

TO AMEND TITLE 38, UNITED STATES CODE, TO IMPROVE THE PROVISION OF ADULT DAY HEALTH CARE SERVICES FOR VETERANS

MAY 23, 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. 1005]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 1005) to amend title 38, United States Code, to improve the provision of adult day health care services for veterans, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for Legislation	2
Hearings	3
Subcommittee Consideration	3
Committee Consideration	3
Committee Votes	4
Committee Oversight Findings	4
Statement of General Performance Goals and Objectives	4
New Budget Authority, Entitlement Authority, and Tax Expenditures	4
Earmarks and Tax and Tariff Benefits	4
Committee Cost Estimate	4
Congressional Budget Office Estimate	4
Federal Mandates Statement	5
Advisory Committee Statement	5
Constitutional Authority Statement	6
Applicability to Legislative Branch	6
Statement on Duplication of Federal Programs	6
Disclosure of Directed Rulemaking	6
Section-by-Section Analysis of the Legislation	6
Changes in Existing Law Made by the Bill as Reported	7

PURPOSE AND SUMMARY

H.R. 1005 was introduced by Representative Lee Zeldin of New York on February 13, 2017.

H.R. 1005 would direct the Department of Veterans Affairs (VA) to enter into an agreement or a contract with state veterans homes (SVHs) to pay for adult day health care (ADHC) for a veteran eligible for, but not receiving, nursing home care.

BACKGROUND AND NEED FOR LEGISLATION

Section 1. Provision of adult day health care services for veterans

In 2017, approximately 9.8 million veterans—or, 46 percent of the total veteran population—will be 65 years of age or older.¹ Congress has long recognized the need to ensure appropriate and affordable geriatric and long-term care is available to aging veterans through the VA healthcare system. Accordingly, the Veterans Benefits, Health Care, and Information Technology Act of 2006 (P.L. 109–416, 120 Stat. 3403) required VA to cover the cost of nursing home care in a SVH for any veteran in need of such care due to a service-connected disability or with a service-connected disability rated 70 percent or more. However, there is an increasing demand for VA to offer geriatric and long-term care programs for veterans in non-institutional settings that would allow aging veterans to receive the services and support they need to remain in their homes.

ADHC programs—a popular alternative to nursing home care—provide veterans in need of supportive services with companionship, peer support, recreation, and certain health care services.² According to the Disabled American Veterans—a proponent of increasing access to ADHC programs for veterans—ADHC programs are, designed to promote socialization [and] stimulation, and to maximize independence while enhancing quality of life as well as providing comprehensive medical, nursing, and personal care services for veterans.³ ADHC programs also provide valuable respite opportunities for caregivers. Despite these benefits, veterans currently face barriers accessing ADHC programs due to cost, meaning some veterans who would prefer ADHC choose instead to receive VA-paid nursing home care.⁴ In testimony before the Subcommittee on Health on March 29, 2017, the National Association of State Veterans Homes claimed that, there are a number of State Homes across the country interested in providing medical model ADHC services; however the current basic ADHC per diem [paid to the SVH by VA] is not nearly sufficient for most State Homes to be cover the costs of this program.⁵ As a result, only three SVHs out of 153 SVHs nationwide provide ADHC programs. Those SVHs that

¹United States Cong. House Committee on Veterans Affairs. *U.S. Department of Veterans Affairs Budget Request for Fiscal Year 2017*. February 10, 2016. 114th Cong. 2nd sess. Washington: GPO, 2016 (statement The Honorable Robert A. McDonald, Secretary, U.S. Department of Veterans Affairs)

²*U.S. Department of Veterans Affairs*. Geriatrics and Extended Care, Adult Day Health Care, https://www.va.gov/geriatrics/guide/longtermcare/Adult_Day_Health_Care.asp. Accessed May 11, 2017.

³United States Cong. House. Committee on Veterans Affairs Subcommittee on Health. *Legislative Hearing*. March 29, 2017. 115th Cong. 1st sess. Washington: GPO, 2016 (statement from Shurhonda Y. Love, Assistant National Legislative Director, Disabled American Veterans)

⁴United States Cong. House Committee on Veterans Affairs Subcommittee on Health. *Legislative Hearing*. March 29, 2017. 115th Cong. 1st sess. Washington: GPO, 2016 (statement for the record from the National Association of State Veterans Homes)

⁵*Ibid.*

provide ADHC programs are located in Stony Brook, New York; Minneapolis, Minnesota; and, Hilo, Hawaii. The Committee is supportive of increasing access to ADHC for veterans and recognizes that such access could allow veterans who would otherwise qualify for more costly VA-paid nursing home care the ability to stay at home longer.

Section 1 of the bill would require VA to enter into an agreement or a contract with SVHs to pay for ADHC for a veteran eligible for, but not receiving, nursing home care and stipulates that payment under each agreement or contract must equal 65 percent of the payment that VA would otherwise pay to the SVH if the veteran were receiving nursing home care.

HEARINGS

There were no full Committee hearings held on H.R. 1005.

On March 29, 2017, the Subcommittee on Health conducted a legislative hearing on a number of bills including H.R. 1005.

The following witnesses testified:

The Honorable David. P. Roe M.D. of Tennessee; The Honorable Jackie Walorski of Indiana; The Honorable Doug Collins of Georgia; The Honorable Mike Coffman of Colorado; The Honorable Stephen Knight of California; The Honorable Ann M. Kuster of New Hampshire; Jennifer S. Lee, M.D., the Deputy Under Secretary for Health for Policy and Services for the Veterans Health Administration of the U.S. Department of Veterans Affairs who was accompanied by Susan Blauert, the Chief Counsel for the Health Care Law Group of the Office of the General Counsel for the U.S. Department of Veterans Affairs; Kayda Keleher, Legislative Associate for the National Legislative Service of the Veterans of Foreign Wars of the United States; Shurhonda Y. Love, the Assistant National Legislative Director for the Disabled American Veterans; and, Sarah S. Dean, the Associate Legislative Director for the Paralyzed Veterans of America.

Statements for the record were submitted by:

The Honorable Lee Zeldin of New York; the American Legion; the National Association of State Veteran Homes; Swords to Plowshares; and, the Wounded Warrior Project.

SUBCOMMITTEE CONSIDERATION

On April 6, 2017, the Subcommittee on Health met in an open markup session, a quorum being present, and ordered H.R. 1005 to be reported favorably to the full Committee by voice vote.

COMMITTEE CONSIDERATION

On May 17, 2017, the full Committee met in open markup session, a quorum being present, and ordered H.R. 1005 to be reported favorably to the House of Representatives by voice vote. A motion by Representative Tim Walz of Minnesota, Ranking Member of the Committee on Veterans Affairs, to report H.R. 1005 favorably to the House of Representatives was agreed to by voice vote.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, there were no recorded votes taken on amendments or in connection with ordering H.R. 1005 reported to the House.

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 Committees 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 Committees performance goals and objectives are to increase the provision of ADHC programs through SVHs.

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. 1005 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. 1005 prepared by 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. 1005 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, May 22, 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. 1005, a bill to amend title

38, United States Code, to improve the provision of adult day health care services for veterans.

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

Sincerely,

KEITH HALL.

Enclosure.

H.R. 1005—A bill to amend title 38, United States Code, to improve the provision of adult day health care services for veterans

H.R. 1005 would require the Department of Veterans Affairs (VA) to enter into provider agreements or contracts with State Veterans Homes (SVHs) to provide adult day health care (ADHC) to veterans with severe service-connected disabilities (SCD) at rates above VA's current per-diem rates; per-diem rates cover not more than half of the cost of the care. SVHs are facilities operated by state governments that offer nursing home care, domiciliary care, or ADHC primarily to veterans and receive some of their funding from the federal government. Under the bill, VA would pay for ADHC at a higher rate equal to 65 percent of the prevailing rate for nursing home care in that region.

Under current law, VA is required to comply with the Federal Acquisition Regulation (FAR) for agreements and contracts with SVHs. The FAR is an extensive and complex set of rules governing the federal government's purchasing processes. VA has been unable to secure agreements or contracts with any SVH because of the contractual requirements under the FAR (mostly related to reporting, compensation, and fringe benefits). As a result, VA would face challenges in entering into agreements or contracts under the bill and CBO expects that VA would continue to pay the SVHs at the current per-diem rate. Therefore, CBO estimates that implementing the bill would have no budgetary effects.

Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 1005 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1005 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 Ann E. Futrell. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 1005 prepared by 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. 1005.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, H.R. 1005 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. 1005 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 of 1995.

STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee finds that no provision of H.R. 1005 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee estimates that H.R. 1005 contains no directed rulemaking that would require the Secretary to prescribe regulations.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Provision of adult day health care services for veterans

Section 1(a) of the bill would amend section 1745 of title 38 U.S.C. by adding at the end a new subsection (d) that would:

(1) require the Secretary of Veterans Affairs to enter into an agreement under section 1720(c)(1) of this title or a contract with each State home for payment for adult day health care provided to a veteran who is eligible for but not receiving nursing home care;

(2) stipulate that payment under each agreement or contract between the Secretary of Veterans Affairs and a State home is required to be made at a rate equal to 65 percent of the payment that the Secretary would pay pursuant to subsection (a)(2) if a veteran received nursing home care under subsection (a) rather than under paragraph (1) of this subsection; and,

(3) stipulate that payment by the Secretary of Veterans Affairs under paragraph (1) to a State home for adult day health care provided to a veteran described in that paragraph constitutes payment in full to the State home for such care furnished to that veteran. Section 1(a) of the bill would amend section 1745 of title 38 U.S.C. by adding at the end a new subsection (d) that would:

Section 1(a) of the bill would also amend section 1745 of title 38 U.S.C. in the heading by inserting, adult day health care, after home care.

Section 1(b) of the bill would amend the table of sections at the beginning of chapter 17 of title 38 U.S.C. by striking the item relating to section 1745 and inserting the following new item: 1745.

Nursing home care, adult day health care, and medications for veterans with service-connected disabilities.”.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

TITLE 38, UNITED STATES CODE

* * * * *

PART II—GENERAL BENEFITS

* * * * *

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

SUBCHAPTER I—GENERAL

Sec.

1701. Definitions.

* * * * *

SUBCHAPTER V—PAYMENTS TO STATE HOMES

* * * * *

[1745. Nursing home care and medications for veterans with service-connected disabilities.]

1745. Nursing home care, adult day health care, and medications for veterans with service-connected disabilities.

* * * * *

SUBCHAPTER V—PAYMENTS TO STATE HOMES

* * * * *

§ 1745. Nursing home care, adult day health care, and medications for veterans with service-connected disabilities

(a)(1) The Secretary shall enter into a contract (or agreement under section 1720(c)(1) of this title) with each State home for payment by the Secretary for nursing home care provided in the home, in any case in which such care is provided to any veteran as follows:

- (A) Any veteran in need of such care for a service-connected disability.
- (B) Any veteran who—

- (i) has a service-connected disability rated at 70 percent or more; and
- (ii) is in need of such care.

(2) Payment under each contract (or agreement) between the Secretary and a State home under paragraph (1) shall be based on a methodology, developed by the Secretary in consultation with the State home, to adequately reimburse the State home for the care provided by the State home under the contract (or agreement).

(3) Payment by the Secretary under paragraph (1) to a State home for nursing home care provided to a veteran described in that paragraph constitutes payment in full to the State home for such care furnished to that veteran.

(b) The Secretary shall furnish such drugs and medicines as may be ordered on prescription of a duly licensed physician as specific therapy in the treatment of illness or injury to any veteran as follows:

- (1) Any veteran who—
 - (A) is not being provided nursing home care for which payment is payable under subsection (a); and
 - (B) is in need of such drugs and medicines for a service-connected disability.
- (2) Any veteran who—
 - (A) has a service-connected disability rated at 50 percent or more;
 - (B) is not being provided nursing home care for which payment is payable under subsection (a); and
 - (C) is in need of such drugs and medicines.

(c) Any State home that requests payment or reimbursement for services provided to a veteran under this section shall provide to the Secretary such information as the Secretary considers necessary to identify each individual veteran eligible for payment under such section.

(d)(1) The Secretary shall enter into an agreement under section 1720(c)(1) of this title or a contract with each State home for payment by the Secretary for adult day health care provided to a veteran who is eligible for, but does not receive, nursing home care pursuant to subsection (a).

(2) Payment under each agreement or contract between the Secretary and a State home under paragraph (1) for each veteran who receives care under such paragraph shall be made at a rate that is equal to 65 percent of the payment that the Secretary would pay to the State home pursuant to subsection (a)(2) if the veteran received nursing home care under subsection (a) rather than under paragraph (1) of this subsection.

(3) Payment by the Secretary under paragraph (1) to a State home for adult day health care provided to a veteran described in that paragraph constitutes payment in full to the State home for such care furnished to that veteran.

* * * * *