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United States Senate

WASHINGTON, DC 20510

COMMITTEES:
AGRICULTURE
APPROPRIATIONS
ENERGY AND NATURAL RESOURCES
INDIAN AFFAIRS

April 24, 2023

The Honorable Julie Su
Acting Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Acting Secretary Su:

I write today regarding an issue of great importance to ensuring veterans have access to high-quality health care, including long-term care, in their home communities. Specifically, I request that the Department of Labor (DoL) permanently exempt Veterans Affairs Health Benefits Program (VAHBP) providers from the Office of Federal Contract Compliance Program's (OFCCP) authority. Given its impending expiration, at a minimum, I urge you to extend the existing enforcement moratorium beyond May 7, 2023. Thank you for your urgent attention to this issue.

As you may know, in August 2021, OFCCP published a final rule to remove TRICARE providers from its authority, with the goal of improving access to medical care for servicemembers and their families. During the rule's comment period, OFCCP received several recommendations that DoL also remove VAHBP providers from OFCCP authority in an effort to increase access to care for veterans and provide better certainty for health care providers participating in VA's Community Care Network (CCN). While the final rule did not provide a similar removal or national interest exemption, OFCCP was in fact concerned that an expiration of the VAHBP enforcement moratorium, in addition to the lack of regulatory exemption for VAHBP providers, may cause health care providers to decide against contracting with the VA, thereby reducing access to health care for veterans. In response, OFCCP issued an October 2020 directive extending the VAHBP enforcement moratorium an additional two years, until May 7, 2023, in order to "provide sufficient time to consider whether a national interest exemption for VAHBP providers is warranted." Further, OFCCP committed to "providing further sub regulatory guidance on VAHBP providers."

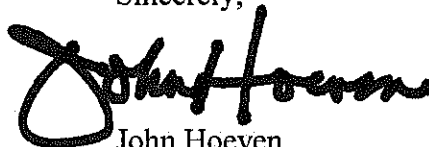
It is important to note that skilled nursing facility providers must already comply with Centers for Medicare and Medicaid Services (CMS) requirements and regulations. In fact, the VA is already deferring to many CMS participation requirements in an effort to minimize redundancies and conflicts when regulations undergo changes. Removing duplicative and overly burdensome requirements will help increase access to care for veterans, particularly those residing in rural areas.

In response to a question for the record following a May 4, 2022, Senate Appropriations Subcommittee on Military Construction, Veterans Affairs, and Related Agencies hearing, the VA stated, "Any additional requirements imposed on providers treating Veterans versus non-Veterans make it more difficult to recruit providers to serve Veterans and give them access to long-term care." The Department went on to say that, "VA agrees that extending the OFCCP's exemption to providers operating pursuant to an agreement with VA in addition to TRICARE is a good idea."

While this response was positive, I am concerned that DoL has not taken any action since these comments were made by the VA, particularly given the looming expiration of the existing enforcement moratorium. That is why I urge you and your Department to permanently exempt VAHBP providers from OFCCP's authority. At a minimum, I would urge that the existing moratorium be extended beyond May 7 so that those who have served our country have access to the quality care that they have earned.

I appreciate your prompt attention to this request. Should your staff wish to speak with mine, please contact Logan Skarphol of my staff at logan_skarphol@hoeven.senate.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "John Hoeven". The signature is stylized with a large, looping initial "J" and a cursive "Hoeven".

John Hoeven
U.S. Senator

CC: Michele Hodge
Acting Director
Office of Federal Contract Compliance Programs