



H.R. 5620: VA Accountability First and Appeals Modernization Act of 2016 (Miller, R-FL)

CONTACT: [Rebekah Armstrong](mailto:Rebekah.Armstrong@rsc.house.gov), 202-226-0678

FLOOR SCHEDULE:

Scheduled for consideration September 14, 2016 under a structured [rule](#) that provides for one hour of general debate and makes 22 amendments in order.

TOPLINE SUMMARY:

[H.R. 5620](#) would grant the Secretary of Veterans Affairs (VA) additional authority to remove employees due to poor performance or misconduct, recoup bonuses and awards, increase whistleblower protections, and reform the appeals process for veteran benefits.

COST:

A Congressional Budget Office (CBO) cost estimate is not available at this time.

CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

H.R. 5620 would allow the secretary to remove or demote a VA employee due to poor performance or misconduct. If the employee chooses to appeal the decision, they may not be placed on administrative leave or any other category of paid leave during the period of appeal, and may only receive compensation if they are working. In addition, any appeal must be expedited through the full Merit Systems Protection Board, must be decided within 60 days, and would uphold the secretary's decision if supported by substantial evidence.

If an individual is removed from a senior executive service (SES) position due to committing a felony that influenced their job performance, the secretary would be authorized to reduce their pension. The individual convicted of the felony would have the opportunity to appeal the order, and the final decision must be made 30 days after receiving the appeal.

This bill would allow the secretary to recoup a bonus or performance award from an employee of the Department of Veterans Affairs. The secretary would promulgate regulations to carry out this action. An affected employee would be offered the opportunity for a hearing conducted by another department or agency of the federal government. This would apply to bonuses awarded on or after the enactment of this

act. In addition, the secretary would be authorized to recoup all or a portion of relocation expenses of an employee who has committed an act of fraud, waste, or malfeasance.

This bill would amend section 707 of the Veterans Access, Choice, and Accountability Act of 2014 to streamline disciplinary actions for SES employees at VA by allowing the secretary to suspend, reprimand, or admonish an individual for actions based on performance or misconduct if their conduct does not rise to the level of removal. The secretary would be given the authority to appoint a board consisting of three VA employees to have exclusive jurisdiction to review any personnel action.

This bill would enhance whistleblower protections by allowing an employee to file the initial complaint with their immediate supervisor. The supervisor would have no more than four business days to notify the employee in writing if there has been a violation. In addition, the supervisor must submit the written decision to the next-level supervisor. If a supervisor does not make a timely determination or is the subject of the complaint, the employee who made the initial whistleblower complaint can file the complaint directly with the next-level supervisor. If a supervisor makes a positive determination regarding a whistleblower complaint, the employee who filed the report would be given the opportunity to volunteer for a transfer or given preference for a transfer. Supervisors who retaliate against employees who submit complaints would be held accountable and could be removed from their position. All VA employees would be provided annual training regarding whistleblower complaints. This bill would also streamline the whistleblower complaint form.

This bill would reform the current VA appeals process for veterans seeking to claim benefits. If, during the review of the original decision the higher-level reviewer identifies an error on the part of the agency, the review would return the claim for correction and adjudication unless the claim can be granted in full. The claimant may request a review of the decision of the agency by a higher-level adjudicator within one year of the original decision. If new or relevant evidence is presented or secured with respect to a supplemental claim, the secretary would readjudicate the claim to take into consideration the new evidence.

Finally, this bill would eliminate awards and bonuses awarded to SES employees at the VA for fiscal years 2017-2021.

AMENDMENTS MADE IN ORDER:

Amendment #1 (Miller, R-FL): This amendment makes technical corrections to the underlying bill, and includes due process procedures for the recoupment of bonus money and relocation expenses from a VA employee.

Amendment #2 (Walz, D-MN; Titus, D-NV): This amendment would strike everything in the bill except for section nine, which outlines appeals reform.

Amendment #3 (Takano, D-CA): This amendment would strike section three, which allows for the removal or demotion of an employee based on poor performance or misconduct. In its place, the secretary would be authorized to suspend without pay an employee whose performance or misconduct is a threat to public health or safety. In addition, it would allow whistleblowers to receive back pay if their suspension or removal was determined to be inappropriate.

Amendment #4 (Lujan, D-NM; Grisham, D-NM): This amendment would require each member of Congress representing the facility where an individual was employed prior to being removed or demoted to be notified. In addition, members of Congress would be notified about monthly whistleblower complaint written reports.

Amendment #5 (Kuster, D-NH): This amendment would strike section seven that streamlines disciplinary actions for SES employees at VA. It would replace the current section with an alternate process of disciplining SES employees for misconduct or performance. Individuals removed from service would be

entitled to representation by an attorney, written notice of the charges, and the ability to grieve the action in accordance with internal grievance processes. An individual adversely affected by the final decision may obtain judicial review of the decision.

Amendment #6 (Kirkpatrick, D-AZ): This amendment would strike section eight of the bill, which addresses the treatment of whistleblower complaints. In its place, it would establish of an Office of Accountably and Whistleblower Protection. The secretary and the Assistant Secretary of Whistleblower Protection would develop criteria to use as a critical element in any evaluation of the performance of a supervisory employee and promote the protection of whistleblowers. In addition, it would classify testifying before Congress as an official duty and require the secretary to provide travel expenses.

Amendment #7 (Newhouse, R-WA): This amendment would apply the statutory requirements of the Emergency Medical Treatment and Labor Act (EMTALA) to emergency care furnished by the VA to enrolled veterans. Under the amendment, if an enrolled veteran goes to a VA medical facility and is determined to have an emergency medical condition, the secretary must provide further medical examination to stabilize the patient or transfer to another medical facility.

Amendment #8 (Schweikert, R-AZ): This amendment would require the use of distributed ledger technology at VA medical facilities no later than one year after enactment. A distributed ledger technology is a technology using consensus of replicated, shared, and synchronized digital data that is geographically spread across multiple digital systems.

Amendment #9 (Cartwright, D-PA): This amendment would allow the secretary to appoint a psychiatrist who completes their residency at the VHA to a VHA health care position without regard to civil service or classification laws, if the psychiatrist meets the qualifications established in regulations prescribed for the position, and the position has been unfilled for at least 35 days

Amendment #10 (Frankel, D-FL): This amendment would include a sense of Congress that honors the men and women left permanently wounded, ill, or injured as a result of their service in the armed forces, and supports the annual recognition of American veterans disabled for life.

Amendment #11 (Gallego, D-AZ): This amendment would establish positions of Directors of Veterans Integrated Service Networks in the office of the Under Secretary for Health.

Amendment #12 (Keating, D-MA; Rothfus, R-PA): This amendment would require health care providers at the VA to complete continuing education courses on pain management once every two years.

Amendment #13 (Lowenthal, D-CA): This amendment would require the secretary to review each covered whistleblower complaint that is filed during the previous calendar quarter.

Amendment #14 (Lujan, D-NM): This amendment would direct the secretary to report on matters relating to part-time employment of members of the armed forces who are physicians.

Amendment #15 (Maloney, D-NY): This amendment would extend the authority of the secretary to provide for medical disability exams to be provided by contract physicians.

Amendment #16 (O'Rourke, D-TX; Stefanik, R-NY): This amendment would change the qualifications for the appointment of a physician position in the VHA to allow for the contingent appointment of physicians. This would allow for physicians to be appointed prior to the completion of residency requirements. The residency must be completed no later than two years after the date of the offer.

Amendment #17 (O'Rourke, D-TX): This amendment would give the secretary the authority to disclose certain medical records of veterans to a non-departmental health care that provides hospital care or medical treatment to veterans.

Amendment #18 (O'Rourke, D-TX): This amendment would require a survey on veterans' experience with VA medical care.

Amendment #19 (Walz, D-MN): This amendment would enable any person to be honored as a veteran who is entitled to retired pay for nonregular (reserve) service or who, but for age, would be so entitled. A person shall not be entitled to any benefit by reason of such recognition.

Amendment #20 (Walz, D-MN): This amendment would allow the secretary to furnish rehabilitative equipment to any veteran who is entitled to a prosthetic appliance. No additional fund would be authorized to carry out these requirements.

Amendment #21 (Duffy, R-MN): This amendment would add hearing aid specialist to a comprehensive list of medical providers in the Veterans Health Administration. The hearing aid specialist's scope of practice would be limited to their state licensure and related to the practice of fitting and dispensing hearing aids. The secretary would be required to submit a report to Congress on the a veteran's ability to have timely access to hearing services at the VA and contracting policies related to providing hearing services in facilities outside the VA. Similar language was included in H.R 3471, which passed by voice vote on September 12, 2016.

Amendment #22 (Lance, R-NJ): This amendment would direct the secretary to include in a required annual report on VA expenditures and activities a report on each VA regional office that failed to reach administrative goals concerning the timeliness and accuracy of veterans' claims adjudication.

COMMITTEE ACTION:

This bill was introduced by Representative Miller and referred to the Committee on Veterans' Affairs, and the Committee on Oversight and Government Reform.

ADMINISTRATION POSITION:

No Statement of Administration Policy is available at this time.

CONSTITUTIONAL AUTHORITY:

According to the sponsor, Congress has the power to enact this legislation pursuant to the following: Article I, Section 8. No specific enumerating clause was included.