

# HEARING ON PENDING LEGISLATION

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## HEARING BEFORE THE COMMITTEE ON VETERANS' AFFAIRS UNITED STATES SENATE ONE HUNDRED TENTH CONGRESS

FIRST SESSION

NOVEMBER 14, 2007

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## HEARING ON PENDING LEGISLATION

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WEDNESDAY, NOVEMBER 14, 2007

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

The Committee met, pursuant to notice, at 9:33 a.m., in room 562, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

Present: Senators Akaka, Rockefeller, Murray, Brown, Tester, Sanders, Burr, Craig, and Isakson.

### **OPENING STATEMENT OF HON. DANIEL K. AKAKA, CHAIRMAN, U.S. SENATOR FROM HAWAII**

Chairman AKAKA. The Senate Committee on Veterans Affairs will come to order. I want to say aloha to everyone and welcome to today's markup of legislation that is pending before the Committee on Veterans Affairs.

This is our second markup of this session, the first with Senator Burr serving as our Ranking Member, and it is focused exclusively on health care matters. We have four items on the agenda.

Before we begin the actual markup, I have a comment on the CBS News report on what they are calling the "veteran suicide epidemic." The report that the rate of suicide among veterans is double that of the general population is deeply troubling to me, and simply unacceptable.

I am pleased that earlier this month, President Bush signed into law the Joshua Omvig Suicide Prevention Act, legislation that we reported this summer. In light of the grim news in the CBS story, I hope that the sense of urgency which has guided the committee's extensive action on mental health issues this session will continue.

In particular, I am pleased that the Ranking Member and I have been able to find agreement on a comprehensive and very substantial mental health bill. For too many veterans, returning home from battle will not bring an end to conflict. They will return home, but the war will follow them in their hearts and minds. Invisible wounds are complicated and wide ranging and our solutions must rise to the challenge.

There is no question that action is needed. One in five Iraq war veterans are likely to develop PTSD, as studies have estimated, and this is but one aspect of the mental health challenges faced by veterans.

In April, the committee held a hearing on veterans' mental health concerns and on VA's response. We heard heart-wrenching testimony from the witnesses. Randall Omvig spoke of his son's

suicide upon returning from Iraq. Tony Bailey spoke of his son's struggle with substance abuse and of his death. Patrick Campbell shared his own experience with PTSD and the experiences of his close friends. Witnesses urged us to learn and they urge us to act.

The provisions of this bill are a direct outgrowth of that hearing and the testimony given by those who have suffered with mental health issues and by their family members. This bill addresses the immediate needs of veterans by ensuring high-quality mental health services at VA facilities and in their communities. The bill also looks to the future with a renewed focus on research.

Also on the agenda is the Veterans' Pain Care Initiative. This bill would enhance the VA's pain care management program through better clinical practices and the coordination of research and education. The management of chronic and acute pain is especially critical today as advances in battlefield medicine have allowed many service members to survive injuries that otherwise would have been fatal. Many of these veterans now face conditions such as TBI and polytrauma. Effective pain management is an important part of improving the quality of life for all wounded veterans.

Senators Murray and Craig worked together on the legislation to establish Epilepsy Centers of Excellence within the VA health care system. We know of the elevated risk for seizures among veterans who have suffered a TBI. This underscores the need for better understanding of epilepsy and more effective treatment strategies.

Finally, we have Senator Brown's legislation directed at fixing the problems associated with reimbursement procedures for veterans who receive emergency care at non-veteran VA facilities. His field hearing in Ohio unearthed issues with the transfer rules implemented by VA that control reimbursement. This bill will ensure veterans need not worry about where they are treated in an emergency.

In conclusion, I thank all the members for their participation and hope that we can move forward in the legislative process in a spirit of bipartisan cooperation. Thank you.

Now I will call on our Ranking Member for his remarks.

**STATEMENT OF HON. RICHARD BURR, RANKING MEMBER,  
U.S. SENATOR FROM NORTH CAROLINA**

Senator BURR. Aloha, Mr. Chairman, and thank you.  
Chairman AKAKA. Aloha.

Senator BURR. This is an incredibly important markup and the committee's attention on this legislation to address the health care needs specifically of our nation's veterans.

First, I would again like to compliment the Senator from Ohio for his legislation to address a problem with the current payment structure for emergency care provided outside the VA health care system. I noted at our hearing in October that I thought this was a fine example of the way in which good legislation is produced and I am proud to support Senator Brown's initiative today.

Second, Mr. Chairman, I especially appreciate your willingness to work with me to improve a couple of the bills that we are considering today. As you know, our staffs have been in discussions about the pain care legislation, S. 2160. I look forward to working with you to ensure that before S. 2160 passes the Senate, it focuses the

proper attention on the issue of pain management and the needs of our veterans who suffer from debilitating pain. I believe we can do so without getting too far down into the weeds of the everyday practice of medicine. By working together, I am sure that this goal can be accomplished.

In addition, Mr. Chairman, I want to thank you for working with me to make some changes to the mental health bill that is before us today. I am proud to be a cosponsor of the bill and I think we have made a number of improvements with the version that is before this committee today. Of course, I think we could make the bill even better by adopting some of the amendments that have been noticed, but I will wait until later on to talk about that. It is my hope that we can get an eighth member back in, Mr. Chairman, and we can very quickly get this bill passed.

But again, I thank the committee.

Chairman AKAKA. Thank you very much. Senator Murray?

**STATEMENT OF HON. PATTY MURRAY,  
U.S. SENATOR FROM WASHINGTON**

Senator MURRAY. Thank you, Mr. Chairman and Ranking Member Burr.

Before I talk about the important bills that we are considering today, I, too, want to take just a couple minutes to talk about the CBS special news report that was on last night. I hope that everyone here had an opportunity to see that, and if you didn't, that you go back and take a look at it. I believe the second part is going to be tonight. It talked about a subject that is very tragic and really receives too little attention in our country today, and that is the number of veterans who are taking their own lives.

CBS did a 5-month investigation and found that 6,256 veterans committed suicide in 2005 alone—6,256. That is a death rate of about 120 a week. That is twice the national average for other Americans. Even more importantly, it found out that veterans between the ages of 20 and 24 that were most likely to serve in the War on Terror are taking their own lives at rates that are estimated between two and four times higher than the same age group in this country.

Those findings, I think, are just horrifying and they are really tragic, and Mr. Chairman, I hope it makes us refocus again on what we need to be doing to go out and find those young men and women and make sure they are getting the help and support they need in all of our communities. Truly, if these statistics don't wake up this country, nothing will.

Mr. Chairman, you talked about the hearing that we had and the testimony we had from Joshua Omvig and Justin Bailey, two veterans who tragically took their own lives after they returned home from Iraq. Their families' heartbreaking testimony and their advocacy did lead us to pass the Joshua Omvig Suicide Prevention Act that was the first step that I think we need to be taking. It was signed into law by the President last week and it was a commendable first step.

But if we watched that report, none of us, I think, can walk away from it saying we have done enough. I think we have to really look at what the cost and consequences of this war are, what we are

doing to reach out. We need to wake up our neighbors, our communities, our employers, our schools, and have them look around and saying, is there anybody here that I can reach out to and bring in and make sure they get the help. And I really hope that this wakes up the White House and that they take a very tough stance and reach out and make sure we are getting the numbers so that we can follow up and do what we need to be doing here.

So, Mr. Chairman, I just wanted to mention this at the top of this and thank you and Ranking Member Burr and say we have got a lot more to do.

With that said, I do want to say that I look forward to working with you on the bills that are in front of this committee today and hope that we can get them passed to the President quickly.

I do want to thank Senator Craig for working with me on the Epilepsy Centers of Excellence bill that is being considered today. You know, our bill will simply ensure that the VA is prepared and equipped to deal with what is going to be one of the long-term impacts of traumatic brain injury. It is a topic we have had a lot of discussion on here. We establish six Centers of Excellence in the VA system. It is based on the successful MS Centers of Excellence and Parkinson's disease research and education clinics that are currently operated by the VA. We know very little about the long-term impacts of TBI today and it is too early to determine what they are for our veterans from Iraq and Afghanistan, but we do know from past wars that many of the injuries associated with service take years or even decades to develop, so we have to be doing what we can right now to be prepared for these veterans with traumatic brain injury and what they are going to be facing down the road. So I thank you very much, Mr. Chairman, for considering that.

And one final comment. I am deeply concerned, at a time when we face so many challenges with our veterans, and this committee, in fact, has passed two good bills. Mr. Chairman, I heard you out on the floor this week trying to get them up for a vote. But we all know that the President made a splash by actually announcing a head of VA on October 30, General James Peake, but it has been 2 weeks and this committee still hasn't gotten the papers, so we can't move forward on considering this nomination until we get those. Mr. Chairman, I hope that the White House moves expeditiously so that we can get that nominee in front of us so we can put somebody in charge of the VA at a time where we have a lot of critical issues that need to be addressed.

Thank you very much, Mr. Chairman.

Chairman AKAKA. Thank you very much, Senator Murray.

Senator BURR. Mr. Chairman, could I inform Senator Murray that it is my hope that all of that paperwork will be here on Thursday. Clearly, the White House has expedited the FBI report. Until that officially comes up, the questionnaire that goes from the committee—but we are working on an expedited timeframe. It is my hope that the Chairman is in agreement that when we return from Thanksgiving, we would have an opportunity to potentially have a hearing and do a confirmation.

Senator MURRAY. Thank you very much.



Chairman AKAKA. I am glad to hear that. We will move as expeditiously as we can.

Noticing that we have eight members now present, I invite a motion to take up the agenda items.

Senator SANDERS. So moved.

Senator MURRAY. Mr. Chairman——

Chairman AKAKA. It has been moved. Is there a second?

Senator BURR. Second.

Chairman AKAKA. It has been seconded. The motion has been made and seconded. Is there any discussion on the motion before we act?

Senator TESTER. Mr. Chairman?

Chairman AKAKA. Senator Tester?

Senator TESTER. The motion includes all four of the bills?

Chairman AKAKA. Yes.

Senator TESTER. Is it appropriate now for me to make a statement and potentially offer an amendment?

Chairman AKAKA. Let me complete my statement.

Senator TESTER. OK.

Chairman AKAKA. The vote is on a motion that the committee approve the agenda items en bloc, subject to any subsequently adopted amendments. All those in favor, say aye.

[Chorus of ayes.]

Chairman AKAKA. Opposed, say no.

[No response.]

Chairman AKAKA. The ayes have it and the motion is agreed to and the agenda items are ordered reported to the Senate, subject to any amendments adopted during the markup.

Senator Tester?

Senator TESTER. Mr. Chairman, I would assume by looking at the agenda that the only bill that there are amendments for is S. 2162, is that correct?

Chairman AKAKA. That is correct.

Senator TESTER. So I will address that bill at this point in time and I want to echo my comrades here on this committee for you holding this markup.

I have an amendment that I want to offer at this point in time. This amendment will allow the VA to implement a system of automatically enrolling into the VA system the members of the National Guard who are demobilizing after they have served in a combat zone. According to the National Guard Association of the United States, only about 55 percent of the demobilizing Guardsmen register in the VA system. Those who do not immediately enroll often encounter delays of several days when they first try to get access to health care from the VA.

If a Guardsman does not register with the VA at the time of demobilization and decides to seek care from the VA, he or she must first go to a regional office. In Montana or other rural areas, this requires a significant time commitment and travel distance just to register. It then takes a day or two to get the name entered in the data base, and finally the Guardsman must go to a central VA facility for initial exam. In all, the process may take several days and involve considerable cost and time, all of which are disincentives for health care. And in the case where the Guardsman's needs are

mental health services, it may be such a disincentive that he or she may choose not to get health care at all.

I have had a visit with the Ranking Member on this committee, Senator Burr, and correct me if I say anything wrong, Senator Burr. He has agreed to work with my staff, his staff, and the Chairman's staff to resolve some issues that occur in this amendment, and I will just say that I have agreed to do that and I will withdraw the amendment, but I want to make one statement.

This amendment is the right thing to do. I don't think there is anybody on this committee that doesn't want to see people who fight for this country on the battlefield to get VA benefits. I look forward to working with Senator Burr and Senator Akaka on getting this amendment onto the first available bill on the floor that we can get it onto. I hope that we hold the bureaucracy's feet to the fire with this and don't just take excuses for them. We will give them the resources they need and get these people in the VA system.

So with that, Mr. Chairman, I withdraw this amendment. I look forward to working with Senator Burr and you to make this amendment a reality.

Senator BURR. Mr. Chairman?

Chairman AKAKA. Thank you very much, Senator Tester. Thank you for withdrawing it. I just want you to know that we will work with you at fixing it, as well.

Senator TESTER. Thank you.

Chairman AKAKA. Senator Burr?

Senator BURR. Mr. Chairman, thank you, and I want to thank Senator Tester. I think the spirit of what he is proposing, I think he stated very correctly. We all share the intent of this.

I am committed to work with you on the language and to accomplish the intent. As I shared with Senator Tester this morning, one of the challenges that we have as we look at the VA is to figure out how to better enable the VA to manage the population that they have got. I think it is safe to say if automatic enrollment is right for the Guard, then it would be right for everybody else, too. And all of a sudden, with the automatic enrollment, potentially the rolls are so large and the VA's inability to identify how many people are going to access entry points is so difficult that it would be extremely tough for them to get it right.

So I think there are ways that we can accomplish the spirit of what Senator Tester is trying to do, working with other members of this committee, working with the Veterans Administration, and figure out exactly how to structure it in a way, because I share, coming from a State that has many rural areas to it, that sometimes we think it is fairly easy for an individual to enroll or get health care, and you are right if you have transportation or if you know where to go, and that is not always the case.

So I want to make sure that what we create, they can manage, and what we create doesn't implode something else in the delivery system and create another problem for us.

Chairman AKAKA. Thank you, Senator Burr.

Senator BURR. Mr. Chairman, if nobody is seeking recognition, I would like to—

Chairman AKAKA. I was going to ask you to offer your amendment.

Senator BURR. Thank you. It is my intention to offer an amendment, Mr. Chairman, and I am, in the spirit of this committee, also going to withdraw my amendment. But as Senator Tester said, he thinks he is right. I think I am right, too, and it was my intent to have everybody vote on it. I am not going to do that, but I think it is time, especially hearing you and Senator Murray talk about the CBS story, that we admit that as it relates to the mental health services, the system that we currently have our veterans in just doesn't work. It may work for some, but it clearly doesn't work for all.

What my amendment would do is very simple. It would create an option for veterans, call it Option B. Option A is in place today. You come out, you need mental health services, you have a rehabilitation schedule. The likelihood is you file a disability claim. Six months, 8 months, 12 months down the road, your disability is approved and you get a check for everything back to the beginning.

The problem is you have got a veteran then challenged for, one, the health care that they need, and two, the cash that they need to survive. My option would say we leave it totally up to a veteran. You can enter that system. You can file a disability claim. You can roll the dice on when that comes due and then be approved for a monthly check. Or you can say, I am willing to delay filing my disability claim and I am willing to accept up to a year of the type of rehabilitation a medical professional tells me I need. And if I enroll in that rehabilitation, I get a cash stipend right up front. And every 90 days that they can verify that I have gone for treatment, I get another cash stipend. And if the treatment schedule is 6 months or if it is 9 months, up to 12 months, I will delay filing my disability claim until I have completed the rehabilitation.

You see, the system today is not designed truly to make somebody well again because it is left up to them as to whether they come for the appointment. Now, Senator Murray, I know, is passionate about this. We have to find an incentive that encourages these veterans to actually come for their treatment.

My fear is that when they are strapped for cash, the likelihood is they will not show up for the appointment. As a matter of fact, Mr. Chairman, just in the Los Angeles Times yesterday, there was an in-depth article. I won't read it for everybody, but I will read two lines at the end of it that I think summarize it very well.

"The months go by. One disability check comes and then the next, about \$2,500 a month. Miller sees Barringer, the psychiatrist, but only occasionally." Sometimes you just have to look at the culture of a small town—I won't name the State. Blake graduated from high school and had no future, so he joined the Marines and now he is home and has a steady income. Things are good. But sometimes, that is more of a negative than a positive, he said. Look at every time you go out to the mailbox and you get a disability check. It tells you how sick you are.

What we can do is we can offer veterans an option, a choice, something that they get the opportunity to exercise up front. Do I want treatment, rehabilitation, and recovery, or do I want the system that we have got right now where once I start getting my

check, I am less likely, because it is permanent, to come in and seek treatment?

I would only challenge my colleagues, if you believe the system that we have today works, then don't work with me. If you believe the system that we have today is broken and we have to change, then come with a better idea or help me to perfect this one, because I think our veterans deserve an option that is different than what we have currently got.

Plain and simple, the Dole-Shalala Commission came out and recognized it. The Disability Commission recognized it. The Disability Commission felt so strongly about focusing on the treatment of those with mental health, particularly PTSD, that they recommended that we condition the receipt of compensation on the receipt of treatment. Condition the receipt of compensation on the receipt of treatment. That is all we are doing.

We are actually saying, we are going to give you a cash incentive to be treated, to actually go to your appointment, to get the rehabilitation that we all agree you have to get if you want the outcome to be different. It is not to get around disability claims. It is not to get around a disability payment. It is to say, if we can take somebody from this level of disability and through rehab get them to this point, their quality of life is better because we have encouraged them, created the incentive, pushed them, challenged them to get the services they need.

I believe it is important. I believe it is important that we try something different. If this is not it, share with me what it is we need to do. But I think this certainly sets a marker out there that we are willing to think outside the box to make sure that our veterans get the type of treatment and that they are committed to actually go.

I thank the Chair.

Chairman AKAKA. I want to thank you, Senator Burr, for withdrawing your amendment, but I also want to urge you to introduce this amendment as a bill. When you do, I will tell you now that certainly I will hold a hearing on that so we can deal with it.

Senator BURR. Thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much.

Senator MURRAY. Mr. Chairman, could I just comment?

Chairman AKAKA. Senator Murray?

Senator MURRAY. Senator Burr, I want to thank you for your trying to reach outside the box and deal with this issue, and I am glad you withdrew this and I hope, Mr. Chairman, that he does introduce it as a bill, that we do have the time to look at it. I would just tell you that for many of our veterans, it isn't the benefits check, it is that they are lost in a remote community and they have no idea why they go home and have nightmares or don't understand why they can't remember where their keys are or why they feel that they are a different person and they really feel that this country doesn't understand them. That is why they often reach the end of their rope.

I think an important part of any package we put together has to have a better support system for families, and that is who we always leave behind in the VA. We take care of the veteran themselves. We talk about that all the time. But it is the mothers, the

fathers, the sisters, the brothers, the wives, the husbands who really need the support network and who need to know how they can reach out when they see their loved one getting lost and not knowing where to turn.

So I will take a look at what you have offered. I would like to see it and see what the consequences are. I fear that if we tell someone they cannot seek a new claim for a year, that some of these men and women who come home who don't even understand what has happened to them will fear that a few months down the road, they will discover they have traumatic brain injury and they will be denied the ability to change any claim if they have already said that they have mental health conditions, and I don't want to put anything on someone that will tell them, I don't want to seek treatment for mental health.

So I think we have to be very cautious as we move forward and I urge this committee to look at all options, but I hope, Mr. Chairman, that what we really look at is how we are reaching out to family members themselves to give them the support they need to get that government in for care.

Chairman AKAKA. Thank you very much, Senator Murray.

Senator CRAIG. Mr. Chairman?

Chairman AKAKA. Senator Craig?

Senator CRAIG. Mr. Chairman, I am going to have to leave for another hearing. I wanted to ask unanimous consent that an opening statement that reflects the nominee that we are going to have before us in a few moments become a part of the record.

Chairman AKAKA. Without objection, it will be made a part of the record.

Senator CRAIG. Thank you.

Chairman AKAKA. Are there any other comments?

Senator BURR. Mr. Chairman, can I just respond to Senator Murray real quick? I just want to make two points.

Chairman AKAKA. Senator Burr?

Senator BURR. One, no veteran would have to give up his or her right to receive compensation. Veterans at any point could file their disability claim. However, the wellness stipend that I have talked about would only be paid if the veteran agrees to stay faithfully in the program and to hold off of the claims during that treatment.

Second, a veteran doesn't have to give up compensation in order to receive the wellness program. The stipend would be lower if the veteran is already in receipt of compensation, but this program is designed to encourage service-connected conditions to get treated, as well. There is no requirement that compensation be reevaluated at the end of the year if the treatment works, and the Institute of Medicine says it does, that this is very crucial, then the veterans will have a better life to live as they seek additional treatment.

I really want to stress with my colleagues, this is not a substitute, this is an option. This is to say to a veteran, here is the pathway. This is the one we have got today. You evaluate it. Here is another one. If this fits your condition, if it fits your expectations, if it fits your financial needs better, then the option is to choose it. At any time if you want to stop if you are in Option B, stop and go back and file your disability claim and eventually get a monthly payment, that is fine.

But I truly believe that we have to recognize the fact that today, for whatever host of reasons, that a person is seeing there are mental health services that are needed, they may start the first week, the first month, but over time, they begin to miss those appointments and we know—we know and the medical profession has proven that a satisfactory outcome for mental health involves a very regimented schedule of individuals receiving services. I want us to simply try something that encourages these kids to actually get those services.

Senator MURRAY. Mr. Chairman, I would commend that. I would just remind you that too many of our veterans have called for an appointment and haven't gotten one, so we have to make sure that we have enough resources available that they are not denied those services once they try to enter the VA. But I don't disagree with you that getting them in to get the counseling is absolutely critical. Finding a way to incentivize that and make it happen is truly important.

Chairman AKAKA. Thank you very much.

Well, I believe that concludes the amendments.

Before we adjourn this markup, I express my appreciation to each of the members of this committee as well as their staffs who have worked hard on this. In my opinion, we have produced a solid body of legislation that will benefit millions of veterans and their families. I extend a big thank you to the Ranking Minority Member and his staff for their contributions to this process. I look forward to continuing to work together with all of you in the weeks and months to come. There is much that remains to be done, but we have made a large step in the right direction.

After I adjourn this markup, which I will do shortly, we will reset the room and proceed to a hearing on a nomination.

This markup stands adjourned.

[Whereupon, at 10:07 a.m., the committee was adjourned.]

