

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 1259) TO AMEND TITLE 38, UNITED STATES CODE, TO PROVIDE FOR THE REMOVAL OR DEMOTION OF EMPLOYEES OF THE DEPARTMENT OF VETERANS AFFAIRS BASED ON PERFORMANCE OR MISCONDUCT, AND FOR OTHER PURPOSES; PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 1367) TO IMPROVE THE AUTHORITY OF THE SECRETARY OF VETERANS AFFAIRS TO HIRE AND RETAIN PHYSICIANS AND OTHER EMPLOYEES OF THE DEPARTMENT OF VETERANS AFFAIRS, AND FOR OTHER PURPOSES; AND PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 1181) TO AMEND TITLE 38, UNITED STATES CODE, TO CLARIFY THE CONDITIONS UNDER WHICH CERTAIN PERSONS MAY BE TREATED AS ADJUDICATED MENTALLY INCOMPETENT FOR CERTAIN PURPOSES

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MARCH 15, 2017.—Referred to the House Calendar and ordered to be printed

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Mr. BUCK, from the Committee on Rules,  
submitted the following

## R E P O R T

[To accompany H. Res. 198]

The Committee on Rules, having had under consideration House Resolution 198, by a record vote of 8 to 3, report the same to the House with the recommendation that the resolution be adopted.

### SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 1259, the VA Accountability First Act of 2017, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Veterans' Affairs. The resolution waives all points of order against consideration of the bill. The resolution makes in order as original text for the purpose of amendment an amendment in the nature of a substitute consisting of the text of Rules Committee Print 115-7 and provides that it shall be considered as read. The resolution waives all points of order against that amendment in the nature of a substitute. The resolution makes in order only those further amendments printed in part A of this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not

be subject to a demand for division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments printed in part A of this report. The rule provides one motion to recommit with or without instructions.

Section 2 of the resolution provides for consideration of H.R. 1367, to improve the authority of the Secretary of Veterans Affairs to hire and retain physicians and other employees of the Department of Veterans Affairs, and for other purposes, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Veterans' Affairs. The resolution waives all points of order against consideration of the bill. The resolution makes in order as original text for the purpose of amendment an amendment in the nature of a substitute consisting of the text of Rules Committee Print 115-6 and provides that it shall be considered as read. The resolution waives all points of order against that amendment in the nature of a substitute. The resolution makes in order only those amendments printed in part B of this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments printed in part B of this report. The resolution provides one motion to recommit with or without instructions.

Section 3 of the resolution provides for consideration of H.R. 1181, the Veterans 2nd Amendment Protection Act, under a closed rule. The resolution provides one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Veterans' Affairs. The resolution waives all points of order against consideration of the bill. The resolution provides that the bill shall be considered as read. The resolution waives all points of order against provisions in the bill. The resolution provides for one motion to recommit.

#### EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of H.R. 1259, includes a waiver of clause 3(d)(1) of rule XIII, which requires the inclusion of a committee cost estimate. It is important to note that while a Congressional Budget Office (CBO) cost estimate on H.R. 1259 was not available at the time the Committee on the Veterans' Affairs filed its report, a CBO cost estimate has since been made publicly available.

Although the resolution waives all points of order against the amendment in the nature of a substitute to H.R. 1259 made in order as original text, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendments to H.R. 1259 in part A of this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

The waiver of all points of order against consideration of H.R. 1367, includes a waiver of clause 3(d)(1) of rule XIII, which requires the inclusion of a committee cost estimate. It is important to note that while a Congressional Budget Office (CBO) cost estimate on H.R. 1367 was not available at the time the Committee on the Veterans' Affairs filed its report, a CBO cost estimate has since been made publicly available.

Although the resolution waives all points of order against the amendment in the nature of a substitute to H.R. 1367 made in order as original text, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendments to H.R. 1367 in part B of this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against consideration of H.R. 1181, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against provisions in H.R. 1181, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

#### COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

#### *Rules Committee record vote No. 34*

Motion by Mr. Cole to report the rule. Adopted: 8–3

Majority Members	Vote	Minority Members	Vote
Mr. Cole .....	Yea	Ms. Slaughter .....	.....
Mr. Woodall .....	Yea	Mr. McGovern .....	Nay
Mr. Burgess .....	Yea	Mr. Hastings of Florida .....	Nay
Mr. Collins .....	Yea	Mr. Polis .....	Nay
Mr. Byrne .....	Yea		
Mr. Newhouse .....	.....		
Mr. Buck .....	Yea		
Ms. Cheney .....	Yea		
Mr. Sessions, Chairman .....	Yea		

#### SUMMARY OF THE AMENDMENTS TO H.R. 1259 IN PART A MADE IN ORDER

1. Roe (TN): MANAGER'S Inserts "to or" after the word "paid" on page 20, line 15. (10 minutes)

2. Walz (MN): Grants the VA Secretary improved authorities to hold VA senior executives and employees accountable, protects employees' constitutionally guaranteed due process rights, and protects employees' collective bargaining rights under federal law. (10 minutes)

3. Hanabusa, Colleen (HI): Allows the Secretary to reduce a demoted individual's pay grade by a minimum of a step, depending on the severity of the misconduct. (10 minutes)

4. Kuster, Ann (NH): Includes as prohibited personnel practices as described in the whistleblower protection subsection of section 3 with those defined in 38 USC 733(c). (10 minutes)

5. Duffy (WI): Directs the Secretary of Veteran Affairs to, at a minimum, suspend an individual who has been charged with the sexual assault of a patient at a Department of Veteran Affairs medical facility. (10 minutes)

6. Taylor (VA): Requires the Veterans Administration to provide a semi-annual report to the House and Senate Committees on Veterans Affairs outlining all instances of Senior Executives who are detailed to a new position within the agency. The report will contain details on the purpose of the reassignment as well as the costs associated with the reassignment. (10 minutes)

7. Tenney (NY): Requires that bonuses awarded to senior-level executives within the Department of Veterans Affairs be reported to Congress on an annual basis. (10 minutes)

8. Kuster, Ann (NH): Requires VA supervisors to develop performance plans for employees, to include steps taken to address poor performance. It would also improve training for supervisors. (10 minutes)

9. Takano (CA): SUBSTITUTE Provides for the suspension and removal of VA employees for performance or misconduct that is a threat to public health and safety in place of the proposed removal process. (10 minutes)

SUMMARY OF THE AMENDMENTS TO H.R. 1367 IN PART B MADE IN  
ORDER

1. Wenstrup (OH): MANAGER'S Extends the timeline to implement the fellowship program from 90 days to one year and extends the GAO reporting deadline from one to two years. Additionally, it removes the requirement to track a number of hiring effectiveness metrics, changes the establishment of a recruiting database from a "shall" to "may" authority, and stipulates that HR training be accomplished virtually. (10 minutes)

2. Meng (NY): Makes clear that the Inspector General of the VA must report, pursuant to 38 U.S.C. 7412, on at minimum five clinical and five nonclinical VA occupations that have the largest staffing shortages, which then triggers special hiring authorities for the Secretary to address such shortages. (10 minutes)

3. Sewell (AL): Allows the Secretary to select eligible employees for the Executive Management Fellowship Program who represent or service rural areas, to whatever extent practicable. (10 minutes)

4. Hanabusa, Colleen (HI): Strikes section 6, "Reemployment of Former Employees," which would allow for the Secretary to appoint former employees at one grade higher than when they last separated, without having to go through the usual competitive application process. (10 minutes)

5. Buck (CO): Prevents former political appointees at the VA from receiving non-political, competitively selected positions at the VA without having to go through the proper selection process. (10 minutes)

6. Shea-Porter (NH): Requires the Secretary of the Department of Veterans Affairs to list open mental health positions in the database established under the bill. (10 minutes)

7. Brownley (CA): Clarifies that "medical facility" referenced in Sec. 10 includes each medical center, domiciliary facility, outpatient clinic, community-based outpatient clinic, and vet center. (10 minutes)

8. Welch (VT): Adds an analysis of succession planning and hiring in rural areas, and requires a study on the ability to hire and recruit veterans in rural areas. (10 minutes)

9. Gottheimer (NJ): Adds veterans who are recent graduates and/or recipients of Post-9/11 GI Bill Educational Assistance as a distinct category of individuals who are allowed for excepted service appointments. (10 minutes)

10. Herrera Beutler (WA): Strengthens anonymity protections for employees filling out exit surveys, and requires exit survey data to be compiled at the VISN level to identify and acknowledge regional differences. (10 minutes)

11. Hanabusa, Colleen (HI): Requires the total number of employees that voluntarily separated and the percentage of those employees that took the voluntary exit survey. (10 minutes)

12. Meng (NY): Encourages the transition of military medical professionals into employment with the Veterans Health Administration upon discharge or separation from the Armed Forces. (10 minutes)

13. Bost (IL): Directs the Department of Veterans Affairs to develop and implement a plan to hire a director for each VA medical center without a permanent director. (10 minutes)

14. O'Rourke (TX): Allows the VA to offer physicians conditional job offers two years prior to the completion of their residency program. Requires VA recruiters or similar official to visit each teaching institution with a residency program at least once annually. (10 minutes)

PART A—TEXT OF AMENDMENTS TO H.R. 1259 MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ROE OF TENNESSEE OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 20, line 15, insert **“to or”** after **“paid”**.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WALZ OF MINNESOTA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike section 3 and insert the following new section 3:

**SEC. 3. IMPROVED AUTHORITIES OF SECRETARY OF VETERANS AFFAIRS TO IMPROVE ACCOUNTABILITY OF SENIOR EXECUTIVES.**

(a) ACCOUNTABILITY OF SENIOR EXECUTIVES.—

(1) IN GENERAL.—Section 713 of title 38, United States Code, is amended to read as follows:

**“§ 713. Accountability of senior executives**

“(a) AUTHORITY.—(1) The Secretary may, as provided in this section, reprimand or suspend, involuntarily reassign, demote, or remove a covered individual from a senior executive position at the Department if the Secretary determines that the misconduct or performance of the covered individual warrants such action.

“(2) If the Secretary so removes such an individual, the Secretary may remove the individual from the civil service (as defined in section 2101 of title 5).

“(b) RIGHTS AND PROCEDURES.—(1) A covered individual who is the subject of an action under subsection (a) is entitled to—

“(A) be represented by an attorney or other representative of the covered individual’s choice;

“(B) not fewer than 10 business days advance written notice of the charges and evidence supporting the action and an opportunity to respond, in a manner prescribed by the Secretary, before a decision is made regarding the action; and

“(C) grieve the action in accordance with an internal grievance process that the Secretary, in consultation with the Assistant Secretary for Accountability and Whistleblower Protection, shall establish for purposes of this subsection.

“(2)(A) The Secretary shall ensure that the grievance process established under paragraph (1)(C) takes fewer than 21 days.

“(B) The Secretary shall ensure that, under the process established pursuant to paragraph (1)(C), grievances are reviewed only by employees of the Department.

“(3) A decision or grievance decision under paragraph (1)(C) shall be final and conclusive.

“(4) A covered individual adversely affected by a final decision under paragraph (1)(C) may obtain judicial review of the decision.

“(5) In any case in which judicial review is sought under paragraph (4), the court shall review the record and may set aside any Department action found to be—

“(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with a provision of law;

“(B) obtained without procedures required by a provision of law having been followed; or

“(C) unsupported by substantial evidence.

“(c) RELATION TO OTHER PROVISIONS OF LAW.—(1) The authority provided by subsection (a) is in addition to the authority provided by section 3592 or subchapter V of chapter 75 of title 5.

“(2) Section 3592(b)(1) of title 5 and the procedures under section 7543(b) of such title do not apply to an action under subsection (a).

“(d) DEFINITIONS.—In this section:

“(1) The term ‘covered individual’ means—

“(A) a career appointee (as that term is defined in section 3132(a)(4) of title 5); or

“(B) any individual who occupies an administrative or executive position and who was appointed under section 7306(a) or section 7401(1) of this title.

“(2) The term ‘misconduct’ includes neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

“(3) The term ‘senior executive position’ means—

“(A) with respect to a career appointee (as that term is defined in section 3132(a) of title 5), a Senior Executive Service position (as such term is defined in such section); and

“(B) with respect to a covered individual appointed under section 7306(a) or section 7401(1) of this title, an administrative or executive position.”

(2) CONFORMING AMENDMENT.—Section 7461(c)(1) of such title is amended by inserting “employees in senior executive positions (as defined in section 713(d) of this title) and” before “interns”.

(b) PERFORMANCE MANAGEMENT.—

(1) IN GENERAL.—The Secretary of Veterans Affairs shall establish a performance management system for employees in senior executive positions, as defined in section 713(d) of title 38, United States Code, as amended by subsection (a), that ensures performance ratings and awards given to such employees—

(A) meaningfully differentiate extraordinary from satisfactory contributions; and

(B) substantively reflect organizational achievements over which the employee has responsibility and control.

(2) REGULATIONS.—The Secretary shall prescribe regulations to carry out paragraph (1).

Strike section 9 and insert the following new section 9:

**SEC. 9. REMOVAL OF EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS BASED ON PERFORMANCE OR MISCONDUCT.**

(a) IN GENERAL.—Subchapter I of chapter 7 of title 38, United States Code, is further amended by inserting after section 713 the following new section:

**“§ 714. Employees: removal based on performance or misconduct**

“(a) IN GENERAL.—(1) The Secretary may remove a covered individual who is an employee of the Department if the Secretary determines that—

“(A) the performance or misconduct of the covered individual warrants such removal; and

“(B) in the case of removal for performance, a portion of such performance occurred during the two-year period ending on the date of the determination.

“(2) If the Secretary removes a covered individual under paragraph (1), the Secretary may remove the covered individual from the civil service (as defined in section 2101 of title 5).

“(3) Nothing in this section may be construed to authorize a finalized performance appraisal of an employee to be retroactively amended.

“(b) NOTICE TO CONGRESS.—Not later than 30 days after removing a covered individual under subsection (a), the Secretary shall submit to the Committees on Veterans’ Affairs of the Senate and House of Representatives notice in writing of such removal and the reason for such removal.

“(c) PROCEDURE.—(1) An employee removed under subsection (a) is entitled, before removal, to—

“(A) at least 10 business days written notice (which, in the case of removal for performance, shall identify specific instances as described in clause (i) of section 4303(b)(1)(A) of title 5 and critical elements as described in clause (ii) of such section), unless there is reasonable cause to believe that the employee committed a crime for which a sentence of imprisonment can be imposed—

“(i) stating the specific reasons for the proposed action; and

“(ii) including a file containing all evidence in support of the proposed action;

“(B) 10 business days to answer the charges orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

“(C) be represented by an attorney or other representative;

“(D) a review of the case by the Secretary before a decision adverse to the employee is made final;

“(E) as soon as practicable, a decision of the Secretary with respect to the charges of the employee; and

“(F) a written statement of the decision of the Secretary that—

“(i) includes the specific reasons of the decision; and

“(ii) in the case of a removal based on performance, complies with section 4303(b)(1)(D) of title 5.

“(2)(A) Subject to subparagraph (B) and subsection (e), any final decision of the Secretary regarding removal under subsection (a) may be appealed to the Merit Systems Protection Board.

“(B) An appeal under subparagraph (A) of a removal may only be made if such appeal is made not later than 10 business days after the date of such removal.

“(C)(i) Subject to clause (ii), the decision of the Secretary shall be sustained under subparagraph (A) only if the Secretary’s decision—

“(I) in the case of an action based on performance, is supported by substantial evidence; or

“(II) in any other case, is supported by a preponderance of the evidence.

“(ii) Notwithstanding clause (i), the Secretary’s decision may not be sustained under subparagraph (A) if the covered individual—

“(I) shows harmful error in the application of the Secretary’s procedures in arriving at such decision;

“(II) shows that the decision was based on any prohibited personnel practice described in section 2302(b) of title 5; or

“(III) shows that the decision was not in accordance with law.

“(3) The procedures under section 7513(b) of title 5 and chapter 43 of such title shall not apply to a removal under this section.

“(d) EXPEDITED REVIEW.—(1) The Merit Systems Protection Board shall promulgate such rules as the Board considers appropriate to expedite appeals under subsection (c)(2).

“(2) The Board shall ensure that a final decision on an appeal described in paragraph (1) is issued not later than 90 days after the appeal is made.

“(3) During the period beginning on the date on which a covered individual appeals a removal from the civil service under subsection (c)(2) and ending on the date that the Board issues a final decision on such appeal, such covered individual may not receive any pay, awards, bonuses, incentives, allowances, differentials, student loan repayments, special payments, or benefits.

“(4) To the maximum extent practicable, the Secretary shall provide to the Merit Systems Protection Board such information and assistance as may be necessary to ensure an appeal under subsection (c)(2) is expedited.

“(e) RELATION TO TITLE 5.—The authority provided by this section is in addition to the authority provided by subchapter V of chapter 75 of title 5 and chapter 43 of such title.

“(f) DEFINITIONS.—In this section:



“(1) The term ‘covered individual’ means an individual occupying a position at the Department but does not include—

“(A) an individual, as that term is defined in section 713(d); or

“(B) a political appointee.

“(2) The term ‘misconduct’ includes a violation of paragraph (8) or (9) of section 2302(b) of title 5, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

“(3) The term ‘political appointee’ means an individual who is—

“(A) employed in a position described under sections 5312 through 5316 of title 5 (relating to the Executive Schedule);

“(B) a limited term appointee, limited emergency appointee, or noncareer appointee in the Senior Executive Service, as defined under paragraphs (5), (6), and (7), respectively, of section 3132(a) of title 5; or

“(C) employed in a position of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations.”

(b) CLERICAL AND CONFORMING AMENDMENTS.—

(1) CLERICAL.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 713 the following new item:

“714. Employees: removal based on performance or misconduct.”

(2) CONFORMING.—

(A) TITLE 5.—Section 4303(f) of title 5, United States Code, is amended—

(i) in paragraph (2), by striking “or” at the end;

(ii) in paragraph (3), by striking the period at the end and inserting “, or”; and

(iii) by adding at the end the following:

“(4) any removal under section 714 of title 38.”

(B) TITLE 38.—Subchapter V of chapter 74 of title 38, United States Code, is amended—

(i) in section 7461(b)(1), by striking “If the” and inserting “Except as provided in section 714 of this title, if the”; and

(ii) in section 7462—

(I) in subsection (a)(1), by striking “Disciplinary” and inserting “Except as provided in section 714 of this title, the Disciplinary”; and

(II) in subsection (b)(1), by striking “In any case” and inserting “Except as provided in section 714 of this title, in any case”.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HANABUSA OF HAWAII OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 2, line 18, insert “of at least one step or the equivalent (as determined by the Secretary, taking into consideration the severity of the misconduct)” after “grade”.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE KUSTER OF NEW HAMPSHIRE OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 8, line 20, insert “or section 733(c) of this title” after “title 5”.

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DUFFY OF WISCONSIN OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 9, after line 19, insert the following new subsection:

“(i) SUSPENSION DURING IMPOSITION OF CERTAIN CHARGES.—(1) In carrying out subsection (a), the Secretary shall, at a minimum, suspend an individual whom the Secretary determines has been charged, or is the subject of a civil protective order, for an offense described in paragraph (2) against a patient at a medical facility of the Department. Such suspension shall be in effect during the period in which the charge is pending or the protective order is in effect, as the case may be.

“(2) An offense described in this paragraph is—

“(A) an offense under chapter 109A of title 18, United States Code; or

“(B) an offense under the laws of the State in which the offense is committed that would be, if subject to Federal jurisdiction, an offense under such chapter 109A.”.

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE TAYLOR OF VIRGINIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 9, after line 19, insert the following:

“(i) SEMI-ANNUAL REPORT ON TRANSFERRED EMPLOYEES.—The Secretary shall submit to the Committees on Veterans’ Affairs of the Senate and House of Representatives semi-annual reports on senior executive employees who are transferred within the Department. Each such report shall include, for each such senior executive employee transferred during the period covered by the report, the reason for the transfer and any costs associated with the transfer.”.

Page 9, line 20, strike “(i)” and insert “(j)”.

7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE TENNEY OF NEW YORK OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Add at the end the following new section:

**SEC. 10. ANNUAL REPORT ON PERFORMANCE AWARDS AND BONUSES AWARDED TO CERTAIN HIGH-LEVEL EMPLOYEES OF THE DEPARTMENT OF VETERANS AFFAIRS.**

(a) IN GENERAL.—Chapter 7 of title 38, United States Code, is further amended by inserting after section 723, as added by section 5, the following new section:

**“§ 724. Annual report on performance awards and bonuses awarded to certain high-level employees**

“(a) IN GENERAL.—Not later than 30 days after the end of each fiscal year, the Secretary shall submit to the appropriate committees of Congress a report that contains, for the most recent fiscal

year ending before the submittal of the report, a description of the performance awards and bonuses awarded to Regional Office Directors of the Department, Directors of Medical Centers of the Department, Directors of Veterans Integrated Service Networks, and any other individual employed in a senior executive position.

“(b) ELEMENTS.—Each report submitted under subsection (a) shall include the following with respect to each performance award or bonus awarded to an individual described in such subsection:

“(1) The amount of each award or bonus.

“(2) The job title of the individual awarded the award or bonus.

“(3) The location where the individual awarded the award or bonus works.

“(c) DEFINITIONS.—In this section:

“(1) The term ‘appropriate committees of Congress’ means—

“(A) the Committee on Veterans’ Affairs and the Committee on Appropriations of the Senate; and

“(B) the Committee on Veterans’ Affairs and the Committee on Appropriations of the House of Representatives.

“(2) The term ‘individual’ means—

“(A) a career appointee (as that term is defined in section 3132(a)(4) of title 5); or

“(B) any individual who occupies an administrative or executive position and who was appointed under section 7306(a) or section 7401(1) of this title.

“(3) The term ‘senior executive position’ means—

“(A) with respect to a career appointee (as that term is defined in section 3132(a)(4) of title 5), a Senior Executive Service position (as such term is defined in section 3132(a)(2) of title 5); and

“(B) with respect to an individual appointed under section 7306(a) or section 7401(1) of this title, an administrative or executive position.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 7 of such title is amended by inserting after the item relating to section 723, as added by section 5, the following new item:

“724. Annual report on performance awards and bonuses awarded to certain high-level employees.”.

## 8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE KUSTER OF NEW HAMPSHIRE OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Add at the end the following:

### SEC. 10. ACCOUNTABILITY OF SUPERVISORS AT DEPARTMENT OF VETERANS AFFAIRS FOR ADDRESSING PERFORMANCE OF EMPLOYEES.

(a) IN GENERAL.—The Secretary of Veterans Affairs shall ensure that, as a part of the annual performance plan of a supervisor in the Department, the supervisor is evaluated on the following:

(1) Taking action to address poor performance and misconduct among the employees that report to the supervisor.

(2) Taking steps to improve or sustain high levels of employee engagement.

(3) Promoting a positive culture of service that—

(A) reflects the mission of the Department and the values of integrity, commitment, advocacy, respect, and excellence; and

(B) emphasizes the greatest degree of performance and conduct.

(b) SUPERVISOR DEFINED.—In this section, the term “supervisor” has the meaning given such term in section 7103(a) of title 5, United States Code.

**SEC. 11. IMPROVEMENT OF TRAINING FOR SUPERVISORS.**

(a) IN GENERAL.—The Secretary of Veterans Affairs shall provide to each employee of the Department of Veterans Affairs who is employed as a supervisor periodic training on the following:

(1) The rights of whistleblowers and how to address a report by an employee of a hostile work environment, reprisal, or harassment.

(2) How to effectively motivate, manage, and reward the employees who report to the supervisor.

(3) How to effectively manage employees who are performing at an unacceptable level and access assistance from the human resources office of the Department and the Office of the General Counsel of the Department with respect to those employees.

(b) DEFINITIONS.—In this section:

(1) SUPERVISOR.—The term “supervisor” has the meaning given such term in section 7103(a) of title 5, United States Code.

(2) WHISTLEBLOWER.—The term “whistleblower” has the meaning given such term in section 323(g) of title 38, United States Code, as added by section 101.

**9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE TAKANO OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES**

Strike sections 1 through 9 and insert the following:

**SECTION 1. SUSPENSION AND REMOVAL OF DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES FOR PERFORMANCE OR MISCONDUCT THAT IS A THREAT TO PUBLIC HEALTH OR SAFETY.**

(a) IN GENERAL.—Chapter 7 of title 38, United States Code, is amended by adding after section 713 the following new section:

**“§ 715. Employees: suspension and removal for performance or misconduct that is a threat to public health or safety**

“(a) SUSPENSION AND REMOVAL.—Subject to subsections (b) and (c), the Secretary may—

“(1) suspend without pay an employee of the Department of Veterans Affairs if the Secretary determines the performance or misconduct of the employee is a threat to public health or safety, including the health and safety of veterans; and

“(2) remove an employee suspended under paragraph (1) when, after such investigation and review as the Secretary considers necessary, the Secretary determines that removal is necessary in the interests of public health or safety.

“(b) PROCEDURE.—An employee suspended under subsection (a)(1) is entitled, after suspension and before removal, to—

“(1) within 30 days after suspension, a written statement of the specific charges against the employee, which may be amended within 30 days thereafter;

“(2) an opportunity within 30 days thereafter, plus an additional 30 days if the charges are amended, to answer the charges and submit affidavits;

“(3) a hearing, at the request of the employee, by a Department authority duly constituted for this purpose;

“(4) a review of the case by the Secretary, before a decision adverse to the employee is made final; and

“(5) written statement of the decision of the Secretary.

“(c) RELATION TO OTHER DISCIPLINARY RULES.—The authority provided under this section shall be in addition to the authority provided under section 713 and title 5 with respect to disciplinary actions for performance or misconduct.

“(d) BACK PAY FOR WHISTLEBLOWERS.—If any employee of the Department of Veterans Affairs is subject to a suspension or removal under this section and such suspension or removal is determined by an appropriate authority under applicable law, rule, regulation, or collective bargaining agreement to be a prohibited personnel practice described under section 2302(b)(8) or (9) of title 5, such employee shall receive back pay equal to the total amount of basic pay that such employee would have received during the period that the suspension and removal (as the case may be) was in effect, less any amounts earned by the employee through other employment during that period.

“(e) DEFINITIONS.—In this section, the term ‘employee’ means any individual occupying a position within the Department of Veterans Affairs under a permanent or indefinite appointment and who is not serving a probationary or trial period.”

(b) CLERICAL AND CONFORMING AMENDMENTS.—

(1) CLERICAL.—The table of sections at the beginning of such chapter is amended by adding after the item relating to section 713 the following new item:

“715. Employees: suspension and removal for performance or misconduct that is a threat to public health or safety.”

(2) CONFORMING.—Section 4303(f) of title 5, United States Code, is amended—

(A) by striking “or” at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting “, or”; and

(C) by adding at the end the following:

“(4) any suspension or removal under section 715 of title 38.”

(c) REPORT ON SUSPENSIONS AND REMOVALS.—Not later than one year after the date of the enactment of this Act, the Inspector General of the Department of Veterans Affairs shall submit to the Committees on Veterans’ Affairs of the House of Representatives and the Senate a report on suspensions and removals of employees of the Department made under section 715 of title 38, United States Code, as added by subsection (a). Such report shall include, with respect to the period covered by the report, the following:

(1) The number of employees who were suspended under such section.

(2) The number of employees who were removed under such section.

(3) A description of the threats to public health or safety that caused such suspensions and removals.

(4) The number of such suspensions or removals, or proposed suspensions or removals, that were of employees who filed a complaint regarding—

(A) an alleged prohibited personnel practice committed by an officer or employee of the Department and described in section 2302(b)(8) or 2302(b)(9)(A)(i), (B), (C), or (D) of title 5, United States Code; or

(B) the safety of a patient at a medical facility of the Department.

(5) Of the number of suspensions and removals listed under paragraph (4), the number that the Inspector General considers to be retaliation for whistleblowing.

(6) The number of such suspensions or removals that were of an employee who was the subject of a complaint made to the Department regarding the health or safety of a patient at a medical facility of the Department.

(7) Any recommendations by the Inspector General, based on the information described in paragraphs (1) through (6), to improve the authority to make such suspensions and removals.

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PART B—TEXT OF AMENDMENTS TO H.R. 1367 MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WENSTRUP OF OHIO OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 8, line 8, strike “90 days” and insert “one year”.

Page 12, line 12, strike “shall” and insert “may”.

Page 12, line 19, strike “shall” and insert “may”.

Page 12, line 21, strike “shall” and insert “may”.

Page 13, strike lines 11 through 13 and insert “such training virtually.”.

Page 16, line 9, strike “one year” and insert “two years”.

Page 16, beginning line 14, strike section 11.

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2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MENG OF NEW YORK OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 2, line 2, strike “the five clinical” and insert “at a minimum, the five clinical”.

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3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SEWELL OF ALABAMA OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 4, line 2, before the period insert the following: “and that whenever practicable provides a preference to such employees who represent or service rural areas”.

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4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HANABUSA OF HAWAII OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike section 6.

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5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BUCK OF COLORADO OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 11, line 2, strike “The Secretary” and insert “Notwithstanding sections 3309 through 3318 of title 5, United States Code, the Secretary”.

Page 11, line 3, insert “career or career conditional” after “former”.

Page 11, beginning on line 4, strike “or any excepted service position under chapter 74 of title 38, United States Code.”.

Page 11, line 7, insert “or equivalent” after “grade” both places it appears.

Page 11, line 16, insert “career or career conditional” before “position”.

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6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SHEA-PORTER OF NEW HAMPSHIRE OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 12, strike lines 2 through 6 and insert the following:

(a) ESTABLISHMENT.—The Secretary of Veterans Affairs shall establish a single database that lists—

(1) each vacant position in the Department of Veterans Affairs that the Secretary determines is critical to the mission of the Department, difficult to fill, or both; and

(2) each vacant position in the Department of Veterans Affairs for a mental health professional.

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7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BROWNLEY OF CALIFORNIA OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 15, line 9, insert “, including each medical center, domiciliary facility, outpatient clinic, community-based outpatient clinic, and vet center” after “Affairs”.

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8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WELCH OF VERMONT OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 16, after line 6, insert the following:

(6) An analysis of succession planning and hiring as it relates to rural areas.

Page 16, line 7, strike “(6)” and insert “(7)”.

Page 17, line 21, strike “and”.

Page 17, line 24, strike the period and insert “; and”.

Page 17, after line 24, insert the following:

(J) the ability to recruit and hire in rural areas.

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9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GOTTHEIMER OF NEW JERSEY OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 21, line 10, strike “or”.

Page 21, line 15, strike the period and insert a semicolon.

Page 21, insert after line 15 the following:

(4) have received educational assistance under chapter 33 of title 38, United States Code; or

(5) graduated from a qualifying educational institution, as defined by the Department, and have not reached 30 years of age.

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10. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HERRERA BEUTLER OF WASHINGTON OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 22, line 18, strike “, to the extent possible,”.

Page 22, beginning on line 19, strike “and personally identifiable information is removed” and insert “, including through the use of a location that allows for privacy, is not directly visible by another employee, and does not require the departing employee to input any personally identifiable data”.

Page 22, line 23, insert “are aggregated at the Veterans Integrated Service Network level and” after “subsection (a)”.

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11. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HANABUSA OF HAWAII OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 23, line 16, strike “the number of employees who” and insert the following: “the total number of employees who voluntarily separated from the Department and the number and percentage of whom”.

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12. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MENG OF NEW YORK OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill insert the following:

**SEC. 14. ENCOURAGING TRANSITION OF MILITARY MEDICAL PROFESSIONALS INTO EMPLOYMENT WITH VETERANS HEALTH ADMINISTRATION.**

The Secretary of Veterans Affairs shall establish a program to encourage an individual who serves in the Armed Forces with a military occupational specialty relating to the provision of health care to seek employment with the Veterans Health Administration when the individual has been discharged or released from service in the Armed Forces or is contemplating separating from such service.

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13. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BOST OF ILLINOIS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Add at the end the following new section:



**SEC. 14. PLAN TO HIRE DIRECTORS OF MEDICAL CENTERS OF DEPARTMENT OF VETERANS AFFAIRS.**

(a) **PLAN.**—Not later than 120 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall develop and implement a plan to hire highly qualified directors for each medical center of the Department of Veterans Affairs that lacks a permanent director as of the date of the plan. The Secretary shall prioritize the hiring of such directors for the medical centers that have not had a permanent director for the longest periods.

(b) **MATTERS INCLUDED.**—The plan developed under subsection (a) shall include the following:

(1) A deadline to hire the directors of the medical centers of the Department as described in such subsection.

(2) Identification of the possible impediments to such hiring.

(3) Identification of opportunities to promote and train candidates from within the Department to senior executive positions in the Department, including as directors of medical centers.

(c) **SUBMISSION.**—Not later than 120 days after the date of the enactment of this Act, the Secretary shall submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate the plan developed under subsection (a).

(d) **SEMIANNUAL REPORTS.**—Not later than 180 days after the date of the enactment of this Act, and each 180-day period thereafter until January 1, 2018, the Secretary shall submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate a list of each medical center of the Department that lacks a permanent director as of the date of the report.

**14. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE O'ROURKE OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES**

Add at the end the following new section:

**SEC. 14. RECRUITMENT OF PHYSICIANS IN DEPARTMENT OF VETERANS AFFAIRS.**

(a) **IN GENERAL.**—Section 7402(b)(1) of title 38, United States Code, is amended—

(1) by inserting “or to be offered a contingent appointment to such position,” after “position,”; and

(2) by striking subparagraph (B) and inserting the following new subparagraph (B):

“(B)(i) have completed a residency program satisfactory to the Secretary; or

“(ii) with respect to an offer for a contingent appointment upon the completion of a post-graduate training program, complete such a residency program by not later than two years after the date of such offer; and”.

(b) **OVERSIGHT OF GRADUATE MEDICAL EDUCATION PROGRAMS.**—The Secretary shall—

(1) ensure that a recruiter or other similar official of each Veterans Integrated Service Network visits, not less than annually, each allopathic and osteopathic teaching institution with a graduate medical education program within the Network to recruit individuals to be appointed to positions in the Veterans Health Administration; and

(2) submit to Congress an annual report on the implementation of paragraph (1), including the success of such recruiting efforts.

