

111TH CONGRESS  
1ST SESSION

# H. R. 3365

To provide Medicare payments to Department of Veterans Affairs medical facilities for items and services provided to Medicare-eligible veterans for non-service-connected conditions.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2009

Mr. FILNER introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Energy and Commerce and Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide Medicare payments to Department of Veterans Affairs medical facilities for items and services provided to Medicare-eligible veterans for non-service-connected conditions.

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 “Medicare VA Reim-  
5 bursement Act of 2009”.

1 **SEC. 2. ESTABLISHMENT OF MEDICARE SUBVENTION FOR**  
2 **VETERANS.**

3 (a) IN GENERAL.—Section 1862 of the Social Secu-  
4 rity Act (42 U.S.C. 1395y) is amended by adding at the  
5 end the following new subsection:

6 “(n) MEDICARE SUBVENTION FOR VETERANS.—

7 “(1) ESTABLISHMENT.—The Secretary of  
8 Health and Human Services, in cooperation with the  
9 Secretary of Veterans Affairs, shall establish a pro-  
10 gram to be known as the ‘Medicare VA reimburse-  
11 ment program’ under which the Secretary of Health  
12 and Human Services shall reimburse the Secretary  
13 of Veterans Affairs, from the Federal Hospital In-  
14 surance Trust Fund established in section 1817 and  
15 the Federal Supplementary Medical Insurance Trust  
16 Fund established in section 1841, for an item or  
17 service that—

18 “(A) is furnished to a Medicare-eligible  
19 veteran by a Department of Veterans Affairs  
20 medical facility for the treatment of a non-serv-  
21 ice-connected condition; and

22 “(B) is covered under this title or is deter-  
23 mined to be medically necessary by the Sec-  
24 retary of Veterans Affairs.

25 “(2) MEMORANDUM OF UNDERSTANDING.—

1           “(A) IN GENERAL.—Not later than 6  
2 months after the date of the enactment of this  
3 Act, the Secretary of Health and Human Serv-  
4 ices shall enter a memorandum of under-  
5 standing with the Secretary of Veterans Affairs  
6 concerning the administration of the Medicare  
7 VA reimbursement program.

8           “(B) CONTRACT ELEMENTS.—The memo-  
9 randum of understanding under subparagraph  
10 (A) shall contain the following:

11           “(i) FREQUENCY OF REIMBURSE-  
12 MENT.—An agreement on how often reim-  
13 bursements will be made by the Secretary  
14 of Health and Human Services to the Sec-  
15 retary of Veterans Affairs.

16           “(ii) BILLING SYSTEM.—An agree-  
17 ment on the details of the billing system  
18 that will be used by the Secretary of Vet-  
19 erans Affairs to make claims for reim-  
20 bursement from the Secretary of Health  
21 and Human Services.

22           “(iii) DATA SHARING AGREEMENT.—  
23 An agreement on data sharing, including—

24           “(I) identification of the data ex-  
25 changes that each Secretary will need

1 to develop, maintain, or provide access  
2 to, for purposes of the Medicare VA  
3 reimbursement program; and

4 “(II) verification of data dem-  
5 onstrating that a item or service was  
6 provided by a Department of Veterans  
7 Affairs medical facility to a Medicare-  
8 eligible veteran for a non-service-con-  
9 nected condition before the Secretary  
10 of Health and Human Services pro-  
11 vides for reimbursement for such item  
12 or service under the Medicare VA re-  
13 imbursement program.

14 “(iv) PAYMENT RATE.—Subject to the  
15 requirements of paragraph (3), details of  
16 the payment rate to be used for reimburse-  
17 ments made under the Medicare VA reim-  
18 bursement program.

19 “(v) PERFORMANCE MEASURES.—An  
20 agreement on performance measures and  
21 performance targets to be used to dem-  
22 onstrate the impact of the Medicare VA re-  
23 imbursement program.

1                   “(vi) ADDITIONAL TERMS.—Any addi-  
2                   tional terms deemed necessary by the ad-  
3                   ministering Secretaries.

4                   “(C) NO MAINTENANCE OF EFFORT RE-  
5                   QUIREMENT.—For purposes of the Medicare  
6                   VA reimbursement program, the Secretary of  
7                   Veterans Affairs shall not be required to meet  
8                   a maintenance of effort requirement (a require-  
9                   ment that the Secretary of Veterans Affairs  
10                  maintain a certain level of spending in order to  
11                  receive reimbursement from the Secretary of  
12                  Health and Human Services).

13                  “(3) PAYMENTS BASED ON REGULAR MEDICARE  
14                  PAYMENT RATES.—

15                  “(A) AMOUNT.—Subject to the succeeding  
16                  provisions of this paragraph, the Secretary of  
17                  Health and Human Services shall reimburse the  
18                  Secretary of Veterans Affairs—

19                         “(i) for an item or service that is cov-  
20                         ered under this title and is provided to a  
21                         Medicare-eligible veteran by a Department  
22                         of Veterans Affairs medical facility for the  
23                         treatment of a non-service-connected condi-  
24                         tion, at a rate that is not less than 100  
25                         percent of the amounts that otherwise

1 would be payable under this title, on a fee-  
2 for-service basis, for such item or service if  
3 the Department of Veterans Affairs med-  
4 ical facility were a provider of services,  
5 were participating in the Medicare pro-  
6 gram, and imposed charges for such item  
7 or service; and

8 “(ii) for an item or service that is not  
9 covered under this title that is provided to  
10 a Medicare-eligible veteran by a Depart-  
11 ment of Veterans Affairs medical facility  
12 for the treatment of a non-service-con-  
13 nected condition, if the Secretary of Vet-  
14 eran’s Affairs determines that such item or  
15 service is medically necessary, at a rate de-  
16 termined by the Secretary of Health and  
17 Human Services in consultation with the  
18 Secretary of Veterans Affairs.

19 “(B) NO ARBITRARY LIMITATION ON  
20 AMOUNT.—Subject to the requirements of this  
21 subsection, the Secretary of Health and Human  
22 Services may not impose an annual cap or other  
23 limit on the amount of reimbursement made  
24 under the Medicare VA reimbursement pro-  
25 gram.

1           “(C) EXCLUSION OF CERTAIN AMOUNTS.—

2           In computing the amount of payment under  
3           subparagraph (A), the following amounts shall  
4           be excluded:

5                   “(i) DISPROPORTIONATE SHARE HOS-  
6                   PITAL ADJUSTMENT.—Any amount attrib-  
7                   utable to an adjustment under section  
8                   1886(d)(5)(F).

9                   “(ii) DIRECT GRADUATE MEDICAL  
10                  EDUCATION PAYMENTS.—Any amount at-  
11                  tributable to a payment under section  
12                  1886(h).

13                  “(iii) INDIRECT MEDICAL EDUCATION  
14                  ADJUSTMENT.—Any amount attributable  
15                  to the adjustment under section  
16                  1886(d)(5)(B).

17                  “(iv) CAPITAL PAYMENTS.—Any  
18                  amounts attributable to payments for cap-  
19                  ital-related costs under section 1886(g).

20           “(D) PERIODIC PAYMENTS FROM MEDI-  
21           CARE TRUST FUNDS.—Reimbursements under  
22           this paragraph shall be made—

23                   “(i) on a periodic basis consistent  
24                   with the periodicity of payments under this  
25                   title; and

1                   “(ii) from the Federal Hospital Insur-  
2                   ance Trust Fund established in section  
3                   1817 and the Federal Supplementary Med-  
4                   ical Insurance Trust Fund established in  
5                   section 1841.

6                   “(E) CREDITING OF PAYMENTS.—Any  
7                   payment made to the Department of Veterans  
8                   Affairs under this subsection shall be deposited  
9                   in the Department of Veterans Affairs Medical  
10                  Care Collections Fund established under section  
11                  1729A of title 38, United States Code.

12                  “(4) COST-SHARING REQUIREMENTS.—The Sec-  
13                  retary of Health and Human Services shall reduce  
14                  the amount of reimbursement to the Secretary of  
15                  Veterans Affairs for items and services under the  
16                  Medicare VA reimbursement program by amounts  
17                  attributable to applicable deductible, coinsurance,  
18                  and cost-sharing requirements under this title.

19                  “(5) WAIVER OF PROHIBITION ON PAYMENTS  
20                  TO FEDERAL PROVIDERS OF SERVICES.—The prohi-  
21                  bition of payments to Federal providers of services  
22                  under sections 1814(e) and 1835(d) shall not apply  
23                  to items and services provided under this subsection.

24                  “(6) RULES OF CONSTRUCTION.—Nothing in  
25                  this subsection shall be construed—

1           “(A) as prohibiting the Inspector General  
2 of the Department of Health and Human Serv-  
3 ices from investigating any matters regarding  
4 the expenditure of funds under this subsection,  
5 including compliance with the provisions of this  
6 title and all other relevant laws;

7           “(B) as adding or requiring additional cri-  
8 teria for eligibility for health care benefits fur-  
9 nished to veterans by the Secretary of Veterans  
10 Affairs, as established under chapter 17 of title  
11 38, United States Code; or

12           “(C) subject to the requirements of title  
13 38, United States Code, as limiting a veteran’s  
14 ability to access such benefits, regardless of the  
15 veteran’s status as a Medicare-eligible veteran.

16           “(7) ANNUAL REPORTS.—Not later than one  
17 year after implementing the program under this sub-  
18 section and annually thereafter, the administering  
19 Secretaries shall submit to the Congress a report  
20 containing the following:

21           “(A) The number of Medicare-eligible vet-  
22 erans who opt to receive health care at a De-  
23 partment of Veterans Affairs medical facility.

24           “(B) The total amount of reimbursements  
25 made from the Federal Hospital Insurance

1 Trust Fund established in section 1817 and the  
2 Federal Supplementary Medical Insurance  
3 Trust Fund established in section 1841 to the  
4 Department of Veterans Affairs Medical Care  
5 Collections Fund established under section  
6 1729A of title 38, United States Code.

7 “(C) The number and types of items and  
8 services provided to Medicare-eligible veterans  
9 by Department of Veterans Affairs medical fa-  
10 cilities under this subsection.

11 “(D) An accounting of the manner in  
12 which the Department of Veterans Affairs ex-  
13 pended funds received through reimbursements  
14 under this subsection.

15 “(E) A detailed description of any changes  
16 made to the memorandum of understanding  
17 under paragraph (2).

18 “(F) A comparison of the performance  
19 data with the performance targets under para-  
20 graph (2)(B)(v).

21 “(G) Any other data on the Medicare VA  
22 reimbursement program that the administering  
23 Secretaries determine is appropriate.

24 “(8) DEFINITIONS.—For purposes of this sub-  
25 section:

1           “(A) ADMINISTERING SECRETARIES.—The  
2 term ‘administering Secretaries’ means the Sec-  
3 retary of Health and Human Services and the  
4 Secretary of Veterans Affairs acting jointly.

5           “(B) MEDICARE-ELIGIBLE VETERAN.—The  
6 term ‘Medicare-eligible veteran’ means an indi-  
7 vidual who is a veteran (as defined in section  
8 101(2) of title 38, United States Code) who is  
9 eligible for care and services under section  
10 1705(a) of title 38, United States Code and  
11 who—

12                   “(i) is entitled to, or enrolled for, ben-  
13 efits under part A of this title; or

14                   “(ii) is enrolled for benefits under  
15 part B of this title.

16           “(C) NON-SERVICE CONNECTED CONDI-  
17 TION.—The term ‘non-service-connected condi-  
18 tion’ means a disease or condition that is ‘non-  
19 service-connected’ as such term is defined in  
20 section 101(17) of title 38, United States Code.

21           “(D) DEPARTMENT OF VETERANS AFFAIRS  
22 MEDICAL FACILITY.—The term ‘Department of  
23 Veterans Affairs medical facility’ means a ‘med-  
24 ical facility’ as such term is defined in section  
25 8101(3) of title 38, United States Code, alone

1           or in conjunction with other facilities under the  
2           jurisdiction of the Secretary of Veterans Af-  
3           fairs.”.

4           (b) CONFORMING AMENDMENT.—Section 1729 of  
5 title 38, United States Code is amended by adding at the  
6 end the following new subsection:

7           “(j) In any case in which a Medicare-eligible veteran  
8 (as defined in section 1862(n)(8)(B) of the Social Security  
9 Act (42 U.S.C. 1395y(n)(8)(B))) is furnished care or serv-  
10 ices under this chapter for a non-service-connected condi-  
11 tion (as defined in section 1862(n)(8)(C) of such Act) the  
12 Secretary shall—

13           “(1) seek reimbursement from the Secretary of  
14 Health and Human Services for such care and serv-  
15 ices under section 1862(n) of such Act; and

16           “(2) collect any applicable deductible, coinsur-  
17 ance, or other cost-sharing amount required under  
18 title XVIII of the Social Security Act from the vet-  
19 eran or from a third party to the extent that the vet-  
20 eran (or the provider of the care or services) would  
21 be eligible to receive payment for such care or serv-  
22 ices from such third party if the care or services had  
23 not been furnished by a department or agency of the  
24 United States.”.

1 **SEC. 3. GAO REPORT.**

2 (a) IN GENERAL.—Not later than the last day of the  
3 three-year period beginning on the date of the enactment  
4 of this Act and the last date of each subsequent three-  
5 year period, the Comptroller General of the United States  
6 shall submit to the Congress a report on the Medicare VA  
7 reimbursement program established under section 1862(n)  
8 of the Social Security Act, as added by section 2 of this  
9 Act.

10 (b) CONTENTS.—The report under subsection (a)  
11 shall contain an analysis of—

12 (1) the impact of the Medicare VA reimburse-  
13 ment program on the Federal Hospital Insurance  
14 Trust Fund established in section 1817 of the Social  
15 Security Act (42 U.S.C. 1395i) and the Federal  
16 Supplementary Medical Insurance Trust Fund es-  
17 tablished in section 1841 of such Act (42 U.S.C.  
18 1395t);

19 (2) whether Medicare-eligible veterans (as de-  
20 fined in section 1862(n)(8)(B)) experience improved  
21 access to health care as a result of the program;

22 (3) whether Medicare-eligible veterans experi-  
23 ence a change in the quality of care that they receive  
24 as a result of this program;

25 (4) the impact of the program on local health  
26 care providers and Medicare beneficiaries in the

1 communities surrounding Department of Veterans  
2 Affairs medical facilities; and

3 (5) any additional issues deemed appropriate by  
4 the Comptroller General of the United States.

5 **SEC. 4. SENSE OF CONGRESS.**

6 It is the sense of the Congress that the amount of  
7 funds appropriated to the Department of Veterans Affairs  
8 for medical care in any fiscal year beginning on or after  
9 the date of the enactment of this Act should not be re-  
10 duced as a result of the implementation of the Medicare  
11 VA reimbursement program under section 1862(n) of the  
12 Social Security Act, as added by section 2(a).

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