

VETERANS AFFAIRS MEDICAL-SURGICAL PURCHASING
STABILIZATION ACT

MAY 21, 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. 5418]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 5418) to direct the Secretary of Veterans Affairs to carry out the Medical Surgical Prime Vendor program using multiple prime vendors, 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. 5418, the “Veterans Affairs Medical-Surgical Purchasing Stabilization Act,” would direct the Department of Veterans Affairs (VA) to correct problems with its medical-surgical formulary using input from medical professionals with relevant expertise rather than administrative staff. This legislation would also prevent VA from outsourcing the creation of this formulary. Representative Jack Bergman of Michigan introduced H.R. 5418 on March 29, 2018.

BACKGROUND AND NEED FOR LEGISLATION

The Veterans Health Administration (VHA) has relied on a just-in-time supply chain system since the 1990s, after it abolished its supply depots. The Medical Surgical Prime Vendor program (MSPV), which began in 2005 in a form recognizable to its current form, sought to partially standardize the list of medical and surgical supplies that clinicians nationwide are permitted to purchase, and to partially outsource the ordering, storing, inventory management, shipping, tracking, and delivery tasks formerly performed by VHA employees, in the supply depots and medical centers. Contractors called “prime vendors” perform this work for various regions of the country, whereas the VHA Logistics Service continues to perform the work that has not been outsourced, primarily stocking and distributing supplies once they arrive in the medical center. The prime vendors obtain the medical and surgical supplies from suppliers, with whom VHA contracts directly. VHA employees must utilize the MSPV system, within certain parameters, to purchase any medical and surgical supplies included in the MSPV product list. Some purchasing of medical and surgical supplies continues to occur outside of MSPV, often through government purchase cards.

In February 2016, VA awarded new prime vendor contracts for VHA’s use reflecting the revamped Medical Surgical Prime Vendor-Next Generation (MSPV-NG) program. Whereas MSPV, only modestly limited the list of available medical-surgical products, MSPV-NG aggressively standardized the list by creating a medical-surgical formulary. MSPV-NG’s objective was to realize greater savings by buying fewer distinct items in greater quantity from fewer suppliers while minimizing the volume of government purchase card usage. The MSPV-NG system became active in December 2016, but operated simultaneously with the older MSPV system until April 2017.

In its November 2017 report entitled, “Veterans Affairs Contracting: Improvements in Buying Medical and Surgical Supplies Could Yield Cost Savings and Efficiency,” the Government Accountability Office found that MSPV-NG had not met VHA medical centers’ needs and its usage remained far below the target. This was because the medical-surgical formulary was developed with limited clinical input, and VA was unable to award an adequate number of competitive supplier contracts.

In October 2017, VA released an informational notice to contractors describing the draft vision for a MSPV 2.0 program. MSPV 2.0 contemplated one prime vendor spanning the United States, rather than multiple regional prime vendors, which would be responsible for developing the formulary, selecting and contracting with sup-

pliers, all distribution, inventory management, quality control, and all aspects of filling VHA orders.

In April 2018, VA released a justification and approval document indicating the Department's intent to modify the existing prime vendor contracts without providing full and open competition, in order to restructure again the MSPV-NG program. The document acknowledged that MSPV-NG has fallen considerably short of its intended outcomes, and its formulary has not grown to sufficient size and maturity. The planned restructuring principally consists of tasking the prime vendors to identify and, upon receiving approval from VHA, select and enter into agreements with the suppliers, rather than VA contracting with the suppliers directly.

The Committee continues to be concerned with the unsatisfactory state of the medical-surgical formulary, reflecting inadequate input from clinicians and broken internal processes, which has rendered MSPV-NG unable to meet VHA facilities' need to receive the correct medical and surgical supplies in a just-in-time manner. It is necessary that the formulary be developed and administered by clinicians who possess expertise in the specific types of items on which they work, not logisticians who lack medical expertise or clinicians with irrelevant expertise. It is also critical to the program's success that VA not pursue the MSPV 2.0 concept empowering one national prime vendor, as it would concentrate too much market power in one company that, given past experience, may be incentivized to exploit such market power to the detriment of the suppliers. Additionally, determining the composition of the formulary is an inherently governmental responsibility that belongs to VHA, and it would be inappropriate to shift this function to a prime vendor.

HEARINGS

On March 7, 2018, the Subcommittee on Oversight and Investigations held a legislative hearing that included a discussion of a draft bill regarding the Medical Surgical Prime Vendor (MSPV) program, which would later be introduced as H.R. 5418.

The following witnesses testified:

The Honorable Cathy McMorris Rodgers, U.S. House of Representatives, 5th District, Washington; Fred Mingo, Director of Program Control, Program Executive Office, Electronic Health Record Modernization Program, U.S. Department of Veterans Affairs, accompanied by Ricky Lemmon, Acting Deputy Chief Procurement Officer, Veterans Health Administration, U.S. Department of Veterans Affairs, John Adams, Director of Corporate Travel, Office of Management, U.S. Department of Veterans Affairs, and Katrina Tuisamatatele, Health Portfolio Director, Office of Information and Technology, U.S. Department of Veterans Affairs; Louis Celli, Jr., Director, Veterans Affairs & Rehabilitation Division, The American Legion; and Scott Denniston, Executive Director National Veterans Small Business Coalition.

Statements for the record were provided by:

The Honorable Cathy McMorris Rodgers, U.S. House of Representatives, 5th District, Washington; and Veterans of Foreign Wars.

SUBCOMMITTEE CONSIDERATION

There was no Subcommittee markup of H.R. 5418.

COMMITTEE CONSIDERATION

On May 8, 2018, the full Committee met in open markup session, a quorum being present, and ordered H.R. 5418 favorably reported to the House of Representatives by voice vote. A motion by Representative Tim Walz of Minnesota to report H.R. 5418 favorably to the House of Representatives was adopted 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. 5418 reported to the House. A motion by Representative Tim Walz of Minnesota to report H.R. 5418 favorably to the House of Representatives was adopted 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 to ensure VA corrects known problems within its MSPV program and to maximize relevant clinical input when developing its formulary.

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. 5418 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. 5418 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. 5418 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 14, 2018.

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. 5418, the Veterans Affairs Medical-Surgical Purchasing Stabilization 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,
Director.

Enclosure.

H.R. 5418—Veterans Affairs Medical-Surgical Purchasing Stabilization Act

H.R. 5418 would require the Department of Veterans Affairs (VA) to use multiple vendors in procuring medical supplies and ensure that the employees responsible for selecting the supplies have medical expertise regarding those items. VA currently uses four vendors to purchase its medical supplies and employs clinicians on its integrated product teams to select those supplies. The bill also would require VA to submit quarterly reports to the Congress identifying the individual employees at VA who determine which items to purchase for VA's formulary and describing their medical expertise. CBO believes that most of the requirements in the bill would codify VA's existing practice. Therefore, CBO estimates that implementing the bill would cost less than \$500,000 over the 2019–2023 period to prepare the necessary reports for the Congress. That spending would be subject to the availability of appropriated funds.

Enacting H.R. 5418 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 5418 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 5418 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Ann E. Futrell. The estimate was reviewed by Leo Lex, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 5418 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. 5418.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, H.R. 5418 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. 5418 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 clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 5418 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, 115th Cong. (2017), the Committee estimates that H.R. 5418 contains no directed rulemaking 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 establish the short title as the "Veterans Affairs Medical-Surgical Purchasing Stabilization Act."

Section 2. Medical Surgical Prime Vendor Program

Section 2(a) of the bill would require the Secretary of Veterans Affairs to operate the MSPV program, or any successor program regarding the procurement of certain medical, surgical, and dental supplies or laboratory supplies for VA medical centers, in a manner that involves multiple regional prime vendors instead of a single nationwide prime vendor.

Section 2(b) of the bill would require the Secretary, in developing the formulary for the MSPV or a successor program, to ensure that each VA employee who conducts formulary analyses or makes decisions with respect to including items on the formulary has medical expertise relevant to the items for which the employee conducts such analyses or makes such decisions. Additionally, this bill would require that, within 30 days of enactment and quarterly thereafter, the Secretary shall submit a list to the House and Senate Committees on Veterans' Affairs that details each employee, their relevant medical expertise, and the categories of items in the formulary they analyzed or on which they made decisions.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED
If enacted, this bill would make no changes to existing law.

