

114TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session 114-742

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 5620) TO AMEND TITLE 38, UNITED STATES CODE, TO PROVIDE FOR THE REMOVAL OR DEMOTION OF EMPLOYEES OF THE DEPARTMENT OF VETERANS AFFAIRS BASED ON PERFORMANCE OR MISCONDUCT, AND FOR OTHER PURPOSES

SEPTEMBER 12, 2016.—Referred to the House Calendar and ordered to be printed

Mr. COLLINS of Georgia from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 859]

The Committee on Rules, having had under consideration House Resolution 859, by a record vote of 7 to 3, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 5620, the VA Accountability First and Appeals Modernization Act of 2016, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Veterans' Affairs. The resolution waives all points of order against consideration of the bill. The resolution provides that the bill shall be considered as read. The resolution waives all points of order against provisions in the bill. The resolution makes in order only those amendments printed in this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments printed in this report. The resolution provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

Although the resolution waives all points of order against consideration of the bill, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 207

Motion by Ms. Foxx to report the rule. Adopted: 7–3

Majority Members	Vote	Minority Members	Vote
Ms. Foxx	Yea	Ms. Slaughter	Nay
Mr. Cole		Mr. McGovern	Nay
Mr. Woodall	Yea	Mr. Hastings of Florida	Nay
Mr. Burgess	Yea	Mr. Polis	
Mr. Stivers	Yea		
Mr. Collins	Yea		
Mr. Byrne	Yea		
Mr. Newhouse			
Mr. Sessions, Chairman	Yea		

SUMMARY OF THE AMENDMENTS MADE IN ORDER

1. Miller, Jeff (FL): MANAGER'S Makes technical and conforming changes to the bill and aligns the due process procedures for the recoupment provisions of the bill. (10 minutes)
2. Walz (MN), Titus (NV): Strikes sections 2 through 8 and section 10. (10 minutes)
3. Takano (CA): Replaces Section 3 with a new provision allowing the Secretary to suspend without pay any VA employee whose performance or misconduct threatens public health or safety, including the health and safety of veterans; and may remove a suspended employee after such investigation and review as the Secretary considers necessary, if the Secretary determines removal is in the interests of public health and safety. (10 minutes)
4. Lujan Grisham (NM): Adds Members of Congress to the reporting requirements. (10 minutes)
5. Kuster, Ann (NH): Replaces Section 7 with S. 2921 Section 113, which contains an improved process to expedite the removal or demotion of a member of the Senior Executive Service. (10 minutes)
6. Kirkpatrick (AZ): Replaces Section 8 with Sections 101–104 from S. 2921 to create the VA Office of Accountability and Whistleblower Protection. (10 minutes)
7. Newhouse (WA): Applies the statutory requirements of the Emergency Medical Treatment and Labor Act (EMTALA) to emergency care furnished by the VA to enrolled veterans. Requires every enrolled veteran who arrives at the emergency department of a VA medical facility, and indicates an emergency condition exists, be assessed and treated in an effort to prevent further injury or death. (10 minutes)
8. Schweikert (AZ): Requires that the VA use distributive ledger technology when scheduling healthcare appointments to ensure

transparency and accountability 1 year after enactment. (10 minutes)

9. Cartwright (PA): Authorizes the Department of Veterans Affairs to appoint a psychiatrist who completes a residency at a Veterans Health Administration (VHA) facility to a VHA health care position immediately after such residency, without regard to civil service or classification laws, if the psychiatrist meets the qualifications established in regulations prescribed for the position, and the position has been unfilled for at least 35 days. (10 minutes)

10. Frankel (FL): Provides the sense of the Congress honoring American veterans disabled for life and encouraging Americans to do so each years. (10 minutes)

11. Gallego (AZ): Establishes positions of Directors of Veterans Integrated Service Networks (VISN) in the VA's Office of Undersecretary for Health. (10 minutes)

12. Keating (MA), Rothfus (PA): Directs healthcare providers with VA affiliation to take continuing education courses specific to pain management, opioids, and substance abuse. (10 minutes)

13. Lowenthal (CA): Requires the Secretary of Veterans Affairs or a designee to review covered whistleblower complaints quarterly. (10 minutes)

14. Lujan (NM): Directs the VA to produce a report on the number of part-time active duty military physicians in VA health facilities, the hiring process for part-time active duty military physicians, the hiring process for part-time civilian physicians in, and the steps the VA is taking to recruit active duty military physicians for part-time employment in VA health facilities. (10 minutes)

15. Maloney, Sean (NY): Extends the Department of Veterans Affairs authority for the performance of medical disability evaluations by contract physicians by one year. (10 minutes)

16. O'Rourke (TX), Stefanik (NY): Provides the VA with the authority to offer physicians conditional job offers two years earlier and increases the VA's recruiting outreach efforts to academic affiliate institutions. (10 minutes)

17. O'Rourke (TX): Provides the VA with the authority to share a patient's electronic health record with VA community-based providers, while maintaining HIPPA protections. (10 minutes)

18. O'Rourke (TX): Directs the Secretary of Veterans Affairs to conduct annual surveys of veterans on experiences obtaining hospital care and medical services from medical facilities of the Department of Veterans Affairs. (10 minutes)

19. Walz (MN): Enables any person who is entitled to retired pay for nonregular (reserve) service or who, but for age, would be so entitled to be honored as a veteran. A person shall not be entitled to any benefit by reason of such recognition. (10 minutes)

20. Walz (MN): Allows the Secretary of the VA to furnish rehabilitative equipment to Veterans entitled to prosthetic appliances, and modify non-rehabilitative equipment owned by the Veteran to meet that purpose, if the Veteran elects. Rehabilitative equipment includes recreational sports equipment that provides an adaption or accommodation for the Veteran. (10 minutes)

21. Duffy (WI): Allows the VA to also use hearing aid specialists, who are more available, and are qualified to fit, program, adjust, and repair hearing aids. (10 minutes)

22. Lance (NJ): Inserts the legislative text of H.R. 658 which requires a V.A. Regional Office carry out claim adjudication within 125 days with 98% accuracy. Regional Offices must submit a three step report every time it fails to meet its 125 day goal with explanation, reasoning and solutions for improvement. It will also contain a description of additional resources necessary for the office to reach its goals, from staffing to policy changes, and an action plan to enable the office to meet its goal. (10 minutes)

TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MILLER OF FLORIDA OR HIS DESIGNEE, DEBATALE FOR 10 MINUTES

Page 4, beginning on line 16, strike “under section 7701 of title 5”.

Page 11, strike lines 11 through 14 and insert the following:

- “(B) before such order is made, the individual is afforded—
 - “(i) notice of the order and an opportunity to respond to the order; and
 - “(ii) an opportunity to appeal the order to another department or agency of the Federal Government.”.

Page 14, strike lines 20 through 23 and insert the following:

- “(2) before such repayment, the employee is afforded—
 - “(A) notice of the order and an opportunity to respond to the order; and
 - “(B) an opportunity to appeal the order to another department or agency of the Federal Government.”.

Page 20, line 8, insert “consistent with paragraph (3),” before “may”.

Page 20, after line 11, insert the following:

“(3) An appeal of a personnel action pursuant to paragraph (2)(A) must be filed with the Senior Executive Disciplinary Appeals Board not later than the date that is seven days after the date of such action. If such appeal is not made within the seven-day period, the personnel action shall be final and not subject to further appeal.”.

Page 29, strike lines 13 through 18 and insert the following:

“(2)(A) Except as provided by subparagraph (B), with respect to a supervisory employee subject to an adverse action under this section who is—

“(i) an individual as that term is defined in section 715(i)(1) of this title, the procedures under subsections (d) and (e) of section 715 of this title shall apply; and

“(ii) an individual as that term is defined in section 713(g)(1) of this title, the procedures under section 713(d) of this title shall apply.”.

Page 29, line 21, strike “five days” and insert “ten days”.

Page 30, line 2, strike “five-day” and insert “ten-day”.

Page 33, line 17, strike “except that” and all that follows through the period on line 21 and insert “except that—”

“(I) any such department or agency shall issue a final decision with respect to such appeal not later than the date that is 30 days after the date the department or agency received such appeal; and

“(II) if such a final decision is not made by the applicable department or agency within 30 days

after receiving such appeal, the order of the Secretary shall be final and not subject to further appeal.

Page 34, line 19, strike "7742" and insert "7332".

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WALZ OF MINNESOTA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 1, line 5, strike "VA Accountability First and".

Page 2, beginning line 3, strike sections 2 through 8.

Page 53, beginning line 14, strike section 10.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE TAKANO OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike section 3 and insert the following:

SEC. 3. SUSPENSION AND REMOVAL OF DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES FOR PERFORMANCE OR MISCONDUCT THAT IS A THREAT TO PUBLIC HEALTH OR SAFETY.

(a) IN GENERAL.—Chapter 7 of title 38, United States Code, is amended by adding after section 713 the following new section:

"§ 715. Employees: suspension and removal for performance or misconduct that is a threat to public health or safety

"(a) SUSPENSION AND REMOVAL.—Subject to subsections (b) and (c), the Secretary may—

"(1) suspend without pay an employee of the Department of Veterans Affairs if the Secretary determines the performance or misconduct of the employee is a threat to public health or safety, including the health and safety of veterans; and

"(2) remove an employee suspended under paragraph (1) when, after such investigation and review as the Secretary considers necessary, the Secretary determines that removal is necessary in the interests of public health or safety.

"(b) PROCEDURE.—An employee suspended under subsection (a)(1) is entitled, after suspension and before removal, to—

"(1) within 30 days after suspension, a written statement of the specific charges against the employee, which may be amended within 30 days thereafter;

"(2) an opportunity within 30 days thereafter, plus an additional 30 days if the charges are amended, to answer the charges and submit affidavits;

"(3) a hearing, at the request of the employee, by a Department authority duly constituted for this purpose;

"(4) a review of the case by the Secretary, before a decision adverse to the employee is made final; and

"(5) written statement of the decision of the Secretary.

"(c) RELATION TO OTHER DISCIPLINARY RULES.—The authority provided under this section shall be in addition to the authority provided under section 713 and title 5 with respect to disciplinary actions for performance or misconduct.

"(d) BACK PAY FOR WHISTLEBLOWERS.—If any employee of the Department of Veterans Affairs is subject to a suspension or re-

moval under this section and such suspension or removal is determined by an appropriate authority under applicable law, rule, regulation, or collective bargaining agreement to be a prohibited personnel practice described under section 2302(b)(8) or (9) of title 5, such employee shall receive back pay equal to the total amount of basic pay that such employee would have received during the period that the suspension and removal (as the case may be) was in effect, less any amounts earned by the employee through other employment during that period.

“(e) DEFINITIONS.—In this section, the term ‘employee’ means any individual occupying a position within the Department of Veterans Affairs under a permanent or indefinite appointment and who is not serving a probationary or trial period.”

(b) CLERICAL AND CONFORMING AMENDMENTS.—

(1) CLERICAL.—The table of sections at the beginning of such chapter is amended by adding after the item relating to section 713 the following new item:

“715. Employees: suspension and removal for performance or misconduct that is a threat to public health or safety.”.

(2) CONFORMING.—Section 4303(f) of title 5, United States Code, is amended—

(A) by striking “or” at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting “, or”; and

(C) by adding at the end the following:

“(4) any suspension or removal under section 715 of title 38.”.

(c) REPORT ON SUSPENSIONS AND REMOVALS.—Not later than one year after the date of the enactment of this Act, the Inspector General of the Department of Veterans Affairs shall submit to the Committees on Veterans’ Affairs of the House of Representatives and the Senate a report on suspensions and removals of employees of the Department made under section 715 of title 38, United States Code, as added by subsection (a). Such report shall include, with respect to the period covered by the report, the following:

(1) The number of employees who were suspended under such section.

(2) The number of employees who were removed under such section.

(3) A description of the threats to public health or safety that caused such suspensions and removals.

(4) The number of such suspensions or removals, or proposed suspensions or removals, that were of employees who filed a complaint regarding—

(A) an alleged prohibited personnel practice committed by an officer or employee of the Department and described in section 2302(b)(8) or 2302(b)(9)(A)(i), (B), (C), or (D) of title 5, United States Code; or

(B) the safety of a patient at a medical facility of the Department.

(5) Of the number of suspensions and removals listed under paragraph (4), the number that the Inspector General considers to be retaliation for whistleblowing.

(6) The number of such suspensions or removals that were of an employee who was the subject of a complaint made to the

Department regarding the health or safety of a patient at a medical facility of the Department.

(7) Any recommendations by the Inspector General, based on the information described in paragraphs (1) through (6), to improve the authority to make such suspensions and removals.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LUJAN GRISHAM OF NEW MEXICO OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 4, line 2, after “Representatives” insert the following: “and to each Member of Congress representing a district in the State or territory where the facility where the individual was employed immediately before being removed or demoted is located”.

Page 5, line 22, after “Representatives” insert the following: “and to each Member of Congress representing a district in the State or territory where the facility where the individual was employed immediately before being removed or demoted is located”.

Page 25, line 17, strike “to the supervisor of the director or official.” and insert “to—”

“(A) the supervisor of the director or official;

“(B) the Committees on Veterans’ Affairs of the Senate and House or Representatives; and

“(C) each Member of Congress representing a district in the State or territory where the facility where the supervisor is employed is located.”.

Page 36, line 5, after “Senate” insert the following: “and each Member of Congress representing a district in the State or territory where a facility relevant to the whistleblower complaint is located”.

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE KUSTER OF NEW HAMPSHIRE OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike section 7 and insert the following:

SEC. 7. IMPROVED AUTHORITIES OF SECRETARY OF VETERANS AFFAIRS TO IMPROVE ACCOUNTABILITY OF SENIOR EXECUTIVES.

(a) ACCOUNTABILITY OF SENIOR EXECUTIVES.—

(1) IN GENERAL.—Section 713 of title 38, United States Code, is amended to read as follows:

“§ 713. Accountability of senior executives

“(a) AUTHORITY.—(1) The Secretary may, as provided in this section, reprimand or suspend, involuntarily reassign, demote, or remove a covered individual from a senior executive position at the Department if the Secretary determines that the misconduct or performance of the covered individual warrants such action.

“(2) If the Secretary so removes such an individual, the Secretary may remove the individual from the civil service (as defined in section 2101 of title 5).

“(b) RIGHTS AND PROCEDURES.—(1) A covered individual who is the subject of an action under subsection (a) is entitled to—

“(A) be represented by an attorney or other representative of the covered individual’s choice;

“(B) not fewer than 10 business days advance written notice of the charges and evidence supporting the action and an opportunity to respond, in a manner prescribed by the Secretary, before a decision is made regarding the action; and

“(C) grieve the action in accordance with an internal grievance process that the Secretary, in consultation with the Assistant Secretary for Accountability and Whistleblower Protection, shall establish for purposes of this subsection.

“(2)(A) The Secretary shall ensure that the grievance process established under paragraph (1)(C) takes fewer than 21 days.

“(B) The Secretary shall ensure that, under the process established pursuant to paragraph (1)(C), grievances are reviewed only by employees of the Department.

“(3) A decision or grievance decision under paragraph (1)(C) shall be final and conclusive.

“(4) A covered individual adversely affected by a final decision under paragraph (1)(C) may obtain judicial review of the decision.

“(5) In any case in which judicial review is sought under paragraph (4), the court shall review the record and may set aside any Department action found to be—

“(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with a provision of law;

“(B) obtained without procedures required by a provision of law having been followed; or

“(C) unsupported by substantial evidence.

“(c) RELATION TO OTHER PROVISIONS OF LAW.—(1) The authority provided by subsection (a) is in addition to the authority provided by section 3592 or subchapter V of chapter 75 of title 5.

“(2) Section 3592(b)(1) of title 5 and the procedures under section 7543(b) of such title do not apply to an action under subsection (a).

“(d) DEFINITIONS.—In this section:

“(1) The term ‘covered individual’ means—

“(A) a career appointee (as that term is defined in section 3132(a)(4) of title 5); or

“(B) any individual who occupies an administrative or executive position and who was appointed under section 7306(a) or section 7401(1) of this title.

“(2) The term ‘misconduct’ includes neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

“(3) The term ‘senior executive position’ means—

“(A) with respect to a career appointee (as that term is defined in section 3132(a) of title 5), a Senior Executive Service position (as such term is defined in such section); and

“(B) with respect to a covered individual appointed under section 7306(a) or section 7401(1) of this title, an administrative or executive position.”.

“(2) CONFORMING AMENDMENT.—Section 7461(c)(1) of such title is amended by inserting “employees in senior executive positions (as defined in section 713(d) of this title) and” before “interns”.

(b) PERFORMANCE MANAGEMENT.—

(1) IN GENERAL.—The Secretary of Veterans Affairs shall establish a performance management system for employees in

senior executive positions, as defined in section 713(d) of title 38, United States Code, as amended by subsection (a), that ensures performance ratings and awards given to such employees—

(A) meaningfully differentiate extraordinary from satisfactory contributions; and

(B) substantively reflect organizational achievements over which the employee has responsibility and control.

(2) REGULATIONS.—The Secretary shall prescribe regulations to carry out paragraph (1).

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE KIRK-PATRICK OF ARIZONA OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike section 8 and insert the following:

SEC. 8. OFFICE OF ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—Chapter 3 of title 38, United States Code, is amended by adding at the end the following new section:

“§ 323. Office of Accountability and Whistleblower Protection

“(a) ESTABLISHMENT.—There is established in the Department an office to be known as the Office of Accountability and Whistleblower Protection (in this section referred to as the ‘Office’).

“(b) HEAD OF OFFICE.—(1) The head of the Office shall be responsible for the functions of the Office and shall be appointed by the President pursuant to section 308(a) of this title.

“(2) The head of the Office shall be known as the ‘Assistant Secretary for Accountability and Whistleblower Protection’.

“(3) The Assistant Secretary shall report directly to the Secretary on all matters relating to the Office.

“(4) Notwithstanding section 308(b) of this title, the Secretary may only assign to the Assistant Secretary responsibilities relating to the functions of the Office set forth in subsection (c).

“(c) FUNCTIONS.—(1) The functions of the Office are as follows:

“(A) Advising the Secretary on all matters of the Department relating to accountability, including accountability of employees of the Department, retaliation against whistleblowers, and such matters as the Secretary considers similar and affect public trust in the Department.

“(B) Issuing reports and providing recommendations related to the duties described in subparagraph (A).

“(C) Receiving whistleblower disclosures.

“(D) Referring whistleblower disclosures received under subparagraph (C) for investigation to the Office of the Medical Inspector, the Office of Inspector General, or other investigative entity, as appropriate, if the Assistant Secretary has reason to believe the whistleblower disclosure is evidence of a violation of a provision of law, mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health and safety.

“(E) Receiving and referring disclosures from the Special Counsel for investigation to the Medical Inspector of the De-

partment, the Inspector General of the Department, or such other person with investigatory authority, as the Assistant Secretary considers appropriate.

“(F) Recording, tracking, reviewing, and confirming implementation of recommendations from audits and investigations carried out by the Inspector General of the Department, the Medical Inspector of the Department, the Special Counsel, and the Comptroller General of the United States, including the imposition of disciplinary actions and other corrective actions contained in such recommendations.

“(G) Analyzing data from the Office and the Office of Inspector General telephone hotlines, other whistleblower disclosures, disaggregated by facility and area of health care if appropriate, and relevant audits and investigations to identify trends and issue reports to the Secretary based on analysis conducted under this subparagraph.

“(H) Receiving, reviewing, and investigating allegations of misconduct, retaliation, or poor performance involving—

“(i) an individual in a senior executive position (as defined in section 713(d) of this title) in the Department;

“(ii) an individual employed in a confidential, policy-making, policy-determining, or policy-advocating position in the Department; or

“(iii) a supervisory employee, if the allegation involves retaliation against an employee for making a whistleblower disclosure.

“(I) Making such recommendations to the Secretary for disciplinary action as the Assistant Secretary considers appropriate after substantiating any allegation of misconduct or poor performance pursuant to an investigation carried out as described in subparagraph (F) or (H).

“(2) In carrying out the functions of the Office, the Assistant Secretary shall ensure that the Office maintains a toll-free telephone number and Internet website to receive anonymous whistleblower disclosures.

“(3) In any case in which the Assistant Secretary receives a whistleblower disclosure from an employee of the Department under paragraph (1)(C), the Assistant Secretary may not disclose the identity of the employee without the consent of the employee, except in accordance with the provisions of section 552a of title 5, or as required by any other applicable provision of Federal law.

“(d) STAFF AND RESOURCES.—The Secretary shall ensure that the Assistant Secretary has such staff, resources, and access to information as may be necessary to carry out the functions of the Office.

“(e) RELATION TO OFFICE OF GENERAL COUNSEL.—The Office shall not be established as an element of the Office of the General Counsel and the Assistant Secretary may not report to the General Counsel.

“(f) REPORTS.—(1)(A) Not later than June 30 of each calendar year, beginning with June 30, 2017, the Assistant Secretary shall submit to the Committee on Veterans’ Affairs of the Senate and the Committee on Veterans’ Affairs of the House of Representatives a report on the activities of the Office during the calendar year in which the report is submitted.

“(B) Each report submitted under subparagraph (A) shall include, for the period covered by the report, the following:

“(i) A full and substantive analysis of the activities of the Office, including such statistical information as the Assistant Secretary considers appropriate.

“(ii) Identification of any issues reported to the Secretary under subsection (c)(1)(G), including such data as the Assistant Secretary considers relevant to such issues and any trends the Assistant Secretary may have identified with respect to such issues.

“(iii) Identification of such concerns as the Assistant Secretary may have regarding the size, staffing, and resources of the Office and such recommendations as the Assistant Secretary may have for legislative or administrative action to address such concerns.

“(iv) Such recommendations as the Assistant Secretary may have for legislative or administrative action to improve—

“(I) the process by which concerns are reported to the Office; and

“(II) the protection of whistleblowers within the Department.

“(v) Such other matters as the Assistant Secretary considers appropriate regarding the functions of the Office or other matters relating to the Office.

“(2) If the Secretary receives a recommendation for disciplinary action under subsection (c)(1)(I) and does not take or initiate the recommended disciplinary action before the date that is 60 days after the date on which the Secretary received the recommendation, the Secretary shall submit to the Committee on Veterans’ Affairs of the Senate and the Committee on Veterans’ Affairs of the House of Representatives a detailed justification for not taking or initiating such disciplinary action.

“(g) DEFINITIONS.—In this section:

“(1) The term ‘supervisory employee’ means an employee of the Department who is a supervisor as defined in section 7103(a) of title 5.

“(2) The term ‘whistleblower’ means one who makes a whistleblower disclosure.

“(3) The term ‘whistleblower disclosure’ means any disclosure of information by an employee of the Department or individual applying to become an employee of the Department which the employee or individual reasonably believes evidences—

“(A) a violation of a provision of law; or

“(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.”.

(b) CONFORMING AMENDMENT.—Section 308(b) of such title is amended by adding at the end the following new paragraph:

“(12) The functions set forth in section 323(c) of this title.”.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 3 of such title is amended by adding at the end the following new item:

“323. Office of Accountability and Whistleblower Protection.”.

SEC. 9. PROTECTION OF WHISTLEBLOWERS IN DEPARTMENT OF VETERANS AFFAIRS.

(a) IN GENERAL.—Chapter 7 of title 38, United States Code, is further amended by adding at the end the following new sections:

“§ 725. Protection of whistleblowers as criteria in evaluation of supervisors

“(a) DEVELOPMENT AND USE OF CRITERIA REQUIRED.—The Secretary, in consultation with the Assistant Secretary of Accountability and Whistleblower Protection, shall develop criteria that—

“(1) the Secretary shall use as a critical element in any evaluation of the performance of a supervisory employee; and

“(2) promotes the protection of whistleblowers.

“(b) PRINCIPLES FOR PROTECTION OF WHISTLEBLOWERS.—The criteria required by subsection (a) shall include principles for the protection of whistleblowers, such as the degree to which supervisory employees respond constructively when employees of the Department report concerns, take responsible action to resolve such concerns, and foster an environment in which employees of the Department feel comfortable reporting concerns to supervisory employees or to the appropriate authorities.

“(c) SUPERVISORY EMPLOYEE AND WHISTLEBLOWER DEFINED.—In this section, the terms ‘supervisory employee’ and ‘whistleblower’ have the meanings given such terms in section 323 of this title.

“§ 727. Training regarding whistleblower disclosures

“(a) TRAINING.—Not less frequently than once every two years, the Secretary, in coordination with the Whistleblower Protection Ombudsman designated under section 3(d)(1)(C) of the Inspector General Act of 1978 (5 U.S.C. App.), shall provide to each employee of the Department training regarding whistleblower disclosures, including—

“(1) an explanation of each method established by law in which an employee may file a whistleblower disclosure;

“(2) the right of the employee to petition Congress regarding a whistleblower disclosure in accordance with section 7211 of title 5;

“(3) an explanation that the employee may not be prosecuted or reprimed against for disclosing information to Congress, the Inspector General, or another investigatory agency in instances where such disclosure is permitted by law, including under sections 5701, 5705, and 7732 of this title, under section 552a of title 5 (commonly referred to as the Privacy Act), under chapter 93 of title 18, and pursuant to regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191);

“(4) an explanation of the language that is required to be included in all nondisclosure policies, forms, and agreements pursuant to section 115(a)(1) of the Whistleblower Protection Enhancement Act of 2012 (5 U.S.C. 2302 note); and

“(5) the right of contractors to be protected from reprisal for the disclosure of certain information under section 4705 or 4712 of title 41.

(b) MANNER TRAINING IS PROVIDED.—The Secretary shall ensure, to the maximum extent practicable, that training provided under subsection (a) is provided in person.

(c) CERTIFICATION.—Not less frequently than once every two years, the Secretary shall provide training on merit system protection in a manner that the Special Counsel certifies as being satisfactory.

(d) PUBLICATION.—The Secretary shall publish on the Internet website of the Department, and display prominently at each facility of the Department, the rights of an employee to make a whistleblower disclosure, including the information described in paragraphs (1) through (5) of subsection (a).

(e) WHISTLEBLOWER DISCLOSURE DEFINED.—In this section, the term ‘whistleblower disclosure’ has the meaning given such term in section 323 of this title.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is further amended by adding at the end the following new items:

“725. Protection of whistleblowers as criteria in evaluation of supervisors.
“727. Training regarding whistleblower disclosures.”.

SEC. 10. TREATMENT OF CONGRESSIONAL TESTIMONY BY DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES AS OFFICIAL DUTY.

(a) IN GENERAL.—Chapter 7 of title 38, United States Code, is further amended by adding at the end the following new section:

“§ 729. Congressional testimony by employees: treatment as official duty

“(a) CONGRESSIONAL TESTIMONY.—An employee of the Department is performing official duty during the period with respect to which the employee is testifying in an official capacity in front of either chamber of Congress, a committee of either chamber of Congress, or a joint or select committee of Congress.

“(b) TRAVEL EXPENSES.—The Secretary shall provide travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, to any employee of the Department of Veterans Affairs performing official duty described under subsection (a).”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter, as amended by section 102, is further amended by inserting after the item relating to section 721 the following new item:

“Sec. 729. Congressional testimony by employees: treatment as official duty.”.

SEC. 11. REPORT ON METHODS USED TO INVESTIGATE EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS.

(a) REPORT REQUIRED.—Not later than 540 days after the date of the enactment of this Act, the Assistant Secretary for Accountability and Whistleblower Protection shall submit to the Secretary, the Committee on Veterans’ Affairs of the Senate, and the Committee on Veterans’ Affairs of the House of Representatives a report on methods used to investigate employees of the Department of Veterans Affairs and whether such methods are used to retaliate against whistleblowers.

(b) CONTENTS.—The report required by subsection (a) shall include the following:

(1) An assessment of the use of administrative investigation boards, peer review, searches of medical records, and other methods for investigating employees of the Department.

(2) A determination of whether and to what degree the methods described in paragraph (1) are being used to retaliate against whistleblowers.

(3) Recommendations for legislative or administrative action to implement safeguards to prevent the retaliation described in paragraph (2).

(c) WHISTLEBLOWER DEFINED.—In this section, the term “whistleblower” has the meaning given such term in section 323 of title 38, United States Code, as added by section 8.

7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE NEWHOUSE OF WASHINGTON OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Add at the end the following new section:

SEC. 11. CLARIFICATION OF EMERGENCY HOSPITAL CARE FURNISHED BY THE SECRETARY OF VETERANS AFFAIRS TO CERTAIN VETERANS.

(a) IN GENERAL.—Chapter 17 of title 38, United States Code, is amended by inserting after section 1730A the following new section:

“§ 1730B. Examination and treatment for emergency medical conditions and women in labor

“(a) MEDICAL SCREENING EXAMINATIONS.—In carrying out this chapter, if any enrolled veteran requests, or a request is made on behalf of the veteran, for examination or treatment for a medical condition, regardless of whether such condition is service-connected, at a hospital emergency department of a medical facility of the Department, the Secretary shall ensure that the veteran is provided an appropriate medical screening examination within the capability of the emergency department, including ancillary services routinely available to the emergency department, to determine whether an emergency medical condition exists.

“(b) NECESSARY STABILIZING TREATMENT FOR EMERGENCY MEDICAL CONDITIONS AND LABOR.—(1) If an enrolled veteran comes to a medical facility of the Department and the Secretary determines that the veteran has an emergency medical condition, the Secretary shall provide either—

“(A) such further medical examination and such treatment as may be required to stabilize the medical condition; or

“(B) for the transfer of the veteran to another medical facility of the Department or a non-Department facility in accordance with subsection (c).

“(2) The Secretary is deemed to meet the requirement of paragraph (1)(A) with respect to an enrolled veteran if the Secretary offers the veteran the further medical examination and treatment described in such paragraph and informs the veteran (or an individual acting on behalf of the veteran) of the risks and benefits to the veteran of such examination and treatment, but the veteran (or individual) refuses to consent to the examination and treatment. The Secretary shall take all reasonable steps to secure the written

informed consent of such veteran (or individual) to refuse such examination and treatment.

“(3) The Secretary is deemed to meet the requirement of paragraph (1) with respect to an enrolled veteran if the Secretary offers to transfer the individual to another medical facility in accordance with subsection (c) of this section and informs the veteran (or an individual acting on behalf of the veteran) of the risks and benefits to the veteran of such transfer, but the veteran (or individual) refuses to consent to the transfer. The hospital shall take all reasonable steps to secure the written informed consent of such veteran (or individual) to refuse such transfer.

“(c) RESTRICTION OF TRANSFERS UNTIL VETERAN STABILIZED.—(1) If an enrolled veteran at a medical facility of the Department has an emergency medical condition that has not been stabilized, the Secretary may not transfer the veteran to another medical facility of the Department or a non-Department facility unless—

“(A)(i) the veteran (or a legally responsible individual acting on behalf of the veteran), after being informed of the obligation of the Secretary under this section and of the risk of transfer, requests in writing a transfer to another medical facility;

“(ii) a physician has signed a certification (including a summary of the risks and benefits) that, based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the veteran and, in the case of labor, to the unborn child from effecting the transfer; or

“(iii) if a physician is not physically present in the emergency department at the time a veteran is transferred, a qualified medical person (as defined by the Secretary in regulations) has signed a certification described in clause (ii) after a physician, in consultation with the person, has made the determination described in such clause, and subsequently countersigns the certification; and

“(B) the transfer is an appropriate transfer as described in paragraph (2).

“(2) An appropriate transfer to a medical facility is a transfer—

“(A) in which the transferring medical facility provides the medical treatment within the capacity of the facility that minimizes the risks to the health of the enrolled veteran and, in the case of a woman in labor, the health of the unborn child;

“(B) in which the receiving facility—

“(i) has available space and qualified personnel for the treatment of the veteran; and

“(ii) has agreed to accept transfer of the veteran and to provide appropriate medical treatment;

“(C) in which the transferring facility sends to the receiving facility all medical records (or copies thereof), related to the emergency condition for which the veteran has presented, available at the time of the transfer, including records related to the emergency medical condition of the veteran, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) provided under paragraph (1)(A), and the name and address of any on-call physician (de-

scribed in subsection (d)(1)(C) of this section) who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment;

“(D) in which the transfer is effected through qualified personnel and transportation equipment, as required including the use of necessary and medically appropriate life support measures during the transfer; and

“(E) that meets such other requirements as the Secretary may find necessary in the interest of the health and safety of veterans transferred.

“(d) CHARGES.—(1) Nothing in this section may be construed to affect any charges that the Secretary may collect from a veteran or third party.

“(2) The Secretary shall treat any care provided by a non-Department facility pursuant to this section as care otherwise provided by a non-Department facility pursuant to this chapter for purposes of paying such non-Department facility for such care.

“(e) NONDISCRIMINATION.—A medical facility of the Department or a non-Department facility, as the case may be, that has specialized capabilities or facilities (such as burn units, shock-trauma units, neonatal intensive care units, or (with respect to rural areas) regional referral centers as identified by the Secretary in regulation) shall not refuse to accept an appropriate transfer of an enrolled veteran who requires such specialized capabilities or facilities if the facility has the capacity to treat the veteran.

“(f) NO DELAY IN EXAMINATION OR TREATMENT.—A medical facility of the Department or a non-Department facility, as the case may be, may not delay provision of an appropriate medical screening examination required under subsection (a) or further medical examination and treatment required under subsection (b) of this section in order to inquire about the method of payment or insurance status of an enrolled veteran.

“(g) WHISTLEBLOWER PROTECTIONS.—The Secretary may not take adverse action against an employee of the Department because the employee refuses to authorize the transfer of an enrolled veteran with an emergency medical condition that has not been stabilized or because the employee reports a violation of a requirement of this section.

“(h) DEFINITIONS.—In this section:

“(1) The term ‘emergency medical condition’ means—

“(A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

“(i) placing the health of the enrolled veteran (or, with respect to an enrolled veteran who is a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

“(ii) serious impairment to bodily functions; or

“(iii) serious dysfunction of any bodily organ or part;

or

“(B) with respect to an enrolled veteran who is a pregnant woman having contractions—

“(i) that there is inadequate time to effect a safe transfer to another hospital before delivery; or

“(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

“(2) The term ‘enrolled veteran’ means a veteran who is enrolled in the health care system established under section 1705(a) of this title.

“(3) The term ‘to stabilize’ means, with respect to an emergency medical condition described in paragraph (1)(A), to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the enrolled veteran from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), to deliver (including the placenta).

“(4) The term ‘stabilized’ means, with respect to an emergency medical condition described in paragraph (1)(A), that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), that the woman has delivered (including the placenta).

“(5) The term ‘transfer’ means the movement (including the discharge) of an enrolled veteran outside the facilities of a medical facility of the Department at the direction of any individual employed by (or affiliated or associated, directly or indirectly, with) the Department, but does not include such a movement of an individual who—

“(A) has been declared dead; or

“(B) leaves the facility without the permission of any such person.”.

(b) CLERICAL AMENDMENT.—The table of sections of such chapter is amended by inserting after the item relating to section 1730A the following new item:

“1730B. Examination and treatment for emergency medical conditions and women in labor.”.

8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SCHWEIKERT OF ARIZONA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Add at the end the following new section:

SEC. 11. USE OF DISTRIBUTED LEDGER TECHNOLOGY TO SCHEDULE APPOINTMENTS.

(a) USE OF DISTRIBUTED LEDGER TECHNOLOGY.—

(1) IN GENERAL.—Beginning not later than one year after the date of the enactment of this Act, the Secretary of Veterans Affairs shall ensure that veterans seeking health care appointments at medical facilities of the Department are able to use an Internet website, a mobile application, or other similar electronic method to use distributed ledger technology to view such appointments and ascertain whether an employee of the Department of Veterans Affairs has modified such appointments.

(2) CONTRACTS.—The Secretary shall carry out paragraph (1) by seeking to enter into one or more contracts with appropriate

entities to develop the appointment distributed ledger technology system described in such paragraph.

(3) PRIVACY AND OWNERSHIP OF INFORMATION.—Any information relating to a veteran that is used or transmitted pursuant to this section—

(A) shall be treated in accordance with section 552a of title 5, United States Code (commonly referred to as the “Privacy Act”) and other applicable laws and regulations relating to the privacy of the veteran;

(B) may only be used by an employee or contractor of the Department of Veterans Affairs to carry out paragraph (1); and

(C) may not be disclosed to any person who is not the veteran or such an employee or contractor unless the veteran provides consent to such disclosure.

(b) REPORT.—Not later than 180 days after the date on which the Secretary commences subsection (a)(1), the Secretary shall submit to Congress a report on the implementation of this section.

(c) DEFINITIONS.—In this section:

(1) The term “distributed ledger technology” means technology using a consensus of replicated, shared, and synchronized digital data that is geographically spread across multiple digital systems.

(2) The term “mobile application” means a software program that runs on the operating system of a mobile device.

(3) The term “mobile device” means a smartphone, tablet computer, or similar portable computing device that transmits data over a wireless connection.

9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CART-WRIGHT OF PENNSYLVANIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 54, after line 2, insert the following:

SEC. 11. APPOINTMENT OF PSYCHIATRISTS BY VETERANS HEALTH ADMINISTRATION.

(a) IN GENERAL.—Chapter 74 of title 38, United States Code, is amended by inserting after section 7406 the following new section:

“§ 7406A. Appointment of certain psychiatrists who complete residencies

“(a) IN GENERAL.—(1) Subject to subsection (b), the Secretary may appoint, without regard to civil service or classification laws, a psychiatrist who completes a residency under section 7406 of this title to a position under section 7401 or 7405 immediately after such residency, if the psychiatrist meets the qualifications established in regulations prescribed by the Secretary for such position.

“(2) The Secretary may begin the process of appointing a psychiatrist under paragraph (1) before the psychiatrist completes a residency.

“(b) POSITIONS PERMITTED.—The Secretary may appoint a psychiatrist under subsection (a) if the position to which the psychiatrist is appointed has been unfilled for not less than 35 days as of the date of the appointment.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 7406 the following new item:

“7406A. Appointment of certain psychiatrists who complete residencies.”.

10. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FRANKEL OF FLORIDA OR HER DESIGNEE, DEBATALE FOR 10 MINUTES

Page 54, after line 2, insert the following:

SEC. 11. SENSE OF CONGRESS REGARDING AMERICAN VETERANS DISABLED FOR LIFE.

(a) FINDINGS.—Congress finds the following:

(1) There are at least 3,600,000 veterans currently living with service-connected disabilities.

(2) As a result of their service, many veterans are permanently disabled throughout their lives and in many cases must rely on the support of their families and friends when these visible and invisible burdens become too much to bear alone.

(3) October 5, which is the anniversary of the dedication of the American Veterans Disabled for Life Memorial, has been recognized as an appropriate day on which to honor American veterans disabled for life each year.

(b) SENSE OF CONGRESS.—Congress—

(1) expresses its appreciation to the men and women left permanently wounded, ill, or injured as a result of their service in the Armed Forces;

(2) supports the annual recognition of American veterans disabled for life; and

(3) encourages the American people to honor American veterans disabled for life each year with appropriate programs and activities.

11. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GALLEGOS OF ARIZONA OR HIS DESIGNEE, DEBATALE FOR 10 MINUTES

Page 54, after line 2, insert the following:

SEC. 11. ESTABLISHMENT OF POSITIONS OF DIRECTORS OF VETERANS INTEGRATED SERVICE NETWORKS IN OFFICE OF UNDER SECRETARY FOR HEALTH OF DEPARTMENT OF VETERANS AFFAIRS AND MODIFICATION OF QUALIFICATIONS FOR MEDICAL DIRECTORS.

Section 7306(a)(4) of title 38, United States Code, is amended—

(1) by inserting “and Directors of Veterans Integrated Service Networks” after “Such Medical Directors”; and

(2) by striking “, who shall be either a qualified doctor of medicine or a qualified doctor of dental surgery or dental medicine”.

12. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE KEATING OF MASSACHUSETTS OR HIS DESIGNEE, DEBATALE FOR 10 MINUTES

Add at the end the following new section:

SEC. 11. CONTINUING EDUCATION REQUIREMENT FOR EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS AUTHORIZED TO PRESCRIBE MEDICATION.

(a) IN GENERAL.—Subchapter I of chapter 74 of title 38, United States Code, is amended by adding at the end the following new section:

“§ 7413. Continuing education requirement for employees authorized to prescribe medication

“(a) REQUIREMENT.—(1) Except as provided in paragraph (2), the Secretary shall require each covered employee of the Department to complete not less than one accredited course of continuing education on pain management once every two years. Such course shall include information on safe prescribing practices and disposal of controlled substances, principles of pain management, identification of potential substance use disorders and addiction treatment.

“(2) Paragraph (1) shall not apply to a covered employee if the covered employee is licensed or certified by a State licensure or specialty board that requires the completion of continuing education relative to pain management or substance use disorder management.

“(b) DEFINITIONS.—In this section:

“(1) The term ‘covered employee’ means any employee of the Department authorized to prescribe any controlled substance, including an employee hired under section 7405 of this title.

“(2) The term ‘controlled substance’ has the meaning given such term in section 102 of the Controlled Substances Act (21 U.S.C. 802).

“(c) APPLICABILITY.—The requirement under subsection (a) shall apply with respect to a covered employee for any 24-month period during which the covered employee is employed by the Department for at least 180 days.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end of the items relating to subchapter I of such chapter the following new item:

“7413. Continuing education requirement for employees authorized to prescribe medication.”.

(c) APPLICABILITY.—Section 7413 of title 38, United States Code, as added by subsection (a) shall apply with respect to a 12-month period that begins on or after the date of the enactment of this Act.

13. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LOWENTHAL OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 54, add after line 2 the following:

SECTION 11. REVIEW OF WHISTLEBLOWER COMPLAINTS.

(a) IN GENERAL.—Chapter 7 of title 38, United States Code, is amended by inserting after section 711 the following new section:

“§ 712. Review of whistleblower complaints

“(a) IN GENERAL.—During each calendar quarter, the Secretary shall review each covered whistleblower complaint that is filed during the previous calendar quarter.

“(b) DELEGATION.—The Secretary may only delegate the authority of the Secretary under subsection (a) to review a covered whistleblower complaint, without further delegation, to—

- “(1) the Deputy Secretary of Veterans Affairs;
- “(2) the Under Secretary for Health;
- “(3) the Under Secretary for Benefits;
- “(4) the Under Secretary for Memorial Affairs;
- “(5) an Assistant Secretary of Veterans Affairs;
- “(6) a Deputy Assistant Secretary of Veterans Affairs; or
- “(7) a director of the Veterans Integrated Service Network.

“(c) COVERED WHISTLEBLOWER COMPLAINT DEFINED.—In this section, the term ‘covered whistleblower complaint’ means any complaint filed with the Office of the Special Counsel under subchapter II of chapter 12 of title 5 with respect to a prohibited personnel practice committed by an officer or employee of the Department of Veterans Affairs and described in section 2302(b)(8) or 2302(b)(9)(A)(i), (B), (C), or (D) of such title.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 711 the following new item:

“712. Review of whistleblower complaints.”.

14. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LUJÁN OF NEW MEXICO OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 54, after line 2, insert the following:

SEC. 11. IDENTIFICATION OF MATTERS RELATING TO PART-TIME EMPLOYMENT OF MEMBERS OF THE ARMED FORCES WHO ARE PHYSICIANS.

The Secretary of Veterans Affairs shall identify—

- (1) the number of members of the Armed Forces serving on active duty who are physicians employed at a Department of Veterans Affairs medical facility on a part-time basis;
 - (2) the process by which the Department hires such physicians on a part-time basis; and
 - (3) the process by which the Department hires civilian physicians on a part-time basis; and
 - (4) the steps the Department is taking to recruit members of the Armed Forces serving on active duty who are physicians for employment at Department medical facilities on a part-time basis.
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15. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MALONEY OF NEW YORK OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 54, after line 2, insert the following:

SEC. 11. EXTENSION OF AUTHORITY OF THE SECRETARY OF VETERANS AFFAIRS TO PROVIDE FOR THE CONDUCT OF MEDICAL DISABILITY EXAMINATIONS BY CONTRACT PHYSICIANS.

Section 704(c) of the Veterans Benefits Act of 2003 (Public Law 108–183; 38 U.S.C. 5101 note) is amended by striking “December 31, 2016” and inserting “December 31, 2017”.

16. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE O'ROURKE OF TEXAS OR HIS DESIGNEE, DEBATALE FOR 10 MINUTES

Add at the end the following new section:

SEC. 11. RECRUITMENT OF PHYSICIANS IN DEPARTMENT OF VETERANS AFFAIRS.

(a) IN GENERAL.—Section 7402(b)(1) of title 38, United States Code, is amended—

(1) by inserting “or to be offered a contingent appointment to such position,” after “position;” and

(2) by striking subparagraph (B) and inserting the following new subparagraph (B):

“(B)(i) have completed a residency program satisfactory to the Secretary; or

“(ii) with respect to an offer for a contingent appointment upon the completion of a post-graduate training program, complete such a residency program by not later than two years after the date of such offer; and”.

(b) OVERSIGHT OF GRADUATE MEDICAL EDUCATION PROGRAMS.—The Secretary shall—

(1) ensure that a recruiter or other similar official of each Veterans Integrated Service Network visits, not less than annually, each allopathic and osteopathic teaching institution with a graduate medical education program within the Network to recruit individuals to be appointed to positions in the Veterans Health Administration; and

(2) submit to Congress an annual report on the implementation of paragraph (1), including the success of such recruiting efforts.

17. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE O'ROURKE OF TEXAS OR HIS DESIGNEE, DEBATALE FOR 10 MINUTES

Add at the end the following new section:

SEC. 11. AUTHORITY TO DISCLOSE CERTAIN MEDICAL RECORDS OF VETERANS WHO RECEIVE NON-DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE.

Section 7332(b)(2) of title 38, United States Code, is amended by adding at the end the following new subparagraph:

“(H) To a non-Department entity (including private entities and other departments or agencies of the Federal Government) that provides hospital care or medical treatment to veterans.”.

18. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE O'ROURKE OF TEXAS OR HIS DESIGNEE, DEBATALE FOR 10 MINUTES

Page 54, add after line 2 the following:

SEC. 11. SURVEY OF VETERAN EXPERIENCES WITH DEPARTMENT OF VETERANS AFFAIRS MEDICAL CARE.

(a) IN GENERAL.—The Secretary of Veterans Affairs shall seek to enter into a contract with a non-government entity with significant experience conducting scientifically verifiable surveys and research to conduct an annual survey of a statistically significant sample of veterans who reside in the geographic area served by each of the medical facilities of the Department of Veterans Affairs to deter-

mine the nature of the experiences of such veterans in obtaining hospital care and medical services furnished by the Secretary at each such medical facility. Each such survey shall be conducted using scientific and verifiable methods. Such contract shall provide that the non-government entity shall conduct such annual surveys during the five-year period beginning on the date on which the Secretary enters into the contract with the non-government entity.

(b) CONTENTS.—The contract entered into under subsection (a) shall provide that each survey conducted pursuant to the contract shall be specific to a medical facility of the Department and shall include questions relating to the experiences of veterans in requesting and receiving appointments for hospital care and medical services furnished by the Secretary at that medical facility, including questions relating to each of the following:

(1) The veteran's ability to obtain hospital care and medical services at the facility in a timely manner.

(2) The period of time between the date on which the veteran requests an appointment at the facility and the date on which the appointment is scheduled.

(3) The frequency with which scheduled appointments are cancelled by the facility.

(4) The quality of hospital care or medical services the veteran has received at the facility.

(c) CONSULTATION.—The contract entered into under subsection (a) shall provide that in designing and conducting the surveys for each medical facility of the Department pursuant to such contract, the non-government entity shall consult with veterans service organizations.

(d) CERTIFICATION.—The contract entered into under subsection (a) shall provide that—

(1) before conducting a survey pursuant to the contract, the non-government entity shall submit the proposed survey to the Comptroller General who shall assess whether the survey is scientifically valid and whether the proposed sample size of veterans to be surveyed is statistically significant; and

(2) the non-government entity may not conduct such a survey until the Comptroller General provides such a certification for the survey.

(e) SUBMITTAL OF RESULTS AND PUBLIC AVAILABILITY OF INFORMATION.—Not later than 30 days after the completion of the surveys conducted pursuant to a contract entered into under subsection (a) for a year, the Secretary shall make the results of the surveys publicly available on the Internet website of the Department.

(f) PAPERWORK REDUCTION.—Subchapter I of chapter 35 of title 44, United States Code shall not apply to this section.

(g) DEADLINE FOR IMPLEMENTATION.—The Secretary shall enter into a contract under subsection (a) for each medical facility of the Department by not later than 180 days after the date of the enactment of this Act.

19. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WALZ OF MINNESOTA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 54, add after line 2 the following:

SEC. 11. PROVISION OF STATUS UNDER LAW BY HONORING CERTAIN MEMBERS OF THE RESERVE COMPONENTS AS VETERANS.

(a) **VETERAN STATUS.—**

(1) IN GENERAL.—Chapter 1 of title 38, United States Code, is amended by inserting after section 107 the following new section:

“§ 107A. Honoring as veterans certain persons who performed service in the reserve components

“Any person who is entitled under chapter 1223 of title 10 to retired pay for nonregular service or, but for age, would be entitled under such chapter to retired pay for nonregular service shall be honored as a veteran but shall not be entitled to any benefit by reason of this section.”

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 107 the following new item:

“107A. Honoring as veterans certain persons who performed service in the reserve components.”

(b) **CLARIFICATION REGARDING BENEFITS.**—No person may receive any benefit under the laws administered by the Secretary of Veterans Affairs solely by reason of section 107A of title 38, United States Code, as added by subsection (a).

20. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WALZ OF MINNESOTA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 54, add after line 2 the following:

SEC. 11. PROVISION OF REHABILITATIVE EQUIPMENT AND HUMAN-POWERED VEHICLES TO CERTAIN DISABLED VETERANS.

(a) IN GENERAL.—Section 1714(a) of title 38, United States Code, is amended—

(1) by striking “Any veteran” and inserting “(1) Any veteran”; and

(2) by adding at the end the following new paragraph:

“(2)(A) The Secretary may furnish rehabilitative equipment to any veteran who is entitled to a prosthetic appliance.

“(B) In carrying out subparagraph (A), the Secretary may modify non-rehabilitative equipment owned by a veteran only if the veteran elects for such modification.

“(C) The Secretary shall annually submit to the Committees on Veterans’ Affairs of the House of Representatives and the Senate a report on rehabilitative equipment furnished to veterans under subparagraph (A). Each such report shall include, with respect to the year covered by the report—

“(i) the number of veterans eligible to receive such rehabilitative equipment;

“(ii) the number of veterans who received such rehabilitative equipment;

“(iii) the number of veterans who elected to receive modified equipment pursuant to subparagraph (B); and

“(iv) any recommendations of the Secretary to improve furnishing veterans with rehabilitative equipment.

“(D) In this paragraph, the term ‘rehabilitative equipment’ means—

"(i) rehabilitative equipment, including recreational sports equipment that provide an adaption or accommodation for the veteran, regardless of whether such equipment is intentionally designed to be adaptive equipment; and

"(ii) includes hand cycles, recumbent bicycles, medically adapted upright bicycles, and upright bicycles.".

(b) NO ADDITIONAL FUNDS.—No additional funds are authorized to be appropriated to carry out the requirements of this section and the amendments made by this section. Such requirements shall be carried out using amounts otherwise authorized.

21. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DUFFY OF WISCONSIN OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 54, after line 2, insert the following:

SEC. 11. APPOINTMENT OF LICENSED HEARING AID SPECIALISTS IN VETERANS HEALTH ADMINISTRATION.

(a) LICENSED HEARING AID SPECIALISTS.—

(1) APPOINTMENT.—Section 7401(3) of title 38, United States Code, is amended by inserting "licensed hearing aid specialists," after "Audiologists,".

(2) QUALIFICATIONS.—Section 7402(b)(14) of such title is amended by inserting ", hearing aid specialist" after "dental technologist".

(b) REQUIREMENTS.—With respect to appointing hearing aid specialists under sections 7401 and 7402 of title 38, United States Code, as amended by subsection (a), and providing services furnished by such specialists, the Secretary shall ensure that—

(1) a hearing aid specialist may only perform hearing services consistent with the hearing aid specialist's State license related to the practice of fitting and dispensing hearing aids without excluding other qualified professionals, including audiologists, from rendering services in overlapping practice areas;

(2) services provided to veterans by hearing aid specialists shall be provided as part of the non-medical treatment plan developed by an audiologist; and

(3) the medical facilities of the Department of Veterans Affairs provide to veterans access to the full range of professional services provided by an audiologist.

(c) CONSULTATION.—In determining the qualifications required for hearing aid specialists and in carrying out subsection (b), the Secretary shall consult with veterans service organizations, audiologists, otolaryngologists, hearing aid specialists, and other stakeholder and industry groups as the Secretary determines appropriate.

(d) ANNUAL REPORT.—

(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act, and annually thereafter during the five-year period beginning on the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to Congress a report on the following:

(A) Timely access of veterans to hearing health services through the Department of Veterans Affairs.

- (B) Contracting policies of the Department with respect to providing hearing health services to veterans in facilities that are not facilities of the Department.
- (2) **TIMELY ACCESS TO SERVICES.**—Each report shall, with respect to the matter specified in paragraph (1)(A) for the one-year period preceding the submittal of such report, include the following:
- (A) The staffing levels of audiologists, hearing aid specialists, and health technicians in audiology in the Veterans Health Administration.
 - (B) A description of the metrics used by the Secretary in measuring performance with respect to appointments and care relating to hearing health.
 - (C) The average time that a veteran waits to receive an appointment, beginning on the date on which the veteran makes the request, for the following:
 - (i) A disability rating evaluation for a hearing-related disability.
 - (ii) A hearing aid evaluation.
 - (iii) Dispensing of hearing aids.
 - (iv) Any follow-up hearing health appointment.
 - (D) The percentage of veterans whose total wait time for appointments described in subparagraph (C), including an initial and follow-up appointment, if applicable, is more than 30 days.
- (3) **CONTRACTING POLICIES.**—Each report shall, with respect to the matter specified in paragraph (1)(B) for the one-year period preceding the submittal of such report, include the following:
- (A) The number of veterans that the Secretary refers to non-Department audiologists for hearing health care appointments.
 - (B) The number of veterans that the Secretary refers to non-Department hearing aid specialists for follow-up appointments for a hearing aid evaluation, the dispensing of hearing aids, or any other purpose relating to hearing health.

22. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LANCE OF NEW JERSEY OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 54, after line 2, insert the following:

SEC. 11. ANNUAL REPORT ON PERFORMANCE OF REGIONAL OFFICES OF THE DEPARTMENT OF VETERANS AFFAIRS.

Section 7734 of title 38, United States Code, is amended—

- (1) in the first sentence, by inserting before the period the following: “and on the performance of any regional office that fails to meet its administrative goals”;
 - (2) in paragraph (2), by striking “and”;
 - (3) by redesignating paragraph (3) as paragraph (4); and
 - (4) by inserting after paragraph (2) the following new paragraph (3):
- “(3) in the case of any regional office that, for the year covered by the report, did not meet the administrative goal of no

claim pending for more than 125 days and an accuracy rating of 98 percent—

“(A) a signed statement prepared by the individual serving as director of the regional office as of the date of the submittal of the report containing—

“(i) an explanation for why the regional office did not meet the goal;

“(ii) a description of the additional resources needed to enable the regional office to reach the goal; and

“(iii) a description of any additional actions planned for the subsequent year that are proposed to enable the regional office to meet the goal; and

“(B) a statement prepared by the Under Secretary for Benefits explaining how the failure of the regional office to meet the goal affected the performance evaluation of the director of the regional office; and”.

