

VA SCHEDULING ACCOUNTABILITY ACT

MAY 23, 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. 467]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 467) to direct the Secretary of Veterans Affairs to ensure that each medical facility of the Department of Veterans Affairs complies with requirements relating to scheduling veterans for health care appointments, to improve the uniform application of directives of the Department, 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. 467, the “VA Scheduling Accountability Act,” was introduced by Representative Jackie Walorski of Indiana on January 12, 2017.

H.R. 467 would require that each director of a VA medical center annually certify compliance with VA’s existing patient scheduling directive (or any successor directive that replaces it) and report to Congress.

BACKGROUND AND NEED FOR LEGISLATION

Section 2. Compliance with scheduling requirements

Veterans Health Administration (VHA) Directive 2010–027, VHA Outpatient Scheduling Processes and Procedures, provides national policy for scheduling outpatient clinic appointments and for ensuring the competency of staff directly or indirectly involved in the scheduling process.¹ This June 2010 directive requires annual certification of full compliance with the content of the directive. In May 2013, the then-VA Deputy Under Secretary for Health for Operations Management waived the requirement for facility directors to certify compliance with VHA Directive 2010–027. Subsequently, in April 2014, the Committee uncovered the use of unauthorized waiting lists at the Phoenix VA Health Care System in Phoenix, Arizona. This revelation—and the investigations that resulted from it—found that no less than 40 veterans died while on these waiting lists and led to a widespread, systemic access and accountability scandal. Though VA has since reinstated the certification requirement for VHA Directive 2010–027, non-compliance with VA’s scheduling policies was a primary factor behind the 2014 access crisis, the repercussions of which continue today.

The Committee continues to be concerned about both the integrity of VA wait time data and individual medical facilities’ compliance with VA scheduling policies. Section 2 of the bill would require VA medical center directors to certify annually that their facility is in compliance with the scheduling directive (or any successor directive that replaces it), prohibit VA from waiving certification, and require VA to report to Congress on individual medical facilities’ compliance. To ensure accountability for poor-performing facilities, section 2 of the bill would also prohibit VA medical center leaders from receiving awards or bonuses if their VA medical center fails to certify compliance with the scheduling directive (or any successor directive that replaces it).

HEARINGS

There were no full Committee hearings held on H.R. 467.

On March 29, 2017, the Subcommittee on Health conducted a legislative hearing on a number of bills including H.R. 467.

The following witnesses testified:

The Honorable David. P. Roe M.D. of Tennessee; The Honorable Jackie Walorski of Indiana; The Honorable Doug Collins of Georgia; The Honorable Mike Coffman of Colorado; The Honorable Stephen Knight of California; The Honorable Ann M. Kuster of New Hampshire; Jennifer S. Lee, M.D., the Dep-

¹ VHA Directive 2010–027, VHA Outpatient Scheduling Processes and Procedure

uty Under Secretary for Health for Policy and Services for the Veterans Health Administration of the U.S. Department of Veterans Affairs who was accompanied by Susan Blauert, the Chief Counsel for the Health Care Law Group of the Office of the General Counsel for the U.S. Department of Veterans Affairs; Kayda Keleher, Legislative Associate for the National Legislative Service of the Veterans of Foreign Wars of the United States; Shurhonda Y. Love, the Assistant National Legislative Director for the Disabled American Veterans; and, Sarah S. Dean, the Associate Legislative Director for the Paralyzed Veterans of America.

Statements for the record were submitted by:

The Honorable Lee Zeldin of New York; The American Legion; the National Association of State Veteran Homes; Swords to Plowshares; and, the Wounded Warrior Project.

SUBCOMMITTEE CONSIDERATION

On April 6, 2017, the Subcommittee on Health met in an open markup session, a quorum being present, and ordered H.R. 467 to be reported favorably to the Full Committee by voice vote.

COMMITTEE CONSIDERATION

On May 17, 2017, the Full Committee met in open markup session, a quorum being present, and ordered H.R. 467 to be reported favorably to the House of Representatives by voice vote. A motion by Representative Tim Walz of Minnesota, Ranking Member of the Committee on Veterans' Affairs, to report H.R. 467 favorably to the House of Representatives was agreed to 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. 467 reported to the House.

JASON CHAFFETZ, UTAH
CHAIRMAN

COMMITTEE CORRESPONDENCE

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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May 22, 2017

The Honorable David P. Roe, M.D.
Chairman
Committee on Veterans' Affairs
335 Cannon HOB
Washington, DC 20515

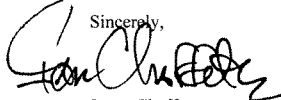
Dear Mr. Chairman:

I write concerning H.R. 467, the VA Scheduling Accountability Act. As you know, the Committee on Veterans' Affairs received an original referral and the Committee on Oversight and Government Reform a secondary referral when the bill was introduced on January 12, 2017. I recognize and appreciate your desire to bring this legislation before the House of Representatives in an expeditious manner, and accordingly, the Committee on Oversight and Government Reform will forego action on the bill.

The Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 467 at this time, we do not waive any jurisdiction over the subject matter contained in this or similar legislation. Further, I request your support for the appointment of conferees from the Committee on Oversight and Government Reform during any House-Senate conference convened on this or related legislation.

Finally, I would ask that a copy of our exchange of letters on this matter be included in the bill report filed by the Committee on Veterans' Affairs, as well as in the *Congressional Record* during floor consideration, to memorialize our understanding

Sincerely,



Jason Chaffetz
Chairman

cc: The Honorable Paul D. Ryan, Speaker
The Honorable Elijah E. Cummings
The Honorable Timothy J. Walz
The Honorable Thomas J. Wickham, Parliamentarian

REPUBLICANS
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 CLAY HIGGINS, LOUISIANA
 JACK BRIDENBA, MICHIGAN
 JIM BANKS, INDIANA
 JENNIFER GONZALEZ-COLON, PUERTO RICO
 JON TOWERS, STAFF DIRECTOR

U.S. House of Representatives

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May 22, 2017

DEMOCRATS
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 RAY KELLEY
 DEMOCRATIC STAFF DIRECTOR

The Honorable Jason Chaffetz
 Chairman
 Committee on Oversight and Government Reform
 U.S. House of Representatives
 2157 Rayburn House Office Building
 Washington, D.C. 20515

Dear Chairman Chaffetz:

In reference to your letter on May 22, 2017, I write to confirm our mutual understanding regarding H.R. 467, the VA Scheduling Accountability Act.

I appreciate the Committee on Oversight and Government Reform's waiver of consideration of provisions under its jurisdiction and its subject matter as specified in your letter. I acknowledge that the waiver was granted only to expedite floor consideration of H.R. 467 and does not in any way waive or diminish the Committee on Oversight and Government Reform's jurisdictional interests over this or similar legislation. I will support a request from the Committee on Oversight and Government Reform for appointment to any House-Senate conference on H.R. 467. Finally, I will also support your request to include a copy of our exchange of letters on this matter in the *Congressional Record* during floor consideration.

Thank you for your attention and assistance in this matter.

Sincerely,



DAVID P. ROE M.D.
 Chairman

- cc: The Honorable Paul Ryan, Speaker of the House
- The Honorable Elijah E. Cummings, Ranking Member, Committee on Oversight and Government Reform
- The Honorable Tim Walz, Ranking Member, Committee on Veterans' Affairs
- Mr. Thomas J. Wickham Jr., Parliamentarian

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 ensure that VA medical facilities are in compliance with scheduling directives.

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. 467 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. 467 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. 467 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, May 19, 2017.

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. 467, the VA Scheduling 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.

Enclosure.

H.R. 467—VA Scheduling Accountability Act

H.R. 467 would require the Department of Veterans Affairs (VA) to ensure that the director of each medical facility of the department certify annually that the facility is in full compliance with the laws and regulations pertaining to scheduling medical appointments. That requirement would codify VA's current practice, as specified under Directive 2010–027. The bill also would prohibit VA from paying bonuses to senior staff in facilities that are not able to certify such compliance. CBO expects that few, if any, bonuses would be denied under this provision.

In addition, the bill would require VA to ensure that directives and policies are being implemented in a uniform manner across the department. To accomplish that requirement, CBO expects VA would distribute regular guidance through electronic correspondence. On that basis, CBO estimates that implementing H.R. 467 would cost less than \$500,000 over the 2018–2022 period; any such spending would be subject to the availability of appropriated funds.

Enacting H.R. 467 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 467 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 467 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 Ann E. Futrell. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 467 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. 467.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, H.R. 467 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. 467 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, 114th Cong. (2015), the Committee finds that no provision of H.R. 467 establishes or reauthorizes a program of the Federal Government known to be dupli-

cative 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, 114th Cong. (2015), the Committee estimates that H.R. 467 contains no directed rule-making 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 to H.R. 467 as the “VA Scheduling Accountability Act.”

Section 2. Compliance with scheduling requirements

Section 2(a)(1) of the bill would require that the Secretary ensure that the director of each center annually certifies that the medical facility is in full compliance with all provisions of law and regulations relating to scheduling medical appointments, including pursuant to VHA Directive 2010–027 or any successor directive.

Section 2(a)(2) of the bill would prohibit VA from waiving any provision of such laws or regulations.

Section 2(b) of the bill would require that if a director of a facility fails to certify compliance pursuant to section 4(a)(1) of the bill for any year, the director must submit to the Secretary a report containing an explanation of why the director cannot certify the facility and a description of actions taken to ensure compliance in the future.

Section 2(c)(1) of the bill would prohibit “covered officials” from receiving any award or bonus the following year if the facility director cannot certify the facility.

Section 2(c)(2) of the bill would define a “covered official” as an official who works in a VA facility that cannot be certified and holds one of the following positions: director; chief of staff; associate director; associate director for patient care; or, deputy chief of staff.

Section 2(d) of the bill would require that the Secretary submit annually to the Committees on Veterans’ Affairs of the U.S. House of Representatives and the U.S. Senate a report that includes a list of each medical facility for which a certification was made during the preceding year and a list of each medical facility for which a certification was not made during the preceding year, along with a copy of each report submitted to the Secretary under subsection (4)(b) of the bill for the preceding year.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

If enacted, this bill would make no changes in existing law.