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VETERANS HEALTH CARE COST RECOVERY ACT OF 2003

MAY 19, 2003.—Ordered to be printed

Mr. SMITH of New Jersey, from the Committee on Veterans' Affairs, submitted the following

R E P O R T

[To accompany H.R. 1562]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 1562) to amend title 38, United States Code, to enhance the authority of the Department of Veterans Affairs to recover costs of medical care furnished to veterans and other persons by the Department from third parties that provide health insurance coverage to such veterans and other persons, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans Health Care Cost Recovery Act of 2003".

SEC. 2. AUTHORITY FOR DEPARTMENT OF VETERANS AFFAIRS TO RECOVER MEDICAL COSTS FROM THIRD-PARTY PROVIDERS AS IF IT IS A PREFERRED PROVIDER ORGANIZATION.

(a) IN GENERAL.—Section 1729(f) of title 38, United States Code, is amended by adding at the end the following new sentence: "The absence of a participation agreement or other contractual arrangement entered into by the Secretary with a person obligated to provide, or to pay, the expenses of health services under a health-plan contract or with a third party that is a preferred provider organization may not be used or operate to prevent, or reduce the amount of, any such recovery or collection by the United States.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply only with respect to care and services furnished under chapter 17 of title 38, United States Code, on and after the date of the enactment of this Act.

SEC. 3 RECOVERY OF COSTS OF HEALTH CARE AND SERVICES PROVIDED TO PERSONS OTHER THAN VETERANS.

(a) COST RECOVERY.—Section 1729 of title 38, United States Code, is amended by adding at the end the following new subsection:

"(j)(1) Whenever the Secretary furnishes care and services to a person other than a veteran, the United States shall have the right to recover or collect charges for such care or services in the same manner, and to the same extent, as is provided under this section for care and services furnished to a veteran, except that for such

purpose the terms "health-plan contract" and "third-party" shall have the meanings set forth in paragraphs (2) and (3), respectively, of section 1725(f) of this title.

"(2) The amounts of charges under paragraph (1) shall be in such amounts as the Secretary may prescribe by regulation.".

(b) TECHNICAL AMENDMENTS.—Subsection (a)(2) of such section is amended—

(1) by inserting "or" at the end of subparagraph (C); and

(2) by striking subparagraphs (D) and (E) and inserting the following:

"(D) that is incurred by a veteran who is entitled to care (or payment of the expenses of care) under a health-plan contract, but, in the case of a veteran who has a service-connected disability, only with respect to care and services furnished before October 1, 2007.".

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply only with respect to care and services furnished under chapter 17 of title 38, United States Code, on and after the date of the enactment of this Act.

SEC. 4. NAME OF DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE FACILITY, CHICAGO, ILLINOIS.

The Department of Veterans Affairs health care facility located at 820 South Damen Avenue in Chicago, Illinois, shall after the date of the enactment of this Act be known and designated as the "Jesse Brown Department of Veterans Affairs Medical Center". Any reference to such facility to any law, map, regulation, document, paper, or other record of the United States shall be considered to be a reference to the Jesse Brown Department of Veterans Affairs Medical Center.

SEC. 5. NAME OF DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC, NEW LONDON, CONNECTICUT.

The Department of Veterans Affairs outpatient clinic located in New London, Connecticut, shall after the date of the enactment of this Act be known and designated as the "John J. McGuirk Department of Veterans Affairs Outpatient Clinic". Any reference to such outpatient clinic in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the John J. McGuirk Department of Veterans Affairs Outpatient Clinic.

Amend the title so as to read:

A bill to amend title 38, United States Code, to enhance the authority of the Department of Veterans Affairs to recover costs of medical care furnished to veterans and other persons by the Department from third parties that provide health insurance coverage to such veterans and other persons, and for other purposes.

INTRODUCTION

The reported bill reflects the Committee's consideration of H.R. 1562, as amended.

H.R. 1562, the Veterans Health Care Cost Recovery Act of 2003, addresses issues reviewed by the Committee in hearings, meetings, and through other oversight mechanisms over the course of this Congress and during previous sessions of Congress.

On April 2, 2003, H.R. 1562 was introduced by Honorable Bob Beauprez, Honorable Christopher H. Smith, Honorable Lane Evans, Honorable Rob Simmons and Honorable Ciro D. Rodriguez.

On April 12, 2003, the Chairman of the Subcommittee on Health, Honorable Rob Simmons, introduced H.R. 1832, to name the Department of Veterans Affairs outpatient clinic located in New London, Connecticut, the "John J. McGuirk Department of Veterans Affairs Outpatient Clinic".

On May 1, 2003, Honorable Danny K. Davis of Illinois introduced H.R. 1908 to name the health care facility of the Department of Veterans Affairs located at 820 South Damen Avenue in Chicago, Illinois, as the "Jesse Brown Department of Veterans Affairs Medical Center".

On May 6, 2003, the Subcommittee on Health met and ordered H.R. 1562, H.R. 1832 and H.R. 1908 reported favorably to the full Committee by unanimous voice vote.

On May 15, 2003, the full Committee met and ordered H.R. 1562, as amended, reported favorably to the House by unanimous voice vote.

SUMMARY OF THE REPORTED BILL

H.R. 1562, as amended, would:

1. Strengthen VA's rights under law to collect third-party reimbursements from certain third parties for the costs VA incurs in providing health care to veterans and others covered by a private or public health plan.
2. Authorize reimbursement for services provided by VA to persons enrolled in and/or receiving treatment from VA health care facilities by designating VA as a "preferred provider" for purposes of collections when a payer is a managed care or preferred provider organization or other non-traditional payer.
3. Authorize VA to receive full reimbursement for services provided to all persons with insurance, with the exception of service-disabled veterans for health care provided related to their service-connected conditions.
4. Correct deficiencies in VA's ability to recover costs of care provided to patients covered by other health plans, by requiring these health plans to reimburse VA for legitimate expenses associated with a covered beneficiary.
5. Designate the health care facility of the Department of Veterans Affairs located at 820 South Damen Avenue in Chicago, Illinois, as the "Jesse Brown Department of Veterans Affairs Medical Center".
6. Designate the Department of Veterans Affairs outpatient clinic located in New London, Connecticut, as the "John J. McGuirk Department of Veterans Affairs Outpatient Clinic".

BACKGROUND AND DISCUSSION

The Committee on Veterans' Affairs is concerned that the VA health care system is faced with serious long-term funding issues and may be unable to keep up with the demands being placed on it by the health care needs of our Nation's veterans. The VA health care system is under great stress, as increasing enrollment and rising health care costs have resulted in hundreds of thousands of veterans being forced to wait months, some even more than a year, to see a VA clinician for the first time. VA recently reported that over 200,000 veterans are waiting six months or more to be seen in VA primary care. These veterans should not be required to wait because VA lacks the necessary resources, or even more unacceptable, be told no care is available for them.

H.R. 1562, as amended, would correct deficiencies in VA's ability to recover costs of care provided to veterans covered by other health plans. Since 1986, VA has had statutory authority to collect from traditional insurers such as Blue Cross-Blue Shield, Aetna, Mutual of Omaha and many others. These funds are used by VA to supplement appropriated funds to maintain high quality health care.

VA is currently unable to collect fully from the sizeable managed care and preferred provider sector, which accounts now for over

two-thirds of all health plans in the United States. The reported bill would require private sector programs to pay VA for care it provides to covered beneficiaries. The absence of a participating agreement or other contractual agreement would no longer serve as grounds for denying or reducing amounts the Department may collect from third-party payers. This bill would eliminate such barriers to reimbursements to the VA system.

H.R. 1562, as amended, would designate VA as a "preferred provider" for purposes of collections when a payer might be a managed care or preferred provider organization or other non-traditional payer. This bill would authorize VA to receive full reimbursement for services provided to all persons with insurance, with the exception of service-disabled veterans for health care provided related to their service-connected conditions. Enactment of this legislation would increase the amount of money VA could collect by hundreds of millions of dollars each year, providing funds that are needed to reduce the waiting lists and promote better use of all available health care resources.

On January 17, 2003, the Secretary of Veterans Affairs suspended any new enrollments of "low priority," higher income veterans for the remainder of fiscal year 2003.

On January 29, 2003, the Committee held a hearing to receive testimony from the Department of Veterans Affairs on its health care system. With record numbers of veterans seeking medical care at VA facilities, the Committee examined how well VA is meeting its obligations to provide comprehensive and timely care to veterans. The VA Under Secretary for Health and expert witnesses from veterans service organizations testified on what can and should be done to improve the delivery of health care. Those individuals testifying were Honorable Robert H. Roswell, M.D., Under Secretary for Health; Mr. Dennis M. Cullinan, National Legislative Director, Veterans of Foreign Wars; Mr. Peter S. Gaytan, Principal Deputy Director, Veterans Affairs and Rehabilitation Commission, The American Legion; Mr. Joseph A. Violante, National Legislative Director, Disabled American Veterans; Mr. Richard Fuller, National Legislative Director, on behalf of Mr. John Bollinger, Deputy Executive Director, Paralyzed Veterans of America; Mr. Richard Jones, National Legislative Director, AMVETS; and Dr. Linda Spoonster Schwartz, Chair of the Health Care Committee for Vietnam Veterans of America.

On February 11, 2003, veterans' health care, disability compensation claims processing and the national cemetery system were topics discussed at a full Committee hearing on the Department of Veterans Affairs budget request for fiscal year (FY) 2004. Honorable Anthony J. Principi, Secretary of Veterans Affairs, was the lead witness at the hearing, which also included expert testimony from major veterans service organizations. For FY 2004, the Administration proposed a record budget for veterans, including over $62 billion for VA, a $3 billion increase over the FY 2003 budget. The Administration's budget proposed a $2.1 billion increase in discretionary spending, primarily on veterans' health care programs. The Committee was particularly interested in examining proposals to meet the rising demand for VA medical care services, enhance management efficiencies and increase revenues from non-appropriated sources.

Testifying at this hearing on the FY 2004 budget for VA were: Honorable Anthony J. Principi, Secretary of the Department of Veterans Affairs, who was accompanied by the following individuals from Department of Veterans Affairs: Honorable Robert H. Roswell, M.D., Under Secretary for Health; Honorable Vice Admiral Daniel L. Cooper, USN (Ret.), Under Secretary for Benefits; Mr. Eric Benson, Acting Under Secretary for Memorial Affairs; Honorable Tim S. McClain, General Counsel; and Honorable William H. Campbell, Assistant Secretary for Management. Additional witnesses included representatives of the Independent Budget: Mr. Joseph A. Violante, National Legislative Director, Disabled American Veterans; Mr. John Bollinger, Deputy Executive Director, Paralyzed Veterans of America; Mr. Richard Jones, National Legislative Director, AMVETS; Mr. Dennis M. Cullinan, National Legislative Director, Veterans of Foreign Wars; as well as Mr. Richard Weidman, Director of Government Relations, Vietnam Veterans of America; Mr. Peter S. Gaytan, Principal Deputy Director, Veterans Affairs and Rehabilitation Commission, The American Legion; and Colonel Robert F. Norton, USA (Ret.), Co-Chair, Veterans Committee, The Military Coalition.

The Subcommittee on Health conducted oversight hearings and briefings during previous sessions of Congress to focus on the rising demand for VA medical care services and ways to address the need for additional funding with management efficiencies and increased revenue streams. In particular, the Subcommittee on Health's hearing on March 19, 2003, considered proposals to ease stresses on VA health care by providing VA authority to issue medication to veterans based on prescriptions written by private providers. Also, the Subcommittee on Oversight and Investigations has conducted periodic oversight hearings to review VA's Medical Care Collection Fund and the progress VA is making in its billing and collections activities since 1997, including a hearing addressing this issue on May 7, 2003.

H.R. 1562, as amended, would honor the late Jesse Brown, former Secretary of Veterans Affairs for his exemplary service to his country as a combat-wounded U.S. Marine Corps veteran of the Vietnam war and dedicated leader of the Department of Veterans Affairs by naming the health care facility of the Department of Veterans Affairs located at 820 South Damen Avenue in Chicago, Illinois, as the "Jesse Brown Department of Veterans Affairs Medical Center".

Mr. Brown, a long-time resident of Chicago, enlisted in the Marine Corps in 1963. During the Vietnam War, he was wounded in combat in 1965 while on patrol in Danang. The resulting injury left him partially paralyzed. After a lengthy recuperation, Mr. Brown began a career in veterans' advocacy that spanned the remainder of his life. Mr. Brown worked for fellow veterans for 25 years with the Disabled American Veterans organization, culminating his tenure there by serving as its executive director from 1989 to 1993.

Honorable Jesse Brown was nominated by President Clinton as the Secretary of Veterans Affairs and on January 22, 1993, was sworn in as VA's third Secretary. Under his leadership for nearly five years, VA expanded benefits and treatment services for those exposed to Agent Orange, radiation, mustard gas, and veterans suffering from post-traumatic stress disorder. He made programs for

homelessness the "fifth mission" of VA and supervised other important progress in veterans' affairs. Secretary Brown was buried at Arlington National Cemetery with full military honors on August 21, 2002, following a lengthy battle with amyotrophic lateral sclerosis (ALS), commonly known as Lou Gehrig's disease.

Naming the West Side division of the VA Medical Center Chicago after Secretary Brown would appropriately memorialize his earnest efforts to help those wounded in battle and recognize his accomplishments and commitment to improving the quality of life of all veterans. The Illinois Congressional delegation is unanimous in its support for the Committee bill, as are the major veterans organizations of the State of Illinois.

H.R. 1562, as amended, would name the Department of Veterans Affairs outpatient clinic in New London, Connecticut, as the "John J. McGuirk Department of Veterans Affairs Outpatient Clinic". During World War II, Mr. McGuirk, a new London native, joined the Navy as a salvage diver and served honorably in the South Pacific. During his service, he was awarded the World War II Victory Medal, Asiatic Pacific Theatre Medal, and the Philippine Liberation Medal.

Mr. McGuirk's commitment to his Nation and fellow veterans was prominent throughout his life. He was an advocate for the opening of a VA clinic in southeastern Connecticut. His leadership led VA to establish a veterans outreach clinic in New London, on the grounds of the Coast Guard Academy. The Connecticut Congressional delegation is unanimous in its support for naming this facility after Mr. McGuirk, as are the Disabled American Veterans, Veterans of Foreign Wars, Paralyzed Veterans of America, The American Legion, AMVETS, and the Commandant of the Coast Guard Academy.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill would cite the bill as the "Veterans Health Care Cost Recovery Act of 2003".

Section 2(a) of the bill would amend section 1729(f) of title 38, United States Code, by adding a sentence to provide VA the authority to bill as a preferred provider organization and to recover medical costs from third-party providers. The absence of a participation agreement or other contractual arrangement may not be used to deny or reduce amounts that VA would collect from third party payers.

Section 2(b) of the bill would make the amendment in subsection (a) applicable only to care and services furnished under chapter 17 of title 38, United States Code, effective on or after the date of enactment of this Act.

Section 3(a) of the bill would amend section 1729 of title 38, United States Code, by adding subsection (j)(1) to provide VA the authority to recover the cost of health care and services provided to persons other than veterans, and identifies the meaning of "health-plan contract" and "third-party" consistent with paragraphs (2) and (3) of section 1725(f) of title 38, United States Code. Subsection (j)(2) would require the Secretary to prescribe by regulation the amounts of charges for health care and services provided to persons other than veterans.

Section 3(b) of the bill would make technical amendments to subsection (a)(2) of Section 1729 of title 38, United States Code, by: section 3(b)(1) inserting "or" at the end of subparagraph (C); section 3(b)(2) striking subparagraphs (D) and (E) and inserting a new subparagraph (D) that states: "that is incurred by a veteran who is entitled to care (or payment of the expenses of care) under a health-plan contract, but in the case of a veteran who has a service-connected disability, only with respect to care and services furnished before October 1, 2007.".

Section 3(c) would make these amendments applicable only to care and services furnished under chapter 17 of title 38, United States Code, effective on or after the date of enactment of this Act.

Section 4 of this bill would, effective after the date of enactment, name the Department of Veterans Affairs health care facility at 820 South Damen Avenue in Chicago, Illinois, the "Jesse Brown Department of Veterans Affairs Medical Center".

Section 5 of this bill would, effective after the date of enactment, name the Department of Veterans Affairs outpatient clinic in New London, Connecticut, the "John J. McGuirk Department of Veterans Affairs Outpatient Clinic".

PERFORMANCE GOALS AND OBJECTIVES

The performance goals and objectives of the Department of Veterans Affairs are established in annual performance plans and are subject to the Committee's regular oversight and evaluation by the U. S. General Accounting Office. VA also publishes a performance and accountability report for each fiscal year.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

At the time of the filing of this report on H.R. 1562, as amended, a cost estimate was not available from the Congressional Budget Office.

STATEMENT OF FEDERAL MANDATES

At the time of the filing of this report on H.R. 1562, as amended, a cost estimate was not available from the Congressional Budget Office.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, the reported bill is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 1729 OF TITLE 38, UNITED STATES CODE

§ 1729. Recovery by the United States of the cost of certain care and services

(a)(1) * * *

(2) Paragraph (1) of this subsection applies to a non-service-connected disability—

(A) * * *

* * * * * * *

(C) that is incurred as the result of a crime of personal violence that occurred in a State, or a political subdivision of a State, in which a person injured as the result of such a crime is entitled to receive health care and services at such State's or subdivision's expense for personal injuries suffered as the result of such crime; *or*

[(D) that is incurred by a veteran—

[(i) who does not have a service-connected disability; and

[(ii) who is entitled to care (or payment of the expense of care) under a health-plan contract; or

[(E) for which care and services are furnished before October 1, 2007, under this chapter to a veteran who—

[(i) has a service-connected disability; and

[(ii) is entitled to care (or payment of the expenses of care) under a health-plan contract.]

(D) that is incurred by a veteran who is entitled to care (or payment of the expenses of care) under a health-plan contract, but, in the case of a veteran who has a service-connected disability, only with respect to care and services furnished before October 1, 2007.

* * * * * * *

(f) No law of any State or of any political subdivision of a State and no provision of any contract or other agreement, shall operate to prevent recovery or collection by the United States under this section or with respect to care or services furnished under section 1784 of this title. *The absence of a participation agreement or other contractual arrangement entered into by the Secretary with a person obligated to provide, or to pay, the expenses of health services under a health-plan contract or with a third party that is a preferred provider organization may not be used or operate to prevent, or reduce the amount of, any such recovery or collection by the United States.*

* * * * * * *

(j)(1) Whenever the Secretary furnishes care and services to a person other than a veteran, the United States shall have the right to recover or collect charges for such care or services in the same manner, and to the same extent, as is provided under this section for care and services furnished to a veteran, except that for such purpose the terms "health-plan contract" and "third-party" shall have the meanings set forth in paragraphs (2) and (3), respectively, of section 1725(f) of this title.

(2) The amounts of charges under paragraph (1) shall be in such amounts as the Secretary may prescribe by regulation.

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