115TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
115–1033

TO AMEND TITLE 38, UNITED STATES CODE, TO PROHIBIT SMOKING IN ANY FACILITY OF THE VETERANS HEALTH ADMINISTRATION, AND FOR OTHER PURPOSES

NOVEMBER 16, 2018.—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. 1662]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 1662) to amend title 38, United States Code, to prohibit smoking in any facility of the Veterans Health Administration, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

PURPOSE AND SUMMARY

H.R. 1662 was introduced by Representative Brad Wenstrup of Ohio, the Chairman of the Committee on Veterans' Affairs Subcommittee on Health on March 21, 2017.

H.R. 1662 would prohibit smoking inside any Veterans Health Administration (VHA) facility. It would also prohibit smoking outside any VHA facility beginning October 1, 2022.

BACKGROUND AND NEED FOR LEGISLATION

Section 1. Prohibition of smoking in facilities of the Veterans Health Administration

The negative health effects of both smoking and second-hand smoke exposure are well documented. According to the American Cancer Society, illnesses related to tobacco use are responsible for 1 out of every 5 deaths in the United States while secondhand smoke is known to cause lung cancer even in those who have never smoked and may be linked to larynx, pharynx, nasal sinus, brain, bladder, rectum, stomach and breast cancer.[1] [2]

However, the Veterans Health Care Act of 1992 (Public Law 102–585; 106 STAT. 4943) requires each VA medical facility to establish and maintain suitable designated smoking areas. Accordingly, VA medical centers across the country provide 971 outdoor smoking areas and 18 indoor smoking areas for veteran patients and VA employees. According to information VA provided to the Committee, VA estimates that the total cost to maintain all outdoor smoking areas at VA medical centers is approximately $1.2 million per year and that the total cost to maintain all indoor smoking areas at VA medical centers is approximately $35,469 per year. Of note, these estimated costs do not include costs associated with maintaining smoking areas at other VHA facilities.

Since FY 2013, VA's annual budget submission has included a legislative proposal to prohibit smoking in VHA facilities, in line with industry standards and best practices. In support of this proposal, the Department of Veterans Affairs (VA) cites 100 percent smoke-free policies that have been adopted on the facilities, grounds, and office buildings of many Department of Defense medical treatment facilities, four large national healthcare systems (Kaiser Permanente, Mayo Clinic, SSM Health Care, and CIGNA Corporation), and more than 4,000 local and/or state/territory/commonwealth hospitals, health care systems and clinics.[3] Yet, "VHA health care providers and visitors do not have the same level of protection from the hazardous effects of second-hand smoke exposure as do patients and employees in these other systems."[4] This is particularly concerning given that, while only about 20 percent of veteran enrollees smoke, VA's non-smoking veteran enrollee population includes veterans who may be particularly vulnerable to

---

[1] *American Cancer Society*. Health Risks of Smoking Tobacco. *https://www.cancer.org/cancer/cancer-causes/tobacco-and-cancer/health-risks-of-smoking-tobacco.html*. Accessed May 15, 2017.

[2] *American Cancer Society*. Health Risks of Secondhand Smoke. *https://www.cancer.org/cancer/cancer-causes/tobacco-and-cancer/secondhand-smoke.html*. Accessed May 15, 2017.

[3] United States Cong. House Committee on Veterans' Affairs Subcommittee on Health. *Legislative Hearing*. March 29, 2017. 115th Cong. 1st sess. Washington: GPO, 2017 (statement from Jennifer S. Lee, Deputy Under Secretary for Health for Policy and Services, Veterans Health Administration, U.S. Department of Veterans Affairs)

[4] Ibid.

cardiovascular events associated with secondhand smoke exposure.[5] For those veteran enrollees who are smokers, 7 out of 10 want to quit.[6] VA provides a number of smoking cessation resources for those veterans. Those resources include nicotine replacement therapies, medication, counseling, a smoking "quitline," and text messaging support.[7]

There is evidence to suggest that quitting smoking can be particularly beneficial for veteran patients. VA has found that—while many veterans, particularly those with mental health conditions, smoke—smokers are more likely than non-smokers to have experienced anxiety, panic, stress, depression, and suicidal thoughts and tobacco smoke can make some medications—particularly those used for depression, anxiety, and psychotic disorders—less effective.[8] On the other hand, one year after quitting, former smokers reporting feeling happier and better able to concentrate.[9]

Section 1 of the bill would prohibit smoking inside any VHA facility within 90 days and outside any VHA facility on or after October 1, 2022. "Smoke" would be defined to include cigarettes, electronic cigarettes (e-cigarettes), cigars, pipes, and any other combustion of tobacco and "facility of VHA" would be defined as any land or building (to include any medical center, nursing home, domiciliary facility, outpatient clinic, or readjustment counseling center) that is under VA's jurisdiction, under VHA's control, and not under the control of the General Services Administration. During a legislative hearing on March 29, 2017, VA estimated that enactment of H.R. 1662 would result in approximately $8.3 million in savings in fiscal year 2023.[10]

HEARINGS

There were no full Committee hearings held on H.R. 1662.

On March 29, 2017, the Subcommittee on Health conducted a legislative hearing on a number of bills including H.R. 1662.

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 Deputy 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,

---

[5] Ibid.
[6] *U.S. Department of Veterans Affairs*. Tobacco and Health. *https://www.publichealth.va.gov/smoking/index.asp* Accessed May 15, 2017.
[7] Ibid.
[8] Ibid.
[9] Ibid.
[10] United States Cong. House Committee on Veterans' Affairs Subcommittee on Health. *Legislative Hearing.*

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. 1662 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. 1662 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. 1662 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. 1662 reported to the House.

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 prohibit smoking inside or outside VA medical facilities.

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. 1662 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. 1662 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. 1662 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 24, 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. 1662, a bill to amend title 38, United States Code, to prohibit smoking in any facility of the Veterans Health Administration, and for other purposes.

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,
Director.

Enclosure.

H.R. 1662—A bill to amend title 38, United States Code, to prohibit smoking in any facility of the Veterans Health Administration, and for other purposes

H.R. 1662 would prohibit smoking indoors at medical facilities of the Department of Veterans Affairs (VA) and eliminate the current requirement that VA provide smoking areas for staff and patients at its major medical facilities. Those provisions would be effective within 90 days of the bill's enactment. (The department already prohibits indoor smoking at its medical facilities.) Beginning in 2023, the bill also would prohibit individuals from smoking outdoors at VA medical facilities. Based on information from VA, we expect that the department would continue to provide outdoor smoking areas through 2022. While the bill would eventually reduce costs for maintaining those smoking areas, CBO expects that those effects, which would probably be small, would occur after 2022. Thus, CBO estimates that implementing the bill would have no significant budgetary effects over the 2018–2022 period.

Enacting H.R. 1662 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 1662 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1662 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

The bill would impose new private-sector mandates, as defined in UMRA, on individuals by prohibiting smoking indoors in any Veterans Health Administration (VHA) facility upon enactment and by prohibiting smoking outside of a VHA facility on or after October I, 2022. CBO estimates that the cost of the mandates, if any, would fall well below the annual threshold established in UMRA for private-sector mandates ($156 million in 2017, adjusted annually for inflation).

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. 1662 prepared by 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. 1662.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, H.R. 1662 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. 1662 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 of 1995.

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. 1662 establishes or reauthorizes a program of the Federal Government known to be duplicative 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. 1662 contains no directed rulemaking that would require the Secretary to prescribe regulations.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Prohibition on smoking in facilities of the Veterans Health Administration

Section 1(a) of the bill would amend section 1715 of title 38 U.S.C. to prohibit smoking indoors in any VHA facility upon enactment and prohibit smoking outside of a VHA facility on or after October 1, 2022. Section 1(a) of the bill would also define "smoke" to include the smoking of cigarettes (including e-cigarettes or electronic cigarettes), cigars, pipes, and any other combustion of tobacco and define "facility of the Veterans Health Administration" to mean any land or building that is under the jurisdiction of VA, under the control of VHA, and not under the control of the General Services Administration.

Section 1(b) of the bill would amend the table of sections at the beginning of chapter 17 of title 38 U.S.C. by striking the item relating to section 1715 and inserting, "1715. Prohibition on smoking in facilities of the Veterans Health Administration.". Section 1(b) of the bill would also repeal section 526 of the Veterans Health Care Act of 1992 (Public Law 102—585; 106 STAT. 4943).

Section 1(c) of the bill would establish an effective date of 90 days after enactment.

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):

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, and 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 I—GENERAL

Sec.
1701. Definitions.

* * * * * * *

SUBCHAPTER II—HOSPITAL, NURSING HOME, OR DOMICILIARY CARE AND MEDICAL TREATMENT

* * * * * * *

[1715. Tobacco for hospitalized veterans.]
1715. Prohibition on smoking in facilities of the Veterans Health Administration.

* * * * * * *

SUBCHAPTER II—HOSPITAL, NURSING HOME, OR DOMICILIARY CARE AND MEDICAL TREATMENT

* * * * * * *

[§ 1715. Tobacco for hospitalized veterans

[The Secretary may furnish tobacco to veterans receiving hospital or domiciliary care.]

§ 1715. Prohibition on smoking in facilities of the Veterans Health Administration

(a) PROHIBITION.—(1) No person may smoke indoors in any facility of the Veterans Health Administration.

(2) No person may smoke outdoors in any facility of the Veterans Health Administration on or after October 1, 2022.

(b) DEFINITIONS.—In this section:

(1) The term "smoke" includes the smoking of cigarettes (including e-cigarettes or electronic cigarettes), cigars, pipes, and any other combustion of tobacco.

(2) The term "facility of the Veterans Health Administration" means any land or building (including any medical center, nursing home, domiciliary facility, outpatient clinic, or center that provides readjustment counseling) that is—

(A) under the jurisdiction of the Department of Veterans Affairs;

(B) under the control of the Veterans Health Administration; and

(C) not under the control of the General Services Administration.

* * * * * * *

SECTION 526 OF THE VETERANS HEALTH CARE ACT OF 1992

[SEC. 526. USE OF TOBACCO PRODUCTS IN DEPARTMENT FACILITIES.

[(a) IN GENERAL.—The Secretary of Veterans Affairs shall take appropriate actions to ensure that, consistent with medical requirements and limitations, each facility of the Department described in subsection (b)—

[(1) establishes and maintains—

[(A) a suitable indoor area in which patients or residents may smoke and which is ventilated in a manner that, to the maximum extent feasible, prevents smoke from entering other areas of the facility; or

[(B) an area in a building that—

[(i) is detached from the facility;

[(ii) is accessible to patients or residents of the facility; and

[(iii) has appropriate heating and air conditioning; and

[(2) provides access to an area established and maintained under paragraph (1), consistent with medical requirements and limitations, for patients or residents of the facility who are receiving care or services and who desire to smoke tobacco products.

[(b) COVERED FACILITIES.—A Department facility referred to in subsection (a) is any Department of Veterans Affairs medical center, nursing home, or domiciliary care facility.

[(c) REPORTS.—(1) Not later than 180 days after the date of the enactment of this Act, the Comptroller General shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the feasibility of the establishment and maintenance of areas for smoking in Department facilities under this section. The report shall include information on—

[(A) the cost of, and a proposed schedule for, the establishment of such an area at each Department facility covered by this section;

[(B) the extent to which the ventilating system of each facility is adequate to ensure that use of the area for smoking does not result in health problems for other patients or residents of the facility; and

[(C) the effect of the establishment and maintenance of an area for smoking in each facility on the accreditation score issued for the facility by the Joint Commission on the Accreditation of Health Organizations.

[(2) Not later than 120 days after the effective date of this section, the Secretary shall submit to the committees referred to in paragraph (1) a report on the implementation of this section. The report shall include a description of the actions taken at each covered facility to ensure compliance with this section.

[(d) EFFECTIVE DATE.—The requirement to establish and maintain areas for smoking under subsection (a) shall take effect 60 days after the date on which the Comptroller General submits to the committees referred to in subsection (c)(1) that report required under that subsection.]

○