

TO AMEND TITLE 38, UNITED STATES CODE, TO ESTABLISH AN OMBUDSMAN WITHIN THE DEPARTMENT OF VETERANS AFFAIRS

JULY 24, 2008.—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. 2192]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 2192) to amend title 38, United States Code, to establish an Ombudsman within the Department of Veterans Affairs, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Amendment	2
Purpose and Summary	3
Background and Need for Legislation	3
Hearings	4
Subcommittee Consideration	4
Committee Consideration	5
Committee Votes	5
Committee Oversight Findings	5
Statement of General Performance Goals and Objectives	5
New Budget Authority, Entitlement Authority, and Tax Expenditures	5
Earmarks and Tax and Tariff Benefits	5
Committee Cost Estimate	5
Congressional Budget Office Estimate	6
Federal Mandates Statement	6
Advisory Committee Statement	7
Constitutional Authority Statement	7
Applicability to Legislative Branch	7
Section-by-Section Analysis of the Legislation	7
Changes in Existing Law Made by the Bill, as Reported	7

AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. ESTABLISHMENT OF OFFICE OF THE OMBUDSMAN IN VETERANS HEALTH ADMINISTRATION.

(a) OFFICE OF THE OMBUDSMAN.—

(1) ESTABLISHMENT.—Subchapter I of chapter 73 of title 38, United States Code, is amended by adding at the end the following new section:

“§ 7309. Office of the Ombudsman

“(a) OFFICE; DIRECTORS.—There is established in the Veterans Health Administration an Office of the Ombudsman (in this section referred to as the ‘Office’). The Office shall be headed by a Director appointed by the Secretary. The Director shall report directly to the Secretary.

“(b) DUTIES OF OFFICE.—The Office shall—

“(1) be responsible for ensuring—

“(A) all matters referred to the Office are handled in a confidential manner; and

“(B) any action taken by the Administration with respect to such a matter does not negatively affect the ability of any veteran to receive health care or benefits under a law administered by the Secretary; and

“(2) serve as a last resort for complaints and issues that cannot be resolved at a local or regional level in the Administration.

“(c) DUTIES OF DIRECTOR.—The Director shall—

“(1) be responsible for overseeing the efforts of patient advocates in the Administration;

“(2) develop and make available to local offices of the Administration tools for monitoring the work of such patient advocates and standards to evaluate the work of such patient advocates;

“(3) determine trends, in terms of numbers, topics, and facility locations, in patient issues and complaints;

“(4) participate in such national quality conferences of the Administration as the Under Secretary for Health may designate;

“(5) help coordinate assistance for veterans who need assistance from the Administration in more than one region of the Administration; and

“(6) maintain a public Web site with links to contact information for each patient advocate at each medical center of the Department.

“(d) REGIONAL ADMINISTRATORS.—The Director shall appoint three regional administrators to support facilities of the Administration and veterans integrated service networks in their patient advocacy work, to identify best practices for patient advocacy work and inform such facilities and networks of such best practices, and to receive and refer to the board established under subsection (e) appeals from veterans in their respective regions who are not satisfied with the efforts of their local medical center of the Department and veteran integrated service network.

“(e) BOARD.—The Director shall establish a board composed of the Director and the three regional administrators appointed under subsection (d) to hear appeals referred to the board by a regional administrator under subsection (d) and issue a letter explaining the board’s decision regarding such appeal and outlining possible steps for resolving issues raised in such appeal.

“(f) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as affecting the authority and responsibility of coordinators of patient advocates for severely injured veterans of Operation of Enduring Freedom and severely injured veterans of Operation Iraqi Freedom.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 7308 the following new item:

“7309. Office of the Ombudsman.”.

(b) DEADLINE FOR DESIGNATION OF OMBUDSMAN.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall designate an individual to serve as the Ombudsman of the Veterans Health Administration under section 7309 of title 38, United States Code, as added by subsection (a).

PURPOSE AND SUMMARY

H.R. 2192 was introduced by Representative Paul W. Hodes of New Hampshire on May 7, 2007. The purpose of H.R. 2192 is to establish an Office of the Ombudsman within the Department of Veterans Affairs (VA). H.R. 2192, as amended, would establish an Office of the Ombudsman within the Veterans Health Administration (VHA) and a Director responsible for overseeing the efforts of the patient advocates and resolving patient issues and complaints that cannot be resolved at the local or regional level.

The bill would require that the Office of the Ombudsman ensure all matters referred to the office are handled in a confidential matter; develop tools for monitoring and establishing performance standards for the work of the patient advocates; track trends in patient issues and complaints; participate in VA's national quality conferences; and, maintain a public website with contact information for each patient advocate.

The bill would require the Director to appoint three regional administrators to support the work of the Office, and establish a Board comprised of the Director and the three regional administrators to hear appeals from veterans who are unsatisfied with the efforts of their local facility and issue a decision regarding such appeal and outlining possible steps to resolve the complaint.

BACKGROUND AND NEED FOR LEGISLATION

Over 30,000 servicemembers have been wounded in Operations Enduring Freedom and Iraqi Freedom (OEF/OIF). Due to improved battlefield medicine, those who might have died in past conflicts are now surviving, many with multiple serious injuries such as amputations, traumatic brain injury (TBI), and post-traumatic stress disorder (PTSD). These injuries often require long-term health care from the VA beyond the servicemember's discharge.

In 2007, reports from the Independent Review Group, the President's Task Force on Returning Global War on Terror Heroes, and the President's Commission on Care for America's Returning Wounded Warriors all highlighted the need to improve case management for servicemembers and veterans in the military health system and in the VA.

VA instituted a number of initiatives in response to these reports to support veteran patients and their families. These measures include appointing patient advocates in every medical center, OEF/OIF Coordinators, and Transition Patient Advocates for those seriously injured in combat.

The joint Federal Recovery Coordinator Program (FRCP) was also established to cut across bureaucratic lines and assist seriously wounded and ill servicemembers. The FRCP is designed to be the single point of contact to identify needed services for seriously wounded and ill servicemembers, veterans and their families. However, the scope of the FRCP is very limited. As of June 1, 2008, there were eight recovery coordinators working with 80 patients.

Veterans who do not have access to FRCP must attempt to navigate the complex system using a number of resources including medical center patient advocates, benefit counselors, OEF/OIF Coordinators, Transition Patient Advocates and Vet Center coun-

selors. Outside of the VA, many veterans also rely on veteran service organizations to provide guidance and counseling.

H.R. 2192, as amended, would create the Office of the Ombudsman (Office) within the VHA to oversee patient advocacy work and coordinate assistance for veterans. The Office would be required to identify trends across the system regarding patient issues and complaints that would allow improvements to VA's policies, practices and procedures. The Office would also serve as the arbiter of last resort for complaints and issues that cannot be resolved at local or regional levels.

The creation of an Office of the Ombudsman would not affect the authority and responsibility of the Federal Recovery Coordinators.

HEARINGS

On June 14, 2007, the Subcommittee on Health held a legislative hearing on a number of bills introduced in the 110th Congress, including H.R. 2192. The following witnesses testified: The Honorable Stephanie Herseht Sandlin of South Dakota; The Honorable Ciro D. Rodriguez of Texas; The Honorable James P. Moran of Virginia; The Honorable Diane E. Watson of California; The Honorable Silvestre Reyes of Texas; The Honorable John T. Salazar of Colorado; The Honorable Jeff Miller of Florida; The Honorable Paul W. Hodes of New Hampshire; The Honorable Nita M. Lowey; Ms. Shannon Middleton, Deputy Director for Health for Veterans Affairs and Rehabilitation Commission, The American Legion; Mr. Kimo S. Hollingsworth, Legislative Director, American Veterans (AMVETS); Mr. Adrian Atizado, Assistant National Legislative Director, Disabled American Veterans; Mr. Carl Blake, National Legislative Director, Paralyzed Veterans of America; Mr. Dennis M. Cullinan, Director, National Legislative Service, Veterans of Foreign Wars of the United States; Mr. Barry Hagge, National Secretary, Vietnam Veterans of America; The Honorable Michael J. Kussman, M.D., Under Secretary for Health, Veterans Health Administration, U.S. Department of Veterans Affairs accompanied by Walter A. Hall, Assistant General Counsel, U.S. Department of Veterans Affairs. Those submitting statements for the record included: Mr. Andy Behrman, Chair of the Rural Health Policy Board, National Rural Health Association; and, Ms. Ruth Cooperrider, President of the United States Ombudsman Association, and Deputy Ombudsman, State of Iowa—Office of Citizens' Aide/Ombudsman.

SUBCOMMITTEE CONSIDERATION

On June 5, 2008, the Subcommittee on Health met in open markup session and ordered favorably forwarded to the full Committee H.R. 2192, as amended, by voice vote. During consideration of the bill the following amendment was considered: An amendment in the nature of a substitute by Mr. Michaud of Maine to require the Secretary to designate an Ombudsman Director in the VA for each administration of the Department and appoint a regional ombudsman for the VHA and VBA within each of the six regions established, was agreed to by voice vote.

COMMITTEE CONSIDERATION

On July 16, 2008, the full Committee met in open markup session, a quorum being present, and ordered H.R. 2192, as amended, favorably reported to the House of Representatives, by voice vote. During consideration of the bill the following amendment was considered:

An amendment in the nature of a substitute by Mr. Michaud of Maine to require the Secretary to establish an Office of the Ombudsman in the Veterans Health Administration headed by a Director appointed by the Secretary, was agreed to 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. 2192 reported to the House. A motion by Mr. Buyer of Indiana to order H.R. 2192, 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. 2192 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. 2192 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. 2192 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, July 22, 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. 2192, a bill to amend title 38, United States Code, to establish an Ombudsman within the Department of Veterans Affairs.

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. 2192—A bill to amend title 38, United States Code, to establish an Ombudsman within the Department of Veterans Affairs

H.R. 2192 would establish an Office of the Ombudsman at the Veterans Health Administration (VHA). The bill would require VHA to appoint a director to report directly to the Secretary of the Department of Veterans Affairs (VA). The director would be required to appoint three regional administrators to support patient advocacy and resolve appeals from patients at VHA facilities.

Based on information from VA, CBO estimates that under the bill VA would require four additional employees at an annual cost between \$500,000 and \$600,000. Assuming that the estimated amounts are appropriated and outlays follow historical spending patterns, CBO estimates that implementing the bill would cost \$3 million over the 2009–2013 period. Enacting the bill would not affect direct spending or revenues.

H.R. 2192 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Sunita D'Monte. This 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. 2192 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. 2192.

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. 2192 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. Establishment of Office of the Ombudsman in Veterans Health Administration

This section would amend title 38, United States Code, by inserting a new section 7309. Section 7309 would establish an Office of the Ombudsman within the VHA. The Office would be led by a Director, designated by the Secretary within 180 days of enactment, and would serve six principal duties: (1) oversee the efforts of patient advocates within the VA; (2) develop tools that local VA offices may use to monitor and evaluate patient advocates; (3) determine numerical, topical, and location trends in patient issues and complaints; (4) participate in national quality conferences of the VA at the designation of the Under Secretary for Health; (5) help veterans seeking VA assistance in more than one VA region; (6) establish and maintain a Web site providing contact information for each patient advocate at each VA medical center.

This section would also establish a board consisting of the Director of the Office of Ombudsman and three regional administrators appointed by the Director. This board would hear appeals from veterans unhappy with the performance of their local medical center and veteran integrated service network (VISN) and respond to each appeal with a letter explaining the decision of the board and outlining steps towards resolving the issue. In addition, the three regional administrators would support patient advocacy work by VA medical centers and VISNs and identify and disseminate best practices for patient advocacy work.

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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

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PART V—BOARDS, ADMINISTRATIONS, AND SERVICES

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**CHAPTER 73—VETERANS HEALTH ADMINISTRATION-
ORGANIZATION AND FUNCTIONS**

SUBCHAPTER I—ORGANIZATION

Sec.						
7301.	Functions of Veterans Health Administration: in general.	*	*	*	*	*
7309.	Office of the Ombudsman.	*	*	*	*	*

SUBCHAPTER I—ORGANIZATION

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§ 7309. Office of the Ombudsman

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(b) *DUTIES OF OFFICE.*—The Office shall—

(1) be responsible for ensuring—

(A) all matters referred to the Office are handled in a confidential manner; and

(B) any action taken by the Administration with respect to such a matter does not negatively affect the ability of any veteran to receive health care or benefits under a law administered by the Secretary; and

(2) serve as a last resort for complaints and issues that cannot be resolved at a local or regional level in the Administration.

(c) *DUTIES OF DIRECTOR.*—The Director shall—

(1) be responsible for overseeing the efforts of patient advocates in the Administration;

(2) develop and make available to local offices of the Administration tools for monitoring the work of such patient advocates and standards to evaluate the work of such patient advocates;

(3) determine trends, in terms of numbers, topics, and facility locations, in patient issues and complaints;

(4) participate in such national quality conferences of the Administration as the Under Secretary for Health may designate;

(5) help coordinate assistance for veterans who need assistance from the Administration in more than one region of the Administration; and

(6) maintain a public Web site with links to contact information for each patient advocate at each medical center of the Department.

(d) *REGIONAL ADMINISTRATORS.*—The Director shall appoint three regional administrators to support facilities of the Administration and veterans integrated service networks in their patient advocacy work, to identify best practices for patient advocacy work and inform such facilities and networks of such best practices, and to re-

ceive and refer to the board established under subsection (e) appeals from veterans in their respective regions who are not satisfied with the efforts of their local medical center of the Department and veteran integrated service network.

(e) BOARD.—The Director shall establish a board composed of the Director and the three regional administrators appointed under subsection (d) to hear appeals referred to the board by a regional administrator under subsection (d) and issue a letter explaining the board’s decision regarding such appeal and outlining possible steps for resolving issues raised in such appeal.

(f) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as affecting the authority and responsibility of coordinators of patient advocates for severely injured veterans of Operation of Enduring Freedom and severely injured veterans of Operation Iraqi Freedom.

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