

# BUSINESS MEETING ON PENDING LEGISLATION

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## MEETING OF THE COMMITTEE ON VETERANS' AFFAIRS UNITED STATES SENATE ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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## **BUSINESS MEETING ON PENDING LEGISLATION**

**WEDNESDAY, JULY 22, 2015**

U.S. SENATE,  
COMMITTEE ON VETERANS' AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:32 p.m., in room 418, Russell Senate Office Building, Hon. Johnny Isakson, Chairman of the Committee, presiding.

Present: Senators Isakson, Moran, Boozman, Heller, Cassidy, Rounds, Tillis, Sullivan, Blumenthal, Murray, Sanders, Brown, Tester, Hirono, and Manchin.

### **OPENING STATEMENT OF HON. JOHNNY ISAKSON, CHAIRMAN, U.S. SENATOR FROM GEORGIA**

Chairman ISAKSON. I call this meeting of the Senate Veterans' Affairs Committee to order.

We will have opening statements by myself and Ranking Member Blumenthal and then we will go straight to the agenda.

I do not normally make a long opening statement, but I may make one a little longer than normal this time because there are some things that need to be said.

When we came together as a Committee in January, we decided we were going to see to it that the situation that happened in Phoenix and some of the problems at the VA were investigated and they were carried to their fullest extent, including, if necessary, criminal investigations if wrongdoing was done to end up injuring a veteran.

I am very sorry to announce, but really pleased to announce, that the first indictment was handed down last Friday of a VA employee for misreporting medical information on veterans that caused damage and harm. That was in Georgia, as a matter of fact, which is my homestate, in the VA hospital in Augusta, GA.

I think it is important for the public to know that this Committee learned the lesson of benign neglect from the past few years in terms of our veterans facilities and we are taking an aggressive standpoint in seeing to it that we investigate wrongdoing, and where there is wrongdoing, whether it is criminal or not, it is prosecuted. In this case, I am very proud, working with Ranking Member Blumenthal and all the Members of the Committee, that we are bringing about accountability in terms of VA for the actions these people have taken.

I am also glad that we have bills today on this agenda to deal with accountability in the Veterans Administration. It is to me un-

acceptable for some of the things that have happened over the past few years to continue to happen. I want to be a partner in every way I can with the VA and with Secretary McDonald and the other employees, but I am going to see to it that we as a Committee hold their feet to the fire and that our veterans get the services they deserve, and when people need to be held accountable for actions they take, they are held accountable. I do not think there is anything less that the people would ask of us than those things.

Second, I know Senator Tester is not here yet and he has got an amendment that I think will be withdrawn, or at least will be discussed and withdrawn later on in the meeting, but I want to talk about it now because it is critically important.

One of the things we have been subjected to as a Committee are press releases by the VA that are issued to the press before we get them ourselves. There is Senator Tester right there. That was a perfect show.

Senator TESTER. Thanks. Thank you, Mr. Chairman.

Chairman ISAKSON. Last week, all of us were hit squarely in the face with a press release from the VA saying that because of Congress, they were going to have to shut down hospitals because they were running out of money. Well, that was a misstatement, at best, of their situation. It was certainly a blame on the Congress that was not deserved. I really wish the VA would pick up the phone and call me, as Chairman, and Rep. Jeff Miller, as Chairman, call the Ranking Members, and let us have civilized discussions about these things rather than issuing press releases that put us all on the defensive.

To that end, Senator Blumenthal and I last Thursday morning were at the VA for a meeting that lasted about 3 hours, if I am not mistaken, with all of the leadership of the VA, including a private meeting with Secretary McDonald and with the other members of the VA leadership team, to talk about avoiding this problem in the future. I am pleased to tell the Committee that I have every reason to believe that the House will send us next week a bill that addresses the funding problems the VA identified in the press release last week.

Senator Tester called me and we talked over the weekend. I told him then what I am telling you now, and I have reconfirmed, Senator Tester, that what I am telling you is, in fact, correct. My last conversation was just minutes ago with members representing the House committee. So, the House will be sending us legislation that the Speaker and the leadership in the Senate have talked about that will solve the problem so we will not get our veterans caught with a hospital being closed, and also open the lines of communication where we really have a responsive VA, responsive to the needs of the veterans and also responsive to this Committee, which I am very proud we were able to do.

I want to thank Senator Blumenthal for attending that meeting and being such an active part of it, because I think we identified in that meeting the problems that the VA is having by mischaracterizing monies to be shortfalls that really were not shortfalls. They were just delineations that were in stovepipes that could not be merged, and we are working those, in particular, out.

But, we will let Senator Tester talk about his amendment when it comes up and we will act accordingly in terms of his wishes in terms of that amendment. But, I would prefer for us to accept the fact that we are going to get a solution from the Committee in the House next week.

Did you want to say something?

Senator TESTER. Mr. Chairman, only—I mean, it is on this topic, and I think we can—

Chairman ISAKSON. We will do it on the amendment?

Senator TESTER. We can do it on the amendment. It is your choice.

Chairman ISAKSON. I appreciate your leadership and your call last week.

This is a bipartisan markup today. We have bills from Republicans and Democrats. I took the position at the beginning of this year that bills that were considered for markup purposes would be paid for, and all the bills are paid for.

One item on the agenda, the IVF bill, has been withdrawn by me at the request of Senator Murray, which I was happy to do. I will be glad to discuss that if anybody wants me to, but we are not going to be taking that bill up today.

Last, let me just simply say this. This is a great Committee with a huge responsibility. I think we have got a very responsive agenda today that holds people accountable and also improves the VA, and I appreciate every Member being here, being in attendance.

With that said, I will recognize Ranking Member Blumenthal.

**STATEMENT OF HON. RICHARD BLUMENTHAL,  
RANKING MEMBER, U.S. SENATOR FROM CONNECTICUT**

Senator BLUMENTHAL. Thanks, Mr. Chairman, and thanks for your bipartisan approach today and throughout our work together on this Committee.

I would second what you have said about the need to address the fiscal challenges, as we discussed with the VA leadership last week.

I am glad that a number of bipartisan measures are on the agenda for this week, including the chiropractor bill that Senator Moran and I have offered together which enables better health care for our veterans through chiropractors, increasing the resources available for them.

I am hopeful—more than hopeful—I fully expect and I will work to make sure that Senator Murray’s caregiver and women’s health bills—particularly the one relating to IVF—are on the agenda at some point. We are going to have hearings on them, hopefully in September, and another markup. My hope also is that the joint DOD/VA formularies bill, which I have spearheaded, and Senator Baldwin’s Jason Simcakoski Memorial Opioid Safety act will also be considered in that markup in the fall. I am determined to redouble our efforts to achieve those bills.

On the issue of accountability, one that is very, very close to my professional and personal interest, there clearly needs to be an enhanced commitment to accountability, stronger laws, better penalties. I will support measures that we will consider at this markup. I want to make sure that those measures are fully constitu-

tional. If they are not constitutional, they are unenforceable, and so I will suggest some modifications and support these bills when they reach the floor as long as they are constitutional and unchallengeable legally.

I believe that we need to consider legislation on its merits, which is how we have worked and will continue to work. I know the Chairman is committed to that approach, and I hope that this fall we will have a large package of bills, including some we did not consider today, so that we can move forward on health care and many other challenges and needs that our veterans face.

Accountability is essential. Enhanced accountability is our job number 1, and I thank my colleagues, all of my colleagues, for being here today.

Chairman ISAKSON. Thank you, Senator Blumenthal.

We will go straight to our agenda items and the first bill—I will call them a little bit out of order to accommodate the request of some of our Members, so if it is not in exactly the order you have it printed before you, it is the same bills, it is just in a different order, and the first one is agenda item number 5, which is S. 627 by Ayotte and Cassidy, which is the accountability bill that is being referred to by Senator Blumenthal. I will recognize Dr. Cassidy for his introduction and any remarks he wants to make about the bill.

#### S. 627

Senator CASSIDY. Yes. Thank you, Mr. Chairman.

S. 627 will establish guidelines for the Secretary to prevent bonuses from being awarded to employees who have violated VA policy or the law, also ensuring that information on reprimands be kept in the employee's permanent record.

Question: Why do we need this bill? When the VA scandal erupted in Phoenix last year, then-VA Secretary Eric Shinseki rescinded the performance award given in 2013 to the career Senior Executive who ran the VA's Phoenix Health Care System, a bonus that the Department said was awarded because of an administrative error. The employee appealed and a Federal judge directed the VA to repay the bonus, despite the fact that the employee had improperly accepted more than \$13,000 in gifts from lobbyists and failed to report them plus manipulated data to conceal excessive wait times for veterans seeking health care. The judge determined, however, that the VA did not have the authority to rescind her bonus.

This is why people do not trust the VA. Here is a woman who, again, took \$13,000 in gifts from lobbyists, did not report, she manipulated data, and nonetheless gets a bonus. Now, if we want to improve the VA system, we need to focus on the quality of the workforce, and workforce morale is seriously affected by those who have failed to do their jobs, yet still receive bonuses, or do not have information on reprimands retained in their permanent record.

We must incentivize the honest workers. How does this incentivize honest workers to do a better job if we reward those who do not? So, we need this bill.

Chairman ISAKSON. Thank you, Senator Cassidy.

Are there any other remarks anyone would like to make? Are there any amendments for the bill?

**Brown Amendment Number 11 to S. 627**

Senator BROWN. Mr. Chairman.

Chairman ISAKSON. Senator Brown.

Senator BROWN. Thank you, Mr. Chairman. I really appreciate your willingness to flip the order a little bit to accommodate me and some others. Thank you.

I have an amendment at the desk somewhere.

Chairman ISAKSON. Have you got the Brown amendment? Amendment Number 11.

Senator BROWN. OK. Thank you. Amendment Number 11. First, I applaud Senator Cassidy's work on this and his genuineness in proposing to deal with a problem that clearly exists. VA employees who engage in demonstrable wrongdoing should be held accountable; no question about that. Veterans and dedicated VA employees deserve nothing less. I understand Senator Cassidy's comments that when good employees see bad employees awarded that way and not punished, then it does, obviously, hurt morale in the workplace.

S. 627 seeks bonus repayments related to wait time manipulations but fails to connect those bonuses to actual evidence of a deliberate misdeed. It targets all bonuses ever paid for any and all charges of misconduct while circumventing the normal fact finding process. The goal is laudable, but the means it utilizes are not.

This amendment ensures that there be a connection between the deliberate misconduct by the employee in question, or the employees in question, and actual evidence of wrongdoing. The amendment strikes language with regards to previously awarded bonuses. The bill had no time limitations between when the bonus in question was awarded and the date of the action to rescind it, when it could have been years.

Currently, reprimands and admonishments are only held in an employee's file for a specific time, which is also the common practice in other Federal agencies and the military. This bill makes that reprimand or admonishment permanent in the employee's file. Saddling employees—and many of these employees, we know, are veterans, some recently returned from Iraq or Afghanistan—saddling employees with permanent letters of reprimand burdens the Secretary with another onerous requirement and undermines managing based on the specific facts and individuals and it completely ignores the idea that employees, like that veteran, can actually improve.

That is the purpose of the amendment, to hold accountable employees, but to give those employees, if you will, a second chance in that way. If our goal is to improve the VA for our veterans, then we must also be fair to VA employees, many of whom are veterans themselves.

Thank you, Mr. Chairman.

Chairman ISAKSON. Thank you, Senator Brown. Are there any other comments or amendments which are to be offered?

Senator CASSIDY. I would like to comment on that amendment, if this is an appropriate time.

Chairman ISAKSON. Senator Cassidy.

Senator CASSIDY. I have not yet seen the amendment that Senator Brown has put out, so without having seen it yet, let me just comment upon your comments, if I may—

Senator BROWN. Sure.

Senator CASSIDY [continuing]. Which I accept as being offered in good faith. Let me work backwards, starting with the idea that we should not keep these reprimands on file. When I speak to veterans, their perception is that the Veterans Administration runs their system for the benefit of the employees and not for the veterans. Whether it is fair or not, that is clearly their perception.

When you actually speak to the supervisors in the VA system, for them to dismiss an employee with cause is extremely difficult, involving appeal processes and documentation that can go on for over a year, meaning that that employee remains on duty—perhaps poorly, being surly, unpleasant, and rude and even taking the veteran whom we should be serving in the wrong direction—yet, is difficult to dismiss.

This makes it a little bit easier to document. If there is already a record of an employee who has been reprimanded serially but perhaps not within the current time period, it is on record. Now, if, on the other hand, the employee after one reprimand continues to do well, it will never come up. Why would it? So, it is the process of dismissing somebody with cause now, which just speaking to supervisors made it very difficult to make the system into one which serves the patient and not the employee.

As regards the bonuses, first, let me say that I have not yet seen your amendment, but I would accept an amendment which pre-dates the time of the offense by a certain period of time. But, I will also point out that on page 5, lines 13 through 17, it is only after the Secretary has an adverse finding that they will then rescind the bonus. So, there is an investigation that takes place.

Chairman ISAKSON. Let me interrupt by saying the amendment is loaded on your iPad. It is Amendment Number 11.

Senator CASSIDY. Well, you are too high tech for me, Mr. Chairman. I am sorry—

Chairman ISAKSON. Do not give me the credit for that. That is the staff. [Laughter.]

But, if you would like to read the amendment, we will go on to the next bill and come back to this one. Delay it for a minute—

Senator BLUMENTHAL. If I may make a suggestion, Mr. Chairman, I think the amendment, in effect, makes this measure constitutional and thereby serves the common goal that we have. Perhaps if we can delay the markup of this measure so we—

Chairman ISAKSON. Well, let us let Senator Cassidy read it—

Senator BLUMENTHAL. OK.

Chairman ISAKSON [continuing]. And then we will delay it until he is finished with that, and then we will go back to the amendment.

#### **S. 1493, Veterans' Compensation Cost-of-Living Adjustment Act of 2015**

Chairman ISAKSON. We will move on to agenda item number 2 and hold our vote on that agenda item. The next item is the COLA,



which is agenda item number 3, is that correct? Agenda item one, the Veterans' Compensation Cost-of-Living Adjustment Act of 2015.

It is this Committee's responsibility every year to pass the COLA that will be applied to the disability payment and certain survivor benefits. I am the author of the bill and it is consistent with the same COLA that is going to Social Security Administration beneficiaries.

Unless there are any questions, I will call it up for a voice vote. Are there any questions?

[No response.]

Hearing none, the question is on adopting agenda item number 1, Veterans Compensation Cost-of-Living, S. 1493. All those in favor, say aye.

[Chorus of ayes.]

Chairman ISAKSON. Opposed, same sign.

[No response.]

Chairman ISAKSON. The item passes by unanimous vote.

Next, we will move to agenda item number 2, which is the 21st Century Veterans Benefits Delivery and Other Improvements Act. It is the vehicle for an omnibus act, and I will call on Senator Heller.

#### **S. 1203, 21st Century Veterans Benefits Delivery and Other Improvements Act**

Senator HELLER. Mr. Chairman, thank you, and I will be brief because I know we are tight for time here, but a couple years ago, Senator Casey and I formed a VA Backlog Working Group and it developed into this piece of legislation that we have.

We worked with groups from DAV to VFW to specifically with organizations dealing directly with the causes and concerns that the regional offices have around the country. As you are well aware of, my State and probably Pennsylvania and a lot of States that we represent have some very large backlogs on their claims. So, I am pleased that Members of this Committee, Moran, Manchin, and Tester, joined us in this effort to fix this problem. I will be the first to admit that there is no silver bullet in solving all VA claims problems and backlog issues, but I think this bill puts it closer to permanently addressing this backlog and holding VA accountable.

I want to thank you for taking time and supporting this effort, and I am appreciative that we are using this as an omnibus package to move other bills forward. So, Mr. Chairman, thank you, and thanks for consideration.

Chairman ISAKSON. Thanks for your effort and hard work.

Are there any—Senator Manchin.

Senator MANCHIN. Mr. Chairman, I also concur with my colleague, Senator Heller. It is a bipartisan bill, has pay-fors. It does cure a lot of the ills and problems that we found through the investigation, also reporting from our veterans back home, our VA clinics, and our hospitals. They believe this is something that will be very helpful to them, the tools they need. So, I would encourage a yes vote on this, and thank you for the hard work, Senator.

Chairman ISAKSON. Thank you, Senator Manchin.

Are there other Members who wish to be recognized?

Senator HIRONO. Mr. Chairman.

Chairman ISAKSON. Senator Hirono.

Senator HIRONO. Is it appropriate to call up amendments now?

Chairman ISAKSON. It is.

**Hirono Amendment Number 17 to S. 1203**

Senator HIRONO. I would like to call up Hirono Amendment Number 17 to S. 1203. This is an amendment to provide VA flexibility to modify work hours for physicians and physician assistants.

The reason that this amendment is needed is current statutory limitations make it very difficult for VA medical centers to recruit and retain providers from the private sector. This amendment would make it easier for medical centers to recruit providers by giving the Secretary the flexibility to modify minimum hours requirements for full-time physicians and physician assistants, in turn making it easier for the VA to accommodate the irregular work schedules of emergency care physicians and hospitalists, in particular. With this flexibility, VA could better accommodate the needs of these providers and better meet the needs of our veterans, ensuring that they have the care they need when they need it the most. I urge my colleagues to support this amendment.

Basically, what this does, really, is as we acknowledge the shortage of medical providers in the VA system, we need to recruit people from the private sector to work with us to provide the veterans with the care they need, and the VA is strapped because they do not have flexibility to adjust the hours of the private sector providers that we want to recruit, and this will give them that flexibility.

Chairman ISAKSON. Thank you, Senator Hirono.

Are there other comments?

[Pause.]

Chairman ISAKSON. I have got a Chairman malfunction. I will be right back. [Laughter.]

[Pause.]

Thank you, Senator Hirono, for offering your amendment. I am going to make a motion to table the amendment. In doing so, I will tell you the reason why.

Title 38 has defined the number of hours physicians or physician assistants can work as at least 80 hours in a biweekly pay period. This would expand that definition and would give the VA authority to increase or decrease the 80 hours as long as the physician or physician assistant does not work more than 2,080 hours annually.

The provision was not included in any of the pending legislation hearings we held this year. We do not have views from the VA or stakeholders or the cost estimate of this amendment from CBO. No offsets were provided for the amendment, and on the basis of my commitment to the Committee at the beginning of the year that we were not going to consider for markup any things that were not paid for, then I would move to table the motion to act on this amendment.

Senator HIRONO. May I respond, or—

Chairman ISAKSON. Certainly.

Senator HIRONO. Let us have a further discussion on this.

Chairman ISAKSON. I am not going to change my mind. [Laughter.]

Senator HIRONO. Well, possibly after you have a hearing on this measure and we do hear from the VA and get the other information that we need, then that would be what I would ask the Chair to consider.

Chairman ISAKSON. You will be——

Senator HIRONO. We did request a hearing on this measure, knowing that that was your desire——

Chairman ISAKSON. Well, I will continue——

Senator HIRONO [continuing]. But we could not get a hearing.

Chairman ISAKSON [continuing]. To follow up on our commitment to see to it every Member gets a hearing and gets the chance to provide a pay-for; and when they do, they will get the chance for the bill being considered. I think my track record proves that. But, until we do have the pay-for and CBO's estimate, I am going to have to reluctantly move to table the amendment.

Senator HIRONO. Well, would you consider having a hearing on this measure——

Chairman ISAKSON. Certainly.

Senator HIRONO [continuing]. Then we can get the CBO estimate——

Chairman ISAKSON. At an appropriate time. You might want to withdraw the amendment and then bring it up when we call the hearing, if you would like to do that.

Senator HIRONO. I would do that. I think this is a really great amendment because we all care about the——

Chairman ISAKSON. We will give you that opportunity.

Senator HIRONO. Thank you very much.

Chairman ISAKSON. Thank you.

Senator HIRONO. In that case, I will withdraw this amendment.

Chairman ISAKSON. Does any other Member have an amendment they wish to offer?

Senator Murray.

### **Murray Caregivers Amendment Number 3**

Senator MURRAY. Mr. Chairman, I want to speak to my caregivers amendment, Number 3. I am sorry. Let me just say that I was really disappointed that the caregivers legislation was not included on today's markup agenda. This is the program that helps our veterans and recognizes the friends and family who take care of our injured servicemembers. These are the moms and dads and wives and husbands that provide assistance for these veterans at home every day. They do a lot to help our veterans recover, and as a result, caregivers often sacrifice their own well-being. And without our support, they suffer from poor health, depression, lost jobs, and incredible stress. They really need the help that this amendment offers.

We know that this is a program that works because veterans who served post-9/11 already are using this program. But veterans and caregivers from prior wars have been waiting to access these services, and my legislation gets them the help they need by expanding services to caregivers and aligns eligibility for VA and DOD.

Finally, the bill takes a major step toward improving caregiver support for our entire country by setting up a governmentwide

committee to share best practices and to coordinate the many services they need. This actually helps our veterans stay in their homes with their loved ones, out of hospitals and nursing homes, and is an enormous improvement to their quality-of-life.

Mr. Chairman, I know that you have concerns about the caregivers program. I share them. GAO found the IT system used to administer the program as insufficient. We know there are not enough VA staff dedicated to running this program, which is why I recently secured an additional \$10 million in the veterans appropriations bill to address the shortage of caregiver support coordinators, and VA is working to replace its computer system. So, the GAO concerns are being addressed and I just think in the meantime there is no reason to make our veterans and caregivers wait.

This legislation is strongly supported by the Elizabeth Dole Foundation, DAV, PVA, VFW, Military Officers Association, and much more.

But, Mr. Chairman, in deference to you, I will withdraw this amendment today with your assurance, again, that we will deal with this at the September markup, as you and I have discussed. I really hope that this is something this Committee will take up and deal with very soon.

Senator SANDERS. Mr. Chairman.

Chairman ISAKSON. One second, please. As I have told the Senator, and we have worked together on a number of items, I share her concerns for those pre-9/11/2001 people who deserve to be compensated for what they are doing. I also am concerned about the GAO report, which you referred to—

Senator MURRAY. I understand.

Chairman ISAKSON [continuing]. And have told you, and I will continue to meet that commitment, that as soon as we make sure we have got the problems in the existing program worked out and we do not recreate those problems again by adding a new one, and we get it paid for so we do not cause the VA worse monetary problems than they already have, I am more than happy to be supportive and we will work toward that end.

Senator MURRAY. OK. I very much appreciate that commitment.

Chairman ISAKSON. And I appreciate your withdrawing the amendment.

Senator Sanders, if you will wait 1 second, I want to ask Senator Cassidy, are you all together or are you going to amend the amendment or what?

Senator CASSIDY. Actually, I oppose the amendment.

Chairman ISAKSON. OK. So, there will not be an amendment to the amendment.

Senator CASSIDY. No, there will not be.

Chairman ISAKSON. All right. Well, let us go through and finish this up out of courtesy for those Members. How long before you have to leave?

Senator BROWN. Well, if possible, 3 or 4 minutes, Mr. Chairman, if we can.

Chairman ISAKSON. All right. This is a bad way to run a Committee, but—

Senator BROWN. I know. I apologize.

Chairman ISAKSON [continuing]. To try to accommodate all the Members, we will go back to S. 627, I think it is—

**Returning to the Brown Amendment Number 11 to S. 627**

Senator BROWN. Yes, S. 627.

Chairman ISAKSON. It is the Brown amendment to the Cassidy bill. Everybody else has had their say-so on it. So, do you move on your amendment?

Senator BROWN. I would like to, Mr. Chairman.

Chairman ISAKSON. The motion is to adopt the Brown amendment, and we will have a roll call vote.

Senator BROWN. Thank you, Mr. Chairman.

The CLERK. Mr. Moran.

Senator MORAN. No.

The CLERK. Mr. Boozman.

Senator BOOZMAN. No.

The CLERK. Mr. Heller.

Senator HELLER. No.

The CLERK. Mr. Cassidy.

Senator CASSIDY. No.

The CLERK. Mr. Rounds.

Senator ROUNDS. No.

The CLERK. Mr. Tillis.

Senator TILLIS. No.

The CLERK. Mr. Sullivan.

Senator SULLIVAN. No.

The CLERK. Mr. Blumenthal.

Senator BLUMENTHAL. Aye.

The CLERK. Mrs. Murray.

Senator MURRAY. Aye.

The CLERK. Mr. Sanders.

Senator SANDERS. Aye.

The CLERK. Mr. Brown.

Senator BROWN. Aye.

The CLERK. Mr. Tester.

Senator TESTER. Yes.

The CLERK. Ms. Hirono.

Senator HIRONO. Aye.

The CLERK. Mr. Manchin.

Senator MANCHIN. Aye.

The CLERK. Chairman Isakson.

Chairman ISAKSON. No.

Would you report the vote.

The CLERK. On this vote, the yeas are seven, the nays are eight. The amendment is not agreed to.

Chairman ISAKSON. The amendment is not agreed to.

Are there any other amendments on the original accountability bill?

[No response.]

**The Cassidy-Ayotte Bill**

Chairman ISAKSON. Hearing none, we will call the vote on the original bill, the Cassidy-Ayotte bill, I believe it is called. We will

call for a voice vote unless anybody wants a recorded vote. All those in favor, say aye.

[Chorus of ayes.]

Chairman ISAKSON. Any opposed?

[No response.]

Chairman ISAKSON. The bill is adopted. So, Senator Brown, I did the best I could. You make a good speech.

And, Senator Murray, thank you for withdrawing that. I will follow through on my commitment, as I have tried always to do.

Senator SANDERS.

Senator SANDERS. I just wanted to concur with Senator Murray on the importance of the Caregivers Act. You know, it is easy to vote for war and at the same time forget about people who came home from war seriously wounded and are dealing with their wounds and their crises 30, 40, 50 years later. The idea of not compensating mostly wives, sisters, husbands, brothers, who are spending much of their life taking care of seriously wounded veterans is to my mind not acceptable.

So, I am glad to hear, as I understand it, Mr. Chairman, that you— if we can make sure that this is a well-run program, you are supportive of the concept?

Chairman ISAKSON. I want to make sure we address the Inspector General's report—

Senator SANDERS. Fair enough.

Chairman ISAKSON [continuing]. And make sure we do not put a burden on the VA to pay for what they cannot pay for.

Senator SANDERS. Good. That is fair enough. And I would hope that we can move forward with Senator Murray's proposal.

Chairman ISAKSON. I agree.

Senator Murray, did you have any other—

Senator MURRAY. I have a number of amendments. Do you want me to—

Chairman ISAKSON. As fast as you can.

#### **Murray Amendment Number 5, The Child Care Amendment**

Senator MURRAY. I would like to offer Amendment Number 5, the child care amendment.

Mr. Chairman, if I am in order, this amendment would make permanent the highly successful child care pilot program in VA and expand it across the country. You know, caring for children is frequently a barrier to care for our younger veterans, especially our women veterans. To address this, what this amendment does is provide permanent authority for the VA to provide child care to veterans going to medical centers or Vet Centers for health care. These pilot programs have been very popular with our veterans and VA employees and have been far less expensive than originally estimated, and we know that a lot of our veterans put off their own care, their own health care, because they do not have affordable and reliable child care, and that is just unacceptable. I really think we can do better, and I think this amendment would make a big difference in making sure that our veterans are able to get the medical services they need without having to worry about what is happening to their children.

This Committee has approved this provision multiple times before and I hope we can support it again today.

Chairman ISAKSON. I am going to oppose the amendment for the following reasons. Number 1, I made at the outset the commitment that we are going to see to it that the legislation we passed out of Committee was paid for, and this one is not.

Number 2, the VA views are not in yet, and I am working hard with the VA to be more responsive to our markup so that we have their views. But, we do not have them on this amendment at this time.

So, I will reluctantly oppose it, but continue my commitment with Senator Murray to work with her on the 21st Century Program and the Caregivers Program.

Are there any other comments or questions?

Senator MURRAY. I would like a vote on this amendment.

Chairman ISAKSON. Do you want a recorded vote?

Senator MURRAY. Mm-hmm.

Chairman ISAKSON. The Clerk will call the roll. This is on Murray Amendment Number 5.

The CLERK. Mr. Moran.

Senator MORAN. No.

The CLERK. Mr. Boozman.

Senator BOOZMAN. No.

The CLERK. Mr. Heller.

Senator HELLER. No.

The CLERK. Mr. Cassidy.

Senator CASSIDY. No.

The CLERK. Mr. Rounds.

Senator ROUNDS. No.

The CLERK. Mr. Tillis.

Senator TILLIS. No.

The CLERK. Mr. Sullivan.

Senator SULLIVAN. No.

The CLERK. Mr. Blumenthal.

Senator BLUMENTHAL. Aye.

The CLERK. Mrs. Murray.

Senator MURRAY. Aye.

The CLERK. Mr. Sanders.

Senator SANDERS. Yes.

The CLERK. Mr. Brown.

Senator BLUMENTHAL. Aye by proxy.

The CLERK. Mr. Tester.

Senator TESTER. Yes.

The CLERK. Ms. Hirono.

Senator HIRONO. Aye.

The CLERK. Mr. Manchin.

Senator MANCHIN. Aye.

The CLERK. Chairman Isakson.

Chairman ISAKSON. No.

The Clerk will report the vote.

The CLERK. On this vote, the yeas are seven, the nays are eight. The amendment is not agreed to.

Chairman ISAKSON. The amendment is not adopted.

Are there other amendments?

Senator TILLIS. Mr. Chair, just—

Chairman ISAKSON. Senator Tillis.

Senator TILLIS. I wanted to mention, on that vote, I think that the intent of that amendment is a good one and I do hope—I think that the real issue there of the vote was whether or not we had the offset. But, I do hope that we are going to bring that forward, similar to Senator Hirono's amendment, and I think another one that Senator Murray has offered, because I do believe they have merit. It is more a matter of making sure they are within the priority scheme. So, I voted no not on the measure itself, but on the timing of its consideration.

Chairman ISAKSON. Senator Moran.

Senator MORAN. Mr. Chairman, thank you. In line of what the Senator from North Carolina was indicating, I share his sentiments, but I do not know whether there is a plan by either the Committee, or the minority or majority staff or both, or those who are offering the amendments to provide an offset.

If our policy is going to be that we are not going to consider bills that are not paid for, which I understand the value of generally, and specifically with the VA shortfall, there are still issues that apparently Senator Murray has offered, and maybe will offer more, other amendments to be offered today, and if the response, the appropriate response is, we cannot consider them today or support them today because they are not paid for, if there a plan by those who are offering the amendments to provide a pay-for so that we can take a look at these in light of they are not adding to the burden at VA in their shortfall?

Chairman ISAKSON. Well, first of all, the reason that we are requiring them to be paid for is to be sure that we are not adding to the shortfall. That is number 1.

And number 2—I want the staff to correct me if I make an incorrect statement—but everybody that brought a potential amendment or bill for this markup to the Committee and asked for a pay-for has got them. Whether they accepted those pay-fors or not is another question. But, the Committee does do the pay-fors and gives them the option. I know in Senator Murray's case, in one of those instances, she did exactly that.

The staff is ready, willing, and able to provide the pay-fors or give you the choice of the pay-fors that we think are available to do it. And I am more than happy to give hearings to subjects like Senator Hirono's and Senator Murray's, but I am going to continue, until the Committee overrides me—which I am perfectly willing to have a vote of confidence any time they want to—but, given what the VA is doing to us by having the continuous press releases of not having enough money, the worst thing in the world for us to do is to pass out mandated legislation to the VA that causes them a bigger financial problem than they allegedly already have, and I think it is responsible for us to be accountable and see to it those pay-fors are there.

Senator MORAN. Well, Mr. Chairman, if you would yield, I just would encourage all of us who are going to offer amendments to find ways to pay for them so we do not find ourselves in a position of adding to the problems at the VA and also not allowing us then to have the opportunity to support policies that we agree with.



Thank you, Mr. Chairman.  
 Chairman ISAKSON. Duly noted.  
 Senator Sullivan.

Senator SULLIVAN. Mr. Chairman, I just want to echo the comments of Senator Moran. I agree exactly with what he is saying. I have been powering through a lot of these amendments. I think there are some great ideas. I think Senator Hirono's amendment is a really good one. Senator Murray has a number of them today that I think are going to be offered. And, so, kind of on a micro-policy level, what we are trying to do, I think, in many ways makes sense, but we did agree—and I certainly support your view.

On a macro level, we do need pay-fors. We have an agency that we are trying to oversee here that not only has a spending problem, cannot account for money, has budget shortfalls, but it is also an agency that has received dramatic, dramatic increases in its budget over the last several years, I think certainly one of the most well-funded agencies in the Federal Government.

I know we are all here because we think taking care of our veterans is a sacred trust and responsibility of the Federal Government. I certainly believe it is. But, we also need to make sure we are paying for this and not sink this agency into a deeper financial hole than it already is.

So, on a number of these amendments, I am very willing to work with many of the Members of this Committee who have great ideas, but I think I am going to be voting no on a lot of them if there is no offset, which was the policy that was established at the outset here. Thank you.

Senator MURRAY. Mr. Chairman, can I just—

Chairman ISAKSON. Senator Murray.

Senator MURRAY. I appreciate where the Chairman is coming from. I would just say that, having been a chair of this Committee before, along with several other Members, when we have done these bills, Members have offered amendments and then we have done offsets before we got to the floor. It is rather hard to come up with an offset for each amendment not knowing what is going to pass and what is not. I could offer an amendment with one offset that somebody else has used as an offset, and before you know it, we are in a pretty big quagmire that way.

So, it is a little challenging for us to be given this assignment, and I know I cannot override you on votes today, but I would just say it is very challenging—

Chairman ISAKSON. You never know. [Laughter.]

Senator MURRAY [continuing]. As Committee Members to know what is going to pass and what is not going to pass and to come up with different offsets that somebody else may have come up with and manage it at the end of the day. It has been the practice of the Committee before to come up with offsets once we know what is part of the omnibus bill, which I am more than happy, as former Budget Chair, as well, to work with the Chairman on. I understand that.

But, it does make it really hard for us to pass important policy that we agree as policy member committee members that we think is important for our country to focus on and then work together to find ways to offset it. If we cannot find ways to offset it, it is not

going to happen on the floor, either. But, this does make it very hard for us.

Chairman ISAKSON. Senator Blumenthal.

Senator BLUMENTHAL. Just to add to what Senator Murray has said so well, we can commit to providing offsets before there is a vote on the floor. That will be one of the commitments we make, is to provide an offset. At this point, as Senator Murray has said, we do not know whether there will be a vote on the floor. In fact, as sometimes happens, the same offset may be used for different measures that we pass today where they cannot suffice to cover all the offsets, if we were to offer the same offset for all these amendments, but not all the amendments may reach the floor.

So, I think that there is a practical difficulty with having an offset for every single amendment. This is not our last bite at the offset apple, and we can commit that we will offer offsets before they reach the floor.

Chairman ISAKSON. Do any other Members have a comment? The Senators' comments, Moran and everybody's, Murray and Blumenthal and Hirono and everybody—I did not mean to leave anybody out that spoke—Senator Tillis—are duly noted. I just want to make sure this Committee is not a contributor to the problems at the VA in terms of cost overruns and spending overrun, and that is the reason our policy exists.

I will take under consideration what you have said as long as you will take under consideration for me the position we need to take as a Committee, because we are in a very critical time with the VA—in my judgment, we are in a very critical time with the VA. I do not think they pay nearly enough attention to us as they should, and the recommendations that we have made to them already. And, I think if we add to our lack of credibility by sending them stuff or voting out things that cannot be paid for, it does not put us in good stead.

So, I am going to take under consideration what you have said, but I want to make sure that you take under consideration, as well, the position we need to be in offering those changes. And, Senator Hirono and the others that have amendments that have not yet had a hearing, I will work with you to have those hearings.

Anybody else? Senator Tester.

Senator TESTER. I am going to offer an amendment, if you recognize me for that. But, I would just say something in regard to this current subject. First of all, Senator Isakson, Mr. Chairman, I appreciate your leadership on the Committee. I will also tell you that until about 6 or 7 years ago we were not investing in the VA. The money that we were giving them was discretionary. It was not mandatory. We did not put money into physical facilities. They were not preparing for the future.

So, now they do have a plussed-up budget. We have also got Vietnam veterans in their 70s and in their 80s. We have also got folks back from Iraq and Afghanistan that would have never survived any previous war.

All this stuff costs money. So, going back to Senator Sanders' point, it is part of a cost of war and we have got to find the offsets or we have got to find the revenue to pay for this stuff. If we do not, the things that we all know are the right things to do, whether

it was Hirono's or Murray's or anybody's idea, we are never going to do. We are just not going to do it, yet it is a cost of war.

It is why, when folks talk about bombing Iran, we ought to think about that cost of war, because it is far more than just the bombs' cost.

Chairman ISAKSON. Well, as Senator Tester knows from our conversation on the phone this past weekend, I am as committed as he is to seeing to it that we do exactly that. I just want to make sure that we do it in an accountable way and in the right way. I appreciate, take note, and associate myself with your remarks.

Are there any other amendments?

Senator MURRAY. Mr. Chairman.

Chairman ISAKSON. Senator Murray.

**Murray Amendment Number 7 on the VA Women Veterans  
Contact Center**

Senator MURRAY. Mr. Chairman, I want to offer Amendment Number 7 on the VA Women Veterans Contact Center. This amendment would make sure that women veterans have greater assistance accessing health care and benefits that have been promised to them.

Women veterans are the fastest-growing group of veterans and the VA has to adapt to meet the specific needs of this expanding female veteran population. The Women Veterans Contact Center is a critical resource for our women veterans, and it is really essential that the VA make sure that women who utilize the call center encounter competent staff that are knowledgeable about their benefits and their eligibility and the services that are specifically designed for them. This amendment will just require the VA to make sure that that happens.

It has been a provision that has been approved by this Committee before on a bipartisan basis, multiple times, and I really hope that our colleagues will support this amendment.

Chairman ISAKSON. Any other comments?

[No response.]

Chairman ISAKSON. I will reluctantly oppose the amendment for the same reasons as stated in the previous two, that, A, it is not paid for; and B, we have conflicting—Senator Murray—we have some conflicting feedback from the VA regarding the do-ability of the amendment. If you would take time to meet with staff after this hearing and maybe you can work that—

Senator MURRAY. I would be happy to do that, but I would note that this amendment does not have a score.

Chairman ISAKSON. Which is part of the problem.

Senator MURRAY. Well, that is because we are just telling the VA that they need to be doing what they are supposed to be doing, and this Committee is on record telling them they need to do that.

Chairman ISAKSON. The VA has told us they interpret it as a new IT system, which costs money.

Senator MURRAY. So women have to wait around for an IT center to be established that they are already supposed to be doing?

Chairman ISAKSON. I am the messenger. Do not shoot him.

Senator MURRAY. I am not trying to shoot you. I am just really frustrated that this Committee, which is an authorizing Com-

mittee, that has the responsibility for oversight to make sure that the VA is doing what they have promised to the men and women who have served us, is being hampered by our inability to speak out as a Committee.

Chairman ISAKSON. Does the Senator want a vote, or do you want to withdraw the amendment—

Senator MURRAY. I would ask for yeas and nays.

Chairman ISAKSON. The Senator asked for the yeas and nays. The Clerk will call the roll.

The CLERK. Mr. Moran.

Senator MORAN. No.

The CLERK. Mr. Boozman.

Senator BOOZMAN. No.

The CLERK. Mr. Heller.

Senator HELLER. No.

The CLERK. Mr. Cassidy.

Senator CASSIDY. Reluctantly, no.

The CLERK. Mr. Rounds.

Senator ROUNDS. No.

The CLERK. Mr. Tillis.

Senator TILLIS. No.

The CLERK. Mr. Sullivan.

Senator SULLIVAN. No.

The CLERK. Mr. Blumenthal.

Senator BLUMENTHAL. Aye.

The CLERK. Mrs. Murray.

Senator MURRAY. Aye.

The CLERK. Mr. Sanders.

Senator SANDERS. Aye.

The CLERK. Mr. Brown.

Senator BLUMENTHAL. Aye, by proxy.

The CLERK. Mr. Tester.

Senator TESTER. Aye.

The CLERK. Ms. Hirono.

Senator HIRONO. Aye.

The CLERK. Mr. Manchin.

Senator MANCHIN. Did you say this has not been scored?

Senator MURRAY. There is no score.

Senator MANCHIN. Aye.

The CLERK. Chairman Isakson.

Chairman ISAKSON. No.

The Clerk will report.

The CLERK. On this vote, the yeas are seven, the nays are eight. The amendment is not agreed to.

Chairman ISAKSON. The amendment is not adopted.

Are there other amendments? Senator Sanders.

#### **Sanders Amendment Number 10**

Senator SANDERS. Thank you, Mr. Chairman. I would like to call up my Amendment Number 10.

Chairman ISAKSON. Sanders Number 10. And, all the amendments are in your iPad, by the way. This is Amendment Number 10 of Sanders.

Senator SANDERS. Mr. Chairman, when I was chair of this Committee, I was startled to hear from the VA that they needed, I cannot remember the exact number right now, but an astronomical amount of money for a new hepatitis C drug, and this amendment that I am offering now is pretty simple. It says that if the price of a medication is the barrier to veterans accessing treatment, the Secretary shall have a generic version of that medication produced for those veterans who need it.

In other words, if the issue is that the price of a particular medicine is so high that we cannot treat veterans who desperately need that treatment, then the VA will have the right to go out and produce a generic at a much, much lower price.

Just last week, the VA asked this Committee for the authority to use \$500 million from the Choice Program on hepatitis C drugs. I am sympathetic to their problem. They have run out of money to treat veterans. But, I do not believe that their solution, just giving the drug companies millions upon millions of dollars, feeding outrageously high profit levels already, is the correct solution.

To my mind, this money would be better spent treating veterans who have been waiting for care or live far from a VA facility. That was the original intent of the money, and it seems to me that is a better way to spend \$500 million than essentially writing a blank check to drug manufacturers.

Let us be clear about something here. This is not a matter of research and development costs of these drug companies. Media report after media report have published what we all know, that the drug companies who manufacture these drugs are making many billions in profits. And, these companies have also been clear—and this is interesting—that they can afford to give this particular drug away to foreign countries, people in foreign countries, for virtually nothing, but they refuse to even consider giving the drugs away here at home to American veterans.

Now, the sticker price for Sovaldi, which is the drug that I am talking about, is \$1,000 per pill on the open market. You walk into a drug store, that is what you pay. The VA has negotiated that price, “down to \$543 per pill.” On the other hand, what we have reason to believe is that private insurance companies have actually brought their cost of the drug down even lower. What we also know is the manufacturer of Sovaldi is a company called Gilead, whose profit margin is nearly 50 percent. Their profits are now going off of the roof, and a lot of that is attributable to this hepatitis C drug.

So, here is the bottom line. As the Chairman and others have been mentioning, the VA has financial problems. You want payors. You want to save money in the VA. This is a way to save money in the VA. Do you want to pad the profits, the already outrageously high profits of a particular company, or do you want to force them to lower prices or have the VA go outside of the system and produce a generic version so that all of the veterans in this country who are suffering with hepatitis C—a very, very serious illness—can get treatment; or do we say to many veterans, sorry, we just do not have the money to treat you. I think that that is unacceptable.

So, I think this amendment resolves a number of issues. I would hope that we could have bipartisan support for this bill.

Senator MANCHIN. Mr. Chairman.

Chairman ISAKSON. Senator Manchin.

Senator MANCHIN. If I could say, I think where the Senator is coming from is absolutely correct, and basically, I do not think that he is trying to infringe on patent linkage or patent rights. He is saying that, basically, anything that has patent linkage or patent rights in 12 years has come off. If there is an appropriate generic, they should be able to, basically, bargain for the lowest price. You would think that would be common sense and they were doing it anyway, but they are not.

So, with that being said, I would support this wholeheartedly. It should be a cost-saving measure for them.

Senator SANDERS. Joe, let me correct you.

Senator MANCHIN. OK.

Senator SANDERS. That is not quite right. What I am saying is I suspect if there was the generic out there, the VA would be going there. What I am saying is that if we cannot negotiate—VA cannot negotiate these prices down—the VA itself should use its powers to produce that generic. A little bit different than what you said.

Chairman ISAKSON. Any other—Senator Blumenthal.

Senator BLUMENTHAL. Mr. Chairman, just a couple of questions, if I may, to Senator Sanders.

My understanding, Senator Sanders, is that there already is a law that enables the Federal Government, in effect, to issue lower prices or reduce the royalties on drugs and thereby negotiate lower prices, is that correct?

Senator SANDERS. I believe that is true.

Senator BLUMENTHAL. And, this bill simply alters some of the criteria, is that correct?

Senator SANDERS. Senator Blumenthal, the precedent that comes to my mind, if you remember a number of years ago when we had, what was the fear, what was it—

Senator MURRAY. Anthrax.

Senator SANDERS [continuing]. Anthrax. You remember the anthrax fear? We needed the Federal Government, I should tell you, President Bush needed an antidote to that. Who remembers what the antidote was? What was that drug? Cipro was the drug. And, what the government, if I am not mistaken, at that point said, if you cannot get us that drug, we are going to do it ourselves. That is what it was about. And—

Senator BLUMENTHAL. I strongly support, as does Senator Manchin, the goal and the principle here. I would like to work with the Senator on some of the criteria and standards and so forth, hopefully before this measure reaches the floor, and I thank the Senator for coming forward with it.

Chairman ISAKSON. Any other comments?

Senator TILLIS. Yes, Mr. Chair. I am just trying to understand the mechanics of it, Senator Sanders. So, in the case that you used, which was the hepatitis C treatment, currently, there is not a generic equivalent?

Senator SANDERS. Correct.

Senator TILLIS. And, so—

Senator SANDERS. This is a relatively new, really good drug that is very effective.

Senator TILLIS. Yes. So, the effect of this legislation would authorize the Department to embark on the development of a generic equivalent?

Senator SANDERS. Yes.

Senator TILLIS. I see a furrowed brow on the part of one of your staff. I was just trying to—

Senator SANDERS. No, that is correct.

Senator TILLIS. So, how does that work mechanically? I mean, how does—why would we not do that for any number of drugs where—

Senator SANDERS. Because there are copyright laws, obviously. If you come up with a new drug, you have a certain—

Senator TILLIS. Yes, but, I mean, what sort of power are we granting the VA or the government to bypass the patent protections—

Senator SANDERS. Good question. Fair question. And, what we are saying is, if the option is that many thousands of veterans will suffer and/or perhaps die because they cannot get access to this drug, if that is the reality, the choice is paying an outrageous price or people dying, then in this case, the government should have the right to produce the generic. Now, hopefully, by the way, that should not be the case. Hopefully, the manufacturer of this drug, who is making a fortune, should treat our veterans with respect and lower the price on their own. But, if they are not prepared to do that and veterans die because they do not get treatment, that is an option.

Does that answer your question, Senator?

Senator TILLIS. Yes.

Senator SANDERS. Thank you.

Chairman ISAKSON. Let me make a couple of comments, if I can, and in my comments I am going to make a request of the Ranking Member and the distinguished former chairman, Senator Sanders. I want to read the language in the amendment so that everybody knows what we are talking about.

“The entire compensation for the use of a patented invention relating to such medical technology to be paid by the Department to the owner of such invention shall be set by the Secretary and be limited to the royalty that is reasonable and affordable, taking into account the budgetary resources of the Department for the fiscal year in which the Secretary seeks to acquire the medical technology.”

So, it does not address—it addresses medical technology, which is all the things that they purchase, a lot of things other than drugs and things like that, first of all.

Second of all, what it basically says, as I read it and have read it, is the Secretary has the sole authority to set the price of what he pays for anything that is a medical technology. That is problematic to me to put in the law and give that kind of power to the Secretary. I think the intent that the Senator is coming from is correct, and I would hope the Ranking Member and Senator Sanders would work together to try to address the interest that Senator Tillis and Senator Cassidy and others, I think, have in this type of a proposal. But, it basically sets—it basically determines the price that is paid for a medical technology—

Senator SANDERS. Well, the answer is, as you know, in every other major country on earth, governments negotiate drug prices. That is not the case in the United States. Thus, we are the only country without an actual health care program. So, you can walk into a drug store tomorrow and the price that you are paying is double. These guys are getting what they want and making unbelievable profits while veterans in this country may die or suffer. And, I think it is appropriate for the Secretary of the VA to say, "Excuse me. You are going to have to lower your outrageously high prices because we are not going to see veterans die and suffer. If you do not, we have an alternative approach."

Chairman ISAKSON. Senator Blumenthal.

Senator BLUMENTHAL. To answer your question, Mr. Chairman, I would be happy to work with Senator Sanders, because I fully share his goals. I hope it will be bipartisan.

And, I would just point out, to further respond to Senator Tillis's question, there is always a possibility of review here. In other words, if there is a taking that is deemed so unfair that it is unconstitutional, or arbitrary and capricious, courts can always be involved, as they are now. And, there are additional criteria in even Senator Sanders's amendment, but I think we should work on the criteria, because I think this measure is very, very important.

Chairman ISAKSON. Senator Manchin.

Senator MANCHIN. I just want to make sure I clarify. I think I understand what Senator Sanders is saying, and I want to make sure. In this amendment, if he is trying to do away with the patent protection that is based, I guess, on drugs that come to market for 12 years, I think is pretty standard in patent protection, 12 years—

Chairman ISAKSON. Correct.

Senator MANCHIN [continuing]. Then they go off and generics come.

Senator SANDERS. Right.

Senator MANCHIN. Since this is a highly effective drug but a highly priced drug, he wants that to either circumvent the 12-year patent protection, or is it just to allow the VA to negotiate a lower price on the existing protected drug?

Senator SANDERS. Well, frankly, if the VA has that as an option, I have the feeling the manufacturer may want to sit down and—

Senator MANCHIN. You want to give them a tool to negotiate with to get a lower price, is really where you are coming from. I mean, I understand. It makes all the sense in the world. But, the bottom line is, with the patent protection laws in this country—I would like to see a lot of these drugs go off patent protection and get cheaper.

Chairman ISAKSON. Senator, your remarks are exactly why I hope the Senator will withdraw the amendment and work with Senator Blumenthal—

Senator MANCHIN. I would like to work with him, also, on that. This is—

Chairman ISAKSON. But, I want to encourage you to understand that in the example Senator Sanders gave about a drug that costs \$1,000 a pill, he said the VA had negotiated it down to \$571. This



would say, if they did not like \$571 after negotiation, they could set the price based on their budgetary allowance—

Senator SANDERS. No. What it—

Chairman ISAKSON [continuing]. So it basically circumvents negotiation and puts the Secretary in charge, based on the way I read it. So, I think—

Senator SANDERS. Well, no, no, no, no, that is not quite the— look, here is the fact. You know, Mr. Chairman, you were talking about the shortfalls. We all are aware of the financial difficulties, without getting into the reasons, the hows and the whys. They have problems. There may be veterans who die because they do not get access to this drug. I do not want to see that happen, not when the company that manufactures this drug is making huge amounts of profit, not when they are selling this product to India, by the way, at a fraction of the cost that they are selling it to the VA.

So, to answer Senator Manchin's point, maybe if we give them this leverage, suddenly, maybe this company will sit down and negotiate a far lower price. If they do not, then the VA has the option. But, the choice is, do veterans die for not getting treatment that is available because the VA lacks the money, or do we give the VA the tools they need to negotiate those prices down.

Chairman ISAKSON. What is the Senator's preference? Do you want to withdraw or do you want a vote?

Senator SANDERS. Uh—

Senator TILLIS. Mr. Chair—

Senator MURRAY. Mr. Chairman.

Senator TILLIS. Mr. Chair, may I be recognized for a motion?

Chairman ISAKSON. Senator Tillis.

Senator TILLIS. Rather than vote on the measure, because it may have merit, again, I am worried about the legal implications in walking through this. I am also worried about the chilling effect it could have on future investments for R&D and saving other people, by thinking that each and every time you make an investment, then the market potential for a potential cure could be adjusted beyond what you would reasonably think you should recoup as part of making the high risk. I mean, there is a risk side to pharmaceutical research.

So, on the one hand, we are talking about saving lives by making existing proven drugs more affordable. On the other hand, we may be losing lives by having a stifling effect on research and development of new cures and new drugs.

So, I am not opposed conceptually to what Senator Sanders has said. In fact, there may even be some argument for dealing with this in terms of getting price alignment, is look at kind of a most favored Nation. If we do think that other nations are getting a better price point than us, then maybe a different way to crack this is instead of potentially threaten patent laws, talk about some sort of most-favored-Nation status for negotiating the cost of medicines. You have outbreaks and other things. There probably needs to be exceptions for it. Sometimes, we want to do the right thing and help other countries.

But, I would like to make a motion to table this so that I am not voting on a measure that I may be able to be convinced to support ahead of its time, similar to motions I would have made for a cou-

ple of the other bills that we voted on the measure, versus, I think, a procedural decision to spend more time working through it. So, I would like to make a motion to table.

Chairman ISAKSON. The Senator makes a motion to table, which would allow the opportunity for Senator Blumenthal to do exactly what he said he wanted to do in working with Senator Sanders.

Senator MURRAY. Mr. Chairman, can I just say, I would support a motion to table, reluctantly. I think the Senator has identified an important problem, but not understanding the implications on patent law and other effects at this point, I would hope, Senator Sanders, that you could work with Senator Blumenthal and others, because I think you have identified a problem, but I am unclear on the larger point of how it would be dealt with at this time.

Senator SULLIVAN. Mr. Chairman, just—may I, real briefly—  
Chairman ISAKSON. Senator Sullivan.

Senator SULLIVAN. I think one of the things in this argument, I think we should all stipulate here, nobody wants to see veterans die. So, the argument, hey, this amendment is going to protect veterans or they are going to die, and I do not think anyone wants to see veterans die. I certainly do not want to see veterans die. So, let us stipulate that.

I think with regard to the discussion on the patent law, if you read the amendment, the other laws become irrelevant, notwithstanding any other provision of law. That is the first phrase in the amendment. That is a huge—those are huge implications. We are kind of saying, hey, everything else, patent law, other things, what Senator Tillis is talking about.

I think there is a lot of agreement here in terms of the ultimate goal of lowering the costs, this most favored Nation idea. But, to me, this is exactly the kind of issue that is big enough, broad enough, has broader ramifications that we should be holding a hearing, digging much deeper than having introduced a three-page amendment right now that could have enormous implications in other areas, and ramifications that could be negative that we do not even recognize right now.

Senator HIRONO. Mr. Chairman.

Chairman ISAKSON. Senator Hirono.

Senator HIRONO. I support our desire, of course, to get the kind of medication that our veterans need. However, this amendment does impact patent laws, and I have done some work, along with Senator Blumenthal, on patent laws, and we should be very careful when we make changes that will have unintended consequences, and clearly in the patent area there could be unintended consequences.

This amendment, as I understand it, would allow the government to basically infringe patents, and I think that opens up various concerns about what does that do to those who are seeking to discover other life-saving drugs.

So, I would hope that we would be able to work on this with Senator Sanders.

Senator SANDERS. Mr. Chairman.

Chairman ISAKSON. Senator Sanders.

Senator SANDERS. If I can pick up on Senator Sullivan's point, could we schedule a hearing on this?

Chairman ISAKSON. I will work with Senator Sanders and the Ranking Member to schedule a hearing so we can do that, yes. In fact, there are a couple things that we have talked about today we probably need to include, as well.

Senator SANDERS. OK.

Chairman ISAKSON. But, the motion before us is a motion to table. Once something is tabled, it can be taken off the table with a majority vote in favor.

Senator SANDERS. If there is—if I have your commitment that there will be a hearing, then I have no objection to the tabling.

Senator BOOZMAN. Mr. Chairman, I guess the premise of this is that if we do not do this, then veterans are going to die. That may or may not be the case, but certainly, that should not be the case. So, I would like to know from VA if—hepatitis C is—and we have an expert on hepatitis C here—it is a funny disease. You know, you can have the disease and not have any symptoms at all. So, VA is working through the process of treating those that need to be treated.

Up until recently, and correct me if I am wrong, many people that had the hepatitis C were followed in the sense that there was not a good treatment out there, and yet they really were not showing any symptoms.

So, I guess what I am saying is if, in fact, we are spending—and these are fictitious numbers—\$500 million on hepatitis C, and if it took \$550 million and somebody, a veteran was not going to suffer adverse effects, then we need to look at that, despite this legislation, which I think is over-broad.

But, again, I would like for the VA to respond to that and kind of go from there.

Senator TILLIS. Senator Isakson—

Chairman ISAKSON. I will make that request of the VA.

Senator TILLIS. Senator Isakson, if Senator Sanders is amenable to withdraw the amendment, I can withdraw the motion, which would mean that you could bring the amendment back before the Committee without having another vote, if you would be amenable to doing that.

Senator SANDERS. Well, I indicated—I think Senator Isakson has indicated that there would be a hearing.

Chairman ISAKSON. We will have a chance to investigate it thoroughly.

Senator SANDERS. That is fine.

Senator TILLIS. So, under the premise that Senator Sanders is going to withdraw his motion, I will withdraw my motion to table—or withdraw his amendment, I will withdraw my motion to table.

Chairman ISAKSON. Sounds like a plan.

Senator SANDERS. OK.

Chairman ISAKSON. Does anybody object?

[No response.]

Chairman ISAKSON. Hearing none, the amendment will be postponed. We will work toward having a hearing at the appropriate time and revisit the issue later on.

Are there any other amendments?

Senator MURRAY. Mr. Chairman.

Chairman ISAKSON. Yes, ma'am.

**Murray Amendment Number 4**

Senator MURRAY. Mr. Chairman, I want to offer my Amendment Number 4. This is, I think, really an important measure because we expect top-quality health care from the VA. Every one of us does. And, we ask them to excel in some very complicated areas of medicine, like polytrauma. It is concerning when the VA does not meet those standards, but when VA hospitals fail at the most basic level, things have got to change.

At the Puget Sound VA in my homestate of Washington, a veteran who is in his 60s came to the emergency room with a broken foot. He was parked at the curb at the entrance of the hospital, but because of his age and his injury, he needed help to go inside. But, the hospital actually refused to help him cover the last few yards in the door and instead they left him outside in pain. Even more shocking, the hospital said it is their policy to do that.

Well, actually, that is not true. The VA policy says medical centers are to follow the Emergency Medical Treatment and Labor Act requirements. The hospital is obligated to treat someone with an emergency if they are within 250 yards of the hospital.

So, I am offering this amendment today to just require the VA to follow the 250-yard requirement to make sure that this never happens again, and I would really appreciate the support of this Committee in sending that message.

Chairman ISAKSON. Is she talking about the EMTALA law?

[Off record discussion.]

Chairman ISAKSON. Senator Murray, the Chair's understanding of the EMTALA laws, they apply to all hospitals—government and private—and the VA is subject to the laws you are referring to, and when the VA says this legislation is already their policy, I accept that and I will accept the amendment.

Senator MURRAY. Thank you.

Chairman ISAKSON. It is merely redundant, but maybe it will get the—

Senator MURRAY. It merely restates policy, but I think it is important—

Chairman ISAKSON. Is there any objection to that by any Member of the Committee?

[No response.]

Chairman ISAKSON. Hearing none, the question would be to accept the—to adopt the Murray amendment, which basically restates the EMTALA laws that exist already in the country that a hospital cannot turn away a patient, they have got to provide for them. Any other question about that?

[No response.]

Chairman ISAKSON. Hearing none, all those in favor, say aye.

[Chorus of ayes.]

Chairman ISAKSON. All opposed?

[No response.]

Chairman ISAKSON. You are opposed?

Senator MORAN. Mr. Chairman, no. I voted aye. But, could I ask Senator Murray a question? I will wait until you—

Chairman ISAKSON. You mean, declare it passed?

Senator MORAN. Yes.

Chairman ISAKSON. The amendment is adopted.

Senator MORAN. Mr. Chair.

Chairman ISAKSON. Senator Moran.

Senator MORAN. Thank you very much.

Senator Murray, to the Chair, what is the VA's explanation for why they refused treatment?

Senator MURRAY. Well, they said that it is their policy to not help someone who cannot get in themselves. I will tell you that the person who was in the car, the 60-year-old man with a broken foot, had to call 911 to come to get him to take him into the VA facility.

Senator MORAN. Thank you. I appreciate you expressing that and having it on the record today.

Senator MURRAY. Thank you.

Chairman ISAKSON. The next item is agenda—I am sorry. Are there any other amendments?

Senator HIRONO. Mr. Chairman.

Chairman ISAKSON. Senator Hirono.

#### **Hirono Amendment Number 16**

Senator HIRONO. I would like to call up Hirono Amendment Number 16 to S. 1203. This has to do with expediting survivors' benefits without requiring the survivors to file a formal claim.

This amendment is based on a, basically, a VA proposal that was introduced as a bill. The amendment would make it easier for survivors of veterans to access benefits. Current statutory limitations require survivors to file formal claims, regardless of whether VA or other Federal agencies already have the information they need to make determinations about benefits. This unnecessary requirement can make a difficult time even more difficult, because remember, these are survivors of people who are killed in the line of duty. So, this particular requirement, which is unnecessary, makes it even more burdensome for grieving family members.

This amendment would give VA the authority, authority that the VA has already requested, by the way, and that many veterans groups, including the American Legion, American Veterans, Disabled American Veterans, Veterans of Foreign Wars, and Paralyzed Veterans of America, have already supported to make determinations about survivors' benefits based on readily available information. The authority would help expedite the processing of funeral and burial benefits, certain accrued benefits, survivor pensions, and benefits for the survivors of military servicemembers who are killed in the line of duty.

I urge everyone to support this amendment, and this amendment should not cost any money.

Chairman ISAKSON. As I understand it, the amendment is merely the bill that you have before the Committee already that is not on this markup, is that correct?

Senator HIRONO. There is a bill, but this is an amendment to the bill that is before us.

Chairman ISAKSON. It is also correct, as you stated, that there is not a CBO score, is that correct?

Senator HIRONO. There should not be a CBO score, because this should not cost any—

Chairman ISAKSON. I wish that was for us to determine, but we have to ask that question. Because of that, I reluctantly oppose the amendment.

Senator HIRONO. So, again, Mr. Chairman, could I get your consent to have this on a hearing calendar?

Chairman ISAKSON. You have my consent that I will work with you to see what we are going to do about it.

Senator HIRONO. OK.

Chairman ISAKSON. But, I am going to——

Senator HIRONO. This is yet another good measure to help our survivors.

Chairman ISAKSON. You can withdraw it or you can have a vote, and if we vote, I will recommend a no vote.

Senator HIRONO. So, with your commitment to have a hearing on this measure, I will withdraw the amendment.

Chairman ISAKSON. We will work with the distinguished lady.

Senator TESTER.

Senator TESTER. Thank you, Mr. Chairman. I have got four, if I might bring them up.

Chairman ISAKSON. How about two?

Senator TESTER. What is that?

Chairman ISAKSON. How about two?

Senator TESTER. Well, I will make it quick. We will make it the same time as——

Chairman ISAKSON. I will tell you what. I might give you a little help with that, too.

Senator TESTER. All right. That is good.

#### **Tester Amendment Number 15**

The first one is an amendment on residencies. Mr. Chairman, because of the current cap on Medicare-funded residency positions, the VA's effort to carry out the Choice Act provision to establish up to 1,500 additional residencies has been impeded. I have introduced legislation, the Docs for Veterans Act, which would, among other things, address this residency issue and ensure residencies established under the Choice Act would not count against this cap.

I am going to pull this amendment, but I would hope the leadership of this Committee will work actively with me to ensure this issue is addressed so that we can ultimately strengthen the pipeline of medical professionals into the VA. Look, I do not care if you are in the VA or you are in the private sector. We do not have enough doctors. We do not have enough medical professionals.

Chairman ISAKSON. And the VA is training many of the ones we do have.

Senator TESTER. Yes, the VA is training many of the ones we do. This bill that I have would address 1,500 additional residences, of which the VA has money to do, but they cannot without Medicare's buy-in on this.

It costs some money, quite frankly, and so I am going to withdraw the amendment for that reason. But, if we could work together, I think we could do some good things for the VA inside and out, quite frankly.

Chairman ISAKSON. I will be happy to work with the Senator.

Senator TESTER. I appreciate that.

**Tester Amendment Number 14**

Senator TESTER. I have another amendment, Mr. Chairman, that deals with workforce. This amendment would ensure that licensed professional medical counselors and marriage and family therapists are included as participants—

Chairman ISAKSON. Is that Amendment Number 14?

Senator TESTER. It is Amendment—

Chairman ISAKSON. I think it is Amendment 14.

Senator TESTER. It would include professional mental health counselors, marriage and family therapists—it actually goes back to the previous issue I am talking about, health care professionals that are able to be used—are included as participating professionals in the VA Office of Academic Affiliations Health Professionals Training Program. What that means is that they can use them.

Chairman ISAKSON. Right.

Senator TESTER. Even though these professionals make up 40 percent of the overall mental health care independent world, they make up less than 1 percent of the VA mental health workforce. In the past—it is past time, I should say, that the VA takes additional steps to integrate these folks into its mental health workforce so it can better utilize all the tools available for our veterans.

All of us sitting around this dais know that we do not have enough mental health care professionals out there to treat the issues that are impacting the VA. This just gives them another tool. I would encourage your adoption of this.

Chairman ISAKSON. I appreciate the Senator bringing this forward and I agree with the Senator's position. Unless there is an objection, we will have a voice vote, unless there is a comment that anybody has.

Senator MORAN. Mr. Chairman.

Chairman ISAKSON. Senator Moran.

Senator MORAN. Which one—what are we voting on, the marriage and family counselors—

Chairman ISAKSON. Number 14, health care training and compensation.

Senator MORAN. I appreciate the Chairman's attitude and approach toward this legislation. I am a cosponsor of the bill with Senator Tester and I intended to vote for it.

Chairman ISAKSON. Any other comments?

[No response.]

Chairman ISAKSON. All in favor of adoption—

Senator SULLIVAN. Mr. Chairman.

Chairman ISAKSON. Senator Sullivan.

Senator SULLIVAN. Is there an offset on this, or is it—

Senator TESTER. There needs no offset, actually, quite frankly.

Chairman ISAKSON. The bill is fine. [Laughter.]

It met all the criteria. That is why it is on there. Senator Tester and I did some work this weekend.

Senator TESTER. Damn straight, we did.

Chairman ISAKSON. Are there any other questions?

[No response.]

Chairman ISAKSON. Hearing none, all those in favor, say aye.

[Chorus of ayes.]

Chairman ISAKSON. Any opposed?

[No response.]

Chairman ISAKSON. The amendment is adopted.

#### **Tester Amendment Number 13**

Senator TESTER. Next, I have one on workforce reporting, which is Number 13.

Chairman ISAKSON. Thirteen.

Senator TESTER. Workforce shortage is critically important. We have seen them, I think, probably in every State represented at this dais. This amendment simply calls for an assessment, an assessment that would provide critical information to better inform our efforts to address these shortages, including ongoing efforts to recruit and integrate more licensed professional mental health counselors, marriage and family therapists in the VA workforce—what we just dealt with—actions that would allow the VA to better utilize and target the educational debt reduction program to address medical workforces as far as recruitment, and steps taken to address various impediments to the delivery of telemedicine services, which if you are in a rural State like Montana or Alaska are critically important, and an assessment of the VHA's succession planning polices to address the prevalence of vacancies across the agency.

I would encourage your aye vote on that.

Chairman ISAKSON. Are there any questions of the Senator?

In answer to Senator Sullivan's question on cost on the previous vote, Senator Sullivan, there was actually a \$5 million savings and there was no cost—on the previous bill, when you asked that question.

Senator SULLIVAN. Great. [Laughter.]

Chairman ISAKSON. I wanted to make sure we got credit for that.

Senator TESTER. They are cheaper than the other ones.

Chairman ISAKSON. Are there any questions of Senator Tester?

[No response.]

Chairman ISAKSON. We are on Amendment 13. Is there any objection?

[No response.]

Chairman ISAKSON. All in favor, say aye.

[Chorus of ayes.]

Chairman ISAKSON. Opposed, same sign.

[No response.]

Chairman ISAKSON. The legislation is adopted.

#### **Tester Amendment Number 12**

Senator TESTER. Now, I have another amendment, and this is one we want to discuss a little bit. This is an amendment to transfer—Senator Sanders talked about \$500 million for the shortfall for hepatitis C treatments, to transfer \$500 million from Choice to their general fund, and also \$2.5 billion shortfall for non-VA care referrals, it transfers that.

Now, I heard in my conversation with the Chairman—I appreciate the conversation we had this weekend, Senator Isakson—was that Congressman Miller and yourself had talked to the VA and you had come to a conclusion that you were going to basically inte-



grate both accounts so they would have maximum flexibility. Is that correct?

Chairman ISAKSON. That is correct. In fact, if you will give me the opportunity—

Senator TESTER. Yes.

Chairman ISAKSON [continuing]. With Senator Blumenthal here, because he was in those discussions, and with Senator Moran here, because, indirectly, this affects him.

We met at the VA for almost 4 hours last Thursday over this whole issue of shutting down hospitals and running out of money. We talked about a template which would merge all the programs—Veterans Choice, non-VA care, and regular VA care—to eliminate the restrictions for the use of money that is in some funds and not in others; seamlessly make the payment reimbursements all the same so there is not a preference pot to go to, and pass legislation that would keep us from closing the hospitals, provide the funds that the VA has in the VA to meet the shortfall they have in one stovepipe, and solve that problem not just temporarily for the time being, but for a long time to come.

My last conversation with Congressman Miller was yesterday. I talked to his staff and my staff about 5 minutes before we came here. It is my understanding the House is working to get that to us next week on the floor of the Senate.

Now, since you raised that question, and since Senator Moran is here, I have tried to keep every promise that I have made to every Member on every situation. As you will remember, when we got the crisis on the Denver hospital, Senator Moran, within every right to do so, would not agree to a UC to get that through until we agreed to do a UC on his veterans—

Senator MORAN. Forty-mile Choice.

Chairman ISAKSON [continued].—Veterans Choice, 40-mile Choice language. We passed that bill in the Senate. The House has not acted on it.

So, I told the House last week they owed it to Senator Moran to go ahead and act on that piece of legislation. I cannot tell them how to act. I cannot tell them what to do. But, I can tell them not to just put it in their closet and leave it sit there.

It is my understanding—I want to underline the word “understanding”—they are working on that as we speak. We will deal with that legislation one way or another. But, it would not be right for what we are trying to do here in terms of settling a shortfall over the language improvements to get that subject to any objection to a UC, if we get an agreement between the House and Senate. That is a separate subject than the hospital, so you are still tied to the hospital and not to the VA funding.

In other words, I would appreciate the cooperation of the Senator from Kansas if we get the bill that I have talked to Senator Tester about to allow that to be adopted so we do not shut down hospitals and so we fix a problem that has been longstanding that would ultimately fund the changes you want to make in the VA 40-mile rule.

Senator MORAN. Mr. Chairman, I thank you for your efforts on behalf of the Choice Act, passed by this Congress, supported widely, and particularly the issue of solving the criteria that the De-

partment uses to determine whether or not a veteran is 40 miles away from a VA facility. You have lived up to your word, as I would expect and appreciate. I had indicated, now on two occasions, I have placed a hold on a bill related to VA funding, and on both instances have withdrawn that based upon an understanding that the next significant piece of legislation necessary to pass will include a provision that defines what it means to live 40 miles from a VA facility.

I am willing to have this conversation further with you to make certain that I understand what you are requesting and that you fully understand what my answer might be.

I think the VA has put us in a gun-to-our-head circumstance, and they are already blaming Congress. I have used this quote before. Senator Sanders and others have talked about how well we have funded the VA over time, but still recognizing the increasing challenges that the VA has with more veterans, more complicated cases.

The President in May 2014 said the VA is resourced more in terms of increases than any other Department or agency in my government, and now the VA comes back and blames Congress for the failure to have the necessary resources to meet the everyday needs at VA hospitals across the country.

And, I would point out—I perhaps have gone beyond the theme of what you asked me about, but the VA, in my view, and everything I knew about the problems well in advance of the drugs that Senator Sanders was talking about; they were aware internally that they were going to have a shortfall at least since January. Only in the last 2 weeks has Congress been notified, yet we are to blame.

Second, my understanding is that the VA, in their presentation to our staff yesterday, indicated that this is probably not the only shortfall and that we can expect the need for additional dollars in the future. So, maybe what the Chairman is telling us is that with the plan that you and Chairman Miller are working on, by combining these accounts, you are coming up with a long-term solution.

But, the points I would make today are: one, I think it is wrong for the VA to blame Congress. We have lots of faults, but the VA management of this issue of a shortfall is woefully inadequate.

Second, that if we “solve this problem now,” are we only setting the stage that months from now we will be in the same position in which there is another shortfall with insufficient funds?

If you do not mind, Mr. Chairman, the third point is that Choice apparently has become the bank by which we will potentially pay for that shortfall, but we are making decisions that are short term. We passed the Choice Act to relieve the pressure of the VA from their inability to provide services, and now we take the money out of the Choice Act, the relief valve, to help them solve their problem with hospital care. This is a band-aid for a much bigger problem than what we have.

I think what you would like to hear from me, Mr. Chairman, I will defer until you and I can have a further conversation about what you are requesting of me—

Chairman ISAKSON. Which is only fair, and you, in your statement—you missed my opening statement, because I said what you

just said. You and I are in lockstep. I think the VA has woefully misrepresented the Congress and has woefully mischaracterized the problems that they have.

I think Senator Blumenthal and Congresswoman Brown and Congressman Miller, me and the Secretary reached an understanding that will prevent the problem from happening again, or at least prevent us from being in a deadline at the last minute, throwing a flag up, having dueling press conferences and press releases. I am working toward that end and I will be glad to sit down with you and discuss all of that.

Senator MORAN. OK.

Chairman ISAKSON. But I wanted—since you were in the room and the subject came up—it was timely for me to bring that up.

Senator MORAN. I appreciate that, and I guess, Mr. Chairman, what I would say is I would like to know what the deal is before I give up the leverage that I have, not on my behalf, but on behalf of veterans and veterans across rural America.

Chairman ISAKSON. I completely respect that. I just do not want us to end up doing something for the right reasons that puts us in the position of doing what they are blaming us of doing, and that is underfunding veterans and closing hospitals. So, that is what I am trying to do.

I apologize, Senator Tester.

Senator TESTER. No, that is fine—

Chairman ISAKSON. That was a discussion we needed, though.

Senator TESTER. I think it is a fine discussion. I would just remind you that the Congress has turned over since I have gotten here, and it has turned over even more since you got here, Mr. Chairman. And I may be wrong on this, I just do not take offense to them saying, we need resources. I do not take offense to that, and the reason is because they completed 56.2 million appointments between June 1, 2014 and May 31, 2015. That is 2.6 million more appointments than were done in the previous fiscal year. Listen to what I said there, 56.2 means 2.6 million more appointments. That is just in the VA hospitals. They spent \$6.3 billion compared to \$5.2 billion on non-VA care referrals. Fully 20 percent of their VA appointments are by non-VA doctors. They are doing what we want them to do in the Choice Act.

But, when the Secretary was in front of this Committee and has told me individually, too—I think he told Senator Tillis and I—he said, if this was a business, you would not run it this way. You would give me some flexibility. So, I think his frustration is that he used to run a business, and now he comes into government and he is feeling that we are going to tie one hand behind his back, then we are going to tie the other hand behind his back; we just need to untie his hands. I think if there is any point back to Congress, it is, untie my hands and let me do this.

So, I do not take offense when he says, we do not have any money and Congress needs to do something about it, because, quite frankly, we do need to do something about it, and that is why I offer this amendment today.

Now, I appreciate what you have done, Mr. Chairman. I would much prefer the Senate to lead on this than the House, and I will tell you why. You agreed with—and do not let me put words in

your mouth—with Congressman Miller that he would come back with basically “breaking the silos down” in funding so VA could move money around to make it work. So, if they had a bunch more non-VA care that they had to pay for, they could, 6 months from now.

Chairman ISAKSON. Right.

Senator TESTER. Or, if they need to use it for the VA fee care, they could.

Chairman ISAKSON. Right.

Senator TESTER. And, there are not going to be any games played with that. They are not going to come back with a bunch more language on something else that is done. It is going to deal with that issue? Because, quite frankly, I want to make sure it deals with that issue and we do not have some other issue out there that he is going to throw on that bill that makes them dance a different dance.

Chairman ISAKSON. For everybody’s benefit, the answer to that question, and I would ask Senator Blumenthal to correct me if I say anything that is incorrect, but the representation, the discussion we had at the meeting at the VA last week was to allow the fungibility of that money, the seamless lack of restrictions on that money so VA could reimburse for the earned medical benefits—

Senator TESTER. Either way you go.

Chairman ISAKSON [continuing]. And it would solve this problem of having these crises at the last minute, or manipulating funds appropriated in one stovepipe to make it look like funds were short when, in fact, they had more funds in another, and to give the Secretary the flexibility to do that. It does not appropriate any more money—

Senator TESTER. No.

Chairman ISAKSON [continuing]. But it gives the fungibility and the flexibility to use that money to solve the problem.

Senator TESTER. And—

Chairman ISAKSON. And, let me finish my answer.

Senator TESTER. Go ahead. Sorry.

Chairman ISAKSON. I will only represent what I know has happened. The House is an unusual place. I served there for 6 years. But, if we cannot get that—the reason the House is leading is because if we cannot get it out of the House, we will never get anything done anyway. I wanted them to go ahead and make a commitment that would get something done. I have talked to the Speaker, as well, and I think they will. But, I think it was the appropriate place for it to begin for that reason.

Senator TESTER. Yes, except that—you are right. Mr. Chairman, you are right. I do not disagree with anything said. The House is a funny place. I never served there, and there is probably over half this Committee that has served there. I thank God every day that I never had to serve over there. [Laughter.]

I will just tell you, I do not see any problem with us doing this. Then, if the House sends us over something that is good, we can take it up; and if they do not, we can push this back out. I would like to get your opinion on that.

Senator BLUMENTHAL. Mr. Chairman.

Chairman ISAKSON. Senator Blumenthal.

Senator BLUMENTHAL. First, I would just like to make clear for the record that Senator Tester speaks only for himself in his comments about the House.

Senator TESTER. Oh, sorry. [Laughter.]

Rounds feels the same way, by the way. [Laughter.]

Senator BLUMENTHAL. I would just add, as a footnote to the Chairman's explanation of our discussion and our understanding with the VA leadership team, that any sort of flexibility that we reach will involve undiminished accountability for those funds—

Senator TESTER. Right.

Senator BLUMENTHAL [continuing]. To make sure that they serve the purposes of the Choice Program. All of us, every one of us here, I think, want that accountability and transparency, frankly, in this program, which aligns with the goals stated by my friend from Montana.

Chairman ISAKSON. Excuse me. Staff is whispering in my ear over here.

Senator Moran.

Senator MORAN. Mr. Chairman, thank you again—

Chairman ISAKSON. And we need to speed it up for the benefit of the Members here who have been so patient to stay this long, so—not because you are speaking, but this was an appropriate time. [Laughter.]

Senator MORAN. I was trying to decide if I was offended. I am not.

Senator TESTER. Great comment. [Laughter.]

Senator MORAN. On this topic, I am not opposed to additional funding to the VA. My point was not about the amount of the money, my point is about the management, the crisis that we have. How long this issue has been known, and what steps have been taken to diminish the problem? Where is the amended budget request, the supplemental that says we need more money? What is the process by which the VA notifies us they have a problem? And, if we solve the problem, are we solving it momentarily or do we just put ourselves back in the same position?

I do not know that I am saying anything different than what anybody else is saying, but there is a credibility issue here with the amount of money necessary. I am convinced the demands are there. It is why I keep supporting the Choice Act.

Senator TESTER. Right.

Senator MORAN. There are lots of people who need services. This is not about the volume of dollars. It is about the VA providing the services in an efficient, timely way and providing Congress with the necessary information so that we can make decisions.

My request would be that we ask the Secretary of the Department of Veterans Affairs or his officials to come to the Committee, explain to us about the shortfall—how we got there, what the problems are, what the fix is—and whether or not we would have his assurance that that is not going to happen again in the future.

Senator TESTER. Mr. Chairman, if I might—

Chairman ISAKSON. Senator Tester.

Senator TESTER. Look, I think we all agree, and if Secretary McDonald was here—he could speak much better to this issue than I—he would say, why would I ask for a supplemental when I have

a bunch of money in this pot and not much money in this pot? All I have to do is transfer from here to here and I do not have to ask for additional revenue. That is what I think he would say. That is what he said before.

I would also say this. The number of appointments have increased. The number of appointments in private care have increased. The number of doctors they are trying to get on board have increased. Their medical facilities have not been up to snuff because they have not had enough. They are getting pounded in all sorts of different directions, which he has talked about here in front of this Committee and he can talk about it again. But, there is plenty of justification for what these costs are going toward, and it is not going out the door for fun stuff. It is medical.

Now, do I believe in accountability? You bet. Get him at this table and we will grill him to death. But, the fact is that he needs this flexibility, so all I am asking is for the Senate to lead on this. Make the transfer.

Do I support, Mr. Chairman, what you have been doing, working with Congressman Miller? Absolutely. I support that. But, number 1, when are they going to do it? Are they going to do it before we leave out of here for State work? And, number 2, if we did it, it would put pressure on them to do it. That is the point.

Chairman ISAKSON. A real quick question, then I do want to end the debate so we can go on and get the rest of our business done.

Senator TESTER. Sure. Yes.

Chairman ISAKSON. It is being done this week. It may be finished today. If not today, it is probably tomorrow. And, it is going to do exactly what I said in terms of the transferability between all three pools and giving the Secretary flexibility.

Senator TESTER. Right.

Chairman ISAKSON. There may be other provisions added to it which will be even more beneficial to some of the interests of the Committee. I do not want to start speculating and hypothesizing what those are, because it will get in the press and then something will not happen and then, all of a sudden, I misled everybody.

Senator TESTER. Yes.

Chairman ISAKSON. But—and trust me is a bad phrase—

Senator TESTER. Yes.

Chairman ISAKSON [continuing]. But if you will trust me, and the Ranking Member has verified it, what you have described is precisely what we are trying to do right this very minute.

Senator TESTER. Mr. Chairman, I would anticipate we would be taking this up the beginning of next week, assuming they get it out this week?

Chairman ISAKSON. We have got to get it done because they are leaving after next week.

Senator TESTER. That is correct.

Chairman ISAKSON. So, we are on a short fuse, and that is why I have been doing some of the explanations I have done to get us to the point where it is not at the very end, but at least early in the week.

Senator TESTER. Well, I would just close by saying, I would hope that there is not a lot of extracurricular stuff on this bill.

Chairman ISAKSON. No. It will deal with the problem—

Senator TESTER. I hope it deals with the issue, because, quite frankly, if it gets cluttered up with stuff that is of a different agenda and ties his hands more——

Chairman ISAKSON. I do not want them taking advantage of the deadline any more than us taking advantage of the deadline. So, with respect, if you would withdraw the amendment, I want to keep things moving, as I described to you on Saturday. But, I think we are accomplishing exactly what you asked, and you will have a chance to vote on exactly——

Senator TESTER. Mr. Chairman, because I trust you, I will withdraw it.

Chairman ISAKSON. God bless you. Go back to Montana where real people are. [Laughter.]

Chairman ISAKSON. Any other amendments? Any other discussion?

#### **Blumenthal Amendment Number 1**

Senator BLUMENTHAL. Mr. Chairman, I have one amendment on joint formularies. It is my Amendment Number 1, which I would like to call up. I want to thank the Chairman for putting this amendment, or this provision and subject, on the agenda for the legislative hearing we had early in the summer.

It deals with drug formularies. As we heard in the testimony in that hearing and we know from having talked to veterans, as they move from the Department of Defense to VA, very often, their medical therapy is interrupted. The medicine is not continuing, and very often, the prescriptions they receive from DOD doctors are not available from VA because the formularies are different.

I have been working with Senator McCain on a bill to correct this problem, the continuity of care problem, and I am offering this measure as an amendment now to this bill.

Chairman ISAKSON. I would add, I am supportive of what you are trying to do. I want to stick and be consistent with what I have said from the beginning about the pay-fors. So, if you will work with me, we will get this adopted, but let us find the pay-for to do so. I think your formulary proposal is exactly correct. I just want to be consistent with every Member, whether they are the Ranking Member or the leader from Kansas or any other place.

Senator BLUMENTHAL. And——

Chairman ISAKSON. So, if you would withdraw it, I will promise you we will do that.

Senator BLUMENTHAL. I do not want to interrupt Senator Barrasso, but I am agreeable to withdrawing with that commitment.

Chairman ISAKSON. Wrong doctor: Boozman, not Barrasso. Senator Boozman.

Senator BOOZMAN. I just want to say that I very much support the amendment in the sense we need to get it paid for. But, this is something that simply needs to be done. It is creating all kinds of problems. As we have talked about in the past, we need to warp up. I appreciate you bringing it forward. This is a very, very important issue.

Senator BLUMENTHAL. Thank you, Senator Boozman.

Chairman ISAKSON. Thank you very much. We will move on that in September. So, I am in agreement—

Senator BLUMENTHAL. Thank you.

Chairman ISAKSON [continuing]. With exactly what Senator Boozman said.

Are there any other amendments or questions?

[No response.]

Chairman ISAKSON. Hearing none—I have almost forgotten which bill we are on, it has been so long. Are there any other amendments to be offered or discussed?

[No response.]

Chairman ISAKSON. Any objection to a voice vote?

[No response.]

Chairman ISAKSON. Hearing none, all those in favor of the legislation, say aye.

[Chorus of ayes.]

Chairman ISAKSON. All opposed, same sign.

[No response.]

Chairman ISAKSON. Hearing none, the legislation is adopted.

And, the next item is agenda item three.

Senator Blumenthal.

#### **Blumenthal Amendment Number 2**

Senator BLUMENTHAL. I would like to call up my Amendment Number 2, which is a substitute amendment to S. 1082, and I want to be really blunt with my colleagues here. I fully support—strongly support—the objectives of this measure. I know we have some pretty distinguished legal minds at this table, including one of my fellow former Attorneys General. We have been in the position sometimes of defending measures that are challenged on constitutional grounds, and I cannot speak for him, but I often went to court scratching my head about why the legislature did what it did in the way it did it because it was plainly unconstitutional, and I wish that there were a better defense for this statute.

If we pass the measure as it has been offered, government lawyers are going to be in court defending against removals of individual employees asking themselves that question and scratching their heads about how we could adopt a measure that, in effect, denied the reality of numerous U.S. Supreme Court decisions that said there is a due process right to some notice and opportunity to be heard in connection with a removal.

My substitute amendment basically requires a due process notice in connection with removal. It enables the VA Secretary to suspend immediately without pay—immediately without pay—any employee whose performance or misconduct represents a threat to public safety or national security. That is within the discretion of the VA Secretary. It provides some measure of notice, some opportunity to be heard, and, it is what I regard as the minimum to pass constitutional muster.

In addition, it goes further and requires accountability on the part of the VA political appointees. They have to be held accountable for properly managing the Department. It provides protection for whistleblowers. It holds managers accountable for hiring the right people. It is broad and comprehensive. But, I just want to em-



phasize how important it is that we consider the constitutional ramifications here.

Chairman ISAKSON. Excuse me for interrupting, but Joe, if you will wait for 1 minute, I am going to try and finish this very quickly.

Senator Blumenthal, I respect what you are doing and I appreciate what you are doing. I am going to oppose the amendment for these reasons: one, it adds another layer to what Senator Rubio is trying to strengthen and synthesize; and, two, the language, “a clear and direct threat to public health or safety,” as I would perceive it, is not something you could apply to all the people I think should be held accountable. So, I would oppose the substitute.

Senator BLUMENTHAL. Well, then I ask, with the Chairman’s permission, that we do as we did with Senator Sanders’s proposal, the opportunity for us to work together—

Chairman ISAKSON. I have no objection to that.

Senator BLUMENTHAL [continuing]. And consider this measure at our next markup, because I think we are completely aligned in terms of our basic objectives. I have no intention of adding another layer—

Chairman ISAKSON. We all want to raise the accountability of the VA, and that is why I said I respect and appreciate what you are doing. The opposition is reluctant, but I do think the reasons are justified, and we will treat it as we did with Senators Hirono, Sanders, and Tillis. We will further the discussion and refine the language.

Senator BLUMENTHAL. Thank you.

Chairman ISAKSON. Any other questions or amendments?

[No response.]

Chairman ISAKSON. Hearing none, all those in favor of the legislation, say aye.

[Chorus of ayes.]

Chairman ISAKSON. Any opposed?

[No audible response.]

Chairman ISAKSON. The legislation is adopted.

#### **Hirono Amendment Number 18**

Chairman ISAKSON. Senator Manchin, we have, I think, one more, right? Item number 4, Department of Veterans Affairs Medical Facility Earthquake Protection and Improvement Act. Senator Hirono, explain briefly please, because I am losing my quorum if anybody else leaves.

Senator HIRONO. I call up Amendment Number 18. All this amendment says is that we would like the VA to assess/evaluate the threats due to high risk tsunami and volcano eruptions in areas and places that—

[Laughter.]

Senator HIRONO [continuing]. Do not laugh—in Hawaii, it is a real threat—

Senator MANCHIN. I do not have that problem.

Senator HIRONO [continuing]. In Alaska, Hawaii, Guam, and American Samoa. As long as we are focusing on making sure that our VA facilities withstand various natural disasters, as we would like them to make sure that they are evaluating—

Chairman ISAKSON. Without objection, I would—

Senator HIRONO [continuing]. High-risk areas.

Chairman ISAKSON. Without objection, as Chairman of the Committee, I would ask for an agreement to accept it by unanimous consent. Is there any objection?

[No response.]

Chairman ISAKSON. Hearing none—and nobody would be a better expert on volcanoes than the lady from Hawaii, I can tell you that.

I want to thank the Members for their patience. I want to particularly thank—

Senator BLUMENTHAL. Mr. Chairman, I apologize for interrupting.

Chairman ISAKSON. I am sorry?

Senator BLUMENTHAL. I just want to reserve the right to file views, minority views—

Chairman ISAKSON. I am getting ready to—

Senator BLUMENTHAL [continuing]. Or my colleagues for the record on any of the agenda items that we reported out today, in case there are additional thoughts that any of our colleagues have.

Chairman ISAKSON. I am sorry. Referring back to Amendment Number 18, I cannot just accept it. We have to vote to adopt it. So, let me ask for the yeas and nays on the vote to adopt the legislation. All those in favor, say aye.

[Chorus of ayes.]

Chairman ISAKSON. Opposed, same sign.

[No response.]

Chairman ISAKSON. Senator Hirono, the legislation is adopted and passed.

We will hold the record open for 7 days for any statements Members want to submit for the record.

Senator BLUMENTHAL. Thank you, Mr. Chairman.

Chairman ISAKSON. Additionally, at the end of the markup, I ask for unanimous consent, in preparation for the agenda items and reporting, that Committee staff be authorized to make any required clerical, technical, or conforming changes, including changes necessary to conform with the Budget Act. Is there any objection?

[No response.]

Chairman ISAKSON. Hearing none, I thank the Members for your patience and appreciate your time.

We are adjourned.

[Whereupon, at 4:14 p.m., the Committee was adjourned.]

# A P P E N D I X

## LETTER FROM CAROL A. BONOSARO, PRESIDENT, SENIOR EXECUTIVES ASSOCIATION



the voice of career federal executives since 1980

77 K Street N.E., Suite 2600 • Washington, D.C. 20002 • (202) 971-3300 • Fax (202) 971-3317 • www.seniorexecs.org

July 21, 2015

The Honorable Johnny Isakson  
Chairman  
Senate Committee on Veterans Affairs  
412 Russell Senate Office Building  
Washington, DC 20510

The Honorable Richard Blumenthal  
Ranking Member  
Senate Committee on Veterans Affairs  
825A Hart Senate Office Building  
Washington, DC 20510

Dear Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee:

As you know, the Senior Executives Association (SEA) represents the interests of career federal executives in the Senior Executive Service (SES), and those in Senior Level (SL), Scientific and Professional (ST), and equivalent positions. On behalf of the Association, and of the SEA members who serve at the Department of Veterans Affairs (VA), I write to share the Association's perspective on S. 627. The bill would prohibit the VA Secretary from awarding bonuses to VA employees who have been subject to an adverse finding by the Secretary.

While SEA commends the committee for listening to stakeholder input and making amendments to the legislative text since its first iteration was discussed in May, this remains an ill-conceived and poorly crafted bill that is more smoke and mirrors than real reform, and SEA cannot support it.

We still believe that Congress' focus on barring eligibility for bonuses or revoking them fails to address the underlying processes by which performance is assessed and award determinations for VA employees are made in the first place.

With regard to Senior Executives, the VA has already taken the extraordinary step of voluntarily banning performance awards for Senior Executives this year. Investigations by the IG, GAO, or other senior ethics officials are already taken into account for SES performance awards, and the Secretary already has ultimate sign-off authority on those awards.

Additionally, we are concerned that this bill would provide unmitigated authority to the Secretary to disregard all laws, including those protecting whistleblowers and against all forms of discrimination, in employing the new authority afforded by the legislation.

On the section of the bill pertaining to previously awarded bonuses and the ability of the Secretary to issue an order to an employee directing repayment of such a bonus, our concerns about the constitutionality of that action remains.

With S. 627, Congress is proving once again that it has no idea what it is doing with regards to workforce policy and is more interested in pursuing lazy, talking point legislation and rhetorical attacks against the VA workforce, rather than addressing the real issues at the VA. SEA stands ready to work with Members to pursue meaningful, constitutional reforms to improve the VA and its workforce.

Sincerely,

CAROL A. BONOSARO  
President

LETTER FROM BETH MOTEN, LEGISLATIVE AND POLITICAL DIRECTOR, AMERICAN  
FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

**American Federation of Government Employees, AFL-CIO**

July 21, 2015

Dear Senator:

On behalf of the 670,000 federal employees represented by the American Federation of Government Employees, AFL-CIO (AFGE), including over 220,000 non-management VA employees, I strongly urge you to oppose S. 627, introduced by Senator Kelly Ayotte (R-NH) during committee markup tomorrow. Instead, I urge you to support Senator Sherrod Brown's (D-OH) Amendment to S. 627 which would establish a fair process for limiting bonus awards when employee misconduct has occurred.

S. 627 contains harmful and counterproductive provisions on bonus bans, bonus recoupment, and permanent retention of reprimands in VA employee personnel files.

The bill's provisions for a prospective bonus ban and bonus recoupment lack fairness and due process. The bill does not require the Secretary to base an adverse finding on the determination of an independent decision maker and it would override other existing rights in current law. The bill's definition of an adverse finding as a violation of "a policy of the Department for which the employee may be removed or suspended" leaves managers with too much discretion and the potential for abusive bonus practices.

Providing managers with broad discretion to recoup modest bonuses awarded to front line employees who have exhibited exemplary performance, achieved cost savings for the agency or developed innovations will undermine the agency's mission and devastate workplace morale. The process of recouping previously awarded bonuses will also be very cumbersome and costly.

Permanent retention of all reprimands and admonishments in the personnel files of every active VA employee is extremely punitive, especially to the large numbers of veterans entering the VA workforce. In addition, it would divert significant VA funding away from current essential investigations of mismanagement in order to handle the massive increase in litigation resulting from elimination of Clear Record Settlement Agreements (CRAs). CRAs give VA managers the flexibility to resolve routine personnel disputes efficiently and quickly without protracted litigation or destruction of the VA careers of front line employees, including large numbers of service-connected disabled veterans.

This provision would have an extremely broad adverse impact on agency operations and the VA's ability to recruit and retain a strong workforce. The Merit Systems Protection Board (MSPB) stated in its 2013 report, Clear Record Settlement Agreements and the Law, that 95% of

agency representatives resolved disputes using negotiated settlement agreements (NSAs) and 89% of these agreements involved CRAs.

Congress has received a great deal of testimony in recent years from brave whistleblowers and their labor representatives regarding the widespread management abuse of reprimands to punish employees and destroy their VA careers. Similarly, Congress has provided steadfast support to active duty personnel making the often difficult transition to civilian employment, including VA support in the form of vocational rehabilitation, compensated work therapy, PTSD treatment, and programs to address homelessness and substance abuse. S. 627 would take away their second chances at a VA career after receiving a reprimand.

In addition, the bill is at best ambiguous about the fate of veterans who leave VA employment for deployment and then seek to return to the VA workforce. Would reprimands that were placed in their personnel files prior to deployment still be visible to all potential VA employers reviewing the returning veteran's application?

If enacted, S. 627 would deprive every VA employee, including non-managerial employees, of the chance to clear his or her name after receiving an unjustified reprimand from a manager who is acting out of incompetence, bias, anti-veteran animus or whistleblower retaliation.

AFGE urges you to support instead Senator Brown's amendment to S. 627. This amendment would set appropriate limits on prospective bonus awards, by requiring the Secretary to base an adverse finding on an independent determination, investigation or report by the Inspector General, VA senior ethics official or GAO. This amendment would ensure that bonus bans are neither arbitrary nor punitive; the Merit Systems Protection Board, and other external and internal fact finding bodies would have to make a determination that the employee violated VA policy prior to imposing the five year ban on bonus awards.

Thank you for considering AFGE's views. If you have any questions, please contact Marilyn Park at [mpark@afge.org](mailto:mpark@afge.org).

Sincerely yours,



Beth Moten  
Legislative and Political Director

Attachments

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