

VETERANS E-HEALTH AND TELEMEDICINE SUPPORT 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. 2123]

The Committee on Veterans’ Affairs, to whom was referred the bill (H.R. 2123) to amend title 38, United States Code, to improve the ability of health care professionals to treat veterans through the use of telemedicine, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 2123, the “Veterans E-Health and Telemedicine Support Act of 2017,” would authorize a licensed health care provider of the Department of Veterans Affairs (VA) to practice telemedicine at any location in any state, regardless of where the provider or patient is located and whether or not the patient or provider is located on federal government property. Representative Glenn Thompson of Pennsylvania introduced H.R. 2123 on April 25, 2017.

BACKGROUND AND NEED FOR LEGISLATION

As a national, integrated health care system, the Veterans Health Administration (VHA) has a responsibility to ensure that veteran patients receive the same level of and access to care no matter where the veteran patient is located.¹ This is a particular challenge for veteran patients residing in remote, rural, or medically underserved areas far from VA medical facilities and for veteran patients with mobility or other issues that impact their ability to travel to VA medical facilities to receive care.²

Telemedicine refers to “the use of telehealth technologies to provide clinical care in circumstances where distance separates those receiving services and those providing services.”³ By allowing VA clinicians to provide “the right care in the right place at the right time,” telemedicine is critical to VA’s ability to deliver health care to veteran patients who could not otherwise access such care.^{4,5} According to VA, “[telemedicine] increases the accessibility of VA health care, bringing VA medical services to locations convenient for beneficiaries, including clinics in remote communities and beneficiaries’ homes.”⁶ In fiscal year 2016, VA health care providers provided more than 2 million episodes of care via telemedicine to more than 700,000 veteran patients, approximately 12 percent of VA’s total patient population.⁷ Veteran patients who have had experience with VA telemedicine programs have demonstrated improved health outcomes, including decreases in hospital admissions.⁸

However, the continued expansion of telemedicine across the VA health care system is constrained by restrictions on the ability of VA providers to practice telemedicine across state lines without jeopardizing their state licensure and facing potential penalties for the unauthorized practice of medicine.⁹ VA claims that this disparity—between VA health care practice and state medical licensure laws—has severely inhibited the provision of telemedicine in VA and, therefore, reduced the availability and accessibility of care for veteran patients.¹⁰

¹ Authority of Health Care Providers to Practice Telehealth. <https://www.federalregister.gov/documents/2017/10/02/2017-20951/authority-of-health-care-providers-to-practice-telehealth>. Accessed October 31, 2017.

² Ibid.

³ VA Telehealth Services. <https://www.telehealth.va.gov/> Accessed October 30, 2017.

⁴ Ibid.

⁵ Authority of Health Care Providers to Practice Telehealth. <https://www.federalregister.gov/documents/2017/10/02/2017-20951/authority-of-health-care-providers-to-practice-telehealth>. Accessed October 31, 2017.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

In response to this, Secretary Shulkin announced on August 3, 2017, that VA would be amending regulations to allow VA health care providers who are licensed, registered, or certified in “a state” to practice in any state when they are acting within the scope of their VA employment—regardless of individual state licensure, registration, or certification restrictions except for applicable state restrictions on the authority to prescribe and administer controlled substances.¹¹ VA claims that this action would serve to “authorize VA health care providers to furnish care, consistent with their employment obligations, through [telemedicine], without fear of adverse action by any state.”¹² Despite this rulemaking, Secretary Shulkin testified during an October 24th Committee hearing that legislation was needed to “[provide] statutory protection and [codify] VA’s longstanding practice of allowing VA providers to practice in any state as long as they are licensed in a state.”¹³

Therefore, section 2 of the bill would exercise preemption of state licensure, registration, and certification laws, rules, and regulations or requirements to the extent such state laws conflict with the ability of VA providers to engage in the practice of telehealth while acting within the state of their VA employment and authorize a VA licensed health care provider to practice telemedicine at any location in any state, regardless of where the provider or patient is located and whether or not the patient or provider is on federal government property. The Committee believes that the continued expansion of telemedicine across the VA healthcare system will aid veterans in receiving timely, quality care from VA and in achieving improved health outcomes. Further, the Committee concurs with the American Medical Association that providing VA healthcare providers the authority to practice telemedicine across state lines would, “address the significant and unique need to expand access to health care services for veterans being treated within the VA system while also ensuring that important patient protections remain in place, including the direct oversight, accountability, training, and quality control specific to VA-employed physicians and other health care professionals.”¹⁴ Section 2 of the bill would also require VA to submit a report to Congress on the Department’s telemedicine programs, which would allow the effectiveness of VA telemedicine to be better understood.

HEARINGS

There were no Subcommittee hearings held on H.R. 2123.

On October 24, 2017, the full Committee conducted a legislative hearing on a number of bills including H.R. 2123.

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 Dis-

¹¹ Ibid.

¹² Ibid.

¹³ United States Cong. House Committee on Veterans’ Affairs. *Legislative Hearing*. October 24, 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (statement from the Honorable David Shulkin M.D., Secretary of Veterans Affairs).

¹⁴ United States Cong. House Committee on Veterans’ Affairs. *Legislative Hearing*. October 24, 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (statement for the record from the American Medical Association).

trict, 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. 2123.

COMMITTEE CONSIDERATION

On November 2, 2017, the full Committee met in open markup session, a quorum being present, and ordered H.R. 2123 to be reported favorably to the House of Representatives 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. 2123 reported to the House. A motion by Representative Tim Walz of Minnesota, Ranking Member of the Committee on Veterans' Affairs, to report H.R. 2123 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 increase the provision of telemedicine to veteran patients by authorizing VA providers to practice telemedicine across state lines.

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. 2123 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. 2123 would have minimal discretionary costs over a five 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. 2123.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, H.R. 2123 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. 2123 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. 2123 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. 2123 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. 2123, as the "Veterans E-Health and Telemedicine Support Act of 2017" or "the VETS Act of 2017".

Section 2. Licensure of health care professionals of the Department of Veterans Affairs providing treatment via telemedicine

Section 2(a) of the bill would amend chapter 17 of title 38 U.S.C. by inserting after section 1730A a new section 1730B. Licensure of health care professionals providing treatment via telemedicine. The

new section 1730B(a) would, notwithstanding any provision of law regarding the licensure of health care professionals, authorize a covered health professional to practice the health care profession of the health care professional at any location in any State, regardless of where the covered health care professional or patient is located, if the covered health care professional is using telemedicine to provide treatment to an individual under this chapter. The new section 1730B(b) would require the new section 1730(a) to apply to a covered health care professional providing treatment to a patient regardless of whether the covered health care professional or patient is located in a facility owned by the Federal government during such treatment. The new section 1730B(c) would state that nothing in this section may be construed to remove, limit, or otherwise affect any obligation of a covered health care professional under the Controlled Substances Act (21 U.S.C. 801 et seq.). The new section 1730B(d) would define a “covered health care professional” as a health care professional who: (1) is a VA employee appointed under sections 7306, 7401, 7405, 7406, or 7408 of title 38 U.S.C. or title 5 U.S.C.; (2) is authorized by VA to provide health care under this chapter; (3) is required to adhere to all quality standards relating to the provision of telemedicine in accordance with applicable VA policies; and (4) has an active, current, full, and unrestricted license, registration, or certification in a State to practice the health care profession of the health care professional.

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 1730A the following new item: “1730B. Licensure of health care professionals providing treatment via telemedicine.”

Section 2(c) of the bill would require VA, after than one year after date of enactment of this Act, to submit to the Committees on Veterans’ Affairs of the Senate and the House of Representatives a report on the effectiveness of the use of telemedicine by VA to include an assessment of: veterans satisfaction with the telemedicine furnished by VA; the satisfaction of health care providers in providing telemedicine furnished by VA; the effect of telemedicine on the ability of veterans to access health care from VA and from non-VA health care providers, the frequency of veterans use of telemedicine, the productivity of health care providers, wait times for an appointment for receipt of health care from VA, and, the reduction—if any—in the use by veterans of in-person services at VA facilities and non-VA facilities; the types of appointments for the receipt of VA telemedicine that were provided during the one-year period preceding the submittal of the report; the number of appointments for the receipt of telemedicine furnished by VA that were requested during such period, disaggregated by Veterans Integrated Service Network (VISN); and, VA savings (including travel costs)—if any—of furnishing health care through telemedicine during such period.

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

Sec.
1701. Definitions.

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SUBCHAPTER III—MISCELLANEOUS PROVISIONS RELATING TO HOSPITAL AND NURSING HOME CARE AND MEDICAL TREATMENT OF VETERANS

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1730B. *Licensure of health care professionals providing treatment via telemedicine.*

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SUBCHAPTER III—MISCELLANEOUS PROVISIONS RELATING TO HOSPITAL AND NURSING HOME CARE AND MEDICAL TREATMENT OF VETERANS

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§1730B. *Licensure of health care professionals providing treatment via telemedicine*

(a) *IN GENERAL.*—Notwithstanding any provision of law regarding the licensure of health care professionals, a covered health care professional may practice the health care profession of the health care professional at any location in any State, regardless of where the covered health care professional or the patient is located, if the covered health care professional is using telemedicine to provide treatment to an individual under this chapter.

(b) *PROPERTY OF FEDERAL GOVERNMENT.*—Subsection (a) shall apply to a covered health care professional providing treatment to a patient regardless of whether the covered health care professional or patient is located in a facility owned by the Federal Government during such treatment.

(c) *CONSTRUCTION.*—Nothing in this section may be construed to remove, limit, or otherwise affect any obligation of a covered health care professional under the Controlled Substances Act (21 U.S.C. 801 et seq.).

(d) *COVERED HEALTH CARE PROFESSIONAL DEFINED.*—In this section, the term “covered health care professional” means a health care professional who—

(1) is an employee of the Department appointed under the authority under sections 7306, 7401, 7405, 7406, or 7408 of this title, or title 5;

(2) is authorized by the Secretary to provide health care under this chapter;

(3) is required to adhere to all quality standards relating to the provision of telemedicine in accordance with applicable policies of the Department; and

(4) has an active, current, full, and unrestricted license, registration, or certification in a State to practice the health care profession of the health care professional.

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