115TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
115–393

VETERANS TRANSPLANT COVERAGE ACT OF 2017

NOVEMBER 7, 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. 1133]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 1133) to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to provide for an operation on a live donor for purposes of conducting a transplant procedure for a veteran, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans Transplant Coverage Act of 2017".

SEC. 2. AUTHORIZATION TO PROVIDE FOR OPERATIONS ON LIVE DONORS FOR PURPOSES OF CONDUCTING TRANSPLANT PROCEDURES FOR VETERANS.

(a) IN GENERAL.—Subchapter VIII of chapter 17 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 1788. Transplant procedures with live donors and related services

"(a) IN GENERAL.—In a case in which a veteran is eligible for a transplant procedure from the Department, the Secretary may provide for an operation on a live donor to carry out such procedure for such veteran, notwithstanding that the live donor may not be eligible for health care from the Department.

"(b) OTHER SERVICES.—Subject to the availability of appropriations for such purpose, the Secretary shall furnish to a live donor any care or services before and after conducting the transplant procedure under subsection (a) that may be required in connection with such procedure.

"(c) USE OF DEPARTMENT OR NON-DEPARTMENT FACILITIES.—The Secretary may provide for the operation described in subsection (a) on a live donor and furnish to the live donor the care and services described in subsection (b) at a facility of the Department or at a non-Department facility pursuant to an agreement entered into by the Secretary under section 1703 or 8153 of this title, section 101 of the Veterans Access, Choice, and Accountability Act of 2014 (Public Law 113–146; 38 U.S.C. 1701 note), or any other authority of the Secretary to furnish care at non-Department facilities. The live donor shall be deemed to be an individual eligible for hospital care and medical services at a non-Department facility pursuant to such an agreement solely for the purposes of receiving such operation, care, and services at the non-Department facility.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 of such title is amended by inserting after the item relating to section 1787 the following new item:

"1788. Transplant procedures with live donors and related services.".

PURPOSE AND SUMMARY

H.R. 1133, as amended, the "Veterans Transplant Coverage Act of 2017," would authorize the Department of Veterans Affairs (VA) to provide for any care or services a live donor may require to carry out a transplant procedure—in either a VA medical facility or a medical facility in the community—for an eligible veteran notwithstanding that the live donor may not be eligible for VA health care. Representative John Carter of Texas introduced H.R. 1133 on February 16, 2017.

BACKGROUND AND NEED FOR LEGISLATION

VA has offered solid organ transplant services for eligible veteran patients since 1962 and bone marrow transplant services for eligible veteran patients since 1982.[1] Through VA's National Transplant Program, VA provides transplants primarily through 13 VA transplant centers located in: Palo Alto, California; Portland, Oregon; Seattle, Washington; Houston, Texas; San Antonio, Texas; Salt Lake City, Utah; Iowa City, Iowa; Madison, Wisconsin; Birmingham, Alabama; Nashville, Tennessee; West Roxbury, Massachusetts; Bronx, New York; Pittsburgh, Pennsylvania; and Richmond, Virginia.[2]

The Veterans Access, Choice, and Accountability Act of 2014 (Public Law 113–146; 128 STAT. 1754) created the Choice program to increase access to care in the community for veteran patients unable to receive care at VA medical facilities due to long waiting

[1] VA National Transplant Program. *https://www.va.gov/health/services/transplant/* Accessed October 30, 2017.

[2] Ibid.

times for VA appointments or lengthy travel distances to VA medical facilities. Since the implementation of the Choice program, the Committee has heard an increasing number of complaints about the VA transplant program from veterans who are concerned about the lengthy travel required for many veterans to reach a VA transplant center and barriers to receiving transplant care in the community. For example, in 2016, Charles Nelson—a 100 percent service-connected veteran from Leander, Texas—attempted to receive a kidney transplant through the VA health care system.[3] Mr. Nelson's non-veteran son, Austin, was willing and able to serve as Mr. Nelson's live donor.[4] Rather than travel to VA transplant centers in Nashville, Tennessee, or Portland, Oregon, to receive his kidney transplant, Mr. Nelson asked VA to authorize him to receive his transplant at the University Hospital in San Antonio via the Choice program.[5] [6] Though his request was approved by local VA officials in Texas, VA Central Office in Washington, D.C. denied Mr. Nelson's request to receive his transplant through the Choice program, arguing that because Austin was not a veteran VA would be unable to use Choice funds to cover the costs of his care.[7] Though Choice is just one of several care in the community programs that VA could have used to cover the costs of Mr. Nelson's transplant at the University Hospital in San Antonio, Mr. Nelson eventually received his transplant at that facility using his Medicare benefits, private donations, and personal savings to cover the cost of his care.[8]

On June 29, 2016, the Journal of the American Medical Association published an article which found that greater distance from a VA Transplant Center was associated with a lower likelihood of receiving a transplant and a greater likelihood of death among certain veteran transplant patients.[9] Given the article's findings the Committee believes that veterans residing far from VA transplant centers should be given the option of receiving their transplant from transplant centers in the community closer to the veteran's place of residence. The Committee also believes that, wherever possible, VA should remove barriers to transplant care in the community for veteran patients. Consistent with those goals, section 2 of the bill would authorize VA to provide for any care or services a live donor may require to carry out a transplant procedure in either a VA transplant center or medical facility or VA community care facility for an eligible veteran notwithstanding that the live donor may not be eligible for VA health care.

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[3] United States Cong. House Committee on Veterans' Affairs. Legislative Hearing. October 24, 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (statement for the record Representative John Carter).

[4] Ibid.

[5] Ibid.

[6] Fox 7, "Leander Veteran Fighting for VA to Pay for Kidney Transplant," May 24, 2016, *http://www.fox7austin.com/news/local-news/disabled-leander-veteran-fighting-to-get-va-to-pay-for-kidney-transplant.*

[7] United States Cong. House Committee on Veterans' Affairs. Legislative Hearing. October 24, 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (statement for the record Representative John Carter).

[8] Ibid.

[9] Journal of the American Medical Association, "Association of Distance from a Transplant Center with Access to Waitlist Placement, Receipt of Liver Transplantation, and Survival Among U.S. Veterans, June 29, 2016, *https://www.ncbi.nlm.nih.gov/pubmed/24668105*.

HEARINGS

There were no Subcommittee hearings held on H.R. 1133.

On October 24, 2017, the full Committee conducted a legislative hearing on a number of bills including H.R. 1133.

The following witnesses testified:

The Honorable Jim Banks, U.S. House of Representatives, 3rd District, Indiana; The Honorable Mike Gallagher, U.S. House of Representatives, 8th District, Wisconsin; The Honorable John R. Carter, U.S. House of Representatives, 31st District, Texas; The Honorable Glenn Thompson, U.S. House of Representatives, 5th District, Pennsylvania; The Honorable Neal P. Dunn, U.S. House of Representatives, 2nd District, Florida; The Honorable Andy Barr, U.S. House of Representatives, 6th District, Kentucky; The Honorable David J. Shulkin, M.D., Secretary, U.S. Department of Veterans Affairs, who was accompanied by Carolyn Clancy M.D., the Executive in Charge of the Veterans Health Administration, and Laurie Zephyrin M.D., MPH, MBA, the Acting Deputy Under Secretary for Health for Community Care for the Veterans Health Administration; Adrian M. Atizado, Deputy National Legislative Director, Disabled American Veterans; Roscoe G. Butler, Deputy Director for Health Care, Veterans Affairs and Rehabilitation Division, The American Legion; and, Kayda Keleher, Associate Director, National Legislative Service, Veterans of Foreign Wars of the United States.

Statements for the record were submitted by:

American Federation of Government Employees, AFL–CIO; American Health Care Association; American Medical Association; AMVETS; Concerned Veterans of America; Fleet Reserve Association; Got Your 6; Health IT Now; Iraq and Afghanistan Veterans of America; Military Officers Association of America; Military Order of the Purple Heart; National Alliance on Mental Illness; National Guard Association of the United States; Nurses Organization of Veterans Affairs/Association of VA Psychologist Leaders/Association of VA Social Workers/Veterans Healthcare Action Campaign; Paralyzed Veterans of America; Reserve Officers Association; University of Pittsburgh; Vietnam Veterans of America; the Wounded Warrior Project; The American Congress of Obstetrics and Gynecologists; the University of California, Riverside School of Medicine; the American Society of Transplant Surgeons; and, the National Indian Health Board.

SUBCOMMITTEE CONSIDERATION

There was no Subcommittee consideration of H.R. 1133, as amended.

COMMITTEE CONSIDERATION

On November 2, 2017, the full Committee met in open markup session, a quorum being present, and ordered H.R. 1133, as amended, to be reported favorably to the House of Representatives by voice vote. During consideration of the bill, the following amendments were considered and agreed to by voice vote:

An Amendment in the Nature of a Substitute to H.R. 1133 offered by Representative Brad Wenstrup of Ohio.

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. 1133, as amended, reported to the House. A motion by Representative Tim Walz of Minnesota, Ranking Member of the Committee on Veterans' Affairs, to report H.R. 1133, 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 Committee's performance goals and objectives are to improve the provision of transplant care to veteran patients by authorizing VA to provide for any care or services a live donor may require to carry out a transplant procedure in either a VA or VA community care facility for an eligible veteran notwithstanding that the live donor may not be eligible for VA health care.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

With respect to the requirement with respect to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee has requested but not received from the Director of the Congressional Budget Office an estimate of new budget authority, entitlement authority, or tax expenditures or revenues.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 1133, 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

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. The Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office. The Committee believes, according to a preliminary score from the Congressional Budget Office,

that enactment of H.R. 1133, as amended, could have significant discretionary costs in the tens of millions of dollars over a 5 year period.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

FEDERAL MANDATES STATEMENT

With respect to the requirements of Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4), the Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether the provisions of the reported bill include unfunded mandates.

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. 1133, as amended.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, H.R. 1133, 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. 1133, 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. 1133, 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. 1133, as amended, contains no directed rulemaking that would require the Secretary to prescribe regulations.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 of the bill would provide the short title for H.R. 1133, as amended, as the "Veterans Transplant Coverage Act of 2017".

Section 2. Authorization to provide for operations on live donors for purposes on conducting transplant procedures for veterans

Section 2(a) of the bill would amend subchapter VIII of chapter 17 of title 38 U.S.C. by adding at the end the following new section: "§ 1788. Transplant procedures with live donors and related services." The new section 1788 (a) would authorize VA, in the case in which a veteran is eligible for a transplant procedure from VA, to provide for an operation on a live donor to carry out the transplant procedure for the eligible veteran notwithstanding that the live donor may not be eligible for health care from VA. The new section 1788 (b) would require VA, subject to the availability of appropriations for such purpose, to furnish to a live donor any care or services before or after conducting the transplant procedure under section 1788(a) that may be required in connection with such procedure. The new section 1788(c) would authorize VA to provide for the operation described in section 1788(a) on a live donor and furnish to the live donor the care and services described in section 1788(b) pursuant to an agreement entered into by VA under section 1703 or 8153 of title 38 U.S.C., section 101 of the Veterans Access, Choice, and Accountability Act of 2014 (Public Law 113–146; 38 U.S.C. 1701 note), or any other authority to provide to furnish care at non-VA facilities. The new section 1788(c) would also require the live donor to be deemed an individual eligible for hospital care and medical services at a non-VA facility pursuant to such an agreement solely for the purposes of receiving such operation, care, and services at a non-VA facility.

Section 2(b) of the bill would amend the table of sections at the beginning of chapter 17 of title 38 U.S.C. by inserting after the item relating to section 1787 the following new item: 1788. Transplant procedures with live donors and related services.".

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

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PART II—GENERAL BENEFITS

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

SUBCHAPTER I—GENERAL

SUBCHAPTER VIII—HEALTH CARE OF PERSONS OTHER THAN VETERANS

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§ 1788. Transplant procedures with live donors and related services

(a) IN GENERAL.—In a case in which a veteran is eligible for a transplant procedure from the Department, the Secretary may provide for an operation on a live donor to carry out such procedure for such veteran, notwithstanding that the live donor may not be eligible for health care from the Department.

(b) OTHER SERVICES.—Subject to the availability of appropriations for such purpose, the Secretary shall furnish to a live donor any care or services before and after conducting the transplant procedure under subsection (a) that may be required in connection with such procedure.

(c) USE OF DEPARTMENT OR NON-DEPARTMENT FACILITIES.—The Secretary may provide for the operation described in subsection (a) on a live donor and furnish to the live donor the care and services described in subsection (b) at a facility of the Department or at a non-Department facility pursuant to an agreement entered into by the Secretary under section 1703 or 8153 of this title, section 101 of the Veterans Access, Choice, and Accountability Act of 2014 (Public Law 113–146; 38 U.S.C. 1701 note), or any other authority of the Secretary to furnish care at non-Department facilities. The live donor shall be deemed to be an individual eligible for hospital care and medical services at a non-Department facility pursuant to such an agreement solely for the purposes of receiving such operation, care, and services at the non-Department facility.

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