STATEMENT OF
JACOB B. GADD, ASSISTANT DIRECTOR FOR PROGRAM MANAGEMENT
VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
TO THE
SUBCOMMITTEE ON HEALTH
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON H.R. 4241

MARCH 3, 2010

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.