115TH CONGRESS
*2d Session*
HOUSE OF REPRESENTATIVES
REPT. 115–1036
Part 1

TO ESTABLISH A COMMISSION FOR THE PURPOSE OF MAKING RECOMMENDATIONS REGARDING THE MODERNIZATION OR REALIGNMENT OF FACILITIES OF THE VETERANS HEALTH ADMINISTRATION, TO IMPROVE CONSTRUCTION AND MANAGEMENT LEASES OF THE DEPARTMENT OF VETERANS AFFAIRS, TO AMEND AND APPROPRIATE FUNDS FOR THE VETERANS CHOICE PROGRAM, AND FOR OTHER PURPOSES

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NOVEMBER 16, 2018.—Ordered to be printed

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Mr. ROE of Tennessee, from the Committee on Veterans' Affairs, submitted the following

# R E P O R T

together with

## DISSENTING VIEWS

[To accompany H.R. 4243]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 4243) to establish a commission for the purpose of making recommendations regarding the modernization or realignment of facilities of the Veterans Health Administration, to improve construction and management leases of the Department of Veterans Affairs, to amend and appropriate funds for the Veterans Choice Program, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS



89–006

## AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

**SECTION 1. TABLE OF CONTENTS.**

The table of contents for this Act is as follows:



# TITLE I—ASSET AND INFRASTRUCTURE REVIEW

**SEC. 101. SHORT TITLE.**

This title may be cited as the "VA Asset and Infrastructure Review Act of 2017".

**SEC. 102. THE COMMISSION.**

(a) ESTABLISHMENT.—There is established an independent commission to be known as the "Asset and Infrastructure Review Commission" (in this title referred to as the "Commission").

(b) DUTIES.—The Commission shall carry out the duties specified for it in this title.

(c) APPOINTMENT.—

(1) IN GENERAL.—

(A) APPOINTMENT.—The Commission shall be composed of 9 members appointed by the President, by and with the advice and consent of the Senate.

(B) TRANSMISSION OF NOMINATIONS.—The President shall transmit to the Senate the nominations for appointment to the Commission not later than May 31, 2021.

(2) CONSULTATION IN SELECTION PROCESS.—In selecting individuals for nominations for appointments to the Commission, the President shall consult with—

(A) the Speaker of the House of Representatives;

(B) the majority leader of the Senate;

(C) the minority leader of the House of Representatives;

(D) the minority leader of the Senate; and

(E) congressionally chartered, membership based veterans service organizations concerning the appointment of three members.

(3) DESIGNATION OF CHAIR.—At the time the President nominates individuals for appointment to the Commission under paragraph (1)(B), the President shall

designate one such individual who shall serve as Chair of the Commission and one such individual who shall serve as Vice Chair of the Commission.

(4) MEMBER REPRESENTATION.—In nominating individuals under this subsection, the President shall ensure that—

(A) veterans, reflecting current demographics of veterans enrolled in the system of annual patient enrollment under section 1705 of title 38, United States Code, are adequately represented in the membership of the Commission;

(B) at least one member of the Commission has experience working for a private integrated health care system that has annual gross revenues of more than $50,000,000;

(C) at least one member has experience as a senior manager for an entity specified in clause (ii), (iii), or (iv) of section 101(a)(1)(B) of the Veterans Access, Choice, and Accountability Act of 2014 (Public Law 113–146; 38 U.S.C. 1701 note);

(D) at least one member—

(i) has experience with capital asset management for the Federal Government; and

(ii) is familiar with trades related to building and real property, including construction, engineering, architecture, leasing, and strategic partnerships; and

(E) at least three members represent congressionally chartered, membership-based, veterans service organizations.

(d) MEETINGS.—

(1) IN GENERAL.—The Commission shall meet only during calendar years 2022 and 2023.

(2) PUBLIC NATURE OF MEETINGS AND PROCEEDINGS.—

(A) PUBLIC MEETINGS.—Each meeting of the Commission shall be open to the public.

(B) OPEN PARTICIPATION.—All the proceedings, information, and deliberations of the Commission shall be available for review by the public.

(e) VACANCIES.—A vacancy in the Commission shall be filled in the same manner as the original appointment, but the individual appointed to fill the vacancy shall serve only for the unexpired portion of the term for which the individual's predecessor was appointed.

(f) PAY.—

(1) IN GENERAL.—Members of the Commission shall serve without pay.

(2) OFFICERS OR EMPLOYEES OF THE UNITED STATES.—Each member of the Commission who is an officer or employee of the United States shall serve without compensation in addition to that received for service as an officer or employee of the United States.

(3) TRAVEL EXPENSES.—Members shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(g) DIRECTOR OF STAFF.—

(1) APPOINTMENT.—The Commission shall appoint a Director who—

(A) has not served as an employee of the Department of Veterans Affairs during the one-year period preceding the date of such appointment; and

(B) is not otherwise barred or prohibited from serving as Director under Federal ethics laws and regulations, by reason of post-employment conflict of interest.

(2) RATE OF PAY.—The Director shall be paid at the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(h) STAFF.—

(1) PAY OF PERSONNEL.—Subject to paragraphs (2) and (3), the Director, with the approval of the Commission, may appoint and fix the pay of additional personnel.

(2) EXEMPTION FROM CERTAIN REQUIREMENTS.—The Director may make such appointments without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and any personnel so appointed may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS–15 of the General Schedule.

(3) DETAILEES.—

(A) LIMITATION ON NUMBER.—Not more than two-thirds of the personnel employed by or detailed to the Commission may be on detail from the Department of Veterans Affairs.

(B) PROFESSIONAL ANALYSTS.—Not more than half of the professional analysts of the Commission staff may be persons detailed from the Department of Veterans Affairs to the Commission.

(C) PROHIBITION ON DETAIL OF CERTAIN PERSONNEL.—A person may not be detailed from the Department of Veterans Affairs to the Commission if, within 6 months before the detail is to begin, that person participated personally and substantially in any matter within the Department of Veterans Affairs concerning the preparation of recommendations regarding facilities of the Veterans Health Administration.

(4) AUTHORITY TO REQUEST DETAILED PERSONNEL.—Subject to paragraph (3), the head of any Federal department or agency, upon the request of the Director, may detail any of the personnel of that department or agency to the Commission to assist the Commission in carrying out its duties under this title.

(5) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal agency such information the Commission considers necessary to carry out this title. Upon request of the Chair, the head of such agency shall furnish such information to the Commission.

(i) OTHER AUTHORITY.—

(1) TEMPORARY AND INTERMITTENT SERVICES.—The Commission may procure by contract, to the extent funds are available, the temporary or intermittent services of experts or consultants pursuant to section 3109 of title 5, United States Code.

(2) LEASING AND ACQUISITION OF PROPERTY.—To the extent funds are available, the Commission may lease real property and acquire personal property either of its own accord or in consultation with the General Services Administration.

(j) TERMINATION.—The Commission shall terminate on December 31, 2023.

(k) PROHIBITION AGAINST RESTRICTING COMMUNICATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), no person may restrict an employee of the Department of Veterans Affairs in communicating with the Commission.

(2) UNLAWFUL COMMUNICATIONS.—Paragraph (1) does not apply to a communication that is unlawful.

**SEC. 103. PROCEDURE FOR MAKING RECOMMENDATIONS.**

(a) SELECTION CRITERIA.—

(1) PUBLICATION.—The Secretary shall, not later than February 1, 2021, and after consulting with veterans service organizations, publish in the Federal Register and transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives the criteria proposed to be used by the Department of Veterans Affairs in assessing and making recommendations regarding the modernization or realignment of facilities of the Veterans Health Administration under this title. Such criteria shall include the preferences of veterans regarding health care furnished by the Department.

(2) PUBLIC COMMENT.—The Secretary shall provide an opportunity for public comment on the proposed criteria under paragraph (1) for a period of at least 90 days and shall include notice of that opportunity in the publication required under such paragraph.

(3) PUBLICATION OF FINAL CRITERIA.—The Secretary shall, not later than May 31, 2021, publish in the Federal Register and transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives the final criteria to be used in making recommendations regarding the closure, modernization, or realignment of facilities of the Veterans Health Administration under this title.

(b) RECOMMENDATIONS OF THE SECRETARY.—

(1) PUBLICATION IN FEDERAL REGISTER.—The Secretary shall, not later than January 31, 2022, and after consulting with veterans service organizations, publish in the Federal Register and transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives and to the Commission a report detailing the recommendations regarding the modernization or realignment of facilities of the Veterans Health Administration on the basis of the final criteria referred to in subsection (a)(2) that are applicable.

(2) FACTORS FOR CONSIDERATION.—In making recommendations under this subsection, the Secretary shall consider each of the following factors:

(A) The degree to which any health care delivery or other site for providing services to veterans reflect the metrics of the Department of Veterans Affairs regarding market area health system planning.

(B) The provision of effective and efficient access to high-quality health care and services for veterans.

(C) The extent to which the real property that no longer meets the needs of the Federal Government could be reconfigured, repurposed, consolidated, realigned, exchanged, outleased, repurposed, replaced, sold, or disposed.

(D) The need of the Veterans Health Administration to acquire infrastructure or facilities that will be used for the provision of health care and services to veterans.

(E) The extent to which the operating and maintenance costs are reduced through consolidating, colocating, and reconfiguring space, and through realizing other operational efficiencies.

(F) The extent and timing of potential costs and savings, including the number of years such costs or savings will be incurred, beginning with the date of completion of the proposed recommendation.

(G) The extent to which the real property aligns with the mission of the Department of Veterans Affairs.

(H) The extent to which any action would impact other missions of the Department (including education, research, or emergency preparedness).

(I) Local stakeholder inputs and any factors identified through public field hearings.

(J) The assessments under paragraph (3).

(K) Any other such factors the Secretary determines appropriate.

(3) CAPACITY AND COMMERCIAL MARKET ASSESSMENTS.—

(A) ASSESSMENTS.—The Secretary shall assess the capacity of each Veterans Integrated Service Network and medical facility of the Department to furnish hospital care or medical services to veterans under chapter 17 of title 38, United States Code. Each such assessment shall—

(i) identify gaps in furnishing such care or services at such Veterans Integrated Service Network or medical facility;

(ii) identify how such gaps can be filled by—

(I) entering into contracts or agreements with network providers under this section or with entities under other provisions of law;

(II) making changes in the way such care and services are furnished at such Veterans Integrated Service Network or medical facility, including—

(aa) extending hours of operation;

(bb) adding personnel; or

(cc) expanding space through the construction, leasing, or sharing of health care facilities;

(III) the building or realignment of Department resources or personnel;

(iii) forecast, based on future projections and historical trends, both the short- and long-term demand in furnishing care or services at such Veterans Integrated Service Network or medical facility and assess how such demand affects the needs to use such network providers;

(iv) include a commercial health care market assessment of designated catchment areas in the United States conducted by a non-governmental entity; and

(v) consider the unique ability of the Federal Government to retain a presence in an area otherwise devoid of commercial health care providers or from which such providers are at risk of leaving.

(B) CONSULTATION.—In carrying out the assessments under subparagraph (A), the Secretary shall consult with veterans service organizations and veterans served by each such Veterans Integrated Service Network and medical facility.

(C) SUBMITTAL.—The Secretary shall submit such assessments to the Committees on Veterans' Affairs of the House of Representatives and the Senate with the recommendations of the Secretary under this subsection and make the assessments publicly available.

(4) SUMMARY OF SELECTION PROCESS.—The Secretary shall include, with the list of recommendations published and transmitted pursuant to paragraph (1), a summary of the selection process that resulted in the recommendation for each facility of the Veterans Health Administration, including a justification for each recommendation. The Secretary shall transmit the matters referred to in the preceding sentence not later than 7 days after the date of the transmittal

to the Committees on Veterans' Affairs of the Senate and the House of Representatives and the Commission of the report referred to in paragraph (1).

(5) TREATMENT OF FACILITIES.—In assessing facilities of the Veterans Health Administration, the Secretary shall consider all such facilities equally without regard to whether the facility has been previously considered or proposed for reuse, closure, modernization, or realignment by the Department of Veterans Affairs.

(6) AVAILABILITY OF INFORMATION TO CONGRESS.—In addition to making all information used by the Secretary to prepare the recommendations under this subsection available to Congress (including any committee or Member of Congress), the Secretary shall also make such information available to the Commission and the Comptroller General of the United States.

(7) CERTIFICATION OF ACCURACY.—

(A) IN GENERAL.—Each person referred to in subparagraph (B), when submitting information to the Secretary or the Commission concerning the modernization or realignment of a facility of the Veterans Health Administration, shall certify that such information is accurate and complete to the best of that person's knowledge and belief.

(B) COVERED PERSONS.—Subparagraph (A) applies to the following persons:

(i) Each Under Secretary of the Department of Veterans Affairs.

(ii) Each director of a Veterans Integrated Service Network.

(iii) Each director of a medical center of the Department of Veterans Affairs.

(iv) Each director of a program office of the Department of Veterans Affairs.

(v) Each person who is in a position the duties of which include personal and substantial involvement in the preparation and submission of information and recommendations concerning the modernization or realignment of facilities of the Veterans Health Administration.

(c) REVIEW AND RECOMMENDATIONS BY THE COMMISSION.—

(1) PUBLIC HEARINGS.—

(A) IN GENERAL.—After receiving the recommendations from the Secretary pursuant to subsection (b), the Commission shall conduct public hearings on the recommendations.

(B) LOCATIONS.—The Commission shall conduct public hearings in regions affected by a recommendation of the Secretary to close a facility of the Veterans Health Administration. To the greatest extent practicable, the Commission shall conduct public hearings in regions affected by a recommendation of the Secretary to modernize or realign such a facility.

(C) REQUIRED WITNESSES.—Witnesses at each public hearing shall include at a minimum—

(i) a veteran—

(I) enrolled under section 1705 of title 38, United States Code; and

(II) identified by a local veterans service organization; and

(ii) a local elected official.

(2) TRANSMITTAL TO PRESIDENT.—

(A) IN GENERAL.—The Commission shall, not later than January 31, 2023, transmit to the President a report containing the Commission's findings and conclusions based on a review and analysis of the recommendations made by the Secretary, together with the Commission's recommendations, for modernizations and realignments of facilities of the Veterans Health Administration.

(B) AUTHORITY TO MAKE CHANGES TO RECOMMENDATIONS.—Subject to subparagraph (C), in making its recommendations, the Commission may change any recommendation made by the Secretary if the Commission—

(i) determines that the Secretary deviated substantially from the final criteria referred to in subsection (a)(2) in making such recommendation;

(ii) determines that the change is consistent with the final criteria referred to in subsection (a)(2);

(iii) publishes a notice of the proposed change in the Federal Register not less than 45 days before transmitting its recommendations to the President pursuant to subparagraph (A); and

(iv) conducts public hearings on the proposed change.

(3) JUSTIFICATION FOR CHANGES.—The Commission shall explain and justify in its report submitted to the President pursuant to paragraph (2) any recommendation made by the Commission that is different from the recommenda-

tions made by the Secretary pursuant to subsection (b). The Commission shall transmit a copy of such report to the Committees on Veterans' Affairs of the Senate and the House of Representatives on the same date on which it transmits its recommendations to the President under paragraph (2).

(4) PROVISION OF INFORMATION TO CONGRESS.—After January 31, 2023, the Commission shall promptly provide, upon request, to any Member of Congress information used by the Commission in making its recommendations.

(d) REVIEW BY THE PRESIDENT.—

(1) REPORT.—The President shall, not later than February 15, 2023, transmit to the Commission and to the Congress a report containing the President's approval or disapproval of the Commission's recommendations.

(2) PRESIDENTIAL APPROVAL.—If the President approves all the recommendations of the Commission, the President shall transmit a copy of such recommendations to the Congress, together with a certification of such approval.

(3) PRESIDENTIAL DISAPPROVAL.—If the President disapproves the recommendations of the Commission, in whole or in part, the President shall transmit to the Commission and the Congress, not later than March 1, 2023, the reasons for that disapproval. The Commission shall then transmit to the President, not later than March 15, 2023, a revised list of recommendations for closures, modernizations, and realignments of facilities of the Veterans Health Administration.

(4) TRANSMITTAL OF RECOMMENDATIONS TO CONGRESS.—If the President approves all of the revised recommendations of the Commission transmitted to the President under paragraph (3), the President shall transmit a copy of such revised recommendations to the Congress, together with a certification of such approval.

(5) FAILURE TO TRANSMIT.—If the President does not transmit to the Congress an approval and certification described in paragraph (2) or (4) by March 30, 2023, the process by which facilities of the Veterans Health Administration may be selected for modernization or realignment under this title shall be terminated.

**SEC. 104. ACTIONS REGARDING INFRASTRUCTURE AND FACILITIES OF THE VETERANS HEALTH ADMINISTRATION.**

(a) IN GENERAL.—Subject to subsection (b), the Secretary shall begin to implement the recommended modernizations and realignments in the report under section 103(d) not later than three years after the date on which the President transmits such report to Congress. Such implementation includes the planning of modernizations and realignments of facilities of the Veterans Health Administration as recommended in such report.

(b) CONGRESSIONAL DISAPPROVAL.—

(1) IN GENERAL.—The Secretary may not carry out any modernization or realignment recommended by the Commission in a report transmitted from the President pursuant to section 103(d) if a joint resolution is enacted, in accordance with the provisions of section 107, disapproving such recommendations of the Commission before the earlier of—

(A) the end of the 45-day period beginning on the date on which the President transmits such report; or

(B) the adjournment of Congress sine die for the session during which such report is transmitted.

(2) COMPUTATION OF PERIOD.—For purposes of paragraph (1) and subsections (a) and (c) of section 107, the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of a period.

(c) SPECIFIC AUTHORIZATION.—Any obligation or expenditure of funds for any major medical facility project or any major medical facility lease under subsection (a) shall be treated as if specifically authorized by law for purposes of section 8104 of title 38, United States Code, as amended by sections 201 and 202 of this Act.

**SEC. 105. IMPLEMENTATION.**

(a) IN GENERAL.—

(1) MODERNIZING AND REALIGNING FACILITIES.—In modernizing or realigning any facility of the Veterans Health Administration under this title, the Secretary may—

(A) take such actions as may be necessary to modernize or realign any such facility, including the alteration of such facilities, the acquisition of such land, the leasing or construction of such replacement facilities, the disposition of such land or facilities, the performance of such activities, and the conduct of such advance planning and design as may be required to transfer functions from a facility of the Veterans Health Administration to

another such facility, and may use for such purpose funds in the Account or funds appropriated to the Department of Veterans Affairs for such purposes;

(B) carry out activities for the purposes of environmental mitigation, abatement, or restoration at any such facility, and shall use for such purposes funds in the Account;

(C) provide outplacement assistance to employees employed by the Department of Veterans Affairs at facilities of the Veterans Health Administration being closed or realigned, and may use for such purpose funds in the Account or funds appropriated to the Department of Veterans Affairs for outplacement assistance to employees;

(D) reimburse other Federal agencies for actions performed at the request of the Secretary with respect to any such closure or realignment, and may use for such purpose funds in the Account or funds appropriated to the Department of Veterans Affairs and available for such purpose; and

(E) exercise the authority of the Secretary under subchapter V of chapter 81 of title 38, United States Code.

(2) ENVIRONMENTAL RESTORATION; HISTORIC PRESERVATION.—In carrying out any closure or realignment under this title, the Secretary, with regards to any property made excess to the needs of the Department of Veterans Affairs as a result of such closure or realignment, shall carry out, as soon as possible with funds available for such purpose, any of the following for which the Secretary is responsible:

(A) Environmental mitigation.

(B) Environmental abatement.

(C) Environmental restoration.

(D) Compliance with historic preservation requirements.

(b) MANAGEMENT AND DISPOSAL OF PROPERTY.—

(1) EXISTING DISPOSAL AUTHORITIES.—To transfer or dispose of surplus real property or infrastructure located at any facility of the Veterans Health Administration that is modernized or realigned under this Act, the Secretary may exercise the authorities of the Secretary under subchapters I and II of chapter 81 of title 38, United States Code, or the authorities delegated to the Secretary by the Administrator of General Services under subchapter III of chapter 5 of title 40, United States Code.

(2) EFFECTS ON LOCAL COMMUNITIES.—

(A) CONSULTATION WITH STATE AND LOCAL GOVERNMENT.—Before any action may be taken with respect to the disposal of any surplus real property or infrastructure located at any facility of the Veterans Health Administration to be closed or realigned under this title, the Secretary of Veterans Affairs shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering any plan for the use of such property by the local community concerned.

(B) TREATMENT OF ROADS.—If infrastructure or a facility of the Veterans Health Administration to be closed or realigned under this title includes a road used for public access through, into, or around the facility, the Secretary—

(i) shall consult with the Government of the State and the heads of the local governments concerned for the purpose of considering the continued availability of the road for public use after the recommended action is complete; and

(ii) may exercise the authority of the Secretary under section 8108 of title 38, United States Code.

(3) LEASES; CERCLA.—

(A) LEASE AUTHORITY.—

(i) TRANSFER TO REDEVELOPMENT AUTHORITY FOR LEASE.—The Secretary may transfer title to a facility of the Veterans Health Administration approved for closure or realignment under this title (including property at a facility of the Veterans Health Administration approved for realignment which will be retained by the Department of Veterans Affairs or another Federal agency after realignment) to the redevelopment authority for the facility if the redevelopment authority agrees to lease, directly upon transfer, one or more portions of the property transferred under this subparagraph to the Secretary or to the head of another department or agency of the Federal Government.

(ii) TERM OF LEASE.—A lease under clause (i) shall be for a term of not to exceed 50 years, but may provide for options for renewal or extension of the term by the department or agency concerned.

(iii) LIMITATION.—A lease under clause (i) may not require rental payments by the United States.

(iv) TREATMENT OF REMAINDERED LEASE TERMS.—A lease under clause (i) shall include a provision specifying that if the department or agency concerned ceases requiring the use of the leased property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another department or agency of the Federal Government using the property for a use similar to the use under the lease. Exercise of the authority provided by this clause shall be made in consultation with the redevelopment authority concerned.

(v) FACILITY SERVICES.—Notwithstanding clause (iii), if a lease under clause (i) involves a substantial portion of the facility, the department or agency concerned may obtain facility services for the leased property and common area maintenance from the redevelopment authority or the redevelopment authority's assignee as a provision of the lease. The facility services and common area maintenance shall be provided at a rate no higher than the rate charged to non-Federal tenants of the transferred property. Facility services and common area maintenance covered by the lease shall not include—

(I) municipal services that a State or local government is required by law to provide to all landowners in its jurisdiction without direct charge; or

(II) firefighting or security-guard functions.

(B) APPLICATION OF CERCLA.—The provisions of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) shall apply to any transfer of real property under this paragraph.

(C) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require any additional terms and conditions in connection with a transfer under this paragraph as such Secretary considers appropriate to protect the interests of the United States.

(4) APPLICATION OF MCKINNEY-VENTO HOMELESS ASSISTANCE ACT.—Nothing in this title shall limit or otherwise affect the application of the provisions of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.) to facilities of the Veterans Health Administration closed under this title.

(c) APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—

(1) IN GENERAL.—The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to the actions of the President, the Commission, and, except as provided in paragraph (2), the Department of Veterans Affairs in carrying out this title.

(2) DEPARTMENT OF VETERANS AFFAIRS.—

(A) COVERED ACTIVITIES.—The provisions of the National Environmental Policy Act of 1969 shall apply to actions of the Department of Veterans Affairs under this title—

(i) during the process of property disposal; and

(ii) during the process of relocating functions from a facility of the Veterans Health Administration being closed or realigned to another facility after the receiving facility has been selected but before the functions are relocated.

(B) OTHER ACTIVITIES.—In applying the provisions of the National Environmental Policy Act of 1969 to the processes referred to in subparagraph (A), the Secretary shall not have to consider—

(i) the need for closing or realigning the facility of the Veterans Health Administration as recommended by the Commission;

(ii) the need for transferring functions to any facility of the Veterans Health Administration which has been selected as the receiving facility; or

(iii) facilities of the Veterans Health Administration alternative to those recommended or selected.

(d) WAIVER.—

(1) RESTRICTIONS ON USE OF FUNDS.—The Secretary may close or realign facilities of the Veterans Health Administration under this title without regard to any provision of law restricting the use of funds for closing or realigning facilities of the Veterans Health Administration included in any appropriation or authorization Act.

(2) RESTRICTIONS ON AUTHORITIES.—The Secretary may close or realign facilities of the Veterans Health Administration under this title without regard to the restrictions of section 8110 of title 38, United States Code.

(e) TRANSFER AUTHORITY IN CONNECTION WITH PAYMENT OF ENVIRONMENTAL REMEDIATION COSTS.—

(1) IN GENERAL.—

(A) TRANSFER BY DEED.—Subject to paragraph (2) of this subsection and section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), the Secretary may enter into an agreement to transfer by deed a facility of the Veterans Health Administration with any person who agrees to perform all environmental restoration, waste management, and environmental compliance activities that are required for the property or facilities under Federal and State laws, administrative decisions, agreements (including schedules and milestones), and concurrences.

(B) ADDITIONAL TERMS OR CONDITIONS.—The Secretary may require any additional terms and conditions in connection with an agreement authorized by subparagraph (A) as the Secretary considers appropriate to protect the interests of the United States.

(2) LIMITATION.—A transfer of a facility of the Veterans Health Administration may be made under paragraph (1) only if the Secretary certifies to Congress that—

(A) the costs of all environmental restoration, waste management, and environmental compliance activities otherwise to be paid by the Secretary with respect to the facility of the Veterans Health Administration are equal to or greater than the fair market value of the property or facilities to be transferred, as determined by the Secretary; or

(B) if such costs are lower than the fair market value of the facility of the Veterans Health Administration, the recipient of such transfer agrees to pay the difference between the fair market value and such costs.

(3) PAYMENT BY THE SECRETARY FOR CERTAIN TRANSFERS.—In the case of a facility of the Veterans Health Administration covered by a certification under paragraph (2)(A), the Secretary may pay the recipient of such facility an amount equal to the lesser of—

(A) the amount by which the costs incurred by the recipient of the facility of the Veterans Health Administration for all environmental restoration, waste, management, and environmental compliance activities with respect to such facility exceed the fair market value of such property as specified in such certification; or

(B) the amount by which the costs (as determined by the Secretary) that would otherwise have been incurred by the Secretary for such restoration, management, and activities with respect to such facility of the Veterans Health Administration exceed the fair market value of property as so specified.

(4) DISCLOSURE.—As part of an agreement under paragraph (1), the Secretary shall disclose to the person to whom the facility of the Veterans Health Administration will be transferred any information of the Secretary regarding the environmental restoration, waste management, and environmental compliance activities described in paragraph (1) that relate to the facility of the Veterans Health Administration. The Secretary shall provide such information before entering into the agreement.

(5) APPLICABILITY OF CERTAIN ENVIRONMENTAL LAWS.—Nothing in this subsection shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

**SEC. 106. DEPARTMENT OF VETERANS AFFAIRS ASSET AND INFRASTRUCTURE REVIEW ACCOUNT.**

(a) ESTABLISHMENT.—There is hereby established in the ledgers of the Treasury an account to be known as the "Department of Veterans Affairs Asset and Infrastructure Review Account" which shall be administered by the Secretary as a single account.

(b) CREDITS TO ACCOUNT.—There shall be credited to the Account the following:

(1) Funds authorized for and appropriated to the Account.

(2) Proceeds received from the lease, transfer, or disposal of any property at a facility of the Veterans Health Administration closed or realigned under this title.

(c) USE OF ACCOUNT.—The Secretary may use the funds in the Account only for the following purposes:

(1) To carry out this title.

(2) To cover property management and disposal costs incurred at facilities of the Veterans Health Administration closed, modernized, or realigned under this title.

(3) To cover costs associated with supervision, inspection, overhead, engineering, and design of construction projects undertaken under this title, and subsequent claims, if any, related to such activities.

(4) Other purposes that the Secretary determines support the mission and operations of the Department of Veterans Affairs.

(d) CONSOLIDATED BUDGET JUSTIFICATION DISPLAY FOR ACCOUNT.—

(1) CONSOLIDATED BUDGET INFORMATION REQUIRED.—The Secretary shall establish a consolidated budget justification display in support of the Account that for each fiscal year—

(A) details the amount and nature of credits to, and expenditures from, the Account during the preceding fiscal year;

(B) separately details the environmental remediation costs associated with facility of the Veterans Health Administration for which a budget request is made;

(C) specifies the transfers into the Account and the purposes for which these transferred funds will be further obligated, to include caretaker and environment remediation costs associated with each facility of the Veterans Health Administration; and

(D) details any intra-budget activity transfers within the Account that exceeded $1,000,000 during the preceding fiscal year or that are proposed for the next fiscal year and will exceed $1,000,000.

(2) SUBMISSION.—The Secretary shall include the information required by paragraph (1) in the materials that the Secretary submits to Congress in support of the budget for a fiscal year submitted by the President pursuant to section 1105 of title 31, United States Code.

(e) CLOSURE OF ACCOUNT; TREATMENT OF REMAINING FUNDS.—

(1) CLOSURE.—The Account shall be closed at the time and in the manner provided for appropriation accounts under section 1555 of title 31, United States Code, except that unobligated funds which remain in the Account upon closure shall be held by the Secretary of the Treasury until transferred to the Secretary of Veterans Affairs by law after the Committees on Veterans' Affairs of the Senate and the House of Representatives receive the final report transmitted under paragraph (2).

(2) FINAL REPORT.—No later than 60 days after the closure of the Account under paragraph (1), the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives and the Committees on Appropriations of the House of Representatives and the Senate a report containing an accounting of—

(A) all the funds credited to and expended from the Account or otherwise expended under this title; and

(B) any funds remaining in the Account.

**SEC. 107. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT.**

(a) DISAPPROVAL RESOLUTION.—For purposes of section 104(b), the term "joint resolution" means only a joint resolution which is introduced within the 5-day period beginning on the date on which the President transmits the report to the Congress under section 103(d), and—

(1) which does not have a preamble;

(2) the matter after the resolving clause of which is as follows: "that Congress disapproves the recommendations of the VHA Asset and Infrastructure Review Commission as submitted by the President on _____", the blank space being filled with the appropriate date; and

(3) the title of which is as follows: "Joint resolution disapproving the recommendations of the VHA Asset and Infrastructure Review Commission.".

(b) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—

(1) REPORTING AND DISCHARGE.—Any committee of the House of Representatives to which a joint resolution is referred shall report it to the House without amendment not later than 15 legislative days after the date of introduction thereof. If a committee fails to report the joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution.

(2) PROCEEDING TO CONSIDERATION.—It shall be in order at any time after the third legislative day after each committee authorized to consider a joint resolution has reported or has been discharged from consideration of a joint resolution, to move to proceed to consider the joint resolution in the House. All points of order against the motion are waived. Such a motion shall not be in order after the House has disposed of a motion to proceed on a joint resolution addressing a particular submission. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. The motion

shall not be debatable. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(3) CONSIDERATION.—The joint resolution shall be considered as read. All points of order against the joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of the joint resolution shall not be in order.

(c) CONSIDERATION IN THE SENATE.—

(1) REFERRAL.—A joint resolution introduced in the Senate shall be referred to the Committee on Veterans' Affairs.

(2) REPORTING AND DISCHARGE.—Any committee of the Senate to which a joint resolution is referred shall report it to the Senate without amendment not later than 15 session days after the date of introduction of a joint resolution described in subsection (a). If a committee fails to report the joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be placed on the calendar.

(3) FLOOR CONSIDERATION.—

(A) IN GENERAL.—Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time after the third session day on which the Committee on Veterans' Affairs has reported or has been discharged from consideration of a joint resolution described in subsection (a) (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

(B) CONSIDERATION.—Consideration of the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(C) VOTE ON PASSAGE.—If the Senate has voted to proceed to a joint resolution, the vote on passage of the joint resolution shall occur immediately following the conclusion of consideration of the joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

(D) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

(d) AMENDMENT NOT IN ORDER.—A joint resolution of disapproval considered pursuant to this section shall not be subject to amendment in either the House of Representatives or the Senate.

(e) COORDINATION WITH ACTION BY OTHER HOUSE.—

(1) IN GENERAL.—If, before passing the joint resolution, one House receives from the other a joint resolution—

(A) the joint resolution of the other House shall not be referred to a committee; and

(B) the procedure in the receiving House shall be the same as if no joint resolution had been received from the other House until the vote on passage, when the joint resolution received from the other House shall supplant the joint resolution of the receiving House.

(2) TREATMENT OF JOINT RESOLUTION OF OTHER HOUSE.—If the Senate fails to introduce or consider a joint resolution under this section, the joint resolution of the House shall be entitled to expedited floor procedures under this section.

(3) TREATMENT OF COMPANION MEASURES.—If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

(f) RULES OF THE HOUSE OF REPRESENTATIVES AND SENATE.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be fol-

lowed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

**SEC. 108. OTHER MATTERS.**

(a) ONLINE PUBLICATION OF COMMUNICATIONS.—

(1) IN GENERAL.—Not later than 24 hours after the transmission or receipt of any communication under this title that is transmitted or received by a party specified in paragraph (2), the Secretary of Veterans Affairs shall publish such communication online.

(2) PARTIES SPECIFIED.—The parties specified under this paragraph are the following:

(A) The Secretary of Veterans Affairs.

(B) The Commission.

(C) The President.

(b) CONTINUATION OF EXISTING CONSTRUCTION PROJECTS AND PLANNING.—During activities that the Commission, President, or Congress carry out under this title, the Secretary of Veterans Affairs may not stop, solely because of such activities—

(1) a construction or leasing project of the Veterans Health Administration;

(2) long term planning regarding infrastructure and assets of the Veterans Health Administration; or

(3) budgetary processes for the Veterans Health Administration.

(c) RECOMMENDATIONS FOR FUTURE ASSET REVIEWS.—The Secretary of Veterans Affairs may, after consulting with veterans service organizations, include in budget submissions the Secretary submits after the termination of the Commission recommendations for future such commissions or other capital asset realignment and management processes.

**SEC. 109. DEFINITIONS.**

In this title:

(1) The term "Account" means the Department of Veterans Affairs Asset and Infrastructure Review Account established by section 106(a).

(2) The term "Commission" means the Commission established by section 102.

(3) The term "date of approval", with respect to a modernization or realignment of a facility of the Veterans Health Administration, means the date on which the authority of Congress to disapprove a recommendation of modernization or realignment, as the case may be, of such facility under this title expires.

(4) The term "facility of the Veterans Health Administration"—

(A) means any land, building, structure, or infrastructure (including any medical center, nursing home, domiciliary facility, outpatient clinic, center that provides readjustment counseling, or leased facility) that is—

(i) under the jurisdiction of the Department of Veterans Affairs;

(ii) under the control of the Veterans Health Administration; and

(iii) not under the control of the General Services Administration; or

(B) with respect to a colocated facility of the Department of Veterans Affairs, includes any land, building, or structure—

(i) under the jurisdiction of the Department of Veterans Affairs;

(ii) under the control of another administration of the Department of Veterans Affairs; and

(iii) not under the control of the General Services Administration.

(5) The term "infrastructure" means improvements to land other than buildings or structures.

(6) The term "modernization" includes—

(A) any action, including closure, required to align the form and function of a facility of the Veterans Health Administration to the provision of modern day health care, including utilities and environmental control systems;

(B) the construction, purchase, lease, or sharing of a facility of the Veterans Health Administration; and

(C) realignments, disposals, exchanges, collaborations between the Department of Veterans Affairs and other Federal entities, and strategic collaborations between the Department and non-Federal entities, including tribal organizations.

(7) The term "realignment", with respect to a facility of the Veterans Health Administration, includes—

(A) any action that changes the numbers of or relocates services, functions, and personnel positions;

(B) disposals or exchanges between the Department of Veterans Affairs and other Federal entities, including the Department of Defense; and

(C) strategic collaborations between the Department of Veterans Affairs and non-Federal entities, including tribal organizations.

(8) The term "redevelopment authority", in the case of a facility of the Veterans Health Administration closed or modernized under this title, means any entity (including an entity established by a State or local government) recognized by the Secretary of Veterans Affairs as the entity responsible for developing the redevelopment plan with respect to the facility or for directing the implementation of such plan.

(9) The term "redevelopment plan" in the case of a facility of the Veterans Health Administration to be closed or realigned under this title, means a plan that—

(A) is agreed to by the local redevelopment authority with respect to the facility; and

(B) provides for the reuse or redevelopment of the real property and personal property of the facility that is available for such reuse and redevelopment as a result of the closure or realignment of the facility.

(10) The term "Secretary" means the Secretary of Veterans Affairs.

(11) The term "tribal organization" has the meaning given such term in section 3765 of title 38, United States Code.

# TITLE II—IMPROVEMENTS TO CONSTRUCTION MANAGEMENT AND LEASES

### SEC. 201. MODIFICATION OF THRESHOLDS FOR MAJOR MEDICAL FACILITY PROJECTS AND MAJOR MEDICAL FACILITY LEASES.

(a) DEFINITIONS.—Paragraph (3) of section 8104(a) of title 38, United States Code, is amended to read as follows:

"(3) In this subsection:

"(A)(i) The term 'major medical facility project' means—

"(I) a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than $20,000,000; or

"(II) the construction, alteration, or acquisition of a shared medical facility (as defined in section 8111B(d) of this title) for which the estimated share of the Department of Veterans Affairs for the costs of such construction, alteration, or acquisition exceeds $20,000,000.

"(ii) Such term does not include—

"(I) an acquisition by exchange;

"(II) nonrecurring maintenance projects of the Department; or

"(III) the construction, alteration, or acquisition of a shared medical facility for which the estimated share of the Department of Veterans Affairs for the costs of such construction, alteration, or acquisition does not exceed $20,000,000.

"(B) The term 'major medical facility lease' means—

"(i) a lease for space for use as a new medical facility at an average annual rent that is equal to or exceeds the amount specified in subsection (a)(2) of section 3307 of title 40; or

"(ii) a lease for space for use as a shared medical facility (as defined in section 8111B(d) of this title) for which the estimated share of the Department of Veterans Affairs for the costs of such lease is equal to or exceeds the amount specified in subsection (a)(2) of section 3307 of title 40.".

(b) APPLICATION.—The amendment made by subsection (a) shall apply with respect to major medical facility projects and major medical facility leases authorized by law on or after the date of the enactment of this Act.

### SEC. 202. SUBMISSION OF PROSPECTUSES OF PROPOSED MINOR MEDICAL FACILITY PROJECTS.

Section 8104(b) of title 38, United States Code, is amended, in the matter preceding paragraph (1), by striking "a major medical facility project (as defined in subsection (a)(3)(A))" and inserting the following: "a major medical facility project (as defined in subsection (a)(3)(A)), a medical facility project that would be a major medical facility project but for the total expenditure (or, with respect to a shared medical facility, the estimated share of the Department of Veterans Affairs) being an amount that is more than $10,000,000 and less than $20,000,000,".

**SEC. 203. IMPROVEMENT TO TRAINING OF CONSTRUCTION PERSONNEL.**

Subsection (g) of section 8103 of title 38, United States Code, is amended to read as follows:

"(g)(1)(A) Not later than September 30 of the fiscal year following the fiscal year during which this subsection is enacted, the Secretary shall implement the covered training curriculum and the covered certification program.

"(B) In designing and implementing the covered training curriculum and the covered certification program under paragraph (1), the Secretary shall use as models existing training curricula and certification programs that have been established under chapter 87 of title 10, United States Code, as determined relevant by the Secretary.

"(2) The Secretary may develop the training curriculum under paragraph (1)(A) in a manner that provides such training in any combination of—

"(A) training provided in person;

"(B) training provided over an internet website; or

"(C) training provided by another department or agency of the Federal Government.

"(3) The Secretary may develop the certification program under paragraph (1)(A) in a manner that uses—

"(A) one level of certification; or

"(B) more than one level of certification, as determined appropriate by the Secretary with respect to the level of certification for different grades of the General Schedule.

"(4) The Secretary may enter into a contract with an appropriate entity to provide the covered training curriculum and the covered certification program under paragraph (1)(A).

"(5)(A) Not later than September 30 of the second fiscal year following the fiscal year during which this Act is enacted, the Secretary shall ensure that the majority of employees subject to the covered certification program achieve the certification or the appropriate level of certification pursuant to paragraph (3), as the case may be.

"(B) After carrying out subparagraph (A), the Secretary shall ensure that each employee subject to the covered certification program achieves the certification or the appropriate level of certification pursuant to paragraph (3), as the case may be, as quickly as practicable.

"(6) In this subsection:

"(A) The term 'covered certification program' means, with respect to employees of the Department of Veterans Affairs who are members of occupational series relating to construction or facilities management, or employees of the Department who award or administer contracts for major construction, minor construction, or nonrecurring maintenance, including as contract specialists or contracting officers' representatives, a program to certify knowledge and skills relating to construction or facilities management and to ensure that such employees maintain adequate expertise relating to industry standards and best practices for the acquisition of design and construction services.

"(B) The term 'covered training curriculum' means, with respect to employees specified in subparagraph (A), a training curriculum relating to construction or facilities management.".

**SEC. 204. AUTHORITY TO PLAN, DESIGN, CONSTRUCT, OR LEASE SHARED MEDICAL FACILITIES.**

(a) AUTHORITY.—

(1) IN GENERAL.—Chapter 81 of title 38, United States Code, is amended by inserting after section 8111A the following new section:

**"§ 8111B. Authority to plan, design, construct or lease a medical facility shared with other departments or agencies**

"(a) AUTHORITY.—Subject to sections 8103 and 8104 of this title, the Secretary of Veterans Affairs may enter into agreements with the heads of other departments or agencies of the Federal Government for the planning, designing, constructing, or leasing of medical facilities to be shared by the Department of Veterans Affairs and that department or agency to improve the access to, and quality and cost effectiveness of, the health care provided by the Veterans Health Administration and that department or agency.

"(b) TRANSFERS OF AMOUNTS FROM DEPARTMENT OF VETERANS AFFAIRS.—(1) With respect to a shared medical facility construction project for which the estimated costs to the Department of Veterans Affairs do not exceed the amount specified in section 8104(a)(3)(A) of this title, the Secretary of Veterans Affairs may transfer to the partner agency amounts appropriated in the Construction, Minor Projects account of the Department for use for the planning, design, or construction of the shared medical facility.

"(2) With respect to a shared medical facility construction project for which the estimated costs to the Department of Veterans Affairs exceed the amount specified in section 8104(a)(3)(A) of this title, the Secretary of Veterans Affairs may transfer to the partner agency amounts appropriated in the Construction, Major Projects account of the Department for use for the planning, design, or construction of the shared medical facility.

"(3) With respect to a shared medical facility lease project for which the estimated costs of the lease to the Department of Veterans Affairs do not exceed the amount specified in section 8104(a)(3)(B) of this title, the Secretary of Veterans Affairs may transfer to the partner agency amounts appropriated in the applicable medical appropriation account of the Department for such lease.

"(c) TRANSFERS OF AMOUNTS TO DEPARTMENT OF VETERANS AFFAIRS.—(1) With respect to a shared medical facility construction project for which the estimated costs to the Department of Veterans Affairs do not exceed the amount specified in section 8104(a)(3)(A) of this title, any amounts transferred by the partner agency to the Secretary of Veterans Affairs may be deposited in the Construction, Minor Projects account of the Department for use for the planning, design, or construction of the shared medical facility. Amounts so deposited shall be merged with and available for the same purposes, and for the same period, as such account.

"(2) With respect to a shared medical facility construction project for which the estimated costs to the Department of Veterans Affairs exceed the amount specified in section 8104(a)(3)(A) of this title, any amounts transferred by the partner agency to the Secretary of Veterans Affairs may be deposited in the Construction, Major Projects account of the Department for use for the planning, design, or construction of the shared medical facility. Amounts so deposited shall be merged with and available for the same purposes, and for the same period, as such account.

"(3) With respect to a shared medical facility lease project, any amounts transferred by the partner agency to the Secretary of Veterans Affairs may be deposited in the applicable medical appropriation account of the Department for such lease. Amounts so deposited shall be available without fiscal year limitation.

"(d) DEFINITIONS.—In this section:

"(1) The term 'partner agency' means a department or agency of the Federal Government that has entered into an agreement with the Secretary of Veterans Affairs under subsection (a).

"(2) The term 'shared medical facility' means a medical facility shared by the Department of Veterans Affairs and a partner agency pursuant to an agreement entered into under subsection (a).

"(3) The term 'shared medical facility construction project' means the planning, designing, or constructing of a shared medical facility pursuant to an agreement entered into under subsection (a).

"(4) The term 'shared medical facility lease project' means the leasing of a shared medical facility pursuant to an agreement entered into under subsection (a).".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 8111A the following new item:

"8111B. Authority to plan, design, construct, or lease a medical facility shared with other departments or agencies.".

(b) DEFINITION OF MEDICAL FACILITY.—Paragraph (3) of section 8101 of title 38, United States Code, is amended to read as follows:

"(3) The term 'medical facility' means any facility or part thereof which is, or will be, under the jurisdiction of the Secretary, including with respect to a shared medical facility (as defined in section 8111B(d) of this title), for the provision of healthcare services (including hospital, outpatient clinic, extended care services, nursing home, or domiciliary care or medical services), including any necessary building and auxiliary structure, garage, parking facility, mechanical equipment, trackage facilities leading thereto, abutting sidewalks, accommodations for attending personnel, and recreation facilities associated therewith.".

**SEC. 205. ENHANCED USE LEASE AUTHORITY.**

(a) IN GENERAL.—Section 8162(a)(2) of title 38, United States Code, is amended—

(1) by striking "only"; and

(2) by inserting ", or if the lease will enhance the use of the property," after "housing".

(b) APPLICATION.—The amendments made by subsection (a) shall apply with respect to enhanced-use leases entered into on or after the date of the enactment of this Act.

# TITLE III—OTHER MATTERS

**SEC. 301. EXCEPTION ON LIMITATION ON AWARDS AND BONUSES FOR RECRUITMENT, RELOCATION, AND RETENTION.**

Section 705(a) of the Veterans Access, Choice, and Accountability Act of 2014 (Public Law 113–146; 38 U.S.C. 703 note) is amended, in the matter preceding paragraph (1), by inserting "other than recruitment, relocation, or retention incentives," after "title 38, United States Code,".

**SEC. 302. APPROPRIATION OF AMOUNTS.**

(a) VETERANS CHOICE PROGRAM.—There is authorized to be appropriated, and is appropriated, to the Secretary of Veterans Affairs, out of any funds in the Treasury not otherwise appropriated, $2,100,000,000 to be deposited in the Veterans Choice Fund under section 802 of the Veterans Access, Choice, and Accountability Act of 2014 (Public Law 113–146; 38 U.S.C. 1701 note).

(b) MINOR CONSTRUCTION AND NONRECURRING MAINTENANCE.—

(1) IN GENERAL.—There is authorized to be appropriated, and is appropriated, to the Secretary of Veterans Affairs, out of any funds in the Treasury not otherwise appropriated, $500,000,000 for "Medical Facilities" for minor construction and nonrecurring maintenance projects, to be prioritized according to their rankings in the strategic capital investment planning process.

(2) NOTIFICATION.—Not later than 30 days before obligating amounts appropriated under paragraph (1), the Secretary shall notify the Committees on Veterans' Affairs of the House of Representatives and the Senate and the Committees on Appropriations of the House of Representatives and the Senate of the medical facilities and specifics of the projects for which such amounts shall be obligated.

(c) AVAILABILITY OF AMOUNTS.—The amounts appropriated under subsections (a) and (b)(1) shall be available for obligation or expenditure without fiscal year limitation.

**SEC. 303. ASSESSMENT OF HEALTH CARE FURNISHED BY THE DEPARTMENT TO VETERANS WHO LIVE IN THE TERRITORIES.**

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report regarding health care furnished by the Department of Veterans Affairs to veterans who live in the territories.

(b) ELEMENTS.—The report under subsection (a) shall include assessments of the following:

(1) The ability of the Department to furnish to veterans who live in the territories the following:

(A) Hospital care.

(B) Medical services.

(C) Mental health services.

(D) Geriatric services.

(2) The feasibility of establishing a medical facility of the Department in any territory that does not contain such a facility.

(c) DEFINITION.—In this section, the term "territories" means Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

## PURPOSE AND SUMMARY

H.R. 4243, as amended, the "VA Asset and Infrastructure Review (AIR) Act of 2017," would require the Department of Veterans Affairs (VA) to establish an Asset and Infrastructure (AIR) Commission to assess and make recommendations regarding the modernization and realignment of Veterans Health Administration (VHA) facilities. It would also authorize and appropriate money for both the Choice program and minor and non-recurring maintenance projects. Representative David P. Roe of Tennessee, the Chairman of the Committee on Veterans' Affairs, introduced H.R. 4243, as amended, on November 3, 2017.

## BACKGROUND AND NEED FOR LEGISLATION

### TITLE I—ASSET AND INFRASTRUCTURE REVIEW

VA is one of the federal government's largest property-holding entities with a capital asset portfolio that includes approximately 155 million square feet across more than 35,000 acres of land.[1] Unlike many other federal agencies, the majority—86 percent—of VA's capital asset portfolio is owned.[2] VA also controls approximately 24.6 million square feet of leased space.[3] In July 2017, VA testified before the Committee that "most of VA's infrastructure portfolio is dated, in need of repair/replacement, and requires considerable investment."[4] VA further testified that "the majority of VA facilities have out-lived their useful life-cycle," raising serious questions about VA's continued ability to meet the needs of veteran patients and beneficiaries.[5]

Most VA facilities are medical facilities that are operated by VHA. Nationally, VHA's portfolio includes 168 VA medical centers, 135 community living centers, 48 domiciliary centers, 737 community-based outpatient clinics, 22 health care centers, and 305 other outpatient facilities such as mobile treatment spaces.[6] The average VHA building is approaching 60 years old, more than five times older than the average building age of a not-for-profit hospital system in the United States.[7] These buildings were designed to meet an older, primarily inpatient, model of care.[8] Thus, they are not well suited to provide care in accordance with modern, primarily outpatient, care models or to meet the contemporary ambulatory care needs of veteran patients.[9]

VHA's capital asset portfolio also includes a significant number of vacant properties, which led the Commission on Care to note in 2016 that "VHA's principal mission is to provide health care to veterans, yet over time it has acquired an ancillary mission: caretaker of an extensive portfolio of vacant buildings."[10] The Commission on Care also found that "maintaining outdated, vacant, and unused buildings, which require millions of dollars in maintenance even in mothball status, diminishes operating funds needed for patient care and yields no benefit to veteran patients."[11] VA announced in June 2017 that the Department would initiate reuse or disposal of approximately 430 vacant buildings totaling 5.9 million gross

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[1] United States Cong. House Committee on Veterans' Affairs Oversight Hearing—"Care Where it Count: Assessing VA's Capital Asset Needs." July 12, 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (statement from James M. Sullivan, Director of the Office of Asset Enterprise Management, U.S. Department of Veterans Affairs).

[2] Ibid.

[3] Ibid

[4] Ibid.

[5] Ibid.

[6] GAO–17–349, April 2017, "VA Real Property. VA Should Improve Its Efforts to Align Facilities with Veterans" Needs," https://www.gao.gov/assets/690/683938.pdf.

[7] CMS Alliance to Modernize Healthcare Federally Funded Research and Development Center, September 1, 2015, "Independent Assessment of the Health Care Delivery Systems and Management Processes of the Department of Veterans Affairs," https://www.va.gov/opa/choiceact/documents/assessments/Integrated_Report.pdf.

[8] Commission on Care, June 30, 2016, "Commission on Care Final Report," https://s3.amazonaws.com/sitesusa/wp-content/uploads/sites/912/2016/07/Commission-on-Care_Final-Report_063016_FOR-WEB.pdf.

[9] Ibid.

[10] Ibid.

[11] Ibid.

square feet over the next two years.[12] VA expects to save approximately $7 million annually as a result of this effort.[13] VA also intends to review approximately 784 underutilized buildings to determine if they can be reused or disposed of to yield additional savings.[14]

The amount of empty or underutilized spaces across the VA health care system has been exacerbated by VHA's struggle to align VA medical facilities with the veteran patient population. In 2015, the Independent Assessment of the Health Care Delivery Systems and Management Processes of VA (Independent Assessment) found that VA struggles to consistently allocate capital to projects that represent the greatest areas of veteran need in the most cost effective and timely manner.[15] The Independent Assessment argued that the misalignment of VA's properties with VA's patients was due, in part, to lengthy approval and funding timelines that hinder VA's ability to meet the identified space requirements to keep up with veteran demand and invest in facility updates that align with changing models for care.[16] The Government Accountability Office (GAO) made a similar judgment in a 2017 report.[17] According to GAO, significant geographic shifts in the veteran patient population coupled with changes in the delivery of care, "antiquated" infrastructure, and serious limitations with VA's capital planning processes created "an imperative for VA to better align its medical facilities and services."[18]

Even absent a serious realignment effort, VA has identified more than $50 billion in capital needs over the next decade to modernize and maintain the Department's infrastructure.[19] However, the capital requirement for VHA to maintain facilities and meet projected growth needs over the next decade is two to three times higher than anticipated funding levels, a gap which is expected to could continue to widen.[20] Furthermore, the Independent Assessment also found that VA's construction costs are double private industry best practice, that VA time-to-complete construction projects exceeds both public and private sector peers, and that VA's facility management costs are two to three times higher than comparable private medical facilities, on average.[21]

VA has attempted to address the Department's capital asset challenges previously. In 2003, then Secretary of Veterans Affairs,

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[12] United States Cong. House Committee on Veterans' Affairs Oversight Hearing—"Care Where it Count: Assessing VA's Capital Asset Needs." July 12, 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (statement from James M. Sullivan, Director of the Office of Asset Enterprise Management, U.S. Department of Veterans Affairs).

[13] Ibid.

[14] id.

[15] CMS Alliance to Modernize Healthcare Federally Funded Research and Development Center, September 1, 2015, "Independent Assessment of the Health Care Delivery Systems and Management Processes of the Department of Veterans Affairs," https://www.va.gov/opa/choiceact/documents/assessments/Integrated_Report.pdf.

[16] Ibid.

[17] GA0–17–349, April 2017, "VA Real Property: VA Should Improve Its Efforts to Align Facilities with Veterans" Needs," https://www.gao.gov/assets/690/683938.pdf.

[18] Ibid.

[19] United States Cong. House Committee on Veterans' Affairs Oversight Hearing—"Care Where it Count: Assessing VA's Capital Asset Needs." July 12, 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (statement from James M. Sullivan, Director of the Office of Asset Enterprise Management, U.S. Department of Veterans Affairs).

[20] CMS Alliance to Modernize Healthcare Federally Funded Research and Development Center, September 1, 2015, "Independent Assessment of the Health Care Delivery Systems and Management Processes of the Department of Veterans Affairs," https://www.va.gov/opa/choiceact/documents/assessments/Integrated_Report.pdf.

[21] Ibid.

Anthony Principi, initiated the Capital Asset Realignment for Enhanced Services (CARES) process.[22] As part of CARES, an independent commission was formed to provide recommendations for the realignment and allocation of capital assets to meet veteran health care demand over the next 20 years.[23] The CARES Commission conducted 38 public hearings and 10 public meetings around the country, heard from 770 witnesses—including 135 members of Congress and seven governors—and received written comments from more than 212,000 people.[24] In February 2004, the CARES Commission released a report recommending substantial changes to existing VA facilities and a limited number of facility closures. Yet, thirteen years after the CARES report was released, its recommendations have yet to be fully implemented.[25] Former Secretary Prinicipi testified before the Committee in July 2017 and stated that, while CARES offered "sound recommendations for realignment and allocation of the Department's capital assets to meet demand for VA's services over the next twenty years," it did not require Congress to adopt or reject the final CARES recommendations as a package and, thus, failed.[26] The Commission on Care similarly noted that, "political resistance doomed previous attempts to better align VHA's capital assets and veterans' needs."[27] In light of this, the Commission also recommended that Congress establish a VHA facility and capital asset realignment process based on the process established by the Department of Defense (DOD) Base Realignment and Closure Commission process to be implemented as soon as practicable.[28]

The Committee applauds VA's recent efforts to initiate reuse or disposal of vacant and underutilized properties across the country and encourages their continuation. However, the Committee also believes that bold steps are needed to fully address VHA's significant and increasing capital asset challenges, to ensure VHA uses taxpayer dollars wisely in caring for the nation's veterans, and—most importantly—to ensure a strong VA health care system is available to meet the needs veteran patients both today and for generations to come. Accordingly, the Committee concurs with the Commission on Care's recommendation to establish a robust VHA capital asset realignment process freed, to the greatest extent possible, from political constraints.

As such, title I of the bill would require VA to establish a nine member Asset and Infrastructure Review (AIR) Commission. The Commissioners would be appointed by the President, with the advice and consent of the Senate and in consultation with Congressional leaders and congressionally chartered, membership-based veterans service organizations (VSOs). The Commission as a whole would be required to reflect current demographics of veterans enrolled in the VA health care system and to have expertise in health

[22] February 12, 2004, VA Office of Public and Intergovernmental Affairs, "CARES Commission Announces Recommendations," https://www.va.gov/opa/pressrel/pressrelease.cfm?id=729.
[23] Ibid.
[24] Ibid.
[25] United States Cong. House Committee on Veterans' Affairs Oversight Hearing—"Care Where it Count: Assessing VA's Capital Asset Needs." July 12, 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (statement from the Honorable Anthony J. Principi).
[26] Ibid.
[27] Commission on Care, June 30, 2016, "Commission on Care Final Report," https://s3.amazonaws.com/sitesusa/wp-content/uploads/sites/912/2016/07/Commission-on-Care_Final-Report_063016_FOR-WEB.pdf.
[28] Ibid.

care system and federal capital asset planning and management. In addition, at least three Commissioners would be required to represent the VSO community. The Commission would be tasked with considering recommendations made by VA and submitting a report to the President on VHA facility modernization and realignment. In addition, the Commission would only be able to change a recommendation made by VA for the modernization or realignment of a VHA facility if: the Commission determines that VA deviated substantially from VA's criteria in making a given recommendation and a change would be consistent with the final criteria; the Commission publishes a notice of the proposed change in the Federal Register not less than 45 days before transmitting the Commission's report including the change to the President; and the Commission conducts public hearings on the proposed change. Upon the President's approval of the Commission's report, the report would be transmitted to Congress. Congress would be required to act under expedited legislative procedures to issue a resolution of disapproval of the Commission's report and the full list of recommendations it contains. Absent such a resolution, VA would be required to take any such action as may be necessary to carry out the actions recommended by the Commission.

The Committee recognizes that the implementation of the Commission's recommended actions would be a substantial task for VA as it is likely that VA will need to carry out a level of construction, leasing, environmental compliance, and property disposition activity that exceeds typical levels. As VA's existing legal authority to initiate property actions may be inadequate to accommodate the Commission's recommendations, title I of the bill would include additional authorities to allow VA to take such action as may be necessary to modernize or realign any VHA facility and to transfer or lease properties to historic preservation organizations. To ensure that VA's maintenance needs continue to be met while the Commission's work is ongoing, title I of the bill would prohibit VA from pausing major or minor construction activities while the Commission process is ongoing.

The Committee intends for the AIR Commission process to be data-driven and to incorporate feedback from veterans, employees, and communities who would be most impacted by VHA modernization or realignment. As such, title I of the bill would require VA to consult with VSOs to establish criteria to use to assess and recommend the modernization or realignment of VHA facilities and to take certain factors—including local veteran and stakeholder input—into account to ensure such recommendations are robust and fair. Title I of the bill would also require VA to consult with local veterans and VSOs to conduct periodic assessments of the capacity of each Veterans Integrated Service Network (VISN) and VA medical facility to furnish hospital care or medical services to veterans. Each assessment would be required to: (1) identify existing deficiencies in the furnishing of care and services to veterans and how such deficiencies may be filled by entering into contracts or agreements with community health care providers or other entities under other provisions of law and changing the way care and services are furnished at such VISNs or VA medical facilities (including through extending hours of operation, adding personnel, and expanding treatment space through construction, leasing, or sharing

of health care facilities); (2) forecast both the short-term and long-term demand in furnishing care and services at such VISN or VA medical facility; (3) consider how demand affects the need to enter into contracts or agreements; (4) consider the commercial health care market of designated catchment areas conducted by a non-governmental entity; and (5) consider the unique ability of the Federal government to retain a presence in a rural area otherwise devoid of commercial health care providers or from which such providers are at risk of leaving.

The Committee also intends the AIR Commission process to be transparent and veteran-centric. Accordingly, title I of the bill would: require that each meeting of the Commission to be open and all proceedings, information, and deliberations of the Commission to be available for review by the public; require VA to publish any information transmitted or received by VA, the Commission, or the President regarding the Commission (or related activities) to be published online within 24 hours; prohibit the restriction of lawful communication from a VA employee to the Commission; require VA to make the local capacity and commercial market assessments 5 publically available; and require the Commission to conduct public hearings and include local veterans and VSOs as witnesses in those hearings.

The Committee is aware that the ultimate success of the Commission may be contingent upon ensuring VA has sufficient time before the Commission begins its work to gather needed data, establish reasonable criteria, and make initial recommendations regarding facility actions. Accordingly and upon consultation with VSOs, title I of the bill would allow VA five years, until January 31, 2022, before transmitting recommendations to the Commission for review. The Commission would then have a year to conduct their work before transmitting the Commission's report to the President on January 31, 2023. The Commission would terminate On December 31, 2023.

The Committee is aware of the sensitive political considerations inherent in the AIR Commission process and the expedited legislative consideration of the Commission's report by Congress. However, the Committee also fully concurs with former Secretary Principi's testimony that:

> The department will fail to honor our nation's commitment to its veterans if VA's medical system does not evolve with the times . . . While the practice of VA medicine has evolved, VA's medical infrastructure has not kept pace. VA facilities are out of step with changes in the practice of medicine, with demographic changes in the veteran population, and with statutory changes in VA's health care benefits packages. If VA does not realign itself, and close its unneeded facilities, the current decline in the veteran population will make many VA medical centers museums of the past—not the guideposts for the future they should be.[29]

[29] United States Cong. House Committee on Veterans' Affairs Oversight Hearing—"Care Where it Count: Assessing VA's Capital Asset Needs." July 12, 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (statement from the Honorable Anthony J.Principi).

TITLE II—IMPROVEMENTS TO CONSTRUCTION MANAGEMENT AND LEASES

Section 8104 of title 38, United States Code defines a "major medical facility project" as a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than $10 million and a "major medical facility lease" as a lease for space for use as a new medical facility at an average annual rental of more than $1 million. Both major medical facility projects and leases are required to be authorized by law. To obtain such authorization, VA is required to submit a prospectus containing detailed information about each proposed project. Each such prospectus is required to include: a detailed estimate of the total costs; demographic data; current and projected workload and utilization data; projected operating costs; and the priority score assigned to the project under the Department's prioritization methodology as well as, if the project is being proposed for funding before a project with a higher score, a specific explanation of the factors other than the priority score that were considered and the basis on which the project is proposed for funding ahead of projects with higher priority scores.

VA's performance in the areas of leasing and construction management has been widely cited as inadequate in recent years, as evidenced by a series of GAO reports from April 2013 through March 2017.[30] In response to unprecedented cost overruns experienced in the Aurora, Colorado, replacement medical center construction project—which were documented in a 2016 VA Office of Inspector General report—Congress enacted the Department of Veterans Affairs Expiring Authorities Act of 2015 (Public Law 114–58; 129 STAT. 530) to require that all VA medical facility construction projects exceeding $100 million be managed by another federal agency.[31]

In order to increase the effectiveness of VA's construction management workforce, Congress enacted the Jeff Miller and Richard Blumenthal Veterans Health Care and Benefits Improvement Act of 2016 (Public Law 114–315; 130 STAT. 1536) to require, among other things, that each employee who VA determines to have construction responsibilities undergo a program of ongoing professional training and development including instruction on industry standards and acquisition best practices. Unfortunately, those provisions do not seem to have led to significant improvements in VA's construction management workforce as it appears that VA has determined that the law should apply to essentially the same employees who were already participating in construction management continuing education and to cover training courses which are not significantly more numerous or wide ranging than the courses that were offered before the law's enactment.

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[30] GA0–13–302, April 2013, "VA Construction: Additional Actions Needed to Decrease Delays and Lower Costs of Major Medical Facility Projects," https://www.gao.gov/assets/660/653585.pdf; GAO–16–619, June 2016, "VA Real Property: Leasing Can Provide Flexibility to Meet Needs, but VA Should Demonstrate the Benefits," https://www.gao.gov/assets/680/678746.pdf; GAO–17–70, March 2017, "VA Construction: Improved Processes Needed to Monitor Contract Modifcations, Develop Schedules, and Estimate Costs," https://www.gao.gov/assets/690/683209.pdf.

[31] VA OIG 15–03706–330, September 21, 2016, "Review of the Replacement Denver Medical Center, Eastern Colorado Health Care System," https://www.va.gov/oig/pubs/VAOIG-15-03706-330.pdf.

Despite these efforts, the Committee continues to find that major construction, minor construction, and leasing remain challenging areas for VA. As a result, title II of the bill would include a number of changes to VA's construction and leasing authorities. In response to concerns that the $10 million and $1 million thresholds on VA major medical facility projects and leases, respectively, are outdated and impede efficient and effective VA construction planning and medical facility improvements, title II of the bill would incorporate VA legislative proposals to: (1) redefine a VA major medical facility project as a project involving a total expenditure of $20 million or, in the case of a shared medical facility, a project in which VA's estimated costs exceed $20 million; and (2) amend the definition of a VA major medical facility lease as a lease for space for use as a new medical facility at an average annual rent that is equal to or exceeds the amount specified in subsection (a)(2) of section 3307 of title 40 United States Code or a lease for use as a shared medical facility in which VA's estimated costs are equal to or would exceed such amount. As the Committee generally finds the prospectuses to provide valuable information that aid in the Committee's oversight of VA facility needs, estimates, and intentions, the Committee wants to continue receiving the prospectuses for VA major medical facility projects despite the threshold increase. Accordingly, title II of the bill would also require VA to include in the Department's annual budget submission prospectuses of both proposed major construction projects and construction projects in which VA's estimated costs are between $10 million and $20 million. Title II of the bill further incorporates VA legislative proposals to facilitate VA's ability to share medical facilities with other federal agencies and to amend VA's authority to enter into enhanced use leases.

The Committee recognizes that, in order to successfully implement the recommended actions regarding facility modernization and alignment that title I of the bill would require, VA's construction management workforce will need to be as well trained, skilled, and effective as possible. The Committee also recognizes that it is necessary to broaden training in construction disciplines beyond architects, engineers, real property specialists, and other such professionals located in programmatic offices that are specifically devoted to construction as there is a much wider universe of personnel involved in construction acquisition, notably including contracting officers, contract specialists, and contracting officers' representatives. Relatedly, since the passage of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 STAT. 1485), the accepted way to deliver such interdisciplinary acquisition training is through formal certification programs. All civilian agencies have subsequently been mandated to adopt certification programs for the fields of contracting and program management, while DOD continues to offer a wider range of certification programs to its employees, notably including certification in facilities engineering. The Committee believes it would be advantageous for VA to adopt a similar, formal certification program for construction and facilities management. As such, title II of the bill would require VA to implement a training and certification program for construction and facilities management personnel, to include all VA employees who are members of occupational series relating to construction or fa-

cilities management or who award or administer contracts for major construction, minor construction, or non-recurring maintenance (including contract specialists or contracting officers' representatives). Title II of the bill would further require that such training be taken to complete a formal certification program and be modeled, to the extent appropriate, after the training and certification program established by the Defense Acquisition Workforce Improvement Act.

TITLE III—OTHER MATTERS

*Section 301. Exception of limitations on awards and bonuses for recruitment, relocation, and retention*

Chapter 45 and Chapter 53 of title 5 United States Code authorizes VA to provide awards and bonuses to employees. Following a nationwide access to care crisis that raised serious concerns about accountability among VA leaders, the Veterans Access, Choice, and Accountability Act of 2014 (Public Law 113–146; 128 STAT. 1754) limited the amount of awards and bonuses payable to VA employees to no more than $360 million from fiscal year 2014 through fiscal year 2024. The Comprehensive Addiction and Recovery Act (Public Law 114–198; 130 STAT 695) further limited the amount of awards and bonuses payable to VA employees to $230 million for fiscal year 2017 through fiscal year 2018, $225 million for fiscal year 2019 through fiscal year 2021, and $360 million for fiscal year 2022 through fiscal year 2024. The limitations imposed on awards and bonuses to VA employees included recruitment, relocation, and retention incentive payments, which has raised concerns about unintended negative consequences on VA's ability to hire high-quality clinicians and support staff to effectively serve veteran patients. As such, section 301 of the bill would exempt recruitment, relocation, and retention incentives from the limitations on awards and bonuses.

*Section 302. Appropriation of amounts*

The Veterans Access, Choice, and Accountability Act of 2014 (Public Law 113–146; 128 STAT. 1754) (the Act) created the Choice program to expand the availability of community care to veteran patients by setting specific triggers that would require VA to give veterans the option of receiving care in the community rather than in a VA medical facility. In general, veterans are eligible to receive care through the Choice program if they are unable to secure an appointment at a VA medical facility within 30 days or if they reside more than 40 miles from the nearest VA medical facility. To fund Choice, the Act also created and deposited $10 billion into the Veterans Choice Fund and stipulated that Choice would sunset either when the money in the Choice fund was fully expended or three years after enactment of the Act. Since the law was enacted on August 7, 2014, three years after enactment of the Act would have been August 7, 2017.

Congress passed a law (Public Law 115–26; 131 STAT. 129) to amend the Act to modify the termination date for the Choice program in April 2017 following testimony that VA expected to have

money left in the Choice Fund on August 7, 2017.[32] However, in June 2017, VA testified that Choice Program funds would fully obligated sooner than previously expected and, as a result, VA was requesting additional funds be deposited into the Choice Fund.[33] VA also testified that, without such action, waiting times for veteran patients would increase and access to care in the community would decrease.[34] In response, Congress enacted the VA Choice and Quality Employment Act of 2017 (Public Law 115–46; 131 STAT. 958) to appropriate $2.1 billion into the Choice fund to preserve the availability of Choice care for veterans patients through the end of calendar year 2017.

The Committee continues to work on legislation to consolidate and improve VA's many care in the community programs, including Choice. However, section 302 of the law would authorize and appropriate $2.1 billion to the Choice Fund to ensure that, while that larger effort is ongoing, veterans can continue to receive needed care through the Choice program. Section 302 would also authorize and appropriate $500 million for minor construction and non-recurring maintenance projects to improve capacity for care for veteran patients in VA medical facilities.

*Section 303. Assessment of health care furnished by the Department of Veterans Affairs who live in the territories*

Veterans in Puerto Rico, the U.S. Virgin Islands, the American Samoa, Guam, and the Northern Mariana Islands face a number of barriers to timely, accessible VA care and benefits. The principle barrier these veterans face is the lack of VA care at home, which necessitates lengthy travel to VA medical centers and clinics in other areas. In light of the unique challenges that veterans residing in these territories face accessing VA services, section 303 of the bill would require VA to report on the care provided to veterans in Puerto Rico, the U.S. Virgin Islands, the American Samoa, Guam, and the Northern Mariana Islands and include whether it would be feasible for VA to establish a medical facility in any territory that does not contain such a facility.

## HEARINGS

There were no Subcommittee hearings held on H.R. 4243, as amended.

On October 12, 2017, the full Committee conducted a legislative hearing on a draft bill that was later introduced as H.R. 4243.

The following witnesses testified:

> The Honorable Mike Coffman, U.S. House of Representatives, 6th District; Colorado; Joy J. Ilem, National Legislative Director, Disabled American Veterans; Louis J. Celli Jr., Director, Veterans Affairs and Rehabilitation Division, The American Legion; Carl Blake, Associate Executive Di-

[32] United States Cong. House Committee on Veterans' Affairs Oversight Hearing—"Care Where it Count. Assessing VA's Capital Asset Needs." March 7 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (statement from the Honorable David Shulkin M.D, Secretary of Veterans Affairs).

[33] United States Cong. House Committee on Veterans' Affairs Oversight Hearing—"FY 2018 Department of Veterans Affairs Budget Request for the Veterans Health Administration." June 22, 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (statement from Poonam Alaigh M.D., Acting Under Secretary for Health, U.S. Department of Veterans Affairs).

[34] Ibid.

rector of Government Relations, Paralyzed Veterans of America; Carlos Fuentes, Director, National Legislative Service, Veterans of Foreign Wars of the United States; Dave Wise, Director, Physical Infrastructure Team, U.S. Government Accountability Office; and, Regan L. Crump MSN, DrPH, Assistant Deputy Under Secretary for Health for Policy and Planning, Veterans Health Administration, U.S. Department of Veterans Affairs, who was accompanied by James M. Sullivan, the Director, Office of Asset Enterprise Management.

Statements for the record were submitted by:

Concerned Veterans of America.

## SUBCOMMITTEE CONSIDERATION

There was no Subcommittee consideration of H.R. 4243, as amended.

## COMMITTEE CONSIDERATION

On November 8, 2017, the full Committee met in open markup session, a quorum being present, and ordered H.R. 4243, as amended, to be reported favorably to the House of Representatives by recorded vote. During consideration of the bill, the following amendments were considered:

An amendment offered by Representative Kilili Sablan of the Northern Mariana Islands to require VA to submit a report to Congress on the care provided to veterans in the American Samoa, Guam, and the Northern Mariana Islands and on whether it would be feasible for VA to establish a medical facility in any such territory that does not contain a VA medical facility. During consideration of the amendment, Representative Sablan asked unanimous consent to amend the amendment to include Puerto Rico and the U.S. Virgin Islands. The amendment, as amended, was agreed to by voice vote.

An amendment offered and then withdrawn by Representative Ann Kuster from New Hampshire, the Ranking Member of the Subcommittee on Oversight and Investigations, to require VA to consider whether a veteran resides in a state with no VA medical center when establishing eligibility criteria for any program that furnishes primary or specialty care through a community provide.

An amendment offered and then withdrawn by Representative Julia Brownley of California, the Ranking Member of the Subcommittee on Health, to remove the requirement for VA major medical facility leases to be authorized by law and prohibit funds from being appropriated for any fiscal year for a major medical facility lease unless the Committees on Veterans' Affairs of the U.S. House of Representatives and the Senate adopt resolutions approving the lease.

## COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives require the Committee to list the recorded votes on motions to report legislation and amendments thereto. During the full Committee markup of H.R. 4243, as amended, on November 8, 2017, one recorded vote was taken and is described below.

A motion by Representative Gus Bilirakis of Florida, the Vice Chairman of the Committee on Veterans' Affairs, to report H.R. 4243, as amended, favorably to the House of Representatives was agreed to by a recorded vote of 13 yeas and 10 nays. The names of the Members who voted for and against the motion are as follows:

ONE HUNDRED AND FIFTEENTH CONGRESS
U.S. STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON VETERANS' AFFAIRS
HON. DAVID P. ROE, M.D., CHAIRMAN

## FULL COMMITTEE ROLL CALL VOTES

**Date: November 8, 2017**
**Subject: H.R. 4243, as amended (Motion to Report Favorably)**

| NAME | YEA/AYE | NAY/NO | NOTES |
|---|---|---|---|
| Dr. Roe, TN, Chairman | X | | |
| Mr. Bilirakis, FL | X | | |
| Mr. Coffman, CO | X | | |
| Dr. Wenstrup, OH | X | | |
| Ms. Radewagen, AS | | | |
| Mr. Bost, IL | X | | |
| Mr. Poliquin, ME | X | | |
| Dr. Dunn, FL | X | | |
| Mr. Arrington, TX | X | | |
| Mr. Rutherford, FL | X | | |
| Mr. Higgins, LA | X | | |
| Mr. Bergman, MI | X | | |
| Mr. Banks, IN | X | | |
| Ms. Gonzalez-Colon, PR | X | | |
| | | | |
| MINORITY MEMBERS | | | |
| Mr. Walz, MN, Ranking Member | | X | |
| Mr. Takano, CA | | X | |
| Ms. Brownley, CA | | X | |
| Ms. Kuster, NH | | X | |
| Mr. O'Rourke, TX | | X | |
| Miss Rice, NY | | X | |
| Mr. Correa, CA | | **X** | |
| Mr. Sablan, Northern Marian Islands | | **X** | |
| Ms. Esty, CT | | **X** | |
| Mr. Peters, CA | | | |
| **Total** | **13** | **10** | |

Mr. Chairman, the vote is 13 Yeas and 10 Noes. H.R. 4243, as amended, was reported favorably to the full House.

# COMMITTEE CORRESPONDENCE



**U.S. House of Representatives**
COMMITTEE ON VETERANS' AFFAIRS
ONE HUNDRED FIFTEENTH CONGRESS
335 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
http://veterans.house.gov



November 9, 2017

The Honorable Pete Sessions
Chairman
Committee on Rules
H-314, the Capitol
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter regarding the Rules Committee's jurisdictional interest in H.R. 4243, as amended, the VA Asset and Infrastructure Review (AIR) Act of 2017, and your willingness to forego consideration of H.R. 4243, as amended, by your committee.

I agree that the Committee on Rules has a valid jurisdictional interest in certain provisions of H.R. 4243, as amended, and that the Committee's jurisdiction will not be adversely affected by your decision to forego consideration of H.R. 4243, as amended. As you have requested, I will support your request for an appropriate appointment of outside conferees from your Committee in the event of a House-Senate conference on this or similar legislation should such a conference be convened.

Finally, I will include a copy of your letter and this response in the Committee Report and in the *Congressional Record* during the floor consideration of this bill.

Thank you again for your cooperation.

Sincerely,

David P. Roe M.D.
Chairman

cc: The Honorable Paul Ryan, Speaker of the House
The Honorable Louise McInstosh Slaughter, Ranking Member, Committee on Rules
The Honorable Tim Walz, Ranking Member, Committee on Veterans' Affairs
Mr. Thomas J. Wickham Jr., Parliamentarian

Committee on Rules
U.S. House of Representatives
H-312 The Capitol
Washington, DC 20515-6269



November 9, 2017

The Honorable Phil Roe
Chairman
Committee on Veterans' Affairs
335 Cannon House Office Building
Washington, DC 20515

Dear Chairman Roe:

On November 8, 2017, the Committee on Veterans' Affairs ordered reported H.R. 4243, the VA Asset and Infrastructure Review Act of 2017. As you know, the Committee on Rules was granted an additional referral upon the bill's introduction pursuant to the Committee's jurisdiction under rule X of the Rules of the House of Representatives over rules and joint rules of the House.

Because of your willingness to consult with my committee regarding this matter, I will waive consideration of the bill by the Rules Committee. By agreeing to waive its consideration of the bill, the Rules Committee does not waive its jurisdiction over H.R. 4243. In addition, the Committee on Rules reserves its authority to seek conferees on any provisions of the bill that are within its jurisdiction during any House-Senate conference that may be convened on this legislation. I ask your commitment to support any request by the Committee on Rules for conferees on H.R. 4243 or related legislation.

I also request that you include this letter and your response as part of your committee's report on the bill and in the Congressional Record during consideration of the legislation on the House floor. Thank you for your attention to these matters.

Sincerely,

Pete Sessions
Chairman, House Committee on Rules

## COMMITTEE OVERSIGHT FINDINGS

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

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are to institute a capital asset realignment process to address the serious and well-documented deficiencies in VA's capital asset portfolio and ensure VA medical facilities are properly aligned with the veteran patient population and the delivery of high quality, modern medical care.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

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

## EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 4243, as amended, does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 4243, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 4243, as amended, provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, November 13, 2017.*

Hon. PHIL ROE, M.D.,
*Chairman, Committee on Veterans' Affairs,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4243, the VA Asset and Infrastructure Review Act of 2017.

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

Sincerely,

KEITH HALL,
*Director.*

Enclosure.

*H.R. 4243—VA Asset and Infrastructure Review Act of 2017*

Summary: H.R. 4243 would directly appropriate $2.1 billion for the Veterans Choice Program (VCP) and $500 million for infrastructure improvements at the Department of Veterans Affairs (VA). The bill also would expand VA's authority to enter into leases for medical facilities and enhanced-use leases (EULs). In total, CBO estimates that enacting H.R. 4243 would increase direct spending by $3.8 billion over the 2018–2027 period.

The bill also would increase the amount VA can spend on awards and bonuses for employees; establish procedures for realigning, modernizing, or closing medical facilities; and require training of construction personnel. In total, CBO estimates that implementing H.R. 4243 would cost $720 million over the 2018–2022 period, assuming appropriation of the necessary amounts.

Because enacting H.R. 4243 would affect direct spending, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 4243 would increase direct spending by more than $2.5 billion and would increase on-budget deficits by more than $5 billion in at least one of the four consecutive 10-year periods beginning in 2028.

H.R. 4243 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effects of H.R. 4243 is shown in Table 1. The costs of this legislation fall within budget function 700 (veterans benefits and services).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 4243, THE VA ASSET AND INFRASTRUCTURE REVIEW ACT OF 2017

| | By fiscal year, in millions of dollars— | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2018–2022 | 2018–2027 |
| INCREASES IN DIRECT SPENDING | | | | | | | | | | | | |
| Estimated Budget Authority | 2,600 | 90 | 90 | 230 | 230 | 230 | 230 | 230 | 230 | 230 | 3,240 | 4,390 |
| Estimated Outlays | 2,220 | 340 | 70 | 76 | 102 | 159 | 192 | 213 | 227 | 227 | 2,808 | 3,826 |
| INCREASES IN SPENDING SUBJECT TO APPROPRIATION | | | | | | | | | | | | |
| Estimated Authorization Level | 131 | 70 | 217 | 260 | 266 | n.a. | n.a. | n.a. | n.a. | n.a. | 1,044 | n.a. |
| Estimated Outlays | 20 | 75 | 158 | 220 | 246 | n.a. | n.a. | n.a. | n.a. | n.a. | 719 | n.a. |

Note: Components may not sum to totals because of rounding; n.a. = not applicable.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the beginning of calendar year 2018 and that the estimated amounts will be appropriated each year. Estimated outlays are based on historical spending patterns for the affected programs.

*Direct Spending*

H.R. 4243 would directly appropriate funds for VCP and construction projects at the department. In addition, the bill would increase VA's ability to lease medical facilities without legislative authorization. On that basis, CBO estimates this bill would increase direct spending by $3.8 billion over the 2018–2027 period (see Table 2).

Direct Appropriations. Section 302 would appropriate $2.1 billion for VCP and $0.5 billion for minor construction and nonrecurring maintenance. VCP pays for certain veterans to receive health care from participating providers in the private sector. At the beginning of fiscal year 2018, VCP had about $2 billion in available funds, which CBO estimates will be completely committed before the first half of 2018 is over. Under current law, the program will terminate once its funding is exhausted. CBO expects that enacting this provision would extend the life of VCP through the remainder of 2018 and would provide additional support for minor construction projects. On that basis, CBO estimates that section 302 would increase direct spending by $2.2 billion in 2018 and $2.6 billion over the 2018–2022 period.

TABLE 2.—ESTIMATE OF THE EFFECTS ON DIRECT SPENDING OF H.R. 4243, THE ASSET AND INFRASTRUCTURE REVIEW ACT OF 2017

| | By fiscal year, in millions of dollars— | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2018–2022 | 2018–2027 |
| INCREASES IN DIRECT SPENDING | | | | | | | | | | | | |
| Direct Appropriations: | | | | | | | | | | | | |
| Budget Authority | 2,600 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2,600 | 2,600 |
| Estimated Outlays | 2,220 | 325 | 40 | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 2,595 | 2,595 |
| Modify Threshold for Major Medical Facilities: | | | | | | | | | | | | |
| Estimated Budget Authority | 0 | 0 | 0 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 200 | 700 |
| Estimated Outlays | 0 | 0 | 0 | 4 | 19 | 49 | 69 | 84 | 94 | 94 | 23 | 413 |
| Shared Medical Facilities: | | | | | | | | | | | | |
| Estimated Budget Authority | 0 | 0 | 0 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 80 | 280 |
| Estimated Outlays | 0 | 0 | 0 | 2 | 8 | 20 | 28 | 34 | 38 | 38 | 10 | 168 |
| Enhanced-Use Leases: | | | | | | | | | | | | |
| Estimated Budget Authority | 0 | 90 | 90 | 90 | 90 | 90 | 90 | 90 | 90 | 90 | 360 | 810 |
| Estimated Outlays | 0 | 15 | 30 | 60 | 75 | 90 | 95 | 95 | 95 | 95 | 180 | 650 |
| Total Changes: | | | | | | | | | | | | |
| Estimated Budget Authority | 2,600 | 90 | 90 | 230 | 230 | 230 | 230 | 230 | 230 | 230 | 3,240 | 4,390 |
| Estimated Outlays | 2,220 | 340 | 70 | 76 | 102 | 159 | 192 | 213 | 227 | 227 | 2,808 | 3,826 |

Expanded Authority to Lease Medical Facilities. Sections 201 and 204 would expand the authority for VA to enter into leases for medical facilities. (Those provisions also would expand the authority to construct medical facilities, discussed below under the heading Spending Subject to Appropriation.) In total, CBO estimates enacting those sections would increase direct spending by $581 million over the 2018–2027 period.

VA classifies its contracts for acquiring such facilities as operating leases and thus records its obligations for lease payments on an annual basis over the term of each lease. However, CBO has reviewed a number of those contracts and has concluded that they are akin to government purchases of facilities built specifically for VA's use—but instead of being financed by the Treasury, they rely

on third-party financing (that is, funds raised by a nonfederal entity), which is generally more expensive.[1] That conclusion is based on those leases having many of the following key features:

- The facilities are designed and constructed to the unique specifications of the government;
- The facilities are constructed at the request of the federal government;
- The leases on the newly constructed facilities are long term—usually 20 years;
- Payments from the federal government are the only or primary source of income for the facilities;
- The term of the contractual agreements coincides with the term of the private partner's financing instrument for developing and constructing the facility (that is, a facility financed with a 20-year bond will have a 20-year lease term);
- The federal government commits to make fixed annual payments that are sufficient to service the debt incurred to develop and construct the facility, regardless of whether the agency continues to occupy the facility during the guaranteed term of the lease; and
- The fixed payments over the life of the lease are sufficient to retire the debt for the facility.[2]

Thus, although those transactions are structured as leases, they are essentially government purchases. Under the normal procedures governing the budgetary treatment of the purchase of capital assets, budget authority should be available and obligations should be recorded at the time the acquisitions are initiated and amounts recorded should equal the full development and construction costs of the medical facilities. Instead, VA records a small fraction of those costs as obligations when it awards the contracts for such transactions.

To the extent that the full costs of developing and constructing the facilities exceeds the relatively small amount that VA would initially record as obligations against its appropriation, CBO treats the legislative authorization for those transactions as contract authority—a type of budget authority that allows an agency to enter into a contract and incur an obligation before receiving an appropriation for those activities. Because the contract authority would be provided in an authorizing bill, rather than in an appropriation act, the resulting spending is categorized as direct spending (as distinguished from discretionary spending, which results from appropriation acts).

In addition, at the time the contracts are signed, VA typically obligates some amounts from available appropriations. Those costs are considered discretionary and are discussed below under the heading Spending Subject to Appropriation.

*Modify Threshold for Major Medical Facilities.* Section 201 would allow VA to enter into leases without legislative authorization for medical facilities with annual lease payments up to $1.5 million. Under current law, VA is required to receive legislative authoriza-

[1] For more information on the budgetary treatment of third-party financing, see Congressional Budget Office, Third-Party Financing of Federal Projects (June 2005), www.cbo.gov/publication/16554.

[2] See the statement of Robert A. Sunshine, Deputy Director, Congressional Budget Office, The Budgetary Treatment of Medical Facility Leases by the Department of Veterans Affairs, before the House Committee on Veterans' Affairs, (June 27, 2013), www.cbo.gov/publication/44368.

tion to lease medical facilities with annual rent payments in excess of $1 million.

After reviewing VA's 2018 budget request for leases of medical facilities, CBO estimates that enacting this provision would allow VA to enter into six additional leases, on average, each year. In total, the annual rent payments for those leases would be about $7 million. CBO expects that the initial contracts for those facilities would be entered into starting in 2021 and that contracts of a similar magnitude would occur each year thereafter. CBO calculated the present value of each lease over the entire term of the lease agreement.[3] We estimate that enacting this provision would increase direct spending by $413 million over the 2021–2027 period.

*Shared Medical Facilities.* Section 204 would allow VA to enter into sharing agreements with other federal agencies to lease medical facilities. Under this section VA's portion of the annual rent payments for leased medical facilities could be lowered by enough that some leases would no longer require legislative authorization. Based on an analysis of information from VA, CBO estimates that, on average, this section would authorize the construction of one medical facility each year at an average annual rent payment of $3 million. CBO expects that VA would enter into the first such contract in 2021 and contracts of similar magnitude each year thereafter. On the basis of the present value for each lease over the entire term of the lease agreement, CBO estimates that enacting this section would increase direct spending by $168 million over the 2021–2027 period.

Enhanced-Use Leases. Section 205 would expand VA's authority to enter into enhanced-use leases.

Under EULs, federal agencies can lease out underused property to a nonfederal entity in exchange for cash or in-kind compensation. Through some of those leases, agencies have obtained third-party financing for the acquisition, construction, rehabilitation, operation, and maintenance of real property used by the agencies. A range of agreements associated with the leases establish government control over the projects, protect the government's interests, and ensure that agencies will receive guaranteed access to whatever facilities are being developed. The contracts also assure the nonfederal partners that they will be able to recover their capital costs for the facilities over time through payments from the federal government.

CBO has concluded that such facilities are built for governmental purposes and are effectively under control of the federal government. Thus, the costs of developing and constructing facilities in that manner are governmental transactions that should be recorded in the budget when they occur, regardless of whether they are financed directly by the U.S. Treasury or indirectly by a third party. Budget authority in the amount of the cost of the facility should be recorded when the lease is signed and outlays should be recorded over the construction phase. Because agencies instead record obligations to pay for the facilities one year at a time, rather than up front, CBO treats the authorization for those transactions

[3] The costs for the 20-year leases are calculated by discounting the expected annual rent payments using the rate on Treasury securities of comparable maturities.

as contract authority—a form of direct spending that allows agencies to incur obligations in advance of appropriations.

VA's authority for enhanced-use leases expired in 2011. It was subsequently authorized to enter EULs only for the purpose of obtaining supportive housing for homeless veterans. Section 205 would restore VA's authority to enter enhanced-use leases for any purpose at any of the department's facilities if the department determines that the lease would enhance the use of the property.

Before VA's EUL authority expired, the department used that authority to acquire numerous facilities such as administrative buildings, utility plants, data centers, hospitals, and parking garages. On the basis of the number of and the costs to acquire those facilities, CBO expects that under section 205, VA would acquire one or two facilities each year beginning in 2019 at an average cost of $60 million each. In total, enacting section 205 would increase direct spending by $650 million over the 2018–2027 period, CBO estimates.

Realignment, Modernization and Closure of VA Medical Facilities. As part of a program of modernizing and realigning medical facilities, section 104 would allow VA to lease such facilities without legislative authorization. Such actions would occur after 2027 and therefore CBO does not include those budgetary effects in the tables for this estimate. However, CBO estimates that enacting section 104 would increase direct spending by more than $7.5 billion in the first 10 years after 2027.

*Spending subject to appropriation*

CBO estimates that implementing H.R. 4243 would increase the amounts VA pays for awards and bonuses, leases of medical facilities, and construction projects by a total of $720 million over the 2018–2022 period, subject to appropriation of the necessary amounts (see Table 3).

Limitation on Bonuses. Section 301 would increase the amount that VA is authorized to pay its employees for awards and bonuses. Under current law, the amount VA may spend for such payments is capped at $230 million in fiscal year 2018, $225 million a year in 2019 through 2021, and $360 million in 2022. By removing from the list of capped payments those amounts provided for recruitment, relocation, and retention incentives (3R incentives), this provision would increase the amount VA can spend for those incentives as well as make room under the caps to increase the amounts paid for all other awards and bonuses.

TABLE 3.—ESTIMATE OF THE EFFECTS ON SPENDING SUBJECT TO APPROPRIATIONS OF H.R. 4243, THE ASSET AND INFRASTRUCTURE REVIEW ACT OF 2017

| | By fiscal year, in millions of dollars— | | | | | |
|---|---|---|---|---|---|---|
| | 2018 | 2019 | 2020 | 2021 | 2022 | 2018–2022 |
| INCREASES IN SPENDING SUBJECT TO APPROPRIATION | | | | | | |
| Limitation on Bonuses: | | | | | | |
| Estimated Authorization Level | 15 | 52 | 98 | 114 | 120 | 399 |
| Estimated Outlays | 15 | 52 | 98 | 114 | 120 | 399 |
| Shared Medical Facilities: | | | | | | |
| Estimated Authorization Level | 100 | 100 | 100 | 107 | 107 | 514 |
| Estimated Outlays | 4 | 19 | 49 | 75 | 91 | 238 |

TABLE 3.—ESTIMATE OF THE EFFECTS ON SPENDING SUBJECT TO APPROPRIATIONS OF H.R. 4243, THE ASSET AND INFRASTRUCTURE REVIEW ACT OF 2017—Continued

| | By fiscal year, in millions of dollars— | | | | | |
|---|---|---|---|---|---|---|
| | 2018 | 2019 | 2020 | 2021 | 2022 | 2018–2022 |
| Modify Threshold for Major Medical Facilities: | | | | | | |
| Estimated Authorization Level | 16 | 16 | 16 | 36 | 36 | 120 |
| Estimated Outlays | 1 | 3 | 8 | 28 | 32 | 72 |
| Procedures for Recommendations: | | | | | | |
| Estimated Authorization Level | * | 1 | 3 | 3 | 3 | 10 |
| Estimated Outlays | * | 1 | 3 | 3 | 3 | 10 |
| Training Construction Personnel: | | | | | | |
| Estimated Authorization Level | 0 | 1 | * | * | * | 1 |
| Estimated Outlays | 0 | * | * | * | * | 1 |
| Total Changes: | | | | | | |
| Estimated Authorization Level | 131 | 170 | 217 | 260 | 266 | 1,044 |
| Estimated Outlays | 20 | 75 | 158 | 220 | 246 | 720 |

Note: Components may not sum to totals because of rounding; * = less than $500,000.

In 2013, before the cap on such payments was first imposed, VA spent $81 million for 3R incentives. CBO expects that under this provision, VA would gradually return to that level of spending, adjusted to account for the increased number of VA employees and past and future cost-of-living increases. At the same time, we expect that VA also would take advantage of the extra room available under the caps to gradually increase the amount it spends on other awards and bonuses. On that basis, CBO estimates that implementing section 301 would cost $399 million over the 2018–2022 period.

Expanded Authority to Construct and Lease Medical Facilities. Sections 201 and 204 would expand the authority of VA to construct and lease medical facilities. In total, CBO estimates that implementing those provisions would cost $310 million over the 2018–2022 period for additional construction and lease projects.

*Shared Medical Facilities.* Section 204 would allow VA to enter into sharing agreements with other federal departments to construct medical facilities. Implementing this section could reduce VA's share of the cost of some construction projects, such that some such projects would no longer require legislative authorization. On the basis of information from VA, CBO estimates the total cost for such major construction projects would average about $100 million each year. On that basis, CBO estimates costs of $225 million over the 2018–2022 period for additional construction projects.

Furthermore, as discussed above under the heading "Direct Spending," this section also would expand VA's authority to enter into leases for medical facilities. CBO estimates that VA would enter into one additional lease each year with a total annual rent payment of $3 million. For those leases, we expect that VA would record obligations of $7 million each year as it enters those contracts, from available appropriations. On that basis, we estimate costs of $13 million over the 2021–2022 period for additional leases.

In total, CBO estimates implementing section 204 would cost $238 million over the 2018–2022 period.

*Modify Threshold for Major Medical Facilities.* Section 201 would allow VA to construct medical facilities with total costs of up to $20 million without legislative authorization. Under current law, VA is

required to receive legislative authorization to construct medical facilities with total expenses above $10 million.

Based on an analysis of information on planned construction projects in VA's 2018 budget submission, CBO estimates that implementing this section would authorize one additional construction project each year with an average cost of $16 million. On that basis, CBO estimates costs of $36 million over the 2018–2022 period.

In addition, as discussed above under Direct Spending, this section would also expand VA's authority to enter into leases for medical facilities. CBO estimates that VA would enter into 6 additional leases each year with a total annual rent payment of $7 million. For those leases, we expect that VA would record obligations of $20 million each year as it enters those contracts, from available appropriations. On that basis, we estimate costs of $36 million over the 2021–2022 period for additional leases.

In total, CBO estimates implementing section 201 would cost $72 million over the 2018–2022 period for additional leases.

Procedures for Recommendations. By February 1, 2021, section 103 would require VA, in consultation with Veterans Service Organizations, to publish the criteria for assessing and making recommendations for modernizing, realigning and closing VA medical facilities. In making recommendations VA must hold public field hearings with local stakeholders. The final criteria must be published by May 1, 2021, after receiving comments from the public. In addition, VA would be required to conduct capacity and commercial market assessments. On the basis of costs for nationwide assessments, CBO estimates that an equivalent of 20 full time employees (with average annual compensation of $150,000) would be necessary. Thus, CBO estimates implementing this provision would cost $10 million over the 2018–2022 period.

Training for Construction Personnel. Section 203 would require VA to offer job training (in person, online or by another federal agency) for all construction employees. CBO estimates that implementing this section would cost $1 million to develop the training materials over the 2018–2022 period.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 4243, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON VETERANS' AFFAIRS ON NOVEMBER 8, 2017

| | By fiscal year, in millions of dollars— | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2018–2022 | 2018–2027 |
| NET INCREASE IN THE ON-BUDGET DEFICIT | | | | | | | | | | | | |
| Statutory Pay-As-You-Go Impact ..... | 2,220 | 340 | 70 | 76 | 102 | 159 | 192 | 213 | 227 | 227 | 2,808 | 3,826 |

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 4243 would increase direct spending by more than $2.5 billion and would increase on-budget deficits by more than $5 billion in at least one of the four consecutive 10-year periods beginning in 2028.

Mandates: H.R. 4243 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Ann E. Futrell; Mandates: Zach Byrum.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

## FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 4243, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

## ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 4243, as amended.

## STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, H.R. 4243, as amended, is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 4243, as amended, does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 115th Cong. (2017), the Committee finds that no provision of H.R. 4243, as amended, establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 115th Cong. (2017), the Committee estimates that H.R. 4243, as amended, would require VA to prescribe regulations.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

### TITLE I—ASSET AND INFRASTRUCTURE REVIEW

*Section 101. Short title*

Section 101 of the bill would establish a short title of the "Department of Veterans Affairs (VA) Asset and Infrastructure Review (AIR) Act of 2017."

*Section 102. The Commission*

Section 102(a) of the bill would establish an independent "VA Asset and Infrastructure Review (AIR) Commission."

Section 102(b) of the bill would require the Commission to carry out the duties described in this title.

Section 102(c)(1) of the bill would require the President, with the advice and consent of the Senate, to appoint nine AIR Commissioners and to transmit nominations to the Senate by May 31, 2021.

Section 102(c)(2) of the bill would require the President to consult with the Speaker and minority leader of the House of Representatives and the majority and minority leader of the Senate in selecting individuals for Commission nomination and congressionally chartered, membership-based veterans service organizations (VSOs) specifically concerning the appointment of three members.

Section 102(c)(3) of the bill would require the President to nominate one person to serve as the Chair of the Commission and one person to serve as the Vice Chair of the Commission.

Section 102(c)(4) of the bill would require the President, in nominating individuals for appointment to the Commission, to ensure: that veterans (reflecting current demographics of veterans enrolled in the VA health care system) are adequately represented in the membership of the Commission; that at least one member of the Commission has experience with a private integrated health care system that has annual gross revenue of more than $50 million; that at least one member has experience as a senior manager for a Federally-qualified health center, the Department of Defense, or the Indian Health Service; that at least one member has experience with capital asset management for the Federal government and is familiar with trades related to building and real property (including construction, engineering, architecture, leasing, and strategic partnerships); and, that at least three members represent congressionally-chartered, membership-based VSOs.

Section 102(d) of the bill would require the Commission to meet only during calendar years 2022 and 2023, and requires that each meeting of the Commission be open and all proceedings, information, and deliberations of the Commission to be available for review by the public.

Section 102(e) of the bill would require a vacancy in the Commission to be filled in the same manner as the original appointment, but the individual appointed to fill the vacancy to serve only for the unexpired portion of the term for which the individual's predecessor was appointed.

Section 102(f) of the bill would require Commissioners to serve without pay, requires each member of the Commission who is an officer/employee of the United States to only receive compensation for their services as an officer/employee of the U.S, and allows Commissioners to receive travel expenses, including per diem.

Section 102(g) of the bill would require the Commission to appoint a staff director who has not served as a VA employee during the one-year period preceding the date of appointment and who is not otherwise barred or prohibited from serving as a Director under Federal ethics law and regulations by reason of post-employment conflict of interest and requires the Director to be paid at the rate of basic pay payable for level IV of the Executive Schedule.

Section 102(h)(1) and (2) of the bill would require the Director, with the approval of the Commission, to appoint and fix the pay of additional personnel, to make such appointments without regard to the provisions of title 5 U.S.C. governing appointments in the competitive service, and any personnel so appointed to be paid without regard to provisions relating to the classification and General Schedule pay rates except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS–15.

Section 102(h)(3) of the bill would allow not more than two-thirds of the personnel employed by or detailed to the Commission to be on detail from VA and not more half of the professional analysts to be detailed from VA. This section also prohibits a person from being detailed to the Commission from VA if, within 6 months before the detail is set to begin, the person participated personally or substantially in any matter concerning the preparation of recommendations regarding Veterans Health Administration (VHA) facilities.

Section 102(h)(4) would allow any Federal department or agency to detail personnel to the Commission upon request.

Section 102(h)(5) of the bill would allow the Commission to secure necessary information from Federal agencies and Federal agencies to furnish such information upon request.

Section 102(i) of the bill would allow the Commission to procure, by contract to the extent funds are available, the temporary or intermittent services or experts of consultants and to lease real property and acquire personal property either of its own accord or in consultation with the General Services Administration (GSA).

Section 102(j) of the bill would terminate the Commission on December 31, 2023.

Section 102(k) of the bill would prohibit the restriction of lawful communication from a VA employee to the Commission.

*Section 103. Procedure for making recommendations*

Section 103(a)(1) of the bill would require VA—not later than February 1, 2021, and after consulting with VSOs—to publish in the Federal Register and transmit to the Committees on Veterans' Affairs of the House of Representatives and the Senate (HVAC/SVAC) the criteria proposed by VA to be used in assessment and making recommendations regarding the modernization or realignment of VHA facilities and require such criteria to include the veterans preference regarding access to VA health care.

Section 103(a)(2) of the bill would require a 90-day public comment period for VA's proposed criteria.

Section 103(a)(3) of the bill would require VA—not later than May 31, 2021—to publish in the Federal Register and transmit to HVAC/SVAC, the final criteria to be used in making recommendations regarding the modernization or realignment of VHA facilities.

Section 103(b)(1) of the bill would require VA—not later than January 31, 2022, and after consulting with VSOs—to publish in the Federal Register and transmit to HVAC/SVAC a report detailing recommendations regarding the modernization or realignment of VHA facilities.

Section 103(b)(2) of the bill would require VA to consider the following factors in making recommendations regarding the mod-

ernization or realignment of VHA facilities: the degree to which health care delivery or other site for providing services to veterans reflect VA's metrics regarding market area health system planning; the provision of effective and efficient access to high-quality health care and services to veterans; the extent to which real property that no longer meets the needs of the Federal Government could be reconfigured, repurposed, consolidated, realigned, exchanged, outleased, repurposed, replaced, sold, or disposed; VHA's need to acquire infrastructure or facilities that will be used for the provision of health care and service to veterans; the extent to which operation and maintenance costs are reduced through consolidating, collocating, and reconfiguring space and through realizing other operational efficiencies; the extent and timing of potential costs and savings, including the number of years such costs and savings will be incurred, beginning with the date of completion of the proposed recommendation; the extent to which the real property aligns with VA's mission; the extent to which any action would impact other VA missions including education, research, or emergency preparedness; local stakeholder inputs and any factors identified through public field hearings; capacity and commercial market assessments; and, any other factors VA determines appropriate.

Section 103(b)(3)(A) of the bill would require VA to assess the capacity of each Veterans Integrated Service Network (VISN) and VA medical facility to furnish hospital care or medical services to veterans and require each assessment to:

> Identify existing deficiencies in the furnishing of care and services to veterans and how such deficiencies may be filled by entering into contracts or agreements with community health care providers or other entities under other provisions of law and changing the way care and services are furnished at such VISNs or VA medical facilities (including through extending hours of operation, adding personnel, and expanding treatment space through construction, leasing, or sharing of health care facilities);
>
> Forecast, based on future projections and historical trends, both the short-term and long term demand in furnishing care and services at such VISN or VA medical facility;
>
> Consider how demand affects the need to enter into contracts or agreements;
>
> Consider the commercial health care market of designated catchment areas conducted by a non-governmental entity; and,
>
> Consider the unique ability of the Federal government to retain a presence in a rural area otherwise devoid of commercial health care providers or from which such providers are at risk of leaving.

Section 103(b)(3)(B) of the bill would require the Secretary to consult with VSOs and veterans served by each VISN and medical facility affected by the assessments.

Section 103(b)(3)(C) of the bill would require VA to submit the local capacity and commercial market assessments to HVAC/SVAC with the recommendations regarding the modernization or realign-

ment of VHA facilities and to make the assessments publicly available.

Section 103(b)(4) of the bill would require VA to include with the recommendations regarding the modernization or realignment of VHA facilities a summary of the selection process that resulted in the recommendation for each VHA facility and a justification for each recommendation and to transmit the summaries and justifications not later than 7 days after the date of transmittal to HVAC/SVAC.

Section 103(b)(5) of the bill would require VA to consider all facilities equally without regard to whether the facility has been previously considered or proposed for reuse, modernization, or realignment.

Section 103(b)(6) of the bill would require VA to make all information used by VA to prepare a recommendation available to Congress, the Commission and the Comptroller General.

Section 103(b)(7) of the bill would require each VA Under Secretary, VISN director, VA medical center director, VA program office director, and each person who is in a position of duties which includes personal and substantial involvement in the preparation and submission of information and recommendations concerning the modernization or realignment of VHA facilities to certify that information submitted to VA or to the Commission concerning the modernization or realignment of VHA facilities is accurate and complete to the best of that person's knowledge and belief.

Section 103(c)(1)(A) and (B) of the bill would require the Commission to conduct public hearings on the Secretary's recommendations regarding the modernization or realignment of VHA facilities, to include required public hearings in regions affected by a VA recommendation for the closure of a facility and, to the greatest extent practicable, public hearings in regions affected by a recommendation for other (non-closure) action by VA.

Section 103(d)(1)(C) of the bill would require each Commission public hearing to include, at a minimum, a local veteran who is enrolled in the VA healthcare system and identified by a local VSO and a local elected official.

Section 103(c)(2)(A) of the bill would require the Commission—not later than January 31, 2023—to transmit to the President a report and analysis of the recommendations made by VA together with the Commission's recommendations for the modernization or realignment of VHA facilities.

Section 103(c)(2)(B) of the bill would authorize the Commission to change a recommendation made by VA for the modernization or realignment of a VHA facility only if the Commission: determines that VA deviated substantially from VA's final criteria in making such recommendation; determines that the change is consistent with the final criteria; publishes a notice of the proposed change in the Federal Register not less than 45 days before transmitting the Commission's recommendations to the President; and, conducts public hearings on the proposed change.

Section 103(c)(3) of the bill would require the Commission to explain and justify any recommendation made by the Commission that is different from the recommendations made by VA in the Commission's report that is transmitted to the President and to

transmit the copy of such report to HVAC/SVAC on the same day that it is transmitted to the President.

Section 103(c)(4) of the bill would require the Commission—after January 31, 2023—to promptly provide information used by the Commission in making its recommendations to any Member of Congress upon request.

Section 103(d) of the bill would require the President—not later than February 15, 2023—to transmit to the Commission and to Congress a report containing the President's approval or disapproval of the Commission's recommendations.

If the President approves of the Commission's recommendations, requires the President to transmit a copy of the Commission's recommendations to the Congress together with a certification of approval.

If the President disapproves of the Commission's recommendations in whole or in part, requires the President to transmit to the Commission and the Congress the reasons for that disapproval and require the Commission—not later than March 15, 2023—to transmit a revised list of recommendations to the President.

If the President approves of the Commission's revised recommendations, requires the President to transmit a copy of the revised recommendations to Congress together with a certification of such approval.

Would require the process for modernization or realignment of VHA facilities to be terminated, if the President does not transmit a certification of approval to Congress, by March 30, 2023.

*Section 104. Actions regarding infrastructure and facilities of the Veterans Health Administration*

Section 104(a) and (b) of the bill would require the Secretary, in the absence of a resolution of Congressional disapproval having been enacted within 45 days of Presidential transmission of the report to Congress or the adjournment of the 117th Congress, to begin implementing the recommendations made in the report under Section 103(d) within 3 years the President having transmitted the report to Congress. Implementation includes the planning of modernizations or realignments. Days on which either House is not in session because of adjournment of more than three days shall be excluded from the computation of the period.

Section 104(c) of the bill would authorize any obligation or expenditure of funds for major medical facility leases or projects made by the report.

*Section 105. Implementation*

Section 105(a) of the bill would allow the Secretary to take such actions as necessary to implement the modernization or realignment of any VHA facility, perform environmental mitigation, abatement or restoration of facilities being closed or realigned to include compliance with historical preservation requirements, provide outplacement assistance to employees of the Department, reimburse Federal agencies for services, and enter into Enhanced Use Lease contracts.

Section 105(b) of the bill would outline how the Secretary may dispose or transfer surplus properties slated for disposal or realignment under this Act, including consultation with state and local governments for proper disposal of real property and roads.

The Secretary may transfer title to a redevelopment authority for a facility for the purposes of a federal lease for a term not to exceed 50 years. Such lease may not require rental payments by the government.

If the lease involves a substantial portion of the facility, the department or agency may obtain facility services from the redevelopment authority as a provision of the lease. Such services shall not include municipal services, firefighting or security guard functions.

Provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 apply. Nothing in this title shall limit or otherwise affect application of McKinney-Vento Homeless Assistance Act provisions.

Section 105(c) of the bill would exempt the Secretary from the National Environmental Policy Act of 1969 in carrying out the recommendations of this title.

Section 105(d) of the bill would exempt the Secretary from any legal prohibition of closing or realigning VHA facilities included in any appropriation or authorization Act.

Section 105(e) of the bill would provide the authority for the Secretary to transfer a deed of a VHA facility to a party who agrees to perform the environmental compliance activities that are required under federal and state laws. Such transfer may occur if the Secretary certifies to Congress that all costs to be paid by the Department are equal to or greater than market value or if such cost are lower than the recipient of the transfer agrees to pay the difference.

*Section 106. Department of Veterans Affairs asset and infrastructure review account*

Section 106(a) of the bill would establish a single account in the ledgers of the U.S. Treasury with which the Secretary may carry out this Act.

Section 106(b) of the bill would allow for the credit to the account any funds authorized and appropriated and any proceeds from a lease, transfer, or disposal of property.

Section 106(c) of the bill would allow the Secretary to use the account for the purposes of carrying out this title, to cover property management and disposal costs, to cover costs of supervision, inspection, overhead, engineering, and design, or for any other purposes in support of the Departments mission and operations.

Section 106(d) of the bill would require the Secretary to establish a consolidated budget display detailing the amount and nature of the credits to and expenditures from, separately details environmental remediation costs, specifies and details any transfers. This information shall be submitted to Congress as part of the Presidential budget submission.

Section 106(e) of the bill would require that upon closure of the account any unobligated funds, upon submission of an accounting report to HVAC/SVAC and the Committees on Appropriations of

the House of Representatives and the Senate, shall be transferred to the Secretary.

*Section 107. Congressional consideration of commission report*

Section 107(a) of the bill would describe the term "joint resolution" as a resolution introduced within the 45-day period beginning on the date on which the President transmits the report to congress which does not include a preamble and contains specific language as to the resolving clause and title.

Section 107(b) of the bill would outline the means by which the House of Representatives shall consider such resolution to include reporting and discharge, proceeding to consideration, and consideration.

Section 107(c) of the bill outlines the means by which the Senate shall consider such resolution to include referral, reporting and discharge, and floor consideration to include consideration, vote on passage, and ruling of the chair on procedure.

Section 107(d) of the bill would prohibit any amendment to a joint resolution of disapproval.

Section 107(e) of the bill would define the coordination between either House upon receipt of companion measures.

Section 107(f) of the bill would state that this section is applicable only with respect to the procedure followed in that House in the case of a joint resolution and supersedes other rules only to the extent that it is inconsistent with such rules, with the recognition of the constitutional right of either House to change the rules.

*Section 108. Other matters*

Section 108(a) of the bill would require the online publication of all communications, within 24 hours, between the Secretary, the Commission and the President with regards to this title.

Section 108(b) of the bill would prohibit the VA from pausing or stopping any scheduled construction, leasing, long-term planning project activities, or budgetary processes with regards to the construction during the activities of the Commission, President, or Congress in carrying out this title.

*Section 109. Definitions*

Section 109 of the bill would define:

"Account" as the VA AIR Account established by section 106.

"Commission" as the AIR Commission established by section 102.

"date of approval" with respect to a modernization or realignment of a VHA facility as the date on which the authority of Congress to disapprove a recommendation of under this title expires.

"VHA facility" as: (1) any land, building, structure, or infrastructure (including any medical center, nursing home, domiciliary facility, outpatient clinic, center that provides readjustment counseling, or leased facility) that is under VA's jurisdiction, under VHA's control, and not under GSA's control; and, (2) with respect to a collocated VA facility, includes any land, building, or structure that is under VA's jurisdiction, under control of another VA administration, and not under GSA's control.

"infrastructure" as improvements to land other than buildings or structures.

"modernization" as any action required to align the form and function of a VHA facility to the provision of modern day health care (including utilities and environmental control systems), the closure, construction purchase, lease, or sharing of a VHA facility, and realignments, disposals, exchanges, collaborations, between VA and other Federal entities and strategic collaborations between VA and non-Federal entities.

"realignment" with respect to a VHA facility to include any action that changes the number of or relocates services, functions, and personnel positions; disposals or exchanges between VA and other Federal entities including DOD; and, strategic collaborations between VA and non-Federal entities.

"Secretary" to mean the Secretary of Veterans Affairs.

"redevelopment authority" to mean, in the case of a VHA facility closed or modernized under this title, any entity (including an entity established by a State or local government) recognized by VA as the entity responsible for developing the redevelopment plan with respect to the facility or for directing the implementation of such a plan.

"redevelopment plan" in the case of a VHA facility to be closed or realigned to mean a plan that is agreed to by the local redevelopment authority with respect to the facility and provides for the reuse or redevelopment of the real property and personal property of the facility that is available for such reuse and redevelopment as a result of the closure or realignment of a facility.

## TITLE II—IMPROVEMENTS TO CONSTRUCTION MANAGEMENT AND LEASES

### *Section 201. Modification of thresholds for major medical facility projects and major medical facility leases*

Section 201(a) of the bill would change the definition of a major medical facility project to that of one involving a total expenditure of more than $20,000,000. The term does not include acquisitions by exchange, non-recurring maintenance, or in the case of a shared facility, when the Departments estimated share is below $200,000,000. The definition of a major medical facility lease is changed to reflect an average annual rent that is equal to or greater than the amount specified by GSA.

Section 201(b) of the bill would establish an effective date on or after enactment of this Act.

### *Section 202. Submission of prospectuses of proposed minor medical facility projects*

Section 202 of the bill would require the VA to include the prospectus of facility projects presented to Congress under Section 8104(b) of Title 38, USC that require a total expenditure of more than $10,000,000 and less than $20,000,000.

### *Section 203. Improvement to training of construction personnel*

Section 203 of the bill would require that the Secretary implement a covered training, curriculum and covered certification pro-

gram that models existing training curricula and certification programs as established under Chapter 87 of Title 10.

*Section 204. Authority to plan, design, construct, or lease shared medical facilities.*

Section 204 of the bill would grant the Secretary the authority to plan, design, construct, or lease a medical facility with other federal departments or agencies. Funds may be transferred from Construction, Major or Construction, Minor accounts based on the amount of the estimated costs to be shared by the Department.

*Section 205. Enhanced use lease authority*

Section 205 of the bill would grant the Secretary the authority to enter into enhanced-use leases for purposes other than supportive housing.

TITLE III—OTHER MATTERS

*Section 301. Exception of limitations on awards and bonuses for recruitment, relocation, and retention*

Section 301 of the bill would amend the restriction imposed on bonuses and awards included in the Veteran Access, Choice, and Accountability Act of 2014 by exempting bonuses and awards for the purposes of incentives for the recruitment, relocation and retention of VA employees.

*Section 302. Appropriation of amounts*

Section 302(a) of the bill would authorize and appropriate $2,100,000,000 for the Veterans Choice Program.

Section 302(b) of the bill would authorize and appropriate $500,000,000 for minor construction and nonrecurring maintenance of VHA medical facilities and requires the Secretary to notify HVAC/SVAC of the projects for which these funds shall be allocated.

*Section 303. Assessment of health care furnished by the Department to veterans who live in the territories*

Section 303 of the bill would require the Secretary to submit to HVAC/SVAC a report regarding the health care furnished by VA to veterans who live in the territories of American Samoa, Guam, Northern Mariana Island, Puerto Rico and the Virgin Islands. The report shall assess the ability of the Department to provide hospital care, medical, mental health, and geriatric services, as well as assess the feasibility of establishing a medical facility in any territory that does not contain such a facility.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

**TITLE 38, UNITED STATES CODE**

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# PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

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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

### § 8101. Definitions

For the purposes of this subchapter:

(1) The term "alter", with respect to a medical facility, means to repair, remodel, improve, or extend such medical facility.

(2) The terms "construct" and "alter", with respect to a medical facility, include such engineering, architectural, legal, fiscal, and economic investigations and studies and such surveys, designs, plans, construction documents, specifications, procedures, and other similar actions as are necessary for the construction or alteration, as the case may be, of such medical facility and as are carried out after the completion of the advanced planning (including the development of project requirements and design development) for such facility.

**[**(3) The term "medical facility" means any facility or part thereof which is, or will be, under the jurisdiction of the Secretary for the provision of health-care services (including hospital, nursing home, or domiciliary care or medical services), including any necessary building and auxiliary structure, garage, parking facility, mechanical equipment, trackage facilities leading thereto, abutting sidewalks, accommodations for attending personnel, and recreation facilities associated therewith.**]**

*(3) The term "medical facility" means any facility or part thereof which is, or will be, under the jurisdiction of the Secretary, including with respect to a shared medical facility (as defined in section 8111B(d) of this title), for the provision of health-care services (including hospital, outpatient clinic, extended care services, nursing home, or domiciliary care or medical services), including any necessary building and auxiliary structure, garage, parking facility, mechanical equipment, trackage facilities leading thereto, abutting*

*sidewalks, accommodations for attending personnel, and recreation facilities associated therewith.*

(4) The term "committee" means the Committee on Veterans' Affairs of the House of Representatives or the Committee on Veterans' Affairs of the Senate, and the term "committees" means both such committees.

* * * * * * *

**§ 8103. Authority to construct and alter, and to acquire sites for, medical facilities**

(a) Subject to section 8104 of this title, the Secretary—

(1) may construct or alter any medical facility and may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, such land or interests in land as the Secretary considers necessary for use as the site for such construction or alteration;

(2) may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, any facility (including the site of such facility) that the Secretary considers necessary for use as a medical facility; and

(3) in order to assure compliance with section 8110(a)(2) of this title, in the case of any outpatient medical facility for which it is proposed to lease space and for which a qualified lessor and an appropriate leasing arrangement are available, shall execute a lease for such facility within 12 months after funds are made available for such purpose.

(b) Whenever the Secretary considers it to be in the interest of the United States to construct a new medical facility to replace an existing medical facility, the Secretary (1) may demolish the existing facility and use the site on which it is located for the site of the new medical facility, or (2) if in the judgment of the Secretary it is more advantageous to construct such medical facility on a different site in the same locality, may exchange such existing facility and the site of such existing facility for the different site.

(c) Whenever the Secretary determines that any site acquired for the construction of a medical facility is not suitable for that purpose, the Secretary may exchange such site for another site to be used for that purpose or may sell such site.

(d)(1) The Secretary may provide for the acquisition of not more than three facilities for the provision of outpatient services or nursing home care through lease-purchase arrangements on real property under the jurisdiction of the Department of Veterans Affairs.

(2)(A) In carrying out this subsection and notwithstanding any other provision of law, the Secretary may lease, with or without compensation and for a period of not to exceed 35 years, to another party any of the real property described in paragraph (1) of this subsection.

(B) Such real property shall be used as the site of a facility referred to in paragraph (1) of this subsection—

(i) constructed and owned by the lessee of such real property; and

(ii) leased under paragraph (3)(A) of this subsection to the Department for such use and for such other activities as the Secretary determines are appropriate.

(3)(A) The Secretary may enter into a lease for the use of any facility described in paragraph (2)(B) of this subsection for not more than 35 years under such terms and conditions as may be in the best interests of the Department.

(B) Each agreement to lease a facility under subparagraph (A) of this paragraph shall include a provision that—

(i) the obligation of the United States to make payments under the agreement is subject to the availability of appropriations for that purpose; and

(ii) the ownership of such facility shall vest in the United States at the end of such lease.

(4)(A) The Secretary may sublease any space in such a facility to another party at a rate not less than—

(i) the rental rate paid by the Secretary for such space under paragraph (3) of this subsection; plus

(ii) the amount the Secretary pays for the costs of administering such facility (including operation, maintenance, utility, and rehabilitation costs) which are attributable to such space.

(B) In any such sublease, the Secretary shall include such terms relating to default and nonperformance as the Secretary considers appropriate to protect the interests of the United States.

(5) The Secretary shall use the receipts of any payment for the lease of real property under paragraph (2) for the payment of the lease of a facility under paragraph (3).

(6) The authority to enter into an agreement under this subsection—

(A) shall not take effect until the Secretary has entered into agreements under section 316 of this title to carry out at least three collocations; and

(B) shall expire on October 1, 1993.

(e)(1) In the case of any super construction project, the Secretary shall enter into an agreement with an appropriate non-Department Federal entity to provide full project management services for the super construction project, including management over the project design, acquisition, construction, and contract changes.

(2) An agreement entered into under paragraph (1) with a Federal entity shall provide that the Secretary shall reimburse the Federal entity for all costs associated with the provision of project management services under the agreement.

(3) In this subsection, the term "super construction project" means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than $100,000,000.

(f) To the maximum extent practicable, the Secretary shall use industry standards, standard designs, and best practices in carrying out the construction of medical facilities.

[(g) The Secretary shall ensure that each employee of the Department with responsibilities, as determined by the Secretary, relating to the infrastructure construction or alteration of medical facilities, including such construction or alteration carried out pursuant to contracts or agreements, undergoes a program of ongoing professional training and development. Such program shall be designed to ensure that employees maintain adequate expertise relating to industry standards and best practices for the acquisition of design and construction services. The Secretary may provide the

program under this subsection directly or through a contract or agreement with a non-Federal entity or with a non-Department Federal entity.]

*(g)(1)(A) Not later than September 30 of the fiscal year following the fiscal year during which this subsection is enacted, the Secretary shall implement the covered training curriculum and the covered certification program.*

*(B) In designing and implementing the covered training curriculum and the covered certification program under paragraph (1), the Secretary shall use as models existing training curricula and certification programs that have been established under chapter 87 of title 10, United States Code, as determined relevant by the Secretary.*

*(2) The Secretary may develop the training curriculum under paragraph (1)(A) in a manner that provides such training in any combination of—*

*(A) training provided in person;*

*(B) training provided over an internet website; or*

*(C) training provided by another department or agency of the Federal Government.*

*(3) The Secretary may develop the certification program under paragraph (1)(A) in a manner that uses—*

*(A) one level of certification; or*

*(B) more than one level of certification, as determined appropriate by the Secretary with respect to the level of certification for different grades of the General Schedule.*

*(4) The Secretary may enter into a contract with an appropriate entity to provide the covered training curriculum and the covered certification program under paragraph (1)(A).*

*(5)(A) Not later than September 30 of the second fiscal year following the fiscal year during which this Act is enacted, the Secretary shall ensure that the majority of employees subject to the covered certification program achieve the certification or the appropriate level of certification pursuant to paragraph (3), as the case may be.*

*(B) After carrying out subparagraph (A), the Secretary shall ensure that each employee subject to the covered certification program achieves the certification or the appropriate level of certification pursuant to paragraph (3), as the case may be, as quickly as practicable.*

*(6) In this subsection:*

*(A) The term "covered certification program" means, with respect to employees of the Department of Veterans Affairs who are members of occupational series relating to construction or facilities management, or employees of the Department who award or administer contracts for major construction, minor construction, or nonrecurring maintenance, including as contract specialists or contracting officers' representatives, a program to certify knowledge and skills relating to construction or facilities management and to ensure that such employees maintain adequate expertise relating to industry standards and best practices for the acquisition of design and construction services.*

*(B) The term "covered training curriculum" means, with respect to employees specified in subparagraph (A), a training curriculum relating to construction or facilities management.*

**§ 8104. Congressional approval of certain medical facility acquisitions**

(a)(1) The purpose of this subsection is to enable Congress to ensure the equitable distribution of medical facilities throughout the United States, taking into consideration the comparative urgency of the need for the services to be provided in the case of each particular facility.

(2) No funds may be appropriated for any fiscal year, and the Secretary may not obligate or expend funds (other than for advance planning and design), for any major medical facility project or any major medical facility lease unless funds for that project or lease have been specifically authorized by law.

**[**(3) For the purpose of this subsection:

**[**(A) The term "major medical facility project" means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than $10,000,000, but such term does not include an acquisition by exchange.

**[**(B) The term "major medical facility lease" means a lease for space for use as a new medical facility at an average annual rental of more than $1,000,000.**]**

*(3) In this subsection:*

*(A)(i) The term "major medical facility project" means—*

*(I) a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than $20,000,000; or*

*(II) the construction, alteration, or acquisition of a shared medical facility (as defined in section 8111B(d) of this title) for which the estimated share of the Department of Veterans Affairs for the costs of such construction, alteration, or acquisition exceeds $20,000,000.*

*(ii) Such term does not include—*

*(I) an acquisition by exchange;*

*(II) nonrecurring maintenance projects of the Department; or*

*(III) the construction, alteration, or acquisition of a shared medical facility for which the estimated share of the Department of Veterans Affairs for the costs of such construction, alteration, or acquisition does not exceed $20,000,000.*

*(B) The term "major medical facility lease" means—*

*(i) a lease for space for use as a new medical facility at an average annual rent that is equal to or exceeds the amount specified in subsection (a)(2) of section 3307 of title 40; or*

*(ii) a lease for space for use as a shared medical facility (as defined in section 8111B(d) of this title) for which the estimated share of the Department of Veterans Affairs for the costs of such lease is equal to or exceeds the amount specified in subsection (a)(2) of section 3307 of title 40.*

(b) Whenever the President or the Secretary submit to the Congress a request for the funding of **[**a major medical facility project (as defined in subsection (a)(3)(A))**]** *a major medical facility project (as defined in subsection (a)(3)(A)), a medical facility project that would be a major medical facility project but for the total expendi-*

*ture (or, with respect to a shared medical facility, the estimated share of the Department of Veterans Affairs) being an amount that is more than $10,000,000 and less than $20,000,000,* or a major medical facility lease (as defined in subsection (a)(3)(B)), the Secretary shall submit to each committee, on the same day, a prospectus of the proposed medical facility. Any such prospectus shall include the following:

(1) A detailed estimate of the total costs of the medical facility to be constructed, altered, leased, or otherwise acquired under this subchapter, including a description of the location of such facility and, in the case of a prospectus proposing the construction of a new or replacement medical facility, a detailed report of the consideration that was given to acquiring an existing facility by lease or purchase and to the sharing of health-care resources with the Department of Defense under section 8111 of this title. Such detailed estimate shall include an identification of each of the following:

(A) Total construction costs.

(B) Activation costs.

(C) Special purpose alterations (lump-sum payment) costs.

(D) Number of personnel.

(E) Total costs of ancillary services, equipment, and all other items.

(2) Demographic data applicable to such facility, including information on projected changes in the population of veterans to be served by the facility over a five-year period, a ten-year period, and a twenty-year period.

(3) Current and projected workload and utilization data regarding the facility, including information on projected changes in workload and utilization over a five-year period, a ten-year period, and a twenty-year period.

(4) Projected operating costs of the facility, including both recurring and non-recurring costs (including and identifying both recurring and non-recurring costs (including activation costs and total costs of ancillary services, equipment and all other items)) over a five-year period, a ten-year period, and a twenty-year period.

(5) The priority score assigned to the project or lease under the Department's prioritization methodology and, if the project or lease is being proposed for funding before a project or lease with a higher score, a specific explanation of the factors other than the priority score that were considered and the basis on which the project or lease is proposed for funding ahead of projects or leases with higher priority scores.

(6) In the case of a prospectus proposing the construction of a new or replacement medical facility, each of the following:

(A) A detailed estimate of the total costs (including total construction costs, activation costs, special purpose alterations (lump-sum payment) costs, number of personnel and total costs of ancillary services, equipment and all other items) for each alternative to construction of the facility that was considered.

(B) A comparison of total costs to total benefits for each such alternative.

(C) An explanation of why the preferred alternative is the most effective means to achieve the stated project goals and the most cost-effective alternative.

(7) In the case of a prospectus proposing funding for a major medical facility lease, a detailed analysis of how the lease is expected to comply with Office of Management and Budget Circular A-11 and section 1341 of title 31 (commonly referred to as the "Anti-Deficiency Act"). Any such analysis shall include—

(A) an analysis of the classification of the lease as a "lease-purchase", "capital lease", or "operating lease" as those terms are defined in Office of Management and Budget Circular A-11;

(B) an analysis of the obligation of budgetary resources associated with the lease; and

(C) an analysis of the methodology used in determining the asset cost, fair market value, and cancellation costs of the lease.

(c)(1) Not less than 30 days before obligating funds for a major medical facility project approved by a law described in subsection (a)(2) of this section in an amount that would cause the total amount obligated for that project to exceed the amount specified in the law for that project (or would add to total obligations exceeding such specified amount) by more than 10 percent, the Secretary shall provide the committees with notice of the Secretary's intention to do so and the reasons for the specified amount being exceeded.

(2) The Secretary shall—

(A) enter into a contract or agreement with an appropriate non-department Federal entity with the ability to conduct forensic audits on medical facility projects for the conduct of an external forensic audit of the expenditures relating to any major medical facility or super construction project for which the total expenditures exceed the amount requested in the initial budget request for the project submitted to Congress under section 1105 of title 31 by more than 25 percent; and

(B) enter into a contract or agreement with an appropriate non-department Federal entity with the ability to conduct forensic audits on medical facility projects for the conduct of an external audit of the medical center construction project in Aurora, Colorado.

(d)(1) Except as provided in paragraph (2), in any case in which the Secretary proposes that funds be used for a purpose other than the purpose for which such funds were appropriated, the Secretary shall promptly notify each committee, in writing, of the particulars involved and the reasons why such funds were not used for the purpose for which appropriated.

(2)(A) In any fiscal year, unobligated amounts in the Construction, Major Projects account that are a direct result of bid savings from a major construction project may only be obligated for major construction projects authorized for that fiscal year or a previous fiscal year.

(B) Whenever the Secretary obligates amounts for a major construction project under subparagraph (A), the Secretary shall submit to the Committee on Veterans' Affairs and the Committee on Appropriations of the Senate and the Committee on Veterans' Af-

fairs and the Committee on Appropriations of the House of Representatives notice of the following:

(i) The major construction project that is the source of the bid savings.

(ii) If the major construction project that is the source of the bid savings is not complete—

(I) the amount already obligated by the Department or available in the project reserve for such project;

(II) the percentage of such project that has been completed; and

(III) the amount available to the Department to complete such project.

(iii) The other major construction project for which the bid savings amounts are being obligated.

(iv) The bid savings amounts being obligated for such other major construction project.

(C) The Secretary may not obligate an amount under subparagraph (A) to expand the purpose of a major construction project except pursuant to a provision of law enacted after the date on which the Secretary submits to the committees described in subparagraph (B) notice of the following:

(i) The major construction project that is the source of the bid savings.

(ii) The major construction project for which the Secretary intends to expand the purpose.

(iii) A description of such expansion of purpose.

(iv) The amounts the Secretary intends to obligate to expand the purpose.

(e) The Secretary may accept gifts or donations for any of the purposes of this subchapter.

(f) The Secretary may not obligate funds in an amount in excess of $500,000 from the Advance Planning Fund of the Department toward design or development of a major medical facility project (as defined in subsection (a)(3)(A)) until—

(1) the Secretary submits to the committees a report on the proposed obligation; and

(2) a period of 30 days has passed after the date on which the report is received by the committees.

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

(h)(1) Not less than 30 days before entering into a major medical facility lease, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives—

(A) notice of the Secretary's intention to enter into the lease;

(B) a detailed summary of the proposed lease;

(C) a description and analysis of any differences between the prospectus submitted pursuant to subsection (b) and the proposed lease; and

(D) a scoring analysis demonstrating that the proposed lease fully complies with Office of Management and Budget Circular A-11.

(2) Each committee described in paragraph (1) shall ensure that any information submitted to the committee under such paragraph is treated by the committee with the same level of confidentiality

as is required by law of the Secretary and subject to the same statutory penalties for unauthorized disclosure or use as the Secretary.

(3) Not more than 30 days after entering into a major medical facility lease, the Secretary shall submit to each committee described in paragraph (1) a report on any material differences between the lease that was entered into and the proposed lease described under such paragraph, including how the lease that was entered into changes the previously submitted scoring analysis described in subparagraph (D) of such paragraph.

* * * * * * *

***§ 8111B. Authority to plan, design, construct or lease a medical facility shared with other departments or agencies***

*(a) AUTHORITY.—Subject to sections 8103 and 8104 of this title, the Secretary of Veterans Affairs may enter into agreements with the heads of other departments or agencies of the Federal Government for the planning, designing, constructing, or leasing of medical facilities to be shared by the Department of Veterans Affairs and that department or agency to improve the access to, and quality and cost effectiveness of, the health care provided by the Veterans Health Administration and that department or agency.*

*(b) TRANSFERS OF AMOUNTS FROM DEPARTMENT OF VETERANS AFFAIRS.—(1) With respect to a shared medical facility construction project for which the estimated costs to the Department of Veterans Affairs do not exceed the amount specified in section 8104(a)(3)(A) of this title, the Secretary of Veterans Affairs may transfer to the partner agency amounts appropriated in the Construction, Minor Projects account of the Department for use for the planning, design, or construction of the shared medical facility.*

*(2) With respect to a shared medical facility construction project for which the estimated costs to the Department of Veterans Affairs exceed the amount specified in section 8104(a)(3)(A) of this title, the Secretary of Veterans Affairs may transfer to the partner agency amounts appropriated in the Construction, Major Projects account of the Department for use for the planning, design, or construction of the shared medical facility.*

*(3) With respect to a shared medical facility lease project for which the estimated costs of the lease to the Department of Veterans Affairs do not exceed the amount specified in section 8104(a)(3)(B) of this title, the Secretary of Veterans Affairs may transfer to the partner agency amounts appropriated in the applicable medical appropriation account of the Department for such lease.*

*(c) TRANSFERS OF AMOUNTS TO DEPARTMENT OF VETERANS AFFAIRS.—(1) With respect to a shared medical facility construction project for which the estimated costs to the Department of Veterans Affairs do not exceed the amount specified in section 8104(a)(3)(A) of this title, any amounts transferred by the partner agency to the Secretary of Veterans Affairs may be deposited in the Construction, Minor Projects account of the Department for use for the planning, design, or construction of the shared medical facility. Amounts so deposited shall be merged with and available for the same purposes, and for the same period, as such account.*

*(2) With respect to a shared medical facility construction project for which the estimated costs to the Department of Veterans Affairs*

*exceed the amount specified in section 8104(a)(3)(A) of this title, any amounts transferred by the partner agency to the Secretary of Veterans Affairs may be deposited in the Construction, Major Projects account of the Department for use for the planning, design, or construction of the shared medical facility. Amounts so deposited shall be merged with and available for the same purposes, and for the same period, as such account.*

*(3) With respect to a shared medical facility lease project, any amounts transferred by the partner agency to the Secretary of Veterans Affairs may be deposited in the applicable medical appropriation account of the Department for such lease. Amounts so deposited shall be available without fiscal year limitation.*

*(d) DEFINITIONS.—In this section:*

*(1) The term "partner agency" means a department or agency of the Federal Government that has entered into an agreement with the Secretary of Veterans Affairs under subsection (a).*

*(2) The term "shared medical facility" means a medical facility shared by the Department of Veterans Affairs and a partner agency pursuant to an agreement entered into under subsection (a).*

*(3) The term "shared medical facility construction project" means the planning, designing, or constructing of a shared medical facility pursuant to an agreement entered into under subsection (a).*

*(4) The term "shared medical facility lease project" means the leasing of a shared medical facility pursuant to an agreement entered into under subsection (a).*

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SUBCHAPTER V—ENHANCED-USE LEASES OF REAL PROPERTY

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**§ 8162. Enhanced-use leases**

(a)(1) The Secretary may in accordance with this subchapter enter into leases with respect to real property that is under the jurisdiction or control of the Secretary. Any such lease under this subchapter may be referred to as an "enhanced-use lease". The Secretary may dispose of any such property that is leased to another party under this subchapter in accordance with section 8164 of this title. The Secretary may exercise the authority provided by this subchapter notwithstanding section 8122 of this title, subchapter II of chapter 5 of title 40, sections 541-555 and 1302 of title 40, or any other provision of law (other than Federal laws relating to environmental and historic preservation) inconsistent with this section. The applicability of this subchapter to section 421(b) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 553) is covered by subsection (c).

(2) The Secretary may enter into an enhanced-use lease **[**only**]** for the provision of supportive housing*, or if the lease will enhance the use of the property,* and if the lease is not inconsistent with and will not adversely affect the mission of the Department.

(3) The provisions of sections 3141-3144, 3146, and 3147 of title 40 shall not, by reason of this section, become inapplicable to property that is leased to another party under an enhanced-use lease.

(4) A property that is leased to another party under an enhanced-use lease may not be considered to be unutilized or underutilized for purposes of section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

(b)(1) If the Secretary has determined that a property should be leased to another party through an enhanced-use lease, the Secretary shall, at the Secretary's discretion, select the party with whom the lease will be entered into using such selection procedures as the Secretary considers appropriate.

(2) The term of an enhanced-use lease may not exceed 75 years.

(3)(A) For any enhanced-use lease entered into by the Secretary, the lease consideration provided to the Secretary shall consist solely of cash at fair value as determined by the Secretary.

(B) The Secretary shall receive no other type of consideration for an enhanced-use lease besides cash.

(C) The Secretary may enter into an enhanced-use lease without receiving consideration.

(D) The Secretary may not waive or postpone the obligation of a lessee to pay any consideration under an enhanced-use lease, including monthly rent.

(4) The terms of an enhanced-use lease may provide for the Secretary to use minor construction funds for capital contribution payments.

(5) The terms of an enhanced-use lease may not provide for any acquisition, contract, demonstration, exchange, grant, incentive, procurement, sale, other transaction authority, service agreement, use agreement, lease, or lease-back by the Secretary or Federal Government.

(6) The Secretary may not enter into an enhanced-use lease without certification in advance in writing by the Director of the Office of Management and Budget that such lease complies with the requirements of this subchapter.

(c) The entering into an enhanced-use lease covering any land or improvement described in section 421(b)(2) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 553) or section 224(a) of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2008, other than an enhanced-use lease under the Los Angeles Homeless Veterans Leasing Act of 2016, shall be considered to be prohibited by such sections unless specifically authorized by law.

(d)(1) Nothing in this subchapter authorizes the Secretary to enter into an enhanced-use lease that provides for, is contingent upon, or otherwise authorizes the Federal Government to guarantee a loan made by a third party to a lessee for purposes of the enhanced-use lease.

(2) Nothing in this subchapter shall be construed to abrogate or constitute a waiver of the sovereign immunity of the United States with respect to any loan, financing, or other financial agreement entered into by the lessee and a third party relating to an enhanced-use lease.

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## VETERANS ACCESS, CHOICE, AND ACCOUNTABILITY ACT OF 2014

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# TITLE VII—OTHER VETERANS MATTERS

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**SEC. 705. LIMITATION ON AWARDS AND BONUSES PAID TO EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS.**

(a) LIMITATION.—The Secretary of Veterans Affairs shall ensure that the aggregate amount of awards and bonuses paid by the Secretary in a fiscal year under chapter 45 or 53 of title 5, United States Code, or any other awards or bonuses authorized under such title or title 38, United States Code, *other than recruitment, relocation, or retention incentives,* does not exceed the following amounts:

(1) With respect to each of fiscal years 2017 through 2018, $230,000,000.

(2) With respect to each of fiscal years 2019 through 2021, $225,000,000.

(3) With respect to each of fiscal years 2022 through 2024, $360,000,000.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the limitation under subsection (a) should not disproportionately impact lower-wage employees and that the Department of Veterans Affairs is encouraged to use bonuses to incentivize high-performing employees in areas in which retention is challenging.

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## DISSENTING VIEWS

We have serious concerns about H.R. 4243, the VA Asset and Infrastructure Review (AIR) Act outlined below in three parts. Title I of this bill seeks to dramatically alter how and where the Department of Veterans. Affairs (VA) delivers health care to veterans before fully understanding not only how a new consolidated community care program will function but who would be eligible to use it (Part 1). Moreover, the process laid out in Title I for how the Commission is selected and operates in addition to the erosion of Congressional authority causes major consternation (Part 2). Furthermore, Section 302(a) in Title III, which provides an additional $2.1 billion in emergency funding for the Veterans Choice Program (VCP)—a program that was established as temporary measure to deal with an access to care crisis—suggests the Majority is happy to continue kicking the proverbial can down the road (Part 3). Taken together, the contents of Title I and III, without corresponding legislation moving out of Committee to address the future of community care, one might view the Committee's activities as a pathway towards the privatization of veterans' care—facilities around the country would potentially be closed while Congress continues to haphazardly fund a flawed short-term program, the Veterans Choice Program.

### PART I

While the Commission on Care recommended a Base Realignment and Closure (BRAC)-like review was needed for VA, declaring it would, "offer a level of rigor far beyond what currently exists for repurposing and selling capital assets",[1] we are not convinced such a model is entirely appropriate in the case of VA. That being said, the Minority is not opposed to the concept of realigning VA's capital assets to right-size the agency. To the contrary. We believe that process is long overdue.

We are, however, unequivocally opposed to the BRAC-like process elements of the Commission on Care outlined in what became known as the "Strawman Document." In March 2016, seven Commissioners (Blom, Cosgrove, Hickey, Johnson, Selnick, Steele and Webster) produced a document which was meant to serve as a basis for discussions. The document stated:

> . . . VA facilities that are under-utilized will be dispensed with. No new facility construction or major renovations will occur. A BRAC-like process will begin to close

[1] Commission on Care, page 60, June 30, 2016, "Commission on Care Final Report," https://s3.amazonaws.com/sitesusa/wp-content/uploads/sites/912/2016/07/Commission-on-Care_Final-Report_063016_FOR-WEB.pdf.

> the other facilities. Over time, the VA will become primarily a payor . . .[2]

For more than a decade the Committee has heard from The Independent Budget veterans service organizations (IBVSOs)—comprised of The Veterans of Foreign Wars (VFW), Disabled American Veterans (DAV) and Paralyzed Veterans of America (PVA)—that VA has not been provided the resources it needs to meet veteran demand for services. In its FY 2018 budget book, the IBVSOs stated:

> In 2004, VA's facilities were utilized at about 80 percent of their planned capacity. Today they are utilized at 109 percent of capacity, even though based on the actual conditions of the facilities they should be operating at just under 80 percent. Over the past few years, the VA budget request and the Congress's VA construction appropriation has fallen far short of the actual need . . . A VA budget that does not adequately fund facility maintenance and construction will continue to negatively impact the quality and timeliness of veterans' health care.[3]

The IBVSO's long held sentiment was echoed and even underscored in the Independent Assessment, a congressionally mandated report to review 12 areas of VA's health care delivery systems and management processes following the access to care crisis in 2014. Authors noted, "The capital requirement for VHA to maintain facilities and meet projected growth needs over the next decade is two to three times higher than anticipated funding levels, and the gap between capital need and resources could continue to widen."[4]

While the Committee understands the need for VA to realign its facilities, the Committee believes that this realignment will likely, and should likely, result in the need for additional construction and leasing endeavors. In its FY 2018 budget submission, VA data illustrated every VISN across the country has greater demand for outpatient care than capacity to provide it.[5] Providing increased access to care in the community will not be the answer in all instances. HCA also explained in testimony to the Subcommittee on Health that a lack of facility space for use by providers significantly affected VA provider's ability to meet national standards of productivity.[6] The Committee agrees that any realignment of VA's assets and infrastructure should be based on sound data and the expected demand of veterans on VA-based services. However, ab-

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[2] Commission on Care, March 18, 2016, "Strawman Document," http://s3.amazonaws.com/sitesusa/wp-content/uploads/sites/912/2016/03/2016.3.18-Proposed-Strawman-Assessment-and-Recommendation.pdf.

[3] The Independent Budget, FY 2018: Critical Issues, pg. 26, http://www.independentbudget.org/2018/FY18_ci.pdf.

[4] CMS Alliance to Modernize Healthcare Federally Funded Research and Development Center, September 1, 2015, "Independent Assessment of the Health Care Delivery Systems and Management Processes of the Department of Veterans Affairs," pg K-1, https://www.va.gov/opa/choiceact/documents/assessments/Integrated_Report.pdf.

[5] VA FY 2018 Budget Submission—Vol. 4, Pg. 8.3–3 https://www.va.gov/budget/docs/summary/fy2018VAbudgetVolumeIVconstructionLongRangeCapitalPlanAndAppendix.pdf.

[6] United States Cong. House Committee on Veterans' Affairs, Subcommittee on Health Oversight Hearing—"Clinical Productivity and Efficiency in the Department of Veterans' Affairs Healthcare System." July 13, 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (statement from Jonathan B. Perlin, President of the Clinical Services Group and Chief Medical Officer at HCA Heatlhcare, Inc.).

sent a permanent VA health care program, the future demand on VA's services is impossible to assess.

As written, H.R. 4243 currently presents a static, one-off event. If VA is to be successful in delivering health care in the 21st century, a process that in and of itself is rapidly changing due to advances in medicine, to an evolving veteran population, the Department needs a dynamic process to both assess and address its future capital asset needs. In its 2015 review of veteran demographics as a part of the Independent Assessment, the RAND Corporation noted while the overall veteran population would decrease by 19 percent over the next 10 years, it did envision a substantial geographical shift in where veterans reside.[7] In addition, in its FY 2018 budget submission, VA highlighted the fact female veterans are the fastest growing cohort, expected to grow from 8% in 2016 to 10% by 2026,[8] and how it is also expecting a bubble of aging veterans requiring long-term care and services over the coming decades (the number of 85-year-old enrollees will almost double over the next 20 years).[9]

While a commission could help to make some initial recommendations about realigning capital assets within VA's system, how are future decisions meant to be made under this legislation? A one-time event serves only as a brief snapshot in time and might take upwards of a decade to complete all of the recommendations. By that point, due to the factors outlined above, the recommendations made could be obsolete. It is our belief, H.R. 4243 would be greatly enhanced if it had included language that would establish a quadrennial veterans review, modeled after the Defense Department's long-term planning document that was established in 1997, as a means of better projecting the needs of veterans programs in the future. Such a review would not only look at capital infrastructure needs, but identify gaps in internal capacity within VA and how to address them in the immediate and long-term, such as offering veterans access to care in the community and reforming the overly burdensome hiring process.

The Majority contends the AIR Commission process would be "data-driven". Unfortunately, VA's track record on data integrity and reliability is poor. For years, this Committee has struggled with this issue as have the other stakeholders that review the Agency such as the Office of Inspector General and GAO. In fact, in its October 12, 2017, written testimony to the Committee, GAO recommended we include the audit community in the process early on to promote confidence in data accuracy noting "DoD Inspector General and military department audit agencies played key roles in identifying data limitations, pointing out the need corrections, and improving the accuracy of the data used in the process," adding, "In their oversight roles, the audit organizations, which had access to relevant information and officials as the process evolved, helped to improve the accuracy of the data used in the BRAC proc-

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[7] CMS Alliance to Modernize Healthcare Federally Funded Research and Development Center, September 1, 2015, "Independent Assessment of the Health Care Delivery Systems and Management Processes of the Department of Veterans Affairs," https://www.va.gov/opa/choiceact/documents/assessments/Integrated_Report.pdf.

[8] VA FY 2018 Budget Submission—Vol. 2, pg. VHA 373 https://www.va.gov/budget/docs/summary/fy2018VAbudgetVolumeIImedicalProgramsAndInformationTechnology.pdf.

[9] Ibid.

ess and thus strengthened the quality and integrity of the data used to develop closure and realignment recommendations."[10] Once again, a critical issue that is not addressed in H.R. 4243.

Furthermore, attempting to determine VA's future capital asset need and/or footprint without fully appreciating the extent of the new community care network of providers is futile. During the full committee markup of H.R. 4243, on November 8, 2017, Mr. Takano reflected the thoughts of other Minority Members on the Committee when he remarked:

> I am afraid we are putting the cart before the horse by moving this legislation forward today. This committee is still grappling with a successor for the Choice program, as I highlighted in my earlier remarks. A new plan that streamlines the eligibility and pathways for veterans to get their care in the community will have a significant effect on the VA's capacity needs. Considering how to realign VA's facilities before we have the program up and running, let alone agreed to in Congress, seems like a recipe for disaster. I believe we need to complete our work on the community care legislation before we consider how best to realign the VA's facilities and infrastructure.[11]

In addition, given H.R. 4243 is proposing to use a static process, any changes that occur to our Nation's broader health care system, as that debate regarding the future of the Affordable Care Act (ACA) has yet has to reach a conclusion, could have a serious impact on where millions of veterans seek their care. VA could see an influx of new enrollees around the country as benefits under the ACA are repealed. For many non-elderly veterans, VA would become their safety net. In a 2017 report, the RAND Corporation found:

> By increasing non-VA health insurance coverage for VA patients, the ACA likely reduced demand for VA care; the authors estimate that, if the gains in insurance coverage that occurred between 2013 and 2015 had not occurred, nonelderly veterans would have used about 1 percent more VA health care in 2015: 125,000 more office visits, 1,500 more inpatient surgeries, and 375,000 more prescriptions. Recent congressional proposals to repeal and replace the ACA would increase the number of uninsured nonelderly veterans and further increase demand for VA health care.[12]

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[10] United States Cong. House Committee on Veterans' Affairs Oversight Hearing—"Realignment May Benefit from Adopting Elements of Defense Base Realignment and Closure Process, Provided Process Challenges are Addressed" October 12, 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (statement from David J. Wise, Director of Physical Infrastructure Issues, Government Accountability Office).

[11] United States Cong. House Committee on Veterans' Affairs Markup- "H.R. 4243, the VA Asset and Infrastructure Review (AIR) Act" November 8, 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (comments by The Honorable Mark Takano, Representative from California's 41st District, U.S. House of Representatives).

[12] Dworsky, Michael, Carrie M. Farmer and Mimi Shen. Veterans' Health Insurance Coverage Under the Affordable Care Act and Implications of Repeal for the Department of Veterans Affairs. Santa Monica, CA: RAND Corporation, 2017. https://www.rand.org/pubs/research_reports/RR1955.html. Also available in print form.

We are concerned VA does not have appropriate staffing or expertise to carry out both the initial data collection requirements or ensure recommendations that are approved are ultimately implemented. Moreover, given the frequent changes in key leadership positions within VA Central Office (VACO) or the fact many of these positions are frequently held by interim or acting figures, ensuring individuals are in place who are capable of driving the work forward may be a barrier to success. This legislation does nothing to address this issue. In its written testimony to the Committee on October 12, 2017, GAO highlighted not only the importance of establishing an organizational structure within the agency but the need to ensure there is continual senior leadership attention.[13] It also recognizes the need for an oversight mechanism to improve accountability for implementation.[14] GAO suggests DoD's eventual inclusion of these items improved not only the process but the overall outcomes.[15]

Finally, it is important to note that closing facilities through a BRAC will not yield immediate results. In fact, in his testimony before the Committee on October 12, 2017, Mr. Lepore, the director of Defense Capabilities and Management at GAO, indicated DoD has still not reached the payback period on the 2005 BRAC—it cost $35.1 billion to implement those recommendations.[16] Only next year will they start to achieve savings. Congress must not begin this endeavor under the false notion that billions of dollars will be saved. In fact, given a number of the points raised above, the process of rightsizing the Agency could end up costing taxpayers tens of billions of dollars in order to fulfil the promise this nation made to its veterans.

PART II

We remain gravely concerned H.R. 4243 unnecessarily cedes Congress' oversight powers, power to authorize and appropriate funds, and the power to decide future VA health care infrastructure needs to the Executive Branch. As Ranking Member Walz stated during markup:

> [T]his bill gives immense power and authority to the President, and it affects every single one of our districts. And I gotta [sic] be honest with you, I don't trust any President to know what is best for my district. I do trust you to know what is best for your district.[17]

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[13] United States Cong. House Committee on Veterans' Affairs Oversight Hearing- "Realignment May Benefit from Adopting Elements of Defense Base Realignment and Closure Process, Provided Process Challenges are Addressed" October 12, 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (statement from David J. Wise, Director of Physical Infrastructure Issues, Government Accountability Office).

[14] Ibid.

[15] Ibid.

[16] United States Cong. House Committee on Veterans' Affairs Oversight Hearing—"Realignment May Benefit from Adopting Elements of Defense Base Realignment and Closure Process, Provided Process Challenges Are Addressed." October 12, 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (statement by Brian J. Lepore Director of Defense Capabilities and Management, Government Accountability Office).

[17] United States Cong. House Committee on Veterans' Affairs Markup—"HR 4243, the VA Asset and Infrastructure Review (AIR) Act" November 8, 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (comments by The Honorable Timothy J. Walz, Representative from Minnesota's 1st District, U.S. House of Representatives).

Specifically, this legislation would grant the President significant and outsized power to: appoint all commissioners to the Asset and Infrastructure Review Commission; authorize VA to make recommendations for the closure or realignment of VHA medical facilities and permit VA to develop the criteria for making those recommendations; authorize the President-appointed Commission to make recommendations to the President regarding the closure or realignment ofVHA medical facilities; prohibit Congress from disapproving the President and Commission's recommendations to close or realign VHA medical facilities without a veto-proof majority in both chambers, and authorize the automatic obligation and expenditure of funds for the construction or lease of a major medical facility based on the Commission's recommendations.

The legislation authorizes the President to appoint 9 commissioners to serve on the Commission, but only specifies qualification requirements for 6 of 9 commissioners, and zero qualification requirements for the Chair and Vice Chair of the Commission. The qualification requirements provide for representation from 3 congressionally-chartered veterans service organizations, but do not require the other 6 commissioners to be veterans. One commissioner must have experience delivering private-sector health care, one commissioner must have senior management experience in a Federally-qualified health center or in the Department of Defense or Indian Health Service, and one commissioner must have experience with Federal Government capital asset management. Without qualification requirements for all commissioners, it allows the President to potentially appoint commissioners with no qualifications, expertise, or knowledge of the specific health care needs of veterans, and commissioners who lack the experience and perspective of being veterans and patients receiving health care at VA medical facilities. Unlike Members of Congress who must represent and answer to their constituents, these potentially unqualified commissioners would be given tremendous power to make decisions regarding the future delivery of veterans' health care with little oversight or accountability over their decisions.

The ability to develop criteria and make recommendations for the closing or realignment of VA medical facilities in every district and state in the U.S. and its Territories would no longer lie with Congress, but would be vested solely within the Executive Branch under H.R. 4243. The legislation would allow VA, not Congress, to determine the criteria for making recommendations regarding VA's health care infrastructure. Although VA would be required to receive public comments on its proposed criteria for 90 days, it would still have the final authority to determine criteria despite objections from veterans and stakeholders. Nine months following publication of its final criteria, VA would make recommendations for the closure or realignment of VA medical facilities and provide these recommendations to the Commission to decide the fate of VA medical facilities throughout the country. During the 1-year period in which the Commission would hold hearings and make decisions on the closure or realignment of VA medical facilities, the Commission would be given the power to withhold information from Congress it used to make recommendations for the closure or realignment of of facilities. The Commission would only be required to provide this

information after reporting its findings to the President, thereby limiting Congress' oversight and subpoena power and its ability to understand the information used to inform the decisions made by the Commission. Within 3 years of the Commission and President's decision, VA medical facilities would begin to close, and representatives would have no access to the information that informed and influenced the Commission's decision to close medical facilities until after a decision had been made.

Congress and the states and districts negatively affected by the President and Commission's recommendations would have virtually no power to prevent the closing or realignment of facilities in those states and districts. Congress would have only 45 days from the date in which the President approved the Commission's recommendations to pass a joint resolution of disapproval to prevent the President's decision to close or realign VA medical facilities. Although a majority of members in both chambers would be required to pass the joint resolution of disapproval, the President would likely veto the resolution, requiring a two-thirds majority in both chambers to override the President's veto. The short timeframe in which to pass a joint resolution of disapproval and the veto-proof majority needed to override a President's decision to close and realign VA medical facilities would all but guarantee the closure and realignment of VA medical facilities throughout the country without Congress' approval. As described by Representative Takano during markup:

> By the time Congress weighs in, the commission has finalized its recommendations and they have been approved by the President. If Congress disagrees, we send a joint resolution of disapproval back to the President, who by this time has already approved the proposal. Then all the President needs to do is veto the joint resolution. We would effectively need a veto proof two thirds majority of Congress to have a check on the commission and the President. On such an important matter that impacts the health of veterans across the country, I am uncomfortable ceding this committee's and this Congress' oversight.[18]

Finally, Congress would be stripped of its power to specifically authorize the obligation and expenditure of funds for major medical facility projects or leases. Any recommendations made by the President and Commission for the funding or lease of a major medical facility would automatically be treated as authorized by Congress, removing its ability to determine whether funds should be authorized.

PART III

Title III of H.R. 4243 would authorize and appropriate an additional $2.1 billion to continue funding of the current Veterans Choice Program (VCP) through FY2018. Without a plan to consider H.R. 4242, the bipartisan VA Care in the Community Act that

[18] United States Cong. House Committee on Veterans' Affairs Markup—"H.R. 4243, the VA Asset and Infrastructure Review (AIR) Act" November 8, 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (comments by The Honorable Mark Takano, Representative from California's 41st District, U.S. House of Representatives).

would reform the issues with the current VCP or consolidate VA's community care programs in the near future, we are concerned that Congress will continue to authorize more funding for a flawed program that was intended to be a temporary measure to address the VHA's access crisis. In July 2017, we authorized an additional $2.1 billion for the VCP as a stop-gap measure to ensure veterans were able to-receive care under the program, and to give the House and Senate Veterans' Affairs Committees an opportunity to write legislation that would reform and consolidate VA's community care authorities under one program.[19] H.R. 4242 was the bipartisan solution to achieving this effort. It was noticed for markup with H.R. 4343 with an understanding that both bills would be marked up and reported favorably out of committee for consideration by the House of Representatives as a package. However, due to concerns over the Congressional Budget Office's estimated cost of almost $40 billion over 5 years for H.R. 4242, HVAC majority withdrew the measure from consideration the night before markup. The majority decided to move forward with markup of H.R. 4243, instead of withdrawing H.R. 4243 from consideration and postponing the markup until a solution could be reached to address the cost of H.R. 4242. These concerns over the failure to consider H.R. 4242 and H.R. 4243 in tandem and the lack of a clear path for consideration ofH.R. 4242 were expressed by Ranking Member Walz during markup:

> You know there is a sequence. You know that it requires strategic thinking. And you know the minute the leverage leaves and this ship sails, it is going to be much harder to do [H.R.] 4242. They were predicated on staying together and moving together. So, once it leaves, now we are going to have to come back.[20]

The need for reform of the flawed Veterans Choice Program is acknowledged by most Members of Congress who have heard from constituents frustrated by the program's administration, and who have participated in oversight hearings on the implementation of the program. VA Inspector General ("VA OIG") and Government Accountability Office (GAO) reviews supported the experience of constituents: Veterans have not necessarily experienced improved access or lower appointment wait times through the program[21] and providers remain frustrated with either the VA or the third party administrator's failure to promptly pay for care provided to veterans.[22]

According to testimony provided by VA Inspector General Missal in an HVAC Hearing "Shaping The Future: Consolidating And Im-

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[19] VA Choice and Quality Employment Act of 2017, Pub. L. No. 115–46.

[20] United States Cong. House Committee on Veterans' Affairs Markup—"H.R. 4243, the VA Asset and Infrastructure Review (AIR) Act" November 8, 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (comments by The Honorable Timothy J. Walz, Representative from Minnesota's 1st District, U.S. House of Representatives).

[21] VA Office of Inspector General, Report: 15–04673–333, "Review of the Implementation of the VCP," January 30, 2017, http://www.va.gov/oig/pubs/VAOIG-15-04673-333.pdf; Government Accountability Office, Report; GAO–17–397T, "Veterans' Health Care: Preliminary Observations on Veterans' Access to Choice Program Care," March 7, 2017, https://www.gao.gov/assets/690/683205.pdf.

[22] Government Accountability Office, Report: GA0–16–353, "Veterans' Health Care: Proper Plan Needed to Modernize System for Paying Community Providers," May 2016, https://www.gao.gov/assets/680/677051.pdf.

proving VA Community Care" in March 2017, the OIG Hotline received over 700 contacts about the VCP from October 1, 2015 through January 31, 2017.[23] Missal testified that the complaints fell into 4 categories: "48% had concerns about appointments and scheduling; 35% had concerns about referrals, authorizations, or consults; 12% had concerns about veteran and provider payments; [and] 5% had concerns about program eligibility or program enrollment."[24] Missal also testified that in its Audit of Veteran Wait Time Data, Choice Access, and Consult Management in Veterans Integrated Service Network 6 (VISN 6) "veterans who were authorized Choice care in VISN 6 did not consistently receive the authorized health care within 30 days as required by Health Net's contract with VA" and out of a "statistical sample of 389 Choice authorizations provided to Health Net by VISN 6 medical facility staff during the first quarter of fiscal year (FY) 2016 . . . [it is] estimated that for the approximately 34,200 veterans who were authorized Choice care in VISN 6, approximately 22,500 veterans who received Choice care waited an average of 84 days to get their care through Health Net . . . [and] it took VA medical facility staff an average of 42 days to provide the authorization to Health Net to begin the Choice process and 42 days for Health Net to provide the service."[25] VA OIG also "identified delays related to authorizations for primary care, mental health care, and specialty care."[26] In VA OIG's Review of the Implementation of the VCP, from November 1, 2014 through September 30, 2015 it found:

- "Approximately 149,400 (53 percent) were for veterans who were able to receive care; on average, these veterans waited 45 days for treatment from the date they chose to opt into Choice."
- "Approximately 6,000 (13 percent) were returned to VHA without the veterans receiving care. On average, authorizations were returned to VHA approximately 48 days after the veteran decided to opt into Choice. About half of the returned authorizations were sent back because Choice was unable to schedule the appointment with an appropriate provider or the appointment offered to the veteran was declined. The other half of returned authorizations were sent back because they were missing VA data, veterans requested specific providers outside the network, VHA requested that the authorizations be returned, or the veterans did not show up for their appointments."
- "Approximately 98,200 (35 percent) were still waiting for TPAs to schedule appointments as of September 30, 2015. On average, for authorizations that had not been scheduled, veterans were waiting 72 days to receive an appointment from the TPA."[27]

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[23] Michael J. Missal, Inspector General Department Of Veterans Affairs, Statement Before The Committee On Veterans' Affairs United States House Of Representatives Hearing On "Shaping The Future: Consolidating And Improving Va Community Care" March 7, 2017.
[24] Ibid.
[25] Ibid.
[26] Ibid.
[27] VA Office of lnspector General, Report: 15–04673–333, "Veterans Health Care: Preliminary Observations on Veterans' Access to Choice Program January 30, 2017, https://www.va.gov/oig/pubs/VAOIG-15-04673-333.pdf.

Additionally, according to a GAO preliminary analysis of wait times in 2016, "selected veterans experienced lengthy overall wait times for Choice Program care in 2016," and veterans could wait up to 81 days for an appointment under the VCP.[28]

Since the implementation of the Veterans Choice Program (VCP), VA has furnished over 15 million appointments to 1.7 million unique veterans.[29] While this program got off to a slow start, utilization of it has continued to grow. Contract modifications and changes in the law have all helped to make the program function better. Between March and May 2017, VA issued nearly 800,000 authorizations for VCP, which represented a 32% increase over the same time-period in 2016.[30] The argument can be made that the steady increase in appointments being sent to the community through Choice illustrate VA is not appropriately resourced to meet veteran demand. The continued near-flat line request for the Medical Services account will continue the trend of VA being unable to provide the needed services and forcing veterans into the community for care.

Without a plan or path identified to consider H.R. 4242, without legislation and funding to address VHA's access challenges by hiring providers to fill over 45,000 vacancies or address VHA's resource gaps, and with consideration of H.R. 4243 being rushed by the majority for consideration in the House of Representatives next week, H.R. 4243 could be interpreted as another large step towards the privatization of VA health care. Without the implementation of H.R. 4242's reforms and the consolidation of VA's disparate community care authorities into one program to inform VA's asset and infrastructure reviews, H.R. 4243 on its own is nothing more than the authorization of a Base Realignment and Closure (BRAC)-style commission to close and realign VA medical facilities and the appropriation of an additional $2.1 billion for private-sector health care via the flawed Veterans Choice Program.

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[28] Government Accountability Office, Report: GA0–17–397T, "Veterans' Health Care: Preliminary Observations on Veterans' Access to Choice Program Care," March 7, 2017, https://www.gao.gov/assets/690/683205.pdf.

[29] United States Cong. House Committee on Veterans' Affairs, Subcommittee on Health Hearing—"Health Programs Budget Request for Fiscal Year 2018" June 22, 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (Statement by Poonam Alaigh, Acting Under Secretary for Health, Veterans Health Administration, US Department of Veterans Affairs).

[30] Ibid.