

MEETING TO CONSIDER THE NOMINATION
OF RAUL PEREA-HENZE AND LEGISLATION
PENDING BEFORE THE COMMITTEE

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THURSDAY, JANUARY 28, 2010

United States Senate,
Committee on Veterans Affairs,
Washington, D.C.

The committee met, pursuant to notice, at 9:45 a.m., in Room 418, Russell Senate Office Building, Hon. Daniel K. Akaka, chairman of the committee, presiding.

Present: Senators Akaka, Murray, Brown, Tester, Begich, Burris, Burr, and Isakson.

OPENING STATEMENT OF CHAIRMAN AKAKA

Chairman Akaka. The Senate Committee on Veterans Affairs will come to order.

Seeing now that we do have a quorum of eight, let us move to the three agenda items. Agenda number one is on the nomination of Paul Perea-Henze to be Assistant Secretary for Policy and Planning of Veterans Affairs.

All in favor of this nomination, say aye.

[Chorus of ayes.]

Chairman Akaka. All opposed, say nay.

Senator Burr. Nay.

Chairman Akaka. The ayes appear to have it. The ayes

do have it.

Senator Burr. Mr. Chairman, could I ask to be recorded as a no vote and also ask that Senator Graham be recorded as a no vote.

Chairman Akaka. We will certainly record that on the request of our Ranking Member, Senator Burr.

Senator Burr. Mr. Chairman, Senator Isakson--

Senator Isakson. I would make the same request.

Chairman Akaka. The same request is made by Senator Isakson and it will be recorded as such.

Senator Brown. I would like to be recorded as yes.

[Laughter.]

Senator Brown. If I am going to get outvoted one to three, I would like to be recorded.

[Laughter.]

Chairman Akaka. That will also be recorded, thank you, as a result of the vote that it is agreed to.

Agenda items two and three are legislative items to which amendments have been filed. Before we take up the amendments individually, the committee's practice is to report pending legislation en bloc subject to amendments and technical and conforming changes.

Senator Murray, did you have the motion?

Senator Murray. Mr. Chairman, I move the committee order favorably reported to the Senate the pending

legislative items, the committee print of S. 1237 and the original bill relating to environmental exposures. I further move that the reporting or approval of these two measures be subject to any amendments or motions subsequently adopted. And finally, I move that the committee staff be directed to prepare the committee reports on these items and make necessary clerical, technical, conforming changes, including changes necessary to conform with the Budget Act.

Chairman Akaka. All in favor of the motion to approve the two legislative items en bloc, say aye.

[Chorus of ayes.]

Chairman Akaka. All those opposed, say nay.

[No response.]

Chairman Akaka. The ayes appear to have it and it is agreed to.

Now, we will take up the amendments that we have on our agenda. Amendments were noticed in accordance with committee rules, eight by the committee's Ranking Member, Senator Burr, and one each by Senator Sanders and Senator Tester. As long as we retain a working quorum of five, the committee will consider any of these amendments that members wish to pursue, alternating sides.

Senator Burr will be recognized to offer the first amendment. Senator Burr?

OPENING STATEMENT OF SENATOR BURR

Senator Burr. Well, thank you, Mr. Chairman, and if I might make some opening remarks before I offer my amendment, with the Chairman's indulgence.

Chairman Akaka. You may make opening remarks.

Senator Burr. I thank the Chair, and I want to thank the Chair for this morning's markup.

As you know, one of my top priorities in the Congress has been to end homelessness among our country's veterans, and the committee print, S. 1237, the Homeless Veterans and Other Health Care Authorities Act of 2010, furthers that goal and I applaud all the members for their commitment to end homelessness.

I am concerned, however, that the committee is marking up legislation without having the official views of the Department of Veterans Affairs on S. 1547, one of the key measures in the committee print before us today.

We have heard the President talk about eliminating duplicate programs. We have had a legislative hearing on S. 1547, in October, at which time official views from the administration were promised. But three months later, we still don't have those views. Without those views, the committee doesn't have a full scope of key questions, such as how the creation of a new program or expansion of existing ones will be coordinated with other homelessness

programs administered by the VA and other Federal agencies, or how this legislation fits with the Secretary's overall plan to end homelessness in five years. As well, what is the cost of the legislation, and how long will it take the VA to be appropriately staffed to carry out the bill's mandates?

Now, I am not suggesting by any stretch of the imagination that any administration's testimony should dictate how this committee proceeds. But it would be helpful to have the information to make an informed judgment on what is best for our veterans and addressing their specific needs.

As for the second bill on the agenda, quite frankly, I am disappointed. I am disappointed at the approach used to provide health care for veterans and family members exposed to contaminated well water at Camp Lejeune. Not only might this bill be subject to Rule 25, Point of Order, because the subject matter is arguably in another committee's jurisdiction, it also fails to appreciate the deep distrust that family members and veterans have for the Department of Defense and specifically its handling of the matters once these wells were found to be contaminated and in the years since on the scientific inquiries that have been ongoing. Frankly, to those affected by the contamination at Camp Lejeune, requiring DOD to be a key decision maker and

provider of health care is absurd.

Now, I am disappointed personally that the majority has decided to take the tack they have to put a different bill in. I don't think it has been the practice of the committee in the past and I hope this is not an indication of how we proceed forward in this committee.

I understand the Chairman has the votes. I know what the outcome is. It won't change my passion for this debate. It will not change the degree of description of what I share with the members is the reason that I and other members have turned to this legislation. And it is certainly indicative of why Democrats and Republicans in the House next week will introduce practically the same bill with VA responsibilities to provide health care to individuals and family members that have disease that could likely be tied to exposure to contaminants on a military installation.

Now, I would only ask the members of this committee, likely included in that group are some of your constituents, and though you haven't had to fight the Department of Defense day in and day out on behalf of this group, I have and members before me have without any conclusion, without any finality, without any help.

Today, as we sit here getting ready for this markup, even though under U.S. Code 42, statutorily, the Secretary of the Navy is obligated to pay for the studies required to

understand the health and mortality effects of this exposure, the Secretary of the Navy refuses to fund the CDC's arm at ASTDR that is the obligated entity to go out and share with the country their scientific conclusion. Let me say that again. The Secretary of the Navy has refused to fund, even though the law says he has to. So for me in good conscience to turn this over to the Department of Defense to determine the scope of coverage for these individuals is insane.

If the outcome of this vote is predetermined, then so be it. I would hate for members to leave the markup today and believe that they will not revisit this issue. It will be revisited time and time and time again until the Congress recognizes that maybe the Department of Defense, maybe the Secretary of the Navy, can hide, but the Congress can't hide from these people. These are people we represent. These are people that have asked us to come here and represent their interests, their health concerns, their future, and we can't hide from them.

So I am committed to bring it up under whatever means on the Senate floor if, in fact, this committee disposes of the legislation. It will be tied to everything appropriate or inappropriate that I can find that leaves this body on its way to the President's desk because I believe the President would sign the legislation.

Now, I am sure that the Veterans Affairs agency is concerned about how to fund it. Well, I have got a funding mechanism for it. It is carryover funds, funds that were unobligated. As a matter of fact, I am going to look very closely over the next several months, and I hope both sides of the aisle will do it with me, to look at the bonus program within the Veterans Administration this year. You know, while millions of Americans have been suffering, having lost their jobs, we rewarded VA workers with lavish bonuses. As a matter of fact, many of them took trips to lavish conferences to sites all around the country, probably with the same money that we could fund the health care for the people that were exposed to this contamination.

If this has been a prioritization within the VA, then it is time they have some adult supervision to figure out where their priorities should be.

Senator Burr. Will the Senator yield?

Senator Burr. I would be happy to yield.

Senator Burr. Are you speaking of money in the VA or money in the DOD?

Senator Burr. Money in the VA.

Senator Burr. You said the Secretary of the Navy is not spending money, but--

Senator Burr. The Secretary of the Navy has refused to fund the studies at the CDC, but my point was that if the

Veterans Administration is objecting to covering this population because of funding, one, I will offer a funding mechanism. Two, I would suggest that if there is plenty of money to do lavish bonuses--

Senator Burr. Thank you, Senator.

Senator Burr. --and to do lavish conferences, then the money should be there to take care of our country's veterans and their families.

Now, Mr. Chairman, you have been very accommodating to me. I appreciate the effort. I can't in good conscience agree to give these brave men and women and their families a false hope that they will get health care. I believe that the reason the agenda has been separated into two bills is to reflect the likelihood that one of them will not advance because of jurisdictional concerns.

My hope is that my colleagues' vote on my amendment will be a vote of conscience, a vote of what is right, and with that, I would ask the Chairman to call up my Amendment Number 5, which is legislation that would freeze TRICARE fees, which I will offer to the committee print to the Chairman's exposure bill. And let me just briefly explain and then open it up for any debate and a vote.

My amendment is exactly the same as the bill currently pending in the House, H.R. 816, that has broad bipartisan support and 193 sponsors at last count. The bill was

introduced by Representative Chet Edwards, who is the Chairman of the House Mil Con-VA Subcommittee. In fact, I will also note that the Chairman of the House Veterans Affairs Committee, Mr. Filner, is a cosponsor of this bill. The bill has been endorsed by numerous veterans' and military organizations.

In essence, my amendment freezes TRICARE for military personnel, retirees, and their families. More specifically, my amendment would express the sense of the Congress that we are dedicated to protecting the earned benefits of our service members and family members and that DOD has many additional options to constrain the growth of health care spending in ways that do not disadvantage beneficiaries and should pursue such options rather than seeking large fee increases for beneficiaries.

Accordingly, my amendment would prohibit fee increases in premiums, deductibles, copayments or other charges prescribed by the Secretary of Defense for medical and dental health care coverage for military personnel. It would also prohibit an increase after September 30, 2009, in the dollar amount of the cost sharing requirement under the DOD Pharmacy Benefit Program. Finally, it would prohibit charges for DOD inpatient care from exceeding \$535 per day, and beginning on January 1, 2009, would prohibit an increase in premiums under TRICARE for certain members of the

Selected Reserve. If adopted, all future fee increases would have to be requested by the administration and approved by the Congress of the United States.

This amendment would benefit over three million Americans, our brave men and women in uniform and their families. Politicians frequently talk a good game about supporting our troops. Now it is time to vote to actually do so.

I would ask for the consideration of my amendment, Mr. Chairman.

Chairman Akaka. Thank you very much, Senator Burr, for your remarks. We will now take up the Burr Amendment Number 5 on TRICARE.

Rising drug prices and copayments are an issue for all Americans. It sometimes seems that only VA beneficiaries are protected because VA has such a good drug management program. That said, it is plainly not in this committee's, again, jurisdiction to adjust TRICARE copayments and premiums. That responsibility rests with the Armed Services Committee. And for that reason, I will now move to table this amendment.

Are there any other comments before the Clerk calls the roll--

Senator Burr. Mr. Chairman, if I--

Chairman Akaka. --on Amendment Number 5?

Senator Burr. If I may comment--
Chairman Akaka. Senator Burr?

Senator Burr. If I understand the consideration of legislation today, the Chairman's alternative to my amendment is to require that DOD provide health care benefits to those individuals exposed at Camp Lejeune to toxic exposure. I am not sure how that might be considered as the jurisdiction of this committee, yet the TRICARE amendment is arguably being tabled because you say it is not the jurisdiction of the committee. Would the Chairman care to elaborate on that?

Chairman Akaka. Yes, Senator Burr. I, too, am concerned about the role of this committee on matters relating to DOD health care. Regarding environmental exposures, as you have mentioned, on military bases, I wrote a letter to Chairman Levin in October 2009 noting my belief that DOD must be the lead agency on matters relating to dependents. The only reason this issue is before us today is because of S. 1518.

Similarly, it is not in this committee's jurisdiction to adjust TRICARE copayments. That responsibility rests with the Armed Services Committee. And again, this is a jurisdictional type of concern and problem. That said, it is plainly not in this committee's jurisdiction to adjust TRICARE copayments and premiums, and I repeat.

With that, again, are there any other comments?
Senator Burris?

Senator Burris. Mr. Chairman, you are moving to table, but not the fact that you are saying this is not something that is needed, but you are saying we just don't have the jurisdiction to do it? Is that the position of the Chair, that this is something that probably is needed for our veterans?

Chairman Akaka. Yes. I have mentioned this to Senator Burr and we need to talk more about this, as well. I would like to continue to discuss it with him and also maybe even suggest to him having a members' meeting of Senator McCain and Senator Levin and Senator Burr and I on these issues.

Senator Burris. Very good, Mr. Chairman. Thank you.

Senator Murray. Mr. Chairman?

Chairman Akaka. Senator Murray?

Senator Murray. Mr. Chairman, thank you, and I appreciate your offer to have yourself and Senator Burr meet with Senator Levin and Senator McCain because this is an issue many of us are concerned about. It is outside the jurisdiction of this committee, and so I understand your reason for asking us to table it at this time, but it is an issue that I think all of us are deeply concerned about and we want the Armed Services Committee to take this up and work with you on it. So, Senator Burr, I thank you for

bringing the issue to us, but I do understand the committee jurisdiction issue and will support the Chairman's position to table it at this time.

Chairman Akaka. As you know, what is important in this is there are people who have gone through these problems and challenges and these are people and we need to deal with these problems as Senator Burr is wanting to do. Though we may table this, this doesn't mean it ends. We need to continue to pursue this.

Are there any other amendments?

Senator Brown. Mr. Chairman?

Chairman Akaka. Senator Brown?

Senator Brown. Thank you, Mr. Chairman, and Senator Burr, both. I echo the words of Senator Murray that this is important, that a vote to table now is not a vote against the substance of it, but it is a jurisdictional issue, which means nothing to anybody except the people in this room, perhaps. But it is important that we move to address it and I support that. So thank you, Mr. Chairman.

Chairman Akaka. Are there any other comments?

The Clerk will please call the roll on the motion to table.

The Clerk. The vote is on the motion to table. Mr. Rockefeller?

Chairman Akaka. Aye by proxy.

The Clerk. Mrs. Murray?
Senator Murray. Aye.
The Clerk. Mr. Sanders?
Chairman Akaka. Aye by proxy.
The Clerk. Mr. Brown?
Senator Brown. Aye.
The Clerk. Mr. Webb?
[No response.]
The Clerk. Mr. Tester?
Senator Tester. Aye.
The Clerk. Mr. Begich?
Senator Begich. Aye.
The Clerk. Mr. Burris?
Senator Burris. Aye.
The Clerk. Mr. Specter?
Chairman Akaka. Aye by proxy.
The Clerk. Mr. Burr.
Senator Burr. Votes no.
The Clerk. Mr. Isakson?
Senator Isakson. No.
The Clerk. Mr. Wicker?
Senator Burr. No by proxy.
The Clerk. Mr. Johanns?
Senator Burr. No by proxy.
The Clerk. Mr. Graham?

Senator Burr. No by proxy.

The Clerk. Mr. Chairman?

Chairman Akaka. Aye.

The Clerk. The ayes are nine, the nays five. The motion prevails.

Chairman Akaka. The amendment is tabled.

Senator Tester, your amendment.

Senator Tester. I want to thank you, Mr. Chairman. I have an amendment that is Amendment Number 9. I understand it has been cleared on both sides, so I want to thank the Chairman and the Ranking Member, Senator Burr.

I ask consent that Senator Sanders, Senator Brown, Senator Begich be added as cosponsors of the amendment.

I want to briefly explain it. The National Center for Homeless Veterans estimates that on any given night, five percent of homeless veterans are in rural areas of this country. What this amendment does, it directs the VA and the Department of Labor to put not less than five percent of the grant money towards recipients in those rural areas.

The bill before us expands the grant program. It pays up to 65 percent of the construction costs associated with building, expanding, or modernizing veteran supportive housing. As we expand that program, we need to make sure the rural areas don't get left behind. I have toured a couple of the sites in Montana that were built with the

program money--the Willis Cruz House, the VOA building in Billings Heights, and they are bursting at the seams and just opened, I think, about a year ago.

The bill also creates a new grant program in the Department of Labor for reintegration of homeless women veterans and homeless veterans with children in the labor force. Since this is a new program, it is vital to make sure that the funds are obligated to rural areas, as well as the places where we most often think of homeless of our veterans as a problem.

Chairman Akaka. Thank you very much, Senator Tester.

Comprehensive service programs in rural areas certainly support our efforts to end homelessness among veterans, and any time we can put emphasis on rural programs, I am delighted to do that.

At this time, I am prepared to accept this amendment. Are there any other comments? Senator Burris?

Senator Burris. Mr. Chairman, I would like to request from Senator Tester, do we know how much money is being spent in the rural areas currently and why it takes an amendment to require them to do this? If they are spending money, how much and why? I mean, is it something that is going to be a natural process that takes place with the VA and--

Senator Tester. And let us hope it does, and since you

come from an urban area and I come from a rural area, there are concerns--

Senator Burris. Pardon me, Senator. There is a lot of rural in Illinois.

Senator Tester. Yes, yes.

Senator Burris. There is a lot of rural.

Senator Tester. And there is none in Montana. What I am saying is this. What this does is make sure that the VA doesn't forget about rural America. There are a ton of veterans in urban America. There are a ton of veterans in rural America and we just want to make sure that when the monies get allocated, that no less than five percent go towards rural America, because as studies have shown, five percent of the homeless veterans reside in those areas. I just don't want them forgotten about.

Chairman Akaka. Are there any other comments on this?

Without any objection, this amendment is agreed to.

Senator Burr?

Senator Burr. Mr. Chairman, I would call up Amendment Number 1.

Chairman Akaka. Amendment Number 1 is called up.

Senator Burr. I would ask that Amendment Number 1 be considered as an amendment to the committee print under the homelessness bill and I will take several minutes to explain what Amendment Number 1 actually does.

Mr. Chairman, this amendment is the text of my bill, S. 1518. It is the original language that I felt addressed the health care needs of those veterans and their families. It is the bill that this committee held a hearing on in October of this year and it has broad support within the veterans' community and bipartisan support within the United States Congress.

The health care eligibility that would be extended under this amendment follows precedent already in law for exposed veterans that would be given VA health care eligibility on the same terms as other veterans who have been exposed to various environmental hazards. For exposed family members, they would be given VA health care eligibility on the same basis as VA provides to children of Vietnam veterans who suffer from birth defects linked to Agent Orange exposure.

Now, I have heard over and over the argument that the Department of Defense and the TRICARE program bears the responsibility and is better prepared and positioned to treat family members exposed at Camp Lejeune. That is certainly the approach that the Chairman's bill takes. I couldn't more passionately disagree.

First of all, has anyone asked the Department of Defense's views on that question? I think you will find the DOD heavily--heavily--resistant to the idea, probably more

resistant than they are to admission of guilt of toxic contaminants at Camp Lejeune. They have denied the culpability for the contamination of the well water. DOD has been dragging their feet on the issue for decades. Do you really believe that DOD will actively implement this new health care authority when it still doesn't accept responsibility for the contamination? I think the family members of Lejeune Marines are right to be concerned as to whether this approach would benefit them one bit.

And I would sort of like to remind my colleagues, many of the individuals exposed died. The reason that this is an issue is because a lot of the family members haven't let us forget that their sacrifice was in a family member that didn't serve, but was put there because of a parent who served and, quite frankly, the Department of Defense still denies that there was still any problem.

Senator Murray is a great champion for breast cancer, as are many members of this. We had somebody that testified. It just happened to be a man. Therefore, it didn't receive as much fanfare and press. Breast cancer in males is rare. And when you look at the number of males that have breast cancer that had exposure at Camp Lejeune, it is off the chart. You can't disassociate that man's testimony with where he lived and what he was exposed to. But to accept the committee print is to ignore his health

challenge that he deals with and to kick this can down the road and to put his hands in the Department of Defense for just the coverage of his health care costs. We are not talking about much.

Secondly, there is no precedent under the TRICARE program to provide health care only for diseases associated with exposure. Now, let me say that. There is no precedent under TRICARE to handle this health care coverage because one was exposed to this. Quite frankly, that is probably why family members of Agent Orange exposure were covered under the Veterans Administration versus under the Department of Defense.

Some would claim that my bill sets precedent at the VA. No. The VA CHAMPUS program, though very targeted, rather small, does exactly what my legislation is attempting to do. This isn't something we created overnight. This was a search to try to find something that already existed where the Federal Government could help these people, and it existed not at the Department of Defense. It existed at the VA.

I am not setting precedent. The committee mark will set precedent by saying, we believe that TRICARE should begin to be the repository of individual exposure cases and the health obligations that go on with it.

TRICARE is an insurance program with a varying degree

of providers in various regions of the country and different networks. I am not sure if they could even get the word out to the providers, region by region, network by network, about the unique beneficiaries that are now covered under a health insurance program that would treat them significantly different than every other covered life in the TRICARE system, much less the delivery points, the community hospitals that these people would visit, and somehow their TRICARE coverage would be limited to only health conditions that might be the result of exposure to contamination. I am not sure how you write that. I am not sure how you implement it within a system that is insurance coverage to provide it for the population in total coverage.

Finally, the Chairman's bill is most likely within the jurisdiction of the Armed Services Committee because of the heavy role contemplated for the Department of Defense and the financial liability placed on the TRICARE program. This bill is at heavy risk of Rule 25 Point of Order on the floor and we have been given no assurances from Chairman Levin or Ranking Member McCain that it is in any way acceptable.

So, where are we? Two separate bills, the Chairman's mark, one dealing with the homelessness issues, the amendments of Senator Tester and probably Senator Sanders, and it will move. The committee--not with my support--will move a bill that basically sends this population off to some

imaginary TRICARE program that the Department of Defense will never recognize, that the committee of jurisdiction will never sign off on, and these folks are in no different position than they were before we started this markup, but we knew that.

That is why we set it out as a separate bill, because nothing was going to happen to it. It wouldn't go anywhere. The committee wouldn't consider it and we could wash our hands of it and say, we have done our best. We have punted this ball down the road because we have determined it is not our jurisdiction. Yet the precedent, the precedent of prior exposure is, in fact, the jurisdiction of the VA Committee, not the Department of Defense.

So what I would ask my colleagues, is this the jurisdiction of our committee? If you don't believe it is, then vote against my amendment. If you believe it is, then I have amended it to the homelessness bill so we assure that it goes together. It doesn't assure that it is going to end up on the floor together. I am sure there are some conversations that we are going to have before then. There might be changes to the bill. But let me say very candidly, negotiations took place before we got here. Negotiations broke down because it was unacceptable for me to put the hands of these people in the Department of Defense and we couldn't bridge that gap.

So this is left up to the members individually, not down the center of the aisle, but individually for your own determination as to whether the United States of America and the United States Congress have an obligation to these people. If we do, then, by golly, let us give them health care. If we don't, then kick the can to somebody else, but don't think that by immaculate conception, health care is going to appear for them. They are going to continue to take it out of their pockets. They are going to continue to get less than the care that they probably deserve because they will go and seek that care in an outlet that doesn't understand how to treat exposures of the kind that they have been exposed to.

So, in summary, the Chairman's bill gives family members false hope. If you support my amendment, you will give them real hope. You won't give them coverage--we are not there yet--but you will give them some hope that this Congress is willing to stand up and fulfill what I think is an obligation we have to them.

Mr. Chairman, I yield.

Chairman Akaka. Thank you, Senator Burr.

We are on Amendment Number 1. Many would agree that there is a strong basis for concerns about the potential for exposure to toxic substances at Camp Lejeune. Based on what I have seen, it appears clear that elements of the

Department of Defense have been less than forthcoming in addressing these concerns. That failure on DOD's part, however, does not--does not suggest to me that this issue now belongs to VA.

For those who were in uniform during the relevant time periods, this is an issue for VA. But for those who were present at Camp Lejeune as dependents, spouses, and children of active duty personnel, the entity which should provide a response is the Department of Defense.

Both of our approaches would provide health care to certain Camp Lejeune veterans and their dependents. I want to be clear about that. What we differ on this question is which department, DOD or VA, would ultimately provide the care for dependents.

I also believe that the VA health care system is simply not designed to meet dependents' health care needs. As Secretary Shinseki noted in a letter to me, family members would be better served under the DOD's health care program, which already provides services to dependents and has the significant experience in this area. VA, on the other hand, has a very small program for a very special and specific group of dependents.

VA estimates that under Senator Burr's approach, more than 500,000 new dependents would become eligible for VA health care. Resources for dependents' health care would be

drawn from VA's existing health care programs, such as programs for traumatic brain injury and PTSD. This would seriously burden the VA system.

The approach in the underlying bill requiring that dependents go to DOD for care has the support of the Disabled American Veterans, Veterans of Foreign Wars, Vietnam Veterans of America, Paralyzed Veterans of America, and the administration. Based on my concerns, I will oppose the amendment.

In addition, the underlying bill is endorsed by families who were directly affected by environmental hazards beyond--beyond Camp Lejeune, families such as the Paganellis, whose son, Jordan, recently passed away after a long battle with cancer. Members of the committee may recall that Mrs. Paganelli testified at the hearing on military exposures in October.

Are there any other comments before the Clerk calls the roll? Senator Burris?

Senator Burris. Thank you, Mr. Chairman. Mr. Chairman, I understand the strong position of the Ranking Member on this issue, and most of us sit on the Armed Services Committee. If we can't do this in Veterans Affairs, Mr. Chairman, we are going to have to do this in Armed Services. We have got to find a way to take care of those veterans and their families.

I am going to support you on your no vote on this, Mr. Chairman, but if it doesn't come up and we do something about this in Armed Services, then we are going to have to find a way either here or there or a joint effort to deal with this Camp Lejeune and that health issue. So I will support you on your motion, Mr. Chairman, and I am impressed with the Ranking Member's commitment and compassion for this issue.

Chairman Akaka. Thank you very much, Senator Burr.

Senator Burr. Mr. Chairman?

Chairman Akaka. Senator Burr?

Senator Burr. Mr. Chairman, if I could, for the knowledge of all the members, just add for the record that the Chairman said that the VA Secretary said what we currently have is a very small, select group. CHAMP VA is 200,000 lives and a \$1 billion budget--200,000 lives, spouses and kids, and a \$1 billion budget that goes to CHAMP VA.

When the decision was made to cover family members of troops exposed to Agent Orange, the definition of exposure to Agent Orange in Vietnam was any service member that served one day. Any service member who served one day was considered exposed to Agent Orange. The population I am talking about is much smaller, individuals who during their active duty military career were stationed at Camp Lejeune

in Jacksonville, North Carolina.

Now, the Chairman said that VA estimated that this could expose us to 500,000 people. Well, I would prefer to turn to an agency that actually, for a living, looks at legislation and determines numbers, and that is the Congressional Budget Office. They estimate that there are 5,000 people that make up the universe that we are talking about.

Now, I am not sure that I can with great confidence tell you that CBO is right. I think they are closer to being right than I would suggest the VA is. But--and this gets to the heart of it, Senator Burris--if this were an issue that came up last year, maybe we would sit here and say, let us wait for some more information to come so we know exactly the number and we know exactly the cost and we know exactly how to go forward. These exposures are decades old. If I had any belief that the Department of Defense was going to step up, raise their hand, and say, we take full responsibility for this population, it would have happened by now.

The fact that still today the law of the country says that the Secretary of the Navy must fund--not can, but must--and the Secretary of the Navy refuses today to commit to the CDC, to the ASTDR the funds they need to carry out the health survey and the mortality study is unconscionable to

me. And I will say as a fellow member of the Armed Services Committee, there will not be a Navy nominee that is considered on the floor until this is resolved. I am not sure of any other tools that we have.

Now, I know the President chastised, I guess me and others last night when he said these holds have to stop. Well, what has to stop is kicking the can down the road. I have exhausted every possibility to resolve this issue. I have researched every option that I have to enforce law on the U.S. Navy. I can't find anymore unless the committees engage, which is our responsibility.

Now, my only point, Mr. Chairman, is the population is 8,000 people. The precedent exists within the VA to handle special exceptions, special needs, of family members exposed. To put this into TRICARE is not just a new precedent. I would suggest to my colleagues it is unworkable to believe that even if tomorrow Senator Levin, Senator McCain, the entire committee said, you know, we need to do this, that then we would have TRICARE coming to us saying, we can't implement this. There is no way for us to give somebody a card that provides coverage for any disease that they were exposed to at Camp Lejeune where they can go anywhere in America, get health care, and that medical professional that sees them knows immediately that that was the result of exposure to contamination at Camp Lejeune.

Hell, they don't even know where Camp Lejeune is and they have no idea what the exposure was to.

So with all due respect to the Chairman, and I realize that he has got to go the direction he is going, I would implore my colleagues to do the right thing. Help these people out. Vietnam veterans waited way too long. These folks have been waiting just as long. It is too long and what we have got to decide is are we going to make it longer. And the truth is, I think it is unconscionable for us to walk away from this, even when the next option does not give us any assurance of the coverage to fulfill the needs that these folks have.

I thank the Chair.

Chairman Akaka. Thank you very much, Senator Burr, for your comments.

Are there any other comments? If not, let me say that there is a vote that will be coming soon, and at this time, I would like to call, if there are no other further comments, I ask the Clerk to call the roll.

The Clerk. The vote is on Senator Burr's amendment on Camp Lejeune exposures. Mr. Rockefeller?

Chairman Akaka. By proxy, no.

The Clerk. Mrs. Murray?

Chairman Akaka. By proxy, no.

The Clerk. Mr. Sanders?

Chairman Akaka. No by proxy.
The Clerk. Mr. Brown?
Chairman Akaka. No by proxy.
The Clerk. Mr. Webb?
[No response.]
The Clerk. Mr. Tester?
Senator Tester. No.
The Clerk. Mr. Begich?
Chairman Akaka. No by proxy.
The Clerk. Mr. Burris?
Senator Burris. No.
The Clerk. Mr. Specter?
Chairman Akaka. No by proxy.
The Clerk. Mr. Burr?
Senator Burr. Votes aye.
The Clerk. Mr. Isakson?
Senator Isakson. Aye.
The Clerk. Mr. Wicker?
Senator Burr. Aye by proxy.
The Clerk. Mr. Johanns?
Senator Burr. Aye by proxy.
The Clerk. Mr. Graham?
Senator Burr. Aye by proxy.
The Clerk. Mr. Chairman?
Chairman Akaka. No.

The Clerk. The amendment fails. The nays are nine, the ayes five.

Chairman Akaka. The amendment is not agreed to. Senator Tester, for your amendment.

Senator Tester. Yes, thank you, Mr. Chairman. Senator Sanders is chairing a subcommittee hearing this morning and asked me to offer this amendment in his stead, so I have an amendment, Sanders Number 10, that I am offering on his behalf. I ask unanimous consent that I be added as a cosponsor of this amendment.

The amendment provides for automatic enrollment of demobilization Guard and Reserve members into the VA health and dental programs. This legislation is based on the belief that if our goal is to help veterans access the care that they have earned through their service, we should make it as easy as possible for them to enter the VA system. Some members of the Guard and Reserve currently do not enroll in the VA health and dental care programs at demobilization and sometimes miss certain windows of enrollment in the VA programs because of this.

The amendment is supported by the National Guard Association of the United States, the Paralyzed Veterans of America, and the Reserve Officers Association.

The amendment makes enrollment automatic, but does not force the service member to use the VA. An opt-out

provision is included for those who do not want to enroll. It requires DOD to make space available at the VA at demobilization sites. In some cases, the VA is doing enrollment assistance for Guard and Reserve in many demobilization sites, but it is not a consistent process. This amendment will help smooth out that process.

Chairman Akaka. Thank you, Senator Tester.

This amendment would provide automatic access to VA health care for basic health care needs for care for mental traumas for whatever it is that they need for members of the Guard and Reserves. This should make it easier and more likely that these service members will get needed care. I think it is also important that the amendment includes an opt-out provision for those who do not wish to enroll.

I am prepared to accept this amendment.

Are there any further comments?

Senator Burriss. Mr. Chairman?

Chairman Akaka. Senator Burriss?

Senator Burriss. This is a very, very good amendment. All I can hear from my veterans is about dental care, and if we are going to help them with that dental care, that is a major, major move and I support this amendment wholeheartedly.

Chairman Akaka. Thank you for those comments.

If there are no further comments, I would say the

amendment is accepted.

The next amendment, let me call on Senator Burr.

Senator Burr. Thank you, Mr. Chairman. I would call up Amendment Number 2 and briefly describe this amendment, Mr. Chairman.

This amendment would direct the VA to pay for the provisions of S. 1237 with any unobligated funds appropriated for VA services from 2009 or 2010 so long as it does not adversely affect health care delivery to our veterans.

Mr. Chairman, when the President requested the budget for VA health care for fiscal year 2010 last February, it is assumed that there would be no carryover money from 2009 to 2010. Congress then provided the VA with almost exactly the appropriations the President requested for fiscal year 2010, again, under the assumption there would be no carryover.

However, VA did, in fact, carry over a substantial sum of money. Here are a few examples. For medical services, they carried over \$619 million. For medical support and compliance, \$226 million. For medical facilities, \$1 billion, just slightly over \$1 billion.

Now, I recognize that some carryover is normal because occasionally VA is not able to spend the money prudently before the expiration of a fiscal year. My amendment is targeted at any excess funds. It would require excess

unobligated funds from 2009 and 2010 to be used for the provisions of this bill. I believe it is a common sense approach. I believe it is consistent with what the President's theme in his State of the Union Address was last night and I believe it would be an appropriate prioritization of unobligated funds where we could direct those towards our nation's veterans that are homeless.

I thank the Chair.

Chairman Akaka. Thank you very much, Senator Burr.

I say to my good friend that it is true that the VA medical services account did carry over substantial funding from fiscal year 2009. I am prepared to accept this amendment and we move forward. As we do that, we will likely need to make some technical changes so as to ensure the Secretary has sufficient flexibility.

Are there any further comments on this? Without objection, this amendment is accepted.

Are there any further amendments?

Senator Burr. Mr. Chairman, as you know, I had additional amendments filed. I don't intend to call those up for the purposes of the members that are left, and we have not started the vote yet. Let me at this time reserve the right to file supplemental views to the committee's report on any matters of concern, with the Chairman's approval. I have no additional amendments.

Chairman Akaka. I want to thank our Ranking Member, Senator Burr, and also members of the committee. I want to thank the staff on both sides for all of the hard work to prepare this markup. I want to say that we have some things to do here and I feel deeply about Senator Burr's concerns, as well. There is no question that we need to pursue some of these challenges that we face.

Are there any further comments? Senator Burr?

Senator Burr. Mr. Chairman?

Chairman Akaka. Senator Tester?

Senator Tester. Just a couple of things. I wasn't going to say anything, but I do respect you and the Ranking Member very much. I respect the passion which Senator Burr came forth with the Camp Lejeune issue. A couple of things during the statements that very much distressed me.

Number one, if we have a person at the head of the Navy that is not doing what they are supposed to do, has Armed Services brought them up in front of the committee? The truth is, they need to be responsible for their actions, and if they are not doing what they are legally supposed to do and they are not, it looks to me like there needs to be some discussion with that person directly by the committee in charge of that.

Senator Burr. I thank Senator Tester for your interest and I heed your advice very well. Let me assure you that I

have raised this to the Secretary of Defense's level. Rather than to encumber the committee at this time, it is my hope that Secretary Gates will, in fact, act on my request. If it doesn't, then I think it is very appropriate to go to Senator Levin and Senator McCain and ask the committee to look at it.

Senator Tester. And I appreciate that method, also, because the truth is, it can be very uncomfortable to sit in front of these committees if, in fact, Secretary Gates doesn't take care of it, and it could be just the imposition of that could be enough.

The other thing that I would say is from a personal basis and the committees I sit on, I think there are ways to skin this cat and get it done. I agree with you, and we need to work to get that done. So thank you very much.

Senator Burr. Thanks.

Chairman Akaka. If there are no further comments, this meeting is adjourned.

[Whereupon, at 10:44 a.m., the committee was adjourned.]