

## **MEETING TO CONSIDER PENDING LEGISLATION**

**WEDNESDAY, DECEMBER 9, 2015**

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

The Committee met, pursuant to notice, at 2:41 p.m., in room 418, Russell Senate Office Building, Hon. Johnny Isakson, Chairman of the Committee, presiding.

Present: Senators Isakson, Moran, Boozman, Heller, Cassidy, Rounds, Sullivan, Blumenthal, Murray, Brown, Tester, Hirono, and Manchin.

### **OPENING STATEMENT OF HON. JOHNNY ISAKSON, CHAIRMAN, U.S. SENATOR FROM GEORGIA**

Chairman ISAKSON. I call this meeting of the Senate Veterans' Affairs Committee to order. I thank all the Members for being here. We have a working quorum. We have at least eight, with at least one from the minority party here, and we more than meet that standard, so we will get started to try to make this go as quickly and as pleasantly and as proudly as possible, while as thoroughly as possible, too.

Let me begin my opening statement by saying that I am delighted we have remained steadfast to our commitment to ensure that everything we do here is paid for. In fact, the omnibus bill that we will consider in a little bit is \$185 million less than it spends, so we are actually saving money rather than spending money. We are also dealing with programs that make a huge difference.

I want to commend former Committee chair, Patty Murray. This is Patty's day. She coauthored Elementary and Secondary Education Act, which we adopted that today and are getting ready to have a big celebration at the White House tomorrow. She has helped negotiate a settlement today, which I think has been done satisfactorily, on some of the objections we had earlier on the Isakson amendment. She has been a great contributor to the Committee and I want to commend her on the development and the approval of the caregiver bill, which we will ratify in a little bit. It is a great benefit to all of our veterans and their families and those who provide care to our veterans, regardless of when and for how long they served.

Tammy Baldwin is in the audience; she is not a Member of the Committee, but I also want to commend her. The Jason Simcakoski Memorial Opioid Safety Act is included in the omnibus bill. We all

were here for the hearing about the terrible tragedy in Jason's life, and his contribution will be lasting when this legislation memorializes the lessons learned from the opioid incident that happened at Tomah. Tammy, I want to thank you very much for your contribution and I am glad we were able to deliver on what we promised.

We have a bipartisan agenda representing both parties. In fact, if I remember correctly, we ended up having almost an identical 50–50 split in terms of the number of things adopted from each party, 20 in the Democratic, 19 in the Republican party in terms of the omnibus. So, we tried to be very open, very bipartisan, very positive. We had a few bumps along the road, one of them on an amendment that I proposed, but we have had a successful negotiation with Senator Murray and others and we have come up with a good compromise that I think everybody can agree to, and we will talk about that in just a little bit.

Most importantly, I also want to thank Senator Manchin and Senator Boozman. It is their underlying bill which will be the vehicle that this omnibus will carry forward on. I appreciate their cooperation and their hard work, and I appreciate the support the Ranking Member has given to our hearings and what we have tried to accomplish here in this particular markup with this particular agenda.

With that said, I will turn to the Ranking Member for any opening comments he might want to make.

**OPENING STATEMENT OF HON. RICHARD BLUMENTHAL,  
RANKING MEMBER, U.S. SENATOR FROM CONNECTICUT**

Senator BLUMENTHAL. Thanks, Mr. Chairman. You really said it well. This has been a real collaboration and alignment of focus and interest on improving the lives of our veterans, which is certainly about as bipartisan as any goal or cause can be.

I really want to thank all of the Members of this Committee. Literally, every Member of this Committee has drafted provisions that will go into this omnibus. That is a rare, if not unique, occurrence for an omnibus bill. Every Member of this Committee has contributed substantially to this bill. I want to thank the Chairman for his leadership and oversight to make sure that it was bipartisan and truly collaborative, both in drafting and investigation, that led us to this point.

It is not, by any means, a final answer to the problems that bedevil the Veterans Administration or fully provide for all of the obligations that we owe our veterans, but it is another downpayment. It has bipartisan measures to improve benefits and services that veterans need and deserve, to keep faith with those veterans, make sure we leave no veteran behind, and to strengthen VA accountability.

In that connection, I want to thank my colleague, Senator Moran, because S. 290, as modified, includes common sense accountability provisions from his measure and many key provisions from S. 1856, legislation I introduced with 27 cosponsors to strengthen VA accountability. This bill gets into the trenches. It digs deep into the issues that have undermined VA accountability. We all believe in holding the VA accountable, especially managers, for employee performance, making sure that poor performance or misconduct is

disciplined and that training for managers is improved. It also limits administrative pay for an employee who is under investigation from his conduct to 2 weeks of evaluation.

The comprehensive immigration bill that we are considering, as the Chairman rightly noted, includes a caregivers' assistance measure that Senator Murray has championed relentlessly and tirelessly. I want to thank her for her persistence. We all know around here that perseverance and persistence are the key to getting things done.

I also want to thank Senator Tillis for joining with me to craft Section 201, the provision allowing for the restoration of G.I. benefits for students who attended bankrupt nonprofit schools.

I want to thank Senator Baldwin, who is here today—she is not on the Committee—but true to her dedication to the problem of opioid and over-prescription, opioid misuse and over-prescription of other drugs, she is here to see her measure adopted. She did an extraordinary job of looking at the problems of Tomah, WI, then drafting many of the provisions included here today on opioids and reforming VA's pain management practices.

There have been some bumps, as the Chairman noted, along the way, but that is normal in the legislative process. What is truly remarkable today is that we have overcome those bumps. We will have more bumps, as we have not fully solved all these problems, but the Committee, I think, has established a really solid foundation for moving forward. So again, I just want to thank you, Mr. Chairman.

Chairman ISAKSON. Thank you very much, and thank you for your service as Ranking Member.

I think it only appropriate, since we are using the Boozman-Tester bill as a vehicle, to recognize Senator Tester and Senator Boozman for any comments they might want to give. I will recognize Senator Tester first.

**STATEMENT OF HON. JON TESTER,  
U.S. SENATOR FROM MONTANA**

Senator TESTER. Yes. Thank you, Mr. Chairman. I just want to thank you and the Ranking Member for allowing us to move forward on a number of critical provisions today.

Some have already been mentioned, plus I certainly appreciate your inclusion of several provisions I have introduced, including provisions of my DOCS for Veterans Act that is going to help address the VA medical workforce shortages and vacancies across the country.

I think we are also taking significant steps on behalf of recently-widowed spouses of veterans, caregivers, homeless veterans, and thanks to Senator Baldwin we are able to advance some common sense reforms, not only on whistleblowers, but on opioid treatments. I just want to thank you for doing that.

I also would just like to point out that Mike Missal was in here a while back. We held a nomination hearing on him. I do not think there were any objections. I think we all want to see the VA work better. I would love to see that nomination go out today, if we could. I would certainly vote to suspend the rules to do that and

get it over to Homeland Security so they can do their work on him, too.

That is all, Mr. Chairman. Thank you very much.

Chairman ISAKSON. Since you raised that question, and since Senator Boozman just walked back, before I recognize Senator Boozman, Senator Rounds posed a very appropriate question in the hearing about—submitting a plan to us regarding what he would do when he got to the IG's position to address some of the problems that we have had with information flowing to us, et cetera. His response was—and this is not a quote, this is my interpretation of what he wrote—was that he really did not have time to do it. He would get it to us after he was confirmed.

That, to me, is not the right answer, so we are going to be notifying him today to please give us the answer as to what he plans to do to implement his operation when he is confirmed, which may take us a little more time. So, we are not going to be able to report him out today, but I talked to Senator Rounds about this and we will be sending that to him today.

Hopefully, he will find the time to give us that report, because I want to know when he takes over what he plans to do about the shortcomings that were talked about, because we want him to make an improvement in that office. I think he is capable of doing that, but I think if we do not find out before the confirmation, we certainly will not find out afterwards.

Senator TESTER. All I would say, Mr. Chairman, is I think it is important to find out what he is going to do after he gets into office and I think it is important that we hold him accountable after he gets in office. In the meantime, I would just hope that we would press him to get that information back ASAP so we can get him confirmed. I certainly do not want to be guilty of the same thing the Administration was, and that is of holding up the IG.

Chairman ISAKSON. That will be done.

Senator Blumenthal, did you want to say something?

Senator BLUMENTHAL. I would like to just express my support for the point raised by Senator Tester. The sooner we have an Inspector General in place, the sooner there will be enforcement, and I know personally what enforcement means. It means investigation, fact finding, probing, searching, producing answers, and going back to the questioning which the Chairman so rightly did with him. The IG should be reporting to us on this Committee, and the sooner he is in place working at that job, the better the VA will be. So, if I can play a part in making sure that report, Mr. Chairman or Senator Rounds, is expedited, I certainly would like to do so.

Finally, as we go into this markup, I want to thank our staff, both our staffs, all our staffs on both sides, because they worked together very well and have done a really good job.

Chairman ISAKSON. Well, thank you. I can assure you that both you and Senator Tester will be copied on my communication to Mr. Missal so you will be kept in the loop and know who is responding to whom. There will be no foot dragging, I promise you that.

Senator Boozman, you are recognized. It is your bill along with Senator Tester's that we are using as a vehicle. I wanted to see if you had any comments that you wanted to make.

**STATEMENT OF HON. JOHN BOOZMAN,  
U.S. SENATOR FROM ARKANSAS**

Senator BOOZMAN. Well, thank you, Mr. Chairman.

I think, in the interest of time, I may like to put a fuller statement in the record. I just want to take a second to thank Senator Tester; working with him, and really, in fact, working with the entire Committee, that is something that we can be so very proud of. The reputation that this Committee has—being very bipartisan and really trying to produce results that are going to impact veterans—the legislation that we are looking at today, I think, does that.

So, thank you, Senator Isakson, Senator Blumenthal, for your hard work, again, in just getting these things such that you can kind of come to agreement, which you have to really come to an agreement, and that takes a lot of hard work sometimes. I appreciate everybody negotiating in good faith and, at the end of the day, coming up with a good product.

Thank you, Mr. Chairman.

Chairman ISAKSON. Thank you very much, Senator Boozman, and thanks to you, Senator Tester, and all the Members of the Committee.

I offered an amendment to the omnibus that incorporated the provisions of Senator Hoeven's bill with regard to contract providers, private nursing homes, and State nursing homes, and I really owe the Committee a little bit of an apology. I should have done it earlier, but I got caught dealing with something I did not know what I was dealing with until the dog had already gotten out of the doghouse, so to speak.

I met with Senator Murray earlier today. We talked about trying to address some of the concerns with what I attempted to do to rectify the situation I was trying to correct. I think we have reached an agreement. I know I have agreed to what I understood she offered. But, I wanted to recognize Senator Murray to make any comments she wants to make with regards to the modifications of the Isakson amendment, and then we will vote on that modification to ensure it is in place.

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

Senator MURRAY. Are you going to let Senator Brown offer his amendment, too?

Chairman ISAKSON. We will at the appropriate time.

Senator MURRAY. OK. Well, first of all, thank you, Mr. Chairman. We were very concerned by the provision that we literally found out about last night in terms of the provider agreements.

I really think that we need to make sure that we can accomplish the goals we set out to here without undercutting critical civil rights protections in this country. Protections against discrimination are not the problem we are dealing with and there is no reason to tear apart sensible and fair protections for people of color, or women, or Americans with disabilities, or religious minorities, or LGBT Americans.

I appreciate your coming to me this morning. We did offer you a revision that sunsetted the provision, and I think you have incor-

porated that into your amendment. But, I think that we all should be well aware that—I will support the Brown amendment, and I know he will speak to that—but that the intent of this should not be to undermine people's protections as we move forward to protect our veterans.

Chairman ISAKSON. Thank you, Senator Murray.

For the education of the Committee—and Senator Manchin, please correct me, I know you are familiar with this, if anybody else wants to correct me, they are welcome to—but the intent of Senator Hoeven's bill was to keep Medicare and Medicaid regulations from being imposed upon nursing home providers in places where they literally could not afford the burden of regulation placed upon them. It was not to get them out from under any discrimination laws, because they do not want to discriminate against anyone.

But, if you could see the volume of compliance requirements nursing homes have under Medicare and Medicaid, to put them in a position of meeting those has caused many of them to get out of that business, two of them in my State, by the way. I did not bring it with me, I left it in my office, but I have gotten e-mails during the course of the year from people who stopped taking veterans because of the cost they were going to have imposed upon them because of the additional labyrinth, if you will, of regulation that would be placed on them.

So, what we have done—and the original intent of the amendment was, to keep them from operating under the Medicare-Medicaid requirements. What you offered, or what I encouraged you to offer and we negotiated on the time, is a 2-year sunset on that provision, which means it dies at the end of 2 years and Congress would have to deal with any extension of dissolution, and I think that is seen to right the system as far as everybody is concerned and so I am, at this time, before anybody else speaks, going to ask for consideration of the modification to the Isakson amendment, which basically is a 2-year sunset on the provision that was posted in the original notice.

Senator Tester.

Senator TESTER. Yeah. I just have some questions, because it is—it came on fairly quickly. So, does this—you said it applies to contract providers, State nursing homes, and private nursing homes? I believe that is correct.

Chairman ISAKSON. That is correct.

Senator TESTER. Does this allow them to discriminate on the basis of race?

Chairman ISAKSON. It does not allow them to discriminate on anything. It relieves them from some of the Medicare and Medicaid regulatory burdens that are placed upon them.

Senator TESTER. So—

Chairman ISAKSON. There have been some—

Senator TESTER. Just help me out to understand this, because this—it has been—and if I am wrong, I hope I am—it has been described to me that they could discriminate on the people they hire or the people they take in—

Chairman ISAKSON. The reason for the—

Senator TESTER [continuing]. Based on religion? I do not want to go down the Trump road here. I mean, I just think if this is what we are trying to do—

Chairman ISAKSON. It is not what we are trying to do.

Senator TESTER. OK, because that is totally unlike you, Johnny, to do something like that, so that is—

Chairman ISAKSON. I would not do that.

Senator TESTER [continuing]. So, I have got to make sure we know what we are voting on here. So, what does—I know you said it relieves them of some of the regulation, but—and I can let Sherrod talk to this with your—but, I mean, the Department of Labor talks about discriminating on the basis of color, marital status, sexual preference, religion. If that is, indeed, what is happening, that is not a road we want to go down.

Chairman ISAKSON. The opponent—let me—I want to recognize Senator Manchin.

**STATEMENT OF HON. JOE MANCHIN III,  
U.S. SENATOR FROM WEST VIRGINIA**

Senator MANCHIN. If I could, maybe, because I had the same concern that you are having, Jon, but I am understanding that the amendment basically clarifies the underlying text to ensure that long-term care providers are only subject to the same rules and regulations as Medicare and Medicaid. It is giving our former servicemen and women more options to access nursing homes. We have waiting lists. We cannot find nursing homes. We are not building any nursing homes. We are just trying to open up some beds for them, for our veterans to get into. But, I am understanding, Jon, that, basically, Medicare and Medicaid regulations are, you know, the same rules as we already have for Medicare and Medicaid. Your amendment does not give them relief—

Chairman ISAKSON. It will not relieve anybody of any—

Senator MANCHIN. You are not relieving anybody, no.

Chairman ISAKSON [continuing]. Obligation to meet the civil rights laws of the United States of America in any category.

Senator MANCHIN. Right.

Chairman ISAKSON. That has been used by some as the stalking horse to not have an exemption for State nursing homes or private providers, but that is not the case. It is not an open door or a back door for somebody to discriminate against anybody because they are Jewish, because they are Swedish, because they are from the South, or whatever it may be. But, it is to recognize the fact that we all must realize when you define people by the fact that they provide a service as a contract provider and place them under a voluminous number of regulations to meet, that sometimes we run people out of providing services that we otherwise would not even be in the business—

Senator MANCHIN. Jon, they will only be subject—as I am understanding, under your amendment, the nursing home providers will only be subject under the Medicare and Medicaid rules as we have them today—

Chairman ISAKSON. That is correct.

Senator MANCHIN [continuing]. Which most of them are. If a nursing home is not operating under those rules, we cannot con-

sider them. But most of them are. So, I think we are in line with what we are doing with Medicare and Medicaid.

Chairman ISAKSON. You answered the Senator's question better than I could.

Senator TESTER.

Senator TESTER. Well, so, what kind of relief are we giving them? I mean, can you give me an example of what the VA requires over in Medicare?

Chairman ISAKSON. We are just not placing them to automatically come under a burden of regulations all because they become a contract provider to meet a need VA has—

Senator TESTER. I have got you. No, no, I have got you. I have got you on that. I just—

Chairman ISAKSON. And there is no back door—

Senator TESTER. OK.

Chairman ISAKSON [continuing]. Ability for them to discriminate against anybody on any characteristic.

Senator MANCHIN. Let me make one other thing clear, too, because I worked with Senator Hoeven on this, they are not going to fall under, I think, under the Office of Federal Contract Compliance Programs. That is all we are saying.

Chairman ISAKSON. Correct.

Senator MANCHIN. The only thing the nursing homes are saying is, if you require me to fall under those guidelines, we are not going to take the veterans, so they are not.

Chairman ISAKSON. They cannot—it does not make any sense for them to.

Senator MANCHIN. That is what I am saying.

Chairman ISAKSON. We are trying to get homes to take veterans—

Senator MANCHIN. So, if you want to find a nursing home bed—

Chairman ISAKSON [continuing]. But we want to fill that need.

Senator MANCHIN [continuing]. That are taking care of Medicare and Medicaid patients, and our veterans in the same condition will have stricter requirements, those nursing homes will not take them. Chairman Isakson is saying that he is going to put a 2-year sunset, right—

Chairman ISAKSON. Absolutely.

Senator MANCHIN [continuing]. To see if it changes within that period of time. But, this opens up immediately. The Chairman's amendment opens up immediately some nursing home beds that we do not have. I am totally in support and favor of this.

Chairman ISAKSON. Senator Moran.

#### **HON. JERRY MORAN, U.S. SENATOR FROM KANSAS**

Senator MORAN. Mr. Chairman, thank you. I am following the discussion, the conversation, and I want to make sure I understand what the amendment does, and what my take would be. We have seen so many times the VA has created additional burdens, requirements, restrictions, costs associated with those things. What this amendment says is, if you comply with the Medicare and Medicaid requirements, that is satisfactory. The VA does not go beyond

that. Is that a layman's explanation of what this amendment is doing, does?

Senator MANCHIN. The amendment, as I am understanding it, does not require nursing homes that wish to take a veteran, if we pass this amendment, to fall under the Affirmative Action Plan required by the Office of Federal Contract Compliance Programs, even if they only took one. We are trying to open up some beds and we want to make sure that the provisions under the Medicaid and Medicare that you have to provide right now for nursing homes are met. This is a new requirement. And the nursing homes are saying, we will not comply with that right now.

The Chairman is saying that, basically, we want you to open up those beds, so we will do a 2-year sunset. Let us see if you will comply with that, and we can work this out within that 2-year period, I believe is what you are saying.

Chairman ISAKSON. And one of the—

Senator BROWN. Mr. Chairman.

Chairman ISAKSON [continuing]. Best examples—I will be right there, just 1 second. I am going to go to Senator Blumenthal, then I will go to you in order of who has asked for recognition.

In Warner Robins, GA, next to Robins Air Force Base, one of our three air logistics complexes in rural Georgia, there are no VA nursing homes. There is no access to a VA nursing home. The closest nursing home is 120 miles away in Augusta, GA. This opens the opportunity for more beds to be available to veterans and for those nursing homes to be reimbursed by the VA for those services. That is the intention of the amendment.

Senator Blumenthal.

Senator BLUMENTHAL. I am going to yield to Senator Brown. There are two aspects to preventing discrimination. One is to set forth a prohibition on it and the other is to assure enforcement. I believe that it is the intent, the strong intent, unequivocal and clear intent of this Committee that there will be no discrimination based on sex, sexual identity, race, color, national origin, disability, and veteran status. Am I correct about that?

Chairman ISAKSON. The Senator is correct.

Senator BLUMENTHAL. Now, we all agree, Senator Manchin, that we want more beds. We want more facilities. We want more opportunities for our veterans. I think we have unanimous agreement on that point. Then, the question is, how do we assure that there is enforcement of that intent? Some want it to be through the Office of Federal Contract Compliance Programs, which would have been our preference, and to require Affirmative Action Plans, which are not ordinarily bureaucratic red tape or regulations. But Senator Murray has wisely and ably worked out with Senator Isakson a modification to reduce to 2 years the sunset, or to sunset after 2 years the means of enforcement which is an alternative.

I am going to support the amendment that Senator Brown is going to offer and I am going to yield to him.

**HON. SHERROD BROWN, U.S. SENATOR FROM OHIO**

Senator BROWN. OK. Thank you, Senator Blumenthal, and thank you, Senator Isakson.

I never question Johnny Isakson's intent. I know John is neither—I think the confusion, in part, is this, that the Medicare and Medicaid rules are about patients and the Department of Labor rules are about employees. Of course, we want the Medicare and Medicaid rules to remain in place to protect patients so no patient is denied admission. An African-American veteran from Columbus, GA, or a white veteran from Columbus, OH, should both be admitted if they qualify in other ways, of course, or a gay patient or a straight patient, or a Jewish patient or a Buddhist patient. So, I think we are all in agreement there.

The issue is the workers at these institutions, and that is where the Department of Labor comes in. The division you mentioned, the Office of Federal Contract Compliance, that is the reason DOL sent the letter to the Chairman and to Ranking Member Blumenthal and that is the reason that the Human Rights Campaign, the National Women's Law Center, and the Leadership Conference on Civil Rights all weighed in on not just my amendment, on this issue, that it really is about discrimination of hiring.

I know that there is not a Member of this Committee that thinks we should discriminate. I know that this is a difficult issue because we want—we are not—we want more beds, but this really is not a question of having beds or not. This is a question of if there are beds available and as employees are hired, that they should not face discrimination. It is a question of the law and a question of enforcement, as Senator Blumenthal said.

So, that is the purpose of the amendment and the reason we want to bring the bill back to protecting those workers from discrimination as Medicare and Medicaid, we all agree, protects the patients from discrimination.

Senator HIRONO. Mr. Chairman.

Chairman ISAKSON. Senator Hirono.

**HON. MAZIE K. HIRONO, U.S. SENATOR FROM HAWAII**

Senator HIRONO. I would like some clarification on this amendment. So, by saying that the section, they should not be treated as a Federal contractor or subcontractor, I really do not know what that means in terms of whatever regulatory relief we are providing with this language. At the same time, I am told that the Medicaid and Medicare provisions will apply. Senator Brown just said that the language that we are—the language of the amendment basically will allow for discrimination in terms of hiring by these contractors, and you seem to have said that is not your intention, but—

Chairman ISAKSON. That is not the intention of this.

Senator HIRONO [continuing]. But if the language allows that discrimination to occur, then the intention may be great, but if the language allows for discrimination, that is not a good result.

Chairman ISAKSON. The language does not allow for discrimination, nor does it promote discrimination. Let me read—I am going to read this. My staff has provided me with a written answer, which will be better than my mental elaboration of what my recollection is.

The language in this amendment clearly states that these providers, the nursing home providers, are not direct contractors of

the government. As such, Federal contracting rules and procedures, which can often be onerous, if they would interfere with the veteran's access to care should not apply to these providers. This is the service that does not apply to the providers. I am not talking about the employees or anything else. We have already set this standard in the Veterans Choice Act and have no reason to create a new standard.

Similarly, health providers who participate in Medicare are not required to be government contractors in recognition of the unreasonable regulatory burden that this would place upon small providers, especially in rural areas, which explains my reference to Robins Air Force Base. As with Medicare, providers covered under this bill are still subject to the same Federal anti-fraud, civil rights, and employment statutes that would apply to any other business.

This is as clearly as I know how to read it.

Senator Tester.

Senator TESTER. Thank you, Mr. Chairman.

I have no doubt that what you are trying to do is what you say you are trying to do. I would just say that your amendment eliminates on page 143 lines 20 through 23. I can go back and read the whole paragraph for you, but, basically, it says, all employment nondiscrimination provisions in Federal, State, and local laws and such laws as otherwise promote employment opportunity for veterans, that will be eliminated. That paragraph will be stricken.

Chairman ISAKSON. Is that your understanding, Senator Murray?

Senator MURRAY. I share the concerns of my side here on this. I think that we should all be very careful, particularly today, what we are saying and what we are doing. I know that we have a number of organizations who are deeply concerned about this, from the National Women's Law Center to National Partnership for Women and Families. Many of them, which I agree with, are concerned.

So, I think it is important to clarify, because I do know you have the votes to pass this and appreciate your working with us to sunset this. But, I expect the VA, and I hope that everyone here does make that commitment and will be responsible to uphold our values of equality and nondiscrimination. I think that means that they should not, and this Committee should affirm, they should not enter into any agreements with institutions that permit discrimination. I just think that Federal tax dollars should not be spent to subsidize unlawful discrimination, and I hope that that is the intent of this Committee.

Chairman ISAKSON. Three members have said, and Senator Tester has made the note that he does not believe that I personally—

Senator MURRAY. Correct. That is correct.

Chairman ISAKSON [continuing]. Would intentionally discriminate against anyone. Neither does this Committee feel that way. Further, I have been assured by those that brought this idea to our attention at the beginning, which is the Hoenen bill that we debated some 6 or 8 months ago before the Committee, that is not the intent nor is it expressly stated in the law. I think Senator Blumenthal, who is a lawyer while I am not, talked about the enforcement provision and the difference there.

There is no intent or allowance for discrimination whatsoever, and I agreed to the sunset for the express purpose of allowing Sen-

ator Blumenthal, my crack lawyer, and Senator Tester, my great investigator, to find out if there is anything happening nefarious out there in the world of health care services to veterans through nursing homes that got this covered so we could correct it and fix it. But, that is the reason for the sunset to begin with, is to assure you, and I want us all to have time to make sure it works the way it is supposed to and then readdress the issue in 2 years.

Senator HIRONO. Mr. Chairman.

Chairman ISAKSON. Yes.

Senator HIRONO. If I may. So, if the intention is not to allow for discrimination or to encourage discrimination, can we have some Committee language in the bill that says that?

Chairman ISAKSON. That will be in the—I have already covered—you all confirm this, now, I am getting ready to make a statement. In our previous meeting, I told the staff, I want to put the report language in the bill to express exactly that—

Senator HIRONO. That would be—

Chairman ISAKSON [continuing]. So there is absolute clarity on what the intention of the bill is from the beginning so nobody can do what is happening right now in the Committee, and that is take some information and extrapolate it into a crisis that does not exist. I will make sure that report language is in there personally, and I will be glad to submit it to all the Committee to see when we do that.

Are there any other questions? I am sorry.

Doctor.

#### **HON. BILL CASSIDY, U.S. SENATOR FROM LOUISIANA**

Senator CASSIDY. It is my understanding—

Chairman ISAKSON. Turn your microphone on.

Senator CASSIDY. It was just confirmed that under the Choice Program, we do not require our private hospital providing services for veterans—

Chairman ISAKSON. Correct.

Senator CASSIDY [continuing]. To adhere to these three lines. We do not. That nursing home is like a hospital except it is for extended stay. So, we are applying a different standard to long-term care than we are to acute care, number 1.

Number 2, if we do not pass this—Senator Tester, you mentioned that we will eliminate certain protections. If we do not pass this, we are going to eliminate the ability of a veteran to enter a nursing home in his or her hometown. That is in my State a reality. We both have rural States.

So, I do not think we should treat long-term care—we trust the acute care hospitals, so let us trust the long-term care that the sunset gives us some sort of—

Senator MURRAY. Mr. Chairman, can I respond to that?

Chairman ISAKSON. I just want to—excuse me 1 second here. I will go to Senator Blumenthal, who asked first, then I will go to you, and then I will go to Senator Brown.

The statement you made, this is already the provision in the Choice Act, as you said. We are keeping everything consistent and making sure our veterans have the same protected access we want them to have.

Senator Blumenthal.

Senator BLUMENTHAL. I am going to yield to Senator Murray—  
Chairman ISAKSON. Senator Murray.

Senator MURRAY. I just want to make an important point. The CARES Act that you referred to is a temporary program, and the amendment that the Chairman is now going to offer sunsets. So, it also will be a temporary program. That is what makes the parity. I think it is important to note that comparing it to other programs that are in law, that is what we are trying to avoid at this point, and, so, that is the comparison we should be looking at.

Chairman ISAKSON. Senator Brown.

Senator BROWN. I yield to Senator Tester.

Chairman ISAKSON. Senator Tester.

Senator TESTER. Yeah, thank you, Mr. Chairman.

All I would say is that—and the way I read this is that a contractor that contracts with the Federal Government to take in a— to service veterans, if a person that is of a religion which that CEO does not like, they do not have to hire him. Totally qualified, but they can discriminate against him based on religion. Or, if that person happens to be gay.

Senator CASSIDY. But that is true of—I am sorry.

Senator TESTER. You can respond to it, but I do not—I, personally, being a dirt farmer from Montana—I am not a lawyer—

Chairman ISAKSON. Well—

Senator TESTER. That is not a road, I know. That is not a road I want to go down. I am just telling you, I do not want to encourage discrimination, especially at this moment in time. That is the wrong message.

Chairman ISAKSON. Senator Blumenthal.

Senator BLUMENTHAL. Yes. I want to just make a point here that may seem like a limited and small point, but it expands on the point made by Senator Brown.

What we are prohibiting here is discrimination based on certain categories, and I read them off. There are broad laws that prohibit discrimination in hiring based on those categories. There is one category where there is no prohibition on discrimination. Do you know what it is? Veterans. It is not against the law to discriminate against somebody because she or he is a veteran.

I introduced legislation, with the support of AMVETS, to protect all veterans against workplace discrimination. That was in 2013. The bill went nowhere.

Now, I would like to take this very useful conversation as a beginning point for an effort to renew that effort because there have been studies that show there is, in fact, discrimination, believe it or not. And, I would point out one of them, 2012 Center for New American Security showed that there are attitudes of discrimination in the workplace against veterans.

This bill does not prohibit discrimination against veterans by the contractors because of the deletion of those three lines. I do not have language here, and that is one of the reasons why I continue to be troubled by this bill. Maybe we can move a bill that more broadly prohibits discrimination against veterans and would meet that need, not only in nursing homes, but in all places of employment. It troubles me that we have deleted a protection against dis-

crimination against veterans by nursing homes that take care of veterans—discrimination against veterans in hiring when they take care of veterans as patients.

I, Mr. Chairman, I apologize for that kind of long-winded comment, but I feel there are some unmet needs here. I am prepared to vote for this measure. I think it is a good step in the right direction. But, I think we still have work to do. So, I would respectfully suggest that we find a way to finish the work that we need to do on this measure. I think you and Senator Murray have really done very able and laudatory work to get us this far and I really want to thank you.

Chairman ISAKSON. Senator Manchin.

Senator MANCHIN. Mr. Chairman, I fall in the same category as the Senator from Montana. I am not a lawyer either. But, do we not have current law, the Uniformed Services Employment and Reemployment Rights Act, now, where basically, the USERRA prohibits employment discrimination against a person on the basis of past military service, current military obligations, or intent to serve. That is current law.

Chairman ISAKSON. I would have never contemplated that it was legal to discriminate against veterans in the first place. As an employer for years, I knew I could not discriminate against anybody—

Senator MANCHIN. But, I am saying, we have law. We already have law.

Senator BLUMENTHAL. Senator Manchin, those are reemployment rights.

Senator MANCHIN. Reemployment—

Senator BLUMENTHAL. So, if you go back to your old employer, he cannot discriminate against you when you come back for a job, even though I will tell you, even there, better enforcement is necessary. I do not know whether you are finding it in West Virginia, but we have some cases of reemployment discrimination. But, it is only reemployment. It is not initial—

Senator MANCHIN. The only thing I would say is that I think we are making a mountain out of a molehill here. I really do. I mean, the time period of 2 years parallel, I think, Senator Cassidy, Dr. Cassidy, whatever role we—basically, you are saying that we have already done that with the Choice Act. We put a 2-year. I think Senator Murray says it should parallel this. That was her agreement, and I think Johnny has accepted that agreement. We just—we live in rural areas. We do not have nursing homes, and I have got men and women who cannot find a place to stay.

So, I am willing to work—John, I know your intentions are admirable as far as helping veterans, and I know that on our side over here, we want to make sure nobody is discriminated against. I am all for that, too. I think you all are for the same. But, there are some of these nursing homes that will not and cannot under the Contracting Act comply. That means we are back to square one. So, we are saying, let us try for 2 years and see what we can work out. I think it is the most reasonable approach.

Chairman ISAKSON. I would remind the Committee that we are reaching that point where everything has been said, just everybody has not said it yet—

[Laughter.]

Chairman ISAKSON [continuing]. And we have got some amendments to cover, so I think Senator Moran wanted to be recognized, is that correct?

Senator MORAN. Well, I appreciate, Mr. Chairman, your recognizing me following that statement. [Laughter.]

Chairman ISAKSON. That was truly by accident.

Senator MORAN. I probably am saying something that has been said, but I am always trying to say things so that I make sure I understand the meaning of what is happening here.

As I understand, there are three sentences that seem to matter, but my point would be, regardless of those three sentences, it is illegal to discriminate anyway. Apparently the absence of those three sentences means that there is less onerous burdens on, I assume, most generally rural nursing homes, assisted living centers, that might contract with the VA but would not if it drives up their costs or increases the bureaucracy and their inability to comply.

So, my assumption is that regardless of whether those three sentences are in or are out, no nursing home can discriminate, but we are reducing the burden that this particular law on Federal contracting places on those nursing homes. Am I anyplace close to what we are talking about?

Chairman ISAKSON. I am—Senator Tester.

Senator TESTER. Well, I hear what you are saying, Senator Moran. I just do not see it in the amendment, OK. I see the amendment doing something different than what we are saying.

Senator MORAN. OK.

Chairman ISAKSON. We have before us the Isakson amendment, a modification to the Isakson amendment to take it to the 2-year sunset agreed upon by Senator Murray and myself and the others, and following that, we will have the Brown amendment. It is my understanding all parties have agreed to a voice vote, is that correct? Is that correct, Senator Brown?

Senator BROWN. [Nodding head.]

Chairman ISAKSON. That being the case, I would move that the Isakson amendment be adopted as amended by the amendment putting in the 2-year sunset, which is at the place of each Member of the Senate.

Senator BLUMENTHAL. Second.

Chairman ISAKSON. It has been moved and seconded. Is there any discussion?

[No response.]

Chairman ISAKSON. If not, hearing none, all in favor, say aye.

[Chorus of ayes.]

Chairman ISAKSON. All opposed, no.

[Chorus of nos.]

Chairman ISAKSON. The ayes have it in the opinion of the Chair.

Senator BROWN. Mr. Chairman, I would—even though it was a voice vote, I would like to be recorded as “no,” if we can do—is that something we can do?

Chairman ISAKSON. The Clerk will record Senator Brown as “no” on the Isakson amendment, as amended.

Senator BROWN. Nothing personal, Mr. Chairman.

Chairman ISAKSON. As modified. I do not take it that way.

Senator BROWN. Personal against Moran.

Chairman ISAKSON. I get in arguments with myself sometimes, so do not worry about this. [Laughter.]

Chairman ISAKSON. Senator Brown has an amendment. Would you like to offer it?

Senator BROWN. Thank you. I would.

Senator HIRONO. Mr. Chairman, before we do that, I would also like to be recorded as "no."

Chairman ISAKSON. The Clerk will be instructed to record Senator Hirono as no.

Senator HIRONO. Nothing personal.

Chairman ISAKSON. Senator Brown.

Senator BROWN. Yes. Thank you, Mr. Chairman.

I am going to offer the amendment and withdraw, but I would like to speak for a moment about it, and I will try to——

Chairman ISAKSON. The Senator is recognized.

Senator BROWN. Thank you, and speak within the confines of your instructions a moment ago about everybody saying what has been said.

Chairman ISAKSON. Well, do not take that as a limitation of speech.

Senator BROWN. OK. Well——

Chairman ISAKSON. I just was trying to make everybody realize the clock was running.

Senator BROWN. OK. Thank you. I, first of all, have two letters I would ask unanimous consent to be added to the Committee record. First is a letter sent to me from a group of civil rights organizations. I have that here. The second letter is from the Secretary of Labor addressed to Senator Isakson and Ranking Member Blumenthal. If I could enter those into the record, Mr. Chairman.

Chairman ISAKSON. Without objection.

[The letters from Senator Brown follow:]

**SECRETARY OF LABOR**  
WASHINGTON, D.C. 20510

DEC - 8 2015

The Honorable Johnny Isakson  
Chairman  
United States Senate  
Committee on Veterans' Affairs  
Washington, DC 20510

The Honorable Richard Blumenthal  
Ranking Member  
United States Senate  
Committee on Veterans' Affairs  
Washington, DC 20510

Dear Chairman Isakson and Ranking Member Blumenthal:

I applaud the Committee's continuing efforts to improve access to quality healthcare for veterans. The Administration strongly supports legislative efforts to clarify the authority of the Department of Veterans Affairs (VA) to purchase care and services in the community when such services are not reasonably available from VA or through contracts or sharing agreements. However, I am writing to express my concerns that the legislative proposal that the Committee is considering does not include some of the most basic civil rights protections in federal law enforced by the Department of Labor (DOL). The Committee is instead considering a proposal that would statutorily roll back important civil rights protections for the people who provide care for our nation's veterans.

DOL is the only agency with enforcement and compliance assistance authority for some of the most basic civil rights protections in federal law. These protections prohibit federal contractors and subcontractors from engaging in employment discrimination and require them to take affirmative action to ensure that job seekers and employees are treated without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a covered veteran. These protections also provide safeguards for millions of workers, including those providing care for veterans.

Throughout our discussions the Administration has maintained the position that legislation authorizing the VA to purchase care in certain circumstances through agreements also be subject to certain provisions of law governing Federal contracts. On November 17, 2015, Janet Murphy, Acting Deputy Under Secretary for Health for Operations and Management at the VA's Veterans Health Administration testified as such, stating that the Administration's draft legislative position would "provide explicit protections for procurement integrity, provider qualifications, price reasonableness and employment protections while ensuring that VA is able to provide local care to Veterans in a timely and responsible manner." The Administration's position on maintaining employment protections is contained in S. 2179 and support for its passage was contained in the VA's Plan to Consolidate Programs of Department of Veterans Affairs to Improve Access to Care (October 30, 2015).

The arguments for statutorily rolling back civil rights protections fly in the face of the demonstrated impact of discrimination and the continued need for vigorous enforcement, and are no more well founded than arguments our nation has heard every time we previously made civil rights advancements. The commitment to civil rights protections is consistent with the long history the VA and the U.S. military have had in embracing the diversity that has made our nation great. We urge the Committee to support legislative proposals that ensure the health care industry providing care to veterans through agreements with the VA also abide by the most basic civil rights protections. We believe that this balance is the right one for our veterans' healthcare system, the healthcare industry, veterans seeking care, and the workers serving or seeking to serve those veterans.

I thank you again for your work on behalf of our nation's veterans.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom E. Perez', written in a cursive style.

THOMAS E. PEREZ

December 9, 2015

**Oppose Weakening Civil Rights Protections**  
**Vote No on Senators Isakson and Manchin Amendment**  
**Vote Yes on Senator Brown Amendment**

Dear Senator:

We write to urge you in the strongest possible terms to reject any amendments to S. 425 that would diminish civil rights protections by undermining the Office of Federal Contract Compliance Programs' (OFCCP) jurisdiction over veterans homes entering into federal contracts. Any such amendments, including the amendments proposed by Senator Isakson and Senator Manchin, strip critical equal employment opportunity protections and threaten grave harm to the men and women employed by veterans homes. It is critically important to reject these unprincipled carve-outs. We urge you to instead support the amendment that will be offered by Senator Brown, restoring OFCCP's full jurisdiction to protect against employment discrimination and promote equal employment opportunities.

The antidiscrimination rules enforced by OFCCP ensure that federal contract dollars further equal employment opportunity and are not used to subsidize unlawful discrimination. OFCCP plays a unique and vital role in combating unlawful employment discrimination by federal contractors on the basis of sex, race, national origin, color, sexual orientation, gender identity, and disability. It also enforces the Vietnam Era Veterans Readjustment Assistance Act, or VEVRAA, which requires nondiscrimination and affirmative action for special and disabled veterans of any war, campaign, or expedition in which a campaign badge has been authorized. In addition, OFCCP guides contractors and subcontractors on affirmatively promoting equal opportunity in the workplace and promotes fair and nondiscriminatory federal contractor workplaces. Many of its regulations require contractors to take affirmative steps to expand the pool of individuals from which it recruits, and evaluate their own practices to identify and address conduct that limits equal employment opportunities for protected classes of workers. By conducting compliance audits and systemic investigations, through its data collection and investigative authority, OFCCP can aid contractors in identifying and resolving practices that limit equal employment opportunities, without relying solely on individuals who are willing to risk retaliation to challenge unfair employment practices. OFCCP's historic and current role in ensuring artificial barriers do not restrict employment based on sex, race, color, national origin, religion, sexual orientation, gender identity, disability, or veteran status has improved opportunities for a wide range of workers across the country and has ensured that federal tax dollars do not subsidize discrimination.

Carving out veterans homes from these antidiscrimination protections, affirmative action rules, or data reporting requirements will have the effect of narrowing employment opportunities for women, people of color, people with disabilities, veterans, and LGBT individuals and removing



critical tools for ending employment discrimination and harassment. Such a rollback of key civil rights protections is particularly misguided in the context of veterans homes, because the health paraprofessional workforce is comprised disproportionately of women and people of color, for whom robust protections against discrimination are critical. And weakening these protections ultimately threatens harm not only to workers, but to those who depend on them for care.

There is no appreciable administrative burden that justifies suspending these protections and requirements. Federal contractors and subcontractors with less than 50 employees and \$50,000 in contracts or subcontracts are not covered by OFCCP's affirmative action requirements. 41 C.F.R. § 60-2.1(b). More than 94 percent of health care and social assistance firms had fewer than 50 employees in 2009. *See* NWLC calculations based on 2009 County Business Patterns Data, Microsoft Excel file *available at* <http://www.census.gov/econ/subs/>. The larger providers, those with 50 or more employees and \$50,000 or more in federal contracts, should be well-equipped to meet the minimal administrative obligations associated with maintaining an affirmative action plan.

The carve-out of veterans homes from the employment discrimination rules applicable to federal contractors not only will have a detrimental impact on the workforces affected, but sends a disturbing message that ensuring fair treatment for women, people of color, LGBT people, veterans and people with disabilities is unnecessary and inconsequential. It sets a precedent for future carve-outs and represents a step backward from equal opportunity. We strongly urge you to reject any amendments weakening these protections and to support Senator Brown's amendment fully restoring the antidiscrimination rules and other equal employment opportunity protections for these providers.

For further information, please contact Fatima Goss Graves of the National Women's Law Center at (202) 588-5180 or [fgraves@nwlc.org](mailto:fgraves@nwlc.org), or Nancy Zirkin of the Leadership Conference on Civil and Human Rights at (202) 263-2880 or [Zirkin@civilrights.org](mailto:Zirkin@civilrights.org).

Sincerely,

National Women's Law Center

Leadership Conference on Civil and Human Rights

National Partnership for Women & Families

Human Rights Campaign

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Senator BROWN. Thank you. We know we want our veterans to receive the best care, whether it is VHA or through a private provider who contracts with the VA. We support the provider agreements included in the omnibus because they give the flexibility the VA needs to go into the community to find appropriate providers, as Senator Manchin says, in those areas particularly where there

are not enough beds and to contract with the entity to serve our veterans.

However, we should not support holding providers to a lower standard when it comes to discrimination, equal employment, hiring, and retention practices. Senator Tester has explored, and Senator Hirono has explored, that this is a question of employees, not discriminating against employees to take care of these veterans. It is in no way restricting the number of beds, anything else, or the availability.

We need the best quality individuals to serve our veterans. Discrimination always means a smaller applicant pool, and the applicant pool should reflect the people it serves. So, you cannot discriminate against a gay veteran or an African-American veteran, but you could discriminate, without my amendment, with a gay employee or an African-American employee.

I am not saying anybody on this Committee supports that, but I am saying, as Senator Tester did, what the language says without this amendment. There is just no reason to carve out a special case for these agreements. A “no” vote on this amendment signals that the Committee does not support these civil rights protections for workers.

I heard some around this table say, well, people do not want to discriminate, that, well, we have had laws against discrimination in all 50 States, not just the South. My mother comes from the same State as Senator Isakson. These were applicable all over the country because people discriminated everywhere until we began to pass these civil rights protections for employees and for workers. Federal contracting should not be a race to the bottom. If companies wish to contract with the Federal Government, it is simple. They should comply with basic civil rights protections currently in law.

Senator Cassidy, in the Choice Act, that is temporary, as Senator Murray said. I would—because the Choice Act does not require nondiscrimination for—on behalf of employees, but there are all kinds of bodies of law where we do ban that discrimination and that is the American way, in spite of some of the comments we hear from people in the national media now. No one should be able to discriminate, period, based on race and color and sex and disability, religion, all that. Without this amendment, providers would be able to do so.

I offer the amendment. I withdraw the amendment. I want to work with Senator Isakson and the Committee on finding ways as this goes forward to build some of these protections back in. I appreciate the sunset, but I think we need to do more.

So, Mr. Chairman, I withdraw the amendment.

Chairman ISAKSON. Senator Brown has withdrawn his amendment, and I would comment that I have been pleased for most of my 11 years in the Senate to serve on multiple committees with Senator Brown and never found him to be anything other than the most outstanding individual for the rights of each and every person, and a very outspoken person for the people of the State of Ohio. I appreciate his input and I just want to make that editorial comment, as well.

Is there any other question or any other comment?

Senator MURRAY. Mr. Chairman.

Chairman ISAKSON. Senator Murray.

Senator MURRAY. Can I speak just on the caregivers' legislation?

Chairman ISAKSON. No, let me tell you what my intent is. We have had a great debate. We have great attendance. We have two bills we want to vote on. There are a lot of things like Tammy Baldwin's provision on the opioid bill, and other things that have been put in there about homelessness. Can we vote on the amendments and the bills to get those done and then entertain comments? I will be here—

Senator MURRAY. I would just simply ask that my statement be in the record, but I want to thank you for including the Caregivers' legislation. It is a critical piece of legislation.

[The prepared statement of Senator Murray follows:]

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

I'm very pleased that my legislation to expand the Caregivers program has been included on today's agenda as part of the omnibus.

The program is so important to improving care for veterans, and as the daughter of a World War II veteran, I am committed to keep fighting for ways that move us forward in this effort. I'm encouraged by all the support I have on this Committee.

I'd really like to thank Senator Isakson and Senator Blumenthal for working with me to move this bill forward, while keeping the most important provisions from my original bill in the final agreement.

Simply, the caregiver program helps those who help our veterans. It recognizes the sacrifice of the caregivers—the friends and family members—who take time out from their own daily routine to take care of our injured servicemembers.

I've met with a number of caregivers who say, they can't imagine NOT being there for their injured loved ones.

And recent research from the RAND Corporation shows us a clearer picture of the toll their sacrifice takes on their well-being. Caregivers often suffer from poor health, depression, lost jobs, and incredible stress. So, they need the help this bill will offer and they need to know their country is there to support them as they support veterans.

The caregiver program is also critical because it helps veterans stay in their homes with their loved ones, and out of hospitals and nursing homes. We know this can result in an enormous improvement to their quality of life, and creates better health outcomes.

Providing care through the caregiver program is also more cost effective than the other options, so this legislation just makes sense.

How do we know that the caregiver program makes a critical difference? Because it's already in effect. Veterans who served post-9/11 already are using this program, to great success. As my legislation states, it's time to expand this program to veterans and caregivers from all eras, who have been waiting for years to access these services. Through a phased-in process, this bill would finally expand the program, while allowing the VA to address important concerns highlighted by GAO.

It also makes improvements to the services offered to our caregivers. The bill will require VA to help caregivers and veterans access legal services and financial advising, because caregivers have very specific needs in those areas which are not being met.

This legislation is a critical step in ensuring all our veteran caregivers have the support they need. And I look forward to continuing to work with all my colleagues to get this signed into law.

Again, I want to thank Chairman Isakson and Ranking Member Blumenthal for their hard work and dedication that led to this compromise language, and for joining me as we continue to seek ways to improve care for our veterans, and fulfill our promise to take care of them long after the battle is over.

Thank you.

Chairman ISAKSON. Without objection. I thank you for your cooperation. I think it will be looked upon many years ahead, as well as the opioid bill, as two of the great accomplishments of this Com-

mittee, and I appreciate both you and Senator Baldwin for what you have done.

S. 425

Chairman ISAKSON. The question before us would be the adoption of S. 425, as amended by the modified Isakson amendment. Is that the correct way to state it?

Senator MORAN. [Nodding head.]

Chairman ISAKSON. I did good finally. OK. Unless there is an objection, we will take it by voice vote. Is there any objection?

[No response.]

Chairman ISAKSON. All in favor of adopting S. 425 as amended and modified by the Isakson amendment, say aye.

[Chorus of ayes.]

Chairman ISAKSON. All opposed.

[No response.]

Chairman ISAKSON. Hearing none, the bill is adopted.

S. 290

The second bill before us is S. 290, Moran and Blumenthal, to which I understand there is an agreed upon amendment by Senator Sullivan. Am I correct?

Senator SULLIVAN. That is correct, Mr. Chairman.

Chairman ISAKSON. Do you want to offer that now?

**STATEMENT OF HON. DAN SULLIVAN,  
U.S. SENATOR FROM ALASKA**

Senator SULLIVAN. Yes, sir, Mr. Chairman. I would like to call up Amendment Number 1 and ask unanimous consent to modify the amendment with clarifying language proposed by Senator Rounds.

Mr. Chairman, I want to thank Senator Rounds for his input and language. I believe it improves my amendment and the bill.

I will just mention very quickly, the purpose of the amendment—as we are looking at what the VA does, I think all of us would agree that it certainly does a lot of good things for our veterans. I think that is something I have learned over the course of my first year in the Senate, but it also does things that a lot of us are troubled by, and I think that stems from a culture that many of us view that is not always putting the veterans first.

The nature of this culture is certainly part of the key elements of the bill by Senator Moran and Ranking Member Blumenthal, S. 290, and I would like to thank Senator Moran and Senator Blumenthal for the hard work they have done with regard to their bill.

My amendment is a simple amendment to their bill that looks at not only a stick approach to accountability, where we are laying out what VA employees need to do and take action for poor performance, but also trying to emphasize the positive aspects of what the employees do. In particular, emphasizing the VA's "I CARE" core values of integrity, commitment, advocacy, respect, and excellence.

So, what my amendment simply does is add—it adds these additional criterion to both performance plans under S. 290, and it

seeks to create a culture where leadership at the VA is not emphasizing just minimum standards of performance and conduct, but also the maximum, to achieve a positive culture and focus on those core values of commitment, integrity, respect, and excellence, which is what I believe our veterans deserve from the VA.

Thank you, Mr. Chairman.

Chairman ISAKSON. I understand from the authors, Senators Blumenthal and Moran, there is no objection to the amendment, is that correct?

Senator BLUMENTHAL. Correct.

Senator MORAN. Correct.

Chairman ISAKSON. I would ask unanimous consent that the amendment by Senator Sullivan be adopted. Is there any objection? [No response.]

Chairman ISAKSON. Hearing none, the amendment is adopted.

Senator Moran, do you have any comments you want to make regarding the legislation?

Senator MORAN. Mr. Chairman, I would thank you and the Ranking Member for bringing this bill forward today. I appreciate the opportunity to work with the full Committee and its staff to make certain we get this in a form of value. It has been modified in a number of ways involving a number of pieces of legislation brought together, all with the design of creating a standard by which we expect the VA to treat veterans, to evaluate their employees, and to make determinations based upon employees and particularly management in whether or not they are doing their jobs correctly.

In particular, this is a serious legislative effort to give the VA the tools necessary to deal with problems, particularly at the management level, that the VA claims they cannot deal with, they do not have the legislative or the legal authority to do so. We have worked hard to accommodate their concerns.

I, in particular, want to make certain that—I would say it this way. I have insufficient faith in the management of the VA to make certain that they do not retaliate against employees who they believe—who can be the scapegoats for bad things happening at the VA. In every effort, I have made the attempt to make certain that we do not give the VA the ability to do that by taking away the rights of employees. I have grown on this concept as I have watched the VA operate and have concerns about people who come to us with problems at the VA.

This bill does not in any way infringe upon the rights of people who work there who might be discriminated against because they are a whistleblower or bring issues to us or are just difficult employees to the management.

So, let me thank my colleague from Connecticut, Senator Blumenthal, who worked side by side to get this in a form that we believe will make a difference and give the tools necessary for accountability at the Department of Veterans Affairs.

Chairman ISAKSON. Senator Blumenthal.

Senator BLUMENTHAL. I want to join in thanks to Senator Moran. We worked very closely. It took some hard work to get to this point, because we addressed some difficult issues, how to enforce strong and stringent standards for accountability and performance

and integrity without infringing on constitutional rights and without discouraging whistleblowers; in fact, how to encourage and protect whistleblowers who are often the life blood of effective investigations when there is wrongdoing.

So, this measure, I think, takes a profoundly important step forward, and if others are necessary, other steps, other measures, I think that this Committee will be prepared to join.

Again, I thank all the Members of the Committee for their support.

Chairman ISAKSON. This is the no excuses bill. I hope that every Member of the Committee, as they go home for Christmas and we come back in January, will take time in their speeches to include the provisions of this bill in their remarks. The VA leadership and management has used the fact that they could not do things as an excuse not to do things. This clearly gives them the authority to do things and to hold VA employees accountable. It is a long time overdue, and I commend Senator Blumenthal and Senator Moran for their hard work and their leadership in so doing.

Are there any other comments, questions, or amendments?

[No response.]

Chairman ISAKSON. Hearing none, the question is on the adoption of the Moran-Blumenthal bill, S. 290, as amended by the Sulivan bill. All in favor, say aye.

[Chorus of ayes.]

Chairman ISAKSON. All opposed, no.

[No response.]

Chairman ISAKSON. In the opinion of the Chair, the ayes have it. The bill is adopted.

Senator TESTER.

Senator TESTER. Well, first of all, Mr. Chairman, I want to thank you for hearing everybody out today. I very much appreciate your leadership. I would hope that if, in fact, we find out between now and when this bill moves forward that what the intent of the amendment was, not what it was intended to be, that we work together in a bipartisan way—

Chairman ISAKSON. Absolutely.

Senator TESTER [continuing]. To get it fixed.

The last thing I would say is that I think if the good Senator from Kansas would let us use National Bio- and Agro-defense Facility as an offset for the VA, we could do a lot of really good work for our veterans here.

Chairman ISAKSON. Before we get into that discussion—

[Laughter.]

Chairman ISAKSON [continuing]. I would like to ask unanimous consent from the Committee in preparing the agenda items for reporting that Committee staff be authorized to make any required clerical, technical, or conforming changes, including changes necessary to conform with the Budget Act. Is there any objection?

[No response.]

Chairman ISAKSON. Hearing none, is there any other business to come before the Committee?

Senator HIRONO. Mr. Chairman.

Chairman ISAKSON. Senator Hirono.

Senator HIRONO. I just want to thank you very much for your openness in hearing legislation that some of us have pushed to have included in other bills as amendments and then to hear them as freestanding bills and then to incorporate our work in this omnibus bill, including some of my bills. Additionally, I want to thank you very much for the integrity with which you run this Committee. Mahalo.

Chairman ISAKSON. Well, it is a privilege to work with each and every Member of the Committee. I am sitting here thinking about all the discussion we had, and we did not spend much time on caregivers or opiates or some of the other provisions that we passed in the omnibus, but in total, this is a great piece of legislation. The Committee acted as a team. Where we had differences, we worked them out; yet, where our veterans needed attention, we have given it to them. I think that is the purpose of this Committee. I appreciate your remarks very much. Most importantly, I appreciate your conscientious interest in the Committee and our veterans around the country.

Senator Moran.

Senator MORAN. Mr. Chairman, thank you. I am following your instructions, which is to save perhaps extraneous remarks until after the vote so that we continued to have a quorum.

But, not extraneous to me is something I want to say to you, and that is thank you very much for the efforts to bring a number of bills together representing ideas by a wide array of Members of this Committee and members of Congress, how we can improve the care of our veterans and how we can improve the efficiency and caregiving of the Department of Veterans Affairs.

You and I had a conversation. I had offered an amendment to the omnibus bill that we voted on earlier. It would add the text of a bill that Senator Blumenthal and I introduced related to toxic exposure. That bill is important to me and many other Members of this Committee. It was not ready for prime time today because there was no CBO score, and recognizing that limitation, I withdrew my amendment. But, I did so with the understanding that you would—you and your Committee staff would help us get a score for that bill and that at the first opportunity in the new year, in 2016, this is a bill that would be put on the agenda for consideration and markup.

I appreciate you working with me once again to accomplish in a timely fashion something that is very important to veterans, particularly those veterans who have children and grandchildren who are affected by the consequences of their service in various wars in which they encountered toxic substances that not only affected their lives, but now affect their children and grandchildren.

Chairman ISAKSON. Well, within an hour of your request of me yesterday, the call was made to get the score. It was impossible to get. There were a lot of people trying to get a lot of things scored right now because of what is going on with the omnibus appropriations bill. Yet, I made the effort. I think I have demonstrated that I will go to regular order on any bill that is paid for and everybody will get their day in court. You certainly will on toxic substances when we get it paid for—when we get a score. If we get a score, then we can find out what it takes to pay for it.

So, I am happy to work with you and appreciate your cooperation yesterday and your cooperation today.

Senator MORAN. Thank you, Mr. Chairman.

Chairman ISAKSON. Senator Boozman.

Senator BOOZMAN. No.

Senator BLUMENTHAL. Mr. Chairman.

Chairman ISAKSON. Senator Blumenthal.

Senator BLUMENTHAL. I want to thank you for that effort on the toxic substances bill, which is a very important one, which Senator Moran and I will continue to advocate for.

I want to second your remark about our being out there and advocating for this bill. It really was a joint product, as I said at the very beginning. Everybody should—let me be very blunt—everybody should take credit for it. It is a bipartisan piece of legislation. Every one of you had a piece of it. The more advocates we have, the more likely it will be to get through the next step and the one after that so we have not just a good bill, we have a good law.

Chairman ISAKSON. Thank you, Senator Blumenthal.

Senator Murray, thank you again for your cooperation today.

Is there any other business to come before the Committee?

[No response.]

Chairman ISAKSON. Hearing none, the Committee stands adjourned.

[Whereupon, at 3:40 p.m., the Committee was adjourned.]