

DEPARTMENT OF VETERANS AFFAIRS EMERGENCY
MEDICAL STAFFING RECRUITMENT AND RETENTION ACT

NOVEMBER 14, 2016.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. MILLER of Florida, from the Committee on Veterans’ Affairs,
submitted the following

R E P O R T

[To accompany H.R. 4150]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans’ Affairs, to whom was referred the bill (H.R. 4150) to amend title 38, United States Code, to allow the Secretary of Veterans Affairs to modify the hours of employment of physicians and physician assistants employed on a full-time basis by the Department of Veterans Affairs, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

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 “Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act”.

SEC. 2. MODIFICATION OF HOURS OF EMPLOYMENT FOR PHYSICIANS AND PHYSICIAN ASSISTANTS EMPLOYED BY THE DEPARTMENT OF VETERANS AFFAIRS.

Section 7423(a) of title 38, United States Code, is amended—

(1) by striking “(a) The hours” and inserting “(a)(1) Except as provided in paragraph (2), the hours”; and

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

“(2) The Secretary may modify the hours of employment for a physician or physician assistant appointed in the Administration under any provision of this chapter on a full-time basis to be more than or less than 80 hours in a biweekly pay period if the total hours of employment for such employee in a calendar year does not exceed 2,080 hours. No physician or physician assistant may accrue overtime by reason of modified hours of employment authorized under this paragraph.”.

PURPOSE AND SUMMARY

H.R. 4150, the “Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act,” was introduced by Representative Raul Ruiz of California on December 1, 2016. H.R. 4150, as amended, would (1) authorize the Department of Veterans Affairs (VA) to modify the hours of employment for a full-time VA physician or physician assistant (PA) to be more than or less than 80 hours in a biweekly pay period if the total of such employee’s hours of employment in a calendar year does not exceed 2,080 hours and (2) stipulate that no physician or PA may accrue overtime as a result of modified hours of employment pursuant to this authority.

BACKGROUND AND NEED FOR LEGISLATION

According to the 2016 report from the Association of American Medical Colleges, the United States is facing a coming physician shortfall as “[p]hysician demand continues to grow faster than supply leading to a projected total physician shortfall of between 61,700 and 94,700 physicians by 2025.”¹ The Veterans Health Administration (VHA) is not immune to the expected provider shortage. On March 16, 2016, VA officials testified before the Subcommittee on Health that VHA had 43,000 current vacancies, nearly 4,000 of which are physician vacancies.² VHA’s ability to effectively manage these vacancies is hampered by continued struggles to recruit and retain quality health care providers and make efficient use of the existing VHA workforce. Accordingly, in the final report of the Commission on Care, which was issued in June 2016, the Commissioners noted that VHA employs “policies that fail to optimize the talents and efficiency of all health professionals [and] detract from the effectiveness of VHA health care,” and that “ro-

¹ *The Complexities of Physician Supply and Demand: Projections from 2014 to 2025*. https://www.aamc.org/download/458082/data/2016_complexities_of_supply_and_demand_projections.pdf.

² Subcommittee on Health and Subcommittee on Economic Opportunity Joint Legislative Hearing on draft legislation to improve the authority of the Secretary of Veterans Affairs to hire and retain physicians and other employees of the Department of Veterans Affairs, March 16, 2016. <https://veterans.house.gov/hearings/legislative-hearing-draft-legislation-improve-authority-secretary-veterans-affairs-hire-0>.

bust structured programs to recruit, retain, develop, and advance high potential staff are essential.”³

Currently, VHA’s ability to maximize its providers’ time is hampered by a rigid, 40-hour work week pay schedule that is at odds with private sector industry standards. Typically, emergency department providers work flexible schedules to accommodate the variant, irregular hours that their work demands. As the University of California, San Francisco School of Medicine explains, “EM [emergency medicine] physicians should expect to work a mix of day, evening, night, weekend, and holiday shifts,” where “every shift is different,” and “work shifts range from 6–12 hours plus time to sign-out and finish clinical tasks.”⁴ However, VHA’s standing 80-hour pay period does not provide emergency room providers sufficient flexibility to work fluid hours similar to their private sector counterparts, putting VA emergency room staffing practices at odds with industry standards. In VA’s fiscal year 2017 budget submission, the Department issued a legislative proposal—which this bill is based on—that would address this issue. According to the Department, this would, “allow VA to arrange flexible physician and physician assistant work schedules to allow for the staffing and full implementation of a hospitalist physician system and to accommodate the unusual work schedule requirements for Emergency Medicine (EM) Physicians.”⁵

The Committee is dedicated to ensuring timely access to quality care for veteran patients. Providing appropriate tools to enhance the recruitment and retention of a high quality VA workforce is essential to achieving that priority. As such, Section 2 of the bill would allow VA to determine a physician or physician assistant’s full-time status based on the hours they are expected to work in a year—2,080—rather than the hours they work during a bi-weekly pay period—80. Section 2 of the bill would also stipulate that no physician or PA may accrue overtime by reason of the modified work hours authorized in this legislation unless the hours worked exceed the normal scheduled hours. The Committee believes this change will enable VHA to maximize the Department’s current workforce and, therefore, increase access to care for veteran patients.

HEARINGS

On June 23, 2016, the Full Committee held a legislative hearing on various bills introduced in the 114th Congress, including H.R. 4150. The following witnesses testified:

The Honorable Doug Lamborn of Colorado, U.S. House of Representatives; the Honorable Dina Titus of Nevada, U.S. House of Representatives; the Honorable Raul Ruiz of California, U.S. House of Representatives; the Honorable Beto O’Rourke of Texas, U.S. House of Representatives; the Honor-

³ *Commission on Care Final Report*. https://commissiononcare.sites.usa.gov/files/2016/07/Commission-on-Care_Final-Report_063016_FOR-WEB.pdf.

⁴ Career Information: Emergency Medicine. <http://meded.ucsf.edu/ume/career-information-emergency-medicine>.

⁵ Full Committee Legislative Hearing on H.R. 3216, H.R. 4150, H.R. 4764, H.R. 5047, H.R. 5083, H.R. 5162, H.R. 5166, H.R. 5392, H.R. 5407, H.R. 5416, H.R. 5420, and H.R. 5428, June 23, 2016. <https://veterans.house.gov/hearings/legislative-hearing-hr-3216-hr-4150-hr-4764-hr-5047-hr-5083-hr-5162-hr-5166-hr-5392-hr-5407>.

able Ron DeSantis of Florida, U.S. House of Representatives; the Honorable Ted Yoho of Florida, U.S. House of Representatives; the Honorable Jody Hice of Georgia, U.S. House of Representatives; the Honorable Dan Newhouse of Washington, U.S. House of Representatives; the Honorable David Young of Iowa, U.S. House of Representatives; the Honorable Sloan Gibson, Deputy Secretary, U.S. Department of Veterans Affairs, accompanied by Laura Eskenazi, the Executive in Charge and Vice Chairman of the Board of Veterans Appeals, David McLenachen, the Deputy Under Secretary for Disability Assistance for the Veterans Benefits Administration, and Dr. Maureen McCarthy, the Assistant Deputy Under Secretary for Health Patient Care Services for the Veterans Health Administration; Raymond Kelley, Director, National Legislative Service, Veterans of Foreign Wars of the United States; Paul Varela, the Assistant National Legislative Director, Disabled American Veterans; Carl Blake, Associate Executive Director of Government Relations, Paralyzed Veterans of America; Louis J. Celli, Jr., Director, National Veterans Affairs and Rehabilitation Division, The American Legion; and, Rick Weidman, Executive Director for Policy and Government Affairs, Vietnam Veterans of America.

Statements for the record were submitted by:

American Battle Monuments Commission; AMVETS; Court of Appeals for Veterans Claims; Iraq and Afghanistan Veterans of America; Military Officers Association of America; Military Veterans Advocacy, Inc.; National Organization of Veterans Advocates; National Veterans Legal Services Program; P.A.W.S. Foundation; Stetson University College of Law's Veterans Law Institute; and, U.S. Department of Labor.

There were no Subcommittee hearings held on H.R. 4150, as amended.

SUBCOMMITTEE CONSIDERATION

There was no Subcommittee markup of H.R. 4150, as amended.

COMMITTEE CONSIDERATION

On September 21, 2016, the Full Committee met in open markup session, a quorum being present, and ordered H.R. 4150, as amended, favorably reported to the House of Representatives by voice vote. During consideration of the bill, the following amendment in the nature of a substitute was considered and agreed to by voice vote:

An Amendment in the Nature of a Substitute to H.R. 4150 offered by Representative Raul Ruiz of California.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, there were no recorded votes taken on amendments or in connection with ordering H.R. 4150, as amended, reported to the House. A motion by Representative Mark Takano of California to report H.R. 4150, as amended, favorably to the House of Representatives was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are to modify hours of employment for certain VHA employees in order to increase access to care for veteran patients.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 4150, as amended, does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 4150, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 4150, as amended, provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 12, 2016.

Hon. JEFF MILLER,
Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4150, the Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Ann E. Futrell.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 4150—Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act

H.R. 4150 would allow the Department of Veterans Affairs (VA) to offer alternative work schedules (above or below 80 hours on a biweekly basis) to physicians or physician assistants (PAs) who work for VA on a full-time basis, provided that the total work hours in a calendar year do not exceed 2,080. Physicians and PAs would not be eligible for overtime pay for the hours worked in accordance with an alternative work schedule. VA reports that implementing this bill would not affect the amount of compensation paid to those employees.

CBO estimates that implementing this bill would cost less than \$500,000 over the 2017–2021 period to prepare the necessary regulations; that spending would be subject to the availability of appropriated funds.

Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 4150 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 4150 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Ann E. Futrell. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 4150, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 4150, as amended.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, H.R. 4150, as amended, is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 4150, as amended, does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee finds that no provision of H.R. 4150, as amended, establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee estimates that H.R. 4150, as amended, contains no directed rule making that would require the Secretary to prescribe regulations.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 of the bill would provide the short title for H.R. 4150, as amended, as the “Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act.”

Section 2. Modification of hours of employment for physicians and physician assistants employed by the Department of Veterans Affairs

Section 2 of the bill would amend section 7423(a) of title 38 U.S.C. by striking “(a) the hours” and inserting “(a)(1) Except as provided in paragraph (2), the hours” and adding at the end a paragraph authorizing VA to modify the hours of employment for a full-time physician or physician assistant to be more or less than eighty hours in a biweekly pay period, so long as that employee’s total hours do not exceed 2,080 in a single calendar year and stipulate that no physician or physician assistant may accrue overtime due to modified hours of employment authorized under this paragraph.

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 *italic*, existing law in which no change is proposed is shown in *roman*):

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*, and existing law in which no change is proposed is shown in *roman*):

TITLE 38, UNITED STATES CODE

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PART V—BOARDS, ADMINISTRATIONS, AND SERVICES

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CHAPTER 74—VETERANS HEALTH ADMINISTRATION - PERSONNEL

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SUBCHAPTER II—COLLECTIVE BARGAINING AND PERSONNEL ADMINISTRATION

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§ 7423. Personnel administration: full-time employees

[(a) The hours] *(a)(1) Except as provided in paragraph (2), the hours of employment in carrying out responsibilities under this title of any employee who is appointed in the Administration under any provision of this chapter on a full-time basis in a position listed in section 7421(b) of this title (other than an intern or resident appointed pursuant to section 7406 of this title) and who accepts responsibilities for carrying out professional services for remuneration other than those assigned under this title shall consist of not less than 80 hours in a biweekly pay period (as that term is used in section 5504 of title 5).*

(2) The Secretary may modify the hours of employment for a physician or physician assistant appointed in the Administration under any provision of this chapter on a full-time basis to be more than or less than 80 hours in a biweekly pay period if the total hours of employment for such employee in a calendar year does not exceed 2,080 hours. No physician or physician assistant may accrue overtime by reason of modified hours of employment authorized under this paragraph.

(b) A person covered by subsection (a) may not do any of the following:

(1) Teach or provide consultative services at any affiliated institution if such teaching or consultation will, because of its nature or duration, conflict with such person's responsibilities under this title.

(2) Accept payment under any insurance or assistance program established under title XVIII or XIX of the Social Security Act or under chapter 55 of title 10 for professional services rendered by such person while carrying out such person's responsibilities under this title.

(3) Accept from any source, with respect to any travel performed by such person in the course of carrying out such person's responsibilities under this title, any payment or per diem for such travel, other than as provided for in section 4111 of title 5.

(4) Request or permit any individual or organization to pay, on such person's behalf for insurance insuring such person

against malpractice claims arising in the course of carrying out such person's responsibilities under this title or for such person's dues or similar fees for membership in medical or dental societies or related professional associations, except where such payments constitute a part of such person's remuneration for the performance of professional responsibilities permitted under this section, other than those carried out under this title.

(5) Perform, in the course of carrying out such person's responsibilities under this title, professional services for the purpose of generating money for any fund or account which is maintained by an affiliated institution for the benefit of such institution, or for such person's personal benefit, or both.

(c) In the case of any fund or account described in subsection (b)(5) that was established before September 1, 1973—

(1) the affiliated institution shall submit semiannually an accounting to the Secretary and to the Comptroller General of the United States with respect to such fund or account and shall maintain such fund or account subject to full public disclosure and audit by the Secretary and the Comptroller General for a period of three years or for such longer period as the Secretary shall prescribe, and

(2) no person in a position specified in paragraph (1)(B) may receive any cash from amounts deposited in such fund or account derived from services performed before that date.

(d) As used in this section:

(1) The term "affiliated institution" means a medical school or other institution of higher learning with which the Secretary has a contract or agreement as referred to in section 7313 of this title for the training or education of health personnel.

(2) The term "remuneration" means the receipt of any amount of monetary benefit from any non-Department source in payment for carrying out any professional responsibilities.

(e)(1) The Secretary shall establish a leave transfer program for the benefit of health-care professionals in positions listed in section 7401(1) of this title. The Secretary may also establish a leave bank program for the benefit of such health-care professionals.

(2) To the maximum extent feasible—

(A) the leave transfer program shall provide the same or similar requirements and conditions as are provided for the program established by the Director of the Office of Personnel Management under subchapter III of chapter 63 of title 5; and

(B) any leave bank program established pursuant to paragraph (1) shall be consistent with the requirements and conditions provided for agency leave bank programs in subchapter IV of such chapter.

(3) Participation by a health-care professional in the leave transfer program established pursuant to paragraph (1), and in any leave bank program established pursuant to such paragraph, shall be voluntary. The Secretary may not require any health-care professional to participate in such a program.

(4)(A) The Secretary and the Director of the Office of Personnel Management may enter into an agreement that permits health-care professionals referred to in paragraph (1) to participate in the leave transfer program established by the Director of the Office of

Personnel Management under subchapter III of chapter 63 of title 5 or in any leave bank program established for other employees of the Department pursuant to subchapter IV of chapter 63 of title 5, or both.

(B) Participation of such health-care professionals in a leave transfer program or a leave bank program pursuant to an agreement entered into under subparagraph (A) shall be subject to such requirements and conditions as may be prescribed in such agreement.

(5) The Secretary is not required to establish a leave transfer program for any personnel permitted to participate in a leave transfer program pursuant to an agreement referred to in paragraph (4).

(f) The Secretary may purchase promotional items of nominal value for use in the recruitment of individuals for employment under this chapter. The Secretary shall prescribe guidelines for the administration of the preceding sentence.

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