

# LEGISLATIVE HEARING ON H.R. 4241

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON HEALTH  
OF THE  
COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED ELEVENTH CONGRESS  
SECOND SESSION

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MARCH 3, 2010  
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# CONTENTS

March 3, 2010

	Page	
Legislative Hearing on H.R. 4241 .....	1	
OPENING STATEMENTS		
Chairman Michael Michaud .....	1	
Prepared statement of Chairman Michaud .....	21	
WITNESSES		
U.S. Department of Veterans Affairs, James F. Burris, M.D., Chief Consultant, Geriatrics and Extended Care, Veterans Health Administration .....	13	
Prepared statement of Dr. Burris .....	40	
Maine Veterans' Homes, Augusta, ME, Kelley J. Kash, Chief Executive Officer .....		9
Prepared statement of Mr. Kash .....	37	
National Association of State Veterans Homes:		
Colleen Rundell, M.S., LNHA, President, and Administrator, Vermont Veterans' Home, Bennington, VT .....	3	
Prepared statement of Ms. Rundell .....	21	
Gary Bermeosolo, Legislative Officer, and Administrator, Nevada State Veterans Home, Boulder City, NV .....	7	
Prepared statement of Mr. Bermeosolo .....	36	
Tennessee State Veterans Homes Board, Murfreesboro, TN, Robert D. Tuke, Chairman .....	4	
Prepared statement of Mr. Tuke .....	24	
Yukio Okutsu State Veterans Home, Hilo, HI, Keith T. Ribbentrop, State Veterans' Home Liaison Officer .....	6	
Prepared statement of Mr. Ribbentrop .....	29	
SUBMISSIONS FOR THE RECORD		
American Legion, Jacob B. Gadd, Assistant Director for Program Management, Veterans Affairs and Rehabilitation Commission, statement .....	41	
American Veterans (AMVETS), Raymond C. Kelley, National Legislative Director, statement .....	42	
Brown, Hon. Henry E. Brown, Jr., Ranking Republican Member, Subcommittee on Health, and a Representative in Congress from the State of South Carolina, statement .....	43	
Disabled American Veterans, Adrian M. Atizado, Assistant National Legislative Director, statement .....	43	
National Association of State Directors of Veterans Affairs, Linda S. Schwartz, RN, MSN, DrPH, FAAN, Senior Vice-President, and Commissioner, Connecticut Department of Veterans' Affairs, Rocky Hill, CT, statement .....	45	
Paralyzed Veterans of America, statement .....	47	
Veterans of Foreign Wars of the United States, Robert E. Wallace, Executive Director, letter .....	49	

MATERIAL SUBMITTED FOR THE RECORD

Page

Post-Hearing Questions and Responses for the Record:

Hon. Michael Michaud, Chairman, and Hon. Henry E. Brown, Jr., Ranking Republican Member, Subcommittee on Health, Committee on Veterans' Affairs to Hon. Eric K. Shinseki, Secretary, U.S. Department of Veterans Affairs, letter dated March 9, 2010, and VA responses ..... 50

## LEGISLATIVE HEARING ON H.R. 4241

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WEDNESDAY, MARCH 3, 2010

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON VETERANS' AFFAIRS,  
SUBCOMMITTEE ON HEALTH,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2:35 p.m., in Room 340, Cannon House Office Building, Hon. Michael H. Michaud [Chairman of the Subcommittee] presiding.

Present: Representatives Michaud, Perriello, Rodriguez, and Donnelly.

### OPENING STATEMENT OF CHAIRMAN MICHAUD

Mr. MICHAUD. While waiting for another Subcommittee Member to arrive, if the first panel could come forward, please.

I would like to call the hearing to order. I apologize for the delay. However, they called votes. In addition, the previous hearing we had scheduled, was snowed out. So I apologize to those who actually had come to DC, and were here waiting to testify a few weeks ago. I know I see some in the audience, as well as myself, who were here for that hearing.

Today's legislative hearing is an opportunity for Members of Congress, veterans and other interested parties to provide their views on and discuss recently introduced legislation within this Subcommittee's jurisdiction. This is an important part of the legislative process and I would encourage everyone to be frank and open on how we can move forward with the legislation we have before us today.

Today we will discuss H.R. 4241, a bill that I introduced to allow for increased flexibility in payment to State Veterans Nursing Homes. I look forward to hearing the views of the witnesses on this bill. I will just say a few words about the legislation that we have before us today. State Veterans Nursing Homes are one of the largest long-term care providers in the country.

According to the National Association of State Veterans Homes (NASVH), there were 137 such Homes in 50 States and Puerto Rico, providing over 28,000 total beds.

In 2006, Congress passed legislation with the intent to provide higher per diem payments to State Veterans Homes providing nursing home care for severely disabled veterans with service-connected disabilities.

Unfortunately, the implementation of this enacted legislation has had the unintended consequence of lowering total per diem payment and does not cover the actual cost incurred by State Veterans

Homes. This unintended consequence threatens the financial viability of many State Veterans Homes and is especially a problem for those 30 States that have Medicare and Medicaid-certified State Veterans Homes because they are unable to bill the unpaid balance of the veterans' care to Medicare and Medicaid.

That is why this legislation is before us today. The legislation provides clarity of the language so that State Veterans Homes may bill Medicare and Medicaid for the balance of veterans' care remaining after the U.S. Department of Veterans Affairs (VA) makes the per diem payment.

In addition, the bill clarifies the payment to State Veterans Homes to reflect the actual cost of care and authorizes contracts for the State Veterans Homes that are similar to the VA's Community Nursing Home Provider Agreement.

And once again, I want to thank both panels for coming today and I will turn it over to Mr. Perriello for any opening statements he may have.

[The prepared statement of Chairman Michaud appears on p. 21.]

Mr. PERRIELLO. I will hold off on a statement for now.

Mr. MICHAUD. Thank you very much. And I want to thank you, Mr. Perriello, for all your hard work and advocacy on behalf of our veterans. You definitely are a true advocate for our veterans and I am very pleased to see you here today to listen to the important testimony that we will hear.

So without any further ado, the first panel that we have before us is Colleen Rundell, who is the President of the National Association of State Veterans Homes, and Administrator of the Vermont Veterans' Home; Kelley Kash, who is the Chief Executive Officer of Maine Veterans' Homes in Augusta, Maine; Gary Bermeosolo.

Mr. BERMEOSOLO. Close enough, sir.

Mr. MICHAUD. Close enough. Okay. From the Nevada State Veterans Nursing Home—if we had Congresswoman Berkley here, I would have her pronounce your name or introduce you—we have Keith Ribbentrop—

Mr. RIBBENTROP. Ribbentrop, yes, sir.

Mr. MICHAUD [continuing]. From the State of Hawaii, as well as Robert Tuke.

Mr. TUKE. Tuke.

Mr. MICHAUD. Tuke. Okay. From the Tennessee State Veterans Homes. So I want to thank all of you for coming here and we will start with Ms. Rundell.

**STATEMENTS OF COLLEEN RUNDELL, M.S., LNHA, PRESIDENT, NATIONAL ASSOCIATION OF STATE VETERANS HOMES, AND ADMINISTRATOR, VERMONT VETERANS' HOME, BENNINGTON, VT; ROBERT D. TUKE, CHAIRMAN, TENNESSEE STATE VETERANS HOMES BOARD, MURFREESBORO, TN; KEITH T. RIBBENTROP, STATE VETERANS' HOME LIAISON OFFICER, YUKIO OKUTSU STATE VETERANS HOME, HILO, HI; GARY BERMEOSOLO, LEGISLATIVE OFFICER, NATIONAL ASSOCIATION OF STATE VETERANS HOMES, AND ADMINISTRATOR, NEVADA STATE VETERANS HOME, BOULDER CITY, NV; AND KELLEY J. KASH, CHIEF EXECUTIVE OFFICER, MAINE VETERANS' HOMES, AUGUSTA, ME**

**STATEMENT OF COLLEEN RUNDELL, M.S., LNHA**

Ms. RUNDELL. Mr. Chairman, Members of the Subcommittee, thank you for holding this hearing on H.R. 4241, legislation that would remedy the unintended consequences of the Section 211(a) of the 2006 Veterans Benefits Act.

Implementation of the 70-Percent Program is not only inhibiting the long-term care of service-connected disabled veterans, but it is also threatening the financial viability of many of the Nation's State Homes.

I am the Administrator of the Vermont Veterans' Home and President of the National Association of State Veterans Homes. NASVH consists of the administrators and staff of State-operated Veterans Homes throughout the United States. NASVH members currently operate 137 Veterans Homes, which provide approximately 28,000 skilled nursing home and domiciliary beds. We assist the VA by caring for more than 50 percent of their long-term care workload.

The 70-Percent Program is creating very serious difficulties for State Homes throughout the country. NASVH has met with Dr. Burris and other VA officials in an attempt to address these problems. Contrary to his written statement, however, Dr. Burris informed us that the issue can only be resolved fully by a modification to the law.

NASVH strongly supported, and still strongly supports, the intent of the 70-Percent Program. After the Millennium Act, a service-connected disabled veterans could receive cost-free care at a private nursing home, but that same veteran could not receive cost-free care at a State Veterans Home.

The 70-percent legislation tried to achieve parity in the provision of nursing home benefits for our veterans. Unfortunately, the implementation of the program has failed to achieve this parity and has resulted in numerous problems and unintended consequences.

Specifically, 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 of the State Homes. The program simply does not provide to many State Homes adequate reimbursement for their actual cost of care. In short, without exaggeration, it threatens the financial viability of our Homes.

This problem is particularly acute in the 30 States that have Medicare and/or Medicaid-certified Homes. The impact is signifi-

cant enough that several States have incurred substantial financial losses, and others have been forced to deny or limit admission for such veterans. Unfortunately, the implementation of the 70-Percent Program is having exactly the opposite result envisioned by Congress.

One typical example comes from my Vermont Veterans' Home. Prior to the 70-Percent Program, Sergeant Jakob Lurie was admitted to my Home under Medicare after a 3-day hospital stay. Sergeant Lurie required skilled care and as a result, received 3 hours of therapy each day.

The average daily cost for Sergeant Lurie was \$476. This includes physical, occupational and speech therapy, medications, physician visits, specialized medical treatments and room and board. Under the 70-Percent Program, however, my Home would have received \$302 a day for Sergeant Lurie's Care, a loss of nearly \$175 per day for just one resident. The math does not add up under the 70-Percent Program. Sergeant Lurie's case is typical.

Since I have arrived in Washington this week, the Vermont Veterans' Home admitted our 11th veteran who qualifies for the 70-Percent Program and this number will only go up.

Among the first 10 veterans alone, I estimate an average loss for the Vermont Veterans' Home of \$180,000.

NASVH supports H.R. 4241, which would allow service-connected disabled veterans to receive the nursing home care that Congress intended, while reimbursing State Veterans Homes fully and more accurately for such care.

We would also support clarifying language to the legislation that made clear that a State Home cannot receive payment from the VA under more than one of the alternatives provided in the bill. State Homes do not want to be paid twice for anything that we do. However, we do want to be paid once for everything we do.

NASVH believes that the enactment of the bill will resolve all of the problems that have arisen in the 70-Percent Program, and permit State Homes to admit covered Veterans without adverse financial consequences.

We are pleased that there is widespread support for our efforts to address this issue. The National Association of State Directors of Veterans Affairs, the National Governors' Association, the American Health Care Association, the Military Order of the Purple Heart, the Catholic War Veterans, American Gold Star Mothers and the American Legion have all called for action to remedy these problems.

I want to thank you, Mr. Chairman, the entire Subcommittee and its professional staff for the leadership and skill that you have shown in addressing the long-term care needs of our Nation's service-connected disabled veterans. I appreciate the opportunity to testify and will be very happy to answer any questions.

[The prepared statement of Ms. Rundell appears on p. 21.]

Mr. MICHAUD. Thank you very much.

Mr. Tuke.

#### **STATEMENT OF ROBERT D. TUKE**

Mr. TUKE. Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to testify today. I am Robert Tuke, and I



am Chairman of the Tennessee State Veterans Homes Board. As a Marine Vietnam Veteran with a minor service-connected disability, I am especially interested in supporting efforts to assist disabled veterans whenever possible. So it is a double privilege and honor to address you today.

The Tennessee State Veterans Homes operate much in the same manner as private nursing homes. We do not receive funding for operations from our State. Instead, we must maintain financial viability just as any other nursing home organization. We operate three nursing homes, each with 140 beds, dually certified for Medicare and Medicaid. The revenues generated and collected by our Homes are our operating and capital fund.

When the VA regulations for the 70-Percent Program became effective last May, we had a total of 13 residents in our three Homes who met the criteria for the 70-Percent Program. By the end of January 2010, 8 months later, the total of such residents was 23, an 85 percent increase. Of the 23 current residents, 18 require skilled nursing home care and the other 5 require standard, custodial nursing care.

We anticipate these numbers will continue to increase as more veterans become aware of the program and elect admission into the State Veterans Homes instead of community homes.

Tennessee does not limit, and has no intention of limiting, admissions to its nursing homes based on payor source, and we do not intend to limit admissions under the 70-Percent Program. But for how long can we honor this commitment, especially given the consequences to revenues and expenses arising from the 70-Percent Program. These threaten the long-term financial viability of the Tennessee State Veterans Homes and to State Veterans Homes nationwide.

As I have pointed out, the vast majority of the new admissions under this program require skilled nursing care services. This means that the billings for services for these residents are submitted to the VA instead of to Medicare. Therefore, the loss of revenue calculations that we have presented today in my written testimony are based on actual payments received from VA compared to what our reimbursements would have been from Medicare.

Additionally, many expense items that are reimbursed adequately under consolidated billing rules for Medicare are not reimbursed adequately under the 70-Percent Program. Examples include services by attending physicians, specialists, and emergency transportation. In essence, when we admit residents who qualify for the 70-Percent Program, we incur higher expenses and receive lower reimbursement for services, as compared to reimbursements from other applicable payor sources. This is because the 70-Percent Program reimbursement is based on the lesser of the prevailing rate as established by the Secretary for Veterans Affairs and the average daily cost of care for all residents based on actual expenses incurred by the home.

The average daily cost of care calculation results in a reimbursement skewed by the much larger percentage of intermediate care residents in each home as compared to a skilled care resident. The expenses associated with custodial care are significantly lower on a per patient day basis than those for skilled care. Moreover, the

70-percent veterans incur expenses, which are higher than those incurred by our typical Medicare residents.

When total expenses are divided by total resident days to obtain the average daily cost of care, the resulting average is much less than the actual cost of care for qualifying residents.

The chart included in my written testimony outlines those charges and reimbursements for skilled services covered under Medicare and under the 70-Percent Program.

In sum, the current reimbursement methodology for the 70-Percent Program does not provide sufficient funding for State Homes. In fact, we estimate a loss of \$338,000 in revenues over the last 8 months alone because of the funding constraints of the 70-Percent Program. My written testimony outlines the details.

Obviously, the Tennessee State Veterans Homes Board cannot continue to absorb this increase in expenses and reduction in reimbursements without dire fiscal consequences, nor can others as you have heard.

In addition, you have received written testimony in support of this legislation from veterans service organizations and others. I urge you to review in particular the testimony of Linda Schwartz on behalf of the State Directors of Veterans Affairs.

Thank you again for the opportunity to testify. We urge support for H.R. 4241 and I would be happy to answer any questions that Members of the Subcommittee or, Mr. Chairman, you may have. Thank you.

[The prepared statement of Mr. Tuke appears on p. 24.]

Mr. MICHAUD. Thank you very much.

Mr. Ribbentrop.

#### **STATEMENT OF KEITH T. RIBBENTROP**

Mr. RIBBENTROP. Mr. Chairman and Members of the Subcommittee, my name is Keith Ribbentrop and I am the State Veterans' Home Liaison Officer to the Yukio Okutsu State Veterans Home in Hilo, Hawaii. I am retired from the United States Air Force, and as a disabled combat veteran of the Vietnam War, I am grateful for the opportunity to be here today and advocate for my fellow comrades-in-arms. Thank you for the honor to speak on their behalf.

As you know, the Veterans Benefits, Health and Information Technology Act of 2006 authorized the Department of Veterans Affairs to make payments to State Veterans Homes that provide nursing home care to veterans with service-connected disabilities.

VA regulations implementing the 70-Percent Program purport to provide a higher per diem rate for eligible veterans. However, the program, as implemented, actually results in significantly lower payments to many State Veterans Homes. Unless revised, the 70-Percent Program will not provide the actual cost of care to State Homes despite Congressional intent.

The problem is particularly urgent in States that are Medicare and/or Medicaid-certified. Hawaii is one of the 30 States across the Nation that is so certified. Under the current program, those veterans eligible for the higher per diem rate are not eligible for Medicaid funds. The tables and charts in my written testimony show the impact of the 70-Percent Program on our Home.

At the end of 2009, we had 12 veterans in our Home under the program. Because the program does not fully compensate our costs, our Home loses more than \$50,000 a month on the care of those veterans.

The more veterans we admit under the program, the greater our losses become. Over time, the program will clearly cut into our ability to provide long-term care to any veteran in our State.

Hawaii is an island State. Our Home is located on a big island, which suffers from a critical shortage of doctors as well as specialty medical services. My written testimony details our physician needs. This shortage, at times, requires that we transport a resident 200 miles by air to the island of Oahu where speciality care could be available.

The rapid growth of the 70-Percent Program eligible veterans in our Home is duplicated nationwide. Because of this growth and its financial implications, many States have constrained admission to veterans under the new program.

Yukio Okutsu State Veterans Home is proud to report that it is nearing capacity. We are approaching 99 percent filled and soon will need to establish a waiting list. Our Home's wait list gives priority to service-connected veterans by order of service-connected disability rating.

As the Yukio Okutsu State Veterans Home reaches capacity, our State Director of Veterans Services, Mr. Mark Moses, has begun to assess the need for Hawaii's next State Home. The losses under this 70-Percent Program will risk the construction of any future State Home in the State of Hawaii.

Mr. Chairman, the 70-Percent Program, was intended to be a blessing for veterans and their families. As currently designed, however, it jeopardizes our ability to care for our most deserving veterans.

The National Association of State Veterans Homes has proposed amendments to the 70-Percent Program that are reflected in H.R. 4241. The legislation will allow State Homes greater flexibility in admission and care for veterans with service-connected disabilities without risking the future of our Homes.

As you and the Committee on Veterans' Affairs consider H.R. 4241, please know that it will be beneficial to both the veterans as well as the Homes that were built to serve them. I urge you to pass this measure.

Mr. Chairman, thank you for your dedication, and the dedication of the Committee on Veterans' Affairs in support of our Nation's veterans.

[The prepared statement of Mr. Ribbentrop appears on p. 29.]

Mr. MICHAUD. Thank you very much.

Mr. Bermeosolo.

#### **STATEMENT OF GARY BERMEOSOLO**

Mr. BERMEOSOLO. Mr. Chairman, I am Gary Bermeosolo, and I thank you for inviting me to testify today.

As the Legislative Officer of NASVH and the Administrator of the Nevada State Veterans Home, I am honored to be here with you to request your support of H.R. 4241.

When Public Law 109-461 passed in 2006, its intent was to correct an inequity that existed in the system, whereby veterans with a 70 percent or greater service-connected disability rating couldn't come to a State Veterans Home at no cost, but they could go to a community nursing home at no cost. This was a well-intended law that we supported because we thought it would correct this inequity.

However, the implementing regulations created more inequities than they corrected. Now, we are being required to admit these veterans under a program intended to cover their total cost of care, but one which actually does not. Consequently, many States can't admit these veterans because of this financial burden.

Let me assure you, this is not an issue confined to any one State. This is a nationwide problem. NASVH is comprised of the 137 State Veterans Homes across the country. Since the new law was implemented, I have been contacted by administrators and directors of State Homes from all over the country about the financial challenges this law has created. And, while I am very concerned as the Legislative Officer for NASVH, I am also very concerned as the Administrator of the Nevada State Veterans Home in Boulder City. Let me share just one of the many actual experiences I have had.

On July 21st of 2009, the wife of a World War II veteran, whom we shall call Mr. Disabled Veteran, Mr. D.V., came to our Home seeking admission for her husband. She was desperate to get him into our Home where she could be confident he would receive quality care and have opportunities to socialize with other vets he could relate to.

As we began discussing our daily cost of care, Mrs. D.V. indicated her husband had a 100-percent service-connected disability rating and, consequently, was not being charged for his care at his community nursing home. Well, we explained to Mrs. D.V. the difference between the VA's reimbursement policies for a community home and for a State Home. We shared with her that we cannot, under current law, provide care for her husband because VA reimbursement may not cover our costs.

At this point, Mrs. D.V. began crying and asked how this could be possible since we aren't just a nursing home, but a nursing home especially for veterans. I told Mrs. D.V. how we arrived at this point and indicated I was working with other State Homes in Congress to fix this problem, but until it is fixed, we simply cannot assume the risk of admitting veterans under this program.

Mrs. D.V. then retrieved her checkbook from her purse and she waived it in the air saying, "But I'll pay for his care if you will just admit him." We responded that VA regulations won't allow her to pay for the cost of her husband's care. She began sobbing and she tried to come to terms with what we were telling her. At this point, I looked this woman in the eye and I promised her I would do everything possible to get this fixed.

As our meeting concluded, we encouraged Mrs. D.V. to check back with us periodically to see if the law had been fixed. Mrs. D.V. did call me back in August, then again in September, again in October, and yet again in November, each time asking if the 70-percent thing was fixed. Each time, we had to tell her, no, we are still working on it.

Mrs. D.V. doesn't call me anymore. Her husband died on December 16, 2009, never able to access the care he deserved as a 100-percent service-connected disabled veteran.

It is impossible to convey how difficult it is to turn these folks away. State Home administrators across the country are unwilling to assume the risk of bankrupting their programs, which would have the catastrophic effect of displacing the current residents.

Mr. Chairman and Members of the Committee, I implore you, please correct this injustice. We are turning away the very people who most deserve and need care in State Veterans Homes. H.R. 4241 corrects inequities and achieves the end result we are all hoping for and, most importantly, that our veterans deserve.

Mr. Chairman, this concludes my statement. Thank you for permitting me to testify today on behalf of NASVH and the Nevada State Veterans Home Program. I will be pleased to answer any questions.

[The prepared statement of Mr. Bermeosolo appears on p. 36.]

Mr. MICHAUD. Thank you very much, and thank you for sharing that story.

I'd better not mess up this pronunciation, the next witness, Mr. Kash.

#### **STATEMENT OF KELLEY J. KASH**

Mr. KASH. Thank you, Mr. Chairman and Members of the Subcommittee. Thank you for inviting me to testify here today. My name is Kelley Kash. I am the Chief Executive Officer of the Maine Veterans' Homes and also retired Air Force Officer Hospital Administrator and Commander.

The Maine Veterans' Homes is a public not-for-profit system established 30 years ago by the government of the State of Maine. We operate 640 skilled nursing, long-term care and domiciliary beds at six locations

All of our Homes are both Medicare and Medicaid-certified. We provide a considerable amount of skilled nursing care, including post-acute, post-operative, and rehabilitative care at no cost, or at very low cost, to Maine's veterans. Skilled nursing care, however, is precisely the type of nursing care for which the VA's new 70-Percent Program causes the greatest financial losses.

We have estimated that if we were to admit every Maine veteran that reasonably could seek admission under the 70-Percent Program, we would lose between \$8 and \$16 million per year. We would be bankrupt within 1½ to 3 years. We calculated this by reviewing the files of several typical skilled nursing residents. They showed us that we would lose an average of \$238 per resident per day under this program compared to existing sources of funds with Medicare or Medicaid. Our data is consistent with the facts being reported here today by other Medicare and Medicaid-certified State Homes.

Keep in mind, that this program applies to all admissions that are service-connected, not just those with a 70-percent or higher disability. A veteran with as little as a 10-percent disability could qualify.

The only State Homes in the Nation that have any hope of not incurring substantial financial losses under this program are those

State Homes, which are not Medicare or Medicaid-certified or which provide only a minimal amount of skilled nursing care.

As my colleagues have testified, the VA's numbers simply do not add up. Under the 70-Percent Program, the VA substantially underpays for skilled nursing care and as implemented, the program is a financial disaster for the State Homes. As a result, many States have avoided admitting any service-connected disabled veterans. This is exactly the opposite result that Congress intended.

As a medical professional, I find this places me in a moral dilemma. I must deny admission to some of our most deserving veterans in order to stay in business to continue to serve any veterans.

Since the 70-Percent Program took effect last year, we have met several times with VA officials, including Dr. Burris. Frankly, I believe that Dr. Burris does not understand the problem or the enormity of the problem that the program creates in the majority of the State Homes in the Nation.

In simple language, the 70-Percent Program does not pay State Veterans Homes enough to provide skilled nursing care to veterans. The VA in the past had said that it could cure the problems with the 70-Percent Program administratively, but it has not done so. The result has been a program in chaos. We have simply run out of patience with the VA. The VA can no longer hide its head in the sand with the disarray that it has created for our Nation's veterans in our State Homes.

What should be done? Congress should allow State Veterans Homes the option of continuing to receive payments from Medicare or Medicaid, plus the basic VA per diem rate until the VA can devise a permanent system and adopt regulations paid to State Homes at rates comparable to existing Medicare rates. The VA should be required also to pay any co-pay required by the veteran for his Medicare benefits, so that such care is at no cost to the veteran. Payment in full by the VA to a State Veterans Home should mean payment in full.

Congress should also allow State Veterans Homes to use the existing VA Community Nursing Home Provider Contract Program so that we can provide immediate long-term care services to service-connected disabled veterans at no cost to such veterans.

The enactment of H.R. 4241 would give the VA the authority to accomplish both of these goals quickly, and we urge its speedy passage. We thank the Chairman and Members of the Subcommittee for the opportunity to testify today, and we look forward to working with both Congress and the VA to effect a permanent solution to the substantial problems of the current 70-Percent Program.

[The prepared statement of Mr. Kash appears on p. 37.]

Mr. MICHAUD. Thank you very much. I want to thank all of you for your service to this great country of ours, as well.

The first question I have is for Ms. Rundell. We have heard a lot about the Medicare and Medicaid-certified homes. How many of those State Veterans Nursing Homes are not Medicare or Medicaid-certified? Or are they all Medicare and Medicaid-certified, but just some more than others.

Ms. RUNDELL. There is no paintbrush that covers each State. There are some States that have Medicare and Medicaid-certified

homes in the law, so within the State have a facility that is non-Medicare/Medicaid. At this point, slightly more than half of the State Veterans Homes in the Nation and Puerto Rico, are Medicare and Medicaid-certified.

Mr. MICHAUD. After reading Mr. Burris' testimony, you suggest that a number of States are satisfied with the new rate for mandatory veterans, but others are not. How many State Veterans Nursing Homes have no problem with the new rate, those who—

Mr. BERMEOSOLO. Mr. Chairman, I would like to take that question if I may. Gary Bermeosolo, for the record.

We are currently having our mid-winter conference here in Washington, D.C. and I asked that question yesterday—how many of you are satisfied with the current law. No hands went up. None.

I am not aware of any States that are satisfied with the current program. I am aware of a number of States that are in financial distress, some of them here at the table with Hawaii, Colorado, Maine, Tennessee, Idaho. The list goes on.

But I don't know where he gets his information from or where he got that piece of information from, but the majority of the States within our association have definitely indicated that they have severe issues with the law.

Mr. MICHAUD. Thank you. And do you believe that it is mandatory for your Homes to admit service-connected veterans even though you would incur losses by admitting such veterans?

Mr. TUKE. Mr. Chairman, if I may address that. Each State has autonomy and discretion in admitting residents to its homes and so no category is mandatory, not even for people in the 70-Percent Program, but some of us believe that it is our moral duty to admit these people. I am a Marine. We take care of our own. The only thing is, when we run a State Veterans Home that we do in Tennessee with three of them, we can't bankrupt our Homes caring for some because the VA won't pay for them and, therefore, imperils the care that we give to all.

Mr. BERMEOSOLO. Mr. Chairman, if I might piggyback on to that. There are a number of States that have different admission criteria. For instance, many States only accept war-time veterans. Some States accept peace-time veterans and yet other States would also accept spouses of veterans and Goldstar Care and it is up to 25 percent of the beds, which are allowed by law, so it varies from State to State.

Ms. RUNDELL. Sir, if I may also add that every time that we have a 70-percent service-connected admission, I am faced with a moral dilemma because I need to, for the first time, really take a look at what it is going to cost and whether or not my facility is going to be able to handle the financial risks attached to that and still be able to be financially viable to take care of my other 142 veterans.

Mr. KASH. And sir, if I might add a final note to that. The problem for me is identifying who those are, in fact. The question is do you know if they are 70 percent or if they are program eligible.

As I mentioned before, I am not—I am intentionally not admitting any of these. When I report to the VA, I believe I have 9 of those. They came back to me and said, no, you, in fact, you have 27. Yesterday they informed me, no, you have 22 more. You actually have 49. This afternoon I found out that one of the people we

thought was 100 percent disabled was, in fact, not eligible for the program, the fact that he has been in our Home for 2½ years under this, quote, “program.”

So for me, it is really hard. How do you sort this out and you can't figure out if, in fact, your person qualifies for 70-percent service-connected admission?

Ms. RUNDELL. So if we admit them, believing they are 70-percent service-connected, it is very difficult to go back and bill if they are not 70-percent service-connected. With Medicaid, I am only allowed to go back 90 days and pick up billing, and I don't think it is fair to hit a family member with a bill to say, hi, no, they weren't really 70-percent service-connected because I received the information from the Department of Veterans Affairs to know what my reality is or the family's or the veteran's.

Mr. RIBBENTROP. Mr. Chairman, in the State of Hawaii, we have the latitude to accept a lot of veterans because we are reaching capacity and the Board of Governors has said that we must establish a waiting list. That waiting list mandates the higher percentage service-connected disabled veterans be put to the top of the waiting list. In a very short period of time we will have a home for the 100-percent disabled veterans.

Mr. MICHAUD. But by the same token, the more disabled veterans go to the top of your waiting list. The cost of taking care of those veterans will be much higher and, therefore, if the VA is not paying the actual cost of care, it would put you in bankruptcy even sooner.

Mr. RIBBENTROP. Yes, sir.

Mr. MICHAUD. Mr. Donnelly.

Mr. DONNELLY. No questions.

Mr. MICHAUD. Other Subcommittee Members might have additional questions if they are submitted in writing. I know Ranking Member Brown is very interested in this. Unfortunately, he had another Committee hearing he had to go to, but he is very interested in trying to solve this problem.

I guess my final question and concern is, you said your Veteran Nursing Homes in Maine, will lose anywhere from \$8 to \$16 million, while another, Vermont, will lose \$180,000. I assume that is because Maine has six Veteran Nursing Homes. I assume that number includes all six.

Do you have any data from all the State Veterans Nursing Homes on what they actually would lose if the VA continues with the current policy? Or can you provide some more data to us?

Mr. KASH. Sir, we are happy to share what data we have collected. We have not heard from every State, but certainly have a good sample of States, including the States here, as well as Idaho and we feel we can get a lot of those numbers. But I can you tell that consistently, in Maine, estimated conservatively when we first looked at this issue that we would be losing approximately \$100 to \$125 per day per resident. We are finding it much higher than that. I know Tennessee found that theirs were a little bit over \$200 per day.

But we would be happy, and we have committed ourselves all along with VA to work and collect data for them and provide them that data. We would be happy to provide what we have now.



[The information follows:]

Mr. Kelly supplied the data and analyses on the impact of the 70-Percent Program implementation as requested. Extensive patient data and Medicare Cost Reports were also provided to the VA Deputy Assistant Secretary for Intergovernmental Affairs and the VA Office of Inspector General. The data and analyses readily show that VA's Higher Per Diem payment only covers the approximate cost of room, board, and basic nursing. The VA's Higher Per Diem payment does not pay adequately for skilled care, and in fact, appears to pay only about 1/2 to 2/3 of what Medicare or other payers would reimburse the State Veterans Homes for the same care for nearly every State reporting to us. [The data supplied to the Subcommittee will be retained in the Committee files.]

Mr. MICHAUD. Thank you very much. I would like to thank each of you for your testimony today and I look forward to working with you as we move forward to resolve these issues. Thank you all.

I invite up the next panel, Dr. Burris, who is the Chief Consultant for Geriatrics and Extended Care under the Veterans Health Administration (VHA), and he is accompanied by Walter Hall, who is the Assistant General Counsel for the Department of Veterans Affairs.

I want to thank you, Doctor, for coming today. We look forward to your testimony and without any further ado, I will turn it over to you, Doctor.

**STATEMENT OF JAMES F. BURRIS, M.D., CHIEF CONSULTANT, GERIATRICS AND EXTENDED CARE, VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY WALTER A. HALL, ASSISTANT GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL, U.S. DEPARTMENT OF VETERANS AFFAIRS**

**STATEMENT OF JAMES F. BURRIS, M.D.**

Dr. BURRIS. Thank you, Mr. Chairman and Members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss H.R. 4241 and how VA has been working together with the State Veterans Homes to try to resolve issues that, as you know, are affecting a number of Homes.

For background, I will use the term "mandatory veterans" to refer to veterans who have a service-connected disability rated 70 percent or more or who need nursing home care because of a service-connected disability at a lower rate. These are the group of veterans for whom VA has been mandated to pay for nursing home care.

Under the State Home program, VA provides support to States to construct and operate nursing homes and domiciliaries for the care of veterans. In return, State Homes provide nursing home care to many of our Nation's veterans.

In testimony, we will begin by describing some of the issues that have arisen during implementation of the most recent legislative changes and the rules and how we have been working to address them and then briefly address H.R. 4241 specifically.

For many years prior to the enactment of Public Law 109-461, VA paid the full cost of the mandatory veterans' care in VA or private nursing homes. For State Homes, VA only paid a fixed basic per diem rate for all veterans. In 2006, Congress directed VA to pay State Homes the full cost of nursing home care for mandatory

veterans. VA regulations implementing this Congressional mandate became effective last May.

Although some States are satisfied with the new rates VA pays for mandatory veterans, many have reported problems. Some States report that they are now receiving smaller total payments from all payors for the care of these veterans because they believe they are no longer able to bill veterans or other payors. Some States report that VA payments do not cover their actual costs and, as a result, they can no longer afford to admit mandatory veterans. Others reported that VA facilities stopped providing specialty physician services to their mandatory veterans. I want to assure impending Subcommittee that VA is committed to the State Home Program and when we ascertain circumstances for the intent of Public Law 109-461, we are working hard and have been working for some time to try to find solutions and avoid adverse impact on veterans.

In an effort to better understand these difficulties, VA has met on several occasions with representatives of the National Association of State Directors of Veterans Affairs, the National Association of State Veterans Homes, the National Governors' Association and Congressional staff. As a result of these discussions, we believe that there are non-legislative actions that VA, working in cooperation with the State Veterans Homes, can take to ameliorate some of these issues.

We have asked the States to share with us supporting documentation that demonstrates how their actual costs for the care of ambulatory veterans exceed the allowable VA per diem payment under the current law and some of the States have provided those data, including Maine and Idaho and Vermont. With this information, we will be in a better position to understand the impact of Public Law 109-461 and address the States' concerns.

As you will note in my written testimony, we will also need that data to come to a conclusion on one element of the legislation we are here to discuss today, the provision related to using contracts for the State Homes.

VA has already taken steps toward resolving one of the reported difficulties. On October 19, 2009, VA issued guidance to its field facilities that the full per diem payment to State Homes covers nursing home services only and that VA facilities are to continue providing most specialty care to mandatory veterans as they did prior to the initiation of the new payments. This has assured veterans of access to needed care and provided cost avoidance for the State Homes.

There are also interagency discussions taking place because other Federal agencies payment rules form part of the Homes' support and we need to make sure everyone is clear on the interpretation of those regulations.

Further, we believe that some States may need assistance in understanding the provisions of Office and Management and Budget (OMB) Circular A-87, which States must use to calculate their actual cost of care for mandatory veterans. VA has offered to work individually with States to improve their understanding of Circular A-87 cost-accounting rules and enhance their cost recovery.

VA's official positions on the provisions of H.R. 4241 are stated in the written testimony which was submitted, so I won't reiterate that now but I will summarize that VA cannot support the legislation as it now written.

Mr. MICHAUD. Thank you for—are you all done?

Dr. BURRIS. Just to emphasize, as I did earlier this week at the winter meeting of the National Association of State Veterans Homes, that we are committed to finding a solution, we will continue to work with the State Homes and other partners to ensure these veterans are properly served. And please note that we are happy to meet with you and your staff at any time to discuss these issues and provide technical assistance. Thank you, sir.

[The prepared statement of Dr. Burris appears on p. 40.]

Mr. MICHAUD. Thank you very much, Doctor, and I want to thank you, Mr. Hall, for coming here today as well, and I appreciate your willingness. You say that you can fix this without legislation. However, as a Member who is sitting on this side of the aisle who passed the bill and has seen it take 2½, 3 years to implement, I have a concern with what has happened or is going to happen to our veterans who need long-term care.

We heard a devastating story of a veteran in Nevada. That is unconscionable and that is something that I would not be very proud of if I were over at VA.

Also, you mentioned in your testimony that the language in Public Law 109-461 stated that the veterans State nursing homes should be paid the full cost. What is your interpretation of “full cost?”

Dr. BURRIS. Well, Public Law 109-461 specifies that VA is to pay the full cost of nursing home care and the elements of nursing home care are defined in our regulations and include, for example, basic primary physician care, skilled nursing, nutrition and dietary services, routine and emergency medications, rehabilitation services and then there are some additional services that the Home is required to make available to veterans living there, but those other services, such as dental services, can be charged for.

So our sense is that the speciality medical services that the State Homes have referred to, such as dialysis or speciality physician care, would fall outside of the services that we're paying for with the per diem and that potentially those other services could be billed for. We have had staff level discussions with Medicare and Medicaid, staff level folks who have clarified for us that under the Centers for Medicare and Medicaid Services (CMS) rules, Medicare and Medicaid pay for a bundled set of services in the nursing home, but the unbundled services that fall outside of that package can be billed for.

We have recently met with the legislative office at the U.S. Department of Health and Human Services and the policy office at CMS to explain problems that have arisen in the implementation of the law and they have said that they will take that under consideration, go back to their general counsel and discuss it and try to come forward with a clarifying letter on what their policy is.

Mr. MICHAUD. And when do you expect that to happen, next year or the year after? I mean, I don't want to be sarcastic about it, but I am concerned that I see our veterans are not being taken care

of because of what I feel is improper implementation of the law that we passed. It is probably our fault for not specifying in more detail what full cost means, but it is our hope as legislators that we don't want to tie administrators hands so that they have no wiggle room. We expect common sense to be used.

But by the same token, we don't want to have legislation that would give you that flexibility, and at the same time be contrary to what the intent of the law was. Now, you mentioned that some services can be billed. It is my understanding that once the VA makes its payment to a State veterans nursing home, then they can no longer bill Medicare and Medicaid because that is considered payment in full.

So if that isn't payment in full, then you have a lot of State Veterans Nursing Homes that have a high population of Medicare and Medicaid, then they are on the short end of the stick, so who are they going to bill if they can't bill Medicare and Medicaid.

You know, that is the problem that we are facing and we do have a lot of nursing homes with both Medicare and Medicaid patients. So who are they going to bill? You mentioned that they can bill for those other services. If it is not Medicare or Medicaid, then who are they going to bill?

Dr. BURRIS. Well, there is quite a bit of variation from State to State in the way the Homes are funded. Some State Homes do receive a direct appropriation from the State. Many do not. They fall under different lines of authority in the State. Some are under the State Department of Veterans Affairs. Some are under the State Department of Public Health.

So it is very difficult to give a single answer to your question. But if the veteran had long-term care insurance, that might cover some of the services that are not part of our defined bundle of nursing home services.

If the veteran is eligible for care from VA, many services can be provided through the VA health care system.

Mr. MICHAUD. The VA runs long-term care facilities as well, correct.

Dr. BURRIS. Yes, sir, that is correct.

Mr. MICHAUD. How many veterans in your long-term care facilities have long-term care health insurance?

Dr. BURRIS. I don't know that number, sir.

Mr. MICHAUD. Would you have to go after that insurance first before the VA pays for it.

Dr. BURRIS. No. No. The VA per diem payment to the State would be made irrespective of what other sources are paying.

Mr. MICHAUD. Well, I am talking about the veterans that are in the VA facilities. You mentioned collecting payments from long-term care insurance, but I doubt very much that many veterans have long-term care health insurance. So my point is, if, in fact, you are taking care of veterans in the VA's long-term care facilities, you must have some idea of how many of those have long-term care health insurance, that you could probably go after third-party billing for. Would that be possible?

Dr. BURRIS. I do not have that data.

Mr. MICHAUD. Do you have to go after third-party billing for veterans in the long-term care facilities.

Mr. HALL. I believe for care provided for a non-service-connected disability, we may collect against third-party insurers.

Mr. MICHAUD. You may?

Mr. HALL. Yes.

Mr. MICHAUD. Have you?

Mr. HALL. I honestly couldn't tell you, sir.

[The VA met with Committee staff regarding the State Homes issues.]

Mr. MICHAUD. Well, my point is when the doctor mentioned collecting payments from veterans with long-term care insurance, I doubt very much if you are going to find veterans who need nursing home care if they have long-term care health insurance, so I think that argument is not valid.

My next question is, you mentioned that a number of States are satisfied with the new rates that the VA pays for mandatory veterans. What States are satisfied with the rules? You said "a number of States." So could you let me know what States are satisfied and whether or not they have a high Medicare or Medicaid population?

Dr. BURRIS. Well, I have only heard from a few States either directly either for or against.

Mr. MICHAUD. What are the few? In your testimony you say "a number." You're saying a few, so what are the States that are satisfied?

Dr. BURRIS. The State of Connecticut, the State of Utah. There was a third.

Mr. MICHAUD. If you could provide to the Committee the States that are satisfied, I would also like to know how many veteran nursing homes they have within those States and whether or not they are Medicare and Medicaid eligible.

[The VA provided the information in the response to Question 8 in the Post-Hearing Questions and Responses for the Record, which appears on p. 53.]

Mr. MICHAUD. My next question is, would a reimbursement schedule that bases payment on the actual acuity of each patient such as the VA does with the Resource Utilization Group, be an effective mechanism to properly and accurately reimburse State Veterans Homes on 70-percent veterans?

Dr. BURRIS. We have had discussions about that point. We believe that it might. We have not been able to—many of the State Homes are providing rough data for us now, but not all, so we wouldn't be able to implement that at the present time, but with the cooperation of the States to provide the data and a change in the method by which we calculate the prevailing rate, we would be able to do that.

Mr. MICHAUD. Once you have that information, how quickly do you think you might be able to put that system in place?

Dr. BURRIS. That would require a change in the regulations and it is, as you know, that is a fairly lengthy process. At best, a year. More likely a year and a half to two.

Mr. MICHAUD. If we were to get what you would want for regulations and actually put it in the Appropriations bill so it would go into effect immediately without waiting a year or 2 years, would that be satisfactory.

Mr. HALL. Yes, sir, if you could accommodate all the requirements of the regulations and statute, they are—unfortunately it is a very—as you know, the regs are very detailed and require, as these regulations did, careful cooperation of working with the State Homes themselves, State Home organizations to hopefully try to avoid the problems we have with these regulations.

And once they are in statute, they are much more difficult to change than they are when they are in regulations even.

Mr. MICHAUD. In your testimony you state that H.R. 4241 will increase the VA cost by \$17.5 million next year and \$200 million over a 10-year period. I am not sure whether that number is accurate, but it implies that either the current system is underpaying the State Veterans Homes by an equal amount or that more 70-percent veterans will receive nursing home care under this bill. Is that a fair assumption.

Dr. BURRIS. The estimate was made by—the States have told us that—let me back up one more step. The law specifies that we must pay either the prevailing rate or the actual cost of care, whichever is less. The States have told us that in most cases the actual cost of care determined in accordance with OMB Circular A-87 is less than the prevailing rate, so the way that that figure was derived was to say that if we are currently paying the States the actual cost of care, and under this law would instead pay them at the prevailing rate, then difference between calculating the actual cost and the prevailing rate would result in those numbers.

Mr. MICHAUD. And in your testimony you mentioned you were concerned about double dipping. If it is made clear that there is no double payment in this, would that change that fiscal number at all.

Dr. BURRIS. It wouldn't alter the cost to VA.

Mr. MICHAUD. There are currently laws on the books that would prevent double dipping and quite frankly no one wants to get paid twice for the job that they are doing once. And that is clearly not the intention of this legislation. So you know, it is my intent to actually make that very clear that there will not be double dipping.

My next question is, you heard from the previous panel, that there is a lot of concern that some of the State Veterans Nursing Homes will experience financial hardship depending upon the acuity of care and the number of veterans on Medicare or Medicaid who are eligible.

Quite frankly, you also heard that they will not be taking veterans because they cannot operate in the red for too long.

And the other issue that we heard is that, yes, some State Veterans Homes might still take some of the veterans, even though they might be operating in the red, but they will have to make a determination on whether or not they are going to have to exclude the veterans who have the most acuity, the veterans that really need the help.

I guess my question, Doctor, is when you said you could do this administratively, how quickly can you solve the problems that you have heard here today administratively.

Dr. BURRIS. Now, we have already addressed the issue of VA providing specialty care. That is done. And we have not continued to

receive concern about that issue from the States. I have asked them to let me know if there are needs where care is denied.

We have met with CMS and we will push—the VA Chief of Staff is taking direct interest in this issue. He has offered to call—in fact, did call his counterpart to start this process going. So we feel a sense of urgency about getting the Medicare and Medicaid business cleared away and clear guidance to both our field personnel and to the State Homes. We have offered to provide assistance on the cost accounting principles in OMB Circular A-87, to any of the States that feel they might benefit from that.

In terms of a change in regulation to base the prevailing rate on acuity of care, that would require a regulatory change and that would take some time.

Mr. MICHAUD. Some time meaning a year or 2 years?

Dr. BURRIS. Yes, sir. And whatever time is needed for the States to ramp up to provide us the data.

Mr. MICHAUD. Both the majority and minority staff will be submitting additional questions for the record. I just want to reemphasize, Doctor, that it appears that there are two, maybe three States that have no problem, which means that the overwhelming majority of the States do have a huge problem with the rules that were implemented to implement the statute.

As other Members of Congress hear more about what is happening at the State Veterans Nursing Homes, they are getting upset and rightfully so. And I don't want to have to deal with my colleagues from all around the country wanting to know why VA is not addressing this particular problem when we know they have known about it for some time.

I appreciate your working with the State Veterans Nursing Homes and I would encourage you to continue working with them because we have to solve this problem.

By the same token, it is my intent to move forward with this legislation in the event that you are not able to work something out and are willing to work with the State Veterans Homes to fine tune legislation to make clear what we intended when we passed the original law. I can't sit back and not do anything and expect VA to ask, because it is not all in your control. You had mentioned CMS. They have jurisdiction so I can't wait a year or 2 years in the meantime to hear similar stories to what we heard earlier today from the Nevada State Veterans Nursing Home, especially if you look at the service that they provide.

It is my understanding when you compare the cost of the State Veterans Nursing Home, to the cost of the VA long-term care, the State home is much cheaper. I don't know if that is still true today, but I assume that it is, so you are definitely getting your money's worth. But more importantly you are taking care of the veteran that needs that help, and that is something I want to work with you on. But by the same token, having talked with Ranking Member Brown, we don't want to take chances and have nothing get done.

So we will work to move this legislation forward. At the same time, hopefully, you are able to work within your separate agencies to try to solve this as quickly as possible.

As I mentioned earlier in my testimony, I have always been under the belief that we ought to allow those agencies the flexibility to work within the law to implement the intention of the law without having to have it very strict. I believe that you need that flexibility because we cannot envision all the problems that might occur down the road, and therefore, that flexibility should be there.

But by the same token, I also believe and I have seen over and over again, whether in the Maine legislature, when I was in the legislature there or here in Congress, some agencies tend to go beyond what the intent of the law was, whether because it is poorly written or whether it was written appropriately but those who are implementing the law just might like it, so they are doing whatever they want to do to implement it.

This is an issue that is extremely important. I talked to Senator Akaka yesterday at the Joint Hearing with the Senate Veterans' Affairs Committee and I will be working with him as well on this legislation. We have to solve the problem and I know that you understand the importance of it, and hopefully, with the testimony that you have heard today and with the individual State Veterans Nursing Home talking to you about the concerns they have, we can work together and solve these problems and take care of the veterans that we are supposed to be taking care of.

So I want to thank you, Doctor, for coming here and, Mr. Hall, for coming here and I look forward to working with you along with the State Veteran Nursing Homes across this country to address this big concern that we are faced with today.

So thank you very much and we will provide additional questions to the VA, as well as the State Veterans Nursing Homes in writing and hopefully you can get the responses in quickly.

If there is no other statement, then I would adjourn this hearing. Thank you for coming, I appreciate it.

[Whereupon, at 3:42 p.m. the Subcommittee was adjourned.]



## A P P E N D I X

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### **Prepared Statement of Hon. Michael H. Michaud, Chairman, Subcommittee on Health**

I would like to thank everyone for coming today.

Today's legislative hearing is an opportunity for Members of Congress, veterans, the VA and other interested parties to provide their views on and discuss recently-introduced legislation within the Subcommittee's jurisdiction in a clear and orderly process. This is an important part of the legislative process that will encourage frank discussions and new ideas.

Today, we will discuss H.R. 4241, which allows for increased flexibility in payments for State Veterans Homes.

I look forward to hearing the views of our witnesses on this bill before us.

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### **Prepared Statement of Colleen Rundell, M.S., LNHA, President, National Association of State Veterans Homes, and Administrator, Vermont Veterans Home, Bennington, VT**

Mr. Chairman and Members of the Committee, on behalf of the National Association of State Veterans Homes ("NASVH"), thank you for holding this hearing on H.R. 4241, legislation that would remedy the unintended consequences of the implementation of section 211(a) of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (Pub. L. No. 109-461) (the "70-Percent Program"). Implementation of the 70-Percent Program is not only inhibiting the long-term care of service-connected disabled Veterans (the opposite of its intended effect), but it is also threatening the financial viability of many of the nation's State Veterans Homes.

NASVH consists of the administrators and staff of *State*-operated Veterans homes throughout the United States and the Commonwealth of Puerto Rico. NASVH members currently operate 137 Veterans Homes in all 50 States and Puerto Rico. Our nursing homes provide approximately 28,000 nursing home and domiciliary beds for Veterans and their spouses, and the gold-star parents of Veterans. Our nursing homes assist the United States Department of Veterans Affairs ("VA") by caring for approximately 53 percent of the VA's long-term care workload at the very reasonable cost of only about 12 percent of the VA's long-term care budget.

The national State Veterans Home system is an economical alternative to other VA long-term care programs. In fact, the VA Office of Inspector General has reported:

A growing portion of the aging and infirm veteran population requires domiciliary and nursing home care. The SVH [State Veterans Home] option has become increasingly necessary in the era of VAMC [VA Medical Center] downsizing and the increasing need to discharge long-term care patients to community based facilities. VA's contribution to SVH per diem rates, which does not exceed 50 percent of the cost to treat patients, is significantly less than the cost of care in VA and community facilities.

Implementation of the 70-Percent Program, however, is creating very serious difficulties for State Veterans Homes throughout the country. This program authorized payment of different per diem amounts by VA to State Veterans Homes which provide nursing home care to Veterans with service-connected disabilities. The VA did not issue regulations to implement the 70-Percent Program until April 29, 2009, and problems arose immediately with its implementation. NASVH has met with VA officials in an attempt to address these problems administratively, but the VA has informed us that the issue can only be resolved fully by a modification of the law.

NASVH strongly supported, and strongly supports, the intent of the 70-Percent Program, which originated in legislation drafted by Senator Daniel Akaka and Congressman Jeb Bradley. In fact, after the enactment of the Veterans' Millennium Health Care and Benefits Act in 1999 (the "Millennium Act"), NASVH noted a disparity in the long-term care treatment of service-connected disabled Veterans. Specifically, after enactment of the Millennium Act, a service-connected disabled Veteran could receive cost-free care at a private community nursing home under a VA community nursing home contract, but that same service-connected disabled Veteran could not receive cost-free treatment at a State Veterans Home. Accordingly, Senator Akaka, Chairman of the Senate Committee on Veterans' Affairs, and Congressman Bradley introduced legislation to eliminate this disparity.

Chairman Akaka's legislation tried to achieve parity in the provision of nursing home benefits for our Veterans between community nursing homes and State Veterans Homes. Unfortunately, the implementation of Chairman Akaka's legislation has failed to achieve such parity and has resulted in numerous problems and unintended consequences.

Specifically, although the VA regulations implementing the 70-Percent Program 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 simply does not provide to many State Veterans Homes adequate reimbursement for their actual cost of care for disabled Veterans, despite congressional intent that it do so. To the extent that State Veterans Homes continue to admit service connected disabled veterans under the 70-Percent Program, it threatens the continued financial viability of such State Veterans Homes.

This problem is particularly acute in the 30 States that have Medicare-certified and/or Medicaid-certified State Veterans Homes. The impact is significant enough to have caused several such States already to incur substantial financial losses on the care of service-connected disabled Veterans under the 70-Percent Program, and others to refrain from admitting Veterans with service-connected disabilities, in order to avoid such financial losses. Accordingly, the implementation of the 70-Percent Program is having exactly the *opposite* result envisioned by Congress.

Although numerous representatives from NASVH, the American Health Care Association, the National Governors' Association, and others have all met with senior VA officials including Dr. James Burris to attempt to remedy the problems with the 70-Percent Program, we have been frustrated by the fact that senior VA officials appear simply to be unable or unwilling to address the 70-Percent Program's serious financial problems.

These problems can be illustrated by many examples from State Veterans Homes, several of which the Committee will hear today. One typical example comes from my home State of Vermont. Prior to implementation of the 70-Percent Program, Sergeant Jakob Lurie (a pseudonym for a 70 percent service-connected disabled veteran) was admitted to the Vermont Veterans' Home, which is Medicare and Medicaid certified. He had experienced a three-day hospital stay and was admitted to the Vermont Veterans' Home thereafter under Medicare. Sergeant Lurie had an acute medical condition that required rehabilitation. As a result, Sergeant Lurie received three hours of therapy each day, including an hour each day of physical, occupational, and speech therapy.

As detailed below, the average daily cost for Sergeant Lurie was \$476.51. Under the 70-Percent Program, however, the Vermont Veterans' Home would have received only \$302 a day for Sergeant Lurie's Care. The math does not add up under the 70-Percent Program, especially for Veterans requiring skilled nursing care.

In this example from the Vermont Veterans' Home:

Physical therapy	\$47.11 an hour including benefits
Occupational therapy	\$53.83 an hour including benefits
Speech/language therapy	\$60.57 an hour including benefits
Medications	\$22.00 daily average
Physician visits <sup>1</sup>	\$11.00 daily average
Wound vac machine for pressure area	\$33.00 daily average
Room and board	\$249.00 per day

<sup>1</sup>Per Federal regulations, a Veteran must be seen by a physician within 48 hours of admission for a full history and physical; then every 30 days for the first 90 days; then every 60 days. This schedule applies only if the Veteran is medically stable. Often, Veterans are not medically stable and must be seen more frequently.

(Room and Board, includes all nurses, aides, meals, dietary, social work staff, electricity, fuel for heat, medical supplies, adult briefs, etc.)

Total actual average daily cost for Sergeant Lurie: \$476.51/day

Compared to a 70-Percent Program calculated payment of only \$302/day, this is a loss to the Vermont Veterans' Home of \$174.51/day for just one resident.

After I calculated the loss that the Vermont Veterans' Home would have incurred on Sergeant Lurie under the 70-Percent Program, I calculated the substantial actual losses and minor gains that the Vermont Veterans' Home has experienced for other Veterans under the 70-Percent Program. These losses and gains are as follows:

Currently, the Vermont Veterans' Home has ten Veterans who qualify for the VA 70-Percent Program and this number is expected to grow. At a 70-Percent Program payment of \$302 per day, below are the actual financial results for these ten Veterans:

Veteran #1	loss of \$108.77/day
Veteran #2	loss of \$39.53/day
Veteran #3	loss of \$127.91/day
Veteran #4	loss of \$126.42/day
Veteran #5	loss of \$42.01/day
Veteran #6	loss of \$124.76/day
Veteran #7	above cost by \$7.14/day
Veteran #8	above cost by \$7.13/day
Veteran #9	above cost by \$17.14/day
Veteran #10	above cost by \$41.79/day

On the average, the 70-Percent Program rate will result, for just the first ten veterans admitted under the Program, in an annual loss to the Vermont Veterans' Home of \$181,113.

As Veterans age, their medical needs often increase and further aggravate the shortfall between a State Veterans Home's costs and VA payments under the 70-Percent Program.

NASVH supports H.R. 4241, introduced by Congressman Michael H. Michaud. The enactment of H.R. 4241 would allow service-connected disabled veterans to receive the nursing home care that Congress intended, while reimbursing State Veterans Homes fully and more accurately for such care.

H.R. 4241 would do four things. First, it would allow State Veterans Homes to serve service-connected disabled veterans, at no cost to such veterans, under the VA's existing community nursing home contract program. This was Senator Akaka's original intent in proposing the legislation which became the 70-Percent Program, and we believe that such intent should be honored now.

Second, if a community nursing home contract cannot be arranged between the VA and a State Veterans Home for a service-connected disabled Veteran, H.R. 4241 would require that payments under the VA's 70-Percent Program be computed according to a State Veterans Homes' actual cost to care for a Veteran, and not computed according to OMB Circular A-87, which in almost all instances allows a lesser reimbursement than the prevailing rate determined by the Secretary of the VA.

Third, H.R. 4241 would clarify that State Veterans Homes and private medical providers could continue to receive payment from sources other than the VA for services not reimbursed under the 70-Percent Program and required for the medical treatment of service-connected disabled veterans residing in State Veterans Homes.

Fourth, H.R. 4241 would clarify, consistent with existing law, that payments made to a State Veterans Home under the 70-Percent Program cannot be offset against any other payment made to assist a service-connected disabled veteran.

In addition, NASVH would support a clarification to H.R. 4241 to emphasize the fact that a State Veterans Home cannot receive payment from the VA under more than one of the following alternative programs: (1) the community nursing home contract program; (2) the 70-Percent Program; or (3) the VA's basic (lower) per diem program, plus Medicaid or Medicare, for a Veteran residing in a State Veterans Home, and that a State Veterans Home cannot receive payment more than once for the same service provided to any Veteran by a State Veterans Home. These requirements generally are already subject to normal audits by the VA, Medicare, and Medicaid under existing law, and can be enforced easily under existing auditing processes. Lastly, we believe that the VA should pay any co-pay required for the receipt of Medicare or Medicaid services under the 70-Percent Program by a veteran so that such care is provided at no cost to such veteran. Payment in full by the VA for a veterans care means payment in full by the VA.

NASVH believes that enactment of H.R. 4241 will resolve the problems that have arisen in implementing the 70-Percent Program, and permit all State Veterans Homes to admit 70 percent Veterans without adverse financial consequences. We welcome the efforts of this Committee, the Senate Committee on Veterans' Affairs, and the VA to work together to solve at the earliest possible time the reimbursement problems with the 70-Percent Program.

There is widespread support for our efforts to address this issue promptly. In addition to NASVH, the National Association of State Directors of Veterans Affairs, the National Governors' Association, and the American Health Care Association have all called for action to remedy the reimbursement problems associated with the 70-Percent Program. I have attached copies of resolutions and letters from these organizations in support of our efforts. Other Veterans service organizations such as the Military Order of the Purple Heart, the Catholic War Veterans, American Gold Star Mothers, and the American Legion all have indicated their support for H.R. 4241 as well.

It has been asked whether the reimbursement deficiencies under the 70-Percent Program could be resolved by the use of "fee basis care" payments from the VA to State Veterans Homes to cover costs not covered by per diem payments under the 70-Percent Program. NASVH does not believe that fee basis care payments ultimately can resolve this problem. Fee basis care payments are discretionary by the VA, are largely not designed for long-term nursing home care, and do not cover many services required for nursing home care.

NASVH believes that the fairest and most accurate way to reimburse Medicare-certified and Medicaid-certified State Veterans Homes for the care of service-connected disabled Veterans under the 70-Percent Program is for the VA to use the example of the existing Medicare payment system as much as possible. Under Medicare, reimbursements for nursing home care fluctuate according to the acuity (degree of illness) of individual patients. Required pharmaceuticals and specialty care are automatically reimbursed, if legitimately required. Nursing homes do not ordinarily lose substantial amounts of money for patient care under the Medicare program. Accordingly, NASVH believes that Congress should not require the 30 States which operate Medicare-certified and Medicaid-certified State Veterans Homes to change fundamentally the way they fund their State Veterans Homes. Congress rather should require the VA to coordinate its reimbursement schedules under the 70-Percent Program, to the extent possible, with the example of the existing Medicare system.

I want to thank you, Mr. Chairman, the entire House Veterans' Affairs Committee, and its professional staff, for the leadership and skill that you have shown in addressing the long-term care needs of our nation's service-connected disabled Veterans within the State Veterans Home system. I am sure that, working together, we can promptly remedy the serious problems that exist in the VA's current 70-Percent Program.

Attachments [The attachments are being retained in the Committee files.]

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**Prepared Statement of Robert D. Tuke, Chairman, Tennessee State  
Veterans Homes Board, Murfreesboro, TN**

Mr. Chairman and Members of the Committee, thank you for the opportunity to submit testimony to you today. I am Robert Tuke, and I am the Chairman of the Tennessee State Veterans Homes Board. As a Marine Vietnam Veteran with a minor service connected disability, I am especially interested in supporting efforts to assist disabled veterans whenever possible. So it is a double privilege and honor to address you today.

The Tennessee State Veterans Homes operate much in the same manner as private nursing homes. The Tennessee State Veterans Homes Board does not receive funding for operations from the State. Instead, it must maintain financial viability just as any other nursing home organization. The Tennessee State Veterans Homes Board operates three nursing homes, each with 140 beds, dually certified for Medicare and Medicaid. The revenues generated and collected by our Homes are the operating funds for the organization, from which the Board pays its employees, vendors, debt service, repair and replacement of equipment and buildings, and from which it funds its capital purchases.

As you know, the VA Regulations promulgated pursuant to the Veterans Benefits, Health Care, and Information Technology Act of 2006 became effective on May 29, 2009. At that time, there were a total of 13 residents in our three homes who met the criteria for the VA 70-Percent Program. By the end of January 2010, eight months later, the total of such residents was 23, an 84.7 percent increase. Of the 23 current residents, 18 require skilled nursing home care and the other 5 require standard, custodial nursing care. Based on the average daily census of our three homes, 5 percent of the patient population are covered by the VA 70-Percent Program.

We anticipate these numbers to continue to increase as more veterans become aware of the program and elect admission into the state veterans homes. Tennessee does not limit and has no intention of limiting admissions to its nursing homes on the basis of payor source, and we will not limit admissions under the VA 70-Percent Program. However, there are consequences to revenues and expenses arising from the VA 70-Percent Program that are problematic to the long-term financial viability of the Tennessee State Veterans Homes, just as there are to state veterans homes nationwide.

As I have pointed out, the vast majority of the new admissions under this program require skilled nursing care services. This means that the billings for services for these residents are submitted to the VA instead of to our fiscal intermediary for Medicare reimbursement. Therefore, the loss of revenue calculations we are presenting today are based on actual payments received from VA compared to what our reimbursement from Medicare would have been had we been able to bill Medicare. Additionally, many expense items that are reimbursed adequately under the consolidated billing rules for Medicare are not reimbursed adequately under the VA 70-Percent Program. Examples include services by an attending physician, specialists, and emergency transportation. In addition, we can no longer bill Medicare Parts B and D for services on this segment of our patient population. In essence, when we admit residents who qualify for the VA 70-Percent Program, we incur higher expenses and receive lower reimbursements for services than we are able to bill for those same services to other applicable payor sources.

The VA 70-Percent Program reimbursement is based on the *lesser* of the prevailing rate as established by the Secretary for Veterans' Affairs or the *average* daily cost of care for all residents based on actual expenses incurred by the nursing home. The average daily cost of care calculation results in a reimbursement skewed by the much larger percentage of intermediate care residents in each home as compared with skilled care residents. For example, if 5 percent of the resident population in a given home qualify for the VA 70-Percent Program and 15 percent of residents in the home are covered by Medicare, the remaining 80 percent require only intermediate or custodial nursing care. The expenses associated with custodial care are significantly lower on a per patient day basis than those for skilled care. Moreover, as the calculation that follows shows, the VA 70-Percent Program residents incur expenses which are higher than those incurred by our Medicare residents. When the total expenses are divided by the total patient days to obtain the 'average daily cost of care,' the resulting average is much less than the actual cost of care for the residents qualifying under the VA 70-Percent Program.

A comparison between the charges and reimbursements for skilled services billed to Medicare and billed to the VA 70-Percent Program follows.

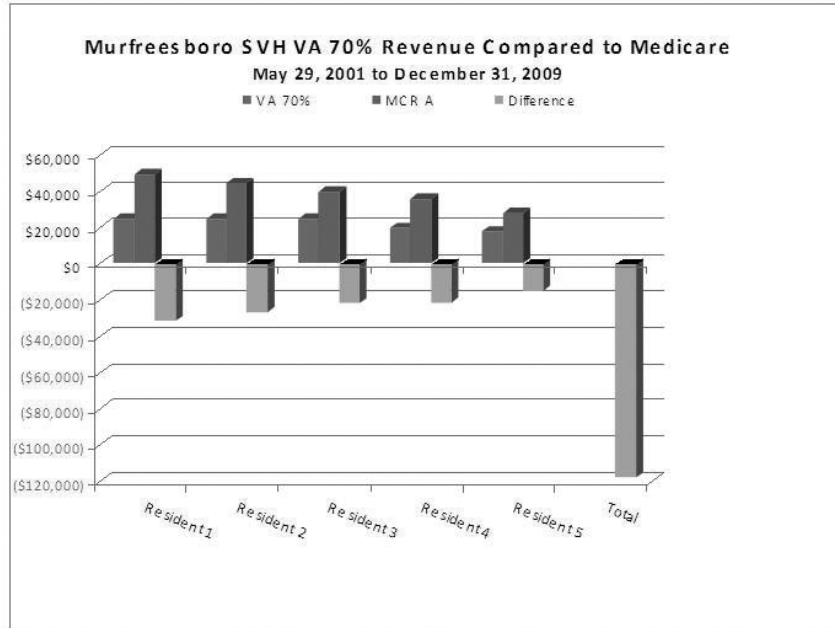
Description	Medicare	VA 70%
Room & Board	\$6,572	\$6,572
Attending Physician	-	200
Specialist	-	300
Pharmacy	728	728
Medical Supplies	380	380
Oxygen	900	900
Physical Therapy	1,860	1,860
Speech Therapy	2,720	2,720
Laboratory	70	70
Radiology	150	150
Inhalation Therapy	16	16
Total Charges	\$13,396	\$13,896
Estimated due from Medicare	\$12,400	-
Billed to VA 70% Program		7,564
VA Standard per diem	2,387	
Total Reimbursement	\$14,787	\$7,564
Revenue Loss		\$7,223

As you can see, the current reimbursement methodology does not provide sufficient funding to the State Veterans Homes. Tennessee estimates the loss of \$338,000 in revenues from May 29, 2009 to the present because of the funding constraints of the VA 70-Percent Program. Please see the attached graphic demonstrations. This substantial loss does not include the realized increase in provision of care costs experienced by the State Veterans Homes as prescribed under the VA 70-Percent Program.

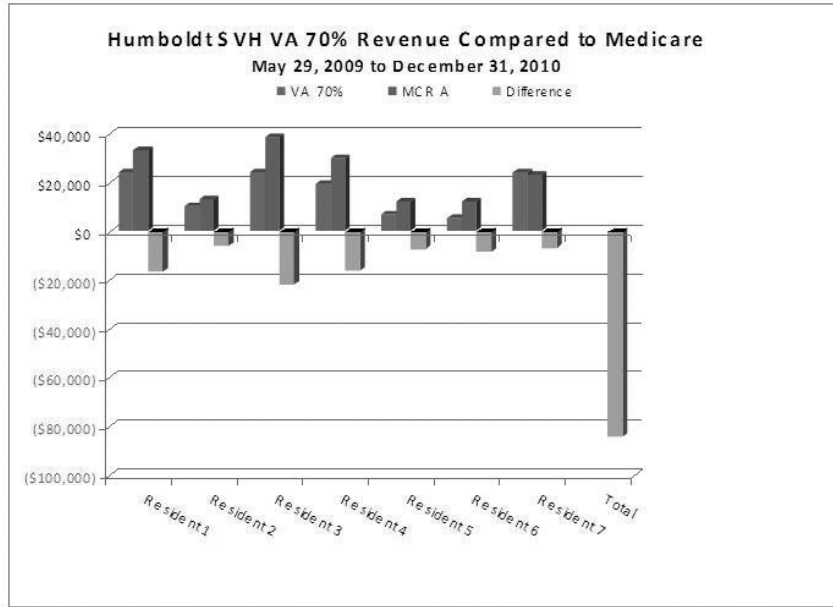
Obviously, the Tennessee State Veterans Homes Board cannot continue to absorb this increase in expenses and reduction in reimbursement without dire fiscal consequences. Therefore I urge you to support H.R. 4241.

Thank you.

		VA 70%	MCR A	VA Supp	MCR plus VA Supp	Difference	Days
	<b>Resident 1</b>	\$24,382.00	\$48,928.30	\$7,445.00	\$56,373.30	(\$31,991.30)	100
	<b>Resident 2</b>	\$24,382	\$43,972.74	\$7,445.00	\$51,417.74	(\$27,035.74)	100
	<b>Resident 3</b>	\$24,382.00	\$39,210.20	\$7,445.00	\$46,655.20	(\$22,273.20)	100
	<b>Resident 4</b>	\$19,506	\$35,323.00	\$5,956.00	\$41,279.00	(\$21,773.40)	80
	<b>Resident 5</b>	\$17,311.22	\$27,494.56	\$5,285.95	\$32,780.51	(\$15,469.29)	71
	<b>Total</b>					(\$118,542.93)	
1/20 admit	<b>Resident 6</b>					\$0.00	
1/21 admit	<b>Resident 7</b>					0	
Used actual 70 percent rate \$243.82 vs Actual MCR rate per day per resident including supplement							
Residents that were eligible to access MCR Part A since May-09							

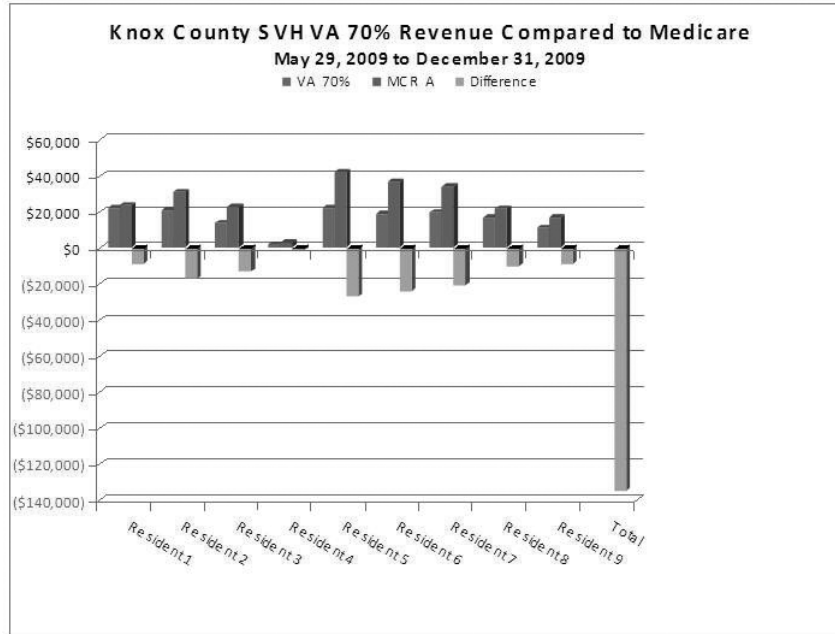


	VA 70%	MCR A	VA Sup	MCR plus VA Supp	Difference	Days	
<b>Resident 1</b>	\$23,867.00	\$33,227.00	\$7,442.00	\$40,669.00	(\$16,802.00)	100	
<b>Resident 2</b>	\$10,024	\$12,883.54	\$3,256.26	\$16,139.80	(\$6,115.66)	42	DC
<b>Resident 3</b>	\$23,867.00	\$38,623.70	\$7,442.00	\$46,065.70	(\$22,198.70)	100	
<b>Resident 4</b>	\$19,332	\$29,788.55	\$6,028.02	\$35,816.57	(\$16,484.30)	81	DC
<b>Resident 5</b>	\$6,921.43	\$12,140.91	\$2,158.18	\$14,299.09	(\$7,377.66)	29	DC
<b>Resident 6</b>	\$5,251	\$12,140.91	\$1,637.24	\$13,778.15	(\$8,527.41)	22	DC
<b>Resident 7</b>	\$23,867.00	23,017.10	7,753.00	30,770.10	(\$6,903.10)	100	
<b>Total</b>				Total Loss	(\$84,408.83)		
Used Actual 70 percent Rate for Humboldt \$238.67 vs Actual MCR rate per day per resident							
Residents that were eligible to access MCR Part A since May-09							



	VA 70%	MCR A	VA Supplement	MCR with VA	Difference	Days	
x	<b>Resident 1</b>	\$21,828.00	\$23,373.00	\$7,656.59	\$31,029.59	(\$9,201.59)	100
	<b>Resident 2</b>	\$20,300.00	\$30,734.47	\$7,210.29	\$37,944.76	(\$17,644.72)	93
	<b>Resident 3</b>	\$13,533.36	\$22,246.50	\$4,800.04	\$27,046.54	(\$13,513.18)	62
	<b>Resident 4</b>	\$1,528.00	\$2,733.78	\$542.71	\$3,276.49	(\$1,748.53)	7 DC 10/16
x	<b>Resident 5</b>	\$21,828.00	\$41,414.00	\$7,753.00	\$49,167.00	(\$27,339.00)	100
x	<b>Resident 6</b>	\$18,336.00	\$36,355.00	6512.52	\$42,867.52	(\$24,532.00)	84
	<b>Resident 7</b>	\$19,429.92	\$33,559.00	6900.17	\$40,459.17	(\$21,029.25)	89
	<b>Resident 8</b>	\$16,589.00	\$21,490.00	\$5,892.28	\$27,382.28	(\$10,793.00)	76
	<b>Resident 9</b>	\$10,695.72	\$16,357.00	\$3,798.97	\$20,155.97	(\$9,460.25)	49
	<b>Total</b>					(\$135,261.52)	
	Used Knoxville VA 70 percent Rate of \$218.28 vs Actual MCR rate per day per resident					(\$219,670.35)	
	Residents that were eligible to access MCR Part A since May-09						





**Prepared Statement of Keith T. Ribbentrop, State Veterans  
 Home Liaison Officer, Yukio Okutsu State Veterans Home, Hilo, HI**

Mr. Chairman and Members of the Subcommittee:

My name is Keith Ribbentrop. I am the State Veterans' Home Liaison Officer to the Yukio Okutsu State Veterans Home in Hilo Hawaii. I am retired from the United States Air Force, and as a disabled combat veteran of the Vietnam War, I am here today, grateful for the opportunity to advocate for my comrades-in-arms. Thank you for the honor to speak on their behalf.

The Veterans Benefits, Health Care, and Information Technology Act of 2006 (Pub. L. No. 109-461) authorized the United States Department of Veterans Affairs (VA) to make payments to State Veterans Homes that provide nursing home care to certain veterans with service-connected disabilities (also known as the 70-Percent Program).

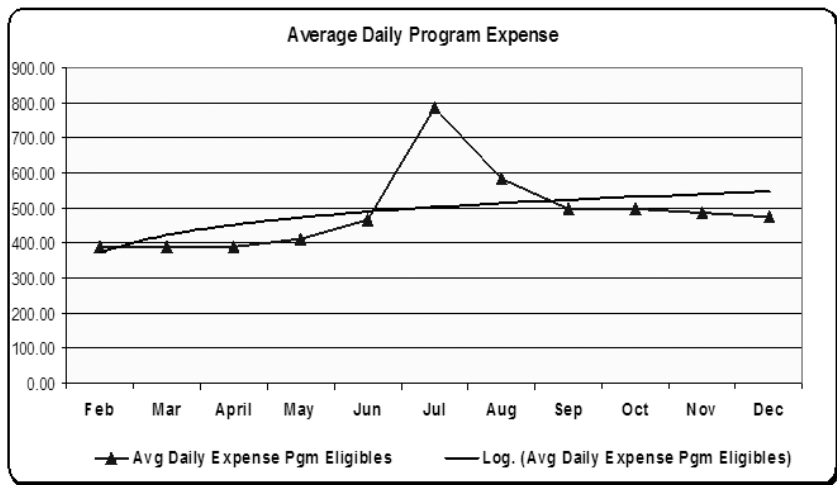
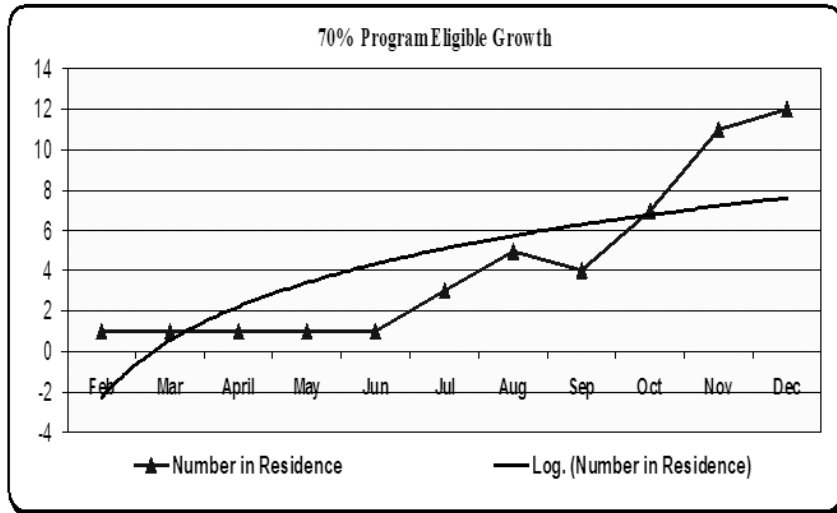
VA regulations implementing section 211(a) of the statute that took effect earlier this year purport to provide a higher per diem rate for 70-Percent Program eligible veterans. However, the program as implemented has actually resulted in significantly *lower* payments to many State Veterans Homes. Unless revised, the 70-Percent Program will not provide the actual cost of care to State Veterans Homes despite congressional intent.

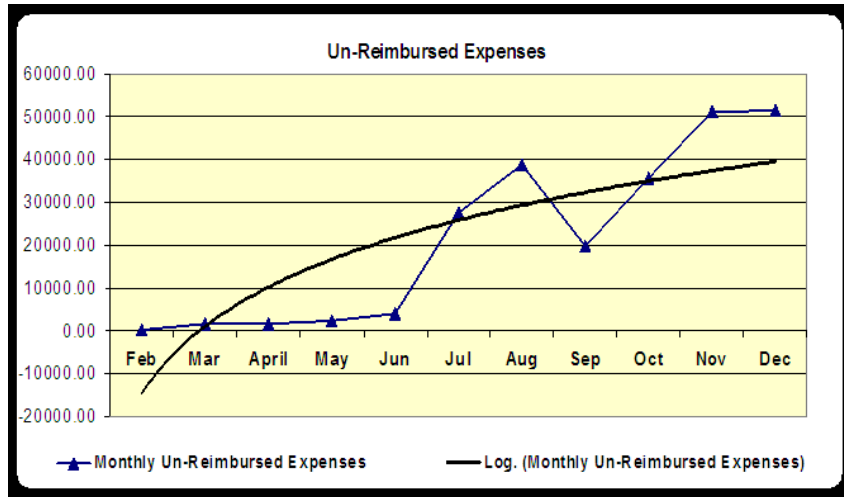
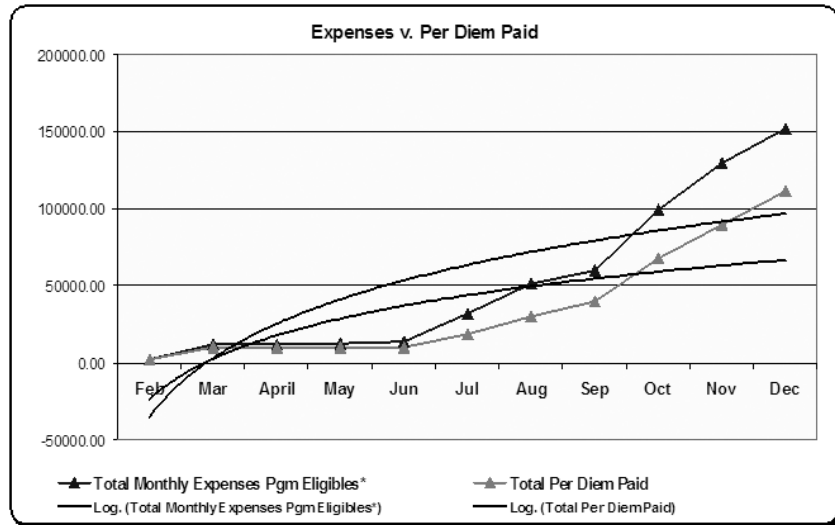
The problem is particularly urgent for states that are Medicare and Medicaid (CMS) certified. There are 30 states across the nation with CMS certified Homes, one of which is Hawaii. Our Home receives payment for the care of veterans with service-connected disabilities for a limited period of time under the Medicare program. However, those veterans eligible for the higher per diem rate *are not* eligible for Medicaid funds. The following table and charts reflect that as the number of veterans eligible for the higher per diem rate increases (1200% in Hawaii since June 2009), the disparity between per diem and cost increases as well thereby threatening the State Homes' viability.

2009 70% Pro- gram	Number in Residence	Total Monthly Expenses Pgm. Eligible's <sup>1</sup>	Avg Daily Expense Pgm. Eligible's	Daily Excess Costs	Total Per Diem Paid <sup>2</sup>	Monthly Un-Reimbursed Expenses
Feb	1	\$ 2,331.00	\$ 388.50	\$ 57.15	\$ 1,988.10	\$ 342.90
Mar	1	\$ 12,043.50	\$ 388.50	\$ 57.15	\$ 10,271.85	\$ 1,771.65
April	1	\$ 11,655.00	\$ 388.50	\$ 57.15	\$ 9,940.50	\$ 1,714.50
May	1	\$ 12,747.75	\$ 411.22	\$ 79.87	\$ 10,271.85	\$ 2,475.90
Jun	1	\$ 13,950.46	\$ 465.02	\$ 133.67	\$ 9,940.50	\$ 4,009.96
Jul	3	\$ 32,103.09	\$ 785.80	\$ 888.85	\$ 18,555.60	\$ 27,554.40
Aug	5	\$ 51,382.62	\$ 582.44	\$ 1,255.47	\$ 30,152.85	\$ 38,919.46
Sep	4	\$ 59,622.29	\$ 496.85	\$ 662.01	\$ 39,762.00	\$ 19,860.29
Oct	7	\$ 98,969.32	\$ 495.82	\$ 1,153.85	\$ 67,519.92	\$ 35,769.34
Nov	11	\$ 129,318.19	\$ 485.97	\$ 1,704.86	\$ 89,695.58	\$ 51,145.73
Dec	12	\$ 152,088.23	\$ 474.91	\$ 1,713.12	\$ 111,209.28	\$ 51,393.63

<sup>1</sup> Actual expenses incurred by 70-Percent Program eligible veterans for the number in-residence days at the State Veterans Home under the 70-Percent Program.

<sup>2</sup> Daily VA per diem rate from February through October 2009 \$331.35; from October 2009 through December 2009 \$330.98.





I believe the VA has done all that it can under current law. However, the VA's administrative measures only relieve a portion of the financial burden. Hawaii Island, where the State Veterans Home is located, suffers from a critical shortage of doctors (see attachment) as well as specialty medical services. This shortage requires transport of a resident 200 miles by air to the island of Oahu where care would be available.

The rapid growth of the 70-Percent Program eligible veterans in our Home is duplicated nationwide. Because of this growth and the financial implications, many states have constrained admission of veterans under the new program. The Yukio Okutsu State Veterans Home is proud to report that it is nearing capacity. We are 99 percent filled and soon will need to establish a waiting list. Our Home's wait list is established with priority given to service connected disabled veterans by rank order of disability rating.

The 70-Percent Program has been a blessing for many veterans and their families. As the Yukio Okutsu State Veterans Home—Hilo reaches capacity, Mr. Mark Moses, State Director, Office of Veterans Services has begun to assess the need for

Hawaii's next State Home. The 70-Percent Program will have a profound impact on his planning and implementation.

The National Association of State Veterans Homes has proposed technical amendments to the 70-Percent Program that are reflected in H.R. 4241, introduced by Representative Michael H. Michaud, a member, House Committee on Veterans' Affairs. The amendments contained in H.R. 4241 will allow all State Veterans Homes greater flexibility for admission and for care of veterans with service-connected disabilities without jeopardizing the future of the Homes. As you and the Committee on Veterans' Affairs deliberate H.R. 4241, please know that it will be beneficial to both veterans as well as the Homes built to serve them. I urge you to support this measure.

Mr. Chairman, thank you for your dedication, and the dedication of the Committee on Veterans' Affairs in support of our nation's veterans.

**Physician Needs Estimate Provided by Hilo Medical Center**

Specialty	2010 Service Area Population	2010 Adjusted Service Area Population 1	Total Estimated Physician Need		Number of Existing Physicians	Estimated Reduction in Practicing Physicians 2010 2	Estimated Reduction in Practicing Physicians 2011 2	2010 Estimated Net Need		2011 Estimated Net Need	
			Hi	Low				Hi	Low	Hi	Low
General/Family Practice	85381	63438	20.7	15.9	18	5	3	7.7	2.9	10.7	3.7
General Internal Medicine	85381	63438	18.7	18.1	16	4	2	6.7	6.1	8.7	10.3
Pediatrics	85381	63652	10	7.9	5	1	0	6	3.9	6	6.7
OB/Gyn	85381	77364	9.7	7.7	7	1	0	3.7	1.7	3.7	2.3
Neonatal/Perinatal	85381	74905	0.7	0	0	0	0	0.7	0	0.7	0
Pediatric Subspecialties	85381	79012	1.3	0	0	0	0	1.3	0	1.3	0
Cardiology	85381	77833	5.1	2.5	3	1	0	3.1	0.5	3.1	0
Endocrinology	85381	69637	0.8	0.6	0	0	0	0.8	0.6	0.8	1.2
Gastroenterology	85381	79293	2.7	2.1	3	2	0	1.7	1.1	1.7	0.2
Hematology/Oncology	85381	67733	1.8	2.5	1	1	0	1.8	2.5	1.8	4
Infectious Diseases	85381	74794	0.9	0.7	0	0	0	0.9	0.7	0.9	1.4
Nephrology	85381	76314	1.3	0.9	1	0	0	0.3	-0.1	0.3	-0.3
Pulmonology	85381	74597	1.9	1.1	1	1	0	1.9	1.1	1.9	1.2
Rheumatology	85381	69372	0.8	0.5	0	0	0	0.8	0.5	0.8	1
Allergy & Immunology	85381	79012	0.9	0.7	0	0	0	0.9	0.7	0.9	1.3
Dermatology	85381	70602	2.2	2	2	0	0	0.2	0	0.2	0
General Surgery	85381	58939	5.9	5.7	3	1	1	3.9	3.7	4.9	7.3
Colon & Rectal Surgery	85381	79012	0.3	0	0	0	0	0.3	0	0.3	0

Neurology	85381	79012	2.8	1.8	1	1	0	2.8	1.8	2.8	2.6
Neurosurgery	85381	7317	0.1	0.1	0	0	0	0.1	0.1	0.1	0.2
Ophthalmology	85381	92893	5.5	4.4	3	0	0	2.5	1.4	2.5	2.8
Orthopedic Surgery	85381	67989	4.6	4.2	1	1	0	4.6	4.2	4.6	7.4
ENT	85381	55353	1.7	1.8	1	0	0	0.7	0.8	0.7	1.6
Plastic Surgery	85381	79012	1.6	0.9	0	0	0	1.6	0.9	1.6	1.8
Thoracic Surgery	85381	79012	1.3	0.7	0	0	0	1.3	0.7	1.3	1.3
Urology	85381	63609	2	2	1.5	0.5	0	1	1	1	1.5
Psychiatry	85381	69859	9.2	11.1	3	2	0	8.2	10.1	8.2	18.2
Rehabilitation	85381	79012	1.6	1.3	2	0	0	-0.4	-0.7	-0.8	-1.4

<sup>1</sup> Population adjusted for market share.

<sup>2</sup> Reduction estimates based on number of physicians who will turn 65 within time frame.

**Prepared Statement of Gary Bermeosolo, Legislative Officer, National Association of State Veterans Homes, and Administrator, Nevada State Veterans Home, Boulder City, NV**

Mr. Chairman and other Distinguished Members of the Subcommittee on Health of the U.S. House of Representatives Committee on Veterans' Affairs, thank you for inviting me to testify at this legislative hearing.

As the Legislative Officer of the National Association of State Veterans Homes (NASVH) and as the Administrator of the Nevada State Veterans Home (NSVH), I am honored to be here with you this afternoon to request your support for H.R. 4241, a bill to amend chapter 17 of title 38, of the United States Code, to allow for increased flexibility in payments for state veterans homes.

When Public Law 109-461 passed in 2006, its intent was to correct the inequities that existed in the system, whereby veterans with a 70 percent or greater service connected disability rating couldn't come to a state veteran home at no cost, but they could go to a community nursing home at no cost. This was a well-intended law and we thought it would correct this inequity.

However, when Public Law 109-461 took effect, on April 29, 2009, the regulations implementing it created more inequities than it corrected. In essence, state veterans homes are being offered a flat rate to assume all responsibility for the veteran's care, which has and will continue to create financial hardships on state veterans homes.

Previously, we were able to admit veterans with a 70 percent or greater service connected disability as "private pay" residents. Now, we are being required to admit them under a program intended to cover their total cost of care, but one which actually places the cost of their care on the state. Consequently, many states can't admit these veterans because of this financial burden.

It is difficult to calculate the actual cost of this burden and/or the number of states currently impacted because many states aren't accepting these veterans because they don't have the funds to provide the required care. They are simply unwilling to assume the risk by exposing their states to the financial uncertainties of this new program.

Let me assure you, this is not an issue confined to any one state. This is a nationwide problem. NASVH is comprised of the 137 state veterans homes across the country. Since Public Law 109-461 was implemented, I have been contacted by administrators and directors of state home programs from all over the United States requesting my assistance, as NASVH's Legislative Officer, with the financial challenges this law has created for their states.

And, while I am very concerned as the Legislative Officer for NASVH, I am also very concerned as the Administrator of the Nevada State Veterans Home in Boulder City. Let me share with you just one of the many experiences I have had in Nevada in recent months.

The wife of an applicant, who we'll call Mr. Disabled Veteran (D.V.), came to our Home on July 21, 2009, seeking admission for her husband, a World War II veteran. She was desperate to get him in our Home where she could be confident he would receive quality care and have opportunities to socialize with other vets who he could relate to.

We gave her a tour and brought her back to the office to review our Home's offerings and application process. As we began discussing our daily cost of care, Mrs. D.V. indicated her husband had a 100 percent service connected disability rating and, consequently, she was not being charged for his care at the community nursing home where he currently resided. We explained to Mrs. D.V. the difference between the community nursing home's and the state home program's reimbursement arrangement with VA and shared with Mrs. D.V. that we cannot, under the current law, provide care for her husband because of the potential financial implications for the State of Nevada.

At this point, Mrs. D.V. began crying and asked how this could be possible, since we aren't just a nursing home, but a nursing home especially for veterans. I gave Mrs. D.V. a history of how we arrived at this point and indicated I was working with other state home programs and Congress to fix this problem, but until it's fixed, we simply can't assume the risk of admitting 70 percent or more disabled veterans.

Mrs. D.V. then reached in her purse and retrieved her check book. As she waived it in the air she stated, "But I'll pay for his care if you'll just admit him." We then shared with her that VA Regulations won't allow her to pay for the cost of her husband's care. She began sobbing as she tried to come to terms with what we were telling her. At this point, I looked this woman in the eyes and I promised her I would do everything possible to get this fixed.



As our meeting concluded, we encouraged Mrs. D.V. to check back with us periodically to see if the law had been fixed. Mrs. D.V. called me back in August, then again in September, and again in October, and again in November, each time asking if “the 70 percent thing” was fixed yet. Each time, we had to tell her “no, but we’re still working on it.”

Mrs. D.V. doesn’t call me anymore. Her husband died on December 16, 2009, never able to access the care he deserved as a 100 percent service connected disabled veteran.

It is impossible to convey how difficult it is to turn these folks away. State home administrators across the country are unwilling to assume the risk of bankrupting their programs, which would have the catastrophic effect of displacing their current residents.

Mr. Chairman and Members of the Committee, I implore you—please correct this injustice. We are turning away the people who most deserve and need care in state veterans homes. H.R. 4241 corrects the inequities and achieves the end result we were all hoping for and, most importantly, that our veterans deserve.

Mr. Chairman, this concludes my statement. Thank you for permitting me to testify today on behalf of the National Association of State Veterans Homes and the Nevada State Veterans Home Program. I will be pleased to answer any questions.

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**Prepared Statement of Kelley J. Kash, Chief Executive Officer,  
Maine Veterans’ Homes, Augusta, ME**

Mr. Chairman, and Members of the Subcommittee, thank you for inviting me to testify here today at this hearing on H.R. 4241. My name is Kelley J. Kash, and I am the Chief Executive Officer of the Maine Veterans’ Homes. The Maine Veterans’ Homes strongly supports H.R. 4241.

The Maine Veterans’ Homes is a public non-profit system of State Veterans Homes established by the government of the State of Maine. We currently operate 640 skilled nursing, long-term care nursing, and domiciliary beds at six locations throughout the State of Maine, at Augusta, Bangor, Caribou, Scarborough, South Paris, and Machias. The Maine Veterans Homes operates its nursing facilities entirely with its own employees, under a Board of Trustees appointed by the Governor of Maine, and we have no management arrangements with private corporate entities.

The Maine Veterans’ Homes is located in one of the 30 States in the nation that have Medicare-certified and/or Medicaid-certified State Veterans Homes. In fact, all nursing facilities of the Maine Veterans’ Homes are both Medicare and Medicaid certified, and we have operated successfully in this manner for almost 30 years. As such, the Maine Veterans’ Homes provides in conjunction with the Medicare and Medicaid payment systems a wide range of post-acute, post-operative, and rehabilitative services to Maine veterans, at no cost, or at very low cost, to such veterans. Such post-acute, post-operative and therapeutic care is known in the health care community as “skilled nursing care.” The Maine Veterans’ Homes provides a lot of skilled nursing care to Maine veterans, and as you have heard here today, skilled nursing care is precisely the type of nursing care for which the VA’s new 70-Percent Program causes a State Veterans Home to incur the greatest financial losses.

The more skilled nursing care that a State Veterans Home provides to veterans under the 70-Percent Program, the larger are its losses. In fact, the Maine Veterans’ Homes has estimated that, based on the demographics of the Maine Veteran Population, if we were to admit every veteran in Maine that reasonably could seek admission to the Maine Veterans’ Homes under the 70-Percent Program, the Maine Veterans’ Homes would sustain a net loss of between \$8 and \$16 million per year, and be bankrupt within 1½ to 3 years. Concerning this fact, it is important to note that the 70-Percent Program in its final form, contrary to Senator Akaka’s original intent, does not serve only those “severely-disabled service-connected veterans” with a 70 percent or greater disability. The 70-Percent Program serves any veteran with a service-connected disability of as low as 10 percent if that service-connected disability in any way requires nursing home care. Furthermore, if a State Veterans Home were to provide any significant amount of skilled nursing care, post-acute care, post-operative care, or therapeutic care to a veteran under the 70-Percent Program (to say nothing of kidney dialysis services, hospice services, therapeutic radiation, oncology services, expensive drugs, or even dentistry) a State Veterans Home is almost guaranteed of incurring substantial financial losses under the 70-Percent Program.

This is why the testimony of the President of the National Association of State Veterans Homes (NASVH), Colleen Rundell, from the State of Vermont, argues the VA's numbers simply do not add up and that the VA's 70-Percent Program substantially underpays a State Veterans Home for providing skilled nursing care to service-connected disabled veterans. This is why the testimony from the State of Hawaii State Veterans Home demonstrates that it is losing money at the rate of more than \$600,000 per year, in its only home, under the 70-Percent Program, and has lost money consistently under the 70-Percent Program since the Program became effective on May 29, 2009. This is why the State of Hawaii previously has called the 70-Percent Program a "financial disaster." This is why the State of Tennessee reports that its State Veterans Homes are currently incurring losses of approximately \$1.4 million per year under the 70-Percent Program and anticipates that these losses will increase. This is why NASVH's National Legislative Director from the State of Nevada has called the reimbursement methods under the VA's 70-Percent Program a "nation-wide problem," and why the Nevada State Veterans Home has entirely avoided admitting any service-connected disabled veteran under the 70-Percent Program since the Program became effective. This is also why the Maine Veterans' Homes has admitted no veteran intentionally under the 70-Percent Program since the Program became effective. This is exactly the *opposite* result that Congress hoped to achieve by the enactment of the legislation that became the 70-Percent Program.

In order to illustrate the financial losses that would be incurred by the Maine Veterans' Homes if we were to provide skilled nursing care to substantial numbers of service-connected disabled veterans at our nursing facilities under the 70-Percent Program, as opposed to being reimbursed under Medicare or Medicaid, we pulled the files of six typical skilled nursing residents at our facilities. These files showed that we would lose an average of \$238 per resident per day under the VA's 70-Percent Program compared to existing sources of funds such as Medicare or Medicaid. These data are consistent with the facts being reported here today by other Medicare-certified and Medicaid-certified State Veterans Homes and also by such homes in other States throughout the nation. The only State Veterans Homes in the nation that have any hope of not incurring substantial financial losses under the VA's new 70-Percent Program are those State Veterans Homes which are not Medicare or Medicaid-certified or which only provide a minimal amount of skilled nursing care. The financial summary of our investigations of actual resident records is appended to my testimony.

Since the 70-Percent Program became effective on May 29, 2009, we have met several times with VA officials including Dr. James Burris, who testified before you today. Frankly, Dr. Burris does not understand the problem that the 70-Percent Program poses for State Veterans Homes that provide skilled nursing services under Medicare and Medicaid, and he does not understand the enormity of this problem for the majority of the States in the nation. In simple language, the VA's 70-Percent Program does not pay State Veterans Homes enough to provide skilled nursing care to veterans.

In short, in implementing the 70-Percent Program, the VA replaced a payment system that pays adequately for skilled nursing care at State Veterans Homes (Medicare/Medicaid) with a payment system that pays inadequately for skilled nursing care at State Veterans Homes (the 70-Percent Program). This has caused Medicare and Medicaid-certified State Veterans Homes to avoid or refuse admission to service-connected disabled veterans requiring skilled nursing. This is clearly not what was intended by Congress when it passed the legislation that eventually became the 70-Percent Program.

To make matters worse, shortly after this hearing was scheduled, the Togus VA Medical Center at Augusta, Maine, on February 1, 2010, advised the Maine Veterans' Homes by telephone, that upon the oral "direction" of the VA central office, it was withholding *all* VA per diem payments from the Maine Veterans' Homes because it suspected that *some* eligible veterans in Maine were not being enrolled mandatorily in the 70-Percent Program—the same program that could cost Maine Veterans' Homes an estimated minimum of \$8 million per year. The VA's illegitimate and wholesale withholding of all VA per diem payments without justification by itself could have cost the Maine Veterans' Homes an estimated \$800,000 per month unless we had successfully complained to the VA that it was unlawfully withholding funds from us. The VA in the past has said that it could cure the problems with the 70-Percent Program administratively, but it has not done so. The result has been a 70-Percent Program in chaos. We have simply run out of patience with the VA. The VA can no longer hide its head in the sand from the disarray that it has created for our nation's veterans and our nation's State Veterans Homes.

What should be done about this? First, Congress should allow State Veterans Homes the option of continuing to receive payments from Medicare or Medicaid, plus the basic (lower) VA per diem rate for the care of service-connected disabled veterans, until the VA can devise a permanent system and adopt regulations under the 70-Percent Program to pay State Veterans Homes at rates comparable to those available from Medicare and Medicaid, plus the basic (lower) VA per diem rate. The VA should be required also to pay any co-pay required by a veteran for the receipt of Medicare or Medicaid benefits under the 70-Percent Program, so that such care is at no cost to the veteran. "Payment in full" by the VA to a State Veterans Home for a veteran's nursing home care means "payment in full" to a State Veterans Home for a veteran's nursing home care. Second, Congress should allow State Veterans Homes to use the existing VA Community Nursing Home Contract program so that we can provide immediate long-term care services to service-connected disabled veterans at *no cost* to such veterans.

The enactment of H.R. 4241 would give the VA the authority to accomplish both of these goals quickly, and we urge its speedy passage. We thank the Chairman and members of the Subcommittee for the opportunity to testify today, and we look forward to working with both Congress and the VA to effect a permanent solution to the substantial financial problems of the VA's current 70-Percent Program.

#### Maine Veterans' Homes—Sample of 70-Percent Disabled Veterans Admissions

Resident	A	B	C	D	E	F
Payor	Medicare	Private Pay	Medicaid	Medicare	Medicare	Medicaid
Days	89	30	30	14	31	31
Room & Board	\$24,933	\$8,310	\$7,560	\$3,878	\$8,990	\$8,122
Pharmacy	\$4,273			\$4,311	\$5,605	
Lab	\$222					
IV Therapy				\$1,465		
Radiology				\$298	\$1,193	
Therapy (PT, OT, & ST)	\$20,610	\$2,450		\$4,670	\$8,540	\$11,490
Total Charges	\$50,038	\$10,760	\$7,560	\$14,622	\$24,328	\$19,612
Total Reimbursements	\$43,236	\$7,462	\$5,350	\$7,752	\$15,875	\$12,345
Difference	(\$6,802)	(\$3,298)	(\$2,210)	(\$6,870)	(\$8,453)	(\$7,267)
VA basic rate per diem	\$5,135	\$2,223	\$2,233	\$1,042	\$2,307	\$2,307
Difference after per diem	(\$1,667)	(\$1,075)	\$23	(\$5,828)	(\$6,146)	(\$4,960)
VA "Higher Per Diem" Payment	\$21,154	\$7,931	\$6,479	\$3,328	\$7,368	\$7,368
Difference	(\$28,884)	(\$2,829)	(\$1,081)	(\$11,294)	(\$16,960)	(\$12,244)
Average daily reimbursement (includes basic rate per diem)	\$543	\$323	\$253	\$628	\$587	\$473
VA "Higher Per Diem" Rate (lesser of prevailing or OMB A-87)	\$238	\$264	\$216	\$238	\$238	\$238
Difference	(\$305)	(\$59)	(\$37)	(\$390)	(\$349)	(\$235)

**Maine Veterans' Homes—Projected Losses from 70-Percent Disabled  
Veterans Program Admissions**

Resident	A	B	C	D	E	F
Primary Payor	Medicare	Private Pay	Medicaid	Medicare	Medicare	Medicaid
Days	89	30	30	14	31	31
Reimbursements (with basic rate per diem)	\$48,371	\$9,685	\$7,583	\$8,794	\$18,182	\$14,652
VA "Higher Per Diem" Payments	\$21,154	\$7,931	\$6,479	\$3,328	\$7,368	\$7,368
Total Reimbursements	\$107,267					
Total 70% Program HPD Payments	\$53,628					
Difference	(\$53,639)					
Total Bed Days	225					
Average Loss per Resident Day	\$(238)					

**Prepared Statement of James F. Burris, M.D., Chief Consultant,  
Geriatrics and Extended Care, Veterans Health Administration,  
U.S. Department of Veterans Affairs**

Good afternoon Mr. Chairman and Members of the Committee. I appreciate the opportunity to appear before you today to discuss H.R. 4241 and the mechanism by which the Department of Veterans Affairs (VA) supports the States' operation of their nursing homes for mandatory Veterans. I will use the term "mandatory Veterans" to refer to Veterans who have a service connected disability rated 70 percent or more or need nursing home care for their service connected disability. Under the State home program, VA provides support to States to construct and operate nursing homes and domiciliaries for the care of Veterans. In return, State homes provide nursing home care to many of our Nation's Veterans. Today, there are 137 State homes, and every State operates at least one. Last fiscal year, 27,413 Veterans were cared for in these homes.

**IMPLEMENTATION OF NEW PER DIEM FOR MANDATORY VETERANS**

For many years prior to the enactment of Public Law 109-461, VA paid the full cost of these Veterans' care in VA or private nursing homes but not in State homes. By law, VA could only pay one rate for all eligible Veterans in a State home. The rate was the lesser of one-half of the cost of the care in the State home or an amount established by VA each year. This changed when, in 2006, Congress directed VA to pay State nursing homes a new rate for mandatory Veterans: the lesser of a prevailing rate determined by VA or the actual cost of care in the State home. VA regulations implementing this congressional mandate were effective May 29, 2009, with provision for retroactive payment to March 21, 2007.

Although a number of States are satisfied with the new rates VA pays for mandatory Veterans, several have reported problems. Some States report that after the enactment of Public Law 109-461, they now receive smaller total payments for the care of these veterans because they are no longer able to bill Veterans or other payors. Some States report that the VA payments do not cover their actual costs and as a result, they cannot afford to admit mandatory Veterans anymore. Other States reported that VA facilities stopped providing specialty physician services to their mandatory Veterans. We are committed to taking steps to ascertain circumstances where the intent of Public Law 109-461 is not being met, and work with the State home program for remedies to avoid any adverse impact upon Veterans.

In an effort to further understand these reported difficulties, VA has met with representatives of the National Association of State Directors of Veterans Affairs, the National Association of State Veterans Homes, the National Governors Association, congressional staff. We believe that with the help of the State Veterans Homes represented here today there are non-legislative steps that can be taken to resolve the difficulties reported by the States. We have asked States to share with us sup-

porting documentation that demonstrates how their actual costs for the care of these veterans exceed the allowable VA per diem payment under current law. With this information, we will be better positioned to understand the impact of Public Law 109-461 and address their concerns.

VA has already taken steps toward resolving one of those reported difficulties. On October 19, 2009, VA issued guidance to its field facilities that the “full per diem payment” to State homes covers nursing home services only and that VA facilities must continue to provide most specialty care to mandatory Veterans as they did prior to the initiation of the new payments. That clarification eliminated one source of confusion.

Further, we believe that some States need assistance in understanding the provisions of the Office of Management and Budget (OMB) Circular A-87, which States must use to compute their actual cost of care for mandatory Veterans. VA has offered to work individually with States to improve their understanding. We will continue to work with the State homes and our other partners to ensure that Veterans are being served appropriately.

#### **H.R. 4241**

H.R. 4241 contains several provisions intended to resolve the difficulties that States have with the new VA payments for mandatory Veterans. Section 1(a)(3) of the bill would authorize VA to enter into agreements with State homes to provide care for mandatory Veterans under VA’s contract nursing home care authority in lieu of making per diem payments. As noted, different State homes have widely varying circumstances and patient populations – without a complete understanding of how State homes are currently being impacted by Public Law 109-461, we are unable to comment on whether a contract mechanism would be a viable solution to the reported problems.

Section 1(b) of the bill would delete the requirement in current law that VA pay the actual cost of care if that cost is less than the prevailing rate (i.e., VA would simply pay the prevailing rate, which for most States is higher than the calculated actual cost). VA opposes this provision, as it would result in VA paying more than the actual cost of care.

Section 1(c) would provide that VA’s “full per diem” payments for mandatory Veterans’ nursing home care is payment in full only with respect to other VA payments under title 38, United States Code. State homes could thus bill other payors for this care, including the mandatory Veterans themselves. VA’s payment is intended to be payment in full with respect to the Veteran, and elimination of Veteran billing (and the resulting disparity with VA Community Living Centers and contracted arrangements) was part of the purpose of the changes made in Public Law 109-461. We therefore oppose this provision.

Section 1(d) would permit State homes to bill Medicare and Medicaid for nursing home care provided to mandatory Veterans without these payments being reduced by the amount of the VA payments. As noted above, VA’s payment for mandatory Veterans is intended to be payment in full for nursing home care. Because this provision could result in the Federal government making duplicate payments for the same care, we oppose it as well.

We anticipate that enactment of H.R. 4241 would require additional VA expenditures of approximately \$17.5 million in the first year and more than \$200 million over 10 years.

Thank you once again for the opportunity to testify. We are prepared to address your questions.

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#### **Statement of Jacob B. Gadd, Assistant Director for Program Management, Veterans Affairs and Rehabilitation Commission, American Legion**

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to submit The American Legion’s views on H.R. 4241, to amend Chapter 17 of title 38, United States Code (USC), to allow for increased flexibility in payments for State Veterans Homes. Thank you Mr. Chairman for introducing this much needed and greatly appreciated proposal to improve the Department of Veterans Affairs’ (VA’s) per diem payments to State Veterans Homes for providing quality nursing home care to service-connected disabled veterans.

When enacted this legislation would improve per diem payments from the Department of Veterans Affairs (VA) to State Veterans Homes which reflects the actual

geographic cost of care furnished in a non-VA nursing home made payable at the prevailing rate.

Title 38, United States Code (USC) authorizes VA to pay per diems for care in State Veterans Homes for the care of service-connected disabled veterans awarded a VA disability rating of 70 percent or greater. Currently, VA pays State Veterans Homes a per diem that covers approximately one-third of the cost of providing nursing home care for eligible veterans.

Public Law (PL) 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006, authorized VA to pay State Veterans Homes to provide nursing home care to veterans with service-connected disabilities. This program commonly was referred to as "the 70-Percent Program" within the State Veterans Home community. The original intent of the program was to amend PL 106-117, the Veterans Millennium Health Care and Benefits Act of 1999, to permit State Veterans Homes to provide the same no-cost care to veterans as provided under the VA's Veterans Health Administration's Community Nursing Home Provider Agreements. Eligibility for "the 70-Percent Program" was expanded to any veteran who has a service-connected disability needing nursing home care for their disability.

Regrettably, the final VA regulation actually resulted in significantly lower payments and fails to cover the actual cost of nursing home care because the calculations of "the daily cost of care" cannot include any medically-necessary services provided outside of the State Veterans Homes, which covers the spectrum from chemotherapy to dialysis to specialized care to just x-rays. Therefore, the State Veterans Homes must forfeit any allowable Centers for Medicare and Medicaid Services (CMS) reimbursements for these medical treatment and services, to include those covered under Medicaid, Medicare Part A, Part B or Part D.

Because of this fiscal discrepancy, the National Association of State Veterans Homes (NASDVA), which represents the 137 state veterans homes throughout our nation, approved a resolution requesting Congress pass a clarification amendment to Section 211, Title II of the Veterans Benefits, Health Care and Information Technology Act of 2006 (PL 109-461) postponing the mandatory implementation of the program.

The American Legion supports legislation to amend Subchapter V, Chapter 17, title 38, USC to provide clarification of CMS and VA per diem reimbursements to State Veterans Homes for nursing home care. The American Legion supports legislation to increase VA's per diem payments to a rate of 50 percent of the national average cost of providing care in a State Veterans Home to more closely align with the CMS rate.

Historically, VA has had a long and beneficial relationship with State Veterans Homes and was able to negotiate nursing home care costs at a much lower rate than other local community providers or VA Nursing Home Units. The American Legion recommends Congress treat the full needs of veterans within State Veterans Homes and not rely on state budgets to offset costs of eligible veterans.

The American Legion believes that under the provisions of "the 70-Percent Program," enrollment for nursing home care in State Veterans Homes will result in significant budgetary shortfall for each eligible veteran admitted. The unintended consequences could very well deter or severely limit State Veterans Homes' willingness to accept eligible service-connected disabled veterans. This unfortunate scenario would require VA to consider more costly alternatives.

The American Legion appreciates the congressional intent in the original VA per diem program, which expanded eligibility for any veteran with a VA disability rating equal to or greater than 10 percent; however, the reimbursed costs of care must reflect the full continuum of care for services delivered while residing in State Veterans Homes. These same costs are routinely applied to veterans utilizing VA Domiciliaries or private Nursing Homes in the community. The American Legion urges Congress to conduct a thorough review of "the 70-Percent Program" and to authorize VA to pay State Veterans Homes for the ancillary costs needed by service-connected disabled veterans.

Mr. Chairman and Members of the Subcommittee, The American Legion sincerely appreciates the opportunity to submit testimony. Thank you.

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**Statement of Raymond C. Kelley, National  
Legislative Director, American Veterans (AMVETS)**

Chairman Michaud, Ranking Member Brown, and Members of the Subcommittee, thank you for the opportunity to submit for the record AMVETS' views regarding the "Increased Flexibility in Payments for State Veterans Homes," H.R. 4241.

In 2006, Congress approved payment of differing per diem rates to State Veterans Homes that provide nursing home care for service-connected veterans through the "Veterans Benefits, Health Care, and Information Act of 2006." The intent of the act was to pay higher per diem rates, however, once enacted the payments to many of the State Veterans Homes did not cover the cost to care for these veterans. Without immediate intervention, the current rate could threaten the ability of many State Veterans Homes to function financially.

Without implementing H.R. 4241, inadequate funding will continue to cause states to not take additional veterans into their facilities because of funding shortages as well as provide only 70 percent of the funding needed to care for the veterans who are already in these homes.

Our veterans have earned and deserve only the highest quality of care, and under the current regulation they do not. AMVETS wholly supports H.R. 4241 and its effort to fix the unintended funding shortage to so many State Veterans Homes.

Mr. Chairman, this concludes my testimony and I will be happy to answer any questions you might have.

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**Statement of Hon. Henry E. Brown, Jr., Ranking Republican  
Member, Subcommittee on Health, and a Representative in  
Congress from the State of South Carolina**

I want to thank Chairman Michaud for holding this hearing to discuss H.R. 4241, a bill he introduced to allow for an increase in flexibility regarding payments to State veterans homes.

The partnership between the Federal Government and States to provide nursing home care to a broad range of veterans is a long-standing and honored tradition of cost sharing.

To my understanding, the intent of H.R. 4241 is to provide a remedy for problems certain State homes are experiencing with the implementation of what is known as "the 70-Percent Program." The program, established under Public Law 109-461, requires VA to reimburse State homes at a higher rate for the cost of care provided to veterans with a 70 percent or higher service-connected condition.

The 70-Percent Program was meant to provide equity of access to VA resources for service-connected veterans residing in State Homes. However, despite our best intentions, this initiative has regrettably resulted in unintentional consequences.

The 70-Percent Program was meant to assist State Veterans Homes in providing the highest quality nursing home care to veterans. And, if the 70-Percent Program is in fact doing the opposite and making it harder to meet that worthiest of goals, then it is a problem I am anxious to correct.

I look forward to hearing from our panelists as we examine this issue and am very hopeful that as a result of this hearing, we will be able to find a way to resolve this issue without the need of a legislative remedy.

I thank our witnesses for their time and participation.

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**Statement of Adrian M. Atizado, Assistant  
National Legislative Director, Disabled American Veterans**

Mr. Chairman and Members of the Subcommittee:

On behalf of the more than 1.3 million members of the Disabled American Veterans (DAV) and its Auxiliary, I wish to express my appreciation for this opportunity to present the Subcommittee our views for the record on legislation pending before the Subcommittee. Mr. Chairman, as you know, DAV is an organization devoted to advancing the interests of service-connected disabled veterans and their dependents and survivors. For more than eight decades, the DAV has devoted itself to a single purpose: building better lives for our nation's disabled veterans and their families.

First, DAV wishes to thank this Subcommittee for establishing and helping enact what became section 211 of Public Law 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006. This Act validated and completed the 1999 Congressional decision to provide seriously disabled service-connected veterans a guaranteed benefit of Department of Veterans Affairs (VA) nursing home care if their need for such care was based on a service-connected disability or for any condition if they were 70 percent or more disabled from service-connected disabilities. The Act extended that eligibility to these high-priority veterans in the nation's 137 state veterans homes.

H.R. 4241, a bill introduced by the Chairman, would amend chapter 17 of title 38, United States Code, to allow for increased flexibility in payments to State veterans homes for the care of service-connected veterans. DAV has a longstanding resolution, No. 238, adopted by our membership at our most recent National Convention, as follows: “[i]n accordance with Public Law 109-461, VA [must] pay the full cost, on an equitable basis, for the care of veterans in need of State Home nursing care for a service-connected disability, and for any disability of a veteran with a service-connected disability rated at 70 percent or more.” Therefore, we support the purposes of this bill, but point out some concerns that should be addressed before final passage.

Section 1 of the bill would make seven technical changes to existing statutory language governing VA’s authority to reimburse state veterans homes their cost of care for service-connected veterans resident in state homes. One primary purpose of the amendment would give the Secretary a new discretionary authority to employ the authority of section 1720 of title 38, United States Code, as a basis for entering into payment agreements with a state home caring for service-connected veterans. Another purpose of the section would replace the payment rate determination in existing law, currently subsiding in subsection 1745(a)(2), with a linkage to the prevailing geographic rate paid by VA under section 1720 to community nursing homes under contract with VA for the care of eligible veterans. A final focus of the amendment would be to circumscribe VA’s reimbursement policy so that some state veterans homes may continue to participate in Medicare and Medicaid reimbursement programs. Continuation of this participation was cast into doubt with issuance of VA instructions under the new reimbursement program for service-connected veterans in state homes.

Public Law 109-461 was enacted in December 2006, but unfortunately VA only promulgated regulations to carry out its intent in April 2009. Since publication of these regulations, Mr. Chairman, we have been informed by the administrators of some state facilities that the “full” reimbursement rates governed by VA regulations will net some state veterans facilities less than their combined payments (from veterans, their state governments, the Department of Health and Human Services, and from VA under the traditional per diem payment subsidy) received before these regulations were issued. Your bill is intended to remedy this inequity.

Current law establishes state veterans home reimbursement rates for service-connected veterans using two formulas: a geographically adjusted per diem rate established by the Secretary as a corollary to the rates VA currently pays community nursing homes; or, a rate determined by the administrator of a state veterans home based on the calculated daily cost of care at that home. Existing law requires the Secretary to reimburse state veterans homes for the care of service-connected veterans at the lesser of these two rates.

As we understand it, these rate choices available to VA and the state veterans homes have been discovered to be complicated significantly by the governing financial and accounting policy of the Office of Management and Budget as expressed in OMB Circular A-87. This circular establishes principles and standards for determining costs for federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments. Under the rules of this circular, a state home in determining its daily cost of care, cannot include in that cost structure the depreciation of buildings that were recipients of VA construction grants. As stated in the circular, “[t]he computation of depreciation or use allowances will exclude: . . . (2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides.” This restriction on counting depreciation as a part of a home’s daily cost of care significantly depresses the payable reimbursement rates. As a result of the state homes’ excluding these significant amounts, the rates determined by the existing statutory formula will invariably become the OMB Circular A-87-determined rates. Therefore, in the view of the National Association of State Veterans Homes and other observers, the current statutory language in section 1745(a)(2) is unworkable for the purpose intended by Congress. The unworkability of these rates has served as a denial of access to nursing home care in state extended care facilities to the highest priority veterans, those who need nursing home care for residuals of chronic illnesses and injuries they incurred in military service to America.

While your bill would appear to us to address the problems in the current statutory language and VA’s current regulations, and would provide sharper guidance to VA in amending those regulations, we are concerned that the language of this bill may not alter the impact of the OMB policy that governs the overall federal-state cost accounting relationship. We ask that the Subcommittee consider requesting counsel of VA and OMB to assure the Subcommittee that the proposed language of



your bill to restructure section 1745 will have its intended outcome of permitting disabled service-connected veterans to be reimbursed equitably and fully covered by state veterans homes.

Mr. Chairman, this concludes DAV's testimony. Again, we thank the Subcommittee for its leadership and for requesting our views on this legislation.

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**Statement of Linda S. Schwartz, RN, MSN, DrPH, FAAN,  
Senior Vice-President, National Association of State Directors of Veterans  
Affairs, and Commissioner, Connecticut Department of Veterans Affairs,  
Rocky Hill, CT**

NASDVA is an organization with a history dating back to the Second World War. Our membership is composed of State Directors of Veterans Affairs and State Department of Veteran Affairs staff. Our members represent each State as well as the District of Columbia, American Samoa, Northern Mariana Islands, Puerto Rico and the Virgin Islands.

As you may know each State has a designated "Office of Prime Responsibility" for service to veterans that is uniquely situated to be a vital resource which augments Federal programs, improve the identification of needs, coordinate local resources and ultimately enhance the quality of care and services to America's veterans now and in the future. NASDVA is a rich resource which had not been fully recognized nor utilized in caring for America's returning military/veterans and their families. Collectively State governments commit more than \$4 billion annually, which makes them second only to the Federal VA, in resource allocations to provide programs, benefits and services to the men and women who serve and defend our nation.

Unlike "Veteran Service Organizations" State Departments are government agencies not membership organizations. Our members are tasked by their respective State with the responsibility to address the needs of all veterans irrespective of time in service, branch of military or disability status. On a daily basis, State Directors are confronted with unique situations which could not possibly be addressed in a timely manner by larger systems like DoD and VA. State Directors are held accountable by the citizens of their individual State and do effect changes and solve problems because they know who, where and how to orchestrate a successful outcome at the local level.

In many respects, all veterans and their needs are our agenda. Over 28,000 Nursing Home beds come directly under the administrative responsibilities of our members which means the subject of today's hearing is of major concern to our members because they bear the consequences of the recently implemented Regulations which are the focus of this hearing today. We appreciate this opportunity to provide testimony and comments on today's issues which are extremely important to our members.

**Per Diem Reimbursement in State Veterans Homes**

Under the Millennium Health Care Act of 1999, Congress, in the name of the American people, directed the Department of Veteran Affairs (VA) to pay for nursing home care for veterans with a service connected disability rating of 70 percent or more and veterans who have sustained service-connected disabilities that require nursing home care. While VA provides full cost of care in either a VA or community contracted nursing home this has not been the case for State Veterans Homes. Not only is this a costly disparity in applying the per diem payments based on the facility in which a veteran receives their care, it penalizes veterans in State Homes. Despite the intent of Congress, over ten years have passed and the uniform application of this benefit has not been implemented.

For years, NASDVA has consistently supported equity in the per diem payment system to veterans regardless of where they receive their care. We believe that Congress authorized the benefit to the veteran, not the facility in which they receive their care. The leadership and members of NASDVA have come, year after year both in testimony to the Congress and advocacy with VA seeking a fair and equitable solution to the inconsistency and inequality of these policies. This issue has also caught the attention of National Governors Association which has issued statements in support of full cost of care reimbursement for State Homes each year since 2002.

In some jurisdictions, VA case managers routinely send veterans to contract homes because the full cost of care is absorbed by VA which prevents veterans from having to meet the stringent financial requirements of Title 19 Medicaid. Hundreds,

probably thousands, of veterans meeting the criteria originally set forth in the 1999 Millennium Act, did not receive this relief, or the benefits Congress intended. During this time lapse, veterans who served this nation honorably and incurred severe disabilities, injuries and illnesses have lost assets, personal savings and pride in order to meet the costs of care levied on them. Additionally State Directors have struggled to meet their fiduciary responsibilities and maintain the quality of care these veterans earned and deserve.

With the enactment of the 2006 “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 VA to State Veterans Homes which meet the rigorous requirements required to qualify for per diem reimbursement and authorized VA to place severely disabled service-connected veterans directly in State homes and stipulated that VA was required to reimburse State homes for the **full cost of such care.** NASDVA as well as many veterans and the National Governors Association believed that the situation had been resolved.

The notice of “Regulations” required for the implementation of this legislation languished for years. Despite the need and the urgency for these rules, Congress, providers and veterans had to wait while the cost of care continued to increase. All parties expected the statute to take effect 90 days after its enactment (March 21, 2007); but VA did not issue regulations to implement the program until April 29, 2009 (effective May 29, 2009). This 2½-year delay in issuing regulations to implement the new per diem program has caused enormous difficulties and hardships not only with recordkeeping and administrative problems, veterans and their families did not receive the financial relief they were promised.

Even as these Regulations finally became public in November of 2008, VA restricted the “comment period” to only 30 days instead of the usual 60 days. On first read of the proposed Regulations, it was clear that the spirit and intent of this process was a casualty of time and bureaucracy. How ironic that Congressional legislation to update the basic per diem rates for veterans in State Homes was enacted in 2006, consumed over 2 years of VA time to develop and publish the Regulations and resulted in only 30 days over the Christmas Holiday for comment. Despite the economic realities of the times, VA presented a very convoluted, confusing and disappointing proposal for the implementation of this landmark legislation.

The program did not provide State Veterans Homes with the actual cost of care for disabled veterans, despite the intent of Congress. In fact in many States that had Medicare and/or Medicaid-certified Veterans Homes, the stipulation that any funding from these sources had to be repaid after 2 years was pejorative and naive on VA’s part. How do you return the lost assets, homes, cars and savings to veterans who did spend down to qualify for Medicaid? How do you “regulate” and disqualify the use of Medicare to veterans who had contributed to that fund throughout their lifetime? How do you square these new policies for veterans who died waiting for these benefits.

NASDVA worked for and expected that the new “per diem” rate for veterans, who meet the mandatory eligibility, would be equal to the same rate paid to VA Contracted Nursing Homes. The Regulations that went into effect in 2009 failed to adequately reimburse State Homes and State governments for the level of care required by VA. More importantly unintended consequences of the present reimbursement rates threatens the continued financial viability of many State Veterans Homes systems and raises questions about the future viability of the entire State Nursing Home Program. The specifications and the limitations required by the present Regulations are not in keeping with the original intent of Congress.

### **2009 GAO Report on VA Long-Term Care**

Information published in the 2009 GAO Report “VA HEALTH CARE Long-Term Care Strategic Planning and Budgeting Need Improvement” identified a considerable difference in estimates of long term care demands and gaps in service with VA budget estimates and strategic planning. GAO found that VA’s estimates were based on cost assumptions and workload projections that appeared to be low and unrealistic for both nursing home and non-institutional care. VA’s model was flawed and underestimated its own nursing home spending because the projected increase in cost was estimated at 2.5 percent which is considerably lower than market costs. GAO reported that VA had plans to increase workload for certain veterans for who they are required to provide care but did not include nursing home workload plans for most veterans already on VA roles.

GAO found that VA used cost assumptions which seriously underestimated the actual cost of care, minimized workload estimates and miscalculated the number of veterans using this system. Not only did this cast a great deal of doubt on the “Stra-

tegic Plan”, these major discrepancies also raised questions about the reliability of VA’s spending estimates and the extent to which VA was actually closing the gaps in the long-term system of care for America’s veterans. These findings strongly suggest that present problems in VA reimbursement policies may be linked to the faulty budget projections and unrealistic data used in the development of the Strategic Plan reviewed by GAO.

NASDVA has and continues to support changes to the present program that would insure that:

- VA develop a strategic plan for long-term care services that maximizes the role of State veterans homes in providing care and minimizes VA cost of Long Term Care for our Nation’s Veterans.
- VA provides veterans in State Nursing Homes meeting the mandatory eligibility requirements the same “per diem rates” paid to VA or community contracted nursing homes.
- Congress authorize sufficient funding to keep the existing backlog of projects in the State Extended Care Facilities Construction Grant Program at a manageable level to assure life safety upgrades and new construction are timely.
- A implement measures to assure that States are paid a more equitable per diem rate representing the 50 percent of the States’ average costs, as allowed by law, and that the policies governing the program be amended to allow new State veterans homes up to 50 percent of the total cost of care paid retroactively from the date of the first veteran’s admission to the new home.

### **Conclusion**

States are the second largest providers of service to veterans in the America and commit over \$4 billion dollars annually to provide direct services and support to veterans and their families. We augment and enhance VA programs and initiatives at the local level. We provide vital services and support to veterans and their families through State Benefit Offices, Cemetery and Memorial Affairs, Domiciles, Homeless programs, Substance Abuse and Skilled Nursing care. As of the beginning of this fiscal year 2009, there were nearly 28,000 State Veteran Nursing Home beds, more than 6,000 veterans domiciliary beds in 135 State veterans’ facilities throughout the Nation. In fact, States provide the majority of VA Authorized long-term and nursing home care. In essence we are “where the rubber meets the road.” More importantly we are accountable to our Governors and the citizens of our State for the quality and responsiveness of our activities. Partnerships with States Departments of Veterans Affairs and State Veterans Homes are both cost-efficient and effective in utilization of resources and the creation of a quality continuum of care for all of America’s Veterans. We must all work together in real partnership to assure veterans now and in the future receive the services and programs the need and deserve.

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### **Statement of Paralyzed Veterans of America**

Chairman Michaud, Ranking Member Brown, and members of the Subcommittee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to submit our views on H.R. 4241, to allow for increased flexibility in payments for State veterans homes. This subject is covered in depth in the recently released version of *The Independent Budget* regarding the funding requirements for the VA health care system for FY 2011.

PVA generally supports H.R. 4241 to allow for increased flexibility in payments for State veterans homes, but believes greater understanding of the problem is needed.

The Department of Veterans Affairs (VA) State Veterans Home Program currently encompasses 137 nursing homes in 50 States and Puerto Rico, with more than 28,000 nursing home and domiciliary beds for veterans and their dependents. State veterans homes provide the bulk of institutional long-term care to the nation’s veterans. The GAO has reported that State homes provide 52 percent of VA’s overall patient workload in nursing homes, while consuming just 12 percent of VA’s long-term care budget. VA’s authorized ADC for State veterans homes was 19,208 for FY 2008.

VA holds State homes to the same standards applied to the nursing home care units it operates. State homes are inspected annually by teams of VA examiners, and VA’s Office of Inspector General (OIG) also audits and inspects them when determined necessary. State homes that are authorized to receive Medicaid and Medicare payments also are subject to unannounced inspections by the CMS and an-

nounced and unannounced inspections by the OIG of the Department of Health and Human Services.

VA pays a small per diem for each veteran residing in a State home, currently at a rate of \$77.53 per day. This is less than one-third of the average cost of that veteran's care. The remaining two-thirds is made up of a mix of funding, including State support, Medicaid, Medicare, and other public and private sources. In contrast, VA pays Community Nursing Homes over \$200 per day with the cost of care in VA Community Living Centers (VACLIC) at almost \$800 per day.

Service-connected veterans should be the top priority for admission to State veterans homes, but traditionally they have not considered State homes an option for nursing home services because of lack of VA financial support. To remedy this disincentive, Congress provided authority for full VA payment.

Unfortunately, veterans with severe disabilities may be put at a disadvantage in gaining access to State veterans homes. As part of P.L. 109-461, the "Veterans Benefits, Health Care, and Information Technology Act of 2006," Congress approved payment of different per diem amounts by VA to State veterans homes which provide nursing home care to veterans with service-connected disabilities, a program dubbed "the 70-Percent Program." VA issued regulations for this program in April 2009 and granted a higher per diem rate for veterans with service-connected disabilities. Unfortunately, PVA is hearing reports that these rates have resulted in lower payments to many State veterans homes and in some cases are less than the actual cost of care.

PVA believes VA made a good faith effort in establishing the original rates, but may not have taken into consideration the significantly greater cost of care for those with severe disabilities, in particular those service connected veterans with 70 percent or greater ratings. As a result, we are concerned that many severely disabled veterans who would choose to use the State veterans homes will be denied access simply because the veterans home can not afford the cost of their care. This will cause a significant impact on our veterans most in need at a time when VA is continuing to reduce their capacity to provide long-term care facilities.

PVA has been informed by representatives of the National Association of State Veterans Homes (NASVH) that VA seems resistant to modifications of the per diem rate or alternatives that may provide greater reimbursement rates. There is a sense that the VA believes the lower rate is appropriate because VA shoulders a great financial burden when it helps cover the cost of construction, rehabilitation, and repair of State veterans homes, providing up to 65 percent of the cost, with the State providing at least 35 percent. If true, PVA believes this argument is invalid.

In FY 2007 the construction grant program was funded at only \$85 million, the same amount Congress had provided in FY 2006. Based on a current backlog of nearly \$1 billion in grant proposals, and with thousands of veterans on waiting lists for State beds, *The Independent Budget for FY 2008* recommended no less than \$150 million for this program and Congress responded with \$165 million for FY 2008 in the Omnibus Appropriations Act. For FY 2009, the *IB* recommended \$200 million for the State veterans home construction grant program, and Congress provided \$175 million. Also in FY 2009 Congress provided State home construction \$100 million in the Stimulus Act, giving VA a total of \$265 million in availability for its construction grant program. For FY 2011, *The Independent Budget* recommends the construction grant program be funded at \$275 million.

The VA is using this grant program as an incentive to build more capacity to avoid the greater cost of building it themselves. PVA firmly believes that construction costs should not be mixed with health care costs. The per diem rate should be independent of any *quid pro quo* VA may believe exists with the State veterans homes due to construction funding. State veterans homes can provide high quality care at a rate cheaper than VA and should be rewarded for doing so, not punished.

Mr. Chairman, PVA believes H.R. 4241 may help remedy this problem. But we believe the Subcommittee should go further. Currently there is only anecdotal information on perceived widespread, but individual, challenges facing State veterans homes due to this problem. With the challenges facing future VA budgets, abstract information is insufficient to make the critical decisions needed to support our veterans. PVA would recommend a study to determine what impact these funding shortfalls are having on State veterans homes. Also, due to the immediate impact of these financial shortfalls, we believe this report should be completed as soon as possible, but no later than September 30, 2010. As the report is being conducted, one option might be for VA to raise their reimbursement rate to State veterans homes to be commensurate with the rate paid to Community Nursing Homes for similar services for 70 percent and greater service-connected disabled veterans.

VA and Congress must continue to provide the construction grant and per diem funding necessary to support State veterans homes. Even though Congress has ap-

proved full long-term care funding for certain service connected veterans in State veterans homes, under P.L. 109-461 it must continue to provide resources to support other veteran residents in these facilities and to maintain the infrastructure. To that end, Congress should provide State veterans homes \$275 million in construction grant funds for FY 2011.

PVA would like to thank this Subcommittee for the opportunity to express our views relating to these important benefits for veterans. We look forward to working with this committee as they continue addressing the issues that effect America's veterans.

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Veterans of Foreign Wars of the United States  
Washington, DC.  
*February 18, 2010*

The Honorable Michael Michaud  
United States House of Representatives  
1724 Longworth House Office Building  
Washington, DC 20515

Dear Representative Michaud,

On behalf of the 2.1 million members of the Veterans of Foreign Wars and our Auxiliaries, I would like to thank you for the invitation to testify on legislation H.R. 4241, *to allow for increased flexibility in payments for State veterans homes*. The VFW supports H.R. 4241, to correct the inadequate financing of long-term care for the most disabled veterans in State Veterans Homes.

This bill seeks to correct the inadequate funding for the long-term care in a SVH for veterans rated at 70 percent or above for service connected disabilities. With the passage of PL 109-461, SVH's were afforded a higher per diem rate of reimbursement from the Department of Veterans Affairs. VA's regulations, issued April 29, 2009, indicate all medication and specific outpatient medical care for service-connected injuries to be provided by SVH's. Further, it bars SVH's from billing to Medicare and Medicaid for any and all additional costs that exceed the per diem rate. The current law and VA regulations create a disincentive for SVH's across the nation to care for the most severely disabled veterans. Several states indicate the potential loss of millions of dollars complying with VA regulations; others have limited or stopped accepting these veterans into their homes.

Your legislation grants the VA Secretary the authority to enter into a state-by-state per diem arrangement with SVH's. Each state's rate would be comparable to the geographic area and the reimbursement rate available to a 'non-department nursing home' or a private nursing home facility. Thus, correcting the existing health care funding shortfall for America's most disabled veterans.

The VFW is pleased to support your legislation for America's veterans.

Sincerely,

Robert E. Wallace  
*Executive Director*

**MATERIAL SUBMITTED FOR THE RECORD**

Committee on Veterans' Affairs  
 Subcommittee on Health  
 Washington, DC.  
*March 9, 2010*

Honorable Eric K. Shinseki  
 Secretary  
 U.S. Department of Veterans Affairs  
 810 Vermont Avenue, NW  
 Washington, DC 20240

Dear Secretary Shinseki:

Thank you for the testimony of Dr. James F. Burris, Chief Consultant for Geriatrics and Extended Care with the Veterans Health Administration, at the U.S. House of Representatives Committee on Veterans' Affairs Subcommittee on Health legislative hearing on H.R. 4241 that took place on March 3, 2010.

Please provide answers to the following questions by April 20, 2010, to Jeff Burdette, Legislative Assistant to the Subcommittee on Health.

1. Prior to the passage of P.L. 109-461, could State Veterans Homes bill the Department of Veterans Affairs (VA) and Center for Medicare and Medicaid Services (CMS) for the same care provided? If so, for what specific services are State Veterans Homes billing both VA and CMS?
2. It is our understanding that VA has been meeting with some State Veterans Homes to explore non-legislative solutions to this problem. Please explain the nature of these discussions and the options that you have explored together. What is prohibiting VA from moving forward with a non-legislative solution?
3. VA opposes H.R. 4241 even though Medicaid and Medicare certified State Veterans Homes have presented initial data showing the negative financial implications of the new per diem rate. Given the urgency of this issue, what solution can VA offer since it opposes H.R. 4241?
4. It appears that one of the key reasons that the new per diem payments do not work for Medicaid and Medicare certified State Veterans Homes is that the new payments do not account for outlier service costs such as dialysis, x-rays, and labs. What are the pros and cons of mandating VA to include outlier costs in the development of new per diem rates so that the State Veterans Homes would not have to bill Medicare and Medicaid?
5. Does CMS have a role to play in this situation? If yes, what would it look like?
6. Would a reimbursement schedule that bases payments on the actual acuity of each patient, such as that used by VA in its Resource Utilization Group (RUG) scores for community nursing homes, be an effective mechanism for properly and accurately reimbursing State Veterans Homes for 70-percent veterans? Could VA implement such a system for "mandatory veterans" under the current law? If yes, how quickly could such a system be put into place?
7. Your testimony states that H.R. 4241 will increase VA costs by \$17.5 million next year and \$200 million over 10 years. Please describe in detail how you arrived at this cost estimate. Does this indicate that the current payment system is underpaying State Veterans Homes under the 70-Percent Program? In your view, does the current payment system compromise the quality of nursing care being provided to veterans under the 70-Percent Program? If not, please explain.
8. H.R. 4241 would authorize VA to enter into agreements with State Homes to provide care for the "70-Percent Program" under VA's contract nursing home care authority. What challenges would this construct create for VA?
9. Might it help alleviate the current situation if State homes were able to simply opt out of the 70-Percent Program if they felt they would be better off without it?
10. In your testimony, you stated that "although a number of States are satisfied with the new rates VA pays for mandatory Veterans, several have reported problems." Please provide a list of those states homes that are satisfied and those state homes that have reported issues.
11. What is VA's long-term strategy to improve the care provided to women veterans and how does the fiscal year 2011 budget request for women veterans fit into this long term strategy?

12. The Paralyzed Veterans of America (PVA) provided a statement for the record. The statement suggests that before rushing to a legislative solution, a study be conducted ASAP to determine the immediate impact of the reported financial shortfalls. Would you support this proposal?
13. Have you received responses from any states regarding your request for "documentation that demonstrates how their actual costs for ... care ... exceeds the allowable VA per diem payment?" If so, please share those responses.
14. Are there any mechanisms in place to assess the accuracy of the actual cost of care reported by state homes? If so, please provide details.
15. What information, if any, are you lacking to gain a complete understanding of how State homes are currently being impacted by P.L. 109-461?

In addition, please answer the following question for Congresswoman Madeleine Bordallo:

Over the past 18 months, I have requested that VA address the issue of eligibility for Guam to participate in the VA State Home Grant program. On July 10, 2009, VA published a proposed rule in the *Federal Register* that would include Guam and the other insular areas in the VA State Home Grant program. As of November 2009, VA anticipated publishing the final rule by the end of the year. I certainly appreciate the efforts of VA to correct this oversight. However, please update me on the status of this final rule and when we can reasonably expect VA to publish the amended final rule that would include Guam in the VA State Home Grant program.

Thank you again for taking the time to answer these questions. The Committee looks forward to receiving your answers by April 20, 2010.

Sincerely,

MICHAEL H. MICHAUD  
*Chairman*

HENRY E. BROWN, JR.  
*Ranking Member*

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**Questions for the Record**  
**The Honorable Michael Michaud, Chairman**  
**The Honorable Henry Brown Jr., Ranking Member**  
**Subcommittee on Health**  
**House Veterans Affairs Committee**  
**Legislative Hearing on H.R. 4241**  
**March 3, 2010**

**Question 1:** Prior to the passage of Public Law 109-461, could State Veterans Homes bill the Department of Veterans Affairs (VA) and Center for Medicare and Medicaid Services (CMS) for the same care provided? If so, for what specific services are State Veterans Homes billing both VA and CMS?

**Response:** Yes, prior to the passage of Public Law 109-461, State Homes could bill both the Department of Veterans Affairs (VA) and the Centers for Medicare and Medicaid Services (CMS) for the same care. Under an amendment to 38 USC 1741 made by Public Law 108-422, payments made by VA under this section cannot be used to offset or reduce any other payment made to assist Veterans. According to CMS, when State Veterans Homes charge their residents and patients to the extent of their ability to pay, or seek payment from available sources other than Medicare, Medicare benefits are payable for covered items and services furnished to Medicare beneficiaries. However, the State Home must charge the Medicare copayment in order to receive Medicare payments. (See Medicare Benefit Policy Manual, 100-02, Chapter 16, § 50.3.3 for details) VA does not have any information about the services for which the State Veterans Homes are billing CMS.

**Question 2:** It is our understanding that VA has been meeting with some State Veterans Homes to explore non-legislative solutions to this problem. Please explain the nature of these discussions and the options that you have explored together. What is prohibiting VA from moving forward with a non-legislative solution?

**Response:** VA has met on several occasions, and continues to meet with designated representatives of the National Association of State Veterans Homes and with the Executive Committee of the National Association of State Directors of Veterans Affairs. We have discussed the concerns of the State Homes and the limitations placed on VA by the current law. VA has explored options for modifying the

method of determining the State Homes' cost of care and clarifying those services they can bill other payors. VA has done the following:

- Sent a memorandum to VA field facilities in October 2009, clarifying that they are to continue providing specialty services to Veterans residing in State Homes;
- Met with the Office of Management and Budget (OMB) to seek assistance in clarifying the cost accounting rules of OMB Circular A-87 for the States;
- Offered to assist individual State Homes in correctly determining their costs of care in accordance with OMB Circular A-87.

Addressing these issues will require detailed actual cost data as well as other information from State Veterans Homes, which VA requested on March 29, 2010, and received, in part, just this week. VA continues to pursue additional data from the States.

**Question 3:** VA opposes H.R. 4241 even though Medicaid and Medicare certified State Veterans Homes have presented initial data showing the negative financial implications of the new per diem rate. Given the urgency of this issue, what solution can VA offer since it opposes H.R. 4241?

**Response:** VA believes that non-legislative approaches such as those described above will mitigate the problems experienced by the states and that legislation is not necessary at this time. VA has asked the State Homes to provide additional cost of care data so that we can better understand the financial implications and challenges they face. VA has already taken the actions noted above in its response to Question 2. Without the data from the States, VA has not been able to sufficiently clarify the scope of the problems being experienced by the State Homes. We continue to seek their cooperation.

**Question 4:** It appears that one of the key reasons that the new per diem payments do not work for Medicaid and Medicare certified State Veterans Homes is that the new payments do not account for outlier service costs such as dialysis, x-rays, and labs. What are the pros and cons of mandating VA to include outlier costs in the development of new per diem rates so that the State Homes would not have to bill Medicare and Medicaid?

**Response:** Public Law (PL) 109-461 specifies that VA is to pay a per diem payment for nursing home care. Nursing home care services are identified in VA regulations and do not include dialysis, x-rays, or other specialized services. Paying those costs would make the State Homes much more expensive for VA to support.

**Question 5:** Does CMS have a role to play in this situation? If yes, what would it look like?

**Response:** We defer to the CMS to describe their potential role in this situation.

**Question 6:** Would a reimbursement schedule that bases payments on the actual acuity of each patient, such as that used by VA in its Resource Utilization Group (RUG) scores for community nursing homes, be an effective mechanism for properly and accurately reimbursing State Veterans Homes for 70 percent veterans? Could VA implement such a system for "mandatory Veterans" under the current law? If yes, how quickly could such a system be put into place?

**Response:** VA would need to revise its regulation to implement such a system. While such system may be an effective mechanism for reimbursing State Veterans Homes for mandatory Veterans there are some limiting factors. For example, only approximately 60 percent of State Homes presently report RUG scores to VA; therefore, implementing such a system would require all State Homes to develop the capability to determine and report RUG scores. In addition, under current law VA is required to pay the lesser of the prevailing rate (i.e., the rate determined by the RUG score) or actual costs, so there is no assurance the State would receive the prevailing rate.

**Question 7:** Your testimony states that H.R. 4241 will increase VA cost by \$17.5 million next year and \$200 million over 10 years. Please describe in detail how you arrived at this cost estimate. Does this indicate that the current payment system is underpaying State Veterans Homes under the 70-Percent Program? In your view, does the current payment system compromise the quality of nursing care being provided to Veterans under the 70-Percent Program? If not, please explain.

**Response:** The State Home representatives have told VA that most states are receiving the actual cost rather than the prevailing per diem rate because the actual cost is less in most cases. To determine the cost estimate, VA multiplied the average



daily census of Veterans residing in State Homes by the average cost of care, and subtracted that total from the total obtained by multiplying the average daily census by the average prevailing rate. The figure of \$17.5 million therefore, reflects the additional amount VA would pay if the “lesser of” language were stricken from the law. The \$200 million figure was obtained by adjusting the \$17.5 million figure for inflation, and the anticipated growth in the average daily census over 10 years. The method of determining actual cost under OMB Circular A-87 is a standard method for grants to State, local, and Tribal governments. We are unable to determine whether the current payment system is underpaying State Veterans Homes under the 70-Percent Program because the States have not provided comprehensive data on their actual costs. We have not seen any evidence from our annual inspections of State Veterans Homes that the quality of nursing care being provided to Veterans has been compromised.

**Question 8:** H.R. 4241 would authorize VA to enter into agreements with State Homes to provide care for the “70-Percent Program” under VA’s contract nursing home care authority. What challenges would this construct create for VA?

**Response:** A construct that would have two different per diem rates and a contract rate all in play would make the program more complex to administer for both VA and State Veterans Homes.

**Question 9:** Might it help alleviate the current situation if State Homes were able to simply opt out of the 70-Percent Program if they felt they would be better off without it?

**Response:** State Homes are at liberty to opt out of the 70-Percent Program under current law and bill other payors. However, VA cannot pay the basic per diem rate for a mandatory Veteran. The state agency responsible for the State Homes must opt out and not receive a VA per diem payment, or opt in and accept the higher VA per diem as the full cost of nursing home care.

**Question 10:** In your testimony, you stated that “although a number of States are satisfied with the new rates VA pays for mandatory Veterans, several have reported problems.” Please provide a list of those State Homes that are satisfied and those State Homes that have reported issues.

**Response:** VA does not have a comprehensive listing of each state’s level of satisfaction with the new rates VA pays for mandatory Veterans. This is because only a few states have chosen to provide input to VA on this issue. Anecdotally, Maine, New Hampshire, New York, California, Nevada and Louisiana have specifically indicated they are dissatisfied. New York and Nebraska have said they would be satisfied if they could bill CMS for outlier costs. Missouri, Oklahoma, and Texas have reported they are satisfied with the new rates. The National Association of State Veterans Homes has reported that “many” states are dissatisfied with the new rates, but has not provided the number or the names of dissatisfied states. Forty-two states have applied to receive the new rates.

**Question 11:** What is the long-term strategy to improve the care provided to women Veterans and how does the fiscal year (FY) 2011 budget request for women Veterans fit into this long term strategy?

**Response:** VA has continued long term strategic plans to enhance the provision of health services to women Veterans. The following elements are outlined as they relate to the FY 2011 Budget request:

#### **Fully Implement Comprehensive Primary Care for Women Veterans**

- Staffing: Providers proficient in women’s health
- Staffing: Support staff for care coordination within medical home care model in women’s health
- Facility Resources: Construction enhancements focusing on dignity, privacy, safety
- Equipment, Supplies: Necessary clinical enhancements to deliver primary care
- Training: Retrain providers to care for women Veterans
- Communication: Effective internal and external communication about women Veterans

Beginning with FY 2010, the New Model of Care Initiative supports the addition of primary care support staff, training, and some space configuration for women’s health. In the FY 2011 Budget request, general medical services dollars will continue to support the overall medical care provision for women Veterans. In addition,

the FY2011 Budget line item request for women Veterans specifically increases the amount needed for gender-specific care such as cervical and breast cancer screenings.

### **Develop a High-Quality Continuum of Health Care for Women Veterans**

The strategic goal is to fully integrate specialty care services for women Veterans at the facility level. In FY 2011, the requested budget will support Comprehensive Care Services for women Veterans that includes:

- Mental Health
- Specialty Care
- Emergency Care
- Diagnostic Services
- Tele-Health
- Geriatric and extended care services
- Women's health and wellness screening and prevention programs
- Rehabilitation health (catastrophically injured women)

VA has made a commitment to the development of health care for women Veterans and will continue to support and evaluate the implementation of this plan.

**Question 12:** The Paralyzed Veterans of America (PVA) provided a statement for the record. The statement suggests that before rushing to a legislative solution, a study be conducted ASAP to determine the immediate impact of the reported financial shortfalls. Would you support this proposal?

**Response:** VA concurs that a study to determine the immediate impact of the reported financial shortfalls and the underlying reasons for the shortfalls would help VA and Congress to better understand the financial challenges faced by the state homes and to develop responses to mitigate those challenges. VA has asked the state homes to provide additional cost of care data, but recently received some data from more states. If Congress were to mandate that VA carry out such a study, VA would request that Congress also mandate that the States provide the data necessary for VA to conduct the study.

**Question 13:** Have you received response from any states regarding your request for "documentation that demonstrates how their actual costs for ... care ... exceeds the allowable VA per diem payment?" If so, please share those responses.

**Response:** VA has received responses from Maine, Idaho, and Hawaii. (See attachments 1, 2, and 3)

VA recently received data from 10 states, including additional data from Maine and Idaho, and is in the process of evaluating it.

**Question 14:** Are there any mechanisms in place to assess the accuracy of the actual cost of care reported by state homes? If so, please provide details.

**Response:** VA has not previously had a mechanism in place to review cost-reporting by the states at the level of detail required to address the challenges posed by the new per diem payment mechanism. Collaboration between the program and fiscal offices will be necessary to review the data now being reported by the states to VA.

**Question 15:** What information, if any, are you lacking to gain a complete understanding of how State Homes are currently being impacted by P.L. 109-461?

**Response:** VA has requested that the states provide Medicaid cost reports for those homes that are certified by the Centers for Medicare and Medicaid Services (CMS). Medicare cost reports may also be made available directly through the CMS. This will provide standardized and audited data on the states' actual costs that can be compared with the new rates paid by VA to the State Homes under P.L. 109-461. More than 60 of the State Homes are CMS certified, but VA has received Medicaid cost reports from only 10 states which have a total of 30 State Homes. VA is seeking additional information from the states and is also exploring obtaining information directly from CMS.

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### **The Honorable Congresswoman Madeleine Bordallo**

**Question 1:** Over the past 18 months, I have requested that VA address the issue of eligibility for Guam to participate in the VA State Home Grant program. On July 10, 2009, VA published a proposed rule in the *Federal Register* that would include

Guam and the other insular areas in the VA State Home Grant program. As of November 2009, VA anticipated publishing the final rule by the end of the year. I certainly appreciate the efforts of VA to correct this oversight. However, please update me on the status of this final rule and when we can reasonably expect VA to publish the amended final rule that would include Guam in the VA State Home Grant program.

**Response:** VA anticipates that the final rule will be published within 30 days after it completes concurrence.

### Attachment 1—Response from Maine

#### OMB A-87 Cost Report

- The OMB A-87 rate will almost always be less than the VA Published Rate.
- This is so because OMB Circular A-87 disallows certain costs that otherwise would be payable to a SVH.
- This means that almost all Medicare/Medicaid certified Homes will be paid less than the published VA Rates for the Program.
- The difference between the VA Published Rate and the OMB A-87 Rate may be substantial.

#### Augusta SVH OMB A-87 Report, FY '08

1. Total Allowable Costs	\$9,141,698
2. Total Income from Other Sources	\$(5,805,822)
3. Total Allowable Costs Less Income from Other Sources	\$3,335,876
4. 1/2 Total Allowable Costs	\$4,570,849
5. Total Claimed by Home from VA	\$2,228,789

#### Detail For Augusta SVH FY '08 OMB A-87 Report

Total Costs	\$9,424,641
Less Disallowed Costs:	
Employee Meals & Lodging	\$2,649
Donated Services	\$9,790
Bad Debts	\$40,220
Disallowed Advertising	\$5,927
Disallowed Depreciation *	\$221,372
Other	\$2,985
Total Disallowed Costs	\$(282,943)
Total Allowable Costs	\$9,141,698 **

\*65% of depreciation expense on items purchased with a VA grant

\*\*\$9,141,698+42,327 (total actual resident days) = \$215.98

#### Cost Report Settlement under the Program

VA Published Rate for 2008	\$267.81
MVH OMB A-87 Rate	\$215.98
Difference	\$51.83

Both are below the actual daily cost of care.

#### OMB Disallowed Costs (Maine)

• Disallowed Costs for MVH Augusta	\$282,943
• Disallowed Costs for MVH Scarborough	\$328,027
• Disallowed Costs for MVH South Paris	\$117,341
• Disallowed Costs for MVH Bangor	\$252,752
• Disallowed Costs for MVH Caribou	\$80,186
OMB FY '08 TOTAL DISALLOWED COSTS:	\$1,061,249

#### The Problem Is Worse Than You Think

- For Medicare/Medicaid Certified Homes, both the VA Published Rate and the OMB A-87 Rate are likely to be *less than* a Home's *actual cost of care*.
- This is so because many services (such as physicians, x-rays, and labs) are currently paid by Medicare Parts B and D rather than State Veterans Homes.
- VA payments under the Program, however, are "payment in full to the State Homes," and the VA appears to *prohibit billing by State Homes to Medicare Parts B and D for veterans covered by the Program*.

- Therefore, State Homes must provide drugs, physicians, and other services under the Program at their own cost.
- Such costs can be thousands of dollars, per resident, per month, and such "Outlier Costs" Are Not Paid under the Program outside of the lesser of the VA Published Rates (which almost nobody will be paid) or the OMB A-87 Rates (which are below actual costs of care).

**Examples of Outlier Costs That Are Not  
Paid Separately by the VA**

Dialysis supplies and services	\$1,200
PET, CT Scans, MRI	\$4,000
Chemotherapy	\$1,800
Radiation Therapy	\$2,000
Customized Prosthetics and Orthotics	\$500
Emergency Room Treatment	\$500
Drugs	Up to \$3,000/month

**Attachment 2—Response from Idaho**

**Idaho Division of Veterans Services Boise Veterans Home  
Statement of Expenditures For the Month Ending:  
September-09**

	NURSING CARE	DOMI- CILIARY CARE	TOTAL COST
FISCAL	15,243.59	907.11	16,150.70
SECURITY	18,927.01	3,399.52	22,326.53
FOOD SERVICE	91,408.09	23,535.76	114,943.85
UTILITIES	29,290.11	5,260.85	34,550.96
LAUNDRY	4,422.91	276.14	4,699.05
VOLUNTEERS	6,797.65	1,750.31	8,548.16
RELIGIOUS SERVICES	1,434.28	369.30	1,803.58
SOCIAL SERVICE	18,652.27	1,109.95	19,762.22
HOUSEKEEPING	43,368.04	7,789.42	51,157.46
MED RECORDS	15,014.56	893.48	15,908.04
PHYSICAL THERAPY	57,637.86	0.00	57,637.86
ACTIVITIES	17,704.45	1,053.55	18,758.00
PHARMACY	43,242.21	0.00	43,242.21
ADMINISTRATION	47,461.42	2,824.31	50,285.73
DIRECT CARE COSTS	371,858.40	22,128.33	393,986.73
DIVISION CENTRAL OF- FICE COSTS	28,796.56	1,713.61	30,510.17
OVA CENTRAL COST AL- LOCATION	3,011.80	179.22	3,191.03
LESS CAPITAL OUTLAY	(7,877.20)	(2,028.22)	(9,905.42)
DEPRECIATION	10,031.22	2,756.67	12,767.69
TOTAL COSTS	\$816,425.45	\$73,919.29	\$890,344.75
ELIGIBLE DAYS CARE	3,613	938	
PER DIEM COST	224.111	78.81	
ELIGIBLE DAYS CARE	3,613.00	938.00	
LESS: 70% or HIGHER DAYS CARE	351.00	0.00	
TOTAL ELIGIBLE DAYS CARE	3,262.00	938.00	
PER DIEM @	74.42	\$242,758.04	
PER DIEM @	34.40	\$32,267.20	
TOTAL PER DIEM			\$275,025.24
70% HIGHER DAYS CARE	224.11	\$78,662.61	
TOTAL PER DIEM + 70% or HIGHER DAYS CARE			\$353,687.85

**Attachment 3—Response from Hawaii**

**The 70 Percent Disabled Veterans Program, Public Law 109-461**

The 70 percent Disabled Veterans Program <http://www.vagov/ogc/docs/PL109-461.pdf> has become a controversial program. Initially, the Law looked good because

it allowed state veterans homes (SVH) the option of providing long-term nursing care services, at no cost, to 70 percent and more disabled veterans. However, upon closer examination we learned the law could cause some States to close their doors because of the additional financial burden placed on them. Under this law, SVH have no choice in the level or source of payment; if the veteran qualifies for the Program, the Home must accept the new VA paid per diem—period. The Program has an enhanced per diem rate (\$331.35 v \$74.42/day for Hawaii) which is enticing, but these higher rates generally result in lower total amounts received for care provided.

The provision originated in legislation introduced by Senator Daniel Akaka CD–HI, who described the measure as an effort to “protect and expand” the State Homes program. “We need to fortify the program,” said Senator Akaka, who described the language that became section 211(a) as intended to “authorize VA to place severely disabled service-connected veterans directly in State homes and . . . require VA to reimburse State homes for the cost of such care.”

Under Public Law 109–461, Title II, Sec 211 §1745a(3) the VA higher Per Diem rate is considered full payment for care. Further, if the VA pays the higher per diem rate, and accepts retroactively money for services delivered; the SVH must return moneys to all payers for the period the VA retroactively paid. Additionally, the VA appears to prohibit billing by State Homes to Medicare Parts B and D for veterans covered by the Program. Payments to SVH under the Program are the lesser of a rate published by VA by the VA for that Veterans Home, or the daily cost of care for that Veterans Home determined under OMB Circular A–87. This circular disallows certain costs that otherwise would be payable to a SVH, i.e., employee meals and lodging, donated services, bad debts, advertising, certain depreciation, etc. To our knowledge, every State Home in the Nation has an OMB Circular A–87 rate which is less than the VA “published” rate. It is as likely as not that SVH costs will rise sharply because state homes must provide and pay for equipment and services currently paid by Medicare Parts B and D.

Yukio Okutsu State Veterans Home has experience with four veterans eligible for the Program, three enhanced Per Diem eligible veterans in residence—two are relatively low maintenance, the third was in residence for 13 days; Per Diem reimbursement for his stay was \$4,307.55 his ancillary medical bills totaled \$8,383.44. Beginning net loss of \$7 per day room and board then adding costs for Ancillary Services; Physician Services, Laboratory Work, X–Ray, Rehab Therapy, Respiratory Therapy, Durable Equipment, Nursing Supplies, Prosthetics, Orthotics, Dialysis, IV Therapy, and Oxygen; the dollars lost add up.

The following table is a summary of charges for Program eligible veterans in residence for July 2009; August admissions added to show accelerating demand.

Resident ID Number	44	131	130	149 *	Pending*
Admission Date	7/14/08	6/19/2009	7/17/2009	8/13/2009	8/21/2009
Age	85	65	93	69	96
Number Days in Residency July 2009	31	9	16		
Room & Board	\$10,272.00	\$2,982.00	\$5,302.00		
Pharmacy	\$1,640.00	\$90.00	\$597.00		
Labs/x ray	--	\$49.00	--		
Rehab	\$2,425.00	--	\$1,703.00		
Central Supply	--	\$54.00	--		
IV Therapy	--	\$2,495.00	--		
Totals	\$14,337.00	\$5,670.00	\$7,602.00		
Per Day Cost	\$462.48	\$630.00	\$475.13		
VA Reimbursement	\$(331.35)	\$(331.35)	\$(331.35)		
Daily Excess Costs	\$131.13	\$298.56	\$143.78		

\* Cost Per Resident is Rising

\* Included To Demonstrate the Rapid Growth of Program Qualified Residents.

Is the 70 Percent Disabled Veterans Program a good deal for the veteran? For the short term, it may seem to be; but for the long term, it is a financial disaster. In fact, State Homes on the mainland have projected losses of as much as \$300K per month. The Program is causing State Homes to profile admission of eligible veterans; the Veterans who were to be the prime beneficiaries of the Program will be least served by legislation created to improve the quality of their lives.

Yuba Okutsu State Veterans Home supports the National Association of State Veterans Homes (NASVH) initiative 4-step solution:

1. Have Congress pass a clarifying amendment to Section 211 of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (Pub. L. No. 109-461) (the "Act") postponing for 2 years, for Medicare-certified and Medicaid-certified State Veterans Homes only, the mandatory implementation of the Program while any adverse economic effects on States operating Medicare-certified and Medicaid-certified State Veterans Homes can be studied, using cost data for actual veterans residing in State Veterans Homes during this period.
2. Allow State Veterans Homes, in interim, to serve service-connected disabled veterans under the existing VA Provider Agreement ("Pro VA") for contract nursing homes.
3. At the end of 18 months, the National Association of State Veterans Homes shall report to the Committees on Veterans Affairs of the United States Senate and House of Representatives with any recommendations that it has to modify the provisions of the Act.
4. During this time, cost and payment data for residents of Medicare-certified and Medicaid-certified State Veterans Homes shall be compared among the Program, existing Medicare and Medicaid programs, and contracted programs between the VA and private nursing homes for the care of veterans with service-connected disabilities.

