

AMENDING TITLE 38, UNITED STATES CODE, TO EXPAND VETERAN ELIGIBILITY FOR REIMBURSEMENT BY THE SECRETARY OF VETERANS AFFAIRS FOR EMERGENCY TREATMENT FURNISHED IN A NON-DEPARTMENT FACILITY, AND FOR OTHER PURPOSES

MARCH 26, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FILNER, from the Committee on Veterans’ Affairs,
submitted the following

R E P O R T

[To accompany H.R. 1377]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans’ Affairs, to whom was referred the bill (H.R. 1377) to amend title 38, United States Code, to expand veteran eligibility for reimbursement by the Secretary of Veterans Affairs for emergency treatment furnished in a non-Department facility, 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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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. EXPANSION OF VETERAN ELIGIBILITY FOR REIMBURSEMENT BY SECRETARY OF VETERANS AFFAIRS FOR EMERGENCY TREATMENT FURNISHED IN A NON-DEPARTMENT FACILITY.

(a) EXPANSION OF ELIGIBILITY.—Section 1725 of title 38, United States Code, is amended—

(1) in subsection (b)(3)(C), by striking “or in part”; and

(2) in subsection (f)(2), by striking subparagraph (E).

(b) LIMITATIONS ON REIMBURSEMENT.—Subsection (c) of such section is amended by adding at the end the following new paragraph:

“(4)(A) If the veteran has contractual or legal recourse against a third party that would only, in part, extinguish the veteran’s liability to the provider of the emergency treatment, and payment for the treatment may be made both under subsection (a) and by the third party, the amount payable for such treatment under such subsection shall be the amount by which the costs for the emergency treatment exceed the amount payable or paid by the third party, except that the amount payable may not exceed the maximum amount payable established under paragraph (1)(A).

“(B) In any case in which a third party is financially responsible for part of the veteran’s emergency treatment expenses, the Secretary shall be the secondary payer.

“(C) A payment in the amount payable under subparagraph (A) shall be considered payment in full and shall extinguish the veteran’s liability to the provider.

“(D) The Secretary may not reimburse a veteran under this section for any copayment or similar payment that the veteran owes the third party or for which the veteran is responsible under a health-plan contract.”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act, and shall apply with respect to emergency treatment furnished on or after the date of the enactment of this Act.

(2) REIMBURSEMENT FOR TREATMENT PROVIDED BEFORE EFFECTIVE DATE.—The Secretary may provide reimbursement under section 1725 of title 38, United States Code, as amended by subsections (a) and (b), for emergency treatment furnished to a veteran before the date of the enactment of this Act, if the Secretary determines that, under the circumstances applicable with respect to the veteran, it is appropriate to do so.

PURPOSE AND SUMMARY

H.R. 1377 was introduced on March 6, 2009, by Representative Bob Filner of California, Chairman of the Committee on Veterans’ Affairs. This legislation would expand veteran eligibility for reimbursement by the Secretary of Veterans Affairs (VA) for emergency treatment furnished in a non-Department facility. It would also set certain limitations on reimbursement.

BACKGROUND AND NEED FOR LEGISLATION

VA is required to reimburse veterans or pay for emergency treatment in non-VA facilities. This authority was last revised in 2008 with the enactment of the Veterans’ Mental Health and Other Care Improvements Act of 2008, Public Law 110–387 (122 Stat. 4110), which made these provisions mandatory.

The Committee has learned that under current law the VA does not pay for emergency treatment for non-service connected conditions in non-VA facilities if the veteran has third-party insurance that pays any portion of the costs associated with such emergency treatment. This situation can inadvertently arise if a veteran has

minimal health insurance coverage through a state-mandated automobile insurance policy. Consequently, if an emergency does occur, and the veteran has a policy containing such minimal coverage, the veteran may be responsible for essentially the full cost of emergency treatment. While some veterans are able to negotiate payment plans and debt forgiveness of a portion of their medical bills with the non-VA hospital where they received the emergency treatment, many veterans are without the financial resources to shoulder such a cost and are unaware that the VA would not be responsible for such emergency care.

To address this problem, Representative Filner introduced H.R. 5888 during the 110th Congress. At a June 5, 2008, legislative hearing, the VA supported the intent of H.R. 5888 but expressed concerns about the reimbursement responsibilities of the VA.

H.R. 1377, as amended, would allow the VA to reimburse veterans for treatment in a non-VA facility if they have a third-party insurer that would pay a portion of the emergency care. In addition, in response to the concerns put forth by the VA last Congress, H.R. 1377 would clarify the reimbursement responsibilities of the VA.

H.R. 1377, as amended, provides for an effective date which is the date of the enactment of the Act. However, many veterans have been adversely affected by the VA's non-reimbursement for emergency treatment under the current law. The Committee strongly urges the Secretary to use the discretionary authority provided by this bill to reimburse veterans for emergency treatment provided prior to the date of enactment who have been financially harmed under the VA's current non-reimbursement policy.

HEARINGS

On March 3, 2009, the Subcommittee on Health held a legislative hearing on a number of bills introduced during the 111th Congress, including a discussion draft of the emergency care reimbursement bill.

The following witnesses testified: The Honorable Niki Tsongas of Massachusetts; The Honorable Stephanie Herseth Sandlin of South Dakota; Ms. Joy Ilem, Assistant National Legislative Director, Disabled American Veterans; Mr. Joseph L. Wilson, Deputy Director, Veterans Affairs and Rehabilitation Commission, The American Legion; Mr. Eric Hilleman, Deputy Director, National Legislative Service, Veterans of Foreign Wars of the United States; Mr. Todd Bowers, Director of Government Affairs, Iraq and Afghanistan Veterans of America; Gerald Cross, M.D., FAAFP, Principal Deputy Under Secretary for Health, Veterans Health Administration, U.S. Department of Veterans Affairs, accompanied by Mr. Walter A. Hall, Assistant General Counsel, U.S. Department of Veterans Affairs. Those submitting statements for the record included: The Honorable Bob Filner of California; the Vietnam Veterans of America; and the Paralyzed Veterans of America.

SUBCOMMITTEE CONSIDERATION

On March 19, 2009, the Subcommittee on Health met in open markup session and ordered favorably forwarded to the full Com-

mittee H.R. 1377, as amended, by voice vote. During consideration of the bill the following amendment was considered:

An amendment by Mr. Rodriguez of Texas to amend the effective date was agreed to by voice vote.

COMMITTEE CONSIDERATION

On March 25, 2009, the full Committee met in an open markup session, a quorum being present, and ordered H.R. 1377, as amended, favorably reported to the House of Representatives, by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report the legislation and amendments thereto. There were no record votes taken on amendments or in connection with ordering H.R. 1377 reported to the House. A motion by Mr. Buyer of Indiana to order H.R. 1377, as amended, reported 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 reflected in the descriptive portions of this report.

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. 1377 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) 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. 1377 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. 1377 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 25, 2009.

Hon. BOB FILNER,
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. 1377, a bill to amend title 38, United States Code, to expand veteran eligibility for reimbursement by the Secretary of Veterans Affairs for emergency treatment furnished in a non-Department facility, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sunita D'Monte.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 1377—A bill to amend title 38, United States Code, to expand veteran eligibility for reimbursement by the Secretary of Veterans Affairs for emergency treatment furnished in a non-Department facility, and for other purposes

H.R. 1377 would require the Department of Veterans Affairs (VA) to pay for the emergency care that certain veterans receive at non-VA medical facilities, or to reimburse veterans if they have paid for that care. It also would permit VA, subject to the Secretary's discretion, to reimburse veterans for emergency treatment that was provided prior to the date of enactment. CBO estimates that implementing the bill would cost \$5 million over the 2010–2014 period, assuming appropriation of the estimated amounts. Enacting the bill would not affect direct spending or revenues.

Under current law, VA has the authority to reimburse certain veterans or pay for emergency treatment of a nonservice-connected condition, if VA is the payer of last resort. Veterans who have recourse against a third party that would partly cover those medical expenses are ineligible for reimbursement from VA. H.R. 1377 would remove that requirement and make them eligible for such reimbursements.

Based on information from VA, CBO estimates that under the bill VA would approve about 700 new claims a year over the 2010–2014 period and about 2,000 claims for emergency treatment provided over the 2005–2009 period. (CBO assumes that few veterans retain records for emergency treatment provided before 2005.) CBO estimates that VA would pay an average of \$730 per claim in 2010, rising to about \$900 per claim in 2014, for total costs of \$1 million a year.

H.R. 1377 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Sunita D'Monte. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 1377 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. 1377.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for H.R. 1377 is provided by Article I, section 8 of the Constitution of the United States.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation 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.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Expansion of veteran eligibility for reimbursement by Secretary of Veterans Affairs for emergency treatment furnished in a non-department facility

This section would amend section 1725 of title 38, United States Code, to expand the eligibility for reimbursement by the VA for emergency treatment received in a non-Department facility.

It also clearly establishes that the VA is responsible for the cost of the emergency treatment which exceeds the amount payable or paid by the third-party insurer. However, the reimbursement may not exceed the maximum amount payable established by the VA. It further defines the VA as a secondary payor where a third-party insurer is financially responsible for a part of the veteran's emergency treatment expenses. Next, it protects veterans by clarifying that they are not liable for any remaining balance due to the provider after the third-party insurer and the VA have made their payments. Finally, it prohibits the Secretary from reimbursing the veteran for copayments or similar payments that the veteran owes to the third party under a health-plan contract.

This section, as amended, would provide for an effective date of the date of the enactment of the Act. In addition, the Secretary of the VA has the authority to reimburse certain veterans for emergency treatment provided before the effective date of this Act if the Secretary determines that it is appropriate to do so.

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):

SECTION 1725 OF TITLE 38, UNITED STATES CODE

§ 1725. Reimbursement for emergency treatment

(a) * * *

(b) ELIGIBILITY.—(1) * * *

* * * * *

(3) A veteran is personally liable for emergency treatment furnished the veteran in a non-Department facility if the veteran—

(A) * * *

* * * * *

(C) has no other contractual or legal recourse against a third party that would, in whole [or in part], extinguish such liability to the provider; and

* * * * *

(c) LIMITATIONS ON REIMBURSEMENT.—(1) * * *

* * * * *

(4)(A) *If the veteran has contractual or legal recourse against a third party that would only, in part, extinguish the veteran's liability to the provider of the emergency treatment, and payment for the treatment may be made both under subsection (a) and by the third party, the amount payable for such treatment under such subsection shall be the amount by which the costs for the emergency treatment exceed the amount payable or paid by the third party, except that the amount payable may not exceed the maximum amount payable established under paragraph (1)(A).*

(B) *In any case in which a third party is financially responsible for part of the veteran's emergency treatment expenses, the Secretary shall be the secondary payer.*

(C) *A payment in the amount payable under subparagraph (A) shall be considered payment in full and shall extinguish the veteran's liability to the provider.*

(D) *The Secretary may not reimburse a veteran under this section for any copayment or similar payment that the veteran owes the third party or for which the veteran is responsible under a health-plan contract.*

* * * * *

(f) DEFINITIONS.—For purposes of this section:

(1) * * *

(2) The term “health-plan contract” includes any of the following:

(A) * * *

* * * * *

**[(E) A law of a State or political subdivision described
in section 1729(a)(2)(B) of this title.]**

* * * * *

