

VA EMPLOYEE FAIRNESS ACT OF 2021

DECEMBER 12, 2022.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 1948]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 1948) to amend title 38, United States Code, to modify authorities relating to the collective bargaining of employees in the Veterans Health Administration, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

The Committee on Veterans' Affairs, to which was referred the bill (H.R. 1948) to amend title 38, United States Code, to modify authorities relating to the collective bargaining of employees in the Veterans Health Administration, having considered the same, reports favorably thereon and recommends that the bill do pass.

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PURPOSE AND SUMMARY

This legislation would strengthen the labor rights of health care providers at the Department of Veterans Affairs (VA). The bill establishes parity by providing the same collective bargaining rights for VA Title 38 health care professionals that are currently afforded to federal professionals covered by Title 5.

BACKGROUND AND NEED FOR LEGISLATION

The VA Employee Fairness Act would strengthen the collective bargaining rights of health care providers who work at VA facilities. Within VA, Title 38 clinicians work side-by-side with psychologists, social workers, pharmacists, licensed practical nurses, and other clinicians who currently have full bargaining rights that are covered under Title 5 of U.S. Code. Current law under Title 38 prevents these individuals from raising grievances about issues such as professional training and safe patient handling policies that undermine patient care.

The VA Employee Fairness Act removes this exemption for Title 38 employees and grants frontline health care providers full collective bargaining rights. This bill would bring parity to the federal workforce by providing the same collective bargaining rights for VA Title 38 health care professionals—such as registered nurses, physicians, dentists, and physician assistants—that are currently afforded to federal professionals covered by Title 5, including those at VA.

Under the legislation, Title 38 health care professionals would be provided the same collective bargaining rights to file grievances over routine workplace issues, such as scheduling, assignments, employee pay errors, and nurse locality pay that are exercised every day by other VA clinicians and federal employees. Guaranteeing Title 38 health care providers the same bargaining rights as other providers will help improve workplace conditions and ultimately benefit our nation's veterans.

HEARINGS

On April 21, 2021, the Subcommittee on Oversight and Investigations conducted a legislative hearing on various bills introduced during the 117th Congress, including H.R. 1948. The following witnesses testified: Mr. Jeffrey R. Mayo, Acting Assistant Secretary, Human Resources and Administration/Operations, Security, and Preparedness, U.S. Department of Veterans Affairs; Mr. Hansel Cordeiro, Acting Assistant Secretary, Office of Accountability and Whistleblower Protection, U.S. Department of Veterans; Mr. Ed Murray, Principal Deputy Assistant Secretary and Deputy Chief Financial Officer, Office of Management, U.S. Department of Veterans Affairs; Ms. Jessica Bonjorni, Chief, Human Capital Management, Veterans Health Administration, U.S. Department of Veterans Affairs; Mr. Christopher Wilber, Counsel to the Inspector General, Office of the Inspector General, U.S. Department of Veterans Affairs.

SUBCOMMITTEE CONSIDERATION

H.R. 1948 was not considered before the Subcommittee on Oversight and Investigations.

COMMITTEE CONSIDERATION

On May 4, 2021, the full Committee met in open session, a quorum being present, to consider H.R. 1948. The measure was agreed to by roll call vote. The Committee ordered that H.R. 1948 be favorably reported to the House of Representatives.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report the legislation and amendments thereto. The results of the record vote on an amendment or motion to transmit, together with the names of those voting for and against, are printed below.

Veterans' Affairs Committee record vote No. 1

Motion to favorably report H.R. 1948 to the House of Representatives. Agreed to: 17–11. The vote was as follows:

Majority Members	Vote	Minority Members	Vote
Mr. Takano	Aye	Mr. Bost	Nay
Ms. Brownley	Aye	Ms. Radewagen	
Mr. Lamb	Aye	Mr. Bergman	
Mr. Levin	Aye	Mr. Banks	Nay
Mr. Pappas	Aye	Mr. Roy	Nay
Ms. Luria	Aye	Mr. Murphy	Nay
Mr. Mrvan	Aye	Mr. Mann	Nay
Mr. Sablan	Aye	Mr. Moore	Nay
Ms. Underwood	Aye	Ms. Mace	Nay
Mr. Allred	Aye	Mr. Cawthorn	Nay
Ms. Frankel	Aye	Mr. Nehls	Nay
Mr. Brown	Aye	Mr. Rosendale	Nay
Ms. Slotkin	Aye	Dr. Miller-Meeks	Nay
Mr. Trone	Aye		
Ms. Kaptur	Aye		
Dr. Ruiz	Aye		
Mr. Gallego	Aye		

SECTION-BY-SECTION DESCRIPTION

Section 1: Short title

This Act may be cited as the “VA Employee Fairness Act of 2022.”

Section 2: Modification of authorities on collective bargaining of employees of the Veterans Health Administration

Allow collective bargaining rights for Title 38 employees by amending Section 7422 of title 38, United States Code, by:

- (1) striking subsections (b), (c), and (d); and
- (2) redesignating subsection (e) as subsection (b).

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. 1948 provided by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

According to the Congressional Budget Office estimate, H.R. 1948 would expand the conditions of employment that are subject to collective bargaining for certain employees of the Veterans Health Administration (VHA). Under current law, the Secretary of Veterans Affairs has broad authority to regulate the hours and conditions of employment for physicians, dentists, podiatrists, optometrists, chiropractors, registered nurses, physician assistants, and dental assistants employed by VHA. Those employees are prohibited from collectively bargaining over matters pertaining to professional conduct or competence, peer review, and compensation. The bill would remove those restrictions. According to the Department of Veterans Affairs, the bill would allow about 110,000 employees to collectively bargain over forms of compensation such as awards, bonuses, overtime, and special scheduling arrangements. Compensation for VHA personnel is funded through annual appropriations; CBO estimates that about \$17 billion was provided in 2020 as compensation for the employees identified above. Some economic research indicates that that collective bargaining increases compensation. On that basis, CBO expects that implementing H.R. 1948 could increase VHA's personnel costs through higher bonuses, overtime pay, or special pay for employees in specialties that are high in demand, for example. However, CBO has no basis upon which to estimate the likelihood or potential magnitude of those effects.

H.R. 1948, VA Employee Fairness Act of 2021			
As ordered reported by the House Committee on Veterans' Affairs on May 4, 2021			
By Fiscal Year, Millions of Dollars	2021	2021-2026	2021-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	not estimated	not estimated	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

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The CBO staff contact for this estimate is Etaf Khan. The estimate was reviewed by Leo Lex, Deputy Director of Budget Analysis.

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.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Article I, section 8 of the United States Constitution, H.R. 1948 is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

EARMARK STATEMENT

H.R. 1948 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.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 1948, 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. 1948.

PERFORMANCE GOALS

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 repeal provisions excluding any matter or question concerning professional conduct or competence; peer review; or the establishment, determination, or adjustment of employee compensation from the applicability of collective bargaining rights for Veterans Health Administration employees.

SUPPLEMENTAL, ADDITIONAL, DISSENTING, AND MINORITY VIEWS

There were no supplemental views filed with this report.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 1948 does not relate to the terms and condition 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. 1948 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.

RAMSEYER SUBMISSION

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 italics, 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

* * * * *

CHAPTER 74—VETERANS HEALTH ADMINISTRATION—PERSONNEL

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SUBCHAPTER II—COLLECTIVE BARGAINING AND PERSONNEL ADMINISTRATION

* * * * *

§ 7422. Collective bargaining

(a) Except as otherwise specifically provided in this title, the authority of the Secretary to prescribe regulations under section 7421 of this title is subject to the right of Federal employees to engage in collective bargaining with respect to conditions of employment through representatives chosen by them in accordance with chapter 71 of title 5 (relating to labor-management relations).

[(b) Such collective bargaining (and any grievance procedures provided under a collective bargaining agreement) in the case of employees described in section 7421(b) of this title may not cover, or have any applicability to, any matter or question concerning or arising out of (1) professional conduct or competence, (2) peer review, or (3) the establishment, determination, or adjustment of employee compensation under this title.

[(c) For purposes of this section, the term “professional conduct or competence” means any of the following:

[(1) Direct patient care.

[(2) Clinical competence.

[(d) An issue of whether a matter or question concerns or arises out of (1) professional conduct or competence, (2) peer review, or (3) the establishment, determination, or adjustment of employee compensation under this title shall be decided by the Secretary and is not itself subject to collective bargaining and may not be reviewed by any other agency.]

[(e)] (b) A petition for judicial review or petition for enforcement under section 7123 of title 5 in any case involving employees described in section 7421(b) of this title or arising out of the applicability of chapter 71 of title 5 to employees in those positions, shall be taken only in the United States Court of Appeals for the District of Columbia Circuit.

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