

1 PENDING LEGISLATION

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3 TUESDAY, MARCH 15, 2016

4 United States Senate,

5 Committee on Veterans' Affairs,

6 Washington, D.C.

7 The Committee met, pursuant to notice, at 2:16 p.m., in
8 Room 418, Russell Senate Office Building, Hon. Johnny
9 Isakson presiding.

10 Present: Senators Isakson, Boozman, Heller, Cassidy,
11 Rounds, Tillis, Sullivan, Blumenthal, Brown, Tester, Hirono,
12 and Manchin.

13 Also present: Senator Burr.

14 Chairman Isakson. I will call this meeting of the
15 Senate Veterans' Affairs Committee to order, and at the
16 outset I want to thank all the members who are here and the
17 ones that are coming for their participation. This is a
18 very important hearing, and I want everybody to be here for
19 as much of it as they possibly can be. And I want to thank
20 the Secretary for rearranging his schedule so he can be here
21 for the complete hearing and for his testimony as well.

22 We are going to go a little bit out of order. I am
23 going to recognize Senator Burr in just a second because he
24 is our Chairman of the Intelligence Committee. He is doing
25 some important intelligence work, and he needs to get back.

1 So I am going to let him make a few comments on his
2 legislation that he has worked on with Senator Tester.

3 Then I will make an opening statement, and then Senator
4 Blumenthal will make an opening statement, and then we will
5 go to Senator Sullivan and Senator Tester to make brief
6 opening statements before Secretary McDonald. That way,
7 everybody who has legislation that is to be discussed today
8 will have had their say to speak, and we will all have had a
9 chance to hear it.

10 So without further ado, I introduce Senator Burr from
11 North Carolina. Welcome.

1 STATEMENT OF THE HONORABLE RICHARD BURR, A UNITED
2 STATES SENATOR FROM THE STATE OF NORTH CAROLINA

3 Senator Burr. Thank you, Mr. Chairman, Ranking Member
4 Blumenthal, and to my colleagues on the Committee. I thank
5 you for holding this hearing and for providing me the
6 opportunity to testify about the Veterans Choice Improvement
7 Act.

8 I introduced this legislation with Senator Ayotte,
9 Boozman, Crapo, Daines, Hoeven, Moran, and Tillis. And it
10 is my understanding, Mr. Chairman, as of right now, we have
11 a bipartisan agreement, and that means hopefully there is an
12 opportunity for this to be markup in the context of your
13 next markup legislation. It would be helpful if those who
14 really are not focused veterans health care would stand down
15 and let us focus on substance in this bill that really does
16 focus on the quality of care delivered and the efforts that
17 the VA continues to make to provide that care for our
18 veterans.

19 2014, when I was the Ranking of this Committee,
20 Congress passed the Veterans Access, Choice, and
21 Accountability Act, which created the Veterans Choice
22 Program, to make sure our veterans get the health care they
23 need and that they get it expeditiously. This legislation
24 was in response to a systemic problem throughout the VA
25 health care system that had been uncovered in early 2014.

1 We recognized at the time that the only way to make certain
2 that veterans got the care they needed was to enable them to
3 go to the doctor outside the VA if, in fact, they were on a
4 wait list or lived a certain distance from a VA facility. I
5 was proud to help author the Veterans Choice Program, and I
6 know that program has helped many veterans get health care
7 without having to wait or to drive far.

8 However, nearly two years later, veterans are still
9 experiencing serious frustrations and delays in getting
10 health care. Just this October a CNN reporter found that
11 appointment wait times at the VA were not getting better
12 even after billions of dollars flowed into the agency.

13 I know every Senator here today is hearing about these
14 problems from veterans living in their own states. I
15 certainly do, and let me give you an example.

16 As recently as last month, Charlotte WBTV reported that
17 a veteran named Jim Bancroft had waited more than a year to
18 receive from the VA to see a spine specialist. Mr. Bancroft
19 was finally given a referral and allowed to see an outside
20 specialist. But when Mr. Bancroft called to make the second
21 appointment, he was told he could not see the doctor because
22 the doctor was no longer accepting veterans under the Choice
23 Act. Why? Because the VA had continually failed to pay the
24 doctor for seeing veterans.

25 This is just one example of thousands and why I

1 introduced the Veterans Choice Improvement Act. We must fix
2 this, and we must get it right for our veterans.

3 The first problem that the Veterans Choice Improvement
4 Act seeks to fix is the confusing nature of receiving care
5 outside of the VA. Currently, the VA offers care to
6 veterans outside of the VA through a number of different
7 programs and contracts. The laws and regulations that
8 govern these programs differ in substantial ways, and this
9 is confusing to the veteran, confusing to the doctor, the
10 hospitals, and oftentimes it is confusing to the VA itself.

11 That is why the Veterans Choice Improvement Act
12 consolidates all of these programs into one permanent
13 program, the Veterans Choice Program. This program will be
14 the one program for veterans to receive care in their
15 community. It is designed to be easily understandable by
16 the veterans so that they will know when they are eligible
17 to go outside of the VA for care.

18 The Veterans Choice Improvement Act will also make
19 significant reforms to the VA medical claims and
20 reimbursement process to make sure that medical providers
21 get paid for the services they provide to our nation's
22 veterans. This, in turn, will ensure veterans will be able
23 to get the timely, quality health care they have earned.

24 In North Carolina, we have already seen hospitals stop
25 seeing veterans under the current Veterans Choice Program

1 because the VA consistently failed to pay reimbursements for
2 hospital services. I know this is a problem in other states
3 as well, and that is why we reformed the claims process in
4 this bill.

5 We have set a standard for how long the VA has to
6 reimburse a claim, and if they fail to meet the standard,
7 interest begins to accrue on the claim. We require the
8 Secretary to notify medical providers of what information a
9 claim must contain for a quick reimbursement and also notify
10 providers if that information requires changes. We also
11 mandate that the VA establish an electronic system to
12 receive medical claims from outside providers, but we give
13 the VA until 2019 to put that in place. That is more than
14 sufficient time to get it right, even for the Federal
15 Government.

16 As the members of this Committee know, the VA has had a
17 significant accounting problem as more and more veterans
18 have been allowed to receive care outside the VA. In May
19 2015, the VA came to Congress and told us that they may have
20 a funding problem but that they were not really sure, and so
21 they hired outside accounting firms to help them understand
22 what was happening.

23 Then in late July 2015, the VA came back and informed
24 us that they were nearly \$3 billion short in their medical
25 services account for the fiscal year. The VA also told us

1 that unless Congress allowed to reprogramming of funds out
2 of the Veterans Choice Act the VA would be forced to close
3 hospitals. Congress, of course, allowed for the
4 reprogramming in order to keep the VA medical facilities
5 open, but to say that such incidences are unacceptable is a
6 gross understatement.

7 In the Veterans Choice Improvement Act, we make an
8 effort to fix these accounting issues so that the incidences
9 like the one I just described do not happen again. The
10 Veterans Choice Program will be funded through a single
11 appropriation account, and that funding will be provided a
12 year in advance. This should help clear up some of the
13 accounting issues and provide more transparency for
14 congressional, and for public, oversight.

15 Lastly, Mr. Chairman, I would like to thank Senators
16 Hoeven and Manchin for their legislation on provider
17 agreements, which is part of this bill. I believe that this
18 will make a real difference for veterans who live in rural
19 America. These provider agreements will allow the VA to
20 have a standing agreement with local doctors and hospitals
21 to provide certain medical services to our nation's
22 veterans. This will alleviate the burden on veterans who
23 currently have to travel distances for minor medical issues
24 that can easily be addressed closer to home.

25 There is simply no reason that veterans are driving

1 four and five hours each way to get a new pair of
2 eyeglasses. I give a great deal of credit to Senator Crapo
3 for passionately advocating for veterans in Idaho and
4 telling me the story of how veterans there were driving
5 three and four hours to Salt Lake City to get fitted for
6 hearing aids when there is a private hospital just down the
7 road that could easily do the same thing.

8 We can do better for our veterans, and that is why I
9 also give the VA credit for requesting this ability and
10 acknowledging that this is necessary and will help our
11 nation's veterans.

12 I will close by saying this, that the Veterans Choice
13 Improvement Act will help veterans across America get the
14 best health care we have to offer, and they get it without
15 having to wait long or to drive far, regardless of whether
16 they live in an urban area or a rural town. This bill will
17 help all.

18 Mr. Chairman, I also want to thank Senator Tester. We
19 have worked aggressively over the last week to put together
20 a bipartisan bill, and I was told before I walked in the
21 door that we are there. And I am sure he will have an
22 opportunity to speak, and he can reconfirm that.

23 Our effort is simply this--to help, through the VA and
24 through this wonderful medical infrastructure that we have
25 in this country, make sure that veterans receive the highest

1 quality of care. This is not an attempt to eliminate, to
2 bypass; it is to put together the best health care system
3 that we can provide for those who have given of themselves
4 for this country.

5 I thank the Chair. I thank the Ranking Member. I
6 thank my colleagues.

7 [The prepared statement of Senator Burr follows:]

1 Chairman Isakson. Senator Burr, I know you have to go
2 back to the Intel Committee, but could you let me amend my
3 introduction a little bit? I want to go to Senator Tester.

4 Before you got here, Jon, I was going to give you and
5 Senator Sullivan a chance to make opening statements as
6 well, but after myself and after Senator Blumenthal, but
7 since you are here and Richard can wait five minutes I
8 believe, and since you all worked so hard on this agreement.

9 I just want to tell everybody this is exemplary of the
10 best in the United States Senate. Ten days ago we had an
11 impasse. I sat down with Jon, personally; I sat down with
12 Richard, and I said, will you all do me a favor? Will you
13 all put your heads together and see if you can find common
14 ground and make this happen? And I want to complement both
15 of you today on doing exactly that.

16 And with the Ranking Member's indulgence, we will go
17 ahead and let Senator Tester make his remarks now.

18 Senator Tester.

19 OPENING STATEMENT OF SENATOR TESTER

20 Senator Tester. I will be very brief, Mr. Chairman.

21 First of all, I want to thank you, and I want thank the
22 Ranking Member but particularly you, Mr. Chairman. That is
23 leadership, and I appreciate it. You allowed Senator Burr
24 and myself the space to be able to get something done. You
25 just did not say no. You said, go talk, get her done.

1 And I think Senator Burr's staff and my staff have
2 worked hard.

3 I think you know the problem here and we all know it,
4 sitting around this dais; Senator Burr knows this. Choice
5 is broken. We have got to figure out how to make it work.
6 Our veterans are suffering because of it. That is
7 unacceptable, and we need to make sure that things are done
8 right with the VA not only because our veterans deserve it
9 but because we should be talking about something else. That
10 program should be done and gone, and we should be talking
11 about the next challenge.

12 So I want to thank Senator Burr in particular for his
13 good work and look forward to finding a path to get this
14 across the finish line so we can get it to the President's
15 desk, so we can really make some things happen.

16 Senator Tillis. Mr. Chair?

17 Chairman Isakson. Yes.

18 Senator Tillis. May I just thank the senior Senator
19 from North Carolina for coming up here and fighting for
20 veterans? He is actually in a contested primary today.
21 Votes are going on, and he is up here, and I appreciate it.

22 Chairman Isakson. We all appreciate the job both you
23 and Jon have done. Thank you for your commitment and go
24 back to Intel and keep us safe.

25 Senator Burr. Thank you, Mr. Chairman.

1 Chairman Isakson. I am going to make my opening
2 remarks. Then I am going to turn it over to Senator
3 Blumenthal.

4 And then, Senator Sullivan, you will be recognized to
5 make yours. I think you knew that was coming.

6 Secretary McDonald. Yes, sir, Mr. Chairman. Thank
7 you.

8 OPENING STATEMENT OF CHAIRMAN ISAKSON

9 Chairman Isakson. Let me just say this to everybody.
10 And, Secretary McDonald, thank you again for being here and
11 changing your schedule so you could go through this.

12 I want to thank the Ranking Member. Over the last
13 month we have had three conversations by phone as things
14 have progressed in our effort to try and find a way to do
15 accountability in the Veterans Administration, to do
16 caregivers in the Veterans Administration, to fix the Choice
17 Program in the Veterans Administration, to speed up the
18 consideration of claims and appeals in the Veterans
19 Administration.

20 We have all had lots of different ideas, and we have
21 had places where we could find an impasse. But, we have
22 tried through communication to find ways to find common
23 ground, and we are on the cusp--we are not there yet, but we
24 are on the cusp--of being able to bring to the floor of the
25 United States Senate a major comprehensive omnibus veterans

1 bill, get it passed through the Senate, get it to the House,
2 find out where, if any place, we are going to have
3 disagreements, and then get it to the President's desk for
4 signature.

5 I have had the privilege of knowing Denis McDonough
6 since he became Chief of Staff, and I have taken the liberty
7 of including him in discussions over the past three or four
8 weeks and talked to him as late as this morning about where
9 we were.

10 And our goal is to have an omnibus bill that this
11 Committee, Democrat and Republican alike, agrees to, to get
12 it to the leaders so they can get a Rule 14 to the floor of
13 the Senate, so we can have action on the floor of the Senate
14 before we get too far in the year, certainly so we can, by
15 Memorial Day, have a signing ceremony somewhere to let our
16 veterans know we do want accountability in the VA, we do
17 want Choice to work, we do want caregivers providing care to
18 those injured prior to 9/11/2001 to have the same benefits
19 as those afterwards, and all other things that we have
20 worked upon. And we are close to getting there.

21 And I want to thank every member of the Committee for
22 their help and their input.

23 Now we will not get everything in the omnibus bill, but
24 we will get a lot of things we never thought we could have
25 it. And we will include a lot of the things Secretary

1 McDonald has asked for, and he knows that because we have
2 been meeting on a private basis--Senator Blumenthal, myself,
3 and the Ranking Member in the Senate, and the Ranking Member
4 in the House, and the Chairman in the House--to see to it we
5 come up with a good bill.

6 We have our differences still, but patently we want to
7 make sure that we send the signal to the American people and
8 the American media that accountability at the VA is now
9 something that is meaningful.

10 Every morning when I wake up and I turn on my
11 television in my condominium or at home, and the first story
12 is about a veteran who did not get an appointment or a
13 veteran who passed away or a mental health patient who got
14 an answering machine rather than a person on the hotline, it
15 grieves my heart because I know every day of the 314,000
16 employees in veterans health care 99.9 percent of them are
17 doing a terrific job and those stories are now
18 representative. But, because they are sensational, because
19 they can make the news, they continue to perpetuate an image
20 that is not true of the VA.

21 And I think if we have an accountability provision
22 which we are going to talk about today and I know the
23 Secretary is going to talk about it in his remarks, we can
24 send the signal to the American people that we are giving
25 the Secretary the ability to hire and the ability to

1 terminate and the ability to appeal but in the way you would
2 want to have an accountable organization.

3 Now I know we--I believe that all the SES employees
4 should be under Title 38 and should have the right to be
5 hired by the Secretary, and the Secretary should have the
6 right to discipline them, and if he disciplines them or
7 fires them they should have the right of an appeal, but it
8 ought to be to the Secretary.

9 The Merit Systems Protection Board has its place, and
10 there are lots of places I think it works well, but I think
11 one of the things we have tried to do is see to it when it
12 comes to SES employees and Title 38 that we have the
13 Secretary have the ability to hire and the Secretary the
14 ability to fire and the Secretary the ability to hear.

15 Now I am not one that likes to fire people. I want to
16 go on the record as saying, I ran a company for 30 years;
17 the hardest thing I ever did was terminate people, but from
18 time to time you have to.

19 But, oftentimes, the fact that termination is a
20 possibility if you do not perform, you set an atmosphere in
21 an organization where everybody works hard and pulls
22 together. And I know that is what Bob McDonald wants in the
23 VA, and I know that is what he is going to deliver.

24 I am proud that Patty Murray, Senator Murray, has
25 worked so hard with me. And I am sorry she is not here for

1 me to brag about her to her face, but she has brought this
2 caregivers bill to the point where we now can incorporate
3 it.

4 We have a lot of things on veterans appeals that we
5 want to incorporate. Representative Blumenthal,
6 Representative Moran--or Senator Blumenthal, Senator Moran,
7 and other Senators on the Committee have done lots of things
8 that will be included in the omnibus bill.

9 So with the good Lord willing and the creek don't rise,
10 by the time we return in the first of April, we will have an
11 omnibus bill ready for everybody to sign off on, we will
12 begin to move it forward to the Senate floor in process, and
13 we will be able to go home to our communities on Memorial
14 Day and say, we brought about accountability in the Veterans
15 Administration so those employees that should shine are
16 shining and those that need more inspiration have that
17 inspiration and Bob McDonald has the authority to run the
18 agency as the Secretary should have to make.

19 And that is our goal today, and I am very proud of what
20 we had today, and I hope I do not--knock on wood, I hope I
21 do not spoil our progress so far.

22 But, I thank the Ranking Member again for his
23 cooperation, his leadership, and his advice on how we get to
24 where we were to where we want to be.

25 And now I will introduce Senator Blumenthal.

1 OPENING STATEMENT OF SENATOR BLUMENTHAL

2 Senator Blumenthal. Thank you, Mr. Chairman, and thank
3 you for your kind words but, most important, for your
4 leadership and your vision and determination to reach this
5 breakthrough moment. It really is a breakthrough moment for
6 the Veterans Choice Program and for health care provided by
7 the VA.

8 And it is a moment. It is a good step, a very positive
9 way forward, a path that ought to be pursued. There will be
10 a lot more after today to be done, and we are near the
11 finish line. I hope that we can cross it.

12 But, in the meantime I want to thank you for your very
13 collaborative and bipartisan leadership, which has
14 emphasized the importance of good ideas regardless of who
15 has them.

16 And it is the same spirit that our military men and
17 women have when they go into serve and sacrifice for our
18 country. It is the same attitude that they have when they
19 seek health care. They do not care about party labels or
20 partisanship.

21 And it is the same attitude that the dedicated doctors
22 and other health care providers in the VA have when they
23 meet those health care needs. And what we need to do is
24 partly enable and empower them, and partly get out of their
25 way, but at the same time hold them accountable. We are

1 absolutely unified in the view that accountability has to be
2 improved, and we are simply seeking the best way to do it
3 consistent with fairness and due process.

4 And I am indebted to everyone on this Committee for
5 their role. Every member of this Committee has played a
6 role in reaching this point. Everyone seated here today has
7 been a participant in the efforts to consolidate all of the
8 community programs that include the Veterans Choice Program,
9 in seeking to speed and improve the appeals of disability
10 claims, in enforcing accountability, and raising the
11 standards and performance of the caregivers' aid to families
12 and others who provide care to our veterans.

13 And so I am hopeful that we will meet that timetable.
14 I believe we can.

15 I continue to look forward to working together. I know
16 we will.

17 And, again, I want to thank you for your leadership.

18 Chairman Isakson. Thank you very much, Senator
19 Blumenthal.

20 Senator Sullivan, you are recognized for up to five
21 minutes but not more.

22 OPENING STATEMENT OF SENATOR SULLIVAN

23 Senator Sullivan. Thank you, Mr. Chairman. I will try
24 and keep it within that time frame.

25 I want to thank you and Ranking Member Blumenthal and

1 fellow members of the Committee for the opportunity to
2 discuss my bill, Senate Bill 2473, the Express Appeals Act
3 of 2016.

4 You know, Mr. Chairman, Secretary McDonald, we have all
5 heard the statistics. The Veterans Benefits Administration
6 will have 11 to 12 percent of the claims decisions that they
7 make will be generally appealed, and that is not surprising.

8 What is surprising I believe to many of us, and I think
9 is unacceptable, is the wait time that we have seen--on
10 average, nearly 1,000 days, almost 3 years--for the VA to
11 resolve an appeal. And I think that creating a less
12 bureaucratic system is something that we all agree on.

13 So what Senate Bill 2473 does is it directs the VA to
14 carry out a 5-year pilot program that will provide an option
15 for veterans to use an express appeal procedure referred to
16 as the Fully Developed Appeal Process. It is completely
17 voluntary. It empowers veterans to make their own case to
18 obtain an expedited result to their appeal. Importantly,
19 what we think we should be looking for is that it should be
20 a fast lane not to know but a fast lane to fix our appeals
21 process.

22 I want to thank my colleagues, in particular those on
23 the Committee--Senators Tester, Heller, Moran, others--
24 Senator Casey, Co-Chairs of the Senate VA Backlog Working
25 Group, and some of the service organizations that are

1 supportive of my bill, Disabled American Veterans for their
2 staunch support and advocacy.

3 And, Mr. Secretary, I do want to--we do want to work
4 together. As you know, I have raised this issue a number of
5 times. We are getting a little bit of mixed signals. I
6 think there was support from the VBA on the House version of
7 this bill. My understanding your testimony now is there
8 might not be support because it does not go far enough.

9 Well, trust me, I am all ears on suggestions from the
10 VA to go further so we can get your support, but I think all
11 of us agree that having the option of a Fully Developed
12 Express Appeals is something that we should be working on
13 together.

14 So I am very interested in working with you and working
15 with the Committee to make sure that this is something the
16 VA does support. And, again, a little confused on whether
17 you do or not at this juncture and if there are suggestions
18 from the VA experts to make this go further in terms of
19 express appeals, I--and I believe the Committee--and my
20 staff are all ears.

21 So thank you again, Mr. Chairman.

22 Chairman Isakson. Thank you very much.

23 It is now my privilege to introduce the Secretary,
24 Secretary McDonald, who will be accompanied by--I should
25 have practiced these names before I got into it--Ms. Flanz.

1 I can handle Flanz pretty easily.

2 Dr. Yehia, we are glad to have you back again.

3 Eskenazi?

4 Secretary McDonald. It is Eskenazi.

5 Chairman Isakson. I did pretty good.

6 Secretary McDonald. You did very well.

7 Ms. Eskenazi. Not bad.

8 Chairman Isakson. Mr. Secretary, the microphone is
9 yours, and you can take as much time as you want to consume.

1 STATEMENT OF THE HONORABLE ROBERT A. MCDONALD,
2 SECRETARY OF THE U.S. DEPARTMENT OF VETERANS
3 AFFAIRS; ACCOMPANIED BY LAURA ESKANAZI, EXECUTIVE
4 IN CHARGE AND VICE CHAIRMAN, BOARD OF VETERANS'
5 APPEALS; DR. BALIGH YEHIA, ASSISTANT DEPUTY
6 SECRETARY FOR COMMUNITY CARE, VETERANS HEALTH
7 ADMINISTRATION; AND MEGHAN FLANZ, DEPUTY GENERAL
8 COUNSEL, LEGAL OPERATIONS AND ACCOUNTABILITY,
9 OFFICE OF GENERAL COUNSEL

10 Secretary McDonald. Thank you, Chairman Isakson,
11 Ranking Member Blumenthal, and members of the Committee.
12 Thanks for this time to discuss VA's legislative priorities
13 for veterans.

14 I ask that my written statement be submitted for the
15 record.

16 Chairman Isakson. Without objection.

17 Secretary McDonald. Thank you, sir.

18 Over these three decades in the private sector, I
19 learned firsthand what it takes to make a high performance
20 organization. Our team of talented business and health care
21 professionals are well equipped with the advanced business
22 skills necessary to build the high performance organization
23 veterans deserve and taxpayers also expect.

24 That is what our five MyVA transformation strategies
25 are about: modernizing the VA, improving the veteran

1 experience, improving the employee experience, improving
2 internal support services, establishing a culture of
3 continuous improvement, and expanding strategic
4 partnerships. That is also what our 12 Breakthrough
5 Priorities for 2016 are about.

6 We appreciate your time in January, helping us shape
7 these priorities. So that goal is within our reach, we
8 believe, and we are as committed to giving veterans a high
9 performing organization as we are convinced that we can get
10 there with your help.

11 But, as I have testified, important priorities for
12 transformational changes require congressional action, and
13 our window of opportunity will not be open indefinitely.
14 More than 100 legislative proposals in the President's 2017
15 budget and 2018 advance appropriations request for VA
16 require congressional action. Over 40 of these are new this
17 year, and some are absolutely critical to maintaining our
18 ability to purchase non-VA care.

19 I would like to focus on seven priorities for veterans.

20 First, modernizing VA's purchase care authorities. We
21 need your help to modernize and clarify VA's purchase care
22 authorities, and we appreciate the legislation introduced to
23 address this issue. Above all else I address today, this
24 needs to get done, and it can done in this Congress, to
25 ensure a strong foundation for veterans access to Community

1 Care.

2 First, we need to be able to contract with providers on
3 an individual basis in communities where veterans are served
4 without forcing those who want to serve veterans to meet
5 excessive and unnecessary bureaucratic standards. This
6 proposal is about maintaining veterans access to timely
7 Community Care everywhere in the country. We provided
8 detailed legislation addressing this change 10 months ago,
9 and I have been consistent and vocal in identifying it as a
10 top priority.

11 Number two, streamlining Care in the Community. To
12 best serve veterans, we need your help streamlining VA's
13 Care in the Community systems and programs. Last October we
14 submitted our plan to consolidate and simplify the
15 overwhelming number of varying programs and improve access
16 to Care in the Community.

17 My written statement sets out a number of ways to
18 improve those programs right now. I will highlight three:

19 First, make VA the primary payer to give providers
20 faster and more accurate payments.

21 Second, allow VA to obligate funding at the time of
22 payment. This small change can make a huge difference in
23 efficiently using the resources Congress provides.

24 And, third, provide funding flexibility so all Care in
25 the Community comes from one single account.

1 Now we do have some significant concerns with the
2 Veterans Choice Improvement Act of 2016 as currently
3 written. I address these concerns in detail in my written
4 submission, but four are particular troublesome. I think we
5 may have already worked through those four. I have to catch
6 up with Senator Tester and Senator Burr because these are
7 fast-breaking changes.

8 But, here were our concerns of the original act:

9 First, the proposed limitations on networks compromised
10 the great potential for veterans that the network model
11 represents. We have discussed this with Senator Tester and
12 Senator Burr. We think they understand this. We think the
13 changes are being made, but we have not seen their next
14 round of work.

15 Second, the proposed extension to Project ARCH until
16 August of 2019 is both unnecessary and financially unsound.

17 Third, the legislation does not afford the rate
18 flexibility necessary to respond to local market conditions.

19 And, fourth, the proposed 90-day timeline between
20 establishing presumptions and providing compensation is an
21 unrealistic expectation that will not serve veterans well.

22 These discussions are ongoing, as I said. I am sure we
23 are making progress as we go forward and coming to a
24 consensus point of view. We look forward to helping ensure
25 the legislation is exactly right for veterans.

1 Third, the appeals reform. The statutory appeals
2 process is archaic. It is not serving veterans well. Last
3 year the board was still adjudicating an appeal that
4 originated 25 years ago and had been decided more than 27
5 times. It is simply inappropriate that only 2 percent of
6 veteran claimants are creating 45 percent of the appeals.

7 Let me say that again. Only 2 percent of veteran
8 claimants are creating 45 percent of the appeals.

9 What we all learned in the military was you put the
10 needs of the organization above yourself. This is not
11 happening.

12 And nearly 74 percent of appeals are from veterans who
13 are already receiving VA disability. In fact, 12 percent of
14 veterans with a pending appeal are already receiving
15 benefits at the 100 percent disability rate.

16 The proposed express appeals act is a good start. It
17 is a good start, but as written it does not achieve the
18 fundamental reform we need to achieve in order to fix this
19 broken process that is over 80 years old and to improve the
20 veteran experience.

21 The fiscal year 2017 budget proposes a simplified,
22 streamlined, and fair appeals process. In five years,
23 veterans could have appeals resolved within one year of
24 filing.

25 Last week we spent three solid days working hard with

1 Veterans Service Organizations, members of the VA, members
2 of your staffs, shaping a genuine reform. And I want to
3 thank our Veterans Service Organizations, the National
4 Association of State Directors of Veterans Affairs, the
5 National Association of County Veteran Service Officers, for
6 rolling up their sleeves with us. We have another meeting
7 beginning later this week on Thursday, and we are going to
8 continue to drive toward a consensus point of view.

9 We welcome the Committee staff also who have come to
10 hear about this and participate with us firsthand.

11 It is a work in process. We are keeping at it. Why do
12 we need to keep at it? Because failure to take full
13 advantage of this rare opportunity for sweeping change in
14 the appeals process fails veterans.

15 Number four, VHA personnel authorities. We compete
16 with the private sector for talent, especially in health
17 care. So we are proposing flexibility on the 80-hour pay
18 period maximum for certain medical professionals and
19 compensation reforms for network and hospital directors.
20 The 80-hour restriction does not give VA the industry
21 standard 12-hour shifts that can improve hospital operations
22 and attract the best staff who prefer flexible schedules.
23 That is one reason that when Sloan Gibson came on board and
24 I came on board we found VA had so many outsourced emergency
25 room departments.

1 Likewise, we need to treat health care career
2 executives more like their private sector counterparts. So
3 we would like to expand the Title 38 hiring authority to VHA
4 senior executive-level medical center directors, VISN
5 directors, and other health care executive leadership
6 positions. These employees could be hired more quickly with
7 flexible salary ranges competitive with the private sector,
8 and they would operate under accountability policies
9 comparable to those of the physicians and dentists that they
10 lead.

11 Number five, budget flexibility. We have to be more
12 responsive to veterans emerging needs. So we are asking for
13 measured flexibility to overcome artificial funding
14 restrictions on veterans care and benefits. The budget
15 proposes a general transfer authority for up to 2 percent of
16 discretionary funding across accounts, including medical
17 care.

18 Number six, West Los Angeles legislation. To get
19 positive results for homeless veterans in great need, we are
20 asking Congress to pass special legislation for our West Los
21 Angeles Campus where years of debate and court action have
22 been unproductive. We now have a community-agreed master
23 plan for the campus to build housing for about 1,200
24 homeless and vulnerable veterans. Developers are ready to
25 put spades in the ground and begin construction. We are

1 waiting on the legislation.

2 Number seven, construction and leasing. Finally, I
3 will reiterate priorities for leases and construction. We
4 need congressional authorization for 18 leases submitted in
5 VA's 2015 and 2016 budget requests. These will make a big
6 difference in expanding access to care for veterans in
7 Florida, Alabama, Georgia, South Carolina, North Carolina,
8 Virginia, Massachusetts, Maine, Michigan, Colorado, Montana,
9 and California. And we need authorization for eight major
10 construction projects included in VA's 2016 request and the
11 six additional replacement major medical facility leases in
12 the 2017 budget.

13 These are only a few of the many opportunities for
14 transformational change. This Congress, with today's VA
15 leadership team, can make these changes and more for
16 veterans. Then we can all look back on this year and look
17 at this year as a turnaround for the Department of Veterans
18 Affairs.

19 On behalf of veterans and VA employees serving them
20 every single day, I would like to thank this Committee and
21 the Chairman and Ranking Member for their bipartisan
22 leadership in getting this done.

23 I look forward to your questions, sir.

24 [The prepared statement of Secretary McDonald follows:]

1 Chairman Isakson. Thank you very much, Mr. Secretary.

2 I want to start, if I can, on the accountability issue,
3 which is kind of the linchpin of everything we want to try
4 and do and do so by commenting that a lot of the things you
5 just mentioned in your seven priorities are, in part or in
6 whole, being dealt with if I am not mistaken. In fact, I
7 think after you meet with Senator Burr and Senator Tester,
8 most of the things that you mentioned you wanted to be sure
9 were included are, in fact, included that you wanted.

10 Secretary McDonald. Yes, sir, and we stand ready to
11 work with your staff to go over and make sure everything is
12 included.

13 Chairman Isakson. And West L.A., I think without
14 exception, is supported by the Committee in terms of getting
15 that done.

16 Secretary McDonald. Yes, sir.

17 Chairman Isakson. Senator Feinstein has been a trooper
18 on that, and I appreciate the effort that you have made.

19 But, the accountability piece is kind of the linchpin
20 for me, and I have been the one that has harped on it the
21 most, and you know that from the meetings that we talked
22 about. I had some prepared remarks in my opening
23 statements, where I was going to quote you and you could
24 quote me, about some of the things we have said leading up
25 to this hearing about accountability, but I did not do that

1 because we are at a point where I really think we can move
2 forward.

3 I know Ms. Flanz is here, and you were in the meeting
4 we had last time with the Secretary at his office, if I am
5 not mistaken.

6 Ms. Flanz. Yes, sir.

7 Chairman Isakson. So legal counsel has been involved
8 as well.

9 I believe the American people expect, and I believe
10 that the veterans of America expect, there to be an
11 accountability mechanization that they understand. What
12 happened in Philadelphia and what happened with the Merit
13 Systems Protection Board overturning your action in those
14 two situations sent a terrible signal across the country and
15 misrepresented, in my judgment, what really goes on at the
16 VA. But, nonetheless, it was the story that was undeniable,
17 that they had been overturned and that you did not have the
18 ability to really discipline as you should and hold them
19 accountable.

20 On the same token, you need and deserve the flexibility
21 that you asked for in terms of VHA personnel flexibility,
22 the 80-hour rule, the emergency room problems, finding the
23 right help that you need to give our veterans health care,
24 and that goes hand in hand with accountability. We need to
25 be accountable to you to give you the tools you need to

1 bring in the right people.

2 But, you need to be accountable to us and, more
3 importantly, to the veterans of the United States of
4 America. If we have got a bad egg in the senior executive
5 leadership of the Veterans Administration, we are going to
6 correct that egg and get a good egg in that place. And they
7 are going to get a fair hearing. They are going to get a
8 right to appeal. But it is going to be back to you, and
9 they are going to know that the buck stops at your desk,
10 which is where it should, and any future Secretary as it
11 should.

12 So that was not a question; that was a statement. But
13 that is kind of my hope, that you will work with us in
14 trying to make the language work in terms of accountability
15 so that all the other things we want to do can come along
16 and follow along behind it.

17 Secretary McDonald. I think we are very close, Mr.
18 Chairman, and if you like, I can describe where I think we
19 are.

20 Chairman Isakson. I would like to hear from you.

21 Secretary McDonald. Sure. I think we are very close.
22 I think we have achieved alignment that all of the
23 individuals in the medical professional in the VA should be
24 Title 38. I mean, that was the intent of the Title 38 law.
25 Today, we have medical center directors that you know are

1 not Title 38, and as a result they are paid less than half
2 they would be in the private sector.

3 Title 38 gives us the ability to hire directly, which
4 will speed up the hiring process and make us competitive
5 with the private sector. We have had a number of instances
6 where we have tried to hire someone, but because of the
7 length of time it took us to clear all of the red tape
8 necessary they were scarfed away by some other for-profit
9 medical system.

10 Also, the Title 38 will allow us to pay more
11 competitively and recruit more competitively.

12 Then separately, what we have talked about is taking
13 the Title 5 individuals who are not part of the health care
14 system and changing the methodology of the process for
15 disciplinary action and appeals, recognizing that in our
16 opinion the Merit Systems Protection Board did not
17 understand or did not get to execute the intention of
18 Congress in the Choice Act. So the way I look at this is:
19 How do we improve the Choice Act?

20 And maybe I ask Meghan, if I can, to comment on that.

21 Ms. Flanz. Sure. Thank you.

22 What we are contemplating is amending the Choice Act
23 Expedited SES Appeal Process to give the Merit Systems
24 Protection Board the clarity in terms of what its
25 obligations are to carry out the Secretary's accountability

1 actions under that Act. We believe that there was perhaps
2 greater adherence to MSPB precedent less appropriate
3 deference to the Secretary's actions in the cases that we
4 have had so far. So what we are contemplating is greater
5 clarity around the rules that apply to the non-health care
6 executives at the Department.

7 Chairman Isakson. Well, there was no deference in the
8 Philadelphia case to the Secretary's authority in terms of
9 what I saw, and that is what really magnified this
10 particular issue. But I appreciate your--I know your
11 proposal is to kind of bifurcate the SES employees from the
12 medical employees to the other, I think you called them,
13 Title 5. Is that right?

14 Secretary McDonald. Yes, sir.

15 Chairman Isakson. And we will talk about that, but in
16 the meantime that bone of contention we have got to work out
17 because I want you to have the ability to hire and bring in
18 the people that you need and also hold them accountable in a
19 fashion that is fair but not so deliberate that you end up
20 being neutered in your ability to lead and discipline the
21 Department.

22 Secretary McDonald. I want that as well, Mr. Chairman.
23 The issue that we face is because of the restrictions in the
24 Choice Act. The judges in the MSPB, I think if they were
25 here to defend themselves, they would say the 21-day limit

1 and the fact that they could not provide any remediated
2 punishment hem them in. And, as a result, we think the
3 changes that we will make will add greater clarity and give
4 more weight to the Secretary's interest in the process.

5 Chairman Isakson. Well, I am not going to take any
6 more time because I have talked already too much today
7 except to say I think ultimate accountability to you as the
8 best authority, as the leader. And those SES employees, I
9 think there are 434 of them in the Agency if I am not
10 mistaken.

11 Secretary McDonald. Yes, sir.

12 Chairman Isakson. That is the heart and soul of the
13 discipline and the attitude and the MyVA program that you
14 put together, and I do not want that compromised in any way
15 whatsoever.

16 Senator Blumenthal.

17 Senator Blumenthal. Thank you, Mr. Chairman.

18 I want to focus on the appeals process. Assuming there
19 is the reform that we are contemplating and the budget
20 envisions, how quickly would it be implemented?

21 Secretary McDonald. I will maybe ask Laura to comment
22 on the details, but it would--because of the difficulty and
23 the changes required, we have put forward a plan where we
24 would actually use extra people right now to brute-force
25 some action on the appeals while putting in place the

1 structure of the new plan, which would take a number of
2 years to put in place.

3 Ms. Eskenazi. Certainly. Thank you.

4 Yes. Whether it is the Express Appeal Act or another
5 form such as we have been discussing with the VSOs recently,
6 what we are talking about is kind of a two-fold process. We
7 have the current inventory in the Department of
8 approximately 445,000 appeals, and we do not intend on
9 changing the laws in which they were filed. So that will
10 require resources.

11 And then for new appeals, though, we are hoping to not
12 have them be prisoners of that current dense process and to
13 put something in place that will, over time, lead to a
14 sustainable, efficient process for all veterans.

15 Senator Blumenthal. In Connecticut, as you know, just
16 to take one example, appeals are currently on hold because
17 of the shift of resources to the initial filings of
18 disability claims. Now what I hear you saying is that you
19 would move resources back to consider those appeals
20 immediately. Is that correct?

21 Ms. Eskenazi. So in the local field offices I know
22 that VBA this year is putting a great deal of effort on
23 appeals, and they are working on some reallocations in the
24 2016 budget to really address those pending appeals. So
25 that is ongoing now.

1 But what we know is that to really address the large
2 inventory across the Department we do have a need for
3 increased resources, as reflected in the President's budget,
4 and we are also looking for a system of laws, a legal
5 framework that is not so costly but yet provides something
6 that is efficient, timely, and fair and transparent for
7 veterans.

8 Senator Blumenthal. And my question goes not only to
9 the reforms that have to be achieved. We are all in
10 agreement that there needs to be streamlining and resources
11 over the long term. But, what will be done right now and
12 immediately, considering that those appeals are pending?

13 The Secretary may be correct that some of them are
14 receiving disability benefits right now, but they are not
15 receive, potentially, all they deserve. So what can we do
16 immediately?

17 Secretary McDonald. In our 2017 budget proposal and in
18 the 2016 budget proposal, we had put in place some requests
19 for more headcount, for more people. We need those people.
20 Unfortunately, given the system the way it is, the law the
21 way it is, we need people. It is people, and if we can get
22 those people, we can start to drive it down.

23 But, we would be irresponsible if we did not tell you
24 that adding more people is not the answer. With this law,
25 we are going to have over two million appeals in a very

1 short period of time, and that is just unacceptable. We
2 have got to change the law.

3 Senator Blumenthal. What you are saying is that in the
4 short term more resources and more people will help stem the
5 rising tide, but over the long haul there have to be changes
6 in the law and the process.

7 Secretary McDonald. Yes, sir, and the sooner the
8 better. That is why we are trying to drive this working
9 group to a consensus or at least a majority within the next
10 couple of weeks so we can meet your and the Chairman's
11 deadline.

12 Senator Blumenthal. Are you satisfied, and can you
13 commit to us that this plan will not just reshift back to
14 the initial claims process that huge backlog because of lack
15 of resources there?

16 Secretary McDonald. Yes, I am happy to commit to that.
17 Laura?

18 Ms. Eskenazi. What I can tell is one of the features
19 of the current inventory and the inability to work it down
20 in a timely fashion is we have a situation where the claims
21 process is very entangled with the appeals process. So we
22 are looking at new ideas where we can segment claims from
23 appeals, allow those appeals to move forward to a timely
24 decision that preserves fairness, and also get those claims'
25 new material handled in the claims stream.

1 Senator Blumenthal. I appreciate those commitments. I
2 think they are tremendously important because I think the
3 credibility and faith in the VA really hinge on addressing
4 this issue effectively. Even as health care is addressed
5 through legislation and through accountability and
6 consolidating Community Care programs, this disability
7 claims process is a--I am tempted to say--festering wound
8 that really needs to be not just Band-aided but solved.

9 Secretary McDonald. We could not agree with you more.
10 This has been the elephant in the room for a long time, and
11 we have joined arms, and we have said, no longer. It cannot
12 go on like this. It is not fair. It is not fair to
13 veterans.

14 Senator Blumenthal. It is not fair to veterans, and it
15 is not fair to a lot of the dedicated men and women who work
16 at the VA because their reputations are tarnished by a
17 system that simply is not working.

18 And it has been, I agree, the elephant in the room,
19 more like the tiger in the room that is dangerous to not
20 only veterans, who cannot get the justice--it really is a
21 matter of simple justice that they deserve and need--but
22 also to the VA itself.

23 Thank you.

24 Chairman Isakson. I want to thank Senator Blumenthal
25 for raising that question, and I am going to fudge a little

1 bit and just ask an amplification if I can.

2 Senator Sullivan, your proposal on appeals is a pilot
3 program. Is that not correct?

4 Senator Sullivan. That is correct, Mr. Chairman.

5 Chairman Isakson. It is predicated on concessions the
6 veteran makes in order to expedite the appeal. Is that
7 correct?

8 Senator Sullivan. That is correct and eliminates a
9 number of kind of standard elements that are normally in the
10 appeal to bring down the timeline of the appeal.

11 Chairman Isakson. And, Mr. Secretary, the Agency's
12 adversity to that recommendation is it is not a total fix.
13 Is that correct?

14 Secretary McDonald. Mr. Chairman, I would not even use
15 the word that we are against it because we worked very hard
16 with the Disabled American Veterans and others on that
17 program when we thought that that was all we could get. I
18 now think we can get more if we are willing to take a more
19 aggressive stance than the pilot program would allow.

20 The pilot program, in and of itself, is a good idea. I
21 thought it was a good idea at the time. But, we are talking
22 about a relatively--an effect that is a relatively small
23 effect relative to the 440,000 appeals that we have.

24 What we would like to come up with is a law which would
25 have a greater impact on those 440,000, but I am not opposed

1 to that bill. I just think we can get more, and I think the
2 time is right for us to get more.

3 Chairman Isakson. Well, I want to enforce the Tester-
4 Burr Rule, and that is where there are differences there can
5 be common ground. And if you work with Senator Sullivan as
6 we expedite the consideration of what we can do, maybe you
7 can come up with that before we have the legislation done.

8 Secretary McDonald. No question, we can do that.

9 Chairman Isakson. And, if not, I see no problem at all
10 in putting in what Senator Sullivan has talked about and you
11 replacing it somewhere else down the line. But, I think we
12 have got such a good template, what Senator Tester and
13 Senator Burr have done, and this is such a big, big problem
14 that it is important for us to do that.

15 And I have to--this is a humorous interlude, and I
16 apologize for the time. My staff has been participating in
17 some of those meetings you all have had over at the Agency,
18 discussing appeals. I know you have had some of these
19 charts on the wall, where you have been discussing different
20 ways to solve the problem. On each one of these charts,
21 there was an elephant being shot by somebody.

22 [Laughter.]

23 Chairman Isakson. I was so afraid that was a partisan
24 statement, but it is not. It is the elephant in--

25 Secretary McDonald. Sir, I am sorry. We have got to

1 learn to strike that from our vocabulary, but in business we
2 often say "the elephant in the room" or "the elephant on the
3 table," and it has nothing--it is a business term. It has
4 nothing to do with political parties.

5 Senator Blumenthal. I think it is unfair to the
6 elephants.

7 [Laughter.]

8 Senator Blumenthal. But, let me--

9 Chairman Isakson. I am sure we can work with Senator
10 Sullivan on this.

11 Senator Blumenthal. And I would join, or offer to
12 join, Senator Sullivan in working on this issue because I
13 understand your position that a more streamlined, fair,
14 efficient process is necessary for all veterans as soon as
15 possible. Senator Sullivan's approach may make sense for a
16 large body of those veterans, and maybe we can combine the
17 two approaches.

18 Chairman Isakson. My apologies for the interlude, but
19 that was an important exchange, I think.

20 Senator Cassidy.

21 Secretary McDonald. Well, you were just demonstrating
22 how we in the VA now are applying tried and true business
23 processes to the business of government.

24 Chairman Isakson. Absolutely.

25 Secretary McDonald. And that is what you showed. That

1 is process-mapping. That is what we are teaching. Lean Six
2 Sigma, human-centered design--that is what we are teaching
3 people in the VA.

4 Chairman Isakson. It is the road to a solution; there
5 is no question about it.

6 Senator Cassidy. Apropos of that what you just said,
7 Secretary, there are going to be some amendments being
8 advanced further about accountability. And on page five of
9 your testimony you speak about, implicitly, that you do not
10 want to fire people, you know, if we define accountability
11 only in the narrow way, in terms of the number of employees
12 removed from their jobs, et cetera.

13 So I am just curious. How many employees does the VA
14 have?

15 Secretary McDonald. If you include part-time
16 employees, we have over 350,000.

17 Senator Cassidy. And how many have been fired in the
18 last year?

19 Secretary McDonald. Well, since I have been Secretary,
20 we have had over 2,600 terminations.

21 Senator Cassidy. So that percent would be?

22 Secretary McDonald. I did not include in that
23 retirements, which would be another over 700.

24 Senator Cassidy. One of the things that concerns us
25 is, for example, I think the woman or the person--I think it

1 was a woman--who headed the scandal at the Phoenix VA was
2 allowed to retire with her bonus and two of the others who
3 were collaborators have been still on the payroll, still
4 working; that we have seen the people who, frankly, acted
5 out of venality in Philadelphia--I do not remember quite the
6 details except it is just reprehensible what they did, and
7 they are still on the payroll.

8 And so I cannot believe in the private sector there
9 would be such a reluctance to hold those who were venal and
10 incompetent accountable to the degree that they would be let
11 go.

12 And I have to dispute a little bit. You say decimate.
13 By definition, that means 1 out of 10 is killed. It is hard
14 for me to think that of those 300,000 employees, 30,000
15 would be venal and incompetent. I have to think it is a
16 very small minority.

17 So explain to me. If it is really a small minority--we
18 are frustrated. We have got people who clearly are venal,
19 who are allowed to stay employed, who are rude to veterans
20 when they show up, who are allowed to stay employed.

21 So I am not sure--we are interested in accountability,
22 and I am not sure I would characterize the ability to let go
23 some as going to intimidate the rest. That implies that the
24 rest are similarly ill-suited for employment. And it has
25 been my experience that it is about, you know, 1 percent

1 that is bad and the 99 percent that are good and who are
2 tainted by those who are bad.

3 So just to kind of elaborate on that, please.

4 Secretary McDonald. Well, as I said, since I have been
5 Secretary, we have terminated over 2,600 people. That does
6 not include roughly 700-plus that have retired or done
7 something else. And as you know, in several instances where
8 we have proposed disciplinary action, the individual has
9 chosen to retire.

10 You can try to pass a law to claw back a retirement
11 benefit from someone, but my experience in the private
12 sector is that will be unconstitutional and that will be
13 decided, and that is what the case law says.

14 I think the important point here is that the changes we
15 are talking about in the new Title 38/Title 5 changes
16 approach would end up with a different result, in my
17 opinion, for Sharon Helman, the lady at Phoenix that you are
18 describing. What happened in that case was the MSPB thought
19 our evidence and our case for her mismanagement was not
20 strong enough, and as a result she was terminated for
21 accepting money from someone else. So let's use that as a
22 test and see.

23 Let me ask our attorney. Under the changes that we are
24 proposing for Title 5, wouldn't the evidentiary standard be
25 different and wouldn't the MSPB arrive at a different

1 decision?

2 Ms. Flanz. The evidentiary standard that we are
3 proposing would, in fact, be more deferential to the
4 Secretary's action, and it would be our hope that in that
5 case we would have been able to sustain all of the charges.
6 I will point out that the case itself we did prevail and she
7 was, in fact, terminated based on other misconduct.

8 But our goal with the proposed--

9 Senator Cassidy. And her two collaborators?

10 Secretary McDonald. They are still employed, but we
11 are very close to taking action with respect to them.

12 Senator Cassidy. And what about the folks in Philly
13 who kind of manipulated things so they were getting moving
14 expenses and others. You know what I am--you know the
15 details better than I.

16 Ms. Flanz. Sure. That individual was returned to her
17 position as a result of the judge finding that the charges
18 were sustained, the action taken was based on sufficient
19 evidence, but that under the circumstances, according to the
20 judge, the penalty was unreasonable.

21 So another part of our proposal is to provide greater
22 clarity to judges around their authority to impose their own
23 judgment with respect to a penalty. What we would propose
24 is that the judge is to defer to the agency action unless
25 the penalty imposed is beyond the tolerable bounds of

1 reasonableness. That is a term of art that judges
2 understand means that they are to defer to the agency
3 penalty unless there is something simply untenable about it,
4 it was imposed for improper reasons, or what have you.

5 Senator Cassidy. So, bottom line, would she have been
6 able to be terminated?

7 Ms. Flanz. We are talking about the Philadelphia
8 individual?

9 Senator Cassidy. Philly

10 Ms. Flanz. Well, the Secretary's proposal in that
11 respect was actually not to terminate her. Based on the
12 facts of the case and the evidence of that case, the
13 proposal or the action taken was to demote rather than
14 remove, and we did sustain the charges. So to answer your
15 question directly, the penalty, we would hope, would have
16 been deferred to in that case.

17 Senator Cassidy. Okay.

18 Secretary McDonald. So what we are trying to do is
19 take the Choice Act that had these provisions that the
20 judges have found constraining and modify it just like we
21 are in the Community Care discussion. Modify it so we can
22 deal with what has happened, what we have learned from this
23 MSPB action.

24 Senator Cassidy. I guess what I--it may only be
25 tangentially related, and I do not know the details well

1 enough to pursue it further. But, as I recall, the person
2 in Philadelphia--again, I thought I remember her being a
3 woman--actually lied, lied to another, manipulated
4 circumstances so that she could be reimbursed to her own
5 advantage but to the disadvantage of the system.

6 I guess my other question is: Why wouldn't she be
7 terminated if that is how I remember?

8 Secretary McDonald. What you remember is some of the
9 reporting in the media. Sloan Gibson, the Deputy Secretary,
10 who was the deciding authority on the punishment, he went
11 through all the case file, and it was his opinion--and I
12 obviously trust his opinion--that she should be demoted
13 rather than terminated, that he did not find where she
14 actually broke the law. But, what he did find is poor
15 judgment, poor management judgment, and he thought demotion
16 was more appropriate, and that is what the judge sustained.

17 Senator Cassidy. I yield back. Thank you.

18 Chairman Isakson. Senator Tester.

19 Senator Tester. Thank you, Mr. Chairman.

20 And thank you for being here, Mr. Secretary, and your
21 team.

22 When I spoke previously, there was a lot of people to
23 thank, and there is somebody that I forgot to thank, and I
24 think it is important that I do, and that is the Ranking
25 Member. Senator Blumenthal has been great in the

1 negotiations. His staff has been incredibly, incredibly
2 helpful, especially on the provider agreement stuff.

3 So we want to give you the due you deserve and thank
4 you for that.

5 Mr. Secretary, I want to talk about provider agreements
6 and spending flexibility because I think a failure to act on
7 those things in a timely manner would ensure that the
8 changes you need to make to the Choice program would not be
9 implemented, and I want you to either confirm or deny that.

10 Secretary McDonald. That is true, sir.

11 Senator Tester. So for those who believe that we are
12 simply making--working to make the Choice Act permanently,
13 could you explain how the Jon-Richard Bill--could be called
14 the Jonny-Dick Bill here pretty quick; it is hard to say--
15 would actually allow us to move well beyond Choice and to
16 put in a framework that actually will work for our veterans?

17 Secretary McDonald. I think as I understand the bill--
18 and, of course, we have not caught up with the most recent
19 version--

20 Senator Tester. Yes, right.

21 Secretary McDonald. --that you and Senator Burr have
22 been working. But, we know from the work that you have done
23 on your bill that this idea of setting up this optimal
24 network of medical providers for veterans will ensure our
25 veterans get the very best care possible.

1 Having one set of standards for payment will allow us
2 to compete equally across the thing versus what we have
3 today. Whereas, you and I know some of our programs are
4 richer for providers and some are actually less fulfilling
5 for providers, and cause the provider to propose one program
6 versus another.

7 Third, being able to be the primary payer allows us the
8 ability to pay our bills more on time, allows us the ability
9 to account for those payments more on time. It means the
10 bills will be paid within 30 days as we have committed to do
11 by the end of the year.

12 Baligh, is there anything else you want to add to my
13 explanation?

14 Dr. Yehia. No. I think that is great.

15 And, Senator, you had it right; there are some things
16 that we need today, to make the Choice program work today,
17 this year, and then build the foundation for the future.
18 And I think the way that we are having this discussion of
19 what has to occur this session and then how do we lay the
20 foundation is the right framework.

21 Senator Tester. Okay. Thank you.

22 Mr. Secretary, you were in front of Appropriations last
23 week. You heard Senator Murkowski and others talk about
24 consolidation of Community Care. Their skepticism was the
25 same as mine initially, by the way, because frontier states

1 like Alaska, like Montana, and others need flexibility to
2 deliver that care.

3 Just explain to me how consolidating Community Care
4 would actually give states, frontier states like mine and
5 Alaska, the flexibility that we need and that we had before
6 Choice to ensure that veterans receive the care that they
7 need?

8 Secretary McDonald. We would work hard to make sure
9 that we got into the network that I talked about the Alaska
10 Native Health System, for example, where there are very
11 outstanding providers. In fact, the Southern Foundation we
12 are working on and trying to get more residencies in Alaska.

13 In Montana, we would make sure we had the very best
14 providers in the network so it would be very easy and very
15 quick for a veteran to go to them.

16 Dr. Yehia. Yeah, I think there are two provisions in
17 there specifically: The provider agreements which will
18 allow us to work with individual providers that may not be
19 part of a large national contracted network, that is
20 critical. And, the ability to, as best as possible, try to
21 link to Medicare but understanding in the frontier states
22 that we might have to pay a different rate in order to get
23 providers to work with us or for some specialties. So
24 building in the consistency as best as possible but allowing
25 for flexibility in those locales.

1 Senator Tester. Okay. Thank you.

2 Montana is one of the few states, I think Maine is
3 another one, that serves veterans under Project ARCH.
4 Project ARCH, for the most part, has been pretty well
5 accepted. Can you tell me why we should not indefinitely
6 just extend the life of that program and why it makes more
7 sense to incorporate that program into consolidated
8 Community Care?

9 Secretary McDonald. We have also learned a lot about
10 ARCH. And if we were to simply extend ARCH, none of us
11 would like the cost or the scoring because ARCH, while it
12 was a good program, does not necessarily differentiate
13 between the urban and the rural areas in the way the
14 reimbursement costs go, and as a result the cost could go
15 astronomical.

16 So I think what you have done in your legislation and
17 what we have tried to advise is to put the best components
18 of ARCH in the legislation but leave those that would raise
19 the cost to an astronomical figure out.

20 Senator Tester. Okay. Just one last thing and then we
21 will shut her down, Mr. Chairman, and that is every once in
22 a while you get to feel good about stuff we do in this body.
23 And this is one of those moments where my staff, Burr's
24 staff, the Secretary's staff, both of your staffs have
25 helped us, get to a point where we have got something that

1 we think is acceptable.

2 But, to be honest with you, we have not accomplished
3 one thing yet. And so, hopefully, with the leadership of
4 the two people to my left we can get this thing done and get
5 it over and, hopefully, get the House's concurrence or some
6 manner if they do some work over there, if they are ever in,
7 and get it to the President's desk.

8 And I say that because, you know, we have got a lot of
9 veterans who are sitting in the audience today that
10 represent a ton of veterans across this country, and we all
11 know that Choice is not doing it. We are all getting the
12 letters. We are all getting the e-mails. We are all
13 getting the phone calls. We are all getting stopped on the
14 street. And the quicker we can get this fixed the better it
15 is going to be for the country.

16 So thank you, Mr. Chairman.

17 Chairman Isakson. Let me just say--and Richard can
18 answer too--Richard and I are committed to seeing to we
19 bring this home, and we would like to bring it home heavy,
20 not light, but we are not going to let a difference of
21 opinion on one issue thwart us from the overall goal, which
22 is to include the big things that we have talked about. And
23 I appreciate your comments, and I remain committed to doing
24 exactly that. Our veterans, on Memorial Day, deserve a new
25 VA set of standards and the hope of accountability that is

1 meaningful and real.

2 Senator Blumenthal. And I agree with the Chairman
3 completely. Compromise is not a four-letter word, and we
4 ought to be ready to move forward with your incredibly
5 important leadership.

6 Thank you, Senator Tester.

7 And we will strike from the record the words "if they
8 are ever in," referring to the House of Representatives.

9 [Laughter.]

10 Secretary McDonald. Ranking Member Blumenthal, just in
11 the defense of Chairman Miller, I have spoken with him. I
12 called him the day he announced his retirement, and we all
13 agreed that this is the moment in time that we need to get
14 something big done. So I can tell you that Chairman Miller
15 and Ranking Member Brown are there as well.

16 Senator Blumenthal. Thank you.

17 Chairman Isakson. And we have one example already, the
18 Denver hospital. I mean, they said we could not get that
19 done a year ago. We brought it home and got it done, and
20 the House came along, too. So we can do it twice in one
21 Congress, I am convinced.

22 Senator Sullivan.

23 Senator Sullivan. Thank you, Mr. Chairman.

24 And I appreciate your comments, Mr. Secretary, Ranking
25 Member Blumenthal, on the whole idea of getting together

1 soon and really hashing out some of the issues that relate
2 to appeals. I think there is widespread agreement that this
3 is a big issue, an important issue. We do not want it to be
4 the next problematic issue. We want to be able to preempt
5 it.

6 So, Mr. Secretary, I will take you up on the offer.
7 Senator Blumenthal, I will certainly take you up on that
8 offer and look forward to working with all of you.

9 Let me--in terms of just kind of trying to look at the
10 parameters of what we are talking about, you know, you
11 mentioned that the bill that myself and a number of members
12 on the Committee have introduced, that it is a good start;
13 it does not go far enough. And I am fine with that,
14 especially if you guys want to be more ambitious and more
15 creative and effective in terms of the problem we are trying
16 to get at.

17 Let me ask a basic kind of threshold question. Is your
18 concern that because it is a pilot program, therefore, it is
19 going to only impact a certain number of veterans, and so it
20 is not really covering the broader kind of category of all
21 veterans? Or, is it the substance itself, that it is not
22 creating enough efficiencies, enough reforms in the process?

23 So those are kind of two different things, right? It
24 is either not covering enough. Because it is a pilot
25 program, by definition, it is not covering. Sometimes we do

1 that here, though, because we want to see if something
2 works. Or, if it is the reforms are not ambitious enough.
3 Or, a combination of both.

4 Secretary McDonald. Again, I do not want to disparage
5 the bill or the work that you have done with the Disabled
6 American Veterans and others because I do think it is
7 outstanding work and it has led to this new approach which
8 may be considered more aggressive.

9 I would add one more thing to it. It is voluntary.

10 Senator Sullivan. Right.

11 Secretary McDonald. Which, you know, the two things
12 you mentioned add to it: It is voluntary. It will take
13 some time to do.

14 So I think there is an opportunity to do even more,
15 faster, but again, I think that that program is the basis of
16 what we have done.

17 Laura, do you want to make any more specific comments?

18 Ms. Eskenazi. Certainly. Thank you.

19 I mean, we started working with the VSOs on this
20 concept two years ago.

21 Senator Sullivan. Yeah.

22 Ms. Eskenazi. And certainly one of the limitations is
23 that it is voluntary, and we always knew that. We always
24 knew that it was not going to be the silver bullet, but it
25 would sort of show--it would sort of model out perhaps other

1 changes that could be taken.

2 One of the things that has happened in the past year,
3 working under our Secretary and our Deputy Secretary, is we
4 were charged this year when we were putting together our
5 budget request to kind of come up with a requirement for
6 appeals. One of the things that appeals has never had is
7 any sort of time frame.

8 Senator Sullivan. Yeah.

9 Ms. Eskenazi. Not that it is all about time. Fairness
10 is certainly paramount. But in doing so, that is when we
11 saw the stark picture that the Secretary has presented in
12 other hearings, that if we continue on this path we are not
13 going to be sitting on 450,000 appeals.

14 Senator Sullivan. Right.

15 Ms. Eskenazi. We will be sitting on over two million.

16 Senator Sullivan. No. It is the bulge, right? I
17 mean, it is a real--

18 Ms. Eskenazi. So that was sort of the shock factor.

19 Senator Sullivan. Yeah.

20 Ms. Eskenazi. Which caused us to take a different look
21 not just at amending what we currently have but sort of
22 putting it aside, focusing on the attributes that veterans
23 are looking for--timeliness, fairness, transparency--and
24 looking to design a new type of an appeals process.

25 Senator Sullivan. Good. Well, look, again, we look

1 forward to working with you and the service organizations
2 because I know they have been very, very involved in this as
3 well.

4 You know, Mr. Chairman, we are talking about
5 accountability.

6 And, Mr. Secretary, I want to go back to a topic that I
7 know you are very focused on, we have all been very focused
8 on, and you see it manifest itself in different ways, and
9 the issue I have raised a number of times with the payment
10 to the providers. And that is a problem.

11 That has been a problem, as we have talked about, where
12 the veteran himself or herself gets stuck with the bill
13 because the VA goes after them--or the provider goes after
14 them because they are not getting paid. But, it also is a
15 huge issue just for the providers.

16 I was just informed of an Alaska group, outstanding
17 health care group. Actually, it is a consortium with some
18 of the groups you were just talking about, South Central and
19 others, where they are now experiencing up to 180 days of
20 nonpayment of up to--I just got a--I was just informed of
21 this a couple days ago--half a million dollars of
22 nonpayment. And I would like to actually provide you and
23 others specifically with their case so you can address that.

24 But, more broadly, you are saying the 30 days. Look, I
25 think that is music to everybody's ears. Making sure that

1 the veteran does not get caught in the middle, as we have
2 talked about, and get, you know, his credit ruined and
3 things like that.

4 But, how do we get there when I already have
5 constituents just informing me that it sounds like it is
6 getting worse on provider payment, not better?

7 And, if this is going to be an accountability bill, do
8 we need to take legislative action in conjunction with you
9 so you can make that commitment about 30-day payments to our
10 providers?

11 I think we start addressing a lot of the problems out
12 there if we can really strongly not only commit to that but
13 make it happen. So how do we do that?

14 Secretary McDonald. There are a number of things that
15 we have done in the short term. Number one, we no longer
16 require the paperwork before we make the payment. We have
17 gone to the best practice of the private sector, where we
18 now will pay when the service is done, at least a good
19 portion of it. We did that about a week ago. I think it
20 was about a week ago we made that change. So already you
21 are going to start seeing the backlog of bills dropping as
22 the payments are made.

23 Senator Sullivan. Okay.

24 Secretary McDonald. Secondly, we instituted a crisis
25 credit hotline for veterans--

1 Senator Sullivan. Right.

2 Secretary McDonald. --so that no veteran's credit
3 could be affected by this.

4 Again, these steps are steps we can take. We are
5 taking them quickly to try to get this alleviated.

6 The important thing is we built this bill so that we
7 eliminate this issue altogether. We become the primary
8 provider, the primary payer.

9 And, why don't you go ahead and describe the details?

10 Dr. Yehia. Sure. Thank you, Senator. And we would
11 love to get those names.

12 We actually have a team that goes out and work with
13 those, and when we sit down with providers we--first of all,
14 all of them want to serve veterans. That is without
15 question. I mean, we always hear that.

16 One of the things that we learn is that they have a lot
17 of things on their books that we will never pay because we
18 are not allowed to pay by law, and that is the whole idea of
19 getting to one way of paying care. For example, in
20 emergency room care, in some circumstances we are the
21 primary payer; in other circumstances we are the payer of
22 last resort, and we only pay a certain portion, but they
23 think we are going to pay 100 percent of the bill. So
24 getting to one system that makes sense will make sure that
25 folks know exactly what they get to pay.

1 Then the next piece is: How do we pay timely and
2 accurately? And there are, in both versions of the Choice
3 consolidation bill, good things in there that I think will
4 help us get to a system where we can pay timely and
5 accurately.

6 So I would divide them into two things. One is we have
7 got to make the system less complex, become the primary
8 payer, and the other one is to get the technology and the
9 system in place so we can pay timely and accurately.

10 Senator Sullivan. Okay. Thank you, Mr. Chairman.

11 Chairman Isakson. Thank you, Senator Sullivan.

12 Senator Rounds.

13 Senator Rounds. Thank you, Mr. Chairman. Let me just
14 begin by saying thank you to you and the Ranking Member for
15 the work that you are doing. I think it always makes all of
16 us feel good when we are working on a bill which is not
17 partisan in nature, and I think we have a lot better chance
18 of getting something done when it is done on a bipartisan
19 fashion.

20 Secretary McDonald, there seems to me to be a lot of
21 confusion about the differences between the terms "co-pay"
22 and "deductibles" when referencing out-of-pocket payments
23 made by veterans under the Choice program. The way I read
24 the current law private providers are only allowed to charge
25 veterans co-pays equal to what the VA would charge at one of

1 your facilities, which is a good thing.

2 This is not true for deductibles, however, and as a
3 result veterans under the Choice are being charged
4 deductibles by providers in accordance with their private
5 insurance policies when seeking care for nonservice-
6 connected disabilities. These deductibles could be in terms
7 of thousands of dollars.

8 Section 1729 of Title 38, meanwhile, forbids the VA
9 from collecting deductibles for nonservice-connected
10 disability care at VA facilities.

11 Last week, I introduced a bill to eliminate this
12 discrepancy. It makes the VA the primary payer under the
13 Choice, as you suggested, and I am very pleased to hear
14 that, and it directs the VA to pay for deductibles just like
15 it would if the veteran received the care at a VA facility.

16 Can you comment on how the VA would treat deductibles
17 for veterans with private insurance under these bills
18 currently before us today?

19 Dr. Yehia. So thank you for that question, Senator.

20 The way that the Choice law currently is, is that we
21 are the secondary payer for nonservice-connected care and if
22 they have another form of health insurance they have to
23 first bill outside health insurance, then bill VA. And, as
24 a result, some veterans will have to pay two co-payments--
25 one to the VA and one to their outside health insurance. We

1 do not want that, and we agree with you of helping us become
2 the primary payer.

3 I think our goal, too, is to make sure that there is
4 parity between internal VA care and external VA care. And
5 so as it comes to hospital care or medical services, if a
6 veteran has to pay a co-payment in the VA, it should be the
7 same outside. If they do not have to pay a co-payment in
8 the VA, it should be the same outside. So what we are
9 hoping to do is to create an even playing field so if this
10 is how they behave when they see a VA doctor it should be
11 the same way in the community.

12 Senator Rounds. Okay. Let me just clarify this
13 because there are two parts. There is co-pay, and there are
14 deductibles. Are you saying--are you excluding co-pay from
15 your discussion, or are you including co-pay as being
16 something which the VA should pick up?

17 Dr. Yehia. If--first of all, only a small segment of
18 the population has a co-payment. Usually, it is a set--

19 Senator Rounds. Co-pay or deductible?

20 Dr. Yehia. Co-payment. Co-pay. Seven and eights.
21 And so if you are getting seen for an--

22 Secretary McDonald. Category 7.

23 Dr. Yehia. Category 7 and 8.

24 Senator Rounds. Okay.

25 Dr. Yehia. Thank you.

1 Secretary McDonald. Category 7s and 8s.

2 Dr. Yehia. If you are getting seen for an outpatient
3 visit, you might have--I do not know what the exact number
4 is, but you will have a certain amount that you have to pay.
5 If you go in the community, we want it to be exactly the
6 same, not higher, not lower, not different.

7 If you do not have a deductible--I am sorry. If you do
8 not have a co-payment at all, in the community it should be
9 the same. You should not be required to pay anything.

10 And this is actually how traditional VA care worked
11 before Choice.

12 Senator Rounds. Now I want you to use the term
13 "deductible" if you mean deductible because there is a
14 difference between deductible and co-pay. Someone outside
15 of the VA receiving services outside of the VA will have a
16 deductible, and then they will have a co-pay under their
17 insurance company. Okay?

18 What we are finding right now is that even if you go in
19 as the primary provider, all right, and if they are at a VA
20 facility today, there is no deductible for the services
21 being provided. But, if they are outside of a VA facility,
22 before a co-pay starts, there is a deductible under an
23 insurance policy plan. First dollar, or it could be
24 thousands of dollars.

25 Dr. Yehia. Yeah.

1 Senator Rounds. If you want it equal to the services
2 being provided inside of a VA facility versus outside of a
3 VA facility, what I am proposing under our proposed
4 legislation is that the deductible will also become the
5 responsibility of the primary provider, which is the VA.

6 Are you in agreement that the deductible should be paid
7 by the VA rather than the veteran?

8 Dr. Yehia. So when we become the primary payer, the
9 whole idea of a deductible, I think, is less of an issue. I
10 do not think it really becomes more of an issue.

11 It is an issue in the secondary payer situation, where
12 you have to pay. If you do have a deductible, you have to
13 pay it and the co-payment.

14 But, when we become the primary payer as it is in fee
15 care, that is less of a concern. It is almost kind of--it
16 is--there is not a deductible.

17 Senator Rounds. There is not a deductible.

18 Dr. Yehia. Yeah.

19 Senator Rounds. Very good.

20 Secretary McDonald. There is no deductible.

21 Senator Rounds. That is what I wanted to get at--is
22 under the proposals, if we make you the primary payer, the
23 deductible is eliminated for these veterans that right now
24 are in some cases paying thousands of dollars.

25 Dr. Yehia. Yeah, the deductible to the outside health

1 insurance will be eliminated.

2 Senator Rounds. There we go. Thank you.

3 Thank you, Mr. Chairman.

4 Chairman Isakson. Thank you, Senator Rounds.

5 Senator Boozman.

6 Senator Boozman. Thank you, Mr. Chairman. I apologize
7 to you and the Ranking Member for being late, and I have got
8 to sneak out again. I have got another hearing that is
9 going on.

10 I want to thank you, Secretary McDonald, for your
11 willingness to come and testify before Congress. I think I
12 have probably been with you five or six times in the last
13 two or three weeks at various--between the appropriations
14 and this process and others, and that really is very
15 important.

16 The question--the comment and question that I would
17 like to make is that it seems like in the last few weeks, as
18 the Choice Program is starting to kick in, that the comments
19 I hear from--I am an optometrist by training. My brother
20 was an ophthalmologist.

21 So, as I talk to my friends, their concern is that they
22 feel like, as providers--and these are folks that realize
23 that we are at war now. You know, that they want to do the
24 right thing, and they want to participate. You know, I can
25 shame them into doing the right thing.

1 The problem is they feel like--that they almost feel
2 like you want them to go to work for the VA as opposed to--
3 you know. They deal with Medicare. They deal with
4 Medicaid, programs for the elderly, programs for the poor.
5 They deal with all kinds of private insurance.

6 But there is something going on right now, you know,
7 with the structure that we have that makes it more
8 difficult, and I do not know exactly what that is.

9 I would really encourage you to--and we are talking
10 about small practices and medium. These are not the clinics
11 that are large, you know, that do a great job. We are
12 talking about small clinics and medium clinics because these
13 are in the communities where they do not have access.

14 But I would really encourage you to get out and send
15 some of your folks to literally camp out there for a week or
16 so and see what is going on because it is just hard. You
17 know.

18 We are going to--and we have got growing pains and all
19 of that, and I realize that, and that is just the way it is.
20 But I am afraid we are in a situation now where we are
21 having such, in some cases, really bad experience.

22 The payment issue we have talked a lot about. You
23 know, I think you are doing a better job of that. I know
24 you. And you are working hard on that, but there are other
25 things. You know.

1 If you have got a key staffer that--it is not the
2 money. It is the key staffer that spends a lot of time on
3 the phone dealing with problems that they feel like are
4 fairly insignificant compared to these other insurance
5 programs. It really is a problem.

6 Secretary McDonald. Senator Boozman, we agree
7 entirely. We think that the changes we have proposed to the
8 law, which I know Senator Burr and Senator Tester have been
9 working on, will address a lot of this and, I hope, will
10 solve it.

11 We, frankly, have been disappointed with the
12 performance of one of our third-party providers, Health Net.
13 I have met with their CEO, but we are still disappointed.
14 And the law, the way the Choice Act is structured today,
15 does not permit us to take back the responsibility from the
16 third-party provider because it is written into law.

17 This new bill would allow us to take that back and
18 would allow us to own the customer service, and I do not
19 think--you know. We are in a customer service business.
20 Our vision is to be the best customer service organization
21 in the government. We cannot outsource our customer
22 service, and so I am hoping we will see lots of changes.

23 Now I notice--I think you meant it euphemistically,
24 that we are trying to make them VA employees. I am out
25 there recruiting. So I, unashamedly, am out there

1 recruiting. As you know, I have been to over two dozen
2 medical schools. So, if there are people who would like to
3 join the VA, we would love to hire them.

4 Senator Boozman. I understand. No, these are people
5 that, like you say, they want to provide service, but they
6 do not want the same restrictions.

7 Secretary McDonald. Yes, sir.

8 Senator Boozman. The same, you know, all that goes
9 through with the people that are working very hard at the VA
10 as providers.

11 And, again, it does seem to be unique, and it is enough
12 that--you know. There is enough smoke that there is some
13 fire there.

14 Dr. Yehia. And, Senator, if I may.

15 Senator Boozman. Sure.

16 Dr. Yehia. That is exactly what we are doing. I was
17 in Orlando, Florida a couple weeks ago, and we hosted a
18 roundtable with those small and medium size practices just
19 to hear directly from them what is going on.

20 And our intention with the plan and where we hope to go
21 is we do not want VA to be so different than everyone else.
22 And so we are trying to figure out what the best practices
23 in industry and as best as possible conform to those because
24 if you are a small practitioner and you have to deal with
25 multiple different insurance plans, each operating in a

1 different way or a similar way except for the VA--

2 Senator Boozman. Right.

3 Dr. Yehia. --why do you want to work with us? And so
4 I think we want to figure out how we can be good partners to
5 community providers.

6 Senator Boozman. Right. Well, thank you very much. I
7 appreciate it.

8 Thank you, sir.

9 Chairman Isakson. Mr. Secretary, I hope that the next
10 time that we meet we will be discussing our mutual joy and
11 success at coming up with significant legislation for the
12 Veterans Administration that addresses the needs of our
13 veterans, ensures the American public there is
14 accountability within the VA administration, deals with the
15 caregivers, deals with all the things that Senator Burr and
16 Senator Tester have done and, in particular, Choice.

17 And I appreciate your changing your schedule to be with
18 us for the entire hearing this afternoon. We are very
19 grateful to you and appreciate all your staff for being here
20 as well.

21 Senator Blumenthal. Could I ask one last question, Mr.
22 Chairman?

23 Chairman Isakson. Certainly.

24 Senator Blumenthal. Thank you.

25 Looking at the budget for this year and the question of

1 how to pay for additional Care in the Community after the
2 emergency Choice Act funding expires, could you explain how
3 you will cover that expense? Because the budget submission
4 that you have made seems to have a shortfall of \$9 billion
5 in the fiscal year 2018. Am I correct?

6 Secretary McDonald. In 2017, I think it was, we put in
7 \$12 million. In 2018, we do have a shortfall there, and the
8 shortfall is because we were not sure what legislation would
9 come out of the Committee and we did not want to put a
10 number in there that would be wrong. As soon as we work
11 together and figure out this legislation and get it done, we
12 will put a number in that hole and talk about that because
13 we will have a better idea what it will be. There are
14 several options in the legislation, and those options each
15 have a different cost with them.

16 Senator Blumenthal. But, you can assure us that you
17 will cover that cost without cannibalizing other VA
18 services.

19 Secretary McDonald. Well, we will deal with it when we
20 get back to the second bite, so to speak, because it will be
21 part of the budget.

22 Senator Blumenthal. Thank you.

23 Secretary McDonald. Yes, sir.

24 Chairman Isakson. Secretary, thank you and your staff
25 very much.

1 Secretary McDonald. Thank you, Mr. Chairman.

2 Chairman Isakson. Our second panel is welcome to come
3 forward.

4 [Pause.]

5 Chairman Isakson. I would like to welcome our VSOs for
6 our second panel today, and first, we will hear from Louis
7 Celli, the Director of Veterans Affairs and Rehabilitation
8 at the American Legion.

9 Welcome. We are glad to have you.

10 Carlos Fuentes, Senior Legislative Associate, Veterans
11 of Foreign Wars.

12 And, Adrian Atizado. Atizado? Atizado? Is that
13 correct? Three times, then you finally get it.

14 We are so glad to have you here today. Welcome to all
15 of you.

16 We would ask you to try and hold your testimony to five
17 minutes. All preprinted statements will be put in the
18 record automatically.

19 Mr. Celli, you are recognized.

1 STATEMENT OF LOUIS CELLI, DIRECTOR OF VETERANS
2 AFFAIRS AND REHABILITATION, THE AMERICAN LEGION

3 Mr. Celli. Well, it is an exciting time right now as
4 we work toward bettering the resources and services that
5 veterans in this country have earned.

6 Chairman Isakson, Ranking Member Blumenthal, and
7 members of the Committee, on behalf of National Commander
8 Dale Barnett and the over two million veterans that make up
9 the American Legion, we welcome this opportunity to comment
10 on bills and discuss VA oversight, access to health care,
11 and the structure of claims and appeals management.

12 Lately, this has been a fast-moving train. In the last
13 two weeks alone, we have furthered efforts to make
14 improvements and advancements for veterans that seek access
15 to high quality health care as well as help define necessary
16 improvements that need to be made in the area of veterans
17 disability claims and appeals.

18 The bills presented today underscore a commitment and
19 dedication that this Committee has shown to ensure that
20 veterans receive care and attention that they have earned,
21 and the American Legion is proud to be working closely with
22 our Congress as well as Department of Veterans Affairs in
23 order to streamline many of the services that have not been
24 updated in close to 50 years.

25 In our written testimony, we look at Senate Bill 2633

1 and 2646, and we highlight the portions of each the American
2 Legion believes will make the greatest impact on veterans
3 who use and enjoy VA health care. In our testimony, you
4 will see that we reviewed eligibility, network structure,
5 prompt payment requirements, and emergency and urgent care
6 reimbursement. We also acknowledge that both bills provide
7 the necessary funding in order to support the programs.

8 One major point of discussion has been the concept of
9 the tiered network. Some are concerned that VA lacks the
10 infrastructure or expertise to support building a provider
11 network organically while others criticize the existing TPA
12 model as dysfunctional.

13 This is a complicated proposal, and the American Legion
14 cannot attest to VA's capabilities one way or the other that
15 would support or deny success, but we can say that if VA is
16 capable of building such a network as they propose it will
17 be more cost effective and support VA's mission to be in a
18 better position to provide better and more seamless health
19 care experiences for veterans. And based on our experience
20 with ARCH and PC3 and community-contracted care, in many
21 ways, they are already doing it.

22 Last week, the American Legion agreed to be sequestered
23 away in a room with no windows over at the Board of
24 Veterans' Appeals for three solid days to help propose
25 streamlining the appeals process. It was painful. A good

1 portion of the initial time was spent developing trust, not
2 only from the VSOs' and advocates' standpoint, but also from
3 the VA.

4 While we did not cure the ills of the world in three
5 days, what we were able to accomplish was everyone's ability
6 to just get it all out onto the table and deal with what was
7 there. By the end of the three-day session, the group was
8 able to agree on a path to move forward, a basic framework
9 for what an improved program might look like, and a
10 fundamental understanding that there is no better
11 opportunity for positive change to take place than for the
12 betterment of veterans in the claims appeals process than
13 now.

14 Some of the participants have continued to work
15 together to this end and are meeting to discuss this
16 framework tomorrow, and the group as a whole has agreed to
17 meet again on Thursday.

18 Again, it is an exciting time right now as we all work
19 together to improve the programs that serve and support our
20 veterans. This Committee has shown that we have your
21 support. This Committee--the House Veterans Affairs
22 Committee has pledged their support for change. The
23 Veterans Service Organizations have committed to working
24 with Congress and VA to improve our programs. And, VA has
25 committed to Congress and the VSOs to work comprehensively

1 together to design and support change. And, the President
2 of the United States has charged us all with making it
3 happen.

4 Senators, the American Legion is actively supported by
5 10 percent of all living American veterans, and that does
6 not take into account our family members, the Auxiliary, and
7 the Sons of the American Legion. As clearly stated by
8 National Commander Dale Barnett just last month during our
9 congressional presentation, the word of the day is
10 "accountability."

11 So, finally, on the proposal that would allow VA to
12 convert certain senior executive positions to another hiring
13 authority within the U.S. Code, specifically Title 38, the
14 American Legion supports any measure that will allow greater
15 hiring flexibility, greater oversight and authority, and
16 simultaneously empower VA to be more competitive in the
17 areas of the country that are difficult to recruit in.

18 But, we caution that any program changes of this
19 magnitude need to be clear on issues of oversight,
20 authority, and accountability, and specifically review and
21 tailor things like the appellate authority and timeliness to
22 take into consideration VA's unique mission and honored
23 customer base before making any final decisions.

24 That is all I have, and thank you.

25 [The prepared statement of Mr. Celli follows:]

1 Chairman Isakson. Thank you very much, Mr. Celli, and
2 thanks for all the input. I held up the poster that you all
3 did when you were referring to the meetings at the VA
4 before. They were graphically very pretty, but they also
5 obviously showed a road map we need to follow to get to a
6 solution on disability claims, and I appreciate the Legion's
7 willingness and ability to do that.

8 Mr. Fuentes.

1 STATEMENT OF CARLOS FUENTES, SENIOR LEGISLATIVE
2 ASSOCIATE, VETERANS OF FOREIGN WARS

3 Mr. Fuentes. Mr. Chairman, on behalf of the men and
4 women of the VFW and our auxiliaries, I would like to thank
5 you for the opportunity to present our views on today's
6 legislation. I would also like to thank you for considering
7 legislation that would supplement, not supplant, the
8 excellent health care veterans receive from the VA.

9 We are pleased to see that the Improving Veterans
10 Access to Care in the Community Act consolidates the best
11 aspects of the Choice Program and other Community Care
12 programs. This would ensure VA employees, private sector
13 providers, and veterans are able to understand and easily
14 navigate VA Community Care.

15 The VFW has also heard from too many veterans who live
16 more than 40 miles from a VA primary care provider but are
17 required to travel further for Choice Program care than they
18 would for VA care. That is why the VFW supports Section
19 302, which would improve how the 40-mile rule is applied.

20 Instead of measuring 40 miles from a VA medical
21 facility, this legislation would make veterans the center of
22 the 40-mile rule. Doing so would ensure VA--would require
23 VA to properly size its networks to ensure veterans have
24 primary care providers within 40 miles of their home.

25 The VFW continues to hear from veterans that VA refuses

1 to pay the cost of their emergency room visits. This is why
2 the VFW strongly supports expansion of emergency and urgent
3 care. However, the legislation--this legislation would
4 require veterans to be active users of VA care. This
5 barrier to access could cause an undue hardship for veterans
6 who are enrolled in VA health care but have been denied
7 access due to wait times.

8 VA is aware of this problem and has requested authority
9 to make an exemption to the 24-month rule for veterans who
10 find themselves in this situation. The VFW agrees with the
11 VA, and this barrier must be eliminated for veterans who are
12 not able to receive VA health care because of long
13 appointment wait times.

14 The VFW supports many of the modifications that the
15 Veterans Choice Improvement Act of 2016 would make to VA
16 Community Care, such as ensuring a veteran is able to
17 receive follow-up care to complete an episode of care
18 without having to cut through bureaucratic red tape.
19 However, this legislation would retain the Choice Program's
20 40-mile standard for determining when veterans access
21 Community Care. The VFW recommends this Committee adopt
22 Section 302 of Senator Tester's bill in lieu of the current
23 40-mile standard to ensure the 40-mile rule is veteran-
24 centric rather than VA-centric.

25 Another lesson learned from the Choice Program is that

1 VA provides health care specialties that do not have
2 Medicare rates, such as gynecological care. That is why we
3 recommend the Committee authorize VA to establish a fee
4 schedule for services it provides that are not covered under
5 Medicare.

6 Section 301 would expedite the process for adjudicating
7 disability claims for veterans exposed to contaminated water
8 at Camp Lejeune. VA recently announced that it will
9 classify eight medical afflictions as presumptive
10 disabilities for these veterans.

11 However, it is unacceptable that VA would require Camp
12 Lejeune veterans to wait an entire year before being able to
13 submit claims. The VFW recommends this Committee require VA
14 to issue interim final regulations within 90 days of
15 establishing a presumptive for service connection and start
16 accepting claims the day the interim final regulations are
17 published.

18 The VFW is pleased to see the Express Appeals Act
19 includes reporting requirements on the efforts of the
20 Secretary to provide more clear rating decisions and improve
21 disability rating notification letters. However, the VFW
22 cannot fully support the fully developed appeals initiative
23 until veterans have sufficient information to understand why
24 VA denied their claims. Simply put, without adequate
25 notice, there can be no knowledgeable waiver.

1 The VFW strongly supports the hiring retention
2 provisions of the discussion draft proposal regarding VA SES
3 employees. The VFW strongly believes that employee
4 accountability is critical to correct the past problems at
5 VA and restoring veterans' trust and confidence.

6 However, the VFW does not believe that a panel of SES
7 employees would effectively determine the veracity of
8 adverse actions being considered against their peers,
9 especially if the Secretary is the final arbiter of that
10 decision. While the VFW has full faith and confidence that
11 Secretary McDonald will strengthen rather than erode VA's
12 SES Core, the VFW does not want future political appointees
13 to politicize VA's career civil servants.

14 Mr. Chairman, this concludes my testimony. I am happy
15 to answer any questions you or the members of the Committee
16 may have.

17 [The prepared statement of Mr. Fuentes follows:]

- 1 Chairman Isakson. Thank you, Mr. Fuentes.
- 2 Mr. Atizado.

1 STATEMENT OF ADRIAN ATIZADO, ASSISTANT NATIONAL
2 LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

3 Mr. Atizado. Thank you, Mr. Chairman. First of all, I
4 would like to thank you for inviting DAV to testify at this
5 legislative hearing.

6 As you know, DAV believes that by putting their lives
7 on the line in defense of this country and our freedom that
8 veterans have earned and deserve timely access to effective
9 benefits and services, which these bills under consideration
10 today do intend to facilitate.

11 DAV thanks the sponsors and co-sponsors of the three
12 bills under consideration, particularly Senator Burr,
13 Senators Tester and Sullivan, and their staff, and of
14 course, your leadership, Mr. Chairman, and your dedicated
15 committee staff, to working with us on these measures.

16 It is well documented in numerous studies of the VA
17 health care system and the quality of care it delivers to
18 millions of veterans. And while VA has many challenges,
19 some of them quite serious, it somehow continues to
20 outperform the U.S. health care sector on nearly every
21 metric of quality. This unique accomplishment in the face
22 of the access crisis, we believe, must not be compromised.

23 We are pleased to support both S. 2646 and provisions
24 of S. 2633 which both contain some of our recommendations to
25 reform the VA health care system while preserving and

1 strengthening the VA for the future. For the sake of
2 brevity, I will only speak to a few key items out of several
3 that DAV believes the Committee should include in the
4 omnibus measure it is working to move.

5 So we believe the health care network contemplated in
6 S. 2633 would most likely yield a tailored network that
7 optimizes the strength of all health care resources,
8 seamlessly integrate Community Care into the VA health care
9 system, and allow VA to best meet the expectations of
10 veteran patients at the most local level.

11 However, we also believe that 2646 offers an important
12 provision that prohibits VA from requiring veterans to
13 receive care from a specific entity in a specific tier.
14 This, we believe, is necessary because we are strongly
15 urging this Committee to ensure that the current arrangement
16 under the Choice program, which has effectively dismantled
17 care coordination in many places, does not become a
18 permanent fixture in the future.

19 See, this disconnect to getting Care in the Community
20 is the single greatest source of complaints and frustration
21 among veterans. We must be--VA must be made the coordinator
22 and principal provider of care, and that responsibility must
23 not be given to VA lightly.

24 Now in addition to the authority to reform how veterans
25 access Care in the Community, DAV urges the Committee to

1 ensure any omnibus measure includes the authority for VA to
2 use provider agreements. There is no doubt that as we
3 discuss the future of VA health care today veterans are
4 being denied the care they have chosen in the community and
5 are being displaced. We must act, and we urge the Committee
6 to consider our recommendations in this provision and move
7 it without further delay.

8 DAV also applauds the sponsors and co-sponsors of 2633
9 for including our recommendations to make urgent care part
10 of VA's medical benefits package and to better integrate
11 emergency and urgent care within the health care delivery
12 system.

13 We are pleased that legislation would limit the
14 imposition of co-payments for this care because our
15 organization, frankly, is opposed to co-payments. We
16 believe it should be reduced or altogether eliminated. But,
17 nonetheless, we strongly oppose the provision that would
18 force veterans to pay co-payments while allowing VA to
19 collect on their health insurance.

20 Finally, Mr. Chairman, because of the year-long
21 collaborative effort put into this proposal by Veterans
22 Service Organizations and VA, I would like to spend a few
23 precious moments on S. 2473, the Express Appeals Act of
24 2016.

25 Now it is worthy to note this Committee's House

1 counterpart and, indeed, the full House believe in the
2 merits of this measure by approving identical provisions in
3 H.R. 677. This bill would establish a fully developed
4 appeal program modeled after the successful fully developed
5 claim program in which veterans voluntarily agree to develop
6 private evidence to substantiate their claim in exchange for
7 expedited processing. And with broad bipartisan support, we
8 urge this Committee to approve this important legislation.

9 Mr. Chairman, I have to note, though, I understand that
10 this is a pilot program. I understand it is small right
11 now. But, just like the fully developed claims process,
12 which also is voluntary, the initial host for the program
13 was maybe 10 percent of the total claims being submitted.
14 It has now grown to over 50 percent and has done tremendous
15 impact on the claims backlog. We hope that small things--
16 great things come in small packages and this is going to be
17 one of those things.

18 Mr. Chairman, this concludes my statement. I would be
19 happy to answer any questions you have.

20 [The prepared statement of Mr. Atizado follows:]

1 Chairman Isakson. Well, thanks to all three of you for
2 your testimony and for your patience, and we appreciate your
3 being here today and your input. And, thank you for the
4 input you give us on a daily basis as we deliberate.

5 Each one of you referred to the inclusion that either
6 the Department or the Committee or both have done with your
7 organizations as we develop many of these platforms and many
8 of these changes in the law for the Veterans Administration.
9 We appreciate that acknowledge, and we could not do if not
10 for your help.

11 Mr. Fuentes, let me ask you a question. You made a
12 reference to Camp Lejeune and the eight presumptions the
13 Secretary approved for coverage about a year ago or about
14 six months ago, but you made a reference to you wanted them
15 to be able to allow them to file claims and they were not
16 allowed to file claims for another year. Is that correct?

17 Mr. Fuentes. That is correct, Mr. Chairman. I may be
18 wrong, but I think it was a couple weeks ago that the
19 Secretary decided to consider a couple--eight conditions as
20 presumptive and being caused by the contaminated water in
21 Camp Lejeune. So what this does is it expedites or reduces
22 the burden of proof that veterans have to present when
23 applying for disability claims. However, because of the
24 regulatory process, it is estimated to take about a year
25 until veterans can actually start applying, which we feel is

1 unacceptable.

2 Chairman Isakson. Mr. Secretary, I know you are in the
3 audience and not testifying. But, can you address that for
4 a second?

5 Secretary McDonald. I can, Mr. Chairman. There is
6 something called an interim--

7 Chairman Isakson. I got him on his knees already.
8 That is a good sign.

9 [Laughter.]

10 Secretary McDonald. Mr. Chairman, I am always on my
11 knees for you.

12 It is something called interim final rule, and like we
13 did with C-123 what I would like to--with C-123 Agent Orange
14 is I would like to do an interim final rule so that veterans
15 can apply as quickly as possible.

16 Mr. Fuentes is right. It does take a period of time to
17 run these regulations and rules through the government
18 structure, but if we do the interim final rule we can speed
19 up that process, and that is what we want to do, obviously.

20 Chairman Isakson. Thank you very much.

21 Secretary McDonald. Yes, sir.

22 Chairman Isakson. Each one of you made a positive
23 reference, in particular Mr. Celli and Mr. Fuentes, to the
24 accountability portion of what we are trying to do in the
25 omnibus bill and made statements making sure that we did not

1 have a negative effective on career Civil Service employees
2 within the Veterans Administration. There is no intention
3 of this Committee to have any negative impact on career
4 civil servants of the Veterans Administration.

5 But, it is clearly our goal to see to it that there is
6 a mechanism for the Secretary to, first of all, hire the
7 professionals he needs to be able to run the Veterans
8 Administration and perform the medical services within the
9 Veterans Administration under Title 38, and that where in
10 SES employees there is a problem the Secretary has the
11 ability for discipline and the ability for future employment
12 depending on the merits of the case that he determines, not
13 determined by some third party.

14 So we share the same--there are a lot of people that
15 always feel when you talk about firing somebody that it is
16 something that just gives somebody a big thrill to say "I am
17 going to go fire a few people today." That is not what we
18 are looking for at all.

19 But, what we are looking for is an explanation, for
20 which there is none to this moment, for some of the
21 egregious things that have happened over the last few years--
22 --prior to Bob McDonald's service, I might add--because we
23 end up dealing with these things two and three and four
24 years after the time they take place.

25 So I appreciate your testimony and your support for the

1 accountability piece, which will be the linchpin that will
2 allow us to do caregivers, will allow us to do West L.A.,
3 will allow us to do the fully expedited claims, will allow
4 us to improve disability claims and improve the processing
5 of those, which is exactly what we want to do.

6 So I want to thank you for being here today and thank
7 you for your testimony. The record will remain open if you
8 have any additional testimony you want to add or any
9 additional things that need to be said. For how much? Five
10 days? Five days.

11 We appreciate your service to the United States of
12 America and your testimony today. God bless you and thank
13 you.

14 [Whereupon, at approximately 4:02 p.m., the Committee
15 was adjourned.]