

February 12, 2021

The Honorable Denis McDonough  
Secretary of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, DC 20420

Mr. Secretary,

Now that you have assumed your new leadership role, we hope you will put into practice the philosophy you espoused during your recent confirmation hearing. Specifically, you stated that as Department of Veterans Affairs (VA) Secretary “every decision I make will flow from two principles: Does the decision increase access for veterans and does it improve outcomes for vets?” We hope this is certainly true when it comes to the VA’s reimbursement of emergency medical expenses by veterans at non-VA facilities.

Congress directed the VA to reimburse expenses that veterans participating in the VA’s healthcare system incur when obtaining emergency treatment at non-VA healthcare facilities for non-service-connected conditions through the **Emergency Care Fairness Act of 2010** (ECFA, codified at 38 U.S.C. § 1725). Yet, for years the VA has defied this statute and two judicial decisions ([Staab v. Shulkin](#) and [Wolfe v. Wilkie](#)) from the U.S. Court of Appeals for Veterans Claims (CAVC) to illegally deny veterans’ legitimate emergency health care claims. According to the CAVC, Congress intended the VA to step in as a “secondary payer” where other health care insurers cover only a portion of the cost of the veteran’s emergency treatment.

In the September 2019 ruling in *Wolfe v. Wilkie*, the Court was unequivocal and ruled that the Emergency Care Fairness Act of 2010 prohibits the VA from denying reimbursement for deductibles and coinsurance that veterans owed under their health insurance policy for emergency medical expenses incurred at a non-VA facility. Yet, the VA has appealed the *Wolfe* decision to the Federal Circuit. As a result, hundreds of thousands of veterans continue to suffer severe financial and medical hardships as they wait to be reimbursed, which have only been exacerbated during the COVID-19 pandemic.

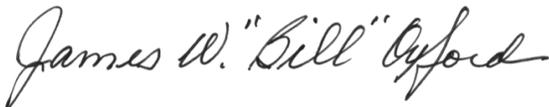
**We are writing to ask that you direct the VA to voluntarily withdraw its appeal and finally pay the veterans their long overdue emergency medical expenses. Additionally, we request that based on the Court’s ruling, you immediately correct the VA’s policy to refuse to reimburse veterans for deductibles, and coinsurance payments they owed under their private health care insurance policy. Withdrawing the VA’s appeal and correcting the VA’s policy on reimbursement would certainly improve veterans’ outcome in this matter.**

The lawful reimbursement of the emergency medical expenses at non-VA facilities is an issue that is supported by leading veterans service organizations including the Disabled American Veterans (DAV), the Paralyzed Veterans of America (PVA), and the Veterans of Foreign Wars (VFW). In their recent report, [The Independent Budget: FY 2022-2023 for the Department of](#)

Veterans Affairs, Budget Recommendations, cited the *Staab* case and “continue to call on the VA to fulfill its responsibility to fully implement this decision .”

We, the undersigned veterans service organizations, who represent millions of veterans, servicemembers and their families, respectfully request that you resolve this matter for veterans who have been unjustly suffering the consequences of the VA’s illegal denial of legitimate emergency health care claims at non-VA facilities.

Sincerely,



James W. “Bill” Oxford  
National Commander  
The American Legion



Carl Blake,  
Executive Director  
Paralyzed Veterans of America



EDWARD R. REESE, JR.  
Executive Director  
Washington Headquarters  
DAV (Disabled American Veterans)



HAROLD “HAL” ROESCH, II  
Commander-in-Chief  
Veterans of Foreign Wars



Barton F. Stichman, Executive Director  
National Veterans Legal Services Program



John Rowan  
National President/CEO  
Vietnam Veterans of America

cc: Chairman Jon Tester, Senate Committee on Veterans’ Affairs  
Ranking Member Jerry Moran, Senate Committee on Veterans’ Affairs  
Chairman Mark Takano, House Committee on Veterans’ Affairs  
Ranking Member Mike Bost, House Committee on Veterans’ Affairs  
Members of Senate Committee on Veterans’ Affairs  
Members of House Committee on Veterans’ Affairs