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February 15, 2023

The Honorable Denis R. McDonough
Secretary of Veterans Affairs
810 Vermont Ave NW
Washington, DC 20420

Dear Secretary McDonough,

We write today to reiterate our deep concern with the upcoming finalization of the Department of Veterans Affairs (VA) proposed rule change for air ambulance and other special mode transportation services rates (AP89). We understand, and support, VA's interest in ensuring rates are fair and appropriate and in following the recommendations made by the 2018 Office of Inspector General Report: The Beneficiary Travel Program, Special Mode of Transportation Eligibility and Payment Controls. However, we are disappointed VA has not been transparent with, or adequately responded to, widespread outreach from Congress, stakeholders, veterans, and the public surrounding this proposed rule change.

This proposed rule change was issued in the midst of negotiations surrounding Public Law 116-260, the Consolidated Appropriations Act of 2021, which included the No Surprises Act. Not only does the proposed rule not account for the major impact the No Surprises Act has had on Center for Medicare & Medicaid Services (CMS) rates for air ambulance services, but it also does not account for the unique nature of these emergency life-saving services or the permanent changes to health care resulting from the pandemic that began after it was proposed. VA has admitted to not having done its own market assessment of air ambulance rates before publishing this proposed rule, which is highly concerning given the impact VA's payment rates could have on this critical transportation service for veterans and the general public, particularly those in rural, remote, or underserved areas. We are discouraged by the lack of due diligence carried out by VA before publishing this rule, with the lack of action taken by VA to rectify these missteps, and with the general dismissiveness that has characterized VA's response to the many concerns raised by lawmakers and stakeholders about this rulemaking.

Additionally, we are concerned with VA's insistence that reductions in care due to the implementation of AP89 are unlikely when more than 80% of claims and related payments will be impacted according to VA's own data. VA asserts air ambulance providers' ability to enter into contracts with VA medical centers (VAMCs) at higher rates than reimbursed by CMS will prevent any base closures or reductions in care. However, it is our understanding VA has not conducted outreach to external stakeholders or VAMCs to encourage this contracting process. VA claims there are contracts in place nationwide, when the majority of providers are only aware of a handful of such contracts in existence, if any.

We urge VA to delay finalizing this rule and to coordinate with the Department of Health and Human Services to ensure VA is basing any changes to air ambulance payment rates on accurate data, as requested in the joint explanatory statement accompanying Public Law 117-328, the Consolidated Appropriations Act, 2023. We also encourage VA to issue another comment period and hold a public forum on the rule given the changes that have occurred in the air ambulance and health care industries since the proposed rule was issued. We further ask VA to conduct extensive internal and external outreach to appropriately inform stakeholders of the implications of the proposed rule change and the tools prospective air ambulance partners may require to begin the contracting process and ensure continuity of care and services for veterans. Finally, we also ask that you take steps to make certain that the Veterans Health Administration demonstrates improved responsiveness and transparency on this and all other matters moving forward.

We look forward to hearing from you regarding our concerns with this proposed rule change, and to working together to ensure veterans who rely on this critical care service are not negatively affected by any payment rate changes.

Sincerely,



Jon Tester
Chairman
Senate Committee on Veterans' Affairs



Jerry Moran
Ranking Member
Senate Committee on Veterans' Affairs