

113TH CONGRESS
2^D SESSION

S. 2424

To provide veterans with the choice of medical providers and to increase transparency and accountability of operations of the Veterans Health Administration of the Department of Veterans Affairs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 3, 2014

Mr. MCCAIN (for himself, Mr. COBURN, Mr. BURR, Mr. FLAKE, Mr. ISAKSON, Mr. INHOFE, Mr. GRASSLEY, Mr. ROBERTS, Mr. HOEVEN, Mr. COATS, Mr. BARRASSO, Mr. JOHANNIS, Mr. RUBIO, Mr. CORNYN, Mr. ALEXANDER, Mr. KIRK, Mr. WICKER, Mrs. FISCHER, Mr. PORTMAN, Mr. TOOMEY, Mr. BOOZMAN, Mr. MORAN, Mr. THUNE, Mr. SCOTT, Mr. ENZI, and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To provide veterans with the choice of medical providers and to increase transparency and accountability of operations of the Veterans Health Administration of the Department of Veterans Affairs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Veterans Choice Act
5 of 2014”.

1 **SEC. 2. EXPANDED AVAILABILITY OF HOSPITAL CARE AND**
2 **MEDICAL SERVICES FOR VETERANS**
3 **THROUGH THE USE OF CONTRACTS.**

4 (a) **EXPANSION OF AVAILABLE CARE AND SERV-**
5 **ICES.—**

6 (1) **IN GENERAL.—**Hospital care and medical
7 services under chapter 17 of title 38, United States
8 Code, shall be furnished to an eligible veteran de-
9 scribed in subsection (b), at the election of such vet-
10 eran, through contracts authorized under subsection
11 (d), or any other law administered by the Secretary
12 of Veterans Affairs, with health care providers that
13 are participating in the Medicare program under
14 title XVIII of the Social Security Act (42 U.S.C.
15 1395 et seq.) for the furnishing of such care and
16 services to veterans.

17 (2) **CHOICE OF PROVIDER.—**An eligible veteran
18 who elects to receive care and services under this
19 section may select the provider of such care and
20 services from among any source of provider of such
21 care and services specified in paragraph (1) that is
22 accessible to the veteran.

23 (b) **ELIGIBLE VETERANS.—**A veteran is an eligible
24 veteran for purposes of this section if—

25 (1)(A) the veteran is enrolled in the patient en-
26 rollment system of the Department of Veterans Af-

1 fairs established and operated under section 1705 of
2 title 38, United States Code; or

3 (B) the veteran is enrolled in such system, has
4 not received hospital care and medical services from
5 the Department, and has contacted the Department
6 seeking an initial appointment from the Department
7 for the receipt of such care and services; and

8 (2) the veteran either—

9 (A)(i) attempts, or has attempted under
10 paragraph (1)(B), to schedule an appointment
11 for the receipt of such care and services but is
12 unable to schedule an appointment within the
13 current wait-time goals of the Veterans Health
14 Administration for the delivery of such care and
15 services; and

16 (ii) elects, and is authorized, to be fur-
17 nished such care or services pursuant to sub-
18 section (c)(2); or

19 (B) resides more than 40 miles from the
20 nearest medical facility of the Department, in-
21 cluding a community-based outpatient clinic,
22 that is closest to the residence of the veteran.

23 (c) ELECTION AND AUTHORIZATION.—If the Sec-
24 retary confirms that an appointment for an eligible vet-
25 eran described in subsection (b)(2)(A) for the receipt of

1 hospital care or medical services under chapter 17 of title
2 38, United States Code, is unavailable within the current
3 wait-time goals of the Department for the furnishing of
4 such care or services, the Secretary shall, at the election
5 of the eligible veteran—

6 (1) place such eligible veteran on an electronic
7 waiting list for such an appointment that is main-
8 tained by the Department and accessible to the vet-
9 eran via www.myhealth.va.gov or any successor
10 website; or

11 (2)(A) authorize that such care and services be
12 furnished to the eligible veteran under this section
13 for a period of time specified by the Secretary; and

14 (B) send a letter to the eligible veteran describ-
15 ing the care and services the eligible veteran is eligi-
16 ble to receive under this section.

17 (d) CARE AND SERVICES THROUGH CONTRACTS.—

18 (1) IN GENERAL.—The Secretary shall enter
19 into contracts with health care providers that are
20 participating in the Medicare program under title
21 XVIII of the Social Security Act (42 U.S.C. 1395 et
22 seq.) to furnish care and services to eligible veterans
23 under this section.

24 (2) RATES AND REIMBURSEMENT.—

1 (A) IN GENERAL.—In entering into a con-
2 tract under this subsection, the Secretary
3 shall—

4 (i) negotiate rates for the furnishing
5 of care and services under this section; and

6 (ii) reimburse the health care provider
7 for such care and services at the rates ne-
8 gotiated pursuant to clause (i) as provided
9 in such contract.

10 (B) LIMIT ON RATES.—Rates negotiated
11 under subparagraph (A)(i) shall not be more
12 than the rates paid by the United States to a
13 provider of services (as defined in section
14 1861(u) of the Social Security Act (42 U.S.C.
15 1395x(u))) or a supplier (as defined in section
16 1861(d) of such Act (42 U.S.C. 1395x(d)))
17 under the Medicare program under title XVIII
18 of the Social Security Act (42 U.S.C. 1395 et
19 seq.) for the same care and services.

20 (C) LIMIT ON COLLECTION.—For the fur-
21 nishing of care and services pursuant to a con-
22 tract under this section, a health care provider
23 may not collect any amount that is greater than
24 the rate negotiated pursuant to subparagraph
25 (A)(i).

1 (3) INFORMATION ON POLICIES AND PROCE-
2 DURES.—The Secretary shall provide to any health
3 care provider with which the Secretary has entered
4 into a contract under paragraph (1) the following:

5 (A) Information on applicable policies and
6 procedures for submitting bills or claims for au-
7 thorized care and services furnished to eligible
8 veterans under this section.

9 (B) Access to a telephone hotline main-
10 tained by the Department that such health care
11 provider may call for information on the fol-
12 lowing:

13 (i) Procedures for furnishing care and
14 services under this section.

15 (ii) Procedures for submitting bills or
16 claims for authorized care and services fur-
17 nished to eligible veterans under this sec-
18 tion and being reimbursed for furnishing
19 such care and services.

20 (iii) Whether particular care or serv-
21 ices under this section are authorized, and
22 the procedures for authorization of such
23 care or services.

24 (e) CHOICE CARD.—

1 (1) IN GENERAL.—For purposes of receiving
2 care and services under this section, the Secretary
3 shall issue to each eligible veteran a card that the
4 eligible veteran shall present to a health care pro-
5 vider that is eligible to furnish care and services
6 under this section before receiving such care and
7 services.

8 (2) NAME OF CARD.—Each card issued under
9 paragraph (1) shall be known as a “Choice Card”.

10 (3) DETAILS OF CARD.—Each Choice Card
11 issued to an eligible veteran under paragraph (1)
12 shall include the following:

13 (A) The name of the eligible veteran.

14 (B) An identification number for the eligi-
15 ble veteran that is not the social security num-
16 ber of the eligible veteran.

17 (C) The contact information of an appro-
18 priate office of the Department for health care
19 providers to confirm that care and services
20 under this section is authorized for the eligible
21 veteran.

22 (D) Contact information and other rel-
23 evant information for the submittal of claims or
24 bills for the furnishing of care and services
25 under this section.

1 (E) The following statement: “This card is
2 for qualifying medical care outside the Depart-
3 ment of Veterans Affairs. Please call the De-
4 partment of Veterans Affairs phone number
5 specified on this card to ensure that treatment
6 has been authorized.”.

7 (4) INFORMATION ON USE OF CARD.—Upon
8 issuing a Choice Card to an eligible veteran, the Sec-
9 retary shall provide the eligible veteran with infor-
10 mation clearly stating the circumstances under
11 which the veteran may be eligible for care and serv-
12 ices under this section.

13 (f) INFORMATION ON AVAILABILITY OF CARE.—The
14 Secretary shall provide information to a veteran about the
15 availability of care and services under this section in the
16 following circumstances:

17 (1) When the veteran enrolls in the patient en-
18 rollment system of the Department under section
19 1705 of title 38, United States Code.

20 (2) When the veteran attempts to schedule an
21 appointment for the receipt of hospital care or med-
22 ical services from the Department but is unable to
23 schedule an appointment within the current wait-
24 time goals of the Veterans Health Administration
25 for delivery of such care or services.

1 (g) PROVIDERS.—To be eligible to furnish care and
2 services under this section, a health care provider must
3 maintain at least the same or similar credentials and li-
4 censes as those credentials and licenses that are required
5 of health care providers of the Department, as determined
6 by the Secretary for purposes of this section.

7 (h) COST-SHARING.—The Secretary shall require an
8 eligible veteran to pay a copayment to the Department for
9 the receipt of care and services under this section only
10 if the eligible veteran would be required to pay such copay-
11 ment for the receipt of such care and services at a medical
12 facility of the Department.

13 (i) CLAIMS PROCESSING SYSTEM.—

14 (1) IN GENERAL.—The Secretary shall provide
15 for an efficient nationwide system for processing and
16 paying bills or claims for authorized care and serv-
17 ices furnished to eligible veterans under this section.

18 (2) REGULATIONS.—Not later than 90 days
19 after the date of the enactment of this Act, the Sec-
20 retary of Veterans Affairs shall prescribe regulations
21 for the implementation of the efficient nationwide
22 system required by paragraph (1).

23 (j) CONTINUITY OF MEDICAL RECORDS.—The Sec-
24 retary shall ensure that medical records of veterans main-

1 tained by the Department are updated to accurately re-
2 flect any care and services furnished under this section.

3 (k) TRACKING OF MISSED APPOINTMENTS.—The
4 Secretary shall implement a mechanism to track any
5 missed appointments for care and services under this sec-
6 tion by eligible veterans to ensure that the Department
7 does not pay for such care and services that were not fur-
8 nished.

9 (l) IMPLEMENTATION.—Not later than 90 days after
10 the date of the enactment of this Act, the Secretary shall
11 prescribe interim final regulations on the implementation
12 of this section and publish such regulations in the Federal
13 Register.

14 (m) INSPECTOR GENERAL AUDIT.—Not later than
15 540 days after the publication of the interim final regula-
16 tions under subsection (l), the Inspector General of the
17 Department shall conduct an audit of care and services
18 furnished under this section to ensure the accuracy of pay-
19 ments by the Department for the cost of care and services
20 furnished under this section.

21 (n) TERMINATION.—The requirement of the Sec-
22 retary to furnish care and services under this section ter-
23 minates on the date that is two years after the date on
24 which the Secretary publishes the interim final regulations
25 under subsection (l).

1 (o) REPORTS.—Not less frequently than once every
2 90 days, the Secretary shall submit to Congress a report
3 on the furnishing of care and services under this section
4 that includes the following:

5 (1) The number of veterans who have received
6 care and services under this section during the 90-
7 day period preceding the submittal of the report.

8 (2) A description of the type of care and serv-
9 ices furnished to veterans under this section during
10 such 90-day period.

11 **SEC. 3. SENSE OF CONGRESS ON PROMPT PAYMENT BY DE-**
12 **PARTMENT OF VETERANS AFFAIRS.**

13 It is the sense of Congress that the Secretary of Vet-
14 erans Affairs shall comply with section 1315 of title 5,
15 Code of Federal Regulations (commonly known as the
16 “prompt payment rule”), or any corresponding similar
17 regulation or ruling, in paying for health care pursuant
18 to contracts entered into with non-Department of Vet-
19 erans Affairs providers to provide health care under the
20 laws administered by the Secretary.

21 **SEC. 4. IMPROVED PERFORMANCE METRICS FOR HEALTH**
22 **CARE PROVIDED BY DEPARTMENT OF VET-**
23 **ERANS AFFAIRS.**

24 (a) PROHIBITION ON USE OF SCHEDULING AND
25 WAIT-TIME METRICS IN DETERMINATION OF PERFORM-

1 ANCE AWARDS.—The Secretary shall ensure that sched-
2 uling and wait-time metrics or goals are not used as fac-
3 tors in determining the performance of the following em-
4 ployees for purposes of determining whether to pay per-
5 formance awards to such employees:

6 (1) Directors, associate directors, assistant di-
7 rectors, deputy directors, chiefs of staff, and clinical
8 leads of medical centers of the Department.

9 (2) Directors, assistant directors, and quality
10 management officers of Veterans Integrated Service
11 Networks of the Department.

12 (b) MODIFICATION OF PERFORMANCE PLANS.—

13 (1) IN GENERAL.—Not later than 30 days after
14 the date of the enactment of this Act, the Secretary
15 shall modify the performance plans of the directors
16 of the medical centers of the Department and the di-
17 rectors of the Veterans Integrated Service Networks
18 to ensure that such plans are based on the quality
19 of care received by veterans at the health care facili-
20 ties under the jurisdictions of such directors.

21 (2) FACTORS.—In modifying performance plans
22 under paragraph (1), the Secretary shall ensure that
23 assessment of the quality of care provided at health
24 care facilities under the jurisdiction of a director de-

1 scribed in paragraph (1) includes consideration of
2 the following:

3 (A) Recent reviews by the Joint Commis-
4 sion (formerly known as the “Joint Commission
5 on Accreditation of Healthcare Organizations”)
6 of such facilities.

7 (B) The number and nature of rec-
8 ommendations concerning such facilities by the
9 Inspector General of the Department in reviews
10 conducted through Combined Assessment Pro-
11 gram (CAP) reviews, in the reviews by the In-
12 spector General of community based outpatient
13 clinics and primary care clinics, and in reviews
14 conducted through the Office of Healthcare In-
15 spections during the two most recently com-
16 pleted fiscal years.

17 (C) The number of recommendations de-
18 scribed in subparagraph (B) that the Inspector
19 General of the Department determines have not
20 been carried out satisfactorily with respect to
21 such facilities.

22 (D) Reviews of such facilities by the Com-
23 mission on Accreditation of Rehabilitation Fa-
24 cilities.

1 (E) The number and outcomes of adminis-
2 trative investigation boards, root cause analysis,
3 and peer reviews conducted at such facilities
4 during the fiscal year for which the assessment
5 is being conducted.

6 (F) The effectiveness of any remedial ac-
7 tions or plans resulting from any Inspector
8 General recommendations in the reviews and
9 analyses described in subparagraphs (A)
10 through (E).

11 (3) ADDITIONAL LEADERSHIP POSITIONS.—To
12 the degree practicable, the Secretary shall assess the
13 performance of other employees of the Department
14 in leadership positions at Department medical cen-
15 ters, including associate directors, assistant direc-
16 tors, deputy directors, chiefs of staff, and clinical
17 leads, and in Veterans Integrated Service Networks,
18 including assistant directors and quality manage-
19 ment officers, using factors and criteria similar to
20 those used in the performance plans modified under
21 paragraph (1).

22 **SEC. 5. IMPROVED TRANSPARENCY CONCERNING HEALTH**
23 **CARE PROVIDED BY DEPARTMENT OF VET-**
24 **ERANS AFFAIRS.**

25 (a) PUBLICATION OF WAIT TIMES.—

1 (1) GOALS.—

2 (A) INITIAL.—Not later than 90 days after
3 the date of the enactment of this Act, the Sec-
4 retary of Veterans Affairs shall publish in the
5 Federal Register, and on an Internet website
6 accessible to the public of each medical center
7 of the Department of Veterans Affairs, the
8 wait-time goals of the Department for the
9 scheduling of an appointment by a veteran for
10 the receipt of health care from the Department.

11 (B) SUBSEQUENT CHANGES.—

12 (i) IN GENERAL.—If the Secretary
13 modifies the wait-time goals described in
14 subparagraph (A), the Secretary shall pub-
15 lish the new wait-times goals—

16 (I) on an Internet website acces-
17 sible to the public of each medical
18 center of the Department not later
19 than 30 days after such modification;
20 and

21 (II) in the Federal Register not
22 later than 90 days after such modi-
23 fication.

24 (ii) EFFECTIVE DATE.—Any modifica-
25 tion under clause (i) shall take effect on

1 the date of publication in the Federal Reg-
2 ister.

3 (C) GOALS DESCRIBED.—Wait-time goals
4 published under this paragraph shall include
5 goals for primary care appointments, specialty
6 care appointments, and goals for such appoint-
7 ments based on the general severity of the con-
8 dition of the veteran.

9 (2) WAIT TIMES AT MEDICAL CENTERS OF THE
10 DEPARTMENT.—Not later than one year after the
11 date of the enactment of this Act, the Secretary of
12 Veterans Affairs shall publish on an Internet website
13 accessible to the public of each medical center of the
14 Department the current wait time for an appoint-
15 ment for primary care and specialty care at the
16 medical center.

17 (b) PUBLICLY AVAILABLE DATABASE OF PATIENT
18 SAFETY, QUALITY OF CARE, AND OUTCOME MEAS-
19 URES.—

20 (1) IN GENERAL.—Not later than 180 days
21 after the date of the enactment of this Act, the Sec-
22 retary shall develop and make available to the public
23 a comprehensive database containing all applicable
24 patient safety, quality of care, and outcome meas-

1 ures for health care provided by the Department
2 that are tracked by the Secretary.

3 (2) UPDATE FREQUENCY.—The Secretary shall
4 update the database required by paragraph (1) not
5 less frequently than once each year.

6 (3) UNAVAILABLE MEASURES.—For all meas-
7 ures that the Secretary would otherwise publish in
8 the database required by paragraph (1) but has not
9 done so because such measures are not available, the
10 Secretary shall publish notice in the database of the
11 reason for such unavailability and a timeline for
12 making such measures available in the database.

13 (4) ACCESSIBILITY.—The Secretary shall en-
14 sure that the database required by paragraph (1) is
15 accessible to the public through the primary Internet
16 website of the Department and through each pri-
17 mary Internet website of a Department medical cen-
18 ter.

19 (c) HOSPITAL COMPARE WEBSITE OF DEPARTMENT
20 OF HEALTH AND HUMAN SERVICES.—

21 (1) AGREEMENT REQUIRED.—Not later than
22 180 days after the date of the enactment of this Act,
23 the Secretary of Veterans Affairs shall enter into an
24 agreement with the Secretary of Health and Human
25 Services for the provision by the Secretary of Vet-

1 erans Affairs of such information as the Secretary of
2 Health and Human Services may require to report
3 and make publicly available patient quality and out-
4 come information concerning Department of Vet-
5 erans Affairs medical centers through the Hospital
6 Compare Internet website of the Department of
7 Health and Human Services or any successor Inter-
8 net website.

9 (2) INFORMATION PROVIDED.—The information
10 provided by the Secretary of Veterans Affairs to the
11 Secretary of Health and Human Services under
12 paragraph (1) shall include the following:

13 (A) Measures of timely and effective health
14 care.

15 (B) Measures of readmissions, complica-
16 tions of death, including with respect to 30-day
17 mortality rates and 30-day readmission rates,
18 surgical complication measures, and health care
19 related infection measures.

20 (C) Survey data of patient experiences, in-
21 cluding the Hospital Consumer Assessment of
22 Healthcare Providers and Systems or any simi-
23 lar successor survey developed by the Depart-
24 ment of Health and Human Services.

1 (D) Any other measures required of or re-
2 ported with respect to hospitals participating in
3 the Medicare program under title XVIII of the
4 Social Security Act (42 U.S.C. 1395 et seq.).

5 (3) UNAVAILABLE INFORMATION.—For any ap-
6 plicable metric collected by the Department of Vet-
7 erans Affairs or required to be provided under para-
8 graph (2) and withheld from or unavailable in the
9 Hospital Compare Internet website, the Secretary of
10 Veterans Affairs shall publish a notice in the Fed-
11 eral Register stating the reason why such metric was
12 withheld from public disclosure and a timeline for
13 making such metric available, if applicable.

14 (d) COMPTROLLER GENERAL REVIEW OF PUBLICLY
15 AVAILABLE SAFETY AND QUALITY METRICS.—Not later
16 than three years after the date of the enactment of this
17 Act, the Comptroller General of the United States shall
18 conduct a review of the safety and quality metrics made
19 publicly available by the Secretary of Veterans Affairs
20 under this section to assess the degree to which the Sec-
21 retary is complying with the provisions of this section.

1 **SEC. 6. INFORMATION FOR VETERANS ON THE CREDEN-**
2 **TIALS OF DEPARTMENT OF VETERANS AF-**
3 **FAIRS PHYSICIANS.**

4 (a) IMPROVEMENT OF “OUR PROVIDERS” INTERNET
5 WEBSITE LINKS.—

6 (1) AVAILABILITY THROUGH DEPARTMENT OF
7 VETERANS AFFAIRS HOMEPAGE.—A link to the “Our
8 Providers” health care providers database of the De-
9 partment of Veterans Affairs, or any successor data-
10 base, shall be available on and through the home-
11 page of the Internet website of the Department that
12 is accessible to the public.

13 (2) INFORMATION ON LOCATION OF RESIDENCY
14 TRAINING.—The Internet website of the Department
15 that is accessible to the public shall include under
16 the link to the “Our Providers” health care pro-
17 viders database of the Department, or any successor
18 database, the location of residency training of each
19 licensed physician of the Department.

20 (3) INFORMATION ON PHYSICIANS AT PAR-
21 TICULAR FACILITIES.—The “Our Providers” health
22 care providers database of the Department, or any
23 successor database, shall identify whether each li-
24 censed physician of the Department is a physician in
25 residency.

1 (b) INFORMATION ON CREDENTIALS OF PHYSICIANS
2 FOR VETERANS UNDERGOING SURGICAL PROCEDURES.—

3 Each veteran who is undergoing a surgical procedure by
4 or through the Department shall be provided, at such time
5 in advance of the procedure as is appropriate to permit
6 such veteran to evaluate such information, information on
7 the credentials of the surgeon to be performing such pro-
8 cedure.

9 (c) GAO REPORT.—Not later than two years after
10 the date of the enactment of this Act, the Comptroller
11 General of the United States shall submit to the Commit-
12 tees on Veterans' Affairs of the Senate and the House of
13 Representatives a report setting forth an assessment by
14 the Comptroller General of the following:

15 (1) The manner in which contractors under the
16 Patient-Centered Community Care initiative of the
17 Department perform oversight of the credentials of
18 physicians within the networks of such contractors
19 under the initiative.

20 (2) The oversight by the Department of the
21 contracts under the Patient-Centered Community
22 Care initiative.

1 **SEC. 7. INFORMATION IN ANNUAL BUDGET OF THE PRESI-**
2 **DENT ON HOSPITAL CARE AND MEDICAL**
3 **SERVICES PROVIDED UNDER SECTION 2.**

4 The materials on the Department of Veterans Affairs
5 in the budget of the President for a fiscal year, as sub-
6 mitted to Congress pursuant to section 1105(a) of title
7 31, United States Code, shall set forth the following:

8 (1) The number of veterans who received hos-
9 pital care and medical services under section 2 of
10 this Act during the fiscal year preceding the fiscal
11 year in which such budget is submitted.

12 (2) The amount expended by the Department
13 on furnishing care and services under such section
14 during the fiscal year preceding the fiscal year in
15 which such budget is submitted.

16 (3) The amount requested in such budget for
17 the costs of furnishing care and services under such
18 section during the fiscal year covered by such budg-
19 et, set forth in aggregate and by amounts for each
20 account for which amounts are so requested.

21 (4) The number of veterans that the Depart-
22 ment estimates will receive hospital care and medical
23 services under such section during the fiscal years
24 covered by the budget submission.

25 (5) The number of employees of the Depart-
26 ment on paid administrative leave at any point dur-

1 ing the fiscal year preceding the fiscal year in which
2 such budget is submitted.

3 **SEC. 8. PROHIBITION ON FALSIFICATION OF DATA CON-**
4 **CERNING WAIT TIMES AND QUALITY MEAS-**
5 **URES AT DEPARTMENT OF VETERANS AF-**
6 **FAIRS.**

7 Not later than 60 days after the date of the enact-
8 ment of this Act, and in accordance with title 5, United
9 States Code, the Secretary of Veterans Affairs shall estab-
10 lish policies whereby any employee of the Department of
11 Veterans Affairs who knowingly submits false data con-
12 cerning wait times for health care or quality measures
13 with respect to health care to another employee of the De-
14 partment or knowingly requires another employee of the
15 Department to submit false data concerning such wait
16 times or quality measures to another employee of the De-
17 partment is subject to a penalty the Secretary considers
18 appropriate after notice and an opportunity for a hearing,
19 including civil penalties, unpaid suspensions, or termi-
20 nation.

1 **SEC. 9. REMOVAL OF SENIOR EXECUTIVE SERVICE EM-**
2 **PLOYEES OF THE DEPARTMENT OF VET-**
3 **ERANS AFFAIRS FOR PERFORMANCE.**

4 (a) IN GENERAL.—Chapter 7 of title 38, United
5 States Code, is amended by adding at the end the fol-
6 lowing new section:

7 **“§ 713. Senior Executive Service: removal based on**
8 **performance**

9 “(a) IN GENERAL.—(1) Notwithstanding subchapter
10 V of chapter 35 of title 5, subchapter V of chapter 75
11 of title 5, or any other provision of law, the Secretary may
12 remove any individual who is an employee of the Depart-
13 ment from a Senior Executive Service position (as defined
14 in section 3132(a) of title 5) if the Secretary determines
15 the performance of the individual warrants such removal.

16 “(2) If the Secretary so removes such an individual,
17 the Secretary may—

18 “(A) remove the individual from the civil service
19 (as defined in section 2101 of title 5); or

20 “(B) appoint the individual to a General Sched-
21 ule position at any grade of the General Schedule
22 the Secretary determines appropriate.

23 “(b) NOTICE TO CONGRESS.—Not later than 30 days
24 after removing an individual from the Senior Executive
25 Service under subsection (a), the Secretary shall submit
26 to the Committee on Veterans’ Affairs of the Senate and

1 the Committee on Veterans' Affairs of the House of Rep-
2 resentatives notice in writing of such removal and the rea-
3 son for such removal.

4 “(c) MANNER OF REMOVAL.—A removal under this
5 section shall be done in the same manner as the removal
6 of a professional staff member employed by a Member of
7 Congress.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
9 at the beginning of such chapter is amended by adding
10 at the end the following new item:

“713. Senior Executive Service: removal based on performance.”.

