

# United States Senate

WASHINGTON, DC 20510

December 8, 2016

The Honorable Robert McDonald  
Secretary of Veterans Affairs  
Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, D.C. 20420

Dear Secretary McDonald:

We write today to express our support for the Veterans Emergency Care Fairness Act of 2009 (ECFA). Six years after enactment of the ECFA, our nation's veterans continue to bear the burden of emergency treatment costs not covered by veterans' third-party insurance. The U.S. Department of Veterans Affairs' (VA) continued denial of these claims is deeply troubling.

Congress's clear intent in passing the ECFA was to expand veteran eligibility for reimbursement for emergency treatment furnished to veterans in non-department facilities. Specifically, congressional intent was to require the VA to act as a secondary payer for emergency treatment costs not covered by the veteran's third-party insurance. It is evident that the VA has ignored congressional intent. Most troubling is the fact that those who are most affected by the VA's non-compliance with the ECFA are our elderly veterans, many of whom are living on fixed incomes and have limited resources to pay medical bills. Often, these veterans find themselves dealing with collection agencies as a result of emergency care received in the community. This potentially increases stress for these veterans, causes them to lose faith in the VA and keeps them from seeking future medical attention out of fear of acquiring additional medical bills for which they would be financially responsible.

As you are aware, on April 8, 2016, in the case of "Staab v. Secretary McDonald," the United States Court of Appeals for Veterans Claims agreed with the appellant's contention that the VA's application of 38 U.S.C. § 1725 frustrates the intent of Congress to reimburse veterans who are not wholly covered by a health-plan contract or other third-party recourse. In its decision, the court ruled that "Congress clearly intended that the VA be responsible for the cost of the emergency treatment which exceeds the amount payable or paid by the third-party insurer." The court further found the VA's regulations regarding the ECFA to be invalid and wholly inconsistent with the statute. As a result, the court ruled that 38 C.F.R. § 17.1002(f) is held invalid and directed it to be set aside.

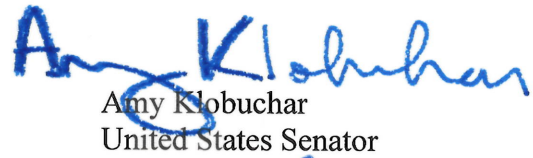
Based upon this ruling, we strongly urge you to bring the VA into compliance with P.L. 111-137 and to amend any policy, regulation or other barrier that results in denial of veterans' claims for

reimbursement for non-department emergency care. We further urge you to re-open all previous claims of veterans that were denied because of the VA's non-compliance with congressional intent and the law.

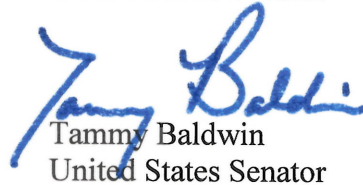
Thank you for your attention to our concerns regarding this important issue. We look forward to working closely with you to fully serve the veterans of our great nation.

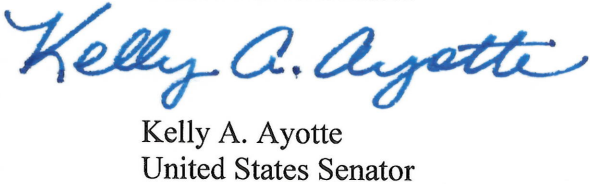
Sincerely,

  
M. Michael Rounds  
United States Senator

  
Amy Klobuchar  
United States Senator

  
Mark Kirk  
United States Senator

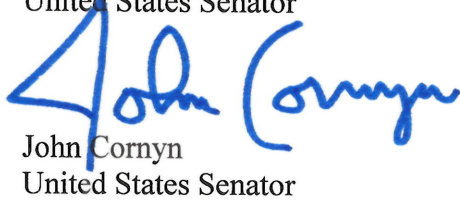
  
Tammy Baldwin  
United States Senator

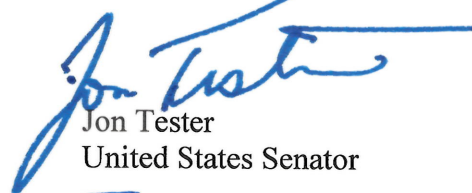
  
Kelly A. Ayotte  
United States Senator

  
John Boozman  
United States Senator

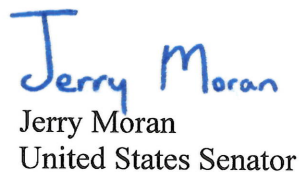
  
Kirsten Gillibrand  
United States Senator

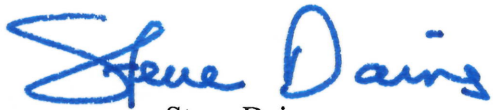
  
Chuck Grassley  
United States Senator

  
John Cornyn  
United States Senator

  
Jon Tester  
United States Senator

  
Shelley Moore Capito  
United States Senator

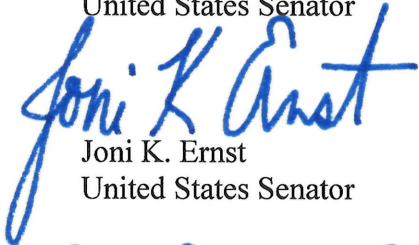
  
Jerry Moran  
United States Senator



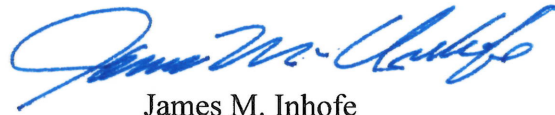
Steve Daines  
United States Senator



Brian Schatz  
United States Senator



Joni K. Ernst  
United States Senator



James M. Inhofe  
United States Senator



Claire McCaskill  
United States Senator



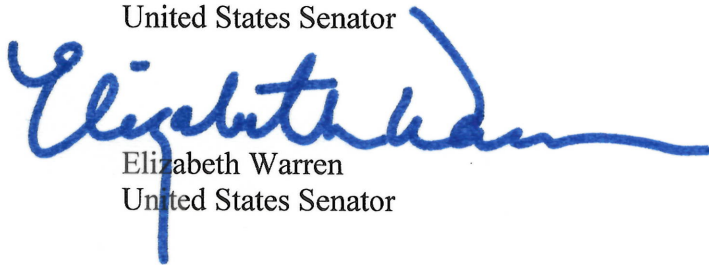
Al Franken  
United States Senator



Sherrod Brown  
United States Senator



Jeffrey A. Merkley  
United States Senator



Elizabeth Warren  
United States Senator



Patty Murray  
United States Senator