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108TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 108-358

DEPARTMENT OF VETERANS AFFAIRS REAL PROPERTY
AND FACILITIES MANAGEMENT IMPROVEMENT ACT OF
2004

SEPTEMBER 27, 2004.—Ordered to be printed

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

R E P O R T

[To accompany S. 2485]

The Committee on Veterans' Affairs (hereinafter, "the Committee"), to which was referred the bill (S. 2485), to amend title 38, United States Code, to improve and enhance the authorities of the Secretary of Veterans Affairs relating to the management and disposal of real property and facilities, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute, and recommends that the bill, as amended, do pass.

INTRODUCTION

On June 1, 2004, Committee Chairman Arlen Specter introduced, at the request of the Administration, S. 2485, the "Department of Veterans Affairs Real Property and Facilities Management Improvement Act of 2003." S. 2485, as introduced, would have allowed the Department of Veterans Affairs (hereinafter, "VA") to use major construction project funds to construct or relocate parking facilities when such relocations or construction projects are incident to a major construction project; would have authorized the VA's Under Secretaries for Benefits and Memorial Affairs to enter into enhanced-use lease projects; would have authorized VA to dispose of, or transfer, real property under its jurisdiction without complying with certain provisions of the McKinney-Vento Homeless Assistance Act and deposit any proceeds from such disposal or transfer into a newly-created Capital Asset Fund; would have terminated the VA's Nursing Home Revolving Fund; and would have

limited VA's authority to dispose of real property with a value of more than \$7 million unless the disposal was proposed in the most recent budget submitted to Congress by the President of the United States.

On October 16, 2003, Senator Barbara Boxer introduced S. 1745, a bill to designate a Prisoner of War/Missing in Action National Memorial at Riverside National Cemetery in Riverside, California. The bill was referred to the Committee on Veterans' Affairs.

On February 26, 2004, Senator Hillary Rodham Clinton introduced S. 2133, a bill to designate the Department of Veterans Affairs Medical Center in Bronx, New York, as the James J. Peters Department of Veterans Affairs Medical Center. Senator Charles E. Schumer was later added as a cosponsor of the bill. The bill was referred to the Committee on Veterans' Affairs.

On April 7, 2004, Committee Member Jim Bunning introduced S. 2296, a bill to require the Secretary of Veterans Affairs to give the Commonwealth of Kentucky the first option on the Louisville Department of Veterans Affairs Medical Center, Kentucky, upon its conveyance, lease or other disposal by the Department of Veterans Affairs. The bill was referred to the Committee on Veterans' Affairs.

On April 21, 2004, Committee Member Ben Nighthorse Campbell introduced S. 2327, a bill to amend title 38, United States Code, to clarify that per diem payments made by the Department of Veterans Affairs for the care of veterans in State Veterans Homes shall not be used to offset or reduce other payments made to assist veterans. Senators Olympia Snowe and Susan Collins are original cosponsors of S. 2327. Committee Member Patty Murray and Senator Hillary Rodham Clinton were later added as cosponsors of the bill. The bill was referred to the Committee on Veterans' Affairs.

On May 13, 2004, Senator Norm Coleman introduced S. 2417, a bill to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to furnish care for newborn children of women veterans receiving maternity care, and for other purposes. Committee Members Kay Bailey Hutchison, Lindsey Graham, Lisa Murkowski, and Zell Miller, and Senators Ted Stevens and Susan Collins, were later added as cosponsors of the bill. The bill was referred to the Committee on Veterans' Affairs.

On June 1, 2004, Chairman Specter introduced, at the request of the Administration, S. 2486, a bill to amend title 38, United States Code, to improve and enhance education, housing, employment, medical, and other benefits for veterans, to improve and extend certain authorities relating to the administration of benefits for veterans, and for other purposes. Committee Member Lisa Murkowski is an original cosponsor of S. 2486, and Committee Member Patty Murray was later added as a cosponsor of the bill. The bill was referred to the Committee on Veterans' Affairs.

On June 16, 2004, Committee Ranking Member Bob Graham introduced S. 2524, a bill to amend title 38, United States Code, to improve the provision of health care, rehabilitation, and related services to veterans suffering from trauma related to a blast injury, and for other purposes. The bill was referred to the Committee on Veterans' Affairs.

COMMITTEE HEARINGS

On June 22, 2004, the Committee held a hearing to receive testimony on, among other bills, S. 1745, S. 2133, S. 2296, S. 2327, S. 2417, S. 2485, S. 2486, and S. 2524. Testimony was heard from: Senators Kent Conrad, Jon S. Corzine, and Hillary Rodham Clinton; The Honorable Tim S. McClain, VA's General Counsel and Michael J. Kussman, M.D., Acting Deputy Under Secretary for Health, Veterans Health Administration; Mr. Donald L. Mooney, Assistant Director for Resource Development, Veterans Affairs and Rehabilitation Commission, The American Legion; Mr. Paul A. Hayden, Deputy Director, National Legislative Service, Veterans of Foreign Wars; Mr. Adrian M. Atizado, Assistant National Legislative Director, Disabled American Veterans; Mr. Carl Blake, Associate Legislative Director, Paralyzed Veterans of America; and Mr. Richard Jones, National Legislative Director, AMVETS.

COMMITTEE MEETING

After carefully reviewing the testimony from the foregoing hearing, the Committee met in open session on July 20, 2004, and voted by unanimous voice vote to report favorably S. 2485, as amended to also incorporate provisions derived from S. 1745, S. 2133, S. 2296, S. 2327, S. 2417, S. 2486, and S. 2524.

SUMMARY OF THE COMMITTEE BILL AS REPORTED

S. 2485, as reported (hereinafter, the "Committee bill"), consists of two titles, summarized below.

TITLE I—REAL PROPERTY AND FACILITIES MATTERS

Title I contains freestanding provisions and amendments to Title 38, United States Code, that would:

1. Authorize VA for five years to dispose of its excess real property by sale, transfer or exchange to a Federal agency, a State, political subdivision of a State, or to any public or private entity, and allow VA to retain the proceeds from such transfers in a Capital Asset Fund to be used for non-recurring capital projects, maintenance, clean-up, or improvements of properties identified for disposal (section 101);
2. Remove the requirement that VA consider certain statutory strictures of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11411, when it disposes of excess real property and allow VA to enter into real property enhanced-use leases for the benefit of the Veterans Benefits Administration and the National Cemetery Administration (section 102);
3. Authorize the use of major construction project funds to construct or relocate surface parking lots if the parking construction or relocation is incidental to the underlying major construction project for which the funds have been appropriated (section 103);
4. Terminate the Nursing Home Revolving Fund (section 104);
5. Allow VA to use advance-planning funds on any construction project without notifying Congress if the planning is for a project that has already been authorized by law (section 105);

6. Permit VA to lease certain undeveloped or underutilized land of the National Cemetery Administration (section 106);
7. Transfer to VA jurisdiction over certain property in Boise, Idaho, currently administered by the General Services Administration (section 111);
8. Designate the VA Medical Center in Bronx, New York, the “James J. Peters Department of Veterans Affairs Medical Center” (section 121);
9. Designate a Prisoner of War/Missing in Action National Memorial at the Riverside National Cemetery in Riverside, California (section 122); and
10. Grant to the Commonwealth of Kentucky the first option on the VA Medical Center in Louisville, Kentucky, upon its proposed conveyance, lease or other disposal by VA (section 131).

TITLE II—BENEFITS MATTERS

Title II contains freestanding provisions and amendments to title 38, United States Code, that would:

1. Prohibit the collection of copayments for VA-provided hospice care (section 201);
2. Expand and make permanent VA’s authority to provide counseling and treatment for veterans suffering from sexual trauma (section 202);
3. Clarify that per diem payments made by VA for the care of veterans in State Veterans Homes shall not be used to offset or reduce other payments made to assist veterans (section 203);
4. Authorize care for newborn children of women veterans receiving maternity care in a VA facility or in a private facility under a VA contract (section 204);
5. Establish centers for research, education, and clinical activities that specialize in blast injuries sustained by active duty service personnel (section 205);
6. Extend for five years the requirement that VA’s special medical advisory group issue certain reports and extend VA pilot programs that are currently in force relating to long term care (section 206); and
7. Require VA to report annually on waiting times for appointments for care and services (section 207).

BACKGROUND AND DISCUSSION

TITLE I—REAL PROPERTY AND FACILITIES MATTERS

Section 101. Restatement and enhancement of real property disposal authorities

Under current law, the Secretary is authorized to dispose of property administered by VA and to retain the proceeds from such a disposal but only if: (1) the property is considered excess to the needs of VA; (2) there is no use for it in providing services to homeless veterans; and (3) the property is valued at less than \$50,000 or, in cases where it is valued at more than \$50,000, the disposal was proposed in the most recent budget submitted to Congress by the President of the United States. In the event VA disposes of

property, all proceeds must be deposited into the Nursing Home Revolving Fund. Funds in the Nursing Home Revolving Fund may only be used for the construction, acquisition, or alteration of VA nursing home facilities.

Section 101 of the Committee bill would authorize VA for five years to dispose of excess real property by sale, transfer or exchange to a Federal agency, a State, or a political subdivision of a State, or to any public or private entity. Such transfers would not be subject to restrictions currently in force. Further, the Committee bill would allow VA to retain the proceeds generated by such disposals of property in a new Capital Asset Fund rather than in the Nursing Home Revolving Fund. Funds in the new account could be used to perform non-recurring maintenance, develop construction proposals, or dispose of other VA property. Removal of current limitations on the use of land transfer proceeds would assist VA in carrying out the goals as outlined in VA's Capital Asset Realignment for Enhanced Services (CARES) plan.

Sec. 102. Improvements of enhanced-use lease authorities

VA is currently authorized to lease real property administered by VA to non-Federal entities in cases where VA determines that such a lease will advance the mission of VA and enhance the use of the property. See 38 U.S.C. § 8161 et seq. In making the determination to enter into such an "enhanced-use lease," VA may only consider the needs of the Veterans Health Administration as outlined in business plans set forth by the Under Secretary for Health. Once a determination to lease is made, VA may receive facilities, space, or services as consideration for the lease, but only if the facilities, space or services are on the VA-leased property.

Section 102 of the Committee bill would allow VA, as part of making a determination to enter into an enhanced-use lease, to consider the needs of the Veterans Benefits Administration or the National Cemetery Administration as outlined in business plans prepared by the respective Under Secretaries of those Administrations. For a number of years, Congress has encouraged VA to stop operating as three distinct health, benefits, and memorial affairs administrations and instead act as a single Department for the benefit of former service members. VA has responded with plans such as this one; the Committee believes it merits support.

Further, this section would permit VA to receive facilities, space, or services in consideration for a lease regardless of whether the facilities, space, or services are on the leased property. The Committee agrees with VA that the requirement that space, services, or facilities offered in consideration be on the affected property advances no compelling policy interest. The overarching goal of leasing in exchange for space, services, or facilities is that the consideration, wherever it might be delivered, be for the benefit of veterans.

Sec. 103. Authority to use project funds to construct or relocate surface parking incidental to a construction or non-recurring maintenance project

When construction projects are undertaken at VA medical centers, it is often necessary to move existing surface parking facilities to permit the project to proceed. In addition, major construction projects often require the addition of new surface parking spaces to

accommodate a programmatic mission or special requirements, e.g., handicapped spaces adjacent to the new building.

Under current law, all money spent for the construction of VA parking lots must be derived from the Parking Revolving Fund, which receives all of its deposits from fees charged for parking. VA may not spend “construction” funds on parking lots.

The Committee supports the basic concept that parking facilities at VA should be constructed using monies derived from the Parking Revolving Fund. Notwithstanding that, section 103 would authorize the use of funds in a construction or capital account for the relocation of a surface parking facility if the relocation is necessitated by a construction or non-recurring maintenance project.

Sec. 104. Termination of Nursing Home Revolving Fund

Under current law, proceeds from the transfer of an interest in real property under the jurisdiction of the Secretary of Veterans Affairs must be deposited in the Nursing Home Revolving Fund. This fund may only be used for the purpose of constructing, altering or acquiring nursing home care facilities.

Section 104 of the Committee bill would terminate the VA Nursing Home Revolving Fund. In light of the Committee’s approval of section 101 of the bill, creating a new Capital Asset Fund to serve as the repository of funds received by VA as a consequence of real property transfers, the Nursing Home Revolving Fund would no longer be needed.

Sec. 105. Inapplicability of limitation on use of Advance Planning Fund to authorized major medical facility projects

Under current law, VA may not spend more than \$500,000 from its Advanced Planning Fund for the development of a construction proposal unless it notifies Congress of its intention to do so, and it waits for a period of 30 days. The reporting requirement was established to ensure that the Veterans’ Affairs Committees of the United States Senate and House of Representatives have advance knowledge of VA project development activities.

The above-summarized reporting requirement applies irrespective of whether a project has already been authorized by Congress. Thus, VA is precluded from spending advanced-planning funds on a project that has been vetted and approved by Congress until VA gives further notification to Congress and the 30-day period has lapsed. The requirement that Congress be given notice of something it has already reviewed and approved is, at best, inefficient. Further, the requirement causes delay of up to three months for no compelling purpose. Accordingly, Section 105 of the Committee bill would eliminate the “notice and wait” provision if the project VA is planning has already been authorized by law.

Sec. 106. Lease of certain National Cemetery Administration property

National Cemetery Administration (hereinafter “NCA”) burial sites are developed in 10-year increments using a “just-in-time” approach. NCA’s premise is that it would be wasteful to develop an entire cemetery the first year VA operates the property when much of the land will not be needed until far into the future. NCA monitors the depletion of grave sites, projected burial requirements,

and estimated timing for new construction activities and then develops increments of new space as needed.

Under current law, VA is not permitted to lease NCA lands. As a consequence, the NCA has in its possession significant acreage that is not yet needed and might be useful for other purposes until it is needed for burial sites. Under current law, it must remain idle.

Section 106 of the Committee bill would allow the NCA to lease land that is not yet needed or is unsuitable for use by NCA. Under this authority, proceeds from such leases would be retained by NCA for the operation of the national cemeteries. Congress has already determined that using land administered by the Veterans Health Administration to generate revenues for VA to use for the betterment of veterans is both sound public policy and a good stewardship of taxpayer resources. This section simply extends that philosophy to the National Cemetery Administration.

Sec. 111. Transfer of jurisdiction, General Services Administration property, Boise, Idaho

Section 111 of the Committee bill would direct the transfer of certain land in Boise, Idaho, administered by the General Services Administration (hereinafter, "GSA") to VA. The land in question was originally under the jurisdiction of the Department of the Army as part of Ft. Boise. The Army transferred the land to VA for use in caring for veterans. Subsequently, VA transferred the land to GSA for the purpose of building a Federal courthouse in Boise.

Today, the land is, at best, underutilized, serving as an overflow courthouse parking lot. VA spends \$500,000 annually leasing space from a private developer for the operation its Boise Veterans Benefits Administration regional office.

Transfer of this land back to VA would potentially reduce VA's annual leasing costs and, just as important, make appropriate use of an otherwise underutilized parcel of Federal land.

Sec. 121. Designation of Department of Veterans Affairs Medical Center, Bronx, New York

For 31 years, James J. Peters, now deceased, was the Executive Director of the Eastern Paralyzed Veterans Association (hereinafter, "EPVA"), a service organization now known as the United Spinal Association. During his tenure, EPVA invested significantly in spinal cord injury care and research. The Bronx VA Medical Center is now a premier center for the treatment of spinal cord injured veterans.

Section 121 of the Committee bill would designate the VA Medical Center in Bronx, New York the "James J. Peters Department of Veterans Affairs Medical Center." The Committee has concluded that naming the VA Medical Center in Bronx, New York would be an appropriate tribute to Mr. Peters' longstanding commitment to veterans.

Sec. 122. Designation of Prisoner of War/Missing in Action National Memorial at the Riverside National Cemetery in Riverside, California

Section 2403 of title 38, United States Code, authorizes the NCA to establish memorial areas to honor veterans who are missing in action or whose remains are otherwise unavailable for burial. Under current law, VA is permitted to erect group memorials to honor the memory of two or more service members who died in service and whose remains were never recovered.

Section 122 of the Committee bill would designate at the Riverside National Cemetery a memorial to former Prisoners of War and members of the Armed Services listed as missing in action. The section directs that the memorial be known as the “Prisoner of War/Missing in Action National Memorial.”

Sec. 131. First option for Commonwealth of Kentucky on the VA Medical Center in Louisville, Kentucky

Under current law, VA generally may not transfer any property to a State unless VA receives compensation equal to the fair market value of the property and the transfer, as proposed, is described in the budget submitted by the President of the United States to the Congress for the fiscal year within which the proposed transfer would take place. VA may, however, transfer excess land to a State for use as the site of a State nursing home or domiciliary without adhering to these restrictions.

Section 131 of the Committee bill would require VA, if it determines that it will convey, lease, or otherwise dispose of all or part of the Louisville VA Medical Center, to negotiate for the conveyance, lease, or other disposal of the Medical Center with the Commonwealth of Kentucky for its use to provide services for veterans or for other purposes. The Committee bill would not relieve the Commonwealth of the burden of paying fair market value for the land if VA were to transfer the Medical Center to Kentucky.

TITLE II—BENEFITS MATTERS

Sec. 201. Prohibition on collection of copayments for hospice care

Section 1710B of title 38, United States Code, requires VA to operate a program to provide extended care services, including hospice care, to eligible veterans. However, section 1710B(c)(1) prohibits VA from providing such care for a non-service-connected disabling condition unless the veteran agrees to pay a copayment. The law does exempt compensable service-connected veterans and low-income veterans from the copayment requirement.

Hospice care is provided to patients who are suffering during the last phase of an incurable disease. As stated by the American Cancer Society, “hospice philosophy recognizes death as the final stage of life and seeks to enable patients to continue an alert, pain-free life and to manage other symptoms so that their last days may be spent with dignity and quality, surrounded by their loved ones.” Given the nature of hospice care, the Committee believes that waiving the copayment obligation for such services would advance the requirement that VA provide compassionate care. Accordingly, section 201 of the Committee bill would exempt veterans receiving hospice care under section 1710B from the copayment requirement.

Sec. 202. Expansion and permanent extension of authority for counseling and treatment for sexual trauma

Section 1720D of title 38, United States Code, authorizes VA to provide counseling and treatment to victims who suffer from an incident of sexual trauma while in service. That authority expires on December 31, 2004. To ensure that appropriate treatment will at least be available to victims of sexual trauma after they separate from service, the Committee bill would make permanent VA's authority to provide these services.

As a further matter, the Committee notes that VA's current authority does not extend to the treatment of members of the Reserves who are victims of sexual trauma while serving on active duty for training. This section would also authorize VA to provide counseling to members of the Reserves who were victims of sexual trauma during such periods.

Sec. 203. Treatment of VA per diem payments to state homes for veterans

Under current law, VA pays each State a per diem payment of \$57.78 for each veteran provided nursing home care in a State veterans' home. Costs above \$57.78 are borne by the State.

In an effort to increase revenues, many States have had their State homes Medicaid-certified; they have thus secured eligibility for payment of a fixed daily cost for each veteran who qualifies for care under the Medicaid program. Under current Medicaid rules, payments from any source other than Medicaid made on behalf of an individual patient must be reimbursed to the Medicaid program by the treating facility. For example, if Medicaid provided \$150 per day for the care of a veteran and the facility caring for the veteran receives \$20 per day from the veteran's spouse, Medicaid is entitled to reimbursement of the \$20 received from the spouse. Recently, Medicaid officials determined that VA per diem payments are "additional payments" made on behalf of an individual patient. Thus, VA's per diem payments must now be reimbursed to the Medicaid program.

The purpose of the VA's program of supporting State homes is to provide high quality nursing home care to aging veterans. VA's per diem payments are an integral part of that effort and were never intended to be reimbursed to Medicaid. Section 203 of the Committee bill would assure that per diem payments accomplish their intended purpose—assistance to the States in providing care to veterans—and that they are not being passed from one Governmental account (VA) to another (Medicaid).

Section 203 is not intended to alter the current rules applicable to patients who wish to qualify for Medicaid treatment. And it is not intended to exempt from Medicaid recoupment any other payments made on behalf of a veteran. Rather, the bill would simply specify that per diem payments made by VA for the care of veterans in State homes will not be used to offset or reduce any other payment made to assist veterans in securing health care services.

Sec. 204. Care for newborn children of women veterans receiving maternity care

Under current law, a former servicewoman can use her eligibility for VA care to secure prenatal care, delivery services, and postnatal

care. In most instances, VA provides such care by contract with community hospitals. VA does not, however, provide care (or pay for care) needed by the veteran's newborn following delivery.

In many cases, where a veteran-mother seeks care from VA, the newborn is uninsured until a hospital social worker or the newborn's parents can arrange for private healthcare coverage or, in other cases, Medicaid assistance. This uninsured period of time often reaches two weeks.

Section 204 of the Committee bill would authorize VA to furnish care to a newborn child of a female veteran who is receiving maternity care furnished by VA for up to 14 days after the birth of the child. This authorization applies if the veteran delivered the child in a VA facility or in a non-VA facility under a contract agreement with VA.

Sec. 205. Centers for research, education, and clinical activities on blast injuries of veterans

Modern technologies and advanced body armor have led to an increase in the number of service personnel who survive explosions while serving overseas in hostile territory. Additionally, better triage and battlefield care have also contributed to the increased survival rate among service members who have suffered such injuries.

Section 205 of the Committee bill would establish at VA, in collaboration with the Department of Defense, at least one, but not more than three, War-Related Blast Injury Centers. These centers would provide comprehensive rehabilitation programs, targeted education and outreach programs, and research initiatives. The structure for the Center(s) would be modeled after similar research, education, and clinical centers that now exist within VA, namely the Geriatric Research Education and Clinical Centers and the Mental Illness Research Education and Clinical Centers.

Sec. 206. Extension of various authorities relating to veterans benefits

Special Medical Advisory Group

Under current law, VA is required to establish a Special Medical Advisory Group to advise the Secretary on the care and treatment provided to disabled veterans. The Special Medical Advisory Group is required to report its findings to the Secretary on February 1st of each year through December 31, 2004.

The contributions of this body are, in the Committee's view, highly valuable. Section 206 would extend the authority for the Special Medical Advisory Group through December 31, 2009.

Pilot program relating to long-term care

Public Law 106-117, the Veterans Millennium Health Care and Benefits Act, established a three-year pilot program to evaluate three different models of providing long-term care to veterans. One model was to provide the care wholly "in-house" using VA employees. Another was to provide the entirety of care by contract with a private provider. The third was to be a mix of in-house and contract care. The law requires VA to report on its experience under each of the models so that Congress might determine whether it is

appropriate to continue or promote the advancement of any or all of the models.

The expiration date of the pilot falls during the summer of 2004. However, the report required by statute will not be available until the spring of 2005. VA states that, absent an extension in the underlying authority to provide these forms of care, it will be forced to suspend contract-based care programs before advising Congress as to whether the programs are working.

Section 206 of the Committee bill allows the pilot program to continue through December 31, 2005. This extension will provide VA with sufficient time to evaluate its experience under this pilot program, prepare the report, and allow a reasonable opportunity for Congress to review its recommendations.

Sec. 207. Annual reports on waiting times for appointments for health care and services

In July 2002, VA took a “one day snapshot look” at waiting times for clinical care in facilities throughout the country. At that time, VA reported over 300,000 veterans were waiting more than 30 days for appointments in primary and specialty care clinics. Since then, members of the Committee have received numerous complaints about widely-varying lengths of time veterans must wait to see a physician at a VA medical center. Anecdotally, Committee members have been told of waits of up to one year.

In January 2004, VA required that all facilities schedule an appointment within 30 days of a service-connected veteran’s request or, in the alternative, that the facility arrange for care for that veteran at another VA facility or at a community facility. Problems continue to persist for those who are not service-connected inasmuch as they do not fall under this directive.

In an effort to obtain more frequent updates on the progress VA is making in reducing waiting times, Section 207 of the Committee bill would require VA to report annually on patient appointment waiting times. The required reports would break out data by facility and service network, and would contain data relating to both speciality and primary care services.

COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the Congressional Budget Office (hereinafter, “CBO”), estimates that enactment of the Committee bill would increase direct spending for veterans programs by \$16 million over the 2005–2009 period, and \$40 million over the 2005–2014 period. In addition, CBO estimates that enactment of the Committee bill would cost \$20 million in 2005 and \$110 million over the 2005–2009 period, assuming appropriation of the estimated amounts. Enactment of the Committee bill might benefit public academic institutions in the form of grants for research. And the Commonwealth of Kentucky would benefit from the exclusive right to negotiate for the VA Medical Center in Louisville, KY if VA chooses to lease, convey, or dispose of the facility. Any costs to those institutions would be incurred voluntarily.

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

WASHINGTON, DC,
September 2, 2004.

Hon. ARLEN SPECTER,
Chairman, Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2485, the Department of Veterans Affairs Real Property Facilities Improvement Act of 2004.

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

Sincerely,

DOUGLAS HOLTZ-EAKIN, *Director.*

S. 2485—Department of Veterans Affairs Real Property and Facilities Management Improvement Act of 2004

Summary: S. 2485 would permanently extend the authority for the Department of Veterans Affairs A) to provide counseling to those veterans who have suffered from sexual trauma and would allow VA to provide care to newborn infants when the mother is a veteran receiving maternity care from the department. The bill also would extend, through the end of calendar year 2005, the authority for VA to provide long-term care for veterans already enrolled in certain pilot programs and would direct VA to create at least one center for research on blast injuries. Additionally, S. 2485 would create a new fund, the Department of Veterans Affairs Capital Asset Fund, that the department could use to pay for certain construction projects, subject to appropriation of the necessary amounts. Finally, the bill would allow both the Veterans Benefits Administration (VBA) and the National Cemetery Administration (NCA) to use enhanced-use lease authority.

CBO estimates that implementing S. 2485 would cost \$20 million in 2005 and \$110 million over the 2005–2009 period, assuming appropriation of the necessary amounts. CBO also estimates that enacting S. 2485 would increase direct spending for enhanced-use leases by \$16 million over the 2005–2009 period, and about \$40 million over the 2005–2014 period.

S. 2485 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Public academic institutions may benefit from grants for research and the state of Kentucky would benefit from exclusive rights to negotiate for the Louisville Medical Center if the VA chooses to lease, convey, or dispose of the facility; any costs to those institutions or the state would be incurred voluntarily.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2485 is summarized in Table 1. The costs of this legislation fall within budget function 700 (veterans benefits and services).

TABLE 1.—ESTIMATED COSTS TO THE FEDERAL GOVERNMENT

	By fiscal year, in millions of dollars—				
	2005	2006	2007	2008	2009
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	28	22	21	23	17
Estimated Outlays	20	25	24	24	17

TABLE 1.—ESTIMATED COSTS TO THE FEDERAL GOVERNMENT—Continued

	By fiscal year, in millions of dollars—				
	2005	2006	2007	2008	2009
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority	0	5	10	0	5
Estimated Outlays	0	1	5	5	5

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted before the end of calendar year 2004 and that the necessary amounts for implementing the bill will be appropriated each year.

Spending subject to appropriation: CBO estimates that implementing S. 2485 would increase discretionary spending for veterans' medical care by \$20 million in 2005 and \$110 million over the 2005–2009 period, assuming appropriation of the necessary amounts (see Table 2).

TABLE 2.—SPENDING SUBJECT TO APPROPRIATION IN S. 2485

	By fiscal year, in millions of dollars—					
	2004	2005	2006	2007	2008	2009
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law for Veterans' Medical Care:						
Estimated Authorization Level*	27,957	28,888	29,706	30,608	31,117	32,104
Estimated Outlays	27,141	28,334	29,293	30,210	30,846	31,756
Proposed Changes:						
Sexual Trauma Counseling:						
Estimated Authorization Level	0	7	11	11	12	12
Estimated Outlays	0	7	10	11	12	12
Newborn Care:						
Estimated Authorization Level	0	3	4	4	5	5
Estimated Outlays	0	3	4	4	5	5
Centers for Blast Injuries:						
Estimated Authorization Level	0	3	6	6	6	0
Estimated Outlays	0	3	6	6	6	0
Capital Asset Fund:						
Estimated Authorization Level	0	10	0	0	0	0
Estimated Outlays	0	2	4	3	1	0
Pilot Program Extension:						
Estimated Authorization Level	0	5	1	0	0	0
Estimated Outlays	0	5	1	0	0	0
Total Changes:						
Estimated Authorization Level	0	28	22	21	23	17
Estimated Outlays	0	20	25	24	24	17
Spending for Veterans' Medical Care Under S. 2485:						
Estimated Authorization Level	27,957	28,916	29,728	30,629	31,140	32,121
Estimated Outlays	27,141	28,354	29,318	30,234	31,870	31,773

*The 2004 level is the amount appropriated for that year. No full-year appropriation has yet been provided for fiscal year 2005. The current-law amounts for the 2005–2009 period assume appropriations remain at the 2004 level with adjustments for anticipated inflation.

Sexual Trauma Counseling. Section 202 would permanently extend a provision allowing VA to provide counseling to veterans who suffered from sexual trauma while serving on active duty. Under current law, the authority to provide such counseling expires on December 31, 2004. Using information from VA, CBO estimates that about 2 percent (approximately 100,000) of veterans who received care from VA were eligible to receive counseling for sexual trauma in 2003. Data from VA, although incomplete, suggests that about 5,000, or 5 percent, of those eligible veterans received such counseling in 2003, at an average per capita cost of almost \$2,000.

Assuming that about this same number of veterans receives counseling for sexual trauma each year over the 2005–2009 period, CBO estimates that permanently extending this provision would cost \$7 million in 2005 and \$52 million over the 2005–2009 period, assuming appropriation of the necessary amounts.

Newborn Care. Section 204 would allow VA to provide care to newborn infants when the mother is a veteran receiving maternity care from VA. According to VA, a little more than 700 women a year are expected to receive maternity care from VA. Based on data from VA, CBO estimates that the cost of providing neonatal care to those infants would be about \$5,700 per infant in 2005. (providing neonatal care for most infants would cost much less; the high average cost is driven by those infants who require extensive care for longer periods of time.) Based on assumed enactment late in calendar year 2004, CBO estimates that implementing section 204 would cost \$3 million in 2005 and \$21 million over the 2005–2009 period, assuming appropriation of the necessary amounts.

Centers for Blast Injuries. Section 205 would require VA to establish at least one, but not more than three, centers for research and study of blast injuries to provide better health care for veterans with such injuries. The provision would authorize \$3 million in 2005 and \$6 million for 2006, 2007, and 2008 for these centers and would require that VA provide additional amounts if necessary. Based on information from VA, CBO believes that the authorized amounts would be sufficient to operate at least one center over the four years. Thus, CBO estimates that implementing this section would cost \$3 million in 2005 and \$21 million over the 2005–2008 period, assuming appropriation of the authorized amounts.

Capital Asset Fund. Section 101 would make it easier for VA to dispose of real property to both public and private entities and would establish a new fund in the Treasury to be known as the Department of Veterans Affairs Capital Asset Fund. Under the bill, VA would be able to dispose of real property without the requirement to use the General Services Administration (GSA), though VA would still have to notify GSA of its intent to dispose of real property. The proceeds from property disposal would be deposited into the Capital Asset Fund and could be used to pay for costs associated with the transfer of property including demolition, environmental clean-up, and administrative expenses. However, expenditures from the fund would be subject to appropriation action. Thus, CBO does not expect that VA would increase its sales or other dispositions of real property.

Section 101 also would authorize the appropriation of \$10 million to the Capital Asset Fund where it could be used for the purposes stated above. Using historical spending patterns for construction, CBO estimates that implementing this provision would cost \$3 million in 2005 and \$10 million over the 2005–2009 period, assuming appropriation of the authorized amount.

Pilot Program Extension. Section 206 would allow VA to extend three pilot programs for long-term care through the end of calendar year 2005. According to VA, it spent about \$5 million in 2003 on these pilot programs. Thus, CBO estimates that implementing section 107 would cost about \$5 million in 2005 and \$6 million over the 2005–2006 period, assuming the appropriation of the necessary amounts.

Direct spending

Section 102 would permit both the VBA and the NCA to use enhanced-use leasing authority, which is only available to the Veterans Health Administration (VHA) under current law. With this enhanced-use leasing authority, VHA can lease land to private partners for up to 75 years, and in exchange these partners renovate or construct facilities on the land for the benefit of VHA. Although the partner is allowed to lease the facilities to non-VHA tenants, VHA has the priority for occupancy. In February 2003, CBO published a study, *The Budgetary Treatment of Leases and Public/Private Ventures*, that examined how VHA had used its enhanced-use leasing authority. That study found that VHA has used enhanced-use leases to acquire office buildings for its regional headquarters, parking facilities, nursing homes, and child care centers for its employees.

Under its enhanced-use lease authority, VHA enters into an array of long-term agreements with a property developer who establishes a limited liability company, partnership, or other special-purpose entity, specifically for the purpose of renovating, constructing, operating, and maintaining the facilities for each project. These agreements establish government control over the project, protect the government's interests, and ensure that VHA will receive guaranteed access to whatever facility is being developed. For example, under its enhanced-use leasing authority, VHA was able to obtain a new regional headquarters facility in Chicago. Although VHA's initial lease was for two years, that lease is automatically renewed unless VHA decides to terminate the lease. Furthermore, VHA must cover all of the project's financing, as long as it maintains any presence in the building. Because agreements and leases like the one described in this example allow VHA to effectively acquire new buildings, CBO believes that the full cost of the project should be recorded up front in the budget. We assume that VBA and NCA would use enhanced use lease authority in a similar manner as VHA. Accordingly, CBO expects that an authorization to use enhanced-use lease authority would result in new direct spending.

Over the past 10 years, CBO estimates that VHA has entered into enhanced-use leases with a total value of more than \$300 million over that period, though VHA's activity has increased significantly in the last few years. Because the value of real property owned by both VBA and NCA is much less than VHA, the total value of enhanced-use leases for the two agencies would be correspondingly lower. Although we do not have information on leasing plans for VBA and NCA, we assume that over the next 10 years VBA and NCA would use this authority to acquire three new office buildings and three other projects such as child care centers or parking facilities.

Based on information from the General Services Administration, CBO estimates that each additional building would cost about \$10 million. We assume that the smaller projects would cost about \$5 million each. Accordingly, CBO estimates that enacting section 102 would increase direct spending for enhanced-use leases by \$16 million over the 2005–2009 period and about \$40 million over the 2005–2014 period, as shown in Table 3. The timing of those projects is uncertain. Table 3 shows one plausible set of staggered

acquisitions; actual project commitments could be either faster or slower than shown.

Intergovernmental and private sector impact: S. 2485 contains no intergovernmental or private-sector mandates as defined in UMRA. Public academic institutions may benefit from grants for research and the state of Kentucky would benefit from exclusive rights to negotiate for the Louisville Medical Center if the VA chooses to lease, convey, or dispose of the facility; any costs to those institutions or the state would be incurred voluntarily.

TABLE 3.—CHANGES IN DIRECT SPENDING UNDER S. 2485

	By fiscal year, in millions of dollars—									
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Estimated Budget Authority	0	5	10	0	5	10	0	5	10	0
Estimated Outlays	0	1	5	5	5	5	5	5	5	5

Previous CBO estimates: Many of the provisions in S. 2485 are similar or identical to provisions in other bills recently estimated by CBO and have similar or identical costs. The differences in estimated costs between those estimates reflect differences in the bills.

On June 4, 2004, CBO transmitted a cost estimate for H.R. 4248, the Homeless Veterans Assistance Reauthorization Act of 2004, as ordered reported by the House Committee on Veterans' Affairs on May 19, 2004. Section 3 of H.R. 4248, which would permanently extend the authority to provide counseling to veterans who suffered from sexual trauma, is almost identical to section 202 of S. 2485; the estimated costs for those two sections are identical. H.R. 4248 also contains a provision that would authorize increased spending for homeless veterans. S. 2485 does not contain a similar provision.

On August 24, 2004, CBO transmitted a cost estimate for H.R. 4658, the Service members and Veterans Legal Protections Act of 2004, as ordered reported by the House Committee on Veterans' Affairs on July 21, 2004. Section 402 of H.R. 4658, which would allow VA to provide care to newborn infants when the mother is a veteran receiving maternity care from VA, is identical to section 204 of S. 2485, as are the estimated costs. H.R. 4658 contains other provisions regarding education, disability compensation, and pension benefits for veterans, as well as VA's fiduciary responsibilities. S. 2485 does not contain similar provisions.

On August 26, 2004, CBO transmitted a cost estimate for H.R. 4768, the Veterans Health Programs and Facilities Enhancement Act of 2004, as ordered reported by the House Committee on Veterans' Affairs on July 21, 2004. section 102 of H.R. 4768, which would establish the Capital Asset Fund, is different in minor ways from section 101 of S. 2485, though the estimated costs are identical for the two sections. In addition, section 107 of H.R. 4768, which would extend the operation of certain pilot programs for long-term care, is similar to section 206 in S. 2485, and the estimated costs are the same. H.R. 4758 also contains provisions that would authorize the leasing of medical facilities and the creation of medical preparedness centers, while S. 2485 does not.

Finally, S. 2485 contains a provision to create a center for the research and study of blast injuries that does not appear in any of the above bills.

REGULATORY IMPACT STATEMENT

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

TABULATION OF VOTES CAST BY COMMITTEE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by members of the Committee on Veterans' Affairs at its July 22, 2004, meeting. On that date, the Committee, by unanimous voice vote, ordered S. 2485, as amended, a bill to improve and enhance the authorities of the Secretary of Veterans Affairs relating to the management and disposal of real property and facilities, and for other purposes, as amendment, reported favorably to the Senate.

AGENCY REPORT

On June 22, 2004, Deputy Secretary of Veterans Affairs, the Honorable Gordon H. Mansfield, appeared before the Committee on Veterans' Affairs and submitted testimony on, among other things, S. 2486, as introduced, and also on the following additional bills from which provisions in S. 2485, as amended, are derived: S. 2099, S. 2522, and S. 2534. Excerpts from this statement are reprinted below:

STATEMENT OF THE HONORABLE GORDON MANSFIELD,
DEPUTY SECRETARY OF VETERANS AFFAIRS

This bill contains provisions designed to improve VA's enhanced-use lease program under 38 U.S.C. §§ 8161 et seq. We acknowledge the need to reform the enhanced-use (EU) leasing process to make it more efficient, as recommended by the Capital Asset Realignment for Enhanced Services (CARES) Commission's February 2004 report to the Secretary, and we appreciate the Committee's interest in this subject. We note that such interest already has led to inclusion of many of the bill's provisions in legislation enacted as Public Law 108-170 (i.e., requiring only one notice to Congress of VA's intent to enter into an EU lease, reducing the congressional notice and review period before executing such lease from 90 to 45 days, reducing by the same number of days the congressional notice and review period regarding a planned disposal of EU leased property, giving the Secretary sole discretion and control of such property disposal by eliminating GSA involvement in the process, and authorizing use of EU lease proceeds to reimburse VA appropriations for expenses incurred in developing additional EU leases). That legislation, together with other initiatives we are pursuing, will help us to signifi-

cantly reduce the time required to consummate these lease transactions.

Mr. Chairman, we also appreciate the provisions that recognize our EU lease projects can and do involve initiatives not only of the Veterans Health Administration, but also of the Veterans Benefits Administration (VBA) and National Cemetery Administration (NCA). In this regard, section 3 would authorize EU leases implementing VBA and NCA business plans providing for applying lease consideration to programs and activities of those Administrations. Further, it would direct that net proceeds from VBA or NCA EU leases be credited to applicable appropriations of the affected Administration. We are studying the budgetary impact of the latter provision and, following executive-branch review, will advise the Committee of our views.

Finally, should a Capital Asset Fund be established (as proposed under this bill), we would support having the proceeds from a disposal of EU lease property deposited into such fund as provided by this bill.

Disposal of VA Property

S. 2485 would authorize VA to dispose of its excess real property by sale, transfer or exchange to a Federal agency, a state or political subdivision of a state or to any public or private entity and to retain the proceeds generated by the disposals. Under the proposal, the disposal of real property would be exempt from GSA's requirements in 40 U.S.C. §§ 521, 522 and 541-545 and those in the McKinney-Vento Homeless Assistance Act (which provides that unused or underutilized Federal real property may be used to assist the homeless). VA would receive compensation equal to the fair market value of the property, and the proceeds would be deposited in a Capital Asset Fund (the "Fund"), as provided for by this legislation. The bill would also terminate the Nursing Home Revolving Fund and deposit funds therein into the Fund.

Amounts in the Fund would have to be used for the costs of actual or planned disposals of real estate, including demolition, environmental cleanup, necessary improvement to facilitate the sales, transfers or exchanges, and administrative expenses. They could also be used for non-recurring VA capital projects.

We support S. 2485 because it would eliminate an existing disincentive to the disposal of Departmental real property. Currently, VA must report all transfers of real property valued in excess of \$50,000 (to another Federal agency or to a state or a political subdivision of a state for fair market value) in its annual budget document. This is administratively burdensome. Further, absent extension of current appropriations law allowing proceeds from the disposal of excess property to be deposited in the Medical Care Collections Fund, provisions in title 38, United States Code, require such proceeds to be deposited into the Nursing Home Revolving Fund. S. 2485 would enhance VA's

ability to manage Departmental capital resources, while promoting efficiencies and cost savings. However, we suggest the proposal be amended to provide that VA receive consideration not less than the fair market value of the disposed property to maximize the Government's return.

Limits on Disposal Authority

S. 2485 would also limit VA's authority to dispose of real property in excess of the major medical facility project dollar limitation unless the disposal has been in the budget justification documents for the current fiscal year. The bill would also require VA to receive consideration equal to the fair market value of the property. Proceeds from disposals would be similarly deposited in the Fund.

VA supports this proposal. However, we again recommend that the bill language be amended to require VA receive consideration that is not less than the fair market value of the property.

Advance Planning Funding for Major Medical Facilities

S. 2485 would also exempt projects that have already been authorized by law from current statutory notice and wait requirements that apply to certain major medical facility projects. It would also do so for such projects that are included in the President's budget. VA supports this proposal.

National Cemetery Administration Property

We are pleased that S. 2485 also includes VA's proposal to permit the leasing of unused or underutilized real property that is administered by the National Cemetery Administration. These leases would be limited to a maximum term of ten years. Leases to a public or non-profit organization would not be required to be advertised. Consideration for these leases could be monetary or, in whole or in part, maintenance, protection or restoration of the leased property. Proceeds would be deposited in a special account in the Treasury, The National Cemetery Administration Facilities Operation Fund (the "NCA Fund"), and available until expended. The NCA Fund would consist of amounts appropriated by law, the proceeds from the leases of land or buildings or agricultural licenses, and any other amounts authorized by law. Again, we appreciate your inclusion of this VA proposal in the bill and strongly urge its enactment.

Co-payment Exemption for Hospice Care

S. 2486 would exempt veterans receiving hospice care under VA's extended care services program from the requirement to agree to pay co-payments. We support section 311 but recommend that its scope be broadened to include hospice care provided in any treatment setting. Currently, veterans receiving hospice care through the Department may be subject to a co-payment, which can vary depending

upon the type of VA facility or setting in which the care is given.

Permanent Authority for Sexual Trauma Care and Counseling Program

This bill would also permanently authorize VA's sexual trauma care and counseling program. We strongly support this proposal, noting that it is identical to a legislative proposal we submitted to Congress in 2003. Making this particular treatment authority permanent is essential. The number of veterans seeking VA counseling and treatment for military sexual trauma continues to increase. Likewise, the number of women who serve in the Armed Forces, the Reserves, and the National Guard continues to grow. VA must be able to provide needed sexual trauma counseling and related health care to these current and future veterans without any lapse in program authority. We estimate there would be no additional costs associated with enactment of this section.

S. 2417—Newborn Care

S. 2417 would authorize VA to provide care to newborn children of women veterans for whom VA furnishes maternity and delivery care. To receive this benefit, the mother must be enrolled in the VA health care system. Currently, VA has no authority to provide care to newborns, although VA provides maternity benefits as part of its medical benefits package.

We strongly support this bill, which is identical to a legislative proposal we submitted to Congress in 2003. After childbirth, some veterans may need this limited benefit to give them time to apply for medical assistance. Offering this care would also be consistent with the normal pregnancy and delivery coverage in the community. The modest cost of the proposal was included in the President's Budget submitted earlier this year.

S. 2327—State Home Per Diem Payment—Relation to Medicaid

For many years, a number of State homes have accepted both VA per diem payments for the care of veterans and Medicaid payments for those veterans without reducing the Medicaid payments by the amount of per diem payments. The Department of Health and Human Services (HHS) has determined that this practice violates its rules and is investigating whether to seek reimbursement. S. 2327 appears aimed at rectifying this situation by deeming that VA state home per diem payments "shall not be considered a liability of a third party, or otherwise be utilized to offset or reduce any other payment made to assist veterans." Because this bill would primarily impact the Medicaid program, we defer to the views of HHS on the matter.

S. 2296—Option for Commonwealth of Kentucky for Certain Property

Mr. Chairman, S. 2296 would grant the Commonwealth of Kentucky a first option should the VA decide to convey, lease or otherwise dispose of the Louisville, KY Veterans Affairs Medical Center. This bill would require the VA to negotiate with the Commonwealth of Kentucky and restrict for one year the Department from negotiating with any other party.

Let me note first of all that because VA does not presently have direct disposal authority, we do not currently have the authority to negotiate with the Commonwealth. However, as discussed earlier in my statement, we do support being given such disposal authority. Having said that, we, nonetheless, oppose this legislation because we believe it could prevent VA from achieving maximum value from disposal of the property should the property no longer be needed by VA. Achieving best value in a property transaction involves market timing and competition, and this proposal would remove both of these considerations.

S. 2133—Designation of Bronx VAMC

This bill would designate the Bronx VAMC as the “James J. Peters Department of Veterans Affairs Medical Center.” We defer to Congress in the naming of federal property.

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

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

TITLE 38, UNITED STATES CODE

* * * * *

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

* * * * *

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

* * * * *

§ 1710B. Extended care services

* * * * *

(c)(1) * * *

(2)(A) to a veteran whose annual income (determined under section 1503 of this title) is less than the amount in effect under section 1521(b) of this title; **[or]**

(B) to a veteran being furnished hospice care under this section;
or

[(B)] (C) with respect to an episode of extended care services that a veteran is being furnished by the Department on November 30, 1999.

* * * * *

§ 1720D. Counseling and treatment for sexual trauma

(a)(1) **[During the period through December 31, 2004, the Secretary]** *The Secretary* shall operate a program under which the Secretary provides counseling and appropriate care and services to veterans who the Secretary determines require such counseling and care and services to overcome psychological trauma, which in the judgment of a mental health professional employed by the Department, resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the veteran was serving on active duty.

(2) In operating the program under paragraph (1), the Secretary shall also provide counseling and appropriate care and services to former members of the Reserves who the Secretary determines require such counseling and care and services to overcome psychological trauma, which in the judgment of such a mental health professional, resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while such individual was a member of the Reserves not serving on active duty.

[(2)] (3) In furnishing counseling to **[a veteran]** *an individual* under this subsection, the Secretary may **[, during the period through December 31, 2004,]** provide such counseling pursuant to a contract with a qualified mental health professional if (A) in the judgment of a mental health professional employed by the Department, the receipt of counseling by **[that veteran]** *that individual* in facilities of the Department would be clinically inadvisable, or (B) Department facilities are not capable of furnishing such counseling to **[that veteran]** *that individual* economically because of geographical inaccessibility.

* * * * *

(c) The Secretary shall provide information on the counseling and treatment available to veterans *and other individuals* under this section. Efforts by the Secretary to provide such information—

(1) shall include availability of a toll-free telephone number (commonly referred to as an 800 number);

(2) shall ensure that information about the counseling and treatment available to veterans *and other individuals* under this section—

(A) is revised and updated as appropriate;

(B) is made available and visibly posted at appropriate facilities of the Department; and

(C) is made available through appropriate public information services; and

(3) shall include coordination with the Secretary of Defense seeking to ensure that individuals who are being separated from active military, naval, or air service are provided appropriate information about programs, requirements, and procedures for applying for counseling and treatment under this section.

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Subchapter III—Miscellaneous Provisions Relating to Hospital and Nursing Home Care and Medical Treatment of Veterans

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§ 1730A. *Annual reports on waiting times for appointments for care and services*

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§ 1730A. Annual reports on waiting times for appointments for care and services

(a) *ANNUAL REPORTS.*—Not later than January 31 each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the waiting times of veterans for appointments for care and services from the Department under this chapter during the preceding year.

(b) *REPORT ELEMENTS.*—Each report under subsection (a) shall specify, for the year covered by the report, the following:

(1) *A tabulation of the waiting time of veterans for appointments with the Department for each category of primary or specialty care or services furnished by the Department, broken out by particular Department facility and by Veterans Integrated Service Network.*

(2) *An identification of the categories of specialty care or services for which there are lengthy delays for appointments at particular Department facilities or throughout particular Veterans Integrated Service Networks, and, for each category so identified, recommendations for the reallocation of personnel, financial, and other resources to address such delays.*

* * * * *

Subchapter V—Payments to State Homes

§ 1741. Criteria for payment

(a) * * *

* * * * *

(e) *Payments to States pursuant to this section shall not be considered a liability of a third party, or otherwise be utilized to offset or reduce any other payment made to assist veterans.*

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Subchapter VIII—Health Care of Persons Other Than Veterans

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§ 1786. *Care for newborn children of women veterans receiving maternity care*

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§1786. Care for newborn children of women veterans receiving maternity care

The Secretary may furnish care to a newborn child of a woman veteran who is receiving maternity care furnished by the Department for up to 14 days after the birth of the child if the veterans delivered the child in a Department facility or in a non-Department facility pursuant to a Department contract for the delivery services.

CHAPTER 24—NATIONAL CEMETERIES AND MEMORIALS

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§2412. Lease of land and buildings

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§2412. Lease of Land and Buildings

(a) **LEASE AUTHORIZED.**—*The Secretary may lease any undeveloped land and unused or underutilized buildings, or parts and parcels thereof, belonging to the United States and part of the National Cemetery Administration.*

(b) **TERM.**—*The term of a lease under subsection (a) may not exceed 10 years.*

(c) **LEASE TO PUBLIC OR NONPROFIT ORGANIZATIONS.**—(1) *A lease under subsection (a) to any public or nonprofit organization may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5).*

(2) *Notwithstanding section 1302 of title 40 or any other provision of law, a lease under subsection (a) to any public or nonprofit organization may provide for the maintenance, protection, or restoration of the leased property by the lessee, as part or all of the consideration for the lease.*

(d) **NOTICE.**—*Before entering into a lease under subsection (a), the Secretary shall give appropriate public notice of the intention of the Secretary to enter into the lease in a newspaper of general circulation in the community in which the lands or building concerned are located.*

(e) **NATIONAL CEMETERY ADMINISTRATION FACILITIES OPERATION FUND.**—

(1) *There is established on the book of the Treasury an account to be known as the “National Cemetery Administration Facilities Operation Fund” (in this section referred to as the “Fund”).*

(2) *The Fund shall consist of the following:*

(A) *Amounts authorized to be appropriated to the Fund.*

(B) *Proceeds from the lease of land or buildings under this section.*

(C) *Proceeds of agricultural licenses of lands of the National Cemetery Administration.*

(D) *Any other amounts authorized for deposit in the Fund by law.*

(3) *Amounts in the Fund shall be available to cover costs incurred by the National Cemetery Administration in the operation and maintenance of property of the Administration.*

(4) Amounts in the Fund shall remain available until expended.

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

* * * * *

Subchapter II—General Authority and Administration

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§ 7327. Centers for research, education, and clinical activities on blast injury

* * * * *

§ 7312. Special medical advisory group

(a) * * *

* * * * *

(d) Not later than February 1 of each year, the special medical advisory group shall submit to the Secretary and the Congress a report on the activities of the advisory group during the preceding fiscal year. No report shall be required under this subsection after **[December 31, 2004]** *December 31, 2009*.

* * * * *

§ 7327. Centers for research, education, and clinical activities on blast injuries

(a) *PURPOSE.*—*The purpose of this section is to provide for the improvement of the provision of health care services and related rehabilitation and education services to eligible veterans suffering from multiple traumas associated with a blast injury through—*

(1) *the conduct of research to support the provision of such services in accordance with the most current evidence on blast injuries;*

(2) *the education and training of health care personnel of the Department; and*

(3) *the development of improved models and systems for the furnishing of services by the Department for blast injuries*

(b) *ESTABLISHMENT.*—(1) *The Secretary shall establish and operate at least one, but not more than three, centers for research, education, and clinical activities on blast injuries.*

(2) *Each center shall function as a center for—*

(A) *research on blast injury to support the provision of services in accordance with the most current evidence on blast injuries, with such research to specifically address injury epidemiology and cost functional outcomes, blast injury taxonomy and measurement system, and longitudinal outcomes;*

(B) *the development of a rehabilitation program for blast injuries, including referral protocol, post-acute assessment, and coordination of comprehensive treatment service;*

(C) *the development of protocols to optimize linkages between the Department and the Department of Defense on matters relating to research, education, and clinical activities on blast injuries;*

(D) the creation of innovative models for education and outreach on healthcare and related rehabilitation and education services on blast injuries, with such education and outreach to target those who have sustained a blast injury and health care providers and researchers in the Veterans Health Administration, the Department of Defense, and the Department of Homeland Security;

(E) the development of educational tools and products on blast injuries, and the maintenance of such tools and products in a resource clearinghouse that can serve as resources for the Veterans Health Administration, the Department of Defense, the Department of Homeland Security, and other departments and agencies of the federal government;

(F) the development of interdisciplinary training programs on the provision of health care and rehabilitation care services for blast injuries that provide an integrated understanding of the continuum of care for such injuries to the broad range of providers of such services, including first responders, acute care providers, and rehabilitation service providers; and

(G) the implementation of strategies for improving the medical diagnostic coding of blast injuries in the Department to reliably identify veterans with blast injuries and track outcomes over time,

(3) The Secretary may designate a center on this section only if—

(A) the proposal submitted for the designation of the center meets the requirements of subsection (c);

(B) the Secretary makes the findings described in subsection (d); and

(C) the peer review panel established under subsection (e) makes the determination specified in subsection (e)(3) with respect to that proposal.

(c) PROPOSAL REQUIREMENTS.—A proposal submitted for the designation of a center under this subsection shall—

(1) provide for close collaboration in the establishment and operation of the center, and for the provision of care and the conduct of research and education at the center, by a Department facility or facilities (in this subsection referred to as ‘collaborating facilities’) in the same geographic area that have a mission centered on the care of individuals with blast injuries and a Department facility in that area which has a mission of providing tertiary care;

(2) provide that not less than 50 percent of the funds appropriated for the center for support of clinical care, research, and education will be provided to the collaborating facilities with respect to the center; and

(3) provide for a governance arrangement among the facilities described in paragraph (1) with respect to the center that ensures that the center will be established and operated in a manner aimed at improving the quality of care for blast injuries at the collaborating facilities with respect to the center.

(d) FINDING RELATED TO PROPOSALS.—The finding referred to in subsection (b)(4)(B) with respect to a proposal for the designation of a site as a location of a center under this section is a finding by the Secretary, upon the recommendation of the Under Secretary for

Health, that the facilities submitting the proposal have developed (or may reasonably be anticipated to develop) each of the following:

(1) An arrangement with an affiliated accredited medical school or university that provides education and training in disaster preparedness, homeland security, and bio-defense.

(2) Comprehensive and effective treatment services for head injury, spinal cord injury, audiology, amputation, gait and balance, and mental health.

(3) The ability to attract scientists who have demonstrated achievement in research—

(A) into the evaluation of innovative approaches to the rehabilitation of blast injuries; or

(B) into the treatment of blast injuries

(4) The capability to evaluate effectively the activities of the center, including activities relating to the evaluation of specific efforts to improve the quality and effectiveness of services on blast injuries that are provided by the Department at or through individual facilities.

(e) DEPARTMENT SUPPORT ON EVALUATION OF CENTER PROPOSALS.—(1) In order to provide advice to assist the Secretary or Under Secretary for Health to carry out their responsibilities under this section, the official within the central office of the Veterans Health Administration responsible for blast injury matters shall establish a peer review panel to assess the scientific and clinical merit of proposals that are submitted to the Secretary for the designation of centers under this section.

(2) The panel shall consist of experts in the fields of research, education and training, and clinical care on blast injuries. Members of the panel shall serve as consultants to the Department.

(3) The panel shall review each proposal submitted to the panel by the official referred to in paragraph (1) and shall submit to that official its views on the relative scientific and clinical merit of each such proposal. The panel shall specifically determine with respect to each such proposal whether or not that proposal is among those proposals which have met the highest competitive standards of scientific and clinical merit.

(4) The panel shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(f) AWARD OF FUNDING.—Clinical and scientific investigation activities at each center established under this section—

(1) may compete for the award of funding from amount appropriated for the Department for medical and prosthetic research; and

(2) shall receive priority in the award of funding from such amounts insofar as funds are awarded from such amounts to projects and activities relating to blast injuries.

(g) DISSEMINATION OF INFORMATION.—(1) The Under Secretary for Health shall ensure that information produced by the centers established under this section that may be useful for other activities of the Veterans Health Administration is disseminated throughout the Administration.

(2) Information shall be disseminated under this subsection through publications, through programs of continuing medical and related education provided through regional medical education centers under subchapter VI of chapter 74 of this title, and through

other means. Such programs of continuing medical education shall receive priority in the award of funding.

(h) SUPERVISION.—The official within the central office of the Veterans Health Administration responsible for blast injury matters shall be responsible for supervising the operation of the centers established under this section and shall provide for ongoing evaluation of the centers and their compliance with the requirements of the section.

(i) AUTHORIZATION OF APPROPRIATIONS—(1) There are authorized to be appropriated to the Department of Veterans Affairs for the centers established under this section amounts as follows:

(A) \$3,125,000 for fiscal year 2005.

(B) \$6,250,000 for each of fiscal years 2006 through 2008.

(2) In addition to amounts authorized to be appropriated by paragraph (1) for a fiscal year, the Under Secretary for Health shall allocate to each center established under this section, from other funds authorized to be appropriated for such fiscal year for the Department generally for medical and prosthetics research, such additional amounts as the Under Secretary determines appropriate to carry out the purpose of this section

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CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

Subchapter I—Acquisition and Operation of Medical Facilities

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【§ 8816. Nursing Home Revolving Fund】

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§ 8104. Congressional approval of certain medical facility acquisitions

(a) * * *

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(g) The limitation specified in subsection (f) shall not apply to projects for which funds have already been authorized by law in accordance with subsection (a)(2).

§ 8109. Parking facilities

(a) * * *

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(j) Funds in a construction account or capital account that are available for a construction project or non-recurring maintenance project may be used for the construction or relocation of a surface parking lot incidental to such a project.

§ 8110. Operation of medical facilities

(a) * * *

* * * * *

(e)(1) The Secretary may not implement a mission change for a medical facility (other than a mission change prescribed by the Secretary of the Capital Asset Realignment for Enhanced Services (CARES) initiative) until 90 days after the date on which the Secretary submits to the committees written notice of the mission change.

(2) For purposes of this subsection, a mission change for a medical facility shall consist of any of the following:

(A) Closure of the facility.

(B) Consolidation of the facility.

(C) An administration reorganization of the facility covered by section 510(b) of this title.

(3) Written notice of a mission change for a medical facility under paragraph (1) shall include—

(A) an assessment of the impact of the mission change on the population of veterans served by the facility;

(B) a description of the availability and quality of health care, including long-term care, mental health care, and substance abuse programs, available in the area served by the facility;

(C) an assessment of the impact of the mission change on the economy of the community in which the facility is located; and

(D) an analysis of any alternatives to the mission change proposed by the community in which the facility is located, organizations recognized by the Secretary under section 5902 of this title, organizations that represent Department employees in such community, or the Department.

(4) In the case of a mission change covered by paragraph (1) that is also an administrative reorganization covered by section 510(b) of this title, both this subsection and such section 510(b) shall apply with respect to the implementation of such mission change.

[(e)] *(f) The Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the House of Representatives, not later than January 20 of each year, a report documenting by network for the preceding fiscal year the following:*

(1) The number of medical service and surgical service beds, respectively, that were closed during that fiscal year and, for each such closure, a description of the changes in delivery of services that allowed such closure to occur.

(2) The number of nursing home beds that were the subject of a mission change during that fiscal year and the nature of each such mission change.

[(f)] *(g) For purposes of this section:*

(1) The term "closure", with respect to beds in a medical center, means ceasing to provide staffing for, and to operate, those beds. Such term includes converting the provision of such bed care from care in a Department facility to care under contract arrangements.

(2) The term "bed section", with respect to a medical center, means psychiatric beds (including beds for treatment of substance abuse and post-traumatic stress disorder), intermediate, neurology, and rehabilitation medicine beds, extended care (other than nursing home) beds, and domiciliary beds.

(3) The term "justification", with respect to closure of beds, means a written report that includes the following:

(A) An explanation of the reasons for the determination that the closure is appropriate and advisable.

(B) A description of the changes in the functions to be carried out and the means by which such care and services would continue to be provided to eligible veterans.

(C) A description of the anticipated effects of the closure on veterans and on their access to care.

* * * * *

§ 8116. Nursing home revolving fund

[(a)(1) Amounts realized from a transfer pursuant to section 8122(a)(2)(C) of this title shall be administered as a revolving fund and shall be available without fiscal year limitation.

[(2) The revolving fund shall be deposited in a checking account with the Treasurer of the United States.

[(b)(1) The expenditure of funds from the revolving fund may be made only for the construction, alteration, and acquisition (including site acquisition) of nursing home facilities and may be made only as provided for in appropriation Acts.

[(2) For the purpose of section 8104(a)(2) of this title, a bill, resolution, or amendment which provides that funds in the revolving fund may be expended for a project involving a total expenditure of more than \$2,000,000 for the construction, alteration, or acquisition (including site acquisition) of a nursing home facility shall be considered to be a bill, resolution, or amendment making an appropriation which may be expended for a major medical facility project.]

§ 8122. Authority to procure [and dispose of] property and to negotiate for common services

(a)[(1)] The Secretary may lease for a term not exceeding three years lands or buildings, or parts or parcels thereof, belonging to the United States under the Secretary's control. Any lease made pursuant to this subsection to any public or nonprofit organization may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5). Notwithstanding section 1302 of title 40, or any other provision of law, a lease made pursuant to this subsection to any public or nonprofit organization may provide for the maintenance, protection, or restoration, by the lessee, of the property leased, as a part or all of the consideration for the lease. Prior to the execution of any such lease, the Secretary shall give appropriate public notice of the Secretary's intention to do so in the newspaper of the community in which the lands or buildings to be leased are located. The proceeds from such leases, less expenses for maintenance, operation, and repair of buildings leased for living quarters, shall be covered into the Treasury of the United States as miscellaneous receipts.

[(2)(A) Except as provided in paragraph (3) of this subsection, the Secretary may not during any fiscal year transfer to another Federal agency or to a State (or any political subdivision of a State) any interest in real property described in subparagraph (B) of this paragraph unless (i) the transfer (as proposed) was described in the budget for that fiscal year submitted to Congress pursuant to sec-

tion 1105 of title 31, and (ii) the Department receives compensation equal to the fair market value of the property.

[(B) An interest in real property described in this subparagraph is an interest in real property that is owned by the United States and administered by the Department and that has an estimated value in excess of \$50,000.

[(C) Amounts realized from the transfer of any interest in real property described in subparagraph (B) of this paragraph shall be deposited in the nursing-home revolving fund established under section 8116 of this title.

[(3)(A) Subject to subparagraph (B) of this paragraph, the Secretary may, without regard to paragraph (2) of this subsection or any other provision of law relating to the disposition of real property by the United States, transfer to a State for use as the site of a State nursing-home or domiciliary facility real property described in subparagraph (E) of this paragraph which the Secretary determines to be excess to the needs of the Department.

[(B) A transfer of real property may not be made under this paragraph unless—

[(i) the Secretary has determined that the State has provided sufficient assurance that it has the resources (including any resources which are reasonably likely to be available to the State under subchapter III of chapter 81 of this title and section 1741 of this title) necessary to construct and operate a State home nursing or domiciliary care facility; and

[(ii) the transfer is made subject to the conditions (I) that the property be used by the State for a nursing-home or domiciliary care facility in accordance with the conditions and limitations applicable to State home facilities constructed with assistance under subchapter III of chapter 81 of this title, and (II) that, if the property is used at any time for any other purpose, all right, title, and interest in and to the property shall revert to the United States.

[(C) A transfer of real property may not be made under this paragraph until—

[(i) the Secretary submits to the Committees on Veterans' Affairs of the Senate and House of Representatives, not later than June 1 of the year in which the transfer is proposed to be made (or the year preceding that year), a report providing notice of the proposed transfer; and

[(ii) a period of 90 consecutive days elapses after the report is received by those committees.

[(D) A transfer under this paragraph shall be made under such additional terms and conditions as the Secretary considers appropriate to protect the interests of the United States.

[(E) Real property described in this subparagraph is real property that is owned by the United States and administered by the Secretary.]

* * * * *

[(d) Real property under the jurisdiction of the Secretary may not be declared excess by the Secretary and disposed of by the General Services Administration or any other entity of the Federal Government unless the Secretary determines that the property is no longer needed by the Department in carrying out its functions and is not suitable for use for the provision of services to homeless

veterans by the Department or by another entity under an enhanced-use lease of such property under section 8162 of this title.】

§ 8122A. Disposal of real property

(a) *AUTHORITY TO DISPOSE OF REAL PROPERTY.*—To the extent provided in advance in appropriations Acts, the Secretary may dispose of real property of the Department, including land and structures and equipment associated with such property, that is under the jurisdiction or control of the Secretary by—

(1) transfer to or exchange with another department or agency of the Federal Government;

(2) conveyance to or exchange with a State or a political subdivision of a State, an Indian tribe, or another public entity; or

(3) conveyance to or exchange with any private person or entity.

(b) *INAPPLICABILITY OF CERTAIN DISPOSAL REQUIREMENTS.*—The Secretary may exercise the authority in subsection (a) without regard to the following provisions of law:

(1) Sections 521, 522, and 541 through 545 of title 40.

(2) Section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

(c) *LIMITATION ON DETERMINATION OF PROPERTY TO BE EXCESS.*—Real property under the jurisdiction of the Secretary may not be declared excess by the Secretary and disposed of by the General Services Administration or any other entity of the Federal Government unless the Secretary determines that the property is no longer needed by the Department in carrying out its functions and is not suitable for use for the provision of services to homeless veterans by the Department or by another entity under an enhanced-use lease of such property under section 8162 of this title.

(d) *DISPOSAL PROCEDURES.*—(1) Except as provided in paragraph (3), the Secretary may not during any fiscal year dispose of real property (including land and structures and equipment associated with such property) owned by the United States and administered by the Secretary that has an estimated value in excess of the major medical facility project threshold specified in section 8104(a)(3)(A) of this title unless—

(A) the disposal is described in the budget justification documents submitted to Congress with the budget of the President for the fiscal year beginning in such year (as submitted pursuant to section 1105 of title 31);

(B) the Secretary—

(i) notifies the Administrator of General Services of an intent to dispose of the property;

(ii) publishes in the Federal Register notice of an intent to dispose of the property; and

(iii) notifies the committees of an intent to dispose of the property;

(C) a period of 30 days elapses after notice under subparagraph (B)(i) during which period no other department or agency of the Federal Government expresses an interest in assuming jurisdiction of the property under the condition of paying the Secretary the fair market value of the property, as determined by the Secretary, of the property; and

(D) a period of 60 days elapses after notice under subparagraph (B)(iii).

(2) Except as provided in paragraph (3), the Secretary may dispose of real property (including land structures and equipment associated with such property) owned by the United States and administered by the Secretary that has an estimated value less than the major medical facility project threshold specified in section 8104(a)(3)(A) of this title if—

(A) the Secretary notifies the committees and the Administrator of General Services of an intent to dispose of the property;

(B) the Secretary publishes a notice of sale in the real estate section of a local newspaper of general circulation serving the market in which the property is located; and

(C) a period of 30 days elapses after notice under subparagraph (A) during which period no other department or agency of the Federal Government expresses an interest in assuming jurisdiction of the property under the condition of paying the Secretary the fair market value of the property, as determined by the Secretary, of the property.

(3)(A) Notwithstanding paragraphs (1) and (2) or any other provision of law relating to the disposition of real property by the United States and subject to subparagraph (B), the Secretary may transfer to a State for use as the site of a State nursing-home or domiciliary facility real property owned by the United States and administered by the Secretary that the Secretary determines to be excess to the needs of the Department.

(B) A transfer of real property may not be made under this paragraph unless—

(i) the Secretary has determined that the State has provided sufficient assurance that it has the resources (including any resources which are reasonably likely to be available to the State under subchapter III of chapter 81 of this title and section 1741 of this title) necessary to construct and operate a State home nursing or domiciliary care facility; and

(ii) the transfer is made subject to the conditions that—

(I) the property be used by the State for a nursing home or domiciliary care facility in accordance with the conditions and limitations applicable to State home facilities constructed with assistance under subchapter III of chapter 81 of this title; and

(II) if the property is used at any time for any other purpose, all right, title, and interest in and to the property shall revert to the United States.

(C) A transfer of real property may not be made under this paragraph until—

(i) the Secretary submits to the committees, not later than June 1 of the year in which the transfer is proposed to be made (or the year preceding that year), a report providing notice of the proposed transfer; and

(ii) a period of 90 consecutive days elapses after the report is received by the committees.

(D) A transfer under this paragraph shall be made under such additional terms and conditions as the Secretary considers appropriate to protect the interests of the United States.

(e) *CONSIDERATION.*—In any transfer, exchange, or conveyance under the authority in this section (other than a transfer described in subsection (d)(3)), the Secretary shall obtain consideration in an amount equal to the fair market value of the property, as determined by the Secretary.

(f) *TREATMENT OF PROCEEDS.*—Proceeds from the transfer, exchange, or conveyance of real property under this section shall be deposited in the Capital Asset Fund under section 8122B of this title.

(g) *REPORTS.*—The Secretary shall include with the budget justification documents submitted to Congress each year with the budget of the President for the fiscal year beginning in such year (as submitted pursuant to section 1105 of title 31) a report setting forth the following:

(1) A statement of each disposal of real property to be undertaken in such fiscal year that is valued in excess of the major medical facility project threshold specified in section 8104(a)(3)(A) of this title.

(2) A description of each disposal of real property that was completed in the fiscal year ending in the year before such report is submitted.

§ 8122B. Capital Asset Fund

(a) *CAPITAL ASSET FUND.*—There is established on the books of the Treasury of the United States a revolving fund known as the Capital Asset Fund (in this section referred to as the “Fund”).

(b) *ELEMENTS OF FUND.*—The Fund shall consist of the following:

(1) Amounts authorized to be appropriated to the Fund.

(2) Proceeds from the transfer, exchange, or conveyance of real property under subsection (a) of section 8122A of this title that are deposited in the Fund under subsection (f) of such section.

(3) Funds to be deposited in the Fund under section 8165(a)(3) of this title.

(4) Any other amounts specified for transfer to or deposit in the Fund by law.

(c) *USE OF AMOUNTS IN FUND.*—Subject to the provisions of appropriations Acts, amounts in the Fund shall be available for purposes as follows and in the following order of priority:

(1) For costs of the Department in disposing of real property under sections 8122A and 8164 of this title, including costs associated with demolition, environmental clean-up, maintenance and repair, improvements to facilitate disposal, and associated administrative expenses.

(2) For costs of the Department associated with proposed disposals of real property of the Department under such sections.

(3) For costs of non-recurring capital projects of the Department.

* * * * *

§ 8162. Enhanced-use leases

(a)(1) * * *

(2) * * *

(B) the Secretary determines that the implementation of a business plan proposed by [the Under Secretary for Health for

applying the consideration under such a lease to the provision of medical care and services] *one of the Under Secretaries for applying the consideration under such a lease to the programs and activities of the Department* would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located.

* * * * *

(b)(1) * * *

(4)(A) obtain facilities, space, or services [on the leased property]; and

(B) use minor construction funds for capital contribution payments.

* * * * *

§ 8164. Authority for disposition of leased property

(a) If, during the term of an enhanced-use lease or within 30 days after the end of the term of the lease, the Secretary determines that the leased property is no longer needed by the Department, the Secretary may initiate action for the transfer to the lessee of all right, title, and interest of the United States in the property. A disposition of property may not be made under this section unless the Secretary determines that the disposition under this section rather than under [section 8122] *section 8122A* of this title is in the best interests of the Department.

(b) *The Secretary may dispose of property under this section without regard to the following provisions of law:*

(1) *Sections 521, 522, and 541 through 545 of title 40.*

(2) *Section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).*

[(b)] (c) A disposition under this section may be made for such consideration as the Secretary determines is in the best interest of the United States and upon such other terms and conditions as the Secretary considers appropriate.

[(c)] (d) Not less than 45 days before a disposition of property is made under this section, the Secretary shall notify the congressional veterans' affairs committees of the Secretary's intent to dispose of the property and shall publish notice of the proposed disposition in the Federal Register. The notice shall describe the background of, rationale for, and economic factors in support of, the proposed disposition (including a cost-benefit analysis summary) and the method, terms, and conditions of the proposed disposition.

§ 8165. Use of proceeds

(a)(1) [Funds received] *Except as provided in paragraph (2), funds received by the Department under an enhanced-use lease and remaining after any deduction from those funds under subsection (b) shall be deposited in the Department of Veterans Affairs Medical Care Collections Fund established under section 1729A of this title.*

(2) *Funds received by the Department under an enhanced-use lease implementing a business plan proposed by the Under Secretary for Benefits or the Under Secretary for Memorial Affairs and remaining after any deduction from such funds under subsection (b)*

shall be credited to applicable appropriations of the Veterans Benefits Administration or National Cemetery Administration, as the case may be.

[(2)] (3) Funds received by the Department from a disposal of leased property under section 8164 of this title shall be deposited in the **[nursing home revolving fund]** *Capital Asset Fund* under section 8122B of this title.

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§ 1710B note. Pilot programs relating to Long Term Care

(a) * * *

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(h) DURATION OF PROGRAMS.—The authority of the Secretary to provide services under a pilot program under this section shall cease on **[the date that is three years after the date of the commencement of that pilot program]** *December 31, 2005*.

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