

United States Senate

WASHINGTON, DC 20510

February 9, 2018

The Honorable David J. Shulkin
Secretary of Veterans Affairs
810 Vermont Avenue, North West
Washington, DC 20420

Dear Secretary Shulkin,

On January 9, 2018, the Department posted an Interim Final Rule revising its regulations regarding payment or reimbursement for emergency treatment for non-service-connected conditions at non-VA facilities in compliance with the April 8, 2016, Court of Appeals for Veterans Claims decision in *Staab v. McDonald*, 28 Vet. App. 50 (2016). Despite that revision, thousands of veterans will not receive relief and will be left with no VA assistance for potentially high medical bills because of the Department's wrongful application of the law and a pre-April 8, 2016, decision not to grant their claims. We believe this is wrong.

In 2010, Public-Law 111-37, the Expansion of Veteran Eligibility for Reimbursement Act, directed VA to bar reimbursement of emergency treatment claims only if a veteran's other health insurance would wholly extinguish the veteran's liability for payment. Subsequently, the court's decision in *Staab* reversed a Board of Veterans' Appeals decision that inappropriately concluded that a partial payment for emergency treatment by a veteran's other health insurance barred VA reimbursement. Between 2010 and April 8, 2016, VA erroneously denied thousands of such claims.

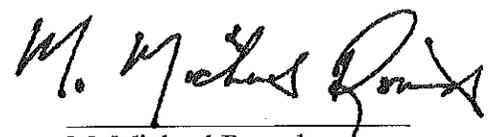
In the January 9, Interim Final Rule, VA stated that it intended to adjudicate claims pending on or after April 8, 2016 – the date the court reversed the Board's decision. This means that for those veterans who filed claims between the enactment of P.L. 111-37 and April 8, 2016, and received an erroneous final decision on their claims, under the Department's Interim Final Rule, they would see no relief from VA's wrongful application of the law and would be stuck paying medical bills that Congress intended that VA pay.

We ask that the Department amend its Interim Final Rule to include those veterans whose claims were decided before April 8, 2016, and subsequent to enactment of P.L. 111-37, so that all veterans can fully take advantage of a benefit Congress intended they receive. If VA lacks the authority to pay for those bills or reimburse veterans for the payment of medical bills they have already paid, we ask that you provide an explanation as to why and what needs to be amended under current law to allow VA to provide that benefit.

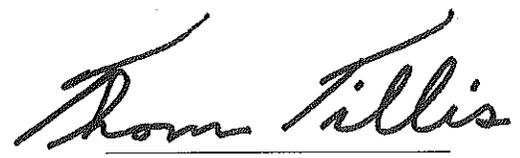
For far too long veterans have been punished for VA's mistake. Congressional intent was clear in requiring the VA to cover costs incurred by these veterans and VA must act to make them whole without further delay.

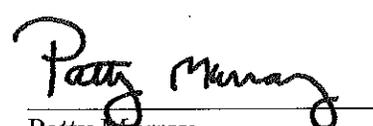
Sincerely,

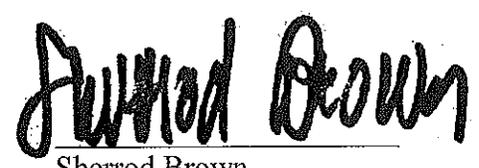

Jon Tester
United States Senator


M. Michael Rounds
United States Senator

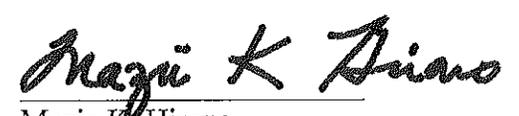

Tammy Baldwin
United States Senator


Thom Tillis
United States Senator


Patty Murray
United States Senator


Sherrod Brown
United States Senator


Richard Blumenthal
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Mazie K. Hirono
United States Senator


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United States Senator


Bernard Sanders
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Steve Daines
United States Senator