

## [H.R. 3236, Surface Transportation and Veterans Health Care Choice Improvement Act of 2015](#)

### FLOOR SITUATION

On Wednesday, July 29, 2015, the House will consider [H.R. 3236](#), *the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015*, under a [closed rule](#).

### SUMMARY

#### Highway Trust Fund

H.R. 3236 extends the programmatic and expenditure authority of the Highway Trust Fund (HTF) through October 29, 2015. The bill also authorizes appropriations for Federal-aid highway, highway safety, and public transportation programs at the level authorized for fiscal year 2014, providing a proportional amount of authorized contract and budget authority for the period of the extension. The bill subjects funding for these programs generally to the same manner of distribution, administration, limitation, and availability for obligation. The bill also transfers approximately \$6.1 billion from Treasury's General Fund to the HTF's Highway Account and \$2 billion to its Mass Transit Account. Click [here](#) for an explanation of the offsets for this transfer.

#### Department of Veterans Affairs (VA)

The bill makes available \$3.348 billion dollars from the Veterans Choice Fund to pay for non-VA care provided to eligible patients from May 1 to October 1, 2015. The bill also would modify the existing Veterans Choice Program by: eliminating the requirement for a veteran to have been enrolled in the VA health care system by August 1, 2014; expanding the number of non-VA providers who are allowed to participate in the Program by allowing VA to include Medicaid providers and other providers as appropriate; allowing VA to waive the wait time criteria for a veteran in need of an appointment but unable to schedule one prior to 30 days based on clinical necessity; and, allowing veterans who live within 40 miles of a VA community-based outpatient clinic that does not have a full-time physician on staff to access primary care through the Program.

The bill also amends the Internal Revenue Code of 1986 to permit an employer, when determining whether it must provide health care coverage to its employees under the Patient Protection and Affordable Care Act (PPACA), to exclude employees who have coverage under a health care program administered by the Department of Defense (DOD). This includes TRICARE or coverage provided by the Department of Veterans Affairs (VA). This provision is substantively similar to [H.R. 22](#), *the Hire More Heroes Act of 2015*, which passed the House by a vote of [412 to 0](#) on January 6, 2015; and [H.J. Res. 61](#), which passed the House by voice vote on July 27, 2015.

The bill also provides the following general provisions:

- prohibits VA funds from being used to expand internal dialysis capabilities until independent analysis of the ongoing dialysis pilot program is complete and 180 days after the VA has submitted reports on the analysis and a 5-year investment plan to Congress;
- prohibits the VA from using more than \$500 million of the transferred funds from the Veterans Choice Fund to cover Hepatitis C pharmaceutical expenses; and,
- requires the VA to develop a plan to consolidate all non-VA programs into a single program called the “Veterans Choice Program” and submit a report on the plan the House and Senate Committees on Veterans’ Affairs by November 1, 2015.

## BACKGROUND

### Highway Trust Fund

Under current law, the federal government levies an excise tax of 18.4 cents per gallon on gasoline and 24.4 cents per gallon on diesel fuel.<sup>1</sup> Federal motor fuels excise tax collections are credited to the Highway Trust Fund (HTF), with the exception of 0.1 cent per-gallon of the fuel taxes deposited in the Leaking Underground Storage Tank (LUST) Trust Fund.<sup>2</sup> The HTF, the primary federal fund for surface transportation, is divided into two accounts: the highway account, and the mass transit account.<sup>3</sup> Fuel taxes have historically provided approximately 90 percent of the receipts to the HTF.<sup>4</sup> In recent years, tax collections have not kept pace with spending on federally-funded transportation projects due to the effect of inflation on both project costs and the real value of non-indexed tax rates; reductions in vehicle miles travelled; and improved corporate average fuel economy (CAFE) standards.<sup>5</sup> These developments have imperiled the sustainability of the Fund.

According to the Congressional Budget Office (CBO), spending from the HTF is projected to be roughly \$53 billion per year after FY 2014 (growing to \$59 billion in 2024), while receipts coming into the HTF are projected to be approximately \$39 billion per year after FY 2014.<sup>6</sup> HTF outlays will exceed revenues by \$167 billion over the 2015 to 2024 period if obligations from the Fund continue at

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<sup>1</sup> See CRS Report—[“The Federal Excise Tax on Motor Fuels and the Highway Trust Fund: Current Law and Legislative History,”](#) June 12, 2015 at 1.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> U.S. Government Accountability Office, *Highway Trust Fund: Options for Improving Sustainability and Mechanisms to Manage Solvency*, GAO-09-845T, June 25, 2009, p. 4, at <http://www.gao.gov/new.items/d09845t.pdf> ; and CRS Report R42877, *Funding and Financing Highways and Public Transportation*, by Robert S. Kirk and William J. Mallett.

<sup>5</sup> See [CRS Report](#) at 2.

<sup>6</sup> [The Highway Trust Fund and the Treatment of Surface Transportation Programs in the Federal Budget](#), Congressional Budget Office (Jun. 11, 2014).

the 2014 rate.<sup>7</sup> Since 2008, Congress has prevented projected HTF shortfalls by transferring \$63 billion from Treasury's General Fund to the HTF.<sup>8</sup>

In 2012, President Obama signed into law H.R. 4348 ([Public Law 112-141](#)), the Moving Ahead for Progress in the 21st Century Act, or MAP-21. MAP-21 authorized Federal surface transportation programs through September 30, 2014 and tax collection authority through September 30, 2016.<sup>9</sup> To offset the cost of reauthorization, the bill transferred \$18.8 billion for fiscal years 2013 and 2014 from Treasury's General Fund to the HTF, and \$2.4 billion from the LUST Trust Fund to the HTF.<sup>10</sup>

In the 113<sup>th</sup> Congress, the House passed legislation (H.R. 5021) that extended the programmatic authority and expenditure authority of the HTF through May 31, 2015. Additionally, H.R. 5021 transferred \$7.8 billion from Treasury's General Fund to the Highway Account of the HTF and \$2 billion to its Mass Transit Account. H.R. 5021 also transferred \$1 billion in gas-tax-funded monies in the LUST Trust Fund to the HTF. The House approved H.R. 5021 by a vote of [367 to 55](#) on July 15, 2014. The bill was enacted into law on August 8, 2014. ([Public Law 113-159](#)).

In the 114<sup>th</sup> Congress, the House passed [H.R. 2353](#), *the Highway and Transportation Funding Act of 2015*, by a vote of [387 to 35](#) on May 19, 2015. The bill, which extended the programmatic and expenditure authority of the HTF through July 31, 2015, was signed into law on May 29, 2015. ([Public Law 114-21](#)). The bill did not transfer any money from Treasury's General Fund because the HTF had sufficient resources to fund its obligations through that period.

On July 15, 2015, the House passed H.R. 3038, *the Highway and Transportation Funding Act of 2015, Part II*, by a vote of [312 to 119](#). The bill would extend the programmatic and expenditure authority of the Highway Trust Fund (HTF) through December 18, 2015, and transfer approximately \$6.1 billion from Treasury's General Fund to the HTF's Highway Account and \$2 billion to its Mass Transit Account. The Senate has not acted on that bill.

### Department of Veterans Affairs Provisions

On July 14, the Secretary of the VA, Robert McDonald, testified before the House Committee on Veterans' Affairs that, due to a sharp increase in demand for treatments for Hepatitis C, the agency is facing a \$2.5 billion budget shortfall and may need to close VA hospitals across the country in August if Congress does not act. The Secretary said the Department wants the flexibility to utilize up to \$3 billion from the new Veterans Choice Program to close the budget gap, with as much as \$500 million designated to treat Hepatitis C.<sup>11</sup>

Hepatitis C (HCV) is a viral disease that causes inflammation of the liver that can lead to reduced liver function, liver failure or liver cancer. Most people infected with HCV have no symptoms of the disease until liver damage becomes apparent, which may take decades. According to the Centers for Disease Control and Prevention, about 3.2 million Americans are infected with HVC, and without proper treatment, 15 to 30 percent will develop cirrhosis.<sup>12</sup> VA states that approximately 180,000 current enrollees have been diagnosed with HCV with the possibility of an additional 40,000 enrollees who have not yet been diagnosed. The FDA approved two sets of HCV drug treatments in the last 12

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<sup>7</sup> Id.

<sup>8</sup> Id. at 2.

<sup>9</sup> Id. at 5.

<sup>10</sup> See Id., Table 3.

<sup>11</sup> <http://www.modernhealthcare.com/article/20150722/NEWS/150729935>

<sup>12</sup> <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm427530.htm>

months – four new drugs. The unit cost for these drugs range from \$25,000 to \$67,000 per average treatment regimen. Extended regimens may be necessary to achieve the 85 percent cure rate or better for some veterans.

In response to concerns of long patient wait times and employee misconduct at VA medical facilities, Congress passed and the President signed the Veterans Access, Choice, and Accountability Act (VACAA) of 2014. The law made a number of changes to programs and policies of the Veterans Health Administration (VHA) within the VA to increase access and reduce wait times for veterans who seek care at VA facilities. Among other things, the law establishes a new program, the Veterans Choice Program, which requires the VA to authorize care for veterans outside the VA health care system if certain conditions are met.

As directed by the VACAA, VA administers the “Veterans Choice Fund” to implement the Veterans Choice Program. The Program is authorized until August 7, 2017, or until the funds in the Veterans Choice Fund have been exhausted. In 2014, Congress appropriated \$10 billion for the Fund and H.R. 3236 makes available over \$3.3 billion dollars from the Fund to pay for non-VA care provided to veteran patients from May 1 to October 1, 2015.

The Program was designed to provide veterans who were enrolled as of August 1, 2014, or eligible to enroll as a recently discharged combat veteran with a Veterans Choice Card, and allow those veterans who are unable to schedule an appointment within 30 days of their preferred date or the clinically appropriate date, or on the basis of their place of residence, to elect to receive care from eligible non-VA health care entities or providers. This is separate from VA’s existing programs providing veterans care outside of the VA system.

Eligible non-VA entities or providers must enter into agreements with VA to furnish care, must maintain the same or similar credentials and licenses as VA providers, and must submit to VA a copy of any medical records related to care and services provided under the Program for inclusion in the veteran’s VA electronic medical record. H.R. 3236 allows the VA to waive the wait time criteria for a veteran in need of an appointment but unable to schedule one prior to 30 days based on clinical necessity; and, allows veterans who live within 40 miles of a VA community-based outpatient clinic that does not have a full-time physician on staff to access primary care through the Program. The bill also eliminates the requirement for a veteran to have been enrolled in the VA health care system by August 1, 2014.

The Patient Protection and Affordable Care Act (PPACA) imposed an “employer mandate,” on employers that requires all businesses with more than 50 full-time or full-time equivalent employees (defined as those who work more than 30 hours per week) to provide employer-sponsored health insurance. When an employer hires a 50<sup>th</sup> full-time employee, businesses not in compliance are subject to a \$2,000 noncompliance penalty for each employee beyond the 30<sup>th</sup> they hire, in addition to the salary and benefits they must provide to their employees.<sup>13</sup> However, under current law, veterans who already receive health insurance through the VA or TRICARE would still be counted toward the employer mandate. H.R. 3236 exempts these veterans from being included in this count and being subject to employer mandate penalties.

## **COST**

A cost estimate from the Congressional Budget Office (CBO) is currently unavailable.

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<sup>13</sup> See Energy and Commerce, Majority Staff report, [“Obamacare vs. Jobs.”](#) March 12, 2013.

## STAFF CONTACT

For questions or further information please contact [John Huston](#) with the House Republican Policy Committee by email or at 6-5539.