

VA BILLING ACCOUNTABILITY ACT

MAY 18, 2018.—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. 1972]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 1972) to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to waive the requirement of certain veterans to make copayments for hospital care and medical services in the case of an error by the Department of Veterans Affairs, 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 “VA Billing Accountability Act”.

**SEC. 2. AUTHORITY OF SECRETARY OF VETERANS AFFAIRS TO WAIVE REQUIREMENT OF CERTAIN VETERANS TO MAKE COPAYMENTS FOR CARE AND SERVICES IN THE CASE OF DEPARTMENT OF VETERANS AFFAIRS ERROR.**

(a) **HOSPITAL CARE, NURSING HOME CARE, AND MEDICAL SERVICES.**—Section 1710(f)(3) of title 38, United States Code, is amended by adding at the end the following new subparagraph:

“(G) The Secretary may waive the requirement of a veteran to make a payment under this subsection or subsection (g) if—

“(i) an error committed by the Department or an employee of the Department was the cause of delaying notification sent to the veteran of the requirement to make the payment; and

“(ii) the veteran received such notification later than 180 days after the date on which the veteran received the care or services for which the payment was required.”.

(b) **MEDICATIONS.**—Section 1722A of such title is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection (c):

“(c) The Secretary may waive the requirement of a veteran to make a payment under this section if—

“(1) an error committed by the Department or an employee of the Department was the cause of delaying notification sent to the veteran of the requirement to make the payment; and

“(2) the veteran received such notification later than 180 days after the date on which the veteran received the medication for which the payment was required.”.

(c) **BILLING PROCEDURES.**—

(1) **IN GENERAL.**—Subchapter I of chapter 17 of such title is amended by adding at the end the following new section:

**“§ 1709C. Procedures for copayments**

“(a) **CARE AT DEPARTMENT FACILITY.**—(1) In requiring a veteran to make a payment for care or services provided at a medical facility of the Department pursuant to this chapter, including sections 1710 and 1722A, the Secretary shall provide to such veteran a notification of such required payment by not later than 180 days after the date on which the veteran receives the care or services for which payment is required.

“(2) If the Secretary does not provide to a veteran a notification of the required payment by the date required under paragraph (1), the Secretary may not collect such payment, including through a third-party entity, unless the Secretary provides the veteran the following:

“(A) Information regarding how to apply for a waiver described in section 1710(f)(3)(G) or section 1722A(c) of this title, as appropriate.

“(B) Information regarding how to establish a payment plan with the Secretary.

“(C) Opportunity to make such a waiver or establish such a payment plan.

“(b) **CARE AT NON-DEPARTMENT FACILITY.**—(1) In requiring a veteran to make a payment for care or services provided at a non-Department facility pursuant to this chapter or other provision of law, the Secretary shall provide to such veteran a notification of such required payment by not later than 18 months after the date on which the veteran receives the care or services for which payment is required.

“(2) If the Secretary does not provide to a veteran a notification of the required payment by the date required under paragraph (1), the Secretary may not collect such payment, including through a third-party entity, unless the Secretary provides the veteran the following:

“(A) Information regarding how to apply for a waiver described in paragraph (3).

“(B) Information regarding how to establish a payment plan with the Secretary.

“(C) Opportunity to make such a waiver or establish such a payment plan.

“(3) The Secretary may waive the requirement of a veteran to make a payment for care or services provided at a non-Department facility pursuant to this chapter or other provision of law if—

“(A) an error committed by the Department, an employee of the Department, or a non-Department facility was the cause of delaying the notification sent to the veteran of the requirement to make the payment; and

“(B) the veteran received such notification after the period described in paragraph (1).”

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1709B the following new item:

“1709C. Procedures for copayments.”.

(d) IMPROVEMENT OF PROCEDURES.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall—

(1) review the copayment billing internal controls and notification procedures of the Department of Veterans Affairs; and

(2) improve such controls and procedures, including pursuant to the amendments made by this Act.

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1972  
OFFERED BY MR. RUTHERFORD OF FLORIDA

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “VA Billing Accountability Act”.

**SEC. 2. AUTHORITY OF SECRETARY OF VETERANS AFFAIRS TO WAIVE REQUIREMENT OF CERTAIN VETERANS TO MAKE COPAYMENTS FOR CARE AND SERVICES IN THE CASE OF DEPARTMENT OF VETERANS AFFAIRS ERROR.**

(a) HOSPITAL CARE, NURSING HOME CARE, AND MEDICAL SERVICES.—Section 1710(f)(3) of title 38, United States Code, is amended by adding at the end the following new subparagraph:

“(G) The Secretary may waive the requirement of a veteran to make a payment under this subsection or subsection (g) if—

“(i) an error committed by the Department or an employee of the Department was the cause of delaying notification sent to the veteran of the requirement to make the payment; and

“(ii) the veteran received such notification later than 180 days after the date on which the veteran received the care or services for which the payment was required.”.

(b) MEDICATIONS.—Section 1722A of such title is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection (c):

“(c) The Secretary may waive the requirement of a veteran to make a payment under this section if—

“(1) an error committed by the Department or an employee of the Department was the cause of delaying notification sent to the veteran of the requirement to make the payment; and

“(2) the veteran received such notification later than 180 days after the date on which the veteran received the medication for which the payment was required.”.

(c) BILLING PROCEDURES.—

(1) IN GENERAL.—Subchapter I of chapter 17 of such title is amended by adding at the end the following new section:

**“§ 1709C. Procedures for copayments**

“(a) CARE AT DEPARTMENT FACILITY.—(1) In requiring a veteran to make a payment for care or services provided at a medical facility of the Department pursuant to this chapter, including sections

1710 and 1722A, the Secretary shall provide to such veteran a notification of such required payment by not later than 180 days after the date on which the veteran receives the care or services for which payment is required.

“(2) If the Secretary does not provide to a veteran a notification of the required payment by the date required under paragraph (1), the Secretary may not collect such payment, including through a third-party entity, unless the Secretary provides the veteran the following:

“(A) Information regarding how to apply for a waiver described in section 1710(f)(3)(G) or section 1722A(c) of this title, as appropriate.

“(B) Information regarding how to establish a payment plan with the Secretary.

“(C) Opportunity to make such a waiver or establish such a payment plan.

“(b) CARE AT NON-DEPARTMENT FACILITY.—(1) In requiring a veteran to make a payment for care or services provided at a non-Department facility pursuant to this chapter or other provision of law, the Secretary shall provide to such veteran a notification of such required payment by not later than 18 months after the date on which the veteran receives the care or services for which payment is required.

“(2) If the Secretary does not provide to a veteran a notification of the required payment by the date required under paragraph (1), the Secretary may not collect such payment, including through a third-party entity, unless the Secretary provides the veteran the following:

“(A) Information regarding how to apply for a waiver described in paragraph (3).

“(B) Information regarding how to establish a payment plan with the Secretary.

“(C) Opportunity to make such a waiver or establish such a payment plan.

“(3) The Secretary may waive the requirement of a veteran to make a payment for care or services provided at a non-Department facility pursuant to this chapter or other provision of law if—

“(A) an error committed by the Department, an employee of the Department, or a non-Department facility was the cause of delaying the notification sent to the veteran of the requirement to make the payment; and

“(B) the veteran received such notification after the period described in paragraph (1).”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1709B the following new item:

“1709C. Procedures for copayments.”.

(d) IMPROVEMENT OF PROCEDURES.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall—

(1) review the copayment billing internal controls and notification procedures of the Department of Veterans Affairs; and

(2) improve such controls and procedures, including pursuant to the amendments made by this Act.

## PURPOSE AND SUMMARY

H.R. 1972, as amended, the “VA Billing Accountability Act” would authorize the Department of Veterans Affairs (VA) to waive copayment requirements for certain veterans under certain conditions. Representative Lloyd Smucker of Pennsylvania introduced H.R. 1972 on April 6, 2017.

## BACKGROUND AND NEED FOR LEGISLATION

Section 1710(f) of title 38 United States Code (U.S.C.) requires VA to assess copayments for health care services to veterans whose income exceeds certain limits and to veterans who choose not to complete a financial assessment upon enrolling in the VA healthcare system.<sup>1</sup>

On June 1, 2015, Members of the Wisconsin and Minnesota Congressional delegation were notified that VA officials at the Minneapolis VA Medical Center had initiated a review of past processes on veteran inpatient copayments charges for the years 2011–2015.<sup>2</sup> As part of the review, VA had uncovered more than one thousand instances where veterans were not billed for inpatient services VA provided to them and, as a result, VA immediately began assessing thousands of dollars of copayments for each of those veterans for care received during that period.<sup>3</sup> Initially, these charges were added to the veterans’ monthly billing statements. However, VA later suspended accounts for the affected veterans and reached out via telephone to explain their account status and provide them with information about applying for waivers or repayment plans. VA claimed to have 6 years to bring an action against a veteran and no authority to waive copayment collections, according to conversations that Committee staff had with VA regarding this incident.

Section 2 of the bill would authorize VA to waive the requirement that a veteran make a copayment if an error committed by VA was the cause of a delayed copayment notification to the veteran and the veteran received such notification later than 180 days (18 months in the case of a community care facility) after the date on which the veteran received the care or services. It would also prohibit VA from collecting copayments from veterans if the veteran was not notified of such copayment in a timely manner unless the veteran is provided with both information about applying for a waiver and establishing a payment plan and the opportunity to make such a waiver or establish such a repayment plan. Finally, it would require VA to review and improve copayment billing internal controls and notification procedures.

## HEARINGS

On September 26, 2017, the Subcommittee on Health conducted a legislative hearing on a number of bills including H.R. 1972.

The following witnesses testified:

<sup>1</sup>*Health Benefit Copays*. U.S. Department of Veterans Affairs Health Benefits. <https://www.va.gov/healthbenefits/cost/copays.asp>. Accessed May 10, 2018.

<sup>2</sup>United States Cong. House Committee on Veterans’ Affairs Subcommittee on Health. Legislative Hearing. November 17, 2015. 114th Cong. 1st sess. Washington: GPO, 2015 (statement from the Honorable John Kline, U.S. House of Representatives, 2nd Congressional District, Minnesota).

<sup>3</sup>*Ibid*.

The Honorable Debbie Dingell, U.S. House of Representatives, 12th District, Michigan; The Honorable Beto O'Rourke, U.S. House of Representatives, 16th Congressional District, Texas; The Honorable Derek Kilmer, U.S. House of Representatives, 6th Congressional District, Washington; The Honorable Steve King, U.S. House of Representatives, 4th Congressional District, Iowa; The Honorable Lloyd Smucker, U.S. House of Representatives, 16th Congressional District, Pennsylvania; The Honorable Mike Coffman, U.S. House of Representatives, 6th Congressional District, Colorado; The Honorable Steve Stivers, U.S. House of Representatives, 15th Congressional District, Ohio; The Honorable Ron DeSantis, U.S. House of Representatives, 6th Congressional District, Florida; The Honorable John Rutherford, U.S. House of Representatives, 4th Congressional District, Florida; Keronica Richardson, Assistant Director of Women and Minority Veterans Outreach for the National Security Division of The American Legion; Amy Webb, National Legislative Policy Advisor for AMVETS; and, Harold Kudler M.D., Acting Assistant Deputy Under Secretary for Health for Patient Care Services for the Veterans Health Administration of the U.S. Department of Veterans Affairs, accompanied by Catherine Biggs-Silvers, Executive Director for Mission, Planning, and Analysis for the Human Resources and Administration of the U.S. Department of Veterans Affairs.

Statements for the record were submitted by:

Blinded Veterans Association, Veterans of Foreign Wars of the United States, Disabled American Veterans, Paralyzed Veterans of America, Justice for Vets, and, Make a Difference America.

#### SUBCOMMITTEE CONSIDERATION

There was no Subcommittee consideration of H.R. 1972.

#### COMMITTEE CONSIDERATION

On May 8, 2018, the full Committee met in open markup session, a quorum being present, and ordered H.R. 1972, as amended, to be reported favorably to the House of Representatives by voice vote. During consideration of the bill, the following amendment was considered and agreed to by voice vote:

An amendment in the nature of a substitute offered by Representative John Rutherford of Florida.

#### 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. 1972, 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. 1972, as amended, favorably to the House of Representatives was adopted 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 VA's copayment billing internal controls and notification procedures.

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. 1972, as amended, does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 1972, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 1972, as amended, provided by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 16, 2018.*

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. 1972, the VA Billing Accountability Act.

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,  
*Director.*

Enclosure.

*H.R. 1972—VA Billing Accountability Act*

Summary: H.R. 1972 would allow the Department of Veterans Affairs (VA) to waive the copayments charged for medical care when veterans are not notified of the charges for a significant period of time. CBO estimates that implementing the bill would reduce collections by \$141 million over the 2019–2023 period. Assuming VA continued to provide the same level of health care, additional funding totaling \$141 million would have to be appropriated, and spending would total \$135 million.

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

CBO estimates that enacting H.R. 1972 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 1972 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 1972 is shown in the following table. The costs of the legislation fall within budget function 700 (veterans benefits and services).

	By fiscal year, in millions of dollars—						
	2018	2019	2020	2021	2022	2023	2019– 2023
INCREASES IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level .....	0	29	28	28	28	28	141
Estimated Outlays .....	0	25	27	27	28	28	135

Basis of estimate: For this estimate, CBO assumes that H.R. 1972 will be enacted near the beginning of fiscal year 2019 and that the estimated amounts will be appropriated each year. Estimated outlays are based on historical spending patterns for the affected programs.

VA charges copayments to certain veterans for medical care and services authorized by the department. H.R. 1972 would allow VA to waive those copayments for veterans who are notified of their liability more than 180 days after receiving medical care or medication at a department facility or 18 months after an appointment at a non-VA facility. The copayments are deposited in the Medical Care Collections Fund and, subject to appropriation, are spent to provide medical care for veterans. CBO expects that any reduction in collections would require VA to request additional funding in order to provide the same level of health care to veterans.

On the basis of information from VA about its billing practices, CBO estimates that roughly 4 percent of the \$660 million in copayments collected by the department each year would be waived due to delayed notification. As a result of those foregone collections, CBO estimates that implementing this bill and continuing to pro-

vide the same level of health care to veterans would cost \$135 million over the 2019–2023 period, assuming appropriation of the necessary amounts.

Pay-As-You-Go Considerations: None.

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 1972 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

Mandates: H.R. 1972 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Ann E. Futrell; Mandates: Andrew Laughlin.

Estimate reviewed by: Sarah Jennings, Chief, Defense, International Affairs, and Veterans' Affairs Cost Estimates Unit; Leo Lex, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 1972, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 1972, as amended.

#### STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, H.R. 1972, 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. 1972, as amended, does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 1972, 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. 1972, as amended, contains no di-

rected 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 establish a short title for H.R. 1972, as amended, of the “VA Billing Accountability Act.”

##### *Section 2. Authority of Secretary of Veterans Affairs to waive requirement of certain veterans to make copayments for care and services in the care of Department of Veterans Affairs*

Section 2(a) of the bill would amend section 1710(f)(3) of title 38 U.S.C. by adding at the end a new subparagraph 1710(f)(3)(G).

The new subparagraph 1710(f)(3)(G)(a) would authorize VA to waive the requirement of a veteran to make a payment under this section of section (g) if a VA error was the cause of a delayed notification sent to the veteran of the requirement to make the payment and the veteran received such notification later than 180 days after the date on which the veteran received the care or services for which the payment was required.

Section 2(b) of the bill would amend section 1722A of title 38 U.S.C. by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) a new subsection (c).

The new subsection 1722(A)(c) would authorize VA to waive the requirement of a veteran to make a copayment under this section if an error committed by VA or a VA employee was the cause of delaying notification sent to the veteran of the requirement to make the payment and the veteran received such notification later than 180 days after the date on which the veteran received the medication for which the payment was required.

Section 2(c) of the bill would amend subchapter I of chapter 17 of title 38 U.S.C. by adding at the following new section, “1709C. Procedures for copayments.” It would also 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 1709B the following new item: “1709C. Procedure for copayments.”

The new section 1709C(a) would require VA to provide a veteran who is required to make a payment for care or services provided at a VA medical facility pursuant to chapter 17 of title 38 U.S.C. with a notification of such required payment by not later than 180 days after the date on which the veteran receives the care or services for which such payment is required. In the event VA does not provide such veteran a notification of the required payment by the date required, it would also prohibit VA from collecting such payment, including through a third party entity, unless VA provides the following: information regarding how to apply for a waiver described in section 1710(f)(3)(G) or section 1722A(c) of title 38 U.S.C., as appropriate; information regarding how to establish a payment plan with VA; and the opportunity to make such a waiver or establish such a payment plan.

The new section 1709C(b) would require VA to provide to a veteran who is required to make a payment for care or services pursuant to chapter 17 of title 38 U.S.C. a notification of such required payment. Such notification would be required by not later than 18

months after the date on which the veteran receives the care or services for which payment is required. In the event that VA does not provide such a notification, it would also prohibit VA from collecting such payment, including through a third party entity, unless VA provides the following: information regarding how to apply for a waiver as described below; information regarding how to establish a payment plan with VA; and the opportunity to make such a waiver or establish such a payment plan. It would further prohibit the requirement of a veteran to make a payment for care or services provided at a community facility pursuant to chapter 17 of title 38 U.S.C. or other provision of law if an error committed by VA, a VA employee, or a community facility was the cause of delaying the notification sent to the veteran of the requirement to make the payment; and the veteran received such notification after the required period.

Section 2(d) of the bill would require VA, not later than 180 days after the date of enactment of the Act, to review the copayment billing internal controls and notification procedures of VA and improve such controls and procedures, including pursuant to the amendments made by this Act.

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 (existing law proposed to be omitted is enclosed in black brackets, 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.						
	*	*	*	*	*	*
1709C. Procedures for copayments.						
	*	*	*	*	*	*

## SUBCHAPTER I—GENERAL

\* \* \* \* \*

**§ 1709C. Procedures for copayments**

(a) *CARE AT DEPARTMENT FACILITY.*—(1) *In requiring a veteran to make a payment for care or services provided at a medical facility of the Department pursuant to this chapter, including sections 1710 and 1722A, the Secretary shall provide to such veteran a notification of such required payment by not later than 180 days after the date on which the veteran receives the care or services for which payment is required.*

(2) *If the Secretary does not provide to a veteran a notification of the required payment by the date required under paragraph (1), the Secretary may not collect such payment, including through a third-party entity, unless the Secretary provides the veteran the following:*

(A) *Information regarding how to apply for a waiver described in section 1710(f)(3)(G) or section 1722A(c) of this title, as appropriate.*

(B) *Information regarding how to establish a payment plan with the Secretary.*

(C) *Opportunity to make such a waiver or establish such a payment plan.*

(b) *CARE AT NON-DEPARTMENT FACILITY.*—(1) *In requiring a veteran to make a payment for care or services provided at a non-Department facility pursuant to this chapter or other provision of law, the Secretary shall provide to such veteran a notification of such required payment by not later than 18 months after the date on which the veteran receives the care or services for which payment is required.*

(2) *If the Secretary does not provide to a veteran a notification of the required payment by the date required under paragraph (1), the Secretary may not collect such payment, including through a third-party entity, unless the Secretary provides the veteran the following:*

(A) *Information regarding how to apply for a waiver described in paragraph (3).*

(B) *Information regarding how to establish a payment plan with the Secretary.*

(C) *Opportunity to make such a waiver or establish such a payment plan.*

(3) *The Secretary may waive the requirement of a veteran to make a payment for care or services provided at a non-Department facility pursuant to this chapter or other provision of law if—*

(A) *an error committed by the Department, an employee of the Department, or a non-Department facility was the cause of delaying the notification sent to the veteran of the requirement to make the payment; and*

(B) *the veteran received such notification after the period described in paragraph (1).*

SUBCHAPTER II—HOSPITAL, NURSING HOME, OR  
DOMICILIARY CARE AND MEDICAL TREATMENT

**§ 1710. Eligibility for hospital, nursing home, and domiciliary care**

(a)(1) The Secretary (subject to paragraph (4)) shall furnish hospital care and medical services which the Secretary determines to be needed—

(A) to any veteran for a service-connected disability; and

(B) to any veteran who has a service-connected disability rated at 50 percent or more.

(2) The Secretary (subject to paragraph (4)) shall furnish hospital care and medical services, and may furnish nursing home care, which the Secretary determines to be needed to any veteran—

(A) who has a compensable service-connected disability rated less than 50 percent or, with respect to nursing home care during any period during which the provisions of section 1710A(a) of this title are in effect, a compensable service-connected disability rated less than 70 percent;

(B) whose discharge or release from active military, naval, or air service was for a disability that was incurred or aggravated in the line of duty;

(C) who is in receipt of, or who, but for a suspension pursuant to section 1151 of this title (or both a suspension and the receipt of retired pay), would be entitled to disability compensation, but only to the extent that such veteran's continuing eligibility for such care is provided for in the judgment or settlement provided for in such section;

(D) who is a former prisoner of war, who was awarded the medal of honor under section 3741, 6241, or 8741 of title 10 or section 491 of title 14, or who was awarded the Purple Heart;

(E) who is a veteran of the Mexican border period or of World War I;

(F) who was exposed to a toxic substance, radiation, or other conditions, as provided in subsection (e); or

(G) who is unable to defray the expenses of necessary care as determined under section 1722(a) of this title.

(3) In the case of a veteran who is not described in paragraphs (1) and (2), the Secretary may, to the extent resources and facilities are available and subject to the provisions of subsections (f) and (g), furnish hospital care, medical services, and nursing home care which the Secretary determines to be needed.

(4) The requirement in paragraphs (1) and (2) that the Secretary furnish hospital care and medical services, the requirement in section 1710A(a) of this title that the Secretary provide nursing home care, the requirement in section 1710B of this title that the Secretary provide a program of extended care services, and the requirement in section 1745 of this title to provide nursing home care and prescription medicines to veterans with service-connected disabilities in State homes shall be effective in any fiscal year only to the extent and in the amount provided in advance in appropriations Acts for such purposes.

(5) During any period during which the provisions of section 1710A(a) of this title are not in effect, the Secretary may furnish nursing home care which the Secretary determines is needed to

any veteran described in paragraph (1), with the priority for such care on the same basis as if provided under that paragraph.

(b)(1) The Secretary may furnish to a veteran described in paragraph (2) of this subsection such domiciliary care as the Secretary determines is needed for the purpose of the furnishing of medical services to the veteran.

(2) This subsection applies in the case of the following veterans:

(A) Any veteran whose annual income (as determined under section 1503 of this title) does not exceed the maximum annual rate of pension that would be applicable to the veteran if the veteran were eligible for pension under section 1521(d) of this title.

(B) Any veteran who the Secretary determines has no adequate means of support.

(c) While any veteran is receiving hospital care or nursing home care in any Department facility, the Secretary may, within the limits of Department facilities, furnish medical services to correct or treat any non-service-connected disability of such veteran, in addition to treatment incident to the disability for which such veteran is hospitalized, if the veteran is willing, and the Secretary finds such services to be reasonably necessary to protect the health of such veteran. The Secretary may furnish dental services and treatment, and related dental appliances, under this subsection for a non-service-connected dental condition or disability of a veteran only (1) to the extent that the Secretary determines that the dental facilities of the Department to be used to furnish such services, treatment, or appliances are not needed to furnish services, treatment, or appliances for dental conditions or disabilities described in section 1712(a) of this title, or (2) if (A) such non-service-connected dental condition or disability is associated with or aggravating a disability for which such veteran is receiving hospital care, or (B) a compelling medical reason or a dental emergency requires furnishing dental services, treatment, or appliances (excluding the furnishing of such services, treatment, or appliances of a routine nature) to such veteran during the period of hospitalization under this section.

(d) In no case may nursing home care be furnished in a hospital not under the direct jurisdiction of the Secretary except as provided in section 1720 of this title.

(e)(1)(A) A Vietnam-era herbicide-exposed veteran is eligible (subject to paragraph (2)) for hospital care, medical services, and nursing home care under subsection (a)(2)(F) for any disability, notwithstanding that there is insufficient medical evidence to conclude that such disability may be associated with such exposure.

(B) A radiation-exposed veteran is eligible for hospital care, medical services, and nursing home care under subsection (a)(2)(F) for any disease suffered by the veteran that is—

(i) a disease listed in section 1112(c)(2) of this title; or

(ii) any other disease for which the Secretary, based on the advice of the Advisory Committee on Environmental Hazards, determines that there is credible evidence of a positive association between occurrence of the disease in humans and exposure to ionizing radiation.

(C) Subject to paragraph (2) of this subsection, a veteran who served on active duty between August 2, 1990, and November 11,

1998, in the Southwest Asia theater of operations during the Persian Gulf War is eligible for hospital care, medical services, and nursing home care under subsection (a)(2)(F) for any disability, notwithstanding that there is insufficient medical evidence to conclude that such disability may be associated with such service.

(D) Subject to paragraphs (2) and (3), a veteran who served on active duty in a theater of combat operations (as determined by the Secretary in consultation with the Secretary of Defense) during a period of war after the Persian Gulf War, or in combat against a hostile force during a period of hostilities after November 11, 1998, is eligible for hospital care, medical services, and nursing home care under subsection (a)(2)(F) for any illness, notwithstanding that there is insufficient medical evidence to conclude that such condition is attributable to such service.

(E) Subject to paragraph (2), a veteran who participated in a test conducted by the Department of Defense Deseret Test Center as part of a program for chemical and biological warfare testing from 1962 through 1973 (including the program designated as "Project Shipboard Hazard and Defense (SHAD)" and related land-based tests) is eligible for hospital care, medical services, and nursing home care under subsection (a)(2)(F) for any illness, notwithstanding that there is insufficient medical evidence to conclude that such illness is attributable to such testing.

(F) Subject to paragraph (2), a veteran who served on active duty in the Armed Forces at Camp Lejeune, North Carolina, for not fewer than 30 days during the period beginning on August 1, 1953, and ending on December 31, 1987, is eligible for hospital care and medical services under subsection (a)(2)(F) for any of the following illnesses or conditions, notwithstanding that there is insufficient medical evidence to conclude that such illnesses or conditions are attributable to such service:

- (i) Esophageal cancer.
- (ii) Lung cancer.
- (iii) Breast cancer.
- (iv) Bladder cancer.
- (v) Kidney cancer.
- (vi) Leukemia.
- (vii) Multiple myeloma.
- (viii) Myelodysplastic syndromes.
- (ix) Renal toxicity.
- (x) Hepatic steatosis.
- (xi) Female infertility.
- (xii) Miscarriage.
- (xiii) Scleroderma.
- (xiv) Neurobehavioral effects.
- (xv) Non-Hodgkin's lymphoma.

(2)(A) In the case of a veteran described in paragraph (1)(A), hospital care, medical services, and nursing home care may not be provided under subsection (a)(2)(F) with respect to—

- (i) a disability that is found, in accordance with guidelines issued by the Under Secretary for Health, to have resulted from a cause other than an exposure described in paragraph (4)(A)(ii); or
- (ii) a disease for which the National Academy of Sciences, in a report issued in accordance with section 3 of the Agent Or-

ange Act of 1991, has determined that there is limited or suggestive evidence of the lack of a positive association between occurrence of the disease in humans and exposure to a herbicide agent.

(B) In the case of a veteran described in subparagraph (C), (D), (E), or (F) of paragraph (1), hospital care, medical services, and nursing home care may not be provided under subsection (a)(2)(F) with respect to a disability that is found, in accordance with guidelines issued by the Under Secretary for Health, to have resulted from a cause other than the service or testing described in such subparagraph.

(3) In the case of care for a veteran described in paragraph (1)(D), hospital care, medical services, and nursing home care may be provided under or by virtue of subsection (a)(2)(F) only during the following periods:

(A) Except as provided by subparagraph (B), with respect to a veteran described in paragraph (1)(D) who is discharged or released from the active military, naval, or air service after January 27, 2003, the five-year period beginning on the date of such discharge or release.

(B) With respect to a veteran described in paragraph (1)(D) who is discharged or released from the active military, naval, or air service after January 1, 2009, and before January 1, 2011, but did not enroll to receive such hospital care, medical services, or nursing home care pursuant to such paragraph during the five-year period described in subparagraph (A), the one-year period beginning on the date of the enactment of the Clay Hunt Suicide Prevention for American Veterans Act.

(C) With respect to a veteran described in paragraph (1)(D) who is discharged or released from the active military, naval, or air service on or before January 27, 2003, and did not enroll in the patient enrollment system under section 1705 of this title on or before such date, the three-year period beginning on January 27, 2008.

(4) For purposes of this subsection—

(A) The term “Vietnam-era herbicide-exposed veteran” means a veteran (i) who served on active duty in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, and (ii) who the Secretary finds may have been exposed during such service to dioxin or was exposed during such service to a toxic substance found in a herbicide or defoliant used for military purposes during such period.

(B) The term “radiation-exposed veteran” has the meaning given that term in section 1112(c)(3) of this title.

(5) When the Secretary first provides care for veterans using the authority provided in paragraph (1)(D), the Secretary shall establish a system for collection and analysis of information on the general health status and health care utilization patterns of veterans receiving care under that paragraph. Not later than 18 months after first providing care under such authority, the Secretary shall submit to Congress a report on the experience under that authority. The Secretary shall include in the report any recommendations of the Secretary for extension of that authority.

(f)(1) The Secretary may not furnish hospital care or nursing home care (except if such care constitutes hospice care) under this section to a veteran who is eligible for such care under subsection (a)(3) of this section unless the veteran agrees to pay to the United States the applicable amount determined under paragraph (2) or (4) of this subsection.

(2) A veteran who is furnished hospital care or nursing home care under this section and who is required under paragraph (1) of this subsection to agree to pay an amount to the United States in order to be furnished such care shall be liable to the United States for an amount equal to—

(A) the lesser of—

(i) the cost of furnishing such care, as determined by the Secretary; or

(ii) the amount determined under paragraph (3) of this subsection; and

(B) before September 30, 2019, an amount equal to \$10 for every day the veteran receives hospital care and \$5 for every day the veteran receives nursing home care.

(3)(A) In the case of hospital care furnished during any 365-day period, the amount referred to in paragraph (2)(A)(ii) of this subsection is—

(i) the amount of the inpatient Medicare deductible, plus (ii) one-half of such amount for each 90 days of care (or fraction thereof) after the first 90 days of such care during such 365-day period.

(B) In the case of nursing home care furnished during any 365-day period, the amount referred to in paragraph (2)(A)(ii) of this subsection is the amount of the inpatient Medicare deductible for each 90 days of such care (or fraction thereof) during such 365-day period.

(C)(i) Except as provided in clause (ii) of this subparagraph, in the case of a veteran who is admitted for nursing home care under this section after being furnished, during the preceding 365-day period, hospital care for which the veteran has paid the amount of the inpatient Medicare deductible under this subsection and who has not been furnished 90 days of hospital care in connection with such payment, the veteran shall not incur any liability under paragraph (2) of this subsection with respect to such nursing home care until—

(I) the veteran has been furnished, beginning with the first day of such hospital care furnished in connection with such payment, a total of 90 days of hospital care and nursing home care; or

(II) the end of the 365-day period applicable to the hospital care for which payment was made, whichever occurs first.

(ii) In the case of a veteran who is admitted for nursing home care under this section after being furnished, during any 365-day period, hospital care for which the veteran has paid an amount under subparagraph (A)(ii) of this paragraph and who has not been furnished 90 days of hospital care in connection with such payment, the amount of the liability of the veteran under paragraph (2) of this subsection with respect to the number of days of such nursing home care which, when added to the number of days of

such hospital care, is 90 or less, is the difference between the inpatient Medicare deductible and the amount paid under such subparagraph until—

(I) the veteran has been furnished, beginning with the first day of such hospital care furnished in connection with such payment, a total of 90 days of hospital care and nursing home care; or

(II) the end of the 365-day period applicable to the hospital care for which payment was made,

whichever occurs first.

(D) In the case of a veteran who is admitted for hospital care under this section after having been furnished, during the preceding 365-day period, nursing home care for which the veteran has paid the amount of the inpatient Medicare deductible under this subsection and who has not been furnished 90 days of nursing home care in connection with such payment, the veteran shall not incur any liability under paragraph (2) of this subsection with respect to such hospital care until—

(i) the veteran has been furnished, beginning with the first day of such nursing home care furnished in connection with such payment, a total of 90 days of nursing home care and hospital care; or

(ii) the end of the 365-day period applicable to the nursing home care for which payment was made,

whichever occurs first.

(E) A veteran may not be required to make a payment under this subsection for hospital care or nursing home care furnished under this section during any 90-day period in which the veteran is furnished medical services under paragraph (3) of subsection (a) to the extent that such payment would cause the total amount paid by the veteran under this subsection for hospital care and nursing home care furnished during that period and under subsection (g) for medical services furnished during that period to exceed the amount of the inpatient Medicare deductible in effect on the first day of such period.

(F) A veteran may not be required to make a payment under this subsection or subsection (g) for any days of care in excess of 360 days of care during any 365-calendar-day period.

(G) *The Secretary may waive the requirement of a veteran to make a payment under this subsection or subsection (g) if—*

*(i) an error committed by the Department or an employee of the Department was the cause of delaying notification sent to the veteran of the requirement to make the payment; and*

*(ii) the veteran received such notification later than 180 days after the date on which the veteran received the care or services for which the payment was required.*

(4) In the case of a veteran covered by this subsection who is also described by section 1705(a)(7) of this title, the amount for which the veteran shall be liable to the United States for hospital care under this subsection shall be an amount equal to 20 percent of the total amount for which the veteran would otherwise be liable for such care under subparagraphs (2)(B) and (3)(A) but for this paragraph.

(5) For the purposes of this subsection, the term “inpatient Medicare deductible” means the amount of the inpatient hospital de-

ductible in effect under section 1813(b) of the Social Security Act (42 U.S.C. 1395e(b)) on the first day of the 365-day period applicable under paragraph (3) of this subsection.

(g)(1) The Secretary may not furnish medical services (except if such care constitutes hospice care) under subsection (a) of this section (including home health services under section 1717 of this title) to a veteran who is eligible for hospital care under this chapter by reason of subsection (a)(3) of this section unless the veteran agrees to pay to the United States in the case of each outpatient visit the applicable amount or amounts established by the Secretary by regulation.

(2) A veteran who is furnished medical services under subsection (a) of this section and who is required under paragraph (1) of this subsection to agree to pay an amount to the United States in order to be furnished such services shall be liable to the United States, in the case of each visit in which such services are furnished to the veteran, for an amount which the Secretary shall establish by regulation.

(3) This subsection does not apply with respect to the following:

(A) Home health services under section 1717 of this title to the extent that such services are for improvements and structural alterations.

(B) Education on the use of opioid antagonists to reverse the effects of overdoses of specific medications or substances.

(h) Nothing in this section requires the Secretary to furnish care to a veteran to whom another agency of Federal, State, or local government has a duty under law to provide care in an institution of such government.

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

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**§ 1722A. Copayment for medications**

(a)(1) Subject to paragraph (2), the Secretary shall require a veteran to pay the United States \$2 for each 30-day supply of medication furnished such veteran under this chapter on an outpatient basis for the treatment of a non-service-connected disability or condition. If the amount supplied is less than a 30-day supply, the amount of the charge may not be reduced.

(2) The Secretary may not require a veteran to pay an amount in excess of the cost to the Secretary for medication described in paragraph (1).

(3) Paragraph (1) does not apply—

(A) to a veteran with a service-connected disability rated 50 percent or more;

(B) to a veteran who is a former prisoner of war;

(C) to a veteran whose annual income (as determined under section 1503 of this title) does not exceed the maximum annual rate of pension which would be payable to such veteran if such veteran were eligible for pension under section 1521 of this title; or

(D) to a veteran who was awarded the medal of honor under section 3741, 6241, or 8741 of title 10 or section 491 of title 14.

(4) Paragraph (1) does not apply to opioid antagonists furnished under this chapter to a veteran who is at high risk for overdose of a specific medication or substance in order to reverse the effect of such an overdose.

(b) The Secretary, pursuant to regulations which the Secretary shall prescribe, may—

(1) increase the copayment amount in effect under subsection (a); and

(2) establish a maximum monthly and a maximum annual pharmaceutical copayment amount under subsection (a) for veterans who have multiple outpatient prescriptions.

(c) *The Secretary may waive the requirement of a veteran to make a payment under this section if—*

*(1) an error committed by the Department or an employee of the Department was the cause of delaying notification sent to the veteran of the requirement to make the payment; and*

*(2) the veteran received such notification later than 180 days after the date on which the veteran received the medication for which the payment was required.*

**[(c)]** (d) Amounts collected under this section shall be deposited in the Department of Veterans Affairs Medical Care Collections Fund.

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