



**National Association of  
State Veterans Homes**

*"Caring for America's Heroes"*

Return Address:

November 16, 2009

VIA UPS NEXT DAY AIR

The Honorable Daniel K. Akaka  
Chairman  
Committee on Veterans' Affairs  
United States Senate  
412 Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Richard Burr  
Ranking Member  
Committee on Veterans' Affairs  
United States Senate  
825A Hart Senate Office Building  
Washington, D.C. 20510

RE: State Veterans Homes 70% Program

Dear Chairman Akaka and Ranking Member Burr:

As you know, as part of the "Veterans Benefits, Health Care, and Information Technology Act of 2006" (Pub. L. No. 109-461), Congress approved payment of different per diem amounts by the Department of Veterans Affairs ("VA") to State Veterans Homes which provide nursing home care to veterans with service-connected disabilities ("the 70% Program"). VA issued regulations to implement the program on April 29, 2009.

Although the VA regulations state that they provide a "higher per diem rate" for veterans with service-connected disabilities, the regulations actually result in significantly lower total amounts being paid to many State Veterans Homes providing nursing home care to veterans with service-connected disabilities. As implemented, the program will not provide to many State Veterans Homes their actual cost of care for disabled veterans, despite congressional intent. This has threatened the continued financial viability of many State Veterans Homes systems.

Although the issue impacts all states, this problem is particularly acute in the 30 states that have Medicare-certified and/or Medicaid-certified State Veterans Homes and that receive payments for the care of veterans with service-connected disabilities under such programs. The impact is significant enough to have caused several such States to refrain from admitting veterans with service-connected disabilities under the 70% Program.

Members and representatives of the National Association of State Veterans Homes have met in recent months with Members of Congress, congressional staff, and VA officials to raise concerns about the operation of the 70% Program and to discuss possible solutions.

It is our conclusion that congressional action is necessary to revise the program so that it functions as intended and to protect State Veterans Homes from financial peril. We have developed a four-part proposal (attached) that we believe will allow veterans to receive the

benefits that this law contemplated while compensating State Veterans Homes more adequately for the true cost of care for such veterans. Such a resolution is in the best interests of the veterans covered by this provision, the State Veterans Homes, and all veterans served by such homes.

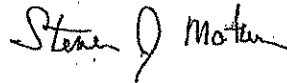
We look forward to working with you, your staff, and your colleagues in the House to address this issue as soon as possible. As always, thank you for your commitment to veterans and for your continued service to our country.

Sincerely,



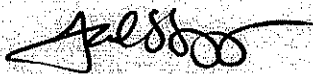
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Colleen Rundell, M.S., LNHA  
President  
National Association of State Veterans  
Homes  
(Vermont)



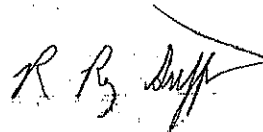
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Steven J. Matune  
1<sup>st</sup> Vice President  
(Ohio)



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Fred S. Sganga  
2<sup>nd</sup> Vice President  
(New York)



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R. Roy Griffith  
Chair, Liaison Committee  
(Oklahoma)



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Gary Bermeosolo  
Legislative Director  
(Nevada)

Attachment

**FOUR-PART LEGISLATIVE PROPOSAL FOR ADDRESSING  
IMPLEMENTATION ISSUES WITH THE NEW PER DIEM PROGRAM  
AUTHORIZED BY 38 U.S.C. § 1745**

Background

As part of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (Pub. L. No. 109-461, § 211(a), codified at 38 U.S.C. § 1745(a)), Congress approved payments by the United States Department of Veterans Affairs (“VA”) to State Veterans Homes which provide nursing home care to veterans with service-connected disabilities. The statute took effect in early 2007; VA issued regulations to implement the program on April 29, 2009.

As implemented by VA, the program will result in significantly lower total amounts being paid to many State Veterans Homes providing nursing home care to veterans with service-connected disabilities. This unintended consequence frustrates the intent of the program and could threaten the continued financial viability of many State Veterans Homes.

The State Veterans Homes have met with VA officials who are committed to resolving issues surrounding this program. However, the remedies available to VA are limited and may be very time-consuming. The most effective response to the problems inherent in the program would be for Congress to make technical corrections to the statute to allow service-connected veterans to be treated in State Veterans Homes and also allow those Homes to be reimbursed at a rate that covers the services provided to those veterans.

Proposals

Below are proposed technical corrections that could resolve the problems associated with the implementation of this program. These changes would allow service-connected veterans to be treated in State Veterans Homes and also allow those Homes to be reimbursed at a rate that covers the services provided to those veterans.

1. Clarify that the New Per Diem Program’s “Payment in Full” Language Applies Only to VA Payments

Description: Clarifies that the payments provided by VA under the new per diem program for veterans with service-connected disabilities constitutes “payment in full” only with respect to payments from VA for services rendered by the home. This language is consistent with the regulations implementing the new per diem program (38 C.F.R. § 51.41(c)).

Provision: Amend 38 U.S.C. § 1745(a)(3) as follows (new language appears in *italics*):

“Payment by the Secretary under paragraph (1) to a State home for nursing home care provided to a veteran described in that paragraph constitutes payment in full *under this title* to the State home for such care furnished to that veteran.”

2. Clarify that Payments to State Nursing Homes Will Reflect the Actual Cost of Care

Description: 38 U.S.C. § 1745(a)(2)(B), which references “the daily cost of care,” relies, as implemented by VA, on the cost principles of OMB Circular A-87. However, OMB Circular A-87 does not provide an accurate and all-inclusive calculation of the cost of care because it does not include any medically-necessary services provided outside of the four walls of a State Veterans Home, which in many cases includes specialized physicians, x-rays, lab services, chemotherapy, radiation, and dialysis. The proposal below would strike subsection (B) and require that payments be made at a rate paid by VA, and determined by the Secretary, for nursing home care furnished in a private nursing home. This approach is consistent with the bills introduced in the House and Senate in 2006 upon which this portion of the statute was based.

Provision: Amend 38 U.S.C. § 1745(a)(2) as follows:

~~“The rate determined under this paragraph with respect to a State home is the lesser of—(A) the applicable or prevailing rate payable in the geographic area in which the State home is located, as determined by the Secretary, for nursing home care furnished in a non-Department nursing home (as that term is defined in section 1720(e)(2) of this title); or (B) a rate not to exceed the daily cost of care, as determined by the Secretary, following a report to the Secretary by the director of the State home.”~~

3. Authorize Contracts with State Veterans Homes Similar to the Community Nursing Home Provider Agreements

Description: Authorizes VA to enter into contracts with State Veterans Homes to provide care for veterans with service-connected disabilities comparable to the VHA Community Nursing Home Agreements. Such contracts would be optional for VA and for State Veterans Homes, as are all Community Nursing Home Agreements.

Provision: Amend 38 U.S.C. § 1745(a) to add the following new subsection:

*“(4) In lieu of making payments to a State Home under paragraph (2), the Secretary may enter into agreements with a State home to furnish nursing home care to a veteran described in paragraph (1) under the provisions of section 1720 of this title.”*

4. Apply the Existing Offset Language to the New Per Diem Program

Description: Apply the provision in 38 U.S.C. § 1741(e) (which states that payments to States under section 1741 (the standard per diem program) shall not be considered a liability of a third party or used to offset other payments) to the new per diem program for veterans with service-connected disabilities described in section 1745.

Provision: Amend 38 U.S.C. § 1741(e) as follows:

*“Payments to States pursuant to this section and pursuant to section 1745 of this chapter, other than section 1745(a)(4), shall not be considered a liability of a third party, or otherwise be used to offset or reduce any other payment made to assist veterans.”*