

EXTENSION OF AUTHORITY OF SECRETARY OF VETERANS AFFAIRS TO  
PROVIDE PRIORITY HEALTH CARE FOR CERTAIN VETERANS EXPOSED  
TO AGENT ORANGE OR IONIZING RADIATION

JUNE 26, 1995.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 1565]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 1565) to amend title 38, United States Code, to extend through December 31, 1997, the period during which the Secretary of Veterans Affairs is authorized to provide priority health care to certain veterans exposed to Agent Orange, ionizing radiation, or environmental hazards, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. AUTHORITY TO PROVIDE PRIORITY HEALTH CARE.**

(a) AUTHORIZED INPATIENT CARE.—Section 1710(e) of title 38, United States Code, is amended—

(1) in paragraph (1), by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

“(e)(1)(A) A herbicide-exposed veteran is eligible for hospital care and nursing home care under subsection (a)(1)(G) for any disease suffered by the veteran that is—

“(i) among those diseases for which the National Academy of Sciences, in a report issued in accordance with section 2 of the Agent Orange Act of 1991, has determined—

“(I) that there is sufficient evidence to conclude that there is a positive association between occurrence of the disease in humans and exposure to a herbicide agent;

“(II) that there is evidence which is suggestive of an association between occurrence of the disease in humans and exposure to a herbicide agent, but such evidence is limited in nature; or

- “(III) that available studies are insufficient to permit a conclusion about the presence or absence of an association between occurrence of the disease in humans and exposure to a herbicide agent; or
- “(ii) a disease for which the Secretary, pursuant to a recommendation of the Under Secretary for Health on the basis of a peer-reviewed research study or studies published within 20 months after the most recent report of the National Academy under section 2 of the Agent Orange Act of 1991, determines there is credible evidence suggestive of an association between occurrence of the disease in humans and exposure to a herbicide agent.
- “(B) A radiation-exposed veteran is eligible for hospital care and nursing home care under subsection (a)(1)(G) for any disease suffered by the veteran that is—
- “(i) a disease listed in section 1112(c)(2) of this title; or
- “(ii) any other disease for which the Secretary, based on the advice of the Advisory Committee on Environmental Hazards, determines that there is credible evidence of a positive association between occurrence of the disease in humans and exposure to ionizing radiation.”;
- (2) in paragraph (2)—
- (A) by striking out “Hospital” and inserting in lieu thereof “In the case of a veteran described in paragraph (1)(C), hospital”; and
- (B) by striking out “subparagraph” and all that follows through “subsection” and inserting in lieu thereof “paragraph (1)(C)”;
- (3) in paragraph (3), by striking out “of this section after June 30, 1995,” and inserting in lieu thereof “, in the case of care for a veteran described in paragraph (1)(A), after December 31, 1997.”; and
- (4) by adding at the end the following new paragraph:
- “(4) For purposes of this subsection and section 1712 of this title:
- “(A) The term ‘herbicide-exposed veteran’ means a veteran (i) who served on active duty in the Republic of Vietnam during the Vietnam era, and (ii) who the Secretary finds may have been exposed during such service to a herbicide agent.
- “(B) The term ‘herbicide agent’ has the meaning given that term in section 1116(a)(4) of this title.
- “(C) The term ‘radiation-exposed veteran’ has the meaning given that term in section 1112(c)(4) of this title.”.
- (b) AUTHORIZED OUTPATIENT CARE.—Section 1712 of such title is amended—
- (1) in subsection (a)(1)—
- (A) by striking out “and” at the end of subparagraph (C);
- (B) by striking out the period at the end of subparagraph (D) and inserting in lieu thereof a semicolon;
- (C) by adding at the end the following new subparagraphs:
- “(E) during the period before January 1, 1998, to any herbicide-exposed veteran (as defined in section 1710(e)(4)(A) of this title) for any disease specified in section 1710(e)(1)(A) of this title; and
- “(F) to any radiation-exposed veteran (as defined in section 1112(c)(4) of this title) for any disease covered under section 1710(e)(1)(B) of this title.”; and
- (2) in subsection (i)(3)—
- (A) by striking out “(A)”;
- (B) by striking out “, or (B)” and all that follows through “title”.

**SEC. 2. SAVINGS PROVISION.**

The provisions of sections 1710(e) and 1712(a) of title 38, United States Code, as in effect on the day before the date of the enactment of this Act, shall continue to apply on and after such date with respect to the furnishing of hospital care, nursing home care, and medical services for any veteran who was furnished such care or services before such date of enactment on the basis of presumed exposure to a substance or radiation under the authority of those provisions, but only for treatment for a disability for which such care or services were furnished before such date.

**Amend the title so as to read:**

A bill to amend title 38, United States Code, to extend through December 31, 1997, the period during which the Secretary of Veterans Affairs is authorized to provide priority health care to certain veterans exposed to Agent Orange and to make such authority permanent in the case of certain veterans exposed to ionizing radiation, and for other purposes.

## INTRODUCTION

The Subcommittee met on May 11, 1995 and recommended H.R. 1565 to the full Committee. The full Committee met on June 15, 1995 and ordered H.R. 1565, with an amendment in the nature of a substitute, reported favorably to the House by unanimous recorded vote.

## SUMMARY OF THE REPORTED BILL

H.R. 1565, as amended, would:

1. Authorize hospitalization, nursing home care, and outpatient treatment for herbicide-exposed veterans for three categories of diseases (suffered by veterans) identified by the National Academy of Sciences:

(a) those with sufficient evidence of an association with herbicide exposure;

(b) those with limited/suggestive evidence of association with herbicide exposure; and

(c) those with inadequate/insufficient evidence to determine whether an association exists with herbicide exposure.

2. "Grandfather" veterans for continued care of any condition treated under prior law based on presumed herbicide exposure.

3. Authorize the Secretary, based on the recommendation of the Under Secretary for Health, to add to the list of covered conditions for which treatment is authorized. A disease could be added based on peer-reviewed research published within 20 months after the most recent National Academy of Sciences report regarding Agent Orange.

4. Provide eligibility for hospitalization, nursing home care and outpatient treatment in the case of radiation-exposed veterans for care of a long list of cancers presumed to be caused by radiation exposure as well as for any disease for which the VA determines there is credible evidence of a positive association between disease occurrence and radiation exposure.

5. "Grandfather" veterans for continued care of any condition treated under prior law based on presumed radiation exposure.

6. Provide for priority treatment for both herbicide-exposed and radiation-exposed veterans.

7. Extend through December 31, 1997 the period during which the Secretary of Veterans Affairs is authorized to provide priority health care to herbicide-exposed veterans.

8. Make permanent the authority to treat certain veterans exposed to ionizing radiation.

## BACKGROUND AND DISCUSSION

Public Law 102-4, known as the Agent Orange Act of 1991, required the VA to enter into an agreement with the National Academy of Sciences (NAS) to conduct a comprehensive review and evaluation of the available scientific and medical literature regarding the health effects of exposure to Agent Orange and other herbicides used during the Vietnam conflict. This Act also required not only the review of scientific literature but also that the NAS evaluate the available scientific evidence and assess, with respect to each

disease suspected of being associated with exposure to Agent Orange, the strength of the association or associations and their relative strength and risk to veterans. This review included 6,420 abstracts of scientific or medical articles. From this published body of scientific literature, 230 epidemiological studies were chosen for detailed review and analysis. Since 1982 the VA has spent approximately \$80 million from Medical Research funds to study health questions related to exposure to Agent Orange and other herbicides.

The findings of the NAS provide for the first time a framework based on scientific evidence on which determinations of eligibility for health care can be based. H.R. 1565, as amended, proposes to incorporate those findings. It would do so by identifying certain specific diseases for which known, limited, and even doubtful statistical associations of exposure would be considered service-incurred for treatment purposes. The bill would authorize VA to provide treatment even for the diseases where science provides insufficient evidence to determine whether there is any relationship between the diseases presented by the veteran and exposure to herbicides. It also would "grandfather" those veterans who have been previously treated at the VA for conditions which the NAS has now found evidence indicating no association to exist between the disease and exposure to herbicides for continued VA care of these conditions. Included in this category would be skin cancer, gastrointestinal tumors, bladder cancer, and brain tumors.

The bill would also provide special eligibility in the case of radiation-exposed veterans for care of a long list of cancers as well as for any diseases for which the VA determines there is credible evidence of a positive association between disease occurrence and radiation exposure. The bill's "grandfather" clause would also permit VA to continue to care for illnesses for which veterans previously or currently receive care at the VA even though no positive association between the disease occurrence and radiation exposure has been found.

Under this bill both groups of veterans would receive substantially expanded outpatient services for covered conditions on a priority basis.

It is the view of the Committee that the Academy's findings provide a basis upon which to establish sound yet compassionate public policy with regard to those veterans exposed to herbicides during their military service in Southeast Asia. The agreed upon compromise, which was accomplished in the spirit of bipartisanship, reflects the strong view of the Committee that veterans deserve every benefit of the doubt with regard to health conditions that may result as part of their military service. H.R. 1565, as amended, would provide a 20-month window for the consideration of new peer-reviewed, published research not previously considered by the NAS. In the event such a study provides credible evidence suggestive of an association between a disease and exposure to Agent Orange, the Secretary, based on the recommendations of the Under Secretary for Health, could authorize VA treatment for that condition.

The provisions of H.R. 1565, as amended, draw on language adopted by the House in passing H.R. 3313 in the 103rd Congress.



## PERSONAL EXPLANATIONS

Congressman Spence has informed the Committee that he was not present at the markup because he was floor manager for H.R. 1530, the National Defense Authorization Act for Fiscal Year 1996, which was being considered by the House at the same time. He has informed the Committee that had he been present for the recorded vote on H.R. 1565, as amended, he would have voted aye.

Congressmen Clement and Baesler were present for the markup but not at the time of the recorded vote on H.R. 1565, as amended, because they were unavoidably detained. They have informed the Committee that, had they been present for the vote on H.R. 1565, as amended, they would have voted aye.

Congressman Schaefer was not present for the markup of H.R. 1565, as amended, because he was unavoidably detained. He has informed the Committee that had he been present for the recorded vote, he would have voted aye.

SUMMARY OF NAS FINDINGS ON AGENT ORANGE  
EXPOSURE

The following is a summary listing of the four categories established by the National Academy of Sciences and the relative strength of each condition in regard to its association between the specific condition and exposure to herbicides.

## SUFFICIENT EVIDENCE OF AN ASSOCIATION

Evidence is sufficient to conclude that there is a positive association.

- Soft tissue sarcoma
- Non-Hodgkin's lymphoma
- Hodgkin's disease
- Chloracne
- Porphyria cutanea tarda (in genetically susceptible individuals)

## LIMITED/SUGGESTIVE EVIDENCE OF ASSOCIATION

Evidence is suggestive of an association between herbicides and the outcome but is limited because chance, bias, and confounding could not be ruled out with confidence.

- Respiratory cancers (lung, larynx, trachea)
- Prostate cancer
- Multiple myeloma

INADEQUATE/INSUFFICIENT EVIDENCE TO DETERMINE WHETHER AN  
ASSOCIATION EXISTS

The available studies are of insufficient quality, consistency, or statistical power to permit a conclusion regarding the presence or absence of an association.

- Hepatobiliary cancers
- Nasal/nasopharyngeal cancer
- Bone cancer
- Female reproductive cancers (cervical uterine ovarian) and breast cancer

Renal cancer  
 Testicular cancer  
 Leukemia  
 Spontaneous abortion  
 Birth defects  
 Neonatal/infant death and stillbirths  
 Low birthweight  
 Childhood cancer in offspring  
 Abnormal sperm parameters and infertility  
 Cognitive and neuropsychiatric disorders  
 Motor/coordination dysfunction  
 Peripheral nervous system disorders  
 Metabolic and digestive disorders (diabetes, changes in  
 liver enzymes, lipid abnormalities, ulcers)  
 Immune system disorders (immune modulation and  
 autoimmunity)  
 Circulatory disorders  
 Respiratory disorders

LIMITED/SUGGESTIVE EVIDENCE OF NO ASSOCIATION

Several adequate studies, covering the full range of levels of exposure that human beings are known to encounter, are mutually consistent in not showing a positive association between exposure to herbicides and the outcome at any level of exposure.

Skin cancer  
 Gastrointestinal tumors (stomach cancer, pancreatic cancer,  
 colon cancer, rectal cancer)  
 Bladder cancer  
 Brain tumors

OVERSIGHT FINDINGS

No oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The following letter was received from the Congressional Budget Office concerning the cost of the reported bill:

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 21, 1995.*

Hon. BOB STUMP,  
*Chairman, Committee on Veterans' Affairs,  
 House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for an amendment in the nature of a substitute to H.R. 1565, a bill to amend title 38, United States Code, to extend through December 31, 1997, the period during which the Secretary of Veterans Affairs is authorized to provide priority health care to certain veterans exposed to Agent Orange and to make such authority permanent in the case of certain veterans exposed to ionizing radiation, and for other purposes, as or-

dered reported by the House Committee on Veterans' Affairs on June 15, 1995.

The bill would not affect direct spending and thus would not be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL.  
*Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Amendment in the nature of a substitute to H.R. 1565.

2. Bill title: A bill to amend title 38, United States Code, to extend through December 31, 1997, the period during which the Secretary of Veterans Affairs is authorized to provide priority health care to certain veterans exposed to Agent Orange and to make such authority permanent in the case of certain veterans exposed to ionizing radiation, and for other purposes.

3. Bill status: As ordered reported by the House Committee on Veterans' Affairs on June 15, 1995.

4. Bill purpose: The bill would extend expiring authorities under which the Department of Veterans Affairs provides inpatient and outpatient medical care to veterans whose conditions have been associated with exposure to certain harmful substances during military service.

5. Estimated cost to the federal government:

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
Spending Under Current Law:						
Budget Authority <sup>a</sup> .....	125	0	0	0	0	0
Estimated Outlays .....	125	18	1	0	0	0
Proposed Changes:						
Authorization Level <sup>b</sup> .....	0	105	111	46	23	25
Estimated Outlays .....	0	90	109	55	27	24
Spending Under H.R. 1565:						
Authorization Level <sup>a, b</sup> .....	125	105	111	46	23	25
Estimated Outlays .....	125	108	110	55	27	24

<sup>a</sup> The 1995 figure is the amount appropriated for programs authorized by the bill.

<sup>b</sup> This estimate assumes an enactment date of October 1, 1995. Enactment before that date could result in additional authorization of appropriations in 1995.

6. Basis of estimate:

Under current law, the Department of Veterans Affairs (VA) provides medical treatment to veterans for disabilities associated with exposure to Agent Orange and ionizing radiation.

VA treats these veterans for certain diseases whether or not sufficient evidence connects the conditions to the exposure.

This bill would extend VA's authority to provide medical treatment to veterans exposed to Agent Orange through December 1997, but would limit treatment to conditions the National Academy of Sciences has deemed positively or suggestively associated with exposure, or for which there is not enough evidence to permit a conclusion. Diseases for which limited or suggestive evidence shows no

association would not be treated unless credible evidence of suggestive association is found. These diseases include gastrointestinal cancers, skin cancers, bladder cancers, and brain tumors. According to VA, the cost for treating veterans exposed to Agent Orange is currently about \$100 million a year. Using incidence rates to exclude diseases that would no longer be treated, VA projects that costs under this bill would be about \$85 million a year.

The bill would limit treatment for veterans exposed to ionizing radiation similarly to the way it would limit treatment for Agent Orange cases, but it would permanently extend VA's authority to provide care. Treatment costs for veterans exposed to ionizing radiation are now about \$25 million a year. Under this bill, the cost would be about \$20 million a year.

VA officials do not expect research in the near term to show sufficient evidence of association between the diseases excluded by this bill and exposure to Agent Orange or radiation. If research would show such a connection, costs could be closer to current expenditures.

This estimate assumes that the amounts authorized will be appropriated for 1996 and future years. It also assumes, based on historical trends, that the number of veterans treated under this authority will remain relatively stable over the five-year period, but that costs increase because of inflation. Outlays after 1996 are estimated according to historical spending patterns.

7. Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. This legislation would not affect direct spending or receipts. Therefore, it has no pay-as-you-go implications.

8. Estimated cost to state and local governments: None.

9. Estimate comparison: None.

10. Previous CBO estimate: None.

11. Estimate prepared by: Mary Helen Petrus.

12. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

#### INFLATIONARY IMPACT STATEMENT

The enactment of the reported bill would have no inflationary impact.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, 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 italics, existing law in which no change is proposed is shown in roman):

### TITLE 38, UNITED STATES CODE

\* \* \* \* \*

**PART II—GENERAL BENEFITS**

\* \* \* \* \*  
 SUBCHAPTER II—HOSPITAL, NURSING HOME OR  
 DOMICILIARY CARE AND MEDICAL TREATMENT  
 \* \* \* \* \*

**§1710. Eligibility for hospital, nursing home, and domiciliary care**

(a) \* \* \*

\* \* \* \* \*  
 [(e)(1)(A) Subject to paragraphs (2) and (3) of this subsection, a veteran—

    [(i) who served on active duty in the Republic of Vietnam during the Vietnam era, and

    [(ii) who the Secretary finds may have been exposed during such service to dioxin or was exposed during such service to a toxic substance found in a herbicide or defoliant used in connection with military purposes during such era,

is eligible for hospital care and nursing home care under subsection (a)(1)(G) of this section for any disability, notwithstanding that there is insufficient medical evidence to conclude that such disability may be associated with such exposure.

    [(B) Subject to paragraphs (2) and (3) of this subsection, a veteran who the Secretary finds was exposed while serving on active duty to ionizing radiation from the detonation of a nuclear device in connection with such veteran's participation in the test of such a device or with the American occupation of Hiroshima and Nagasaki, Japan, during the period beginning on September 11, 1945, and ending on July 1, 1946, is eligible for hospital care and nursing home care under subsection (a)(1)(G) of this section for any disability, notwithstanding that there is insufficient medical evidence to conclude that such disability may be associated with such exposure.]

*(e)(1)(A) A herbicide-exposed veteran is eligible for hospital care and nursing home care under subsection (a)(1)(G) for any disease suffered by the veteran that is—*

*(i) among those diseases for which the National Academy of Sciences, in a report issued in accordance with section 2 of the Agent Orange Act of 1991, has determined—*

*(I) that there is sufficient evidence to conclude that there is a positive association between occurrence of the disease in humans and exposure to a herbicide agent;*

*(II) that there is evidence which is suggestive of an association between occurrence of the disease in humans and exposure to a herbicide agent, but such evidence is limited in nature; or*

*(III) that available studies are insufficient to permit a conclusion about the presence or absence of an association between occurrence of the disease in humans and exposure to a herbicide agent; or*

(ii) a disease for which the Secretary, pursuant to a recommendation of the Under Secretary for Health on the basis of a peer-reviewed research study or studies published within 20 months after the most recent report of the National Academy under section 2 of the Agent Orange Act of 1991, determines there is credible evidence suggestive of an association between occurrence of the disease in humans and exposure to a herbicide agent.

(B) A radiation-exposed veteran is eligible for hospital care and nursing home care under subsection (a)(1)(G) for any disease suffered by the veteran that is—

(i) a disease listed in section 1112(c)(2) of this title; or

(ii) any other disease for which the Secretary, based on the advice of the Advisory Committee on Environmental Hazards, determines that there is credible evidence of a positive association between occurrence of the disease in humans and exposure to ionizing radiation.

(C) Subject to paragraphs (2) and (3) of this subsection, a veteran who the Secretary finds may have been exposed while serving on active duty in the Southwest Asia theater of operations during the Persian Gulf War to a toxic substance or environmental hazard is eligible for hospital care and nursing home care under subsection (a)(1)(G) of this section for any disability, notwithstanding that there is insufficient medical evidence to conclude that such disability may be associated with such exposure.

(2) **[Hospital]** *In the case of a veteran described in paragraph (1)(C), hospital and nursing home care may not be provided under subsection (a)(1)(G) of this section with respect to a disability that is found, in accordance with guidelines issued by the Under Secretary for Health, to have resulted from a cause other than an exposure described in [subparagraph (A), (B), or (C) of paragraph (1) of this subsection] paragraph (1)(C).*

(3) Hospital and nursing home care and medical services may not be provided under or by virtue of subsection (a)(1)(G) **[of this section after June 30, 1995,]** *in the case of care for a veteran described in paragraph (1)(A), after December 31, 1997, or, in the case of care for a veteran described in paragraph (1)(C), after December 31, 1995.*

(4) *For purposes of this subsection and section 1712 of this title:*

(A) *The term “herbicide-exposed veteran” means a veteran (i) who served on active duty in the Republic of Vietnam during the Vietnam era, and (ii) who the Secretary finds may have been exposed during such service to a herbicide agent.*

(B) *The term “herbicide agent” has the meaning given that term in section 1116(a)(4) of this title.*

(C) *The term “radiation-exposed veteran” has the meaning given that term in section 1112(c)(4) of this title.*

\* \* \* \* \*

## **§ 1712. Eligibility for outpatient services**

(a)(1) Except as provided in subsection (b) of this section, the Secretary shall furnish on an ambulatory or outpatient basis such medical services as the Secretary determines are needed—

(A) to any veteran for a service-connected disability (including a disability that was incurred or aggravated in line of duty and for which the veteran was discharged or released from the active military, naval, or air service);

(B) for any disability of a veteran who has a service-connected disability rated at 50 percent or more;

(C) to any veteran for a disability for which the veteran is in receipt of compensation under section 1151 of this title or for which the veteran would be entitled to compensation under that section but for a suspension pursuant to that section (but in the case of such a suspension, such medical services may be furnished only to the extent that such person's continuing eligibility for medical services is provided for in the judgment or settlement described in that section); [and]

(D) during the period before December 31, 1995, for any disability in the case of a veteran who served on active duty in the Southwest Asia theater of operations during the Persian Gulf War and who the Secretary finds may have been exposed to a toxic substance or environmental hazard during such service, notwithstanding that there is insufficient medical evidence to conclude that the disability may be associated with such exposure[.];

(E) during the period before January 1, 1998, to any herbicide-exposed veteran (as defined in section 1710(e)(4)(A) of this title) for any disease specified in section 1710(e)(1)(A) of this title; and

(F) to any radiation-exposed veteran (as defined in section 1112(c)(4) of this title) for any disease covered under section 1710(e)(1)(B) of this title.

\* \* \* \* \*

(i) The Secretary shall prescribe regulations to ensure that special priority in furnishing medical services under this section and any other outpatient care with funds appropriated for the medical care of veterans shall be accorded in the following order, unless compelling medical reasons require that such care be provided more expeditiously:

(1) \* \* \*

\* \* \* \* \*

(3) To a veteran [(A)] who is a former prisoner of war[, or (B) who is eligible for hospital care under section 1710(e) of this title].

\* \* \* \* \*

