

**Suspend the Rules and Pass the Bill, HR. 4399, with An Amendment**

**(The amendment strikes all after the enacting clause and inserts a new text)**

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4399

To amend title 38, United States Code, to improve the performance appraisal system for senior executives of the Department of Veterans Affairs, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 4, 2014

Mr. MICHAUD introduced the following bill; which was referred to the Committee on Veterans' Affairs

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## A BILL

To amend title 38, United States Code, to improve the performance appraisal system for senior executives 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 “Comprehensive De-  
5 partment of Veterans Affairs Performance Management  
6 and Accountability Reform Act of 2014”.



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

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

4 **SEC. 3. IMPROVEMENT OF PERFORMANCE APPRAISAL OF**  
5 **SENIOR EXECUTIVES OF THE DEPARTMENT**  
6 **OF VETERANS AFFAIRS.**

7 (a) PERFORMANCE APPRAISAL SYSTEM.—

8 (1) IN GENERAL.—Chapter 7 of title 38, United  
9 States Code, as amended by section 2, is further  
10 amended by adding at the end the following new sec-  
11 tion:

12 **“§ 714. Senior Executive Service: performance ap-**  
13 **praisal**

14 “(a) PERFORMANCE APPRAISAL SYSTEM.—The Sec-  
15 retary shall be responsible for carrying out the require-  
16 ments of subchapter II of chapter 43 of title 5.

17 “(b) ORGANIZATIONAL PERFORMANCE REQUIRE-  
18 MENTS.—(1) In implementing the performance appraisal  
19 system for senior executives of the Department required  
20 by section 4312 of title 5, the Secretary shall issue, by  
21 not later than September 1 of each year, organizational  
22 performance requirements to be used to inform the estab-  
23 lishment of performance requirements for each senior ex-  
24 ecutive of the Department. The performance requirements  
25 of each senior executive shall be achievable by each senior

1 executive and shall be consistent with the organizational  
2 performance requirements issued by the Secretary.

3 “(2) Not less than half of the annual summary rating  
4 of a senior executive of the Department under section  
5 4314 of title 5 shall be based on the organizational per-  
6 formance requirements issued under this subsection and  
7 applicable to such senior executive.

8 “(3) Not later than December 15 of each year, the  
9 Secretary shall submit to the Committees on Veterans’ Af-  
10 fairs of the Senate and House of Representatives certifi-  
11 cation that for the fiscal year during which the certifi-  
12 cation is submitted that—

13 “(A) all individual and organizational perform-  
14 ance requirements applicable to senior executives of  
15 the Department pursuant to section 4312 of title 5  
16 accurately reflected the organizational performance  
17 requirements of the Department; and

18 “(B) the performance requirements established  
19 for each senior executive are expected to lead to the  
20 overall success of the Department in meeting its or-  
21 ganizational performance requirements.

22 “(c) ADDITIONAL REQUIREMENTS.—(1) In imple-  
23 menting the performance appraisal system for senior ex-  
24 ecutives of the Department required by section 4312 of

1 title 5, the Secretary shall ensure that such system is de-  
2 signed to—

3 “(A) evaluate the contribution of each senior  
4 executive to the overall mission and objectives of the  
5 Department;

6 “(B) ensure that each senior executive is ac-  
7 countable for efforts undertaken to further the ob-  
8 jectives of the Departments; and

9 “(C) evaluate the contribution of each senior  
10 executive in ensuring the Department meets the  
11 needs of veterans and their dependants.

12 “(2)(A) The performance review board established  
13 pursuant to section 4314 of title 5 shall ensure that—

14 “(i) the performance requirements for each sen-  
15 ior executive of the Department clearly and dis-  
16 tinctly address both individual and organizational  
17 performance; and

18 “(ii) the performance of each senior executive is  
19 evaluated based on such performance requirements  
20 together with the demonstrated accountability, exec-  
21 utive, and leadership capabilities of the senior execu-  
22 tive.

23 “(B) In evaluating the performance of a senior execu-  
24 tive of the Department, the performance review board  
25 shall take into consideration each of the following:

1           “(i) Any deficiencies identified by the Inspector  
2           General of the Department or the Comptroller Gen-  
3           eral of the United States in the performance of du-  
4           ties or areas managed by the senior executive.

5           “(ii) Any final determination in response to a  
6           formal complaint submitted regarding the perform-  
7           ance of the senior executive or a deficiency in a pro-  
8           gram under the direction of the senior executive.

9           “(iii) The findings of any final report relating  
10          to the performance of the senior executive or to a  
11          deficiency in a program under the direction of the  
12          senior executive.

13          “(d) ANNUAL SUMMARY RATINGS.—(1) The Sec-  
14          retary shall provide in a timely manner to any senior exec-  
15          utive who receives an annual summary rating under sec-  
16          tion 4314(a) of title 5 of any level of performance lower  
17          than fully successful a detailed explanation of the perform-  
18          ance deficiencies of the senior executive.

19          “(2) In the case of a senior executive for whom it  
20          is determined during a mid-year review that the senior ex-  
21          ecutive is likely to receive an annual summary rating of  
22          less than fully successful, the Secretary shall ensure that  
23          senior executive is provided a plan to address performance  
24          deficiencies before the end of the evaluation period.

1           “(3) Any senior executive of the Department who re-  
2 ceives two annual summary ratings of any level of per-  
3 formance lower than fully successful shall be removed  
4 from the Senior Executive Service.

5           “(4) Any senior executive who receives three consecu-  
6 tive annual summary ratings of the highest level of per-  
7 formance shall be provided with an opportunity to obtain  
8 a different position within the Department with more re-  
9 sponsibility, if such a position is available.

10          “(e) ANNUAL REPORTS.—Not later than January 1  
11 of each year, the Secretary shall submit to the Committees  
12 on Veterans’ Affairs of the Senate and House of Rep-  
13 resentatives a report on the senior executive performance  
14 appraisal system of the Department for the fiscal year pre-  
15 ceding the fiscal year during which the report is sub-  
16 mitted. Each such report shall include, for the year cov-  
17 ered by the report, each of the following:

18           “(1) The number of senior executives who re-  
19 ceived summary ratings.

20           “(2) The number of senior executives who re-  
21 ceived a summary rating at each level of perform-  
22 ance.

23           “(3) Any actions taken with respect to senior  
24 executives who received ratings at a level of perform-  
25 ance lower than fully successful.

1           “(4) The number of initial annual summary  
2 ratings that were raised or lowered by the perform-  
3 ance review board.”.

4           (2) CLERICAL AMENDMENT.—The table of sec-  
5 tions at the beginning of such chapter, as amended  
6 by section 2, is further amended by adding at the  
7 end the following new item:

“714. Senior Executive Service: performance appraisal.”.

8           (b) PERFORMANCE PAY FOR PHYSICIANS AND DEN-  
9 TISTS.—Section 7431 of title 38, United States Code, is  
10 amended—

11           (1) in subsection (b)(3), by inserting after  
12 “dentist” the following: “who received a fully suc-  
13 cessful level of performance at the physician or den-  
14 tist’s most recent performance appraisal”;

15           (2) in subsection (c)—

16                   (A) in paragraph (2)—

17                           (i) by inserting “(A)” before “Market  
18 pay”; and

19                           (ii) by adding at the end the following  
20 new subparagraph:

21                           “(B) The Secretary shall submit to the Com-  
22 mittees on Veterans’ Affairs of the Senate and  
23 House of Representatives a semi-annual report on  
24 health care trends, including anticipated shortages  
25 of health care professionals by specific specialty and



1 location, which shall be used in determining the re-  
2 cruitment and retention needs of the Department for  
3 purposes of this subsection. The Secretary may not  
4 provide market pay to a physician or dentist under  
5 this subsection unless the payment of market pay to  
6 the physician or dentist meets a specialty or location  
7 need of the Department as articulated in a report  
8 submitted under this subparagraph.”.

9 (B) in paragraph (4)(B)—

10 (i) in clause (i), by striking the last  
11 sentence; and

12 (ii) in clause (iii), by striking “should,  
13 to the extent practicable,” and inserting  
14 “shall”; and

15 (3) in subsection (d)—

16 (A) in paragraph (1)—

17 (i) by inserting “(A)” before “One ele-  
18 ment”; and

19 (ii) by adding at the end the fol-  
20 lowing: “The Secretary shall establish a  
21 performance appraisal system for physi-  
22 cians and dentists. The performance ap-  
23 praisal system shall provide for annual  
24 summary ratings of levels of performance  
25 as follows:”

1           “(A) one or more fully successful levels;

2           “(B) a minimally satisfactory level; and

3           “(C) an unsatisfactory level.”;

4                       (iii) by inserting after subparagraph

5                       (A) the following new subparagraph:

6           “(B) Under the performance appraisal system under  
7 subparagraph (A), performance shall be evaluated based  
8 on both individual and organizational performance and  
9 specific goals or objectives shall be explicitly linked to im-  
10 proved health care outcomes and quality as well as the  
11 Department’s overall effectiveness in providing quality  
12 health care services. The specific goals and objectives shall  
13 be consistent with the overarching objectives and goals of  
14 the Department.

15           “(C) Under such performance appraisal system, each  
16 physician and dentist employed by the Department shall  
17 receive an annual review by the Under Secretary of  
18 Health. For each year, the Under Secretary shall submit  
19 to the Secretary certification that such reviews are con-  
20 ducted.”;

21                       (B) by striking paragraph (3) and redesign-  
22                       nating paragraph (2) as paragraph (3);

23                       (C) by inserting after paragraph (1) the  
24                       following new paragraph (2):

1 “(2) Under the performance appraisal system estab-  
2 lished under paragraph (1)—

3 “(A) on or before the beginning of each rating  
4 period, performance requirements for each physician  
5 or dentist shall be established in consultation with,  
6 and communicated to, each physician or dentist;

7 “(B) written appraisals of performance shall be  
8 based on the individual and organizational perform-  
9 ance requirements established for the rating period  
10 involved; and

11 “(C) each physician or dentist shall be provided  
12 a copy of the appraisal and the physician or den-  
13 tist’s performance appraisal rating and shall be  
14 given an opportunity to respond in writing and have  
15 the rating reviewed by the Under Secretary for  
16 Health before the rating becomes final.”;

17 (D) in paragraph (3), as redesignated by  
18 subparagraph (B)—

19 (i) by inserting “only” after “paid”;  
20 and

21 (ii) by striking “on the basis” and in-  
22 sserting “who receives a level of perform-  
23 ance of fully successful under the perform-  
24 ance appraisal system established under  
25 paragraph (1) and whose performance ex-

1 ceeds the specific goals and performance  
2 objectives established under such system.”;

3 (E) in paragraph (4), by striking “para-  
4 graph (2)” and inserting “this subsection”;

5 (F) in paragraph (5)(B), by striking “7.5  
6 percent” and inserting “5 percent”; and

7 (G) by striking paragraph (6); and

8 (4) by adding at the end the following new sub-  
9 section:

10 “(i) FAILURE TO MAINTAIN A LICENSE.—A physi-  
11 cian or dentist who has not maintained an appropriate  
12 professional license may not be paid.”.

13 (c) STUDY.—Not later than one year after the date  
14 of the enactment of this Act, the Secretary shall submit  
15 to the Committees on Veterans’ Affairs of the Senate and  
16 House of Representatives a report on the training pro-  
17 gram of the Department of Veterans Affairs for senior ex-  
18 ecutives. Such report shall include—

19 (1) an evaluation of succession planning and  
20 long-term career development plans for senior execu-  
21 tives and efforts undertaken by the Department to  
22 improve cross-Department opportunities for senior  
23 executives; and

1           (2) the recommendations of the Secretary for  
2           improving the mobility and effectiveness of senior  
3           executives.

4 **SEC. 4. LIMITATION ON PERFORMANCE AWARDS IN THE**  
5 **SENIOR EXECUTIVE SERVICE.**

6           For each of fiscal years 2014 through 2018, the Sec-  
7           retary of Veterans Affairs may not make any performance  
8           awards under section 5384 of title 5, United States Code.