

**Congress of the United States**  
Washington, DC 20510

October 17, 2019

The Honorable Robert Wilkie  
Secretary of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, DC 20420

Dear Secretary Wilkie,

On August 12, 2019, we wrote to you with concern that the Department of Veterans Affairs (VA) inappropriately denied payment for veterans who received emergency care from non-VA providers. On September 9, 2019, the United State Court of Appeals for Veterans Claims decided in *Wolfe v. Wilkie*,<sup>1</sup> that VA is indeed responsible for reimbursing veterans for emergency care obtained outside of the VA system, and indicated that over 600,000 veterans may be affected. We request a detailed explanation regarding a compliance implementation plan and intended outreach to impacted veterans.

The Court in *Wolfe* found that VA “effectively rolled back the clock and, with no transparency, essentially readopted a position we have authoritatively held inconsistent with Congress’s command.”<sup>2</sup> We will echo the Court’s opinion that this situation is completely unacceptable. The VA has had almost a decade of notice that it was responsible for paying for emergency treatment for veterans. Congress amended 38 U.S.C. § 1725 in 2010 specifically to “allow the VA to reimburse veterans for treatment in a non-VA facility if they have a third-party insurer that would pay a portion of the emergency care.” Despite this, the VA purposely changed its regulations to exclude reimbursement if there was any other insurance.

In 2016, the Court of Appeals for Veterans Claims decided in *Staab v. McDonald*<sup>3</sup> that the VA’s interpretation of 38 U.S.C. § 1725 was wrong, and that VA should reimburse veterans for emergency care that is not covered by another insurer. At a June 14, 2017 hearing of the Senate Committee on Veterans Affairs, then-Secretary of Veterans Affairs, David Shulkin, committed to voluntarily withdrawing the appeal of that case, and pledged that VA was planning to move forward with payment of these claims. Instead, the VA stopped processing these claims while it revised its regulation, again preventing veterans from receiving reimbursements for ER claims. The VA also continued to send letters to veterans incorrectly writing that, “VA has no legal authority to pay a veteran’s cost shares, deductibles, or copayments associated with their other health insurance.”

---

<sup>1</sup> No. 18-6091, 2019 WL 4254039, (Vet. App. Sept. 9, 2019)

<sup>2</sup> *Id.* at 2.

<sup>3</sup> 28 Vet. App. 50 (2016)

We request a thorough explanation of how and when the Department intends to comply with the *Wolfe v. Wilkie* decision. In addition, we ask the Department to answer the following:

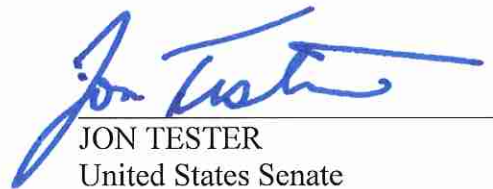
1. Does VA intend to appeal the decision in the *Wolfe v. Wilkie* case?
2. On what date did VA stop sending letters incorrectly stating, "It is important to note that VA has no legal authority to pay a Veteran's cost shares, deductibles or copayments associated with their other health insurance?"
3. Will VA comply with the court order to prepare and submit to the Court for approval, a plan for providing notice to veterans affected by October 24, 2019?
4. What criteria will the Secretary use to readjudicate *Wolfe* claims, and what is the timeline for decisions on these claims?
5. When and how does VA plan to inform veterans affected by this Court decision?
6. What is the timeline for reimbursing veterans affected by this Court decision?
7. Please provide a state-by-state breakdown of impacted veterans and planned reimbursements.

It is inexcusable that the VA has directly suborned Congressional intent and two separate judicial decisions, causing a situation in which thousands of veterans have suffered while waiting for the VA to follow the law. These veterans have waited for years, through unlawful rejections of their claims, suffering potentially unreparable damage to their financial well-being.


We intend to personally communicate with veterans in our states and around the country to inform them of when they will receive their rightful reimbursements. We appreciate your urgent attention to implementation without delay.

Sincerely,

  
RICHARD BLUMENTHAL  
United States Senate

  
JON TESTER  
United States Senate

  
MARK TAKANO  
Member of Congress

  
JULIA BROWNLEY  
Member of Congress

*B. Sanders*

---

BERNARD SANDERS  
United States Senate

*Sherrod Brown*

---

SHERROD BROWN  
United States Senate

*Mazie K. Hirono*

---

MAZIE K. HIRONO  
United States Senate

*Chris Pappas*

---

CHRIS PAPPAS  
Member of Congress

*Conor Lamb*

---

CONOR LAMB  
Member of Congress

*Susie Lee*

---

SUSIE LEE  
Member of Congress