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U.S. House of Representatives

COMMITTEE ON VETERANS' AFFAIRS

ONE HUNDRED NINTH CONGRESS

335 CANNON HOUSE OFFICE BUILDING

WASHINGTON, DC 20515

<http://veterans.house.gov>

May 5, 2005

Honorable Jim Nicholson
Secretary
Department of Veterans Affairs
Washington, DC 20420

Dear Mr. Secretary:

On April 5, 2005, Ralph Charlip of the Health Administration Center (HAC) in Denver and other members of your staff offered Committees on Veterans Affairs staff a briefing on the HAC and the fee-based programs it supports. My staff appreciated the opportunity for this briefing.

During the course of this briefing, staff inquired about section 1725 of Title 38 U.S. Code which authorizes VA to pay for non-VA emergency care under certain situations. Specifically, VA stated that it does not pay for and does not believe it has the authority to reimburse care during this episode once the veteran is stabilized *even if* there is no Department facility feasibly available to accept the patient for care.

I believe that the law is clear. The VA is authorized to reimburse "emergency treatment" which is defined as:

medical care or services furnished, in the judgment of the Secretary - (A) **when Department or other Federal facilities are not feasibly available** and an attempt to use them beforehand would not be reasonable; (B) when such care or services are rendered in a medical emergency of such nature that a prudent layperson reasonably expects that delay in seeking immediate medical attention would be hazardous to life or health; and (C) **until such time as the veteran can be transferred safely to a Department facility or other Federal facility.** (Title 38 USC §1725 (f) (1) (A) (B) and (C)—emphasis added)

In my view the law requires VA to pay for the emergency care until such time as the veteran can be safely transported to a Department or other Federal

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facility. If there is no Department or Federal facility available to provide the care, there is no place to which the veteran can be safely transferred. Coverage should be terminated only if the veteran refuses transfer to a feasibly available facility after stabilization of the medical condition. As long as there is no other facility to which the veteran can be safely transported, all of the three conditions (A),(B), and (C) continue to be met and payment should be made.

The final condition requires two conditions to be met. First that the veteran be "stabilized" (a term that is further defined in 38 CFR Ch. 1§17.1001(d)), and second that the VA or other government facility that is closest to the treating facility *accepts* a transfer. I believe that Congress clearly meant for the VA to offer the eligible veteran a continuous benefit where the episode of care is either reimbursed or directly provided by VA.

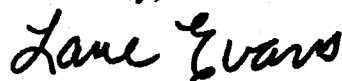
Has the VA General Counsel issued a formal or informal opinion concerning VA's authority to terminate coverage under the emergency care provision when there is no feasibly available facility to provide the necessary care? If so, please share this opinion with me. If not, I am requesting that the General Counsel provide an opinion on this matter.

In the event that VA defends its position to cease payment for care after a patient is stabilized, but when no alternative Department or Federal facility is feasibly available, I would like to request VA to offer technical assistance in drafting legislation addressing this unintended "loophole."

I would appreciate your response by August 1, 2005. If you have questions about this request I ask that you direct them to Mary Ellen McCarthy on my Democratic Committee on Veterans Affairs staff at (202)225-9756.

Thank you for your assistance with this request.

Sincerely,



LANE EVANS

Ranking Democratic Member