

**TESTIMONY OF
FRED BENJAMIN, VICE PRESIDENT AND CHIEF OPERATING OFFICER
OF
MEDICALODGES, INC.**

**BEFORE THE
U.S. SENATE COMMITTEE ON VETERANS' AFFAIRS**

JUNE 3, 2015

Good afternoon, Chairman Isakson, Ranking Member Blumenthal, and distinguished members of the Committee. I'd like to thank you for holding this hearing to discuss, among other veterans related health care issues, the discussion draft on VA provider agreements language. I especially appreciate the opportunity to appear before you here today. My name is Fred Benjamin, and I am the Vice President and Chief Operating Officer of Medicalodges, Inc., a company that offers a continuum of health care options which include independent living, skilled nursing home care, rehabilitation, assisted living, specialized care, outpatient therapies, adult day care, in-home services, as well as services and living assistance to those with developmental disabilities.

Medicalodges was launched in 1961 when its first nursing home, Golden Age Lodge, was opened in Coffeyville, Kansas by founding owners Mr. and Mrs. S.A. Hann. The company grew through the 1960's with the addition of eight nursing facilities. In 1969, Golden Age Lodges was renamed Medicalodges, Inc. As new care centers were built or purchased, the company expanded its products and services to include a continuum of health care. In February, 1998 the employees of Medicalodges acquired the company from its previous owners in a 100% Employee Stock Ownership Trust transaction. Today, the company owns and operates over 30 facilities with operations in Kansas, Missouri and Oklahoma and employs over 2500 people in the communities it serves.

I have served as the Company's Chief Operating Officer since May 2009. I am honored to have worked 30-years in this industry that includes senior management roles in skilled and sub-acute care, hospitals and other for-profit and not-for-profit ventures. I am also currently serving as Chairman of the Board of the Kansas Health Care Association, the leading provider advocacy group for seniors in Kansas.

I would like to note that Medicalodges is a member of the American Health Care Association (AHCA), which is nation's largest association of long term and post-acute care providers. The Association's members provide essential care to approximately one million individuals in more than 12,000 not-for-profit and proprietary member facilities.

AHCA, its affiliates, and member providers advocate for quality care and services for frail, elderly, and disabled Americans -- including our nation's veterans -- and for the continuing vitality of the long term care provider community. The Association is committed to developing and advocating for public policies which balance economic and regulatory principles to support quality of care and quality of life. Therefore, I appreciate the opportunity today to submit a statement on behalf of AHCA in strong support of the concept of veteran's provider agreements for extended care services in particular.

AHCA has been working on the issue of VA provider agreements for over two decades, and was supportive of the VA releasing its proposed rule, RIN 2900-A015, on this issue in February of 2013. This important rule, among other things, increases the opportunity for veterans to obtain non-VA extended care services from local providers that furnish vital and often life-sustaining medical services. This rule is an example of how government and the private sector can effectively work together for the benefit of veterans who depend on long term and post-acute care.

Last Congress, and through the advocacy efforts of AHCA's members, close to half of the U.S. Senate chamber and 109 U.S. House members signed onto a letter to the VA encouraging the release of the final VA provider agreement rule. Shortly after these letters were sent to the VA, it was determined that the VA needed the legislative authority to enter into these agreements. The U.S. Senate and House Veteran's Affairs Committees are currently working on this issue through the VA provider agreement discussion draft we are here to focus in on today.

As I mentioned earlier, AHCA started work with the VA and Capitol Hill on the provider agreement issue for extended care services several years ago. In this current Congress, AHCA has worked very closely with Congressional members like Senators John Hoeven (R-ND), Chairman Johnny Isakson (R-GA), Committee members Richard Blumenthal (D-CT) and Joe Manchin (D-WV), along with House VA Committee Chairman Jeff Miller (R-FL-1st), Representatives Jackie Walorski (R-IN-2nd) and Tulsi Gabbard (D-HI-2nd) on ensuring that the VA has the legislative authority to enter into provider agreements. It is long-standing policy that Medicare (Parts A and B) or Medicaid providers are not considered to be federal contractors. However, if a provider currently has VA patients, they are considered to be a federal contractor. The discussion draft legislation being considered today, and worked on under the leadership of Senators Hoeven and Blumenthal, would cover the gamut of care VA provides, including primary care and other areas outside of extended care. Across that spectrum of health care, VA purchases care through both the Federal Acquisition Regulation (FAR) and non-FAR based agreements, and that would continue under this proposal.

I speak specifically from my experience leading Medicalodges and also for my fellow extended care providers across the country whom the AHCA represents. For our company, and many extended care providers, FAR-based agreements are simply not workable, and a streamlined approach that still protects Veterans, taxpayers, and preserves oversight is desperately needed.

What we like about the draft legislation is that it makes sure the non-FAR based option is available so that we can continue in partnership with the VA to provide veterans quality health care as close to home as possible.

To illustrate the details, FAR-based Federal contracts come with extensive reporting requirements to the Department of Labor (DOL) on the demographics of contractor employees and applicants, which have deterred providers, particularly smaller ones, from VA participation. The use of provider agreements for extended care services would facilitate services from providers who are closer to veterans' homes and community support structures, under terms and oversight similar to those used by Medicare. Once providers can enter into provider agreements, the number of providers serving veterans will increase in most markets, expanding the options among veterans for nursing center care and home and community-based services. Services covered as extended care under the proposed rule include: nursing center care, geriatric evaluation, domiciliary services, adult day health care, respite care, and palliative care, hospice care, and home health care.

After years and years of work on this issue by many, we are delighted to be at the point we are now of discussing a comprehensive provider agreement proposal. AHCA fully endorses the VA provider agreements draft legislation being worked on by Senators Hoeven and Blumenthal. As a provider myself and with a total of 9 VA contracts currently, I can tell you why it is so vital that extended care providers have the provider agreement option. I'll outline some of the day to day issues from the experience of our company and other extended care providers:

Issue: Additional administrative workload Additional administrative responsibilities under the Contractor Performance Assessment Reports System (CPARS) as compared to Medicaid or Medicare. Please note that aside from designated State Veterans Homes, most facilities have less

than 5 Veterans in house at a time. Each of our contracts with the VA has 68 pages of terms and responsibilities with rates that are updated quarterly. Beyond this, with the new CPARS program, I receive multiple emails daily from this automated system requesting approval or acknowledgement of payment in full when full payment has not yet been received. This alone has added to our administrative workload to deal with this correspondence.

Issue: Lack of Clarity in Approval processes Separate reporting structures for those writing and administering contracts results in lack of clarity in approval of needed supplies and services. Contracting personnel are not at the same location as those referring Veterans for care and managing contracts on a day to day basis. These include durable medical equipment such as wheelchairs, specialty equipment such as Clinitron beds, drugs and non-emergent dental services.

Issue: Lack of consistency in contract administration This includes different procedures at each location for getting approval for items such as durable medical equipment, oral medications whose cost exceed 8.5% of the approved daily rate. Another example is differing administration of daily rates and the requirement for pre-approval of services when personnel are not available to answer questions or provide approval. This sometimes leaves providers in the position of having to provide equipment or services because of State or Federal Centers for Medicare and Medicaid Service (CMS) requirements without guarantee of payment.

Issue: Duplication of Regulatory Supervision In addition to State and CMS performance reviews, the VA conducts its own annual reviews inspections that are largely duplicative of those in other governmental health programs.

Issue: Additional DOL supervision and review While we understand the need to be under DOL regulations for wage and hour/overtime rules and the like, there are additional requirements for those providing services under FAR. These include identification of direct care workers and documentation benefit premiums of 40% of base pay and exactly which workers this covers. This proposal strikes a good balance.

To close, we must ensure that those veterans who have served our nation so bravely have access to quality health care – and the legislative discussion draft being worked on by Senators Hoeven and Blumenthal will ensure this will be the case. We are looking forward to continuing to work with both the Senate and House VA Committees and members of Congress on getting the VA provider agreement proposal across the finish line, and signed into law. Thank you again for the opportunity to comment on this important matter. I am happy to answer any questions that you may have.