

United States Senate

WASHINGTON, DC 20510

March 5, 2020

The Honorable Robert Wilkie
Secretary of Veterans Affairs
U.S. Department of Veterans' Affairs
810 Vermont Avenue, NW
Washington, D.C. 20420

Dear Secretary Wilkie:

We write today to request that the Department of Veterans' Affairs (VA) take immediate action to comply with 38 U.S.C §§ 5102(a), 5103A, 5014 and 1720I, by allowing veterans with Other Than Honorable, or bad paper, discharges to apply for VA health care. A study published today, entitled *Turned Away: How VA Unlawfully Denies Health Care to Veterans with Bad Paper Discharges*, systematically demonstrates what countless anecdotes have indicated: VA is turning away veterans who may be entitled to care.¹ With an estimated 20 veterans dying by suicide per day, VA cannot turn away veterans who may be in mental health crisis.²

The study includes reports of veterans being turned away in eighteen states, including Connecticut, Montana, Massachusetts, California, Virginia, Kansas, West Virginia, Arkansas, North Carolina, Alaska, Florida, New York, and Texas.³ As you know, under current law, every single veteran seeking VA health care is entitled to apply and have VA consider their application. VA cannot turn away veterans who are reaching out for care and benefits without due process and proper adjudication. However, this study demonstrates that VA routinely denies potentially eligible veterans the right to even apply for benefits.

More than 575,000 of veterans discharged since 1980 have a status that is Other Than Honorable, and 81% of these decisions were administrative; meaning that there was no court-martial or other judicial process to determine whether they were appropriate.⁴ Many of these veterans are suffering from Traumatic Brain Injury, Post Traumatic Stress Disorder, or Military Sexual Trauma. Particularly considering that these veterans have higher rates of mental health conditions and suicide, VA must not turn them away before a rigorous process to determine if they are eligible for care.

¹ OUTVETS, *Turned Away: How VA Unlawfully Denies Health Care to Veterans with Bad Paper Discharges* (Cambridge: MA, Legal Service Center of Harvard Law School, 2020), 1-2.

² Department of Veterans Affairs, "Veteran Suicide Data," https://www.mentalhealth.va.gov/suicide_prevention/data.asp (accessed March 4, 2020).

³ OUTVETS, *Turned Away*, 15.

⁴ Ibid.

Veterans Health Administration staff also receive incorrect or inadequate training and guidance on this issue, as determined in this study.⁵ It is encouraging that VA has added instructions on how to process Other Than Honorable discharge veterans for temporary access to care, and created some resource materials about how veterans may be able to access VA.⁶ Alarming, the study showed that most staff were not aware of these materials and so did not reference them when veterans attempted to enroll.⁷ This lack of information and sometimes, misinformation, directly impacts the ability of veterans to access health care.

We recommend that VA have a standardized, comprehensive plan to train frontline employees who are processing requests for care from veterans with bad paper discharges with step-by-step guidance. VA should also review and update all current training and guidance, including the Eligibility and Enrollment Handbook, for incorrect, misleading or vague language, and provide specific, accurate language that presumes eligibility for veterans.

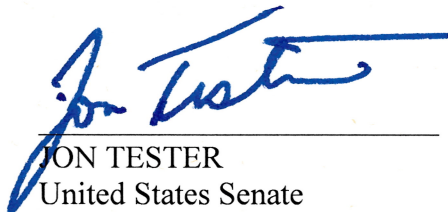
We further recommend that VA outline a process for veterans to request a character of discharge determination and be able to supply evidence for this claim, as well as request a hearing and have assistance for the claim by a Veterans Service Organization or other accredited representative. We encourage VA to decide these claims within a reasonable timeframe. VA should also implement a tracking system for VHA enrollment requests to ensure that the turn-away problem is resolved prospectively, and reach out to veterans who have previously been turned away.

There is a mental health crisis in our communities and in the VA system. VA cannot continue to turn away veterans who may qualify for health care without a deliberative and fair process to consider their claims. As this study states, "VA's denial of care to veterans with bad paper discharges is national, persistent, and systemic. Its impact on some of our most vulnerable veterans can be harmful or even deadly."⁸ We look forward to your response and continuing to work with you to remedy the problems highlighted in this important study.

Sincerely,



RICHARD BLUMENTHAL
United States Senate



JON TESTER
United States Senate

⁵ Ibid., 13-21.


⁶ Department of Veterans Affairs, Veterans Health Administration, *Other Than Honorable Discharges: Impact on Eligibility for VA Health Care Benefits*, IB 10-448, Veterans Health Administration (Washington, DC, 2017) https://www.va.gov/healthbenefits/resources/publications/IB10-448_other_than_honorable_discharges5_17.pdf; Department of Veterans Affairs, Veterans Benefits Administration, *Claims for VA Benefits & Character Of Discharge: General Information*, Benefits Assistance Service (Washington, DC, 2014) https://www.benefits.va.gov/BENEFITS/docs/COD_Factsheet.pdf.

⁷ OUTVETS, *Turned Away*, 21.

⁸ OUTVETS, *Turned Away*, 15.




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