March 15, 2013

Director, Regulations Management (02REG)
Department of Veterans Affairs
810 Vermont Avenue NW, Room 1068
Washington, DC 20420

Re: Comments on Proposed Regulations for RIN 2900 – AO15, Use of Medicare Procedures to Enter into Provider Agreements for Extended Care Services

Submitted Electronically through www.regulations.gov;
ID VA-2013-VHA-0006-0001

Dear Director:

The National Association of Area Agencies on Aging (n4a) appreciates the opportunity to comment on the proposed regulations regarding the Department of Veterans Affairs (VA) use of Medicare procedures to enter into provider agreements for extended care services for veterans. n4a is the leading voice on aging and long-term service and supports (LTSS) issues for Area Agencies on Aging (AAAs) and a champion for Title VI Native American aging programs. Through advocacy, training and technical assistance, n4a supports the national network of 629 AAAs and 246 Title VI programs in their mission to ensure that people can age and live successfully at home and in the community with dignity and independence for as long as possible.

For forty years, AAAs have played a variety of vital roles in the planning, coordination and delivery of LTSS. AAAs, which were created and are still funded by the federal Older Americans Act, offer vulnerable individuals and caregivers access to critical home and community-based services (HCBS), including care coordination; information and assistance; home-delivered meals and nutrition education; personal care and in-home assistance; legal services; transportation; and much more. Although these services were initially targeted to address the needs of older adults, over the past several decades, AAA services have expanded to provide services and supports to people with
disabilities of all ages. Millions of Americans in every community across the country depend on these services to meet their health and social needs.

n4a appreciates the primary intent of this proposed rule, which is to simplify how the VA can approve non-VA providers to deliver “extended care services” to veterans, as well as obtain services from providers who are closer to a veteran’s home and community support structures. The latter is especially important for veterans who live in rural communities where there are often fewer eligible care providers. We also applaud the VA for providing the means for non-VA providers of HCBS to provide these important services to our country’s veterans.

Although we support the intention of the proposed rule, we are concerned that it unnecessarily limits the non-VA provider definition and, as a result, may limit veterans access to the “extended care services” that the rule was targeted to expand. n4a respectfully offers several suggestions that would strengthen the rule and ensure its successful implementation.

The proposed regulation would require the VA to enter into provider agreements, of which only Medicare and Medicaid providers are eligible. As written, the definition of “extended care services” and “provider” limits the veterans from accessing high-quality care from HCBS providers that are not participants of the Medicare or Medicaid program. This is unnecessarily restrictive and will harm the overall goals of the program.

The continuum of health care services, both acute and LTSS, has evolved dramatically in recent years. Many health care providers operate outside of the realm of Medicare and Medicaid, providing high-quality, innovative and cost-effective care to our nation’s most vulnerable populations. Moreover, health care operations are transforming from siloed entities to integrated systems of acute and LTSS that maximize the outcomes for the patient while limiting costs to the system as a whole. Services such as care coordination or evidence-based chronic disease self-management programs serve as examples of this innovation, all of which are offered by AAAs.

AAAs, with their 40 year history of providing high quality HCBS utilizing federal and state funding as well as other established HCBS providers should be able to be designated as a VA extended service provider under the proposed rule. Such an expansion of the definition would allow the VA to utilize and leverage these critical community organizations as it strives to provide extended care services to our nation’s veterans.

Specifically, we believe that the proposed rule as written may cause the following unintended consequences:

- Many high-quality HCBS alternatives to institutional care will not be accessible to veterans in need because provider agreements are limited to only Medicare and Medicaid reimbursable care providers.
A lack of ample quality providers may lead to increased placement of veterans into more costly, and often unwanted, nursing home care.

Veteran self-direction and patient preference will be compromised by limiting the available providers. This may especially affect veterans who live in rural communities where provider options are limited to begin with.

Innovative services or advanced technologies available more readily in non-Medicare or Medicaid settings will not be available to veterans now or in the future.

**n4a’s Recommended Changes to the Proposed Rule**

1. Amend the Definitions of “Extended Care Services” and “Provider” to Better Reflect Current Law and the Realities of HCBS Provision

**Definitions (§17.75(a)) - Extended Care Services**

Currently, proposed §17.75(a) defines “extended care services” as “geriatric evaluation; nursing home care; domiciliary services; adult day health care; noninstitutional palliative care, noninstitutional hospice care, and home health care when they are noninstitutional alternatives to nursing home care; and respite care.”

However, the VA offers that the derivation of the proposed definition of “extended care services” in fact stems from Public Law 110-387, U.S.C. 1710B(a), which elaborates on the definition and offers another option: “such other noninstitutional alternatives to nursing home care as the Secretary may furnish as medical services under [38 U.S.C. 1701(10)].” 38 U.S.C. 1710B(a)(1)-(6).

It is important to note that the definition of “medical services” that would fall under “extended care services” under 38 U.S.C. 1701(10) was set to sunset in 2008, and was replaced by language that provides that “medical services” include “[n]oninstitutional extended care services, including alternatives to institutional extended care that [VA] may furnish directly, by contract, or through provision of case management by another provider or payer.” Public Law 110-387, title VIII, §801 (Oct. 10, 2008).

As written, the proposed §17.75(a) does not offer the statutory definition of extended care services provided by Public Law 110-387. **n4a recommends that the statutory language under Public Law 110-387, title VIII, § 801 be included for “extended care services” under the proposed §17.75(a).**

**Definitions (§17.75(a)) - Provider**

Further, proposed § 17.75(a) defines “provider” as “any non-VA entity that provides extended care services and is participating in Medicare or a State plan under title XIX of the Social Security Act pursuant to a valid provider agreement.”
n4a recommends broadening the definition of “provider” to one which reflects the fullest definition of “extended care services,” as noted above. n4a looks forward to the opportunity to remain engaged as language is developed.

2. Explicitly Expand the Pool of Eligible Providers

Eligible providers from whom VA may obtain extended care services (§17.75(b))

Proposed §17.75(b) only allows the VA to obtain extended care services from providers that participate in the Medicare and Medicaid programs. n4a believes that §17.75(b) should be amended to reflect consistent language with §17.75(a).

It is critical that the pool of “eligible providers of extended care services” be expanded to include the wide range of high-quality HCBS providers that are outside of the scope of the Medicare and Medicaid programs.

Conclusion

As the VA expands its reach of HCBS services for our nation’s veterans, we hope the relevant regulations will reflect the realities and opportunities that the very broad, diverse and rich group of community aging and disability providers offers. We also believe in the value of patient/consumer self-direction that is being implemented throughout the country, and unfortunately, the proposed rule unintentionally limits this choice for veterans.

We appreciate the opportunity to provide comments on these proposed regulations and look forward to working with the VA to ensure successful local delivery of HCBS programs for veterans nationwide.

Sincerely,

Sandy Markwood
Chief Executive Officer