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(Original Signature of Member)

111TH CONGRESS
1ST SESSION

H. R. _____

To provide Medicare payments to Department of Veterans Affairs medical facilities for items and services provided to Medicare-eligible veterans for non-service-connected conditions.

IN THE HOUSE OF REPRESENTATIVES

Mr. FILNER introduced the following bill; which was referred to the Committee on _____

A BILL

To provide Medicare payments to Department of Veterans Affairs medical facilities for items and services provided to Medicare-eligible veterans for non-service-connected conditions.

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 “Medicare VA Reim-
5 bursement Act of 2009”.

1 **SEC. 2. ESTABLISHMENT OF MEDICARE SUBVENTION FOR**
2 **VETERANS.**

3 (a) IN GENERAL.—Section 1862 of the Social Secu-
4 rity Act (42 U.S.C. 1395y) is amended by adding at the
5 end the following new subsection:

6 “(n) MEDICARE SUBVENTION FOR VETERANS.—

7 “(1) ESTABLISHMENT.—The Secretary of
8 Health and Human Services, in cooperation with the
9 Secretary of Veterans Affairs, shall establish a pro-
10 gram to be known as the ‘Medicare VA reimburse-
11 ment program’ under which the Secretary of Health
12 and Human Services shall reimburse the Secretary
13 of Veterans Affairs, from the Federal Hospital In-
14 surance Trust Fund established in section 1817 and
15 the Federal Supplementary Medical Insurance Trust
16 Fund established in section 1841, for an item or
17 service that—

18 “(A) is furnished to a Medicare-eligible
19 veteran by a Department of Veterans Affairs
20 medical facility for the treatment of a non-serv-
21 ice-connected condition; and

22 “(B) is covered under this title or is deter-
23 mined to be medically necessary by the Sec-
24 retary of Veterans Affairs.

25 “(2) MEMORANDUM OF UNDERSTANDING.—

1 “(A) IN GENERAL.—Not later than 6
2 months after the date of the enactment of this
3 Act, the Secretary of Health and Human Serv-
4 ices shall enter a memorandum of under-
5 standing with the Secretary of Veterans Affairs
6 concerning the administration of the Medicare
7 VA reimbursement program.

8 “(B) CONTRACT ELEMENTS.—The memo-
9 randum of understanding under subparagraph
10 (A) shall contain the following:

11 “(i) FREQUENCY OF REIMBURSE-
12 MENT.—An agreement on how often reim-
13 bursements will be made by the Secretary
14 of Health and Human Services to the Sec-
15 retary of Veterans Affairs.

16 “(ii) BILLING SYSTEM.—An agree-
17 ment on the details of the billing system
18 that will be used by the Secretary of Vet-
19 erans Affairs to make claims for reim-
20 bursement from the Secretary of Health
21 and Human Services.

22 “(iii) DATA SHARING AGREEMENT.—
23 An agreement on data sharing, including—

24 “(I) identification of the data ex-
25 changes that each Secretary will need

1 to develop, maintain, or provide access
2 to, for purposes of the Medicare VA
3 reimbursement program; and

4 “(II) verification of data dem-
5 onstrating that a item or service was
6 provided by a Department of Veterans
7 Affairs medical facility to a Medicare-
8 eligible veteran for a non-service-con-
9 nected condition before the Secretary
10 of Health and Human Services pro-
11 vides for reimbursement for such item
12 or service under the Medicare VA re-
13 imbursement program.

14 “(iv) PAYMENT RATE.—Subject to the
15 requirements of paragraph (3), details of
16 the payment rate to be used for reimburse-
17 ments made under the Medicare VA reim-
18 bursement program.

19 “(v) PERFORMANCE MEASURES.—An
20 agreement on performance measures and
21 performance targets to be used to dem-
22 onstrate the impact of the Medicare VA re-
23 imbursement program.

1 “(vi) ADDITIONAL TERMS.—Any addi-
2 tional terms deemed necessary by the ad-
3 ministering Secretaries.

4 “(C) NO MAINTENANCE OF EFFORT RE-
5 QUIREMENT.—For purposes of the Medicare
6 VA reimbursement program, the Secretary of
7 Veterans Affairs shall not be required to meet
8 a maintenance of effort requirement (a require-
9 ment that the Secretary of Veterans Affairs
10 maintain a certain level of spending in order to
11 receive reimbursement from the Secretary of
12 Health and Human Services).

13 “(3) PAYMENTS BASED ON REGULAR MEDICARE
14 PAYMENT RATES.—

15 “(A) AMOUNT.—Subject to the succeeding
16 provisions of this paragraph, the Secretary of
17 Health and Human Services shall reimburse the
18 Secretary of Veterans Affairs—

19 “(i) for an item or service that is cov-
20 ered under this title and is provided to a
21 Medicare-eligible veteran by a Department
22 of Veterans Affairs medical facility for the
23 treatment of a non-service-connected condi-
24 tion, at a rate that is not less than 100
25 percent of the amounts that otherwise

1 would be payable under this title, on a fee-
2 for-service basis, for such item or service if
3 the Department of Veterans Affairs med-
4 ical facility were a provider of services,
5 were participating in the Medicare pro-
6 gram, and imposed charges for such item
7 or service; and

8 “(ii) for an item or service that is not
9 covered under this title that is provided to
10 a Medicare-eligible veteran by a Depart-
11 ment of Veterans Affairs medical facility
12 for the treatment of a non-service-con-
13 nected condition, if the Secretary of Vet-
14 eran’s Affairs determines that such item or
15 service is medically necessary, at a rate de-
16 termined by the Secretary of Health and
17 Human Services in consultation with the
18 Secretary of Veterans Affairs.

19 “(B) NO ARBITRARY LIMITATION ON
20 AMOUNT.—Subject to the requirements of this
21 subsection, the Secretary of Health and Human
22 Services may not impose an annual cap or other
23 limit on the amount of reimbursement made
24 under the Medicare VA reimbursement pro-
25 gram.

1 “(C) EXCLUSION OF CERTAIN AMOUNTS.—

2 In computing the amount of payment under
3 subparagraph (A), the following amounts shall
4 be excluded:

5 “(i) DISPROPORTIONATE SHARE HOS-
6 PITAL ADJUSTMENT.—Any amount attrib-
7 utable to an adjustment under section
8 1886(d)(5)(F).

9 “(ii) DIRECT GRADUATE MEDICAL
10 EDUCATION PAYMENTS.—Any amount at-
11 tributable to a payment under section
12 1886(h).

13 “(iii) INDIRECT MEDICAL EDUCATION
14 ADJUSTMENT.—Any amount attributable
15 to the adjustment under section
16 1886(d)(5)(B).

17 “(iv) CAPITAL PAYMENTS.—Any
18 amounts attributable to payments for cap-
19 ital-related costs under section 1886(g).

20 “(D) PERIODIC PAYMENTS FROM MEDI-
21 CARE TRUST FUNDS.—Reimbursements under
22 this paragraph shall be made—

23 “(i) on a periodic basis consistent
24 with the periodicity of payments under this
25 title; and

1 “(ii) from the Federal Hospital Insur-
2 ance Trust Fund established in section
3 1817 and the Federal Supplementary Med-
4 ical Insurance Trust Fund established in
5 section 1841.

6 “(E) CREDITING OF PAYMENTS.—Any
7 payment made to the Department of Veterans
8 Affairs under this subsection shall be deposited
9 in the Department of Veterans Affairs Medical
10 Care Collections Fund established under section
11 1729A of title 38, United States Code.

12 “(4) COST-SHARING REQUIREMENTS.—The Sec-
13 retary of Health and Human Services shall reduce
14 the amount of reimbursement to the Secretary of
15 Veterans Affairs for items and services under the
16 Medicare VA reimbursement program by amounts
17 attributable to applicable deductible, coinsurance,
18 and cost-sharing requirements under this title.

19 “(5) WAIVER OF PROHIBITION ON PAYMENTS
20 TO FEDERAL PROVIDERS OF SERVICES.—The prohi-
21 bition of payments to Federal providers of services
22 under sections 1814(e) and 1835(d) shall not apply
23 to items and services provided under this subsection.

24 “(6) RULES OF CONSTRUCTION.—Nothing in
25 this subsection shall be construed—

1 “(A) as prohibiting the Inspector General
2 of the Department of Health and Human Serv-
3 ices from investigating any matters regarding
4 the expenditure of funds under this subsection,
5 including compliance with the provisions of this
6 title and all other relevant laws;

7 “(B) as adding or requiring additional cri-
8 teria for eligibility for health care benefits fur-
9 nished to veterans by the Secretary of Veterans
10 Affairs, as established under chapter 17 of title
11 38, United States Code; or

12 “(C) subject to the requirements of title
13 38, United States Code, as limiting a veteran’s
14 ability to access such benefits, regardless of the
15 veteran’s status as a Medicare-eligible veteran.

16 “(7) ANNUAL REPORTS.—Not later than one
17 year after implementing the program under this sub-
18 section and annually thereafter, the administering
19 Secretaries shall submit to the Congress a report
20 containing the following:

21 “(A) The number of Medicare-eligible vet-
22 erans who opt to receive health care at a De-
23 partment of Veterans Affairs medical facility.

24 “(B) The total amount of reimbursements
25 made from the Federal Hospital Insurance

1 Trust Fund established in section 1817 and the
2 Federal Supplementary Medical Insurance
3 Trust Fund established in section 1841 to the
4 Department of Veterans Affairs Medical Care
5 Collections Fund established under section
6 1729A of title 38, United States Code.

7 “(C) The number and types of items and
8 services provided to Medicare-eligible veterans
9 by Department of Veterans Affairs medical fa-
10 cilities under this subsection.

11 “(D) An accounting of the manner in
12 which the Department of Veterans Affairs ex-
13 pended funds received through reimbursements
14 under this subsection.

15 “(E) A detailed description of any changes
16 made to the memorandum of understanding
17 under paragraph (2).

18 “(F) A comparison of the performance
19 data with the performance targets under para-
20 graph (2)(B)(v).

21 “(G) Any other data on the Medicare VA
22 reimbursement program that the administering
23 Secretaries determine is appropriate.

24 “(8) DEFINITIONS.—For purposes of this sub-
25 section:

1 “(A) ADMINISTERING SECRETARIES.—The
2 term ‘administering Secretaries’ means the Sec-
3 retary of Health and Human Services and the
4 Secretary of Veterans Affairs acting jointly.

5 “(B) MEDICARE-ELIGIBLE VETERAN.—The
6 term ‘medicare-eligible veteran’ means an indi-
7 vidual who is a veteran (as defined in section
8 101(2) of title 38, United States Code) who is
9 eligible for care and services under section
10 1705(a) of title 38, United States Code and
11 who—

12 “(i) is entitled to, or enrolled for, ben-
13 efits under part A of this title; or

14 “(ii) is enrolled for benefits under
15 part B of this title.

16 “(C) NON-SERVICE CONNECTED CONDI-
17 TION.—The term ‘non-service-connected condi-
18 tion’ means a disease or condition that is ‘non-
19 service-connected’ as such term is defined in
20 section 101(17) of title 38, United States Code.

21 “(D) DEPARTMENT OF VETERANS AFFAIRS
22 MEDICAL FACILITY.—The term ‘Department of
23 Veterans Affairs medical facility’ means a ‘med-
24 ical facility’ as such term is defined in section
25 8101(3) of title 38, United States Code, alone

1 or in conjunction with other facilities under the
2 jurisdiction of the Secretary of Veterans Af-
3 fairs.”.

4 (b) CONFORMING AMENDMENT.—Section 1729 of
5 title 38, United States Code is amended by adding at the
6 end the following new subsection:

7 “(j) In any case in which a Medicare-eligible veteran
8 (as defined in section 1862(n)(8)(B) of the Social Security
9 Act (42 U.S.C. 1395y(n)(8)(B))) is furnished care or serv-
10 ices under this chapter for a non-service-connected condi-
11 tion (as defined in section 1862(n)(8)(C) of such Act) the
12 Secretary shall—

13 “(1) seek reimbursement from the Secretary of
14 Health and Human Services for such care and serv-
15 ices under section 1862(n) of such Act; and

16 “(2) collect any applicable deductible, coinsur-
17 ance, or other cost-sharing amount required under
18 title XVIII of the Social Security Act from the vet-
19 eran or from a third party to the extent that the vet-
20 eran (or the provider of the care or services) would
21 be eligible to receive payment for such care or serv-
22 ices from such third party if the care or services had
23 not been furnished by a department or agency of the
24 United States.”.

1 **SEC. 3. GAO REPORT.**

2 (a) IN GENERAL.—Not later than the last day of the
3 three-year period beginning on the date of the enactment
4 of this Act and the last date of each subsequent three-
5 year period, the Comptroller General of the United States
6 shall submit to the Congress a report on the Medicare VA
7 reimbursement program established under section 1862(n)
8 of the Social Security Act, as added by section 2 of this
9 Act.

10 (b) CONTENTS.—The report under subsection (a)
11 shall contain an analysis of—

12 (1) the impact of the Medicare VA reimburse-
13 ment program on the Federal Hospital Insurance
14 Trust Fund established in section 1817 of the Social
15 Security Act (42 U.S.C. 1395i) and the Federal
16 Supplementary Medical Insurance Trust Fund es-
17 tablished in section 1841 of such Act (42 U.S.C.
18 1395t);

19 (2) whether Medicare-eligible veterans (as de-
20 fined in section 1862(n)(8)(B)) experience improved
21 access to health care as a result of the program;

22 (3) whether Medicare-eligible veterans experi-
23 ence a change in the quality of care that they receive
24 as a result of this program;

25 (4) the impact of the program on local health
26 care providers and Medicare beneficiaries in the

1 communities surrounding Department of Veterans
2 Affairs medical facilities; and
3 (5) any additional issues deemed appropriate by
4 the Comptroller General of the United States.

5 **SEC. 4. SENSE OF CONGRESS.**

6 It is the sense of the Congress that the amount of
7 funds appropriated to the Department of Veterans Affairs
8 for medical care in any fiscal year beginning on or after
9 the date of the enactment of this Act should not be re-
10 duced as a result of the implementation of the Medicare
11 VA reimbursement program under section 1862(n) of the
12 Social Security Act, as added by section 2(a).