

Calendar No. 559

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 111-288

A BILL TO EXTEND THE TEMPORARY AUTHORITY FOR THE PERFORMANCE OF MEDICAL DISABILITY EXAMINATIONS BY CONTRACT PHYSICIANS FOR THE DEPARTMENT OF VETERANS AFFAIRS

SEPTEMBER 2, 2010.—Ordered to be printed

Filed, under authority of the order of the Senate of August 5, 2010

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

R E P O R T

[To accompany S. 3609]

The Committee on Veterans' Affairs (hereinafter, "the Committee"), to which was referred the bill (S. 3609), to extend the temporary authority for the performance of medical disability examinations by contract providers for the Department of Veterans Affairs (hereinafter, "VA"), having considered the same, reports favorably thereon, and recommends that the bill do pass without amendment.

INTRODUCTION

On July 19, 2010, Committee Chairman Daniel K. Akaka introduced S. 3609, to extend the temporary authority for the performance of medical disability examinations by contract providers for VA.

COMMITTEE MEETING

The Committee met in open session on August 5, 2010, to consider, among other legislation, S. 3609. The Committee voted, without dissent, to report favorably S. 3609.

SUMMARY OF S. 3609 AS REPORTED

S. 3609 as reported (hereinafter, "the Committee bill") would extend the temporary authority for the performance of medical disability examinations by contract providers for VA.

BACKGROUND AND DISCUSSION

In order to determine the type and severity of disabilities of veterans filing for VA compensation or pension benefits, VA often requires thorough medical disability examinations. Because these examinations form the basis of disability ratings, their accurate and timely completion is essential. In recent years, the demand for medical disability examinations has increased beyond the number of requests that the current in-house system was designed to accommodate. This rise in demand is due to an increase in the complexity of disability claims, an increase in the number of disabilities claimed by veterans, and changes in eligibility requirements for disability benefits.

Background. In 1996, in Public Law 104–275, the Veterans’ Benefits Improvements Act of 1996, VA was authorized to carry out a pilot program of contract disability examinations through ten VA regional offices using amounts available for payment of compensation and pensions. During the initial pilot program, one contractor performed all contract examinations at the ten selected regional offices.

The pilot was deemed a success, with general satisfaction reported from all stakeholders. According to the VA Claims Processing Task Force’s 2001 report to the Secretary of Veterans Affairs: “The quality of [contract] examinations has been reported to exceed a 99 percent adequacy rate, and the Task Force found high approval from Regional Office employees. Reported medical examination timeliness was within contract compliance with positive feedback in customer service surveys.”

Subsequently, in 2003, in Public Law 108–183, the Veterans Benefits Act of 2003, VA was given additional, time-limited authority to contract for disability examinations using other appropriated funds. That initial authority was extended until December 31, 2010, by Public Law 110–389, the Veterans’ Benefits Improvement Act of 2008. VA continues to report high demand for compensation and pension examinations and satisfaction with the contracted examinations.

Committee Bill. The Committee bill would extend VA’s authority, through December 31, 2012, to use appropriated funds for the purpose of contracting with non-VA providers to conduct disability examinations. The examinations would be conducted pursuant to contracts entered into and administered by the Under Secretary for Benefits. The Committee notes that the authority to contract for disability examinations through the ten regional offices, using amounts available for payment of compensation and pension, is an ongoing authority with no time limitation.

COMMITTEE BILL COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the CBO, estimates that enactment of the Committee bill would, relative to current law, increase discretionary spending by \$58 million over the 2011–2013 period, assuming appropriation of the necessary amounts. Enacting S. 3609 would not affect direct spending or revenues. S. 3609 contains no intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act.

The cost estimate provided by CBO, setting forth a detailed breakdown of costs, follows:

CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 12, 2010.

Hon. DANIEL K. AKAKA,
Chairman,
Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 3609, a bill to extend the temporary authority for the performance of medical disability examinations by contract physicians for the Department of Veterans Affairs.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Dwayne M. Wright.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

S. 3609—A bill to extend the temporary authority for the performance of medical disability examinations by contract physicians for the Department of Veterans Affairs

S. 3609 would extend by two years the authority for the Department of Veterans Affairs (VA) to use contract physicians to perform medical disability examinations. Under current law, that authority expires on December 31, 2010. Based on information from VA, CBO estimates that, in 2010, VA will use the current authority to have about 36,000 exams completed by contract physicians at a cost of about \$800 per exam. CBO further estimates that if the authority is extended for two years, VA would use contract physicians to complete about 72,000 additional examinations.

In the absence of such authority, VA physicians who would otherwise be providing other types of health care to veterans will perform the exams, at no additional cost to VA. Thus, CBO estimates that implementing S. 3609 would cost \$58 million over the 2011–2013 period, assuming appropriation of the necessary amounts. Enacting S. 3609 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 3609 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Dwayne M. Wright. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs has made an evaluation of the regulatory impact that would be incurred in carrying out the Committee bill. The Committee finds that the Committee bill would not entail any regulation of individuals or

businesses or result in any impact on the personal privacy of any individuals and that the paperwork resulting from enactment would be minimal.

TABULATION OF VOTES CAST IN COMMITTEE

In compliance with paragraph 7(b) of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by members of the Committee on Veterans' Affairs at its August 5, 2010, meeting. On that date, the Committee, by voice vote, without objection, ordered to report S. 3609, a bill to extend the temporary authority for the performance of medical disability examinations by contract providers for the Department of Veterans Affairs.

AGENCY REPORT

On August 6, 2010, the Secretary of Veterans Affairs submitted the views of the Department on S. 3609—a bill to extend VA's authority to contract for medical disability examinations. Below are excerpts from the Secretary's letter:

THE SECRETARY OF VETERANS AFFAIRS,
Washington, DC, August 6, 2010.

Hon. DANIEL K. AKAKA,
Chairman,
Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Veterans Affairs (VA) on section 3609, 111th Congress, a bill to extend the temporary authority for the performance of medical disability examinations by contract physicians for VA. VA supports this bill, which is virtually identical to section 104 of VA's legislative proposal for Fiscal Year 2011 as provided to Congress on May 26, 2010.

Section 704(a) of the Veterans Benefits Act of 2003, Public Law 108-183, authorizes VA to provide for the conduct of VA compensation and pension examinations by persons other than VA employees, by using appropriated funds other than mandatory funds, appropriated for the payment of compensation and pension benefits. In accordance with section 704(b) of that act, VA exercises this authority pursuant to contracts with private entities. However, under section 704(c), as amended by section 105 of the Veterans' Benefits Improvement Act of 2008, Public Law 110-389, this authority will expire on December 31, 2010.

This bill would extend to December 31, 2012, VA's authority to contract for compensation and pension examinations. Extending this authority is essential to VA's objective of ensuring the timely adjudication of disability claims and would allow the Veterans Health Administration to focus its resources on providing needed health care to Veterans. The demand for medical disability examinations has increased, largely due to an increase in the complexity of disability claims, an increase in the number of disabilities

for which Veterans claim benefits, and changes in eligibility requirements for disability benefits. Extending the authority to provide examinations to Veterans through non-VA medical providers would improve patient care and accelerate benefit delivery.

We anticipate no benefit costs or savings because this flexibility impacts only the timeliness of rating decisions. As this provision would only extend VA's current authority to effectively utilize supplemental and other discretionary appropriated funds as available for examinations, we estimate that enactment of this bill would have no significant financial impact.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ERIC K. SHINSEKI.

* * * * *

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, 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 italic, existing law in which no change is proposed is shown in roman).

VETERANS BENEFITS ACT OF 2003

(Public Law 108-183; 38 U.S.C. 5101 note)

* * * * *

TITLE VII. OTHER MATTERS

* * * * *

SEC. 704. TEMPORARY AUTHORITY FOR PERFORMANCE OF MEDICAL DISABILITIES EXAMINATIONS BY CONTRACT PHYSICIANS.

(a) * * *

(b) * * *

(c) EXPIRATION.—The authority in subsection (a) shall expire on **【December 31, 2010】** *December 31, 2012*. No examination may be carried out under the authority provided in that subsection after that date.

(d) * * *

* * * * *

