

[Floor Situation](#) | [Summary](#) | [Background](#) | [Cost](#) | [Staff Contact](#)

[H.R. 1994, VA Accountability Act of 2015](#)

FLOOR SITUATION

On Wednesday, July 29, 2015, the House will consider [H.R. 1994](#), *the VA Accountability Act of 2015*, under a [structured rule](#). H.R. 1994 was introduced on April 23, 2015, by Rep. Jeff Miller (R-FL) and was referred to the Committee on Veterans' Affairs, and in addition, to the Committee on Oversight and Government Reform. The Committee on Veterans' Affairs ordered the bill reported, as amended, by voice vote, on July 15, 2015.

SUMMARY

H.R. 1994 provides the Secretary of the Department of Veterans' Affairs (VA) increased flexibility in removing poor performing VA employees, provides improved protections for whistleblowers including restricting bonus awards for supervisors who retaliate against whistleblowers, and strengthens accountability and performance measures for Senior Executive Service (SES) employees.

Major provisions of the bill are as follows:

Increased Employee Accountability—the bill gives the Secretary the authority to remove any VA employee based on performance or misconduct. The employee would have the right to file an appeal with the Merit Systems Protection Board (MSPB) within seven days of their removal, and the MSPB would have to make a final decision on the removal within 45 days of the appeal submission.¹ In an attempt to prevent VA employees from staying on paid administrative leave for an extended period of time, the bill prevents the Secretary from placing any VA employee on paid administrative leave, or any other type of a paid non-duty status, for longer than 14 days during any 365 day period.²

Whistleblower Protections—the bill limits the Secretary's authority to remove or demote an employee if they are a whistleblower who has filed a claim with the Office of Special Counsel. The bill also provides employees additional methods to report complaints. In an attempt to ensure that VA supervisors address complaints brought to them by subordinate employees, the bill mandates written records for each step in the whistleblower complaint review process and grants supervisors a fixed

¹ See [House Report 114-225](#) at 12.

² Id. at 22.

period within which complaints must be addressed. The bill also requires the VA to notify all employees of their rights, as whistleblowers, by posting the hotline number and website for reporting complaints in every VA facility and on the VA website. Further the bill requires the VA to hold supervisors accountable for retaliation against employees by mandating suspension, termination, and bonus prohibition and recoupment for supervisors found to have retaliated against employees. According to the Committee, these protections are critically important as whistleblowers continue to be vital to Congress's oversight role of the VA.³

Extended New Employee Probationary Period—the bill requires that all probationary periods for new VA employees last for at least 18 months—instead of the current period of one year. It would also give the Secretary the authority to extend this probationary period. The bill also requires supervisors to make an affirmative decision that an employee is qualified for their position after their probationary period is over and before full civil service protections are granted.⁴

Senior Executive Performance Agreements (SES) Performance Pay Reform—the bill requires the Secretary to reassign SES employees at least once in every five year period. Reassignment would occur on a rolling basis to prevent a mass movement of all SES employees at the same time. The bill limits to ten percent the number of SES employees that could be placed in the top performance evaluation tier and limits the second performance tier to twenty percent. Being placed in these performance tiers makes these employees eligible for performance based compensation bonuses. The bill also requires the Secretary to take into account any Office of Inspector General (OIG) investigations or Equal Employment Opportunity (EEO) complaints when evaluating an SES employee's work performance. The bill also authorizes the Secretary to reduce the retirement pay and benefits for an SES employee upon conviction of a felony that had an effect upon the purported work performance of that employee.

Limitation on awards and bonuses paid to VA Employees—the Veterans Access, Choice, and Accountability Act (VACAA) of 2014 limited the aggregate amount of awards and bonuses paid to VA employees each fiscal year to no more than \$360 million. This bill would amend the VACAA to limit the amount VA can pay in bonuses for fiscal years 2015 through 2018 to \$300 million, and for fiscal years 2019 through 2024, to \$360 million annually.⁵

Government Accountability Office VA Labor Union Study—the bill requires the GAO to study and report to Congress on the amount of time VA employees spend involved in labor union activities. The study would also require them to do a cost-benefit analysis of the use of VA time and space spent on these activities. VA currently has five Master Collective Bargaining Agreements with labor unions, and additional local labor union contracts.⁶

BACKGROUND

The Department of Veterans Affairs (VA) provides an array of benefits to veterans and to certain members of their families. These benefits include disability compensation and pensions, education benefits, survivor benefits, medical treatment, life insurance, vocational rehabilitation, and burial and memorial benefits. In order to apply for these benefits, in most circumstances, the claimant will send an application to his or her local VA Regional Office or apply online. Once a veteran has filed an

³ Id. at 17.

⁴ Id. at 16.

⁵ Id. at 24.

⁶ Id. at 23.

application for benefits with the VA, the agency has a unique obligation to the claimant when adjudicating the claim—the VA has a "duty to assist" the claimant throughout the claim process.⁷

According to reports, in 2014, as many as 40 patients at the Phoenix VA Health Care System may have died while awaiting medical care.⁸ Additionally, "more than 250,000 appointments were completed at the VA Medical Center in Phoenix between September and February [of 2014], and over 14,000 of those appointments, or 5.7 percent, faced delays of 31 days or longer."⁹ Subsequent investigations of VA medical facilities around the country revealed widespread issues of long wait times and gross employee misconduct.¹⁰ The allegations of several whistleblowers, including Drs. Samuel Foote and Kathleen Mitchell from Phoenix, shed light on these issues and improper practices, which resulted in one of the largest scandals VA had ever endured. In response to this scandal, the VA Secretary, Eric Shinseki, resigned in May of 2014.¹¹

In response to these concerns, 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, that would allow the VA to authorize care for veterans outside the VA health care system if certain conditions are met. The law also required, among other things:¹²

- increased collaboration between the VA and facilities operated by the Indian Health Service or the Native Hawaiian Health Care System and required increased funding for graduate medical education training at the VA;
- the extension of Project ARCH (Access Received Closer to Home) within specified Veterans Integrated Service Networks (VISNs) for veterans in highly rural areas who are enrolled in VA health care for an additional two years;
- several studies to examine a variety of issues pertaining to VA's health care delivery system, and to explore ideas on how best to reform the system;
- imposition of penalties on VA employees who knowingly falsify data on patient wait times or health care quality measures or knowingly request other VA employees to falsify such data; and,
- limitations on VA employee bonuses and removal or transfer of VA senior executives for performance or misconduct and expedited review of such actions.

Since the passage of the VACAA, according to the Committee, instances of mismanagement or misconduct by VA employees have continued. Some of these instances include: allegations of manipulation of disability claims data at the Philadelphia Regional Benefit Office; the continued construction failures of a new medical center in Aurora, Colorado that is now many years and hundreds of millions of dollars over budget; VA's alleged \$2.5 billion shortfall for FY 2015; allegations of illegal use of government purchase cards resulting in the waste of billions of dollars annually; and many other examples of poor performance or misconduct. The Committee believes that throughout all of these incidents, it has become clear that the VA often does not hold individuals

⁷ See CRS Report, "[Veterans' Benefits: The Department of Veterans Affairs and the Duty to Assist Claimants.](#)" September 26, 2014.

⁸ <http://www.cnn.com/2014/05/30/politics/va-hospitals-shinseki/>

⁹ <http://www.washingtontimes.com/news/2015/apr/9/problems-remain-at-phoenix-va-hospital-after-scand/?page=all>

¹⁰ <http://www.cnn.com/2014/04/23/health/veterans-dying-health-care-delays/>

¹¹ <http://www.cnn.com/2014/05/30/politics/va-hospitals-shinseki/>

¹² See CRS Report, "[Veterans Access, Choice, and Accountability Act of 2014.](#)" June 9, 2015.

appropriately accountable for their actions, and in the instances that they have tried to take disciplinary action against an employee, the process is so difficult and lengthy that such action rarely occurs.¹³

When an individual enters into competitive service at VA, and across the federal government, he or she is put on a probationary period at the beginning of their employment for one year. Physicians at the VA are considered a part of the excepted service and are required to undergo a two-year probationary period. An employee's appeal rights are greatly diminished during their probationary period, as it is meant to be a period of time during which supervisors can fully assess the employee's capabilities and appropriateness for the position before that employee becomes a full-time employee of the agency. According to the Committee, the current standard of a one year probationary period is not long enough to accurately track and review a new employee's performance. Therefore, H.R. 1994 extends this probationary period to 18 months and grants the Secretary the ability to increase that period.¹⁴

VA annually uses performance evaluation forms, known as "Senior Executive Performance Agreements," to track the performance of SES employees and determine bonuses based on the outcomes of these evaluations. Performance evaluations go through several stages before reaching the Secretary for signature, with opportunities for the employee to review the rating official's and performance review board's comments. VA currently has five rating levels, ranging from "unsatisfactory" to "outstanding." From fiscal years 2010 to 2013, not a single executive had been placed in a level lower than one of the top three levels and most were placed in the top two levels, thereby making them eligible for a performance based bonus. According to the Committee, this lack of distribution across all performance levels is evidence that the performance evaluation system within VA does not reflect reality and that the Department is unable to objectively and fairly examine its senior management on their merits. H.R. 1994 limits the amount of SES employees who could become eligible for bonus pay, caps the total level of bonus pay that may be paid, and requires complaints regarding SES employees to be taken into account when reviewing their performance.¹⁵

Many VA employees have reported retaliation towards whistleblowers from supervisors, senior managers, and other VA employees. This retaliation may discourage some employees from stepping forward and shedding light on problems within the VA. H.R. 1994 provides increased protections for whistleblowers at the VA in an attempt to create a conducive environment for employees to report issues that are adversely affecting the care our nation's veterans receive.¹⁶

H.R. 1994, as amended, incorporates the text of [H.R. 2981](#) introduced by Rep. Tim Huelskamp (R-KS); and in addition, [H.R. 571](#) and [H.R. 473](#), both introduced by Rep. Jeff Miller (R-FL) in the 114th Congress.

COST

The Congressional Budget Office (CBO) [estimates](#) enacting H.R. 1994 would, on net, decrease costs by \$145 million over the 2016 to 2020 period, assuming appropriation levels are reduced by those amounts. Enacting the bill would have an insignificant effect on direct spending over the 2016 to 2025 period; therefore, pay-as-you-go procedures apply. Enacting H.R. 1994 would not affect revenues.

¹³ See [House Report 114-225](#) at 13.

¹⁴ Id. at 15.

¹⁵ Id. at 18.

¹⁶ Id. at 22.

AMENDMENTS

1. [Rep. Dan Benishek \(R-MI\)](#)—the amendment reforms and improves the VA Inspector General's (IG) ability to report on problems and problem employees at the VA. Requires the IG to release reports including employee misconduct to the public and explain what changes the VA has requested, requires the IG to identify a manager responsible for fixing an identified problem, makes it easier to fire an identified employee, and targets the bonuses of employees that fail to solve problems.
2. [Rep. Mark Takano \(D-CA\)](#)—(Substitute) the amendment provides VA Secretary the authority to immediately suspend without pay any employee whose performance or misconduct is a threat to health or safety; ensures back pay for whistleblowers unfairly terminated, and caps the payment of administrative leave to 14 days. Makes effective date of back pay provision October 1, 2015.

STAFF CONTACT

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