWER
AND RESERVE AFFAIRS
ASSISTANT COMMANDANT OF THE COAST GUARD FOR
HUMAN SERVICES, MANPOWER AND PERSONNEL
DIRECTOR, DEFENSE HEALTH AGENCY

SUBJECT: Implementation of Section 711 of the National Defense Authorization Act for Fiscal Year 2023 (Public Law 117-263)

References: (a) Section 711 of the National Defense Authorization Act for Fiscal Year 2023 (Public Law 117-263)
(b) DoDI 1332, 18, "Disability Evaluation System," November 10, 2022
(c) DoDM 1332.18, Volume 1, "Disability Evaluation System Manual: Processes," February 24, 2023

Service members referred to the Disability Evaluation System deserve to be kept informed about their case, including their due process rights, in accordance with DoD policy. Many of the requirements directed by Reference (a) are already established in DoD policy (references (b) and (c)) and Armed Forces issuances. Consistent with Reference (a), the attached document contains excerpts of DoD policy restating the requirements set forth in subparagraphs (a)(1), (a)(2), (a)(4), (a)7 and (a)(8) of Reference (a). DoD individuals involved in the Disability Evaluation Process are expected to comply with these requirements.

Please ensure your respective component policies address these requirements and ensure compliance and appropriate accountability. Additional requirements set forth in §711 are being addressed separately by DHA, in consultation with the Armed Forces. Your staff is involved in those efforts.

My point of contact in this matter is Mr. Al Bruner, Director, Disability Evaluation Policy, Health Services Policy and Oversight, (571) 242-3171.

[REDACTED]

Lester Martínez-López, M.D., M.P.H

Attachments:
As stated

Restatement of Policies Required by
§711 of the National Defense Authorization Act for Fiscal Year 2023

Restatements are quoted from DoD Instruction 1332.18, "Disability Evaluation System," November 10, 2022

Requirement from §711a(1) - A restatement of the requirement that, in accordance with §1216(b) of title 10, United States Code, a determination of fitness for duty of a member of the Armed Forces under chapter 61 of title 10, United States Code, is the responsibility of the Secretary concerned.

Restated from Section 11.1c.

“c. Secretaries of the Military Departments. Except as stated in Paragraphs 11.1.a. [prohibition against unsuitability denials/administrative separations] and 11.1.b [general officer, flag officer, or medical officer mandatory reviews by USD (P&R)], the Secretary of the Military Department concerned may make all determinations in accordance with this issuance regarding unfitness, disability percentage, and entitlement to disability severance or retired pay.”

Requirement from §711a(2) - A description of the role of the Director of the Defense Health Agency in supporting the Secretaries concerned in carrying out determinations of fitness for duty as specified in paragraph (1).

Policy regarding the role of the Director, Defense Health Agency in support of the Military Department’s DES is spread throughout the issuance. Additionally, I have chartered a joint workgroup (DHA chairs) that intends to formalize many of the various local and national arrangements for DHA DES support (the Military Departments) into one DHA procedural instruction under the signature of the Director. The DHAPI will also provide more granularity to overarching DES directions as they relate to the very important DHA support role. Finally, in accordance with Section 2.6u of the issuance, you should coordinate with the Director, DHA to identify the appropriate military medical personnel to assign to each MTF to achieve the DES timeliness goals.

Restated from Section 2.4.

“Under the authority, direction, and control of the USD(P&R), through the ASD(HA), and in accordance with DoDD 5136.13, the Director, DHA:

a. In coordination with the Secretaries of the Military Departments, establishes procedures to support the DES through the provision of MEBs and any other necessary clinical or health care services delivered in an MTF or through the TRICARE program.

b. In coordination with the ASD(HA) and the Secretaries of the Military Departments, ensure an adequate supply of resources, including personnel, supplies, and available appointments, are maintained in all locations where DES examinations and MEBs are required.”

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§711 of the National Defense Authorization Act for Fiscal Year 2023**

Restated from Section 3.2c.

“When an MTF fails to meet the MEB stage goal for 3 consecutive months, the Director, DHA, in coordination with the Secretaries of the Military Departments, will:

- (1) Allocate additional personnel to the MEB stage process at the underperforming MTF.
- (2) Inform the ASD(HA) by memorandum when an MTF receives additional MEB personnel. The memorandum will contain information regarding:
 - (a) The MTF’s performance metrics, including the number of days the MTF exceeded the MEB stage goal for the previous 3 months.
 - (b) The number of additional personnel allocated to the MTF.”

Restated from Section 3.2e(4)

“(4) Impartial Medical Reviews. In accordance with Section 1612 of Public Law 110-181, the Director, DHA, upon the Service member’s request, will assign an impartial physician or other appropriate health care professional who is independent of the MEB to:

- (a) Serve as an independent source of review of the MEB findings and recommendations.
- (b) Advise and counsel the Service member regarding the findings and recommendations of the MEB.
- (c) Advise the Service member on whether the MEB findings adequately reflect the complete spectrum of their injuries and illnesses”

Restated from Section 3.8

“a. Assignment of Personnel to the DES. In coordination with the Director, DHA, the Secretaries of the Military Departments will annually certify that the personnel assigned to or impacting the DES outlined in Paragraphs 3.8.a.(1)-(6) were formally trained before being assigned to performing DES duties:

- (1) Physicians (military and DoD civilian).
- (2) PEBLOs.
- (3) Patient administration officers, administrative MEB staff, and DES program managers.
- (4) PEB adjudicators.
- (5) Judge advocates.

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(6) Military Department civilian attorneys.”

Restated from Section 3.10.

“The Secretaries of the Military Departments and the Director, DHA, will provide PEBLOs and MSCs with adequate space for counseling and access to online resources. This includes a private counseling space, computer, printer, telephone line, and internet and e-mail connectivity.”

Restated from Section 9.2.

“b. Disability Reexaminations. If the Military Department determines the available medical records and examination reports, including those available from VA, do not meet the requirements in Paragraph 9.2.a.(3), the Secretary of the Military Department concerned, in coordination with the Director, DHA, will comply with their responsibilities in Chapter 61 of Title 10, U.S.C. regarding the TDRL, including performing TDRL examinations that meet the requirements of Paragraphs 9.2.a.(3).”

Requirement from §711a(4) - A requirement that, in determining fitness for duty of a member of the Armed Forces under chapter 61 of title 10, United States Code, the Secretary concerned shall consider the results of any medical evaluation of the member provided under the authority of the Defense Health Agency pursuant to §1073c of title 10, United States Code.

In addition to the below, DHA will be providing additional guidance in the forthcoming DHAPI.

Restated from Section 3.2a.:

“Purpose. The Director, DHA, is responsible for provision of MEBs in support of the DES process. A MEB will:

(1) Review all available medical evidence, including examinations completed as part of DES processing, and document whether the Service member has medical conditions that either singularly, collectively, or through combined effect, may prevent them from reasonably performing the duties of their office, grade, rank, or rating.

(2) Document the medical status and duty limitations of Service members who meet the referral eligibility criteria in Paragraph 5.3.”

Requirement from §711a(7) - A restatement of the requirement that wounded, ill, and injured members of the Armed Forces may not be denied any due process protection afforded under applicable law or regulation of the Department of Defense or the Armed Forces.

and

Requirement from §711a(8) - A description of the types of due process protections specified in paragraph (7), including an identification of each specific due process protection.

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There are two entitled due-process protections within Title 10, U.S.C., Chapter 61—Formal Physical Evaluation Board (FPEB) and FPEB appeal. The DoDI provisions are restated below.

Section 3.3c. FPEB

“(1) Background.

(a) In accordance with Section 1214 of Title 10, U.S.C., Service members are entitled to a full and fair hearing, upon request, before the Service member may be separated or retired for physical disability.

(b) If the Secretary of the Military Department concerned unilaterally changes the IPEB findings or determinations of “fit” or “unfit” following a Service member’s concurrence, the Service member may demand a FPEB to contest the changes

(2) Composition.

(a) The FPEB must be comprised of at least three members, at least one of whom will be military officers in accordance with Paragraph 3.3.c.(2)(b)(1). DoD civilian employees may also be included as additional members.

(b) Should a Service member demand, FPEB members cannot have participated in the adjudication process of the same case at the IPEB.

1. The FPEB will consist of at least a board president who will be a military officer in the grade of O-5 or higher (or civilian equivalent); a physician (military or DoD civilian); and a line officer (or non-commissioned officer at the E-9 level for enlisted cases) familiar with duty assignments. No board member will be unduly influenced by another member on their determination.

2. The physician cannot:

- a. Be the Service member’s physician.
- b. Have served on the Service member’s MEB or Impartial Medical Reviewer.
- c. Have participated in a TDRL reexamination of the Service member.

3. For RC Service members, the Secretaries of the Military Departments will ensure RC representation on the PEBs is consistent with Section 12643 of Title 10, U.S.C., and related policies.

4. Contract personnel may not serve as FPEB adjudicators.

(3) Eligibility. Service members who receive an unfit determination from the IPEB will be entitled to a FPEB hearing.

(4) Issues. At the FPEB, the Service member will be entitled to address issues pertaining to their fitness, the percentage of disability, degree or stability of disability, administrative determinations, a

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determination that their injury or disease was non-duty related, or that their injury or disease was combat-related or took place in a combat-zone.

(5) Hearing Rights. Service members will, at a minimum, have the right to:

(a) Have their case considered by FPEB members, who were not voting members of their IPEB, if requested.

(b) Appear themselves, through a personal representative, or by videoconference. Unless otherwise directed by the Secretary of the Military Department concerned, RC Service members referred only for non-duty-related conditions, are responsible for their personal travel and other expenses.

(c) Be represented by government-appointed counsel provided by the Military Department concerned. Service members may choose their own civilian counsel at no expense to the U.S. Government. The PEB President will notify the Secretary of the Military Department concerned if the lack of government-appointed counsel affects timely PEB caseload adjudication.

(d) Make a sworn or an unsworn statement. A Service member will not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury.

(e) Remain silent. When the Service member exercises the right to remain silent, the member may not selectively respond, but must remain silent throughout the hearing.

(f) Request witnesses and introduce depositions, documents, or other evidence, and to question all witnesses who testify at the hearing. The FPEB president will determine whether witnesses are essential. If the FPEB president determines witnesses are essential to the hearing, travel expenses and per diem may be reimbursed or paid in accordance with the Joint Travel Regulation. Other people may attend formal hearings at no expense to the U.S. Government.

(g) Access all records and evidence the PEB receives before, during, and after the formal hearing, unless such records are exempt from disclosure by law, which were relied upon by the FPEB in making their recommendation.”

Section 3.3d. Appeal of FPEB Determination of Fitness

“Upon the Service member’s decision to appeal the FPEB fitness determination, the Secretary of the Military Department concerned will ensure their respective Military Department has procedures to:

(1) Inform Service members that they are entitled to appeal their FPEB fitness for duty determinations to the official designated by the Secretary of the Military Department concerned as the FPEB appellate authority. A Service member may submit the appeal in writing or, if requested by the Service member, a hearing will be conducted, and the Service member will have the option to be represented at the hearing by legal counsel. The Service member will make election whether to present a FPEB appeal in a reasonable timeframe specified by Military Department regulations and consistent with other similar processes.

(2) Inform the Service member that, in lieu of a hearing, they may submit a written appeal explaining why they do not agree with the FPEB fitness determinations.

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(3) Require the FPEB appellate authority to consider all records comprising the Service member's DES case file, including the Impartial Medical Review, if one was prepared; the IPEB and FPEB decisions; and any additional relevant documentation submitted by the Service member for consideration.

(a) Provide access to relevant records to the Service member and the appellate authority. However, if the Service member desires to have documentation considered by the appellate authority, not previously considered or available to the Military Department concerned, the Service member must provide such documentation in the time and manner prescribed by the Military Department concerned.

(b) Identify for the Service member what documents within the Military Department's custody were provided to the appellate authority for consideration in rendering a decision.

(4) Inform the Service member that they are entitled, upon their request, to appeal a unilateral change to FPEB findings or determinations by the Military Department concerned following a Service member's concurrence to the FPEB findings or determinations.

(5) Provide Service members with additional levels of review within the Military Department concerned subsequent to the FPEB appeal process outlined in this section, if appropriate."

Appendix B

**Charter, “Disability Evaluation
System Defense Health Agency
Procedural Instruction Advisory
Council,” November 22, 2021**

CHARTER

Disability Evaluation System Defense Health Agency Procedural Instruction Advisory Council

1. ESTABLISHMENT, OBJECTIVE, AND PURPOSE

a. Establishment: The Department of Defense (DoD) Disability Evaluation System (DES) Defense Health Agency (DHA) Procedural Instruction Advisory Council (DES DHAPIAC) is established under the direction and control of the Assistant Secretary of Defense for Health Affairs (ASD(HA)). The DES DHAPIAC operates under the authority and policy guidance of ASD(HA) and the Director, Defense Health Agency (DHA).

b. Objective: In order to ensure the proper and timely execution of section 1073c of Title 10, United States Code, the DES DHAPIAC is chartered to provide a forum in which key DES stakeholders may offer advice in establishing enterprise-wide guidance, and to create a Procedural Instruction that supplements existing DES policy to ensure efficient and effective coordination between the Military Departments and DHA in the execution of DES Medical Evaluation Board (MEB) processes completed at military Medical Treatment Facilities (MTFs).

c. Purpose: The primary purposes of the DES DHAPIAC are, but are not limited to:

(1) Discussing initiatives to include:

(a) Prioritization of clinical work in support of the DES through the MEB phase, including timely retrieval of Service Treatment Records for MEB provider review and transfer to the Department of Veterans Affairs;

(b) Statutory requirements to complete re-evaluations of Service members placed on the Temporary Disability Retirement List;

(c) Appropriate personnel resourcing to DHA for examinations conducted through the Legacy DES process;

(d) Standardization of position descriptions, duties, and responsibilities of the DES staff; particularly, personnel in support of the MEB; and

(e) Access to care for Service members identified as wounded, ill and/or injured.

(2) Making recommendations to the Director, DHA, and ASD(HA) that may enhance services.

(3) Delivering recommendations to ASD(HA), through the DHA Patient-Centered Care Operations Board (PCCOB), regarding implementation of changes to DHA and DoD policies and issuances.

(4) Providing advice to ensure consistency and clarity of guidance for training

DHA/Military Department personnel, as applicable.

(5) Discussing facility and logistical support for field-level DES stakeholders at DHA facilities.

(6) Establishing a forum for implementing process improvements and other improvement initiatives.

2. ORGANIZATION

a. Leadership:

(1) The DES DHAPIAC will report to the co-chairs of the PCCOB.

(2) The Deputy Assistant Director, Medical Affairs (DAD(MA)), or their designee, will chair the DES DHAPIAC.

(3) The Chair will be responsible for:

(a) Organizing agendas;

(b) Coordinating availability of meetings;

(c) Distributing materials to all attendees prior to meetings;

(d) Establishing sub-workgroups;

(e) Recording meetings and attendance;

(f) Finalizing and presenting recommendations to the DHA PCCOB; and

(g) Delegating duties to one or more designated representatives as needed.

b. Membership: In addition to the Chair, the DES DHAPIAC requires attendance from specific DES stakeholders, all of whom will participate in DES DHAPIAC General Sessions. All designated representatives must be knowledgeable in DES policies and procedures, particularly MEB processes. Designation of representatives will occur by memorandum to DAD(MA). Representatives cannot be contractors.

(1) Each Military Department may designate no more than three representatives; one of whom must be a delegated DES program execution oversight authority, one of whom must be assigned to the Military Department's MTFs, and one of whom must be sufficiently knowledgeable in MEB processes and procedures.

(2) Director, DHA, may designate three representatives who have an understanding of appointment scheduling, access to care, and Service Treatment Records.

c. DASD (HSP&O) may appoint two members.

d. Ad Hoc Attendees: The DES DHAPIAC Chair may invite other federal civilian employees or Service members who possess knowledge relevant to an item on the DES DHAPIAC agenda.

e. Periodic Review: DAD(MA) will review the DES DHAPIAC Charter at least every two years, sooner if needed, and recommend updates to the Charter as required.

3. BUSINESS RULES

a. General Session: The DES DHAPIAC will convene a General Session meeting no less than once per quarter and at other times at the discretion of the DES DHAPIAC Chair. DHAPIAC members may present issues for discussion and resolution/adjudication by DAD(MA), if appropriate.

b. Executive Session: If needed, the DES DHAPIAC Chair will have the discretion to host an Executive Session before or at the conclusion of a General Session. The Executive Session will meet to create a mechanism for board independence and oversight, discuss confidential issues, and/or to conduct strategy sessions in preparation for, or after General Sessions in adopting or amending recommendations. The Executive Session will consist of one representative from DHA (aside from the Chair), one representative from each Military Department's Manpower and Reserve Affairs staff, and two representatives from DASD(HSP&O). Designation of Executive session representatives will occur by memorandum to DAD(MA) as outlined in paragraph 2.b.

c. Sponsored business items presented to the DES DHAPIAC will be proposed by a member, approved by the Chair, and published in the agenda before the DES DHAPIAC meeting. Business item sponsors must provide the Chair with a request to add an item to the agenda at least 10 business days before the meeting. Business item sponsors must provide the Chair with briefing slides to be included in the presentation deck at least five business days before the meeting. The business item sponsor, to the extent possible, will make appropriate recommendations to the DES DHAPIAC.

b. Working Group Sponsorship: DES DHAPIAC may sponsor working groups to study specific problems pertinent to the DES DHAPIAC or DHA/MTF MEB processes and report findings to the DES DHAPIAC Chair. If appropriate, the DES DHAPIAC Chair will forward recommendations to the appropriate entity listed in paragraph 2.b.

d. DES DHAPIAC meetings may be conducted over a virtual enterprise platform, at a physical location, or in combination at the Chair's discretion. The DHAPIAC may discuss critical, time-sensitive issues by conference call or other electronic communications at the discretion of the Chair.

e. The DES DHAPIAC Chair will ensure there are recorded minutes for each meeting and distribute approved minutes no later than 30 days after the meeting. The minutes will include an

invitation for the next scheduled DES DHAPIAC, a copy of the presentation deck, and an attendance roster.

4. EFFECTIVE DATE

The DoD DES DHAPIAC Charter is effective upon signature.

5. TERMINATION

This DoD DES DHAPIAC Charter may be amended or terminated by the ASD(HA) or the Director, DHA with notice to the Military Departments.

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Terry Adirim, M.D., M.P.H., M.B.A.,
Performing the Duties of the Assistant Secretary
of Defense for Health Affairs

Appendix C

**Deputy Director, Defense Health
Agency Memorandum, “Defense
Health Agency Roles and
Responsibilities in the Execution
Support of Disability Evaluation
System Medical Evaluation Board
Processes,” October 17, 2023**



DEFENSE HEALTH AGENCY
7700 ARLINGTON BOULEVARD, SUITE 5101
FALLS CHURCH, VIRGINIA 22042-5101

MEMORANDUM FOR: SEE DISTRIBUTION LIST

SUBJECT: Defense Health Agency Roles and Responsibilities in the Execution Support of
Disability Evaluation System Medical Evaluation Board Processes

As directed by the Assistant Secretary of Defense for Health Affairs, the purpose of this memorandum is to provide interim guidance in the execution of Disability Evaluation System (DES) Medical Evaluation Board (MEB) processes completed at military Medical Treatment Facilities (MTF) for the implementation of References (b) and (p). This memorandum lays out the interim procedures, developed jointly by the Defense Health Agency (DHA) and Military Departments (MILDEP), to supplement existing DES policy and to clarify how the DHA will support the MILDEPs in overseeing and executing their MEB processes. This interim guidance is intended to provide clarity pending publication of the DES DHA Procedural Instruction (PI), which will include comprehensive DES DHA responsibilities and procedures. This memorandum is not intended to supplant or change existing organizational policy, DoD Directives, or Instructions.

In accordance with (IAW) Chapter 61 of Reference (a), the DES is the mechanism for determining fitness for duty because of disability and whether a Service member – including initial entry trainees, Military Academy cadets, and midshipmen – found unfit for duty due to disability will be separated or retired. As such, the DES falls under the operational authority of the Secretaries of the MILDEPs and is ultimately a MILDEP personnel decision, with recommendations from clinicians through the MEB process. The DES is therefore governed by MILDEP policies (References (c)-(o)), in addition to DoD policy (References (p)-(t)). As directed by Reference (b) Subsection (a)(7), no wounded, ill, or injured Service member may be denied any due process protection afforded under applicable law or regulation of the DoD or their respective MILDEPs.

The MILDEPs and DHA routinely operate within collaborative roles and, in coordination with each other, provide quality service to Service members and commanders within Chapter 61 and section 1073c of Reference (a) and DoD policy. The MILDEPs continue to operate the MEB process IAW DoD and their respective policies, which may require updates to align with current DoD policy and congressional mandate (Reference (b)). The most recent publication of Reference (p) significantly expanded the roles and responsibilities of DHA in support of the DES, while Reference (b) calls for policy that establishes how this support will be implemented. This interim guidance will supplement DoD policy established in References (p) and (r) that recognized DHA's role with administering and managing MTFs.

As a result of MTF oversight, the primary role of the DHA within the DES is supporting the function of MEBs, executed by ensuring adequate staffing and resourcing of MEBs, MEB rebuttals, and impartial medical reviews (IMR). To fulfill this role and facilitate increased standardization of the DES, IAW References (p) and (r), the DHA, in coordination with the MILDEPs, will collaborate to identify best practices and the feasibility and applicability of standardization of the MEB processes within the DES. The DHA will ensure consistent and cohesive communication across DES mission

partners and stakeholders at all echelons (strategic/operational/tactical) to enable these processes. To meet mission requirements, the MTFs will ensure implementation of the following:

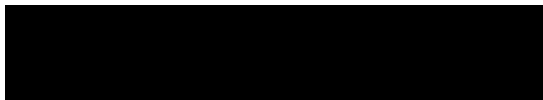
- The MTF Director will appoint MEB convening authorities IAW DoD and respective MILDEP policy. These senior medical officers will:
 - Assemble one MEB for the MTF;
 - Ensure the MEB staff completes their deliberations and documents their recommendation; and
 - Ensure that MEB rebuttal and/or IMR procedures include the necessary components, as outlined in Section 4.6 of Reference (r), if applicable.
- MTF Directors, or their designees, will coordinate with the MILDEPs to ensure the training of DES personnel, IAW Section 3.8 of Reference (p), prior to performing DES duties, and report verification of DES personnel training on an annual basis to the Deputy Assistant Director, Medical Affairs (DAD-MA).
- MTF Directors will ensure the appropriate allocation, use, and provision of health care resources for DES operations, including personnel, supplies, available appointments, facility space, equipment, and online resources, sufficient to execute the requirements set forth in References (p) and (r).
 - The MTFs will execute the backfill of positions to maintain adequate staffing. This includes ensuring DHA-appointed designated DES positions be protected from diversion to other collateral duties, as feasible.
 - DES civilian and contractor personnel who are operationally aligned under DHA will remain in dedicated DES positions as their primary responsibility. Exceptions to those responsibilities must be approved by the DHA, Personnel and Manpower (J1) and the Deputy Assistant Director for Medical Affairs.
 - IAW Section 1612 of Reference (u), upon a Service member's request, an impartial physician, or other appropriate health care professional, will be assigned to conduct IMRs.
 - As supported and provided by DHA Information Technology (IT), the MTFs will ensure each MEB has IT support and access to programs and systems used for DES processing purposes.
- MTF Directors will implement local policy and procedures needed to decrease overall DES processing times to achieve the DoD-mandated DES timeliness goal of 180 days. For the purposes of monitoring MEB performance, Reference (r) establishes a 72-day goal for the entire MEB phase of the DES. Meeting the 72-day MEB phase goal will be the threshold for measuring MEB performance across the enterprise. For underperforming MTFs (e.g., failing to meet the timeliness goal for three consecutive months), MTF Directors, or their designees, will coordinate support, including determining the basis for underperformance and establishing a course of action accordingly (e.g., identify and assign appropriate medical personnel to successfully meet goals).

- MTF Directors will support other MTFs and ensure MTF personnel involved in the MEB process serve all military members or veterans, regardless of the individual’s military service affiliation, for their DES processing, including but not limited to:
 - The referral of Service members into the DES for evaluation by an MEB; and
 - The provision of Temporary Disability Retirement List (TDRL) reexaminations are assigned to an MTF, as mandated by Chapter 61 of Reference (a). These TDRL veterans will be treated as equal to Active-Duty Service Members when being triaged for access to care, including hospitalizations, in connection with the conduct of the TDRL reexaminations, per Reference (p). Denial of service for the purposes of executing TDRL reexaminations, will be considered a violation of DHA and DoD policy by the MTF and MILDEP provider(s).
- MTF Directors will submit information and reports to comply with metric requirements established by DHA headquarters. The MTFs will designate independent review entities for MEB case reviews to ensure MEB determination accuracy and consistency.

The forthcoming DES DHA-PI will provide complete guidance aimed at full implementation of Reference (b) and Reference (p), process improvements and standardization within the DES MEB process.

This memorandum is available to authorized users from the DHA SharePoint site at <https://info.health.mil/cos/admin/pubs/>. It is effective upon signature and will expire 1 year from the date of signature if it has not been reissued or canceled before this date.

My point of contact for the guidance in this memorandum is Mr. David Vogt, Director, DES Operations. Mr. Vogt can be reached at 571-389-2669 or david.e.vogt10.civ@mail.mil.



Michael P. Malanoski, M.D., SES
Deputy Director, DHA

Attachments:
As stated

DISTRIBUTION:

Defense Health Network Indo-Pacific
Defense Health Network Pacific Rim
Defense Health Network West
Defense Health Network Central
Defense Health Network Atlantic
Defense Health Network East
Defense Health Network National Capital Region
Defense Health Network Europe
Defense Health Network Continental

cc:

Surgeon General of the Army
Surgeon General of the Navy
Surgeon General of the Air Force

ATTACHMENT

References

- (a) United States Code, Title 10
- (b) Public Law 117-263, Section 711, “James M. Inhofe National Defense Authorization Act for Fiscal Year 2023”
- (c) Secretary of Navy (SECNAV) Instruction 1850.4F, “Department of the Navy Disability Evaluation System,” June 27, 2019
- (d) Bureau of Medicine and Surgery Instruction 6000.19, “Medical Evaluation Board Composition, Function, Management, Staffing, and Standardization,” October 1, 2020
- (e) SECNAV Manual 1850.1, “Department of the Navy Disability Evaluation System Manual,” September 23, 2019
- (f) Department of Air Force (DAF) Manual 48-108, “Physical Evaluation Board Liaison Officer (PEBLO) Functions: Pre-Disability Evaluation System (DES) and Medical Evaluation Board (MEB) Processing,” August 5, 2021
- (g) Air Force Instruction (AFI) 36-3212, “Physical Evaluation for Retention, Retirement, and Separation,” July 5, 2019, as amended
- (h) AFI 48-133, “Duty Limiting Conditions,” August 7, 2020
- (i) U.S. AF Medical Standards Directory, March 17, 2023¹
- (j) DAF Manual 48-123, “Medical Examinations and Standards,” December 8, 2020
- (k) AFI 48-123, Aerospace Medicine, Medical Examinations and Standards,” September 4, 2009, as amended
- (l) Army Regulation 635-40, “Disability Evaluation for Retention, Retirement, or Separation,” January 19, 2017
- (m) Army Regulation 40-501, “Standards of Medical Fitness,” June 27, 2019
- (n) Army Regulation 40-502, “Medical Readiness,” June 27, 2019
- (o) Department of the Army Pamphlet 635-40, “Procedures for Disability Evaluation for Retention, Retirement, or Separation,” January 12, 2017
- (p) DoD Instruction 1332.18, “Disability Evaluation System,” November 10, 2022
- (q) DoD Directive 5136.13, “Defense Health Agency, (DHA),” September 30, 2013, as amended
- (r) DoD Manual 1332.18, Volume 1, “Disability Evaluation System Manual: Processes,” February 24, 2023
- (s) DoD Instruction 6130.03, Volume 1, “Medical Standards for Military Service: Appointment, Enlistment, or Induction,” May 6, 2018, as amended
- (t) DoD Instruction 6130.03, Volume 2, “Medical Standards for Military Service: Retention,” September 4, 2020, as amended
- (u) Public Law 110-181, “National Defense Authorization Act for Fiscal Year 2008,” January 28, 2008

¹ This product is available to CAC holders at <https://kx.health.mil/Pages/default.aspx>.