

TO AMEND TITLE 38, UNITED STATES CODE, TO IMPROVE THE TREATMENT OF MEDICAL EVIDENCE PROVIDED BY NON-DEPARTMENT OF VETERANS AFFAIRS MEDICAL PROFESSIONALS IN SUPPORT OF CLAIMS FOR DISABILITY COMPENSATION UNDER THE LAWS ADMINISTERED BY THE SECRETARY OF VETERANS AFFAIRS, AND FOR OTHER PURPOSES

MAY 19, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 1725]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 1725) to amend title 38, United States Code, to improve the treatment of medical evidence provided by non-Department of Veterans Affairs medical professionals in support of claims for disability compensation under the laws administered by the Secretary of Veterans Affairs, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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AMENDMENT

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. REPORT ON PROGRESS OF DEPARTMENT OF VETERANS AFFAIRS ACCEPTABLE CLINICAL EVIDENCE INITIATIVE.

(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the progress of the Acceptable Clinical Evidence initiative of the Department of Veterans Affairs in reducing the necessity for in-person disability examinations and other efforts to comply with the provisions of section 5125 of title 38, United States Code.

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

(1) The number of claims eligible for the Acceptable Clinical Evidence initiative during the period beginning on the date of the commencement of the initiative and ending on the date of the submittal of the report, disaggregated by fiscal year.

(2) The total number of claims eligible for the Acceptable Clinical Evidence initiative that required a medical examiner of the Department to supplement the evidence with information obtained during a telephone interview with a claimant.

(3) Information on any other initiatives or efforts of the Department to further encourage the use of private medical evidence and reliance upon reports of a medical examination administered by a private physician if the report is sufficiently complete to be adequate for the purposes of adjudicating a claim.

(4) The anticipated impact on the timeline and accuracy of a decision on a claim for benefits under chapter 11 or 15 of title 38, United States Code, if the Secretary were prohibited from requesting a medical examination in the case of a claim in support of which a claimant submits medical evidence and a medical opinion provided by a private physician that is competent, credible, probative, and otherwise adequate for the purpose of making a decision on that claim.

(5) Recommendations on how the Department can measure, track, and prevent the ordering of unnecessary medical examinations when the provision by a claimant of a medical examination administered by a private physician in support of a claim for benefits under chapter 11 or 15 of title 38, United States Code, is adequate for the purpose of making a decision on that claim.

SEC. 2. ANNUAL REPORT ON SUBMITTAL OF PRIVATE MEDICAL EVIDENCE IN SUPPORT OF CLAIMS FOR DEPARTMENT OF VETERANS AFFAIRS BENEFITS.

Not later than March 1 of fiscal years 2018 through 2024, the Secretary of Veterans Affairs shall submit to Congress a report that includes, for the calendar year preceding the year in which the report is submitted, the following for each regional office of the Department of Veterans Affairs:

(1) The number of times a veteran who submitted private medical evidence in support of a claim for compensation or pension under the laws administered by the Secretary was scheduled for an examination performed by Department personnel because the private medical evidence submitted was determined to be unacceptable.

(2) The most common reasons why private medical evidence submitted in support of claims for benefits under the laws administered by the Secretary was determined to be unacceptable.

(3) The types of disabilities for which claims for benefits under the laws administered by the Secretary were mostly commonly denied when private medical evidence was submitted.

Amend the title so as to read:

A bill to direct the Secretary of Veterans Affairs to submit certain reports relating to medical evidence submitted in support of claims for benefits under the laws administered by the Secretary.

PURPOSE AND SUMMARY

H.R. 1725, as amended, the “Quicker Veterans Benefits Delivery Act of 2017,” was introduced by Representative Timothy J. Walz, Ranking Member of Committee on Veterans’ Affairs, on March 24, 2017. The purpose of H.R. 1725, as amended, is to help VA reduce the number of unnecessary and duplicative disability examinations. H.R. 1725, as amended, would require VA to submit to submit: (1) a report to Congress on the progress of the VA’s Acceptable Clinical Evidence initiative in reducing the necessity for in-person disability examinations within 180 days of enactment; and, (2) an annual report to Congress regarding claims for which VA determined the private medical evidence was unacceptable, with such information containing in the report to be disaggregated by regional office.

BACKGROUND AND NEED FOR LEGISLATION

VA may afford medical examinations to veterans seeking disability benefits, but there may be a long wait time before VA can schedule such examinations. In such cases, the veteran may wish to submit private medical evidence in support of their claim for disability benefits. There may also be cases in which the veteran simply prefers to submit private medical evidence in support of his or her claim, regardless of the timeliness of scheduling an examination with a VA medical professional.

Section 1525 of title 38, U.S.C., currently authorizes VA to accept a report of medical examination administered by a private physician, if such report is sufficiently complete and is adequate for the purpose of adjudicating the veteran’s claim for disability benefits. However, the law does not require VA to accept such a report.

In 2013, VA developed the Acceptable Clinical Evidence Initiative (ACE), which gives VA the option to review a veteran’s existing medical records and determine if additional medical information is necessary to adjudicate a disability claim. The purpose of ACE is to expedite the disability ratings process by eliminating the wait time to schedule and conduct an in-person examination. If the Department determines that the veteran’s existing medical records contain sufficient evidence to decide the claim, VA may decide such claim without ordering a new disability examination.

During the April 5, 2017, Subcommittee on Disability Assistance and Memorial Affairs hearing, The American Legion testified that it had documented many instances of VA scheduling unnecessary and duplicative examinations with a VA physician, even though the veteran had already submitted sufficient medical evidence from a private physician to decide the claim. These duplicative examinations add unnecessary delays to the disability claims process. Moreover, reducing the number of disability examinations conducted by VA physicians would allow such medical professionals to devote more resources to providing care for our nation’s veterans and improve the timeliness for those VA compensation examinations conducted by VA physicians.

H.R. 1725, as amended, seeks to reduce the number of unnecessary disability examinations by requiring additional information be provided to Congress regarding VA’s use of private medical evidence in support of claims for disability compensation.

HEARINGS

On April 5, 2017, the Subcommittee on Disability Assistance and Memorial Affairs conducted a legislative hearing on various bills introduced during the 115th Congress, including H.R. 1725.

The following witnesses testified:

The Honorable Mike Bost, U.S. House of Representatives; The Honorable Julia Brownley, U.S. House of Representatives; The Honorable Jim Banks, U.S. House of Representatives; The Honorable Jack Bergman, U.S. House of Representatives; The Honorable David G. Valadao, U.S. House of Representatives; Ms. Beth Murphy, Director, Compensation Service, Veterans Benefits Administration, U. S. Department of Veterans Affairs, *accompanied by* Dr. Ralph L. Erickson, Chief Consultant for Post Deployment Health Service, Veterans Health Administration, U. S. Department of Veterans Affairs; Ms. Patricia Watts, Director, Legislative and Regulatory Service, National Cemetery Administration, U. S. Department of Veterans Affairs; Mr. Zachary Hearn, Deputy Director, Veterans Affairs and Rehabilitation Division, The American Legion; Mr. Rick Weidman, Executive Director, Policy and Government Affairs, Vietnam Veterans of America; Mr. Patrick Murray, Associate Director, National Legislative Service, Veterans of Foreign Wars; Mr. LeRoy Acosta, Assistant National Legislative Director, Disabled American Veterans; and, Mr. John B. Wells, Executive Director, Military-Veterans Advocacy, Inc.

Statements for the record were submitted by:

The Honorable Timothy J. Walz, U.S. House of Representatives and the Paralyzed Veterans of America

SUBCOMMITTEE CONSIDERATION

On April 27, 2017, the Subcommittee on Disability Assistance and Memorial Affairs met in open markup session, a quorum being present, and favorably forwarded to the full Committee H.R. 1725, as amended. During consideration of H.R. 1725, the following amendment in the nature of a substitute was considered and adopted by voice vote:

An amendment in the nature of a substitute offered by Ms. Esty of Connecticut that retained provisions that would require VA submit: (1) a report to Committees on Veterans' Affairs of the House of Representatives and the Senate on the progress on the Acceptable Clinic Evidence Initiative; and, (2) annual reports to Congress on the treatment of private medical evidence provided by non-VA medical professionals in support of claims for disability compensation. The amendment in the nature of a substitute removed the provisions that would have mandated VA accept reports of private physician examinations, if such reports were sufficiently complete for the purpose of adjudicating a claim for veterans benefits.

COMMITTEE CONSIDERATION

On May 17, 2017, the Full Committee met in an open markup session, a quorum being present, and ordered H.R. 1725, as amend-

ed, reported favorably to the House of Representatives by voice vote. During consideration of the bill, the following amendment to the Subcommittee Print of H.R. 1725, was considered and agreed to by voice vote:

An amendment offered by Mr. Walz of Minnesota that specified that the requirement that VA issue annual reports to Congress on the treatment of private medical evidence provided by non-VA medical professions in support of claims for disability compensation be submitted for fiscal years 2018 through 2024.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report the legislation and amendments thereto. There were no recorded votes taken on amendments or in connection with ordering H.R. 1725, as amended, reported to the House. A motion by Ranking Member Timothy Walz of Minnesota to report H.R. 1725, as amended, favorably to the House of Representatives was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

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

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the objectives for this legislation are to provide Congress information on the use of private medical evidence in support of claims for veterans disability benefits.

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. 1725, 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. 1725, 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. 1725, as amended, provided by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 17, 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. 1725, a bill to direct the Secretary of Veterans Affairs to submit certain reports relating to medical evidence submitted in support of claims for benefits under the laws administered by the Secretary.

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

Sincerely,

KEITH HALL.

Enclosure.

H.R. 1725—A bill to direct the Secretary of Veterans Affairs to submit certain reports relating to medical evidence submitted in support of claims for benefits under the laws administered by the Secretary

H.R. 1725 would require the Department of Veterans Affairs (VA) to submit several reports to the Congress regarding the use of private medical evidence in lieu of a VA-provided examination for purposes of establishing eligibility for disability compensation or pension. CBO estimates that implementing H.R. 1725 would cost less than \$500,000 to prepare those reports over the 2018–2022 period; such spending would be subject to the availability of appropriated funds.

Section 1 would require VA to submit a report detailing the progress of the Acceptable Clinical Evidence initiative—a VA initiative created to allow the department to accept private medical evidence to support an eligible individual's claim for disability compensation or pension—and recommendations on how VA can best use private medical evidence in its claims process. That report would be due within 180 days of enactment of the bill.

Section 2 would require annual reports on disability examinations requested each year by VA because the private medical evidence submitted was deemed unacceptable by the department. Those reports would document the number of cases where private evidence was found to be unacceptable, the most common reasons why such evidence was unacceptable, and the most common disabilities for which private medical evidence was deemed unacceptable.

Enacting H.R. 1725 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 1725 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1725 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Dwayne M. Wright. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 1725, 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. 1725, as amended.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Article I, section 8 of the United States Constitution, H.R. 1725, 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. 1725, 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 clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 1725, 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. 1725, as amended, contains no directed rule making that would require the Secretary to prescribe regulations.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1—Report on progress of Department of Veterans Affairs Acceptable Clinical Evidence initiative

Section 1 would require VA to, not later than 180 days after the date of enactment: submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate a report on the progress of VA's Acceptable Clinical Evidence initiative in reducing the necessity for in-person disability examinations. Such report must include: (1) the number of claims eligible for the Acceptable Clinical Evidence initiative; (2) the number of claims eligible for the Acceptable Clinical Evidence initiative that required a VA medical examiner to supplement the evidence with information obtained during a telephone interview with the claimant; (3) information on VA's other efforts to encourage the use of private medical evidence; (4) the anticipated impact on processing claims for veterans benefits if VA were prohibited from requesting a medical examination when a claimant submits medical evidence and a medical opinion provided by a private physician that is adequate for the purpose of making a decision on the claim; and, (5) recommendations on how VA can measure, track, and prevent the ordering of unnecessary medical examinations.

Section 2—Annual report on submittal of private medical evidence in support of claims for Department of Veterans Affairs benefits

Section 2 would require VA to, not later than March 1 of each year for seven years after the date of enactment, submit to Congress a report that includes for the preceding calendar year, the following information disaggregated by each regional office: (1) the number of times a veteran who submitted private medical evidence in support of a claim for compensation or pension was scheduled for an examination conducted by a VA medical provider because the private medical evidence submitted was determined to be unacceptable, (2) the most common reasons why private medical evidence submitted in support of claims for veterans benefits was determined to be unacceptable, and (3) the types of disabilities for which claims for veterans benefits were most commonly denied when private medical evidence was submitted.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

If enacted, this bill would make no changes in existing law.

