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### VETERANS PAIN CARE ACT OF 2007

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FEBRUARY 28, 2008.—Ordered to be printed

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Mr. AKAKA, from the Committee on Veterans' Affairs,  
submitted the following

### R E P O R T

[To accompany S. 2160]

The Committee on Veterans' Affairs (hereinafter, "the Committee"), to which was referred the bill (S. 2160), to amend title 38, United States Code, to establish a pain care initiative in health care facilities of the Department of Veterans Affairs, and for other purposes, having considered the same, reports favorably thereon, and recommends that the bill do pass.

#### INTRODUCTION

On October 15, 2007, Committee Chairman, Senator Daniel Akaka, introduced S. 2160, the proposed "Veterans Pain Care Act of 2007." The bill would require every Department of Veterans Affairs (hereinafter, "VA") health facility to have an initiative on pain care. VA would also be required to designate an appropriate number of facilities as cooperative centers on the research and education of pain. S. 2160 is cosponsored by Committee Member Senator Sherrod Brown.

On October 24, 2007, the Committee held a hearing on pending veterans' health legislation, at which testimony on S. 2160, among other bills, was offered by: Michael J. Kussman, MD, MS, MACP, VA Under Secretary for Health; Carl Blake, National Legislative Director, Paralyzed Veterans of America; Joy J. Ilem, Assistant National Legislative Director, Disabled American Veterans; and Brenda Murdough, MSN, RN-C, Military/Veterans Initiative Coordinator, American Pain Foundation. The witnesses from Paralyzed Veterans of America, Disabled American Veterans, and the American Pain Foundation supported S. 2160. VA did not support the

legislation, believing it to be superfluous and duplicative of existing VA programs on pain care management.

#### COMMITTEE MEETING

After carefully reviewing the testimony from the foregoing hearing, the Committee met in open session on November 14, 2007, to consider, among other legislation, S. 2160. The Committee agreed by voice vote to report favorably S. 2160 to the Senate.

#### SUMMARY OF S. 2160 AS REPORTED

S. 2160, as reported (hereinafter, “the Committee bill”), would provide a Congressional mandate for VA’s existing efforts in the area of pain care management and significantly enhance VA’s pain management research and education. The Committee bill would require the establishment of a pain care initiative at each health care facility of the Department of Veterans Affairs. The Committee bill would also require the Secretary of Veterans Affairs (hereinafter, “the Secretary”) to designate an appropriate number of facilities of the Department as cooperative centers for research and education on pain. Further, national oversight and leadership of VA’s pain management efforts would be secured through the designation of an appropriate officer to manage the program’s operations.

Section 2 of the Committee bill contains eight of Congress’ findings as follows:

*Paragraph (1)* recognizes the prevalence of acute and chronic pain among the veteran population.

*Paragraph (2)* finds that modern warfare, including the prevalence of improvised explosive devices, produces a substantial number of battlefield casualties with damage to the central and peripheral nervous system.

*Paragraph (3)* notes that the success of military health care has resulted in high survival rates among severely injured military personnel. The higher survival rate is anticipated to result in the affliction of many survivors with significant pain disorders.

*Paragraph (4)* finds that the failure to treat pain appropriately at the time of transition from the Department of Defense to receipt of care from the VA contributes to the development of long-term chronic pain syndromes and can be accompanied by long-term mental health and substance use disorders.

*Paragraph (5)* observes that pain is a leading cause of short-term and long-term disability among veterans.

*Paragraph (6)* recognizes that VA has implemented some worthwhile pain care initiatives, but has yet to adopt a comprehensive pain care program available to all patients in need.

*Paragraph (7)* finds that the inconsistent and ineffective pain care provided by VA leads to pain-related impairments, occupational disability, and other complications for veterans with acute and chronic pain; and that these problems result in substantial long-term costs for both VA and society at large.

*Paragraph (8)* finds that the research, diagnosis, treatment, and management of acute and chronic pain among veterans constitute a health care priority.

*Section 3(a)* of the Committee bill would require the Secretary to carry out a pain care initiative at each VA health care facility.

*Section 3(b)* of the Committee bill is a clerical amendment which would add a separate section on pain care at the beginning of chapter 17 of title 38.

*Section 3(c)* of the Committee bill establishes a timeline for implementation of the pain care initiative by January 1, 2008, for inpatient care and January 1, 2009, for outpatient care.

*Section 4(a)* of the Committee bill would require the Secretary to carry out a program of research and training on pain.

*Section 4(b)* of the Committee bill is a clerical amendment, which would add a new section on the program of research and training on acute and chronic pain in the appropriate tables of sections of title 38.

#### BACKGROUND AND DISCUSSION

The Committee bill was developed in response to the need for better pain management of veterans. Pain can be a cause of short-term and long-term disability among veterans of all eras.

Modern warfare has produced a new range of battlefield injuries. This is due to factors such as the use of body armor, the prevalence of improvised explosive devices, and improvements in battlefield medicine. Today's servicemembers are surviving injuries that would have been fatal in previous conflicts. Traumatic brain injury and polytrauma are among the hallmark injuries of the military operations in Iraq and Afghanistan. In many cases, these wounded servicemembers suffer from damage to the central and peripheral nervous system, necessitating a better understanding of pain and more effective management techniques.

A study of Iraq and Afghanistan veterans found that 47% reported at least a mild level of pain, and 28% reported experiencing pain of moderate to severe intensity. The study concluded that a substantial percentage of these veterans will experience clinically significant pain following their military service. (Gironde, Ronald J. PhD, et. al, "Pain among Veterans of Operations Enduring Freedom and Iraqi Freedom." *Pain Medicine*, Vol. 7, No. 4, 2006).

Another study, focused broadly upon veterans of all eras, found a correlation between pain and other conditions such as depression and PTSD. Nearly three-fourths of participants in the study said that pain has "very much" interfered with their quality of life and ability to work. Additionally, only 6% of participants rated their pain care management as "very effective," while nearly twice as many rated their pain care as "very ineffective." ("Survey of Veterans and Pain," American Pain Foundation, November 2006).

Research led by Robyn L. Walker, a clinical psychologist at the James A. Haley VA Medical Center in Tampa, Florida, revealed that 96 percent of polytrauma patients experienced more than one pain problem during rehabilitation, and 70 percent of the patients experienced pain in more than one site. The study also found that 56 percent of patients were diagnosed with PTSD and other mental health conditions. The study concluded that "pain needs to be consistently assessed, treated, and documented." Further, the study found the need for consistency of pain assessment and treatment across the continuum of care. (Walker, Robyn L., Ph.D., "Pain Problems, Pain Related Impairments, and Emotional Problems in Polytrauma Patients," 2007).

Further, the testimony of Brenda Murdough of the American Pain Foundation at the Committee's October 24, 2007, hearing on this bill indicated that failure to treat pain appropriately at the outset of the injury, or when pain carries on into the rehabilitation period, is a leading cause of long-term chronic pain syndromes. In turn, mismanaged or unmanaged pain oftentimes leads to or accompanies long-term mental health and substance use disorders.

VA has had a pain management program in place for some time, although the program's focus was initially directed towards pain associated with end-of-life care. It is the Committee's view, however, that the program has not received necessary priority for full implementation via the establishment of consistent standards for assessment that are practiced uniformly across the VA health care system. The Committee seeks to expedite that process with this legislation.

The lack of standardized implementation of VA's own pain care management strategy has limited the effectiveness of pain care for veterans. VA's current program is decentralized and has languished since its inception in 2003, despite the growing need for pain care management and research. For example, VA has stopped holding regular conferences at the national level on pain and distributing educational materials. However, the existing program provides a foundation for the renewed focus upon pain that the Committee bill would require. Some Veterans Integrated Service Networks (hereinafter, VISN's), such as VISN 23 and VISN 4, still have health care professionals participating in internal quarterly phone conferences, utilizing an e-mail list serve, and informally sharing information on pain care. Accordingly, some VISN's have better developed pain management strategies and more proficient personnel than others.

Medical professionals familiar with VA's pain management efforts provided the Committee with input that underscored the need for VA to focus upon and assume a leadership position in the field of pain management. This need is heightened by the distinct demographic characteristics of veterans and the unique challenges some face. For example, men make up a greater proportion of the veteran population than the civilian population, and some of the injuries suffered by veterans, including blast injuries and shrapnel wounds, tend to be much more prevalent among veterans than their civilian cohorts. The Pain Forum, and other groups, have formally and informally identified research opportunities on co-morbidity with substance use disorder, and alcoholism, and on co-morbidity with mental health issues, including depression and post-traumatic stress disorder.

The Committee bill has broad support among experts in the pain care management field. It has been endorsed by the Pain Forum, which consists of over 25 health care and health care advocacy groups, including the American Academy of Pain Management, American Academy of Pain Medicine, Alliance of State Pain Initiatives, American Cancer Society, American Chronic Pain Association, American Hospice Foundation, American Pain Foundation, American Pain Society, American Pharmacists Association, American Society for Pain Management Nursing, Federation of State Medical Boards, National Coalition for Cancer Survivorship, Na-

tional Hospice & Palliative Care Organization, and the National Pain Foundation.

*Pain Initiatives at VA Health Care Facilities.* Section 3(a) of the Committee bill would add a new section to title 38, proposed section 1720F, entitled “Pain Care,” that would require VA to implement a comprehensive pain management program. Under this new section 1720F, the Secretary would be required to develop and carry out an initiative on pain care at every VA health care facility, and to assess every patient for pain at the time of their admission or initial treatment, and periodically thereafter. Under this new section, VA would be required to utilize a “professionally recognized pain assessment tool or process.” In practice, this would require VA to adopt a uniform pain assessment tool or process. VA has done work in this area before, notably through the “fifth vital sign” education project, first implemented in 1999, that added a screening for pain to the traditional assessment of blood pressure, temperature, and other vital signs at check-in. However, inconsistencies remain system-wide in the practical implementation of this internal policy.

At the Committee’s October 24, 2007, hearing, Brenda Murdough of the American Pain Foundation spoke of the benefits of a pain management program for veterans. According to Ms. Murdough:

[While] many of our military and veterans treatment facilities offer the highest level of skill and expertise in treating these painful conditions suffered by our wounded armed service men and women, we need to ensure that all of our veterans’ facilities are consistently providing the highest level of effective, comprehensive pain management to prevent long term suffering and disability.

Carl Blake of Paralyzed Veterans of America provided insight on the positive impact of pain management upon individuals suffering spinal cord injuries:

We have seen firsthand the benefits of pain care programs, as each VA facility that supports a spinal cord injury (SCI) unit also maintains a pain care program. Veterans with spinal cord injury know all too well the impact that pain, including phantom pain, can have on their daily life. The pain care programs that SCI veterans have access to have greatly enhanced their rehabilitation and improved their quality of life.

As such, this section of the Committee bill would require that each patient be provided appropriate pain care, and when necessary, be provided access to specialty pain management services, including individualized counseling and psychological support, anesthesiology, and other tools as needed.

*Implementation of Pain Care Initiatives.* Section 3(c) of the Committee bill would require the Secretary to ensure that the implementation of the pain care initiative at all health care facilities occurs no later than January 1, 2008, for inpatient care; and January 1, 2009, for outpatient care.

*Research and Training Programs.* Section 4(a) of the Committee bill would add a new section 7330A to title 38, entitled “program of research and training on acute and chronic pain,” that would re-

quire VA to carry out, within the Medical and Prosthetic Research Service of the Veterans Health Administration, a program of research and training on acute and chronic pain. It is the Committee's view that there is a need for expanded research and education of VA's health care workers in how to assess and treat pain.

Subsection (b) of proposed section 7330A would describe the program's goals, including the identification of research priorities, promotion and coordination of research opportunities, and education of VA's health care personnel. It is the Committee's understanding, based on informal input from commentators familiar with current VA pain management efforts, that while there has been a slow decline of the pain management program at VA, there is also enthusiasm about the prospect of a renewed focus upon pain research. Some contributors suggested that VA could explore research opportunities focused upon co-morbid substance use disorder, post-traumatic stress disorder, multiple chronic pain, and other conditions that have a higher incidence among veterans than comparable civilian cohorts.

Subsection (c) of proposed section 7330A would provide for the designation of an appropriate number of health centers to serve as cooperative centers for research and education on pain. The Secretary would also be required to select a lead center for research on pain attributed to central and peripheral nervous system damage, and another for the coordination of research activities of all other centers. The center designated to do so would be required to review and evaluate research, collect and disseminate information, and develop educational materials and products.

#### COMMITTEE BILL COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the CBO, estimates that enactment of the Committee bill would increase spending by \$2 million in 2008 and by \$17 million over the 2009–2013 period. Enactment of the Committee bill would not affect direct spending or receipts, and would not affect the budget of state, local or tribal governments.

The cost estimate provided by CBO, setting forth a detailed breakdown of costs, follows:

CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, January 15, 2008*

Hon. DANIEL K. AKAKA,  
*Chairman, Committee on Veterans' Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2160, the Veterans Pain Care Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sunita D'Monte.

Sincerely,

PETER R. ORSZAG,  
*Director.*

Enclosure.

S. 2160 would require the Department of Veterans Affairs (VA) to implement an initiative on pain care at all VA health care facilities, under which VA would assess and appropriately treat acute and chronic pain. In addition, the bill would require VA to establish a program of research and training on treatment for acute and chronic pain—including centers for research and education on pain—and to appoint a national coordinator to oversee those programs.

According to VA, the department has already implemented appropriate pain assessment and management protocols at its medical facilities. Based on information from VA regarding similar research programs, CBO expects that under S. 2160, VA would establish three pain research and training centers at an estimated annual cost of about \$1 million each. Therefore, CBO estimates that implementing the provisions on research, training, and education would cost \$2 million in 2008 and \$17 million over the 2009–2013 period, assuming appropriation of the estimated amounts. This estimate further assumes that outlays will follow historical spending patterns for similar programs and that the bill will be enacted this spring. Enacting the bill would have no effect on direct spending or revenues.

S. 2160 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Sunita D'Monte. This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has made an evaluation of the regulatory impact that would be incurred in carrying out the Committee bill. The Committee finds that the Committee bill would not entail any regulation of individuals or businesses or result in any impact on the personal privacy of any individuals and that the paperwork resulting from enactment would be minimal.

#### TABULATION OF VOTES CAST IN COMMITTEE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by members of the Committee at its November 14, 2007 meeting. On that date, the Committee, by voice vote, ordered S. 2160 reported favorably to the Senate.

#### AGENCY REPORT

On October 24, 2007, Michael J. Kussman, MD, MS, MACP, the Department of Veterans Affairs' Under Secretary for Health, appeared before the Committee and submitted testimony on, among other things, the Veterans Pain Care Act of 2007. Excerpts from this statement are reprinted below:

## STATEMENT OF THE VIEWS OF THE ADMINISTRATION

Michael J. Kussman, MD, MD, MACP

Under Secretary for Health for the Department of  
Veterans Affairs

Good morning Mr. Chairman and Members of the Committee:

Thank you for inviting me here today to present the Administration's views on several bills that would affect Department of Veterans Affairs (VA) programs that provide veterans benefits and services. With me today is Walter A. Hall, Assistant General Counsel. I will address the five bills on today's agenda and then I would be happy to answer any questions you and the Committee members may have.

## S. 2160 "VETERANS PAIN CARE ACT OF 2007"

S. 2160 would require the Secretary to carry out an initiative on pain care management at each VA health care facility. Under the initiative, each individual receiving treatment in a VA facility would receive: (1) a pain assessment at the time of admission or initial treatment and periodically thereafter, using a professionally recognized pain assessment tool or process; and (2) appropriate pain care consistent with recognized means for assessment, diagnosis, treatment, and management of acute and chronic pain, including, when appropriate, access to specialty pain management services. The initiative would have to be implemented at all VA health care facilities by not later than January 1, 2008, in the case of inpatient care and by not later than January 1, 2009, in the case of outpatient care.

The bill would further require the Secretary to carry out a program of research and training on acute and chronic pain within VHA's Medical and Prosthetic Research Service. These programs would be directed to meet the purposes specified in the bill. The Secretary would also be required to designate an appropriate number of facilities as cooperative centers for research and education on pain. Each such center would focus on research and training in one or more of the following areas: acute pain; chronic pain, or a research priority identified by VHA. The Secretary would also need to designate at least one of those centers as a lead center for research on pain attributable to central and peripheral nervous system damage commonly associated with the battlefield injuries characteristic of modern warfare. Another center would be the lead for coordinating the pain care research activities conducted by the centers and responsible for carrying out a number of other duties specified in the bill.

The measure would permit these centers to compete for funding from amounts appropriated to the Department each year for medical and prosthetics research. It would also charge the USH with designating an appropriate offi-

cial to oversee their operation and to evaluate their performance.

VA health care is delivered in accordance with patient-centered medicine. Fundamental to this is effective pain management. In 2003 VHA established a National Pain Management Strategy to provide a system-wide approach to pain management to reduce pain and suffering for veterans experiencing acute and chronic pain associated with a wide range of illnesses. The national strategy uses a system-wide standard of care for pain management; ensures that pain assessment is performed in a consistent manner; ensures that pain treatment is prompt and appropriate; provides for continual monitoring and improvement in outcomes of pain treatment; uses an interdisciplinary, multimodal approach to pain management; and ensures VA clinicians are prepared to assess and manage pain effectively. The national strategy also called for pain management protocols to be established and implemented in all clinical settings and directed all VHA medical facilities to implement processes for measuring outcomes and quality of pain management.

To oversee implementation of the National Pain Management System, VHA established an interdisciplinary committee. Part of the committee's charge is to ensure that every veteran in every network has access to pain management services. The committee is also responsible for making certain that national employee education is provided to VHA clinicians so that they have the needed expertise to provide high quality pain assessment and treatment and for identifying research opportunities and priorities in pain management. It also facilitates collaborative research efforts and ensures that VHA pain management standards have been integrated into the curricula and clinical learning experiences of medical students, allied health professional students, interns, and resident trainees.

Because pain management is already a subject of systematic and system-wide attention in the VHA health care system, S. 2160 is superfluous and duplicative of what is already happening in VA healthcare. We would be very happy to meet with the Committee to discuss VA's ongoing pain management program and activities.

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CHANGES IN EXISTING LAW MADE BY THE COMMITTEE BILL,  
AS REPORTED

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, changes in existing law made by the Committee bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**TITLE 38—VETERANS’ BENEFITS**

**PART II—GENERAL BENEFITS**

**CHAPTER 17—HOSPITAL, NURSING HOME,  
DOMICILIARY, AND MEDICAL CARE**

**Subchapter II—Hospital, Nursing Home, or Domiciliary  
Care and Medical Treatment**

\* \* \* \* \*

SEC.

1720F. PAIN CARE

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**SEC. 1720F. PAIN CARE**

(a) *IN GENERAL.*—The Secretary shall carry out at each health care facility of the Department an initiative on pain care.

(b) *ELEMENTS.*—The initiative at each health care facility of the Department shall ensure that each individual receiving treatment in such health care facility receives the following:

(1) *An assessment for pain at the time of admission or initial treatment, and periodically thereafter, using a professionally recognized pain assessment tool or process.*

(2) *Appropriate pain care consistent with recognized means for assessment, diagnosis, treatment, and management of acute and chronic pain, including when appropriate, access to specialty pain management services.*

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**PART V—BOARDS, ADMINISTRATIONS, AND  
SERVICES**

**CHAPTER 73—VETERANS HEALTH ADMINISTRATION—  
ORGANIZATION AND FUNCTIONS**

\* \* \* \* \*

SEC.

7330A. PROGRAM OF RESEARCH AND TRAINING ON ACUTE AND CHRONIC PAIN.

\* \* \* \* \*

(a) *IN GENERAL.*—The Secretary shall carry out within the Medical and Prosthetic Research Service of the Veterans Health Administration a program of research and training on acute and chronic pain.

(b) *PURPOSES.*—The purposes of the program shall include the following:

(1) *To identify research priorities most relevant to the treatment of the types of acute and chronic pain suffered by veterans.*

(2) *To promote, conduct, and coordinate research in accordance with such research priorities—*

(A) *through the facilities and programs of the Department; and*

(B) in cooperation with other agencies, institutions, and organizations, including the Department of Defense.

(3) To educate and train health care personnel of the Department with respect to the assessment, diagnosis, treatment, and management of acute and chronic pain.

(c) DESIGNATION OF CENTERS.—(1) The Secretary shall designate an appropriate number of facilities of the Department as cooperative centers for research and education on pain. Each such center shall be designated with a focus on research and training on one or more of the following:

(A) Acute pain.

(B) Chronic pain.

(C) A research priority identified under subsection (b)(1).

(2) The Secretary shall designate at least one of the centers designated under paragraph (1) as a lead center for research on pain attributable to central and peripheral nervous system damage commonly associated with the battlefield injuries characteristic of modern warfare.

(3) The Secretary shall designate one of the centers designated under paragraph (1) as the lead center for coordinating the pain care research activities of the centers designated under this subsection. The functions of such center shall be the following:

(A) To review and evaluate periodically the research of the centers designated under this subsection and to ensure that such research is conducted in accordance with the research priorities identified pursuant to subsection (b)(1).

(B) To collect and disseminate the results of the research of the centers designated under this subsection.

(C) To develop and disseminate educational materials and products—

(i) to enhance the assessment, diagnosis, treatment, and management of acute and chronic pain by the health care professionals and facilities of the Veterans Health Administration; and

(ii) for veterans suffering from acute or chronic pain and their families.

(d) AWARD OF FUNDING.—Centers designated under subsection (c) may compete for the award of funding from amounts appropriated to the Department each fiscal year for medical and prosthetics research.

(e) NATIONAL OVERSIGHT.—The Under Secretary of Health shall designate an appropriate officer—

(1) to oversee the operation of the centers designated under subsection (c); and

(2) to review and evaluate periodically the performance of such centers.