

SUMMARY OF PROVISIONS

Section 1 – Title

Section 2 - Suspension and Removal for Misconduct that is a Threat to Public Health or Safety

- Authorizes the Secretary to **immediately suspend without pay** an employee if the Secretary determines that an employee’s performance or misconduct is a **clear** and **direct threat to public health or safety**.
- Authorizes the Secretary to **remove** an employee suspended under this new authority if, after an investigation, the Secretary determines that removal is necessary in the **interests of public health or safety**.
- This new authority is modeled after 5 U.S.C. Section 7532, a statute that allows the head of an agency to immediately suspend without pay, and then remove, a federal employee when the head of the agency considers the action necessary in the interests of national security.

Section 3 - Holding Leaders Accountable for Managing the Department

- Accountability starts at top. VA’s political appointees should be held accountable for properly managing the Department. This provision requires political appointees at VA to have annual performance plans that include an assessment of whether the appointees are meeting the following goals:
 - Recruiting and selecting **well-qualified** individuals for the Department;
 - Engaging and motivating employees;
 - Training, developing, and preparing employees for future leadership roles; and
 - **Holding managers accountable** for addressing issues of performance.

Section 4 - Holding Managers Accountable for Hiring Well-Qualified People

- The probationary period provides an opportunity for managers to develop high-potential employees. It also gives them a chance to **remove** poor performers more easily. Under current law, supervisors and managers do not have to make an affirmative determination as to whether an individual in a probationary period should “graduate” to permanent employee.
- This provision requires managers to make an **affirmative decision** as to whether an individual who serves in a probationary period has demonstrated successful performance and should continue on past the probationary period. For new supervisors who serve in a probationary period, successful performance should include demonstrating management competencies in addition to technical skills.
- This provision also requires that **managers be held accountable** in their performance plans for providing regular feedback to employees before making a decision on their probationary status.

Section 5 - Holding Managers Accountable for Addressing Performance

- VA must **hold its managers accountable** for managing employee performance.
- This provision requires VA to hold its managers accountable in their performance plans for (a) taking action to address poor performance or misconduct and (b) taking steps to improve employee engagement.

Section 6 – Improvement of Training for Managers

- In the Senate Veterans' Affairs Committee hearing on June 24th, the Partnership for Public Service mentioned that the **biggest contributor to the performance problems at VA is the quality of the management.**
- This provision directs VA to provide periodic training for new managers and supervisors on:
 - **Whistleblower rights** and how to address a report by an employee of a hostile work environment, reprisal, or harassment;
 - How to effectively **motivate, manage, and reward** employees; and
 - How to effectively manage employees who are **performing at unacceptable levels** and access assistance from H.R. and the General Counsel's Office.

Section 7 – Promotional Opportunities for Technical Experts

- Supervisors often promote their employees to management positions because they want to be able to pay them more, even when the employees are technical experts and often uninterested in managing people. There should be opportunities for advancement without having to become a manager.
- This provision directs VA to create a separate **promotion track** so that **technical experts** can advance in their careers without having to go into management positions for which they may be ill-suited.

Section 8 - Closing the Gap on Whistleblower Protections

- This provision clarifies the authority of the **Office of Special Counsel (OSC)** to process complaints from Title 38 employees regarding negative **performance evaluations.**
- Currently, OSC's jurisdiction to review a claim related to a performance evaluation has to be connected to an issue concerned pay and not the evaluation itself. In most cases, OSC can attempt to connect the performance evaluation to an issue concerning pay.
- This provision provides OSC with explicit jurisdiction over claims from Title 38 employees that focus solely performance evaluation.

Sections 9 & 10 – Preventing Conflicts of Interest

- Section 9 would require a VA official who either (a) **personally** and **substantially** participated in an acquisition by the Department that **exceeds \$1 million** or (b) held a **key position** in the Department relating to **acquisition**, to obtain a written opinion from a VA ethics counselor regarding the activities the official may undertake on behalf of a VA contractor within two years of leaving the VA.
- Section 10 would prohibit a VA contractor from providing compensation to a VA official subject to section 9 without first determining that the official has received or appropriately requested a **post-employment ethics opinion**.
- Sections 9 and 10 are based on **Defense Acquisition Regulations** (48 CFR Part 203 – Improper Business Practices and Personal Conflicts of Interest) that apply to senior DoD officials seeking employment with defense contractors.

Section 11- Limitation on Paid Administrative Leave

- This provision **limits** the ability of the Secretary to place an employee who is under **investigation** for **misconduct** on **paid administrative leave** for more than 14 days. The limitation may be waived if the Secretary submits to the House and Senate Committees on Veterans' Affairs a detailed explanation of the reasons the employee was placed on administrative leave and the reasons for the extension of such leave.

Section 12 – Increasing Transparency and Oversight of VHA

- This provision requires the VA Office of the Medical Inspector to submit to the House and Senate Veterans' Affairs Committees periodic reports on any problems or deficiencies within the Veterans Health Administration, including recommendations for corrective action.

Section 13 - GAO Report on Performance and Accountability

Unintended Consequences of Section 707

- Last summer, at the height of the VA crisis, Congress passed the *Veterans Access, Choice, and Accountability Act of 2014*. Section 707 of that bill allows the Secretary to remove Senior Executives more quickly by eliminating a Senior Executive's right to notice and any opportunity to respond prior to the imposition of an adverse personnel action. Section 707 was intended to give the Secretary another tool to hold bad actors accountable. Section 707, however, has made it difficult for the Department to attract the top-notch talent it needs. This provision would direct GAO to review how VA is using Section 707 and what the impact has been in terms of addressing **performance** and **accountability**, as well as the **impact** on **recruitment** and **retention** at the executive level.

Expediting VA's Processes for Dealing with Performance Issues

- In the Senate Veterans' Affairs Committee of June 24th, the Partnership for Public Service mentioned that many of the delays in dealing with **performance** and **accountability** happen at the agency level before action is even taken. To see what could be done administratively to **streamline the process**, this provision would direct GAO to review VA internal policies for dealing with performance issues, and to **determine how to speed up VA's internal processes** for addressing performance and misconduct issues.