

JOHN HOEVEN
NORTH DAKOTA

338 RUSSELL SENATE OFFICE BUILDING
TELEPHONE: (202) 224-2551
FAX: (202) 224-7999

hoeven.senate.gov

United States Senate

WASHINGTON, DC 20510

COMMITTEES:
AGRICULTURE
APPROPRIATIONS
ENERGY AND NATURAL RESOURCES
INDIAN AFFAIRS

April 24, 2023

The Honorable Denis McDonough
Secretary of Veterans Affairs
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Dear Secretary McDonough:

Thank you for your continued service on behalf of our nation's veterans. I write to request that the Department of Veterans Affairs (VA) urge the Department of Labor (DoL) to permanently exempt Veterans Affairs Health Benefits Program (VAHBP) providers, including long-term care facilities, from the Office of Federal Contract and Compliance Program's (OFCCP) authority. Given the current moratorium expires May 7, I request your urgent attention to this issue so that veterans can continue to have access to high-quality care.

As you know, the VA MISSION Act (Public Law 115-182) authorized non-VA long-term care providers, including skilled nursing facilities, to enter into Veterans Care Agreements (VCAs) with the Department. Prior to the establishment of VCAs, the VA traditionally used community care and local contracts (provider agreements) through its medical centers across the country. However, these types of contracts have not always worked, particularly in rural areas, due to burdensome regulations, including duplicative requirements from OFCCP. As a result, numerous long-term care providers have declined to participate in VA's Community Care Network, leaving too many veterans without access to quality, convenient long-term care services in their home communities.

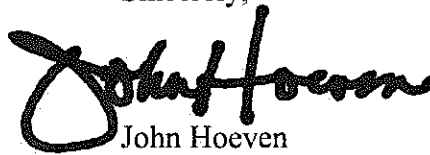
In August 2021, OFCCP published a final rule that removed TRICARE providers from its authority, with the goal of improving access to medical care for servicemembers and their families. During the rule's comment period, OFCCP received several recommendations to also remove VAHBP providers from OFCCP authority, 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. 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. As a result of these concerns, OFCCP issued an October 2020 directive extending the VAHBP enforcement moratorium an additional two years, until May 7, 2023.

In response to a question for the record following a Senate Appropriations Subcommittee on Military Construction, Veterans Affairs, and Related Agencies hearing last spring, 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 continued that, "VA agrees that extending the OFCCP 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 once again urge you and your Department to discuss with DoL the importance of permanently exempting 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.

Thank you for your consideration of my request. Should your staff wish to speak with mine, please contact Logan Skarphol at logan_skarphol@hoeven.senate.gov.

Sincerely,

A handwritten signature in black ink that reads "John Hoeven". The signature is written in a cursive, flowing style with a large initial "J".

John Hoeven
U.S. Senator