

111TH CONGRESS
1ST SESSION

S. 1322

To provide for the Captain James A. Lovell Federal Health Care Center
in Lake County, Illinois, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 23, 2009

Mr. DURBIN (for himself and Mr. AKAKA) introduced the following bill; which
was read twice and referred to the Committee on Armed Services

A BILL

To provide for the Captain James A. Lovell Federal Health
Care Center in Lake County, Illinois, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Captain James A.
5 Lovell Federal Health Care Center Act of 2009”.

6 **SEC. 2. EXECUTIVE AGREEMENT.**

7 (a) EXECUTIVE AGREEMENT REQUIRED.—Not later
8 than 180 days after the date of the enactment of this Act,
9 the Secretary of Defense, in consultation with the Sec-
10 retary of the Navy, and the Secretary of Veterans Affairs

1 shall execute a signed executive agreement for the joint
2 use by the Department of Defense and the Department
3 of Veterans Affairs of the following:

4 (1) A new Navy ambulatory care center (on
5 which construction commenced in July 2008), park-
6 ing structure, and supporting structures and facili-
7 ties in North Chicago, Illinois, and Great Lakes, Illi-
8 nois.

9 (2) Medical personal property and equipment
10 relating to the center, structures, and facilities de-
11 scribed in paragraph (1).

12 (b) SCOPE.—The agreement required by subsection
13 (a) shall—

14 (1) be a binding operational agreement on mat-
15 ters under the areas specified in section 706 of the
16 Duncan Hunter National Defense Authorization Act
17 for Fiscal Year 2009 (Public Law 110–417; 122
18 Stat. 4500); and

19 (2) contain additional terms and conditions as
20 required by the provisions of this Act.

21 **SEC. 3. TRANSFER OF PROPERTY.**

22 (a) TRANSFER.—

23 (1) TRANSFER AUTHORIZED.—The Secretary of
24 Defense, acting through the Administrator of Gen-
25 eral Services, may transfer, without reimbursement,

1 to the Secretary of Veterans Affairs jurisdiction over
2 the center, structures, facilities, and property and
3 equipment covered by the executive agreement under
4 section 2.

5 (2) DATE OF TRANSFER.—The transfer author-
6 ized by paragraph (1) may not occur before the ear-
7 lier of—

8 (A) the date that is five years after the
9 date of the execution under section 2 of the ex-
10 ecutive agreement required by that section; or

11 (B) the date of the completion of such spe-
12 cific benchmarks relating to the joint use by the
13 Department of Defense and the Department of
14 Veterans Affairs of the Navy ambulatory care
15 center described in section 2(a)(1) as the Sec-
16 retary of Defense (in consultation with the Sec-
17 retary of the Navy) and Secretary of the De-
18 partment of Veterans Affairs shall jointly estab-
19 lish for purposes of this section not later than
20 180 days after the date of the enactment of this
21 Act.

22 (3) DELAY OF TRANSFER FOR COMPLETION OF
23 CONSTRUCTION.—If construction on the center,
24 structures, and facilities described in paragraph (1)
25 is not complete as of the date specified in subpara-

1 graph (A) or (B) of that paragraph, as applicable,
2 the transfer of the center, structures, and facilities
3 under that paragraph may occur thereafter upon
4 completion of the construction.

5 (4) DISCHARGE OF TRANSFER.—The Adminis-
6 trator of General Services shall effectualize and me-
7 morialize the transfer as authorized by this sub-
8 section not later than 30 days after receipt of the re-
9 quest for the transfer.

10 (5) DESIGNATION OF FACILITY.—The center,
11 structures, facilities transferred under this sub-
12 section shall be designated and known after transfer
13 under this subsection as the “Captain James A.
14 Lovell Federal Health Care Center”.

15 (b) REVERSION.—

16 (1) IN GENERAL.—If any of the real and re-
17 lated personal property transferred pursuant to sub-
18 section (a) is subsequently used for purposes other
19 than those specified in the executive agreement re-
20 quired by section 2, or is otherwise jointly deter-
21 mined by the Secretary of Defense and the Secretary
22 of Veterans Affairs to be excess to the needs of the
23 Captain James A. Lovell Federal Health Care Cen-
24 ter, the Secretary of Veterans Affairs shall offer to
25 transfer jurisdiction over such property, without re-

1 imbursement, to the Secretary of Defense. Any such
2 transfer shall be carried out by the Administrator of
3 General Services not later than one year after the
4 acceptance of the offer of such transfer, plus such
5 additional time as the Administrator may require to
6 effectuate and memorialize such transfer.

7 (2) REVERSION IN EVENT OF LACK OF FACILI-
8 TIES INTEGRATION.—

9 (A) WITHIN INITIAL PERIOD.—During the
10 five-year period beginning on the date of the
11 transfer of real and related personal property
12 pursuant to subsection (a), if the Secretary of
13 Veterans Affairs, the Secretary of Defense, and
14 the Secretary of Navy jointly determine that
15 the integration of the facilities transferred pur-
16 suant to that subsection should not continue,
17 jurisdiction over such real and related personal
18 property shall be transferred, without reim-
19 bursement, to the Secretary of Defense. The
20 transfer under this subparagraph shall be car-
21 ried out by the Administrator of General Serv-
22 ices not later than 180 days after the date of
23 the determination by the Secretaries, plus such
24 additional time as the Administrator may re-

1 quire to effectuate and memorialize such trans-
2 fer.

3 (B) AFTER INITIAL PERIOD.—After the
4 end of the five-year period described in sub-
5 paragraph (A), if the Secretary of Veterans Af-
6 fairs or the Secretary of Defense determines
7 that the integration of the facilities transferred
8 pursuant to subsection (a) should not continue,
9 the Secretary of Veterans Affairs shall transfer,
10 without reimbursement, to the Secretary of De-
11 fense jurisdiction over the real and related per-
12 sonal property described in subparagraph (A).
13 Any transfer under this subparagraph shall be
14 carried out by the Administrator of General
15 Services not later than one year after the date
16 of the determination by the applicable Sec-
17 retary, plus such additional time as the Admin-
18 istrator may require to effectuate and memori-
19 alize such transfer.

20 (C) REVERSION PROCEDURES.—The exec-
21 utive agreement required by section 2 shall pro-
22 vide the following:

23 (i) Specific procedures for the rever-
24 sion of real and related personal property,
25 as appropriate, transferred pursuant to

1 subsection (a) to ensure the continuing ac-
2 complishment by the Department of De-
3 fense and the Department of Veterans Af-
4 fairs of their missions in the event that the
5 integration of facilities described trans-
6 ferred pursuant to that subsection (a) is
7 not completed or a reversion of property
8 occurs under subparagraph (A) or (B).

9 (ii) In the event of a reversion under
10 this paragraph, the transfer from the De-
11 partment of Veterans Affairs to the De-
12 partment of Defense of associated func-
13 tions including appropriate resources, civil-
14 ian positions, and personnel, in a manner
15 that will not result in adverse impact to
16 the missions of Department of Defense or
17 the Department of Veterans Affairs.

18 **SEC. 4. TRANSFER OF CIVILIAN PERSONNEL OF THE DE-**
19 **PARTMENT OF DEFENSE.**

20 (a) **TRANSFER OF FUNCTIONS.**—The Secretary of
21 Defense and the Secretary of the Navy may transfer to
22 the Secretary of Veterans Affairs functions necessary for
23 the effective operation of the Captain James A. Lovell
24 Federal Health Care Center. The Secretary of Veterans
25 Affairs may accept any functions so transferred.

1 (b) TERMS.—

2 (1) EXECUTIVE AGREEMENT.—Any transfer of
3 functions under subsection (a) shall be carried out
4 as provided in the executive agreement required by
5 section 2. The functions to be so transferred shall be
6 identified utilizing the provisions of section 3503 of
7 title 5, United States Code.

8 (2) ELEMENTS.—In providing for the transfer
9 of functions under subsection (a), the executive
10 agreement required by section 2 shall provide for the
11 following:

12 (A) The transfer of civilian employee posi-
13 tions of the Department of Defense identified in
14 the executive agreement to the Department of
15 Veterans Affairs, and of the incumbent civilian
16 employees in such positions, and the transition
17 of the employees so transferred to the pay, ben-
18 efits, and personnel systems that apply to em-
19 ployees of the Department of Veterans Affairs
20 (to the extent that different systems apply).

21 (B) The transition of employees so trans-
22 ferred to the pay systems of the Department of
23 Veterans Affairs in a manner which will not re-
24 sult in any reduction in an employee's regular
25 rate of compensation (including basic pay, local-

1 ity pay, any physician comparability allowance,
2 and any other fixed and recurring pay supple-
3 ment) at the time of transition.

4 (C) The continuation after transfer of the
5 same employment status for employees so
6 transferred who have already successfully com-
7 pleted or are in the process of completing a
8 one-year probationary period under title 5,
9 United States Code, notwithstanding the provi-
10 sions of section 7403(b)(1) of title 38, United
11 States Code.

12 (D) The extension of collective bargaining
13 rights under title 5, United States Code, to em-
14 ployees so transferred in positions listed in sub-
15 section 7421(b) of title 38, United States Code,
16 notwithstanding the provisions of section 7422
17 of title 38, United States Code, for a two-year
18 period beginning on the effective date of the ex-
19 ecutive agreement.

20 (E) At the end of the two-year period be-
21 ginning on the effective date of the executive
22 agreement, for the following actions by the Sec-
23 retary of Veterans Affairs with respect to the
24 extension of collective bargaining rights under
25 subparagraph (D):

1 (i) Consideration of the impact of the
2 extension of such rights.

3 (ii) Consultation with exclusive em-
4 ployee representatives of the transferred
5 employees about such impact.

6 (iii) Determination, after consultation
7 with the Secretary of Defense and the Sec-
8 retary of the Navy, whether the extension
9 of such rights should be terminated, modi-
10 fied, or kept in effect.

11 (iv) Submittal to Congress of a notice
12 regarding the determination made under
13 clause (iii).

14 (F) The recognition after transfer of each
15 transferred physician's and dentist's total num-
16 ber of years of service as a physician or dentist
17 in the Department of Defense for purposes of
18 calculating such employee's rate of base pay,
19 notwithstanding the provisions of section
20 7431(b)(3) of title 38, United States Code.

21 (G) The preservation of the seniority of the
22 employees so transferred for all pay purposes.

23 (c) RETENTION OF DEPARTMENT OF DEFENSE EM-
24 PLOYMENT AUTHORITY.—Notwithstanding subsections
25 (a) and (b), the Department of Defense may employ civil-

1 ian personnel at the Captain James Lovell Federal Health
2 Care Center if the Secretary of the Navy, or a designee
3 of the Secretary, determines it is necessary and appro-
4 priate to meet mission requirements of the Department
5 of the Navy.

6 **SEC. 5. JOINT FUNDING AUTHORITY FOR THE CAPTAIN**
7 **JAMES A. LOVELL FEDERAL HEALTH CARE**
8 **CENTER.**

9 (a) IN GENERAL.—The Department of Veterans Af-
10 fairs/Department of Defense Health-Care Resources Shar-
11 ing Committee under section 8111(b) of title 38, United
12 States Code, may provide for the joint funding of the Cap-
13 tain James A. Lovell Federal Health Care Center in ac-
14 cordance with the provisions of this section.

15 (b) HEALTH CARE CENTER FUND.—

16 (1) ESTABLISHMENT.—There is established on
17 the books of the Treasury under the Department of
18 Veterans Affairs a fund to be known as the “Cap-
19 tain James A. Lovell Federal Health Care Center
20 Fund” (in this section referred to as the “Fund”).

21 (2) ELEMENTS.—The Fund shall consist of the
22 following:

23 (A) Amounts transferred to the Fund by
24 the Secretary of Defense, in consultation with
25 the Secretary of the Navy, from amounts au-

1 thorized to be appropriated for the Department
2 of Defense.

3 (B) Amounts transferred to the Fund by
4 the Secretary of Veterans Affairs from amounts
5 authorized to be appropriated for the Depart-
6 ment of Veterans Affairs.

7 (C) Amounts transferred to the Fund from
8 medical care collections under paragraph (4).

9 (3) DETERMINATION OF AMOUNTS TRANS-
10 FERRED GENERALLY.—The amount transferred to
11 the Fund by each of the Secretary of Defense and
12 the Secretary of Veterans Affairs under subpara-
13 graphs (A) and (B), as applicable, of paragraph (2)
14 each fiscal year shall be such amount, as determined
15 by a methodology jointly established by the Sec-
16 retary of Defense and the Secretary of Veterans Af-
17 fairs for purposes of this subsection, that reflects the
18 mission-specific activities, workload, and costs of
19 provision of health care at the Captain James A.
20 Lovell Federal Health Care Center of the Depart-
21 ment of Defense and the Department of Veterans
22 Affairs, respectively.

23 (4) TRANSFERS FROM MEDICAL CARE COLLEC-
24 TIONS.—

1 (A) IN GENERAL.—Amounts collected
2 under the authorities specified in subparagraph
3 (B) for health care provided at the Captain
4 James A. Lovell Federal Health Care Center
5 may be transferred to the Fund under para-
6 graph (2)(C).

7 (B) AUTHORITIES.—The authorities speci-
8 fied in this subparagraph are the following:

9 (i) Section 1095 of title 10, United
10 States Code.

11 (ii) Section 1729 of title 38, United
12 States Code.

13 (iii) Public Law 87–693, popularly
14 known as the “Federal Medical Care Re-
15 covery Act” (42 U.S.C. 2651 et seq.).

16 (5) ADMINISTRATION.—The Fund shall be ad-
17 ministered in accordance with such provisions of the
18 executive agreement required by section 2 as the
19 Secretary of Defense and the Secretary of Veterans
20 Affairs shall jointly include in the executive agree-
21 ment. Such provisions shall provide for an inde-
22 pendent review of the methodology established under
23 paragraph (3).

24 (c) AVAILABILITY.—

1 (1) IN GENERAL.—Funds transferred to the
2 Fund under subsection (b) shall be available to fund
3 the operations of the Captain James A. Lovell Fed-
4 eral Health Care Center, including capital equip-
5 ment, real property maintenance, and minor con-
6 struction projects that are not required to be specifi-
7 cally authorized by law under section 2805 of title
8 10, United States Code, or section 8104 of title 38,
9 United States Code.

10 (2) LIMITATION.—The availability of funds
11 transferred to the Fund under subsection (b)(2)(C)
12 shall be subject to the provisions of section 1729A
13 of title 38, United States Code.

14 (3) PERIOD OF AVAILABILITY.—

15 (A) IN GENERAL.—Except as provided in
16 subparagraph (B), funds transferred to the
17 Fund under subsection (b) shall be available
18 under paragraph (1) for one fiscal year after
19 transfer.

20 (B) EXCEPTION.—Of an amount trans-
21 ferred to the Fund under subsection (b), an
22 amount not to exceed two percent of such
23 amount shall be available under paragraph (1)
24 for two fiscal years after transfer.

1 (d) FINANCIAL RECONCILIATION.—The executive
2 agreement required by section 2 shall provide for the de-
3 velopment and implementation of an integrated financial
4 reconciliation process that meets the fiscal reconciliation
5 requirements of the Department of Defense, the Depart-
6 ment of the Navy, and the Department of Veterans Af-
7 fairs. The process shall permit each of the Department
8 of Defense, the Department of Navy, and the Department
9 of Veterans Affairs to identify their fiscal contributions
10 to the Fund, taking into consideration accounting, work-
11 load, and financial management differences.

12 (e) ANNUAL REPORT.—The Secretary of Defense, in
13 consultation with the Secretary of the Navy, and the Sec-
14 retary of Veterans Affairs shall jointly provide for an an-
15 nual independent review of the Fund for at least three
16 years after the date of the enactment of this Act. Such
17 review shall include detailed statements of the uses of
18 amounts of the Fund and an evaluation of the adequacy
19 of the proportional share contributed to the Fund by each
20 of the Secretary of Defense and the Secretary of Veterans
21 Affairs.

22 (f) TERMINATION.—The authorities in this section
23 shall terminate on September 30, 2015.

1 **SEC. 6. ELIGIBILITY OF MEMBERS OF THE UNIFORMED**
2 **SERVICES FOR CARE AND SERVICES AT THE**
3 **CAPTAIN JAMES A. LOVELL FEDERAL**
4 **HEALTH CARE CENTER.**

5 (a) IN GENERAL.—For purposes of eligibility for
6 health care under chapter 55 of title 10, United States
7 Code, the Captain James A. Lovell Federal Health Care
8 Center may be treated as a facility of the uniformed serv-
9 ices to the extent provided under subsection (b) in the ex-
10 ecutive agreement required by section 2.

11 (b) ADDITIONAL ELEMENTS.—The executive agree-
12 ment required by section 2 may include provisions as fol-
13 lows:

14 (1) To establish an integrated priority list for
15 access to health care at the Captain James A. Lovell
16 Federal Health Care Center, which list shall—

17 (A) integrate the respective health care
18 priority lists of the Secretary of Defense and
19 the Secretary of Veterans Affairs; and

20 (B) take into account categories of bene-
21 ficiaries, enrollment program status, and such
22 other matters as the Secretary of Defense and
23 the Secretary of Veterans Affairs jointly con-
24 sider appropriate.

25 (2) To incorporate any resource-related limita-
26 tions for access to health care at the Captain James

1 A. Lovell Federal Health Care Center that the Sec-
2 retary of Defense may establish for purposes of ad-
3 ministering space-available eligibility for care in fa-
4 cilities of the uniformed services under chapter 55 of
5 title 10, United States Code.

6 (3) To allocate financial responsibility for care
7 provided at the Captain James A. Lovell Federal
8 Health Care Center for individuals who are eligible
9 for care under both chapter 55 of title 10, United
10 States Code, and title 38, United States Code.

11 (4) To waive the applicability to the Captain
12 James A. Lovell Federal Health Care Center of any
13 provision of section 8111(e) of title 38, United
14 States Code, that the Secretary of Defense and the
15 Secretary of Veterans Affairs shall jointly specify.

16 **SEC. 7. EXTENSION OF DOD-VA HEALTH CARE SHARING IN-**
17 **CENTIVE FUND.**

18 Section 8111(d)(3) of title 38, United States Code,
19 is amended by striking “September 30, 2010” and insert-
20 ing “September 30, 2015”.

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