

VETERANS EMERGENCY CARE FAIRNESS ACT OF 2007

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MAY 15, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 3819]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 3819) to amend title 38, United States Code, to require the Secretary of Veterans Affairs to reimburse veterans receiving emergency treatment in non-Department of Veterans Affairs facilities for such treatment until such veterans are transferred to Department facilities, 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. 3819 was introduced by Representative Zack Space of Ohio. This legislation would require the Secretary of Veterans Affairs (VA) to reimburse certain veterans for the cost of emergency treatment received in a non-VA facility. It would also require the Secretary to reimburse certain veterans with a service-connected disability or a non-service-connected disability associated with, or aggravated by, a service-connected disability for the value of emergency treatment for which such veterans have made payment from sources other than the VA.

The bill would also define “emergency treatment” in both sections to that of a “prudent layperson” standard and define “emergency treatment” as continuing until the veteran could have been transferred safely to a VA or other Federal facility, or a VA or other Federal facility agrees to accept such transfer if, at the time the veteran could have been transferred safely, the non-VA provider makes and documents reasonable attempts to transfer the veteran to a VA facility or other Federal facility.

## BACKGROUND AND DISCUSSION

During a Joint House and Senate Committee on Veterans’ Affairs meeting in New Philadelphia, Ohio, on May 29, 2007, several issues were brought to the attention of the Committee regarding recurring problems with reimbursement or payment of emergency treatment by VA to non-VA facilities. Testimony highlighted delays in receiving transfer approvals in order to transfer veterans from a non-VA community hospital to an appropriate VA medical center, withdrawal of previously provided approvals by VA, and delays in receiving reimbursement. VA medical centers are often full, or are unwilling to accept the transfer of these patients, leaving them in the care of non-VA facilities. These facilities are often small community hospitals who often feel obligated to continue providing medical care with no promise of reimbursement from the VA.

VA is currently authorized to provide reimbursement to non-VA hospitals for emergency care provided for treatment of a service-connected disability, or a non-service connected disability aggravated by a service-connected condition, up to the point of stabilization of the patient. VA can also reimburse or pay for the reasonable value of expenses incurred by a covered veteran for non-VA emergency treatment for a non-service connected condition. Once the patient is stable enough to be transferred, he or she must be moved to a VA hospital. After the point of stabilization, if a VA hospital does not have a bed available, or they are unwilling to accept the transfer, VA currently is not required to reimburse the non-VA facility for the cost of care.

This legislation would mandate that the VA reimburse or pay for the reasonable value of treatment for any veteran who meets eligibility criteria and defines “emergency treatment” as continuing until the veteran can be transferred safely to a VA or other Federal facility, and the VA or other Federal facility agrees to accept such a transfer. This change would ensure that veterans’ emergency care at a non-VA facility will be paid for until he or she can be safely transferred to an available VA or other Federal facility. This legislation would also standardize the emergency reimbursement

programs by applying the “prudent layperson” definition of emergency treatment to all emergency situations, where the standard for determining whether treatment is covered is whether a prudent layperson would have thought it reasonable to seek immediate medical attention.

#### HEARINGS

On January 17, 2008, the Subcommittee on Health held a legislative hearing on a number of bills introduced in the 110th Congress, including H.R. 3819. The following witnesses testified: The Honorable Phil Hare of Illinois; The Honorable Stephanie Herseth Sandlin of South Dakota; The Honorable Zachary T. Space of Ohio; The Honorable Shelley Moore Capito of West Virginia; The Honorable Michael M. Honda of California; The Honorable Leonard L. Boswell of Iowa; The Honorable Steve Kagen of Wisconsin; Mr. Joseph L. Wilson, Deputy Director, Veterans Affairs and Rehabilitation Commission, The American Legion; Ms. Joy J. Ilem, Assistant National Legislative Director, Disabled American Veterans; Mr. Christopher Needham, Senior Legislative Associate, Veterans of Foreign Wars of the United States; Mr. Richard F. Weidman, Executive Director for Policy and Government Affairs, Vietnam Veterans of America; Gerald M. 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: American Academy of Physician Assistants; The Honorable Shelley Berkley of Nevada; Mental Health America; and, the Paralyzed Veterans of America.

#### COMMITTEE CONSIDERATION

On April 23, 2008, the Subcommittee on Health met in open markup session and ordered favorably forwarded to the full Committee H.R. 3819, without amendment, by voice vote.

On April 30, 2008, the full Committee met in open markup session, a quorum being present, and ordered H.R. 3819 favorably reported to the House of Representatives, without amendment, 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. 3819 reported to the House. A motion by Mr. Buyer of Indiana to order H.R. 3819, 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. 3819 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. 3819 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. 3819 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 12, 2008.*

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. 3819, the Veterans Emergency Care Fairness Act of 2007.

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

Sincerely,

ROBERT A. SUNSHINE  
(For Peter R. Orszag, Director).

Enclosure.

#### *H.R. 3819—Veterans Emergency Care Fairness Act of 2007*

Summary: H.R. 3819 would require the Department of Veterans Affairs (VA) to pay for the emergency care certain veterans receive at non-VA medical facilities, or to reimburse veterans if they have paid for that care. CBO estimates that implementing H.R. 3819 would cost \$323 million over the 2009–2013 period, assuming ap-

propriation of the estimated amounts. Enacting the bill would not affect direct spending or revenues.

H.R. 3819 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

**Estimated Cost to the Federal Government:** The estimated budgetary impact of H.R. 3819 is shown in the following table. The costs of this legislation fall within budget function 700 (veterans benefits and services).

	By fiscal year, in millions of dollars—				
	2009	2010	2011	2012	2013
<b>CHANGES IN SPENDING SUBJECT TO APPROPRIATION</b>					
Estimated Authorization Level .....	52	58	65	73	82
Estimated Outlays .....	49	57	64	72	81

**Basis of Estimate:** For this estimate, CBO assumes that the legislation will be enacted before the end of fiscal year 2008, that the estimated amounts will be appropriated each year, and that outlays will follow historical spending patterns for the VA medical services program.

Under two different sections of law, VA currently has the authority to reimburse certain veterans or to pay for emergency care provided at non-VA facilities. H.R. 3819 would amend and enhance those authorities. Based on information from VA, CBO estimates that by requiring VA to pay for longer (on average) lengths of stay in private medical facilities, the bill would cost \$323 million over the 2009–2013 period, assuming appropriation of the estimated amounts.

#### *Reimbursements under current law*

Under 38 U.S.C. 1725, VA may reimburse veterans or pay for emergency treatment of a nonservice-connected condition, if VA is the payer of last resort. Under this section of law, emergency treatment is defined as care or services provided for a medical emergency where a prudent layperson could reasonably expect that a delay in seeking medical attention would be hazardous to life or health. According to VA data on payments made under 38 U.S.C. 1725, VA paid a total of \$123 million in 2006—\$103 million for inpatient treatment provided to about 18,200 veterans (\$1,200 per day, for an average length of stay of 4.7 days) and \$20 million for ancillary care.

Under 38 U.S.C. 1728, VA may reimburse certain veterans with service-connected conditions or those who are covered for purposes of a vocational rehabilitation program if medical professionals determine that a medical emergency exists. Data from VA on payments made under 38 U.S.C. 1728 indicate that in 2006 VA paid \$83 million for treatment provided to 7,800 veterans (\$1,900 per day, for an average length of stay of 5.6 days).

Under both sections of current law, VA can make payments only until the veteran's condition has stabilized and he or she can be transferred safely to a VA or other federal facility, regardless of whether any such facility is actually available to accept such a transfer.

*Additional reimbursements under H.R. 3819*

H.R. 3819 would amend those authorities by establishing the prudent layperson definition of emergency treatment for both sections of law and requiring VA to pay for treatment until the veteran is transferred to a VA or other federal facility, or the veteran is otherwise discharged from the hospital. Under the bill, some veterans who incur medical costs after they are deemed to be stable but before they are transferred to a VA or other federal facility would now be eligible for additional payments from VA.

Data from the 2005 National Hospital Discharge Survey indicate that male patients over age 45 who were admitted through the emergency department stayed in the hospital for an average of 5.4 days. CBO estimates that under the bill, the average length of stay for which veterans would be reimbursed would rise from 4.7 days to 5.4 days, and VA's costs under 38 U.S.C. 1725 would increase by an average of \$30 million a year over the 2009–2013 period, assuming appropriation of the estimated amounts.

Based on information from VA, CBO estimates that under H.R. 3819, veterans who are eligible for reimbursement under 38 U.S.C. 1728—primarily veterans with service-connected disabilities—would be reimbursed for hospital stays averaging 6.6 days. CBO also expects that by establishing a prudent layperson definition of medical emergencies, the bill would increase the number of eligible veterans by 5 percent each year. Thus, CBO estimates that under the bill, costs under 38 U.S.C. 1728 would rise by an average of \$35 million a year over the 2009–2013 period, assuming appropriation of the estimated amounts.

Intergovernmental and private-sector impact: H.R. 3819 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Previous CBO Estimate: On January 16, 2008, CBO transmitted a cost estimate for S. 2142, the Veterans Emergency Care Fairness Act of 2007, as ordered reported by the Senate Committee on Veterans' Affairs on November 14, 2007. The bills are similar and their estimated costs are the same over the 2009–2013 period. Because CBO assumed an earlier enactment date for S. 2142, we estimated that bill would cost \$20 million in 2008.

Estimate prepared by: Federal costs: Sunita D'Monte; Impact on state, local, and tribal governments: Lisa Ramirez-Branum; Impact on the private sector: Daniel Frisk.

Estimate 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. 3819 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. 3819.

#### 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. 3819 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. Short title*

This section would provide the short title of H.R. 3819 as the “Veterans Emergency Care Fairness Act of 2007.”

##### *Section 2. Requires that the Department of Veterans Affairs provide reimbursement to veterans receiving emergency treatment in non-Department of Veterans Affairs facilities until transfer to department facilities*

This section would amend section 1725 of title 38, United States Code, to require the VA to reimburse veterans who receive emergency treatment in non-VA facilities until the time when the veteran can be safely transferred to a VA facility and the VA agrees to accept such transfer. This section also would amend section 1728 of title 38, United States Code, to require the VA to reimburse certain veterans with a service-connected disability or a non-service-connected disability associated with or aggravating a service-connected disability for the value of emergency treatment for which such veterans have made payment from sources other than the VA.

#### 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):

#### **TITLE 38, UNITED STATES CODE**

\* \* \* \* \*

#### **PART II—GENERAL BENEFITS**

\* \* \* \* \*

#### **CHAPTER 17—HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE**

\* \* \* \* \*

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

\* \* \* \* \*

**§ 1725. Reimbursement for emergency treatment**

(a) GENERAL AUTHORITY.—(1) Subject to subsections (c) and (d), the Secretary [may reimburse] shall reimburse a veteran described in subsection (b) for the reasonable value of emergency treatment furnished the veteran in a non-Department facility.

\* \* \* \* \*

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

(1) The term “emergency treatment” means medical care or services furnished, in the judgment of the Secretary—

(A) \* \* \*

\* \* \* \* \*

[(C) until such time as the veteran can be transferred safely to a Department facility or other Federal facility.]

(C) until—

(i) such time as the veteran can be transferred safely to a Department facility or other Federal facility; or

(ii) such time as a Department facility or other Federal facility agrees to accept such transfer if—

(I) at the time described in clause (i), no Department facility or other Federal facility agrees to accept such transfer; and

(II) the non-Department facility in which such medical care or services is furnished makes and documents reasonable attempts to transfer the veteran to a Department facility or other Federal facility.

\* \* \* \* \*

**§ 1728. Reimbursement of certain medical expenses**

[(a) The Secretary may, under such regulations as the Secretary shall prescribe, reimburse veterans entitled to hospital care or medical services under this chapter for the reasonable value of such care or services (including travel and incidental expenses under the terms and conditions set forth in section 111 of this title), for which such veterans have made payment, from sources other than the Department, where—

[(1) such care or services were rendered in a medical emergency of such nature that delay would have been hazardous to life or health;

[(2) such care or services were rendered to a veteran in need thereof (A) for an adjudicated service-connected disability, (B) for a non-service-connected disability associated with and held to be aggravating a service-connected disability, (C) for any disability of a veteran who has a total disability permanent in nature from a service-connected disability, or (D) for any illness, injury, or dental condition in the case of a veteran who (i) is a participant in a vocational rehabilitation program (as defined in section 3101(9) of this title), and (ii) is medically de-

termined to have been in need of care or treatment to make possible such veteran's entrance into a course of training, or prevent interruption of a course of training, or hasten the return to a course of training which was interrupted because of such illness, injury, or dental condition; and

[(3) Department or other Federal facilities were not feasibly available, and an attempt to use them beforehand would not have been reasonable, sound, wise, or practical.]

(a) *The Secretary shall, under such regulations as the Secretary shall prescribe, reimburse veterans entitled to hospital care or medical services under this chapter for the reasonable value of emergency treatment (including travel and incidental expenses under the terms and conditions set forth in section 111 of this title) for which such veterans have made payment, from sources other than the Department, where such emergency treatment was rendered to such veterans in need thereof for any of the following:*

(1) *An adjudicated service-connected disability.*

(2) *A non-service-connected disability associated with and held to be aggravating a service-connected disability.*

(3) *Any disability of a veteran in the veteran has a total disability permanent in nature from a service-connected disability.*

(4) *Any illness, injury, or dental condition of a veteran who—*

*(A) is a participant in a vocational rehabilitation program (as defined in section 3101(9) of this title); and*

*(B) is medically determined to have been in need of care or treatment to make possible the veteran's entrance into a course of training, or prevent interruption of a course of training, or hasten the return to a course of training which was interrupted because of such illness, injury, or dental condition.*

(b) In any case where reimbursement would be in order under subsection (a) of this section, the Secretary may, in lieu of reimbursing such veteran, make payment of the reasonable value of [care or services] emergency treatment directly—

(1) to the hospital or other health facility furnishing the [care or services] emergency treatment; or

\* \* \* \* \*

(c) *In this section, the term "emergency treatment" has the meaning given such term in section 1725(f)(1) of this title.*

\* \* \* \* \*

