

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4399
OFFERED BY Mr. Michaud

Strike all after the enacting clause and insert the following:

1 **SECTION 1. IMPROVEMENT OF PERFORMANCE APPRAISAL**
2 **OF SENIOR EXECUTIVES OF THE DEPART-**
3 **MENT OF VETERANS AFFAIRS.**

4 (a) PERFORMANCE APPRAISAL SYSTEM.—

5 (1) IN GENERAL.—Chapter 7 of title 38, United
6 States Code, is amended by adding at the end the
7 following new section:

8 **“§ 714. Senior Executive Service: performance ap-**
9 **praisal**

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

13 “(b) ORGANIZATIONAL PERFORMANCE REQUIRE-
14 MENTS.—(1) In implementing the performance appraisal
15 system for senior executives of the Department required
16 by section 4312 of title 5, the Secretary shall issue, by
17 not later than September 1 of each year, organizational
18 performance requirements to be used to inform the estab-

1 lishment of performance requirements for each senior ex-
2 ecutive of the Department. The performance requirements
3 of each senior executive shall be achievable by each senior
4 executive and shall be consistent with the organizational
5 performance requirements issued by the Secretary.

6 “(2) The annual summary rating of a senior execu-
7 tive of the Department shall be at least 50 percent deter-
8 mined by the executive’s performance under achievable
9 performance requirements defining what contribution the
10 executive is expected to make to meet the organizational
11 performance requirements issued by the Secretary.

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

17 “(A) all individual and organizational perform-
18 ance requirements applicable to senior executives of
19 the Department pursuant to section 4312 of title 5
20 accurately reflected the organizational performance
21 requirements of the Department; and

22 “(B) the performance requirements established
23 for each senior executive are expected to lead to the
24 overall success of the Department in meeting its or-
25 ganizational performance requirements.

1 “(c) ADDITIONAL REQUIREMENTS.—(1) In imple-
2 menting the performance appraisal system for senior ex-
3 ecutives of the Department required by section 4312 of
4 title 5, the Secretary shall ensure that such system is de-
5 signed to—

6 “(A) evaluate the contribution of each senior
7 executive to the overall mission and objectives of the
8 Department;

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

12 “(C) evaluate the contribution of each senior
13 executive in ensuring the Department meets the
14 needs of veterans and their dependants.

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

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

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

1 “(B) In evaluating the performance of a senior execu-
2 tive of the Department, the performance review board
3 shall—

4 “(i) submit a timely recommendation to support
5 the appointing authority’s issuance of the executive’s
6 annual summary rating, and

7 “(ii) take into consideration—

8 “(I) any deficiencies identified by the In-
9 spector General of the Department or the
10 Comptroller General of the United States in the
11 performance of duties or areas managed by the
12 senior executive;

13 “(II) any final determination in response
14 to a formal complaint submitted regarding the
15 performance of the senior executive or a defi-
16 ciency in a program under the direction of the
17 senior executive; and

18 “(III) the findings of any final report
19 issued by the Inspector General of the Depart-
20 ment or the Comptroller General of the United
21 States relating to the performance of the senior
22 executive or to a deficiency in a program under
23 the direction of the senior executive.

24 “(d) ANNUAL SUMMARY RATINGS.—(1) The Sec-
25 retary shall provide in a timely manner to any senior execu-

1 utive who receives an annual summary rating under sec-
2 tion 4314(a) of title 5 of any level of performance lower
3 than fully successful a detailed explanation of the perform-
4 ance deficiencies of the senior executive.

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

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

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

20 “(e) ANNUAL REPORTS.—Not later than January 1
21 of each year, the Secretary shall submit to the Committees
22 on Veterans’ Affairs of the Senate and House of Rep-
23 resentatives a report on the senior executive performance
24 appraisal system of the Department for the fiscal year pre-
25 ceding the fiscal year during which the report is sub-

1 mitted. Each such report shall include, for the year cov-
2 ered by the report, each of the following:

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

5 “(2) The number of senior executives who re-
6 ceived a summary rating at each level of perform-
7 ance.

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

11 “(4) The number of initial annual summary
12 ratings that were recommended to be raised or low-
13 ered by the performance review board.”.

14 (2) CLERICAL AMENDMENT.—The table of sec-
15 tions at the beginning of such chapter is amended
16 by adding at the end the following new item:

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

17 (3) EFFECTIVE DATE.—Section 714 of title 38,
18 United States Code, as added by paragraph (1),
19 shall apply with respect to the appraisal of work per-
20 formed after the date of the enactment of this Act.

21 (b) PERFORMANCE PAY FOR PHYSICIANS AND DEN-
22 TISTS.—

23 (1) IN GENERAL.—Section 7431 of title 38,
24 United States Code, is amended—

25 (A) in subsection (c)—

1 (i) in paragraph (2)—

2 (I) by inserting “(A)” before
3 “Market pay”; and

4 (II) by adding at the end the fol-
5 lowing new subparagraph:

6 “(B) The Secretary shall submit to the Com-
7 mittees on Veterans’ Affairs of the Senate and
8 House of Representatives a semi-annual report on
9 health care trends, including anticipated shortages
10 of health care professionals by specific specialty and
11 location. Each such report shall include information
12 that defines local market conditions, identifies the
13 individual clinician skills and experience required to
14 meet projected demand under those conditions, and
15 sets the required market pay accordingly.”

16 (ii) in paragraph (4)(B)—

17 (I) in clause (i), by striking the
18 last sentence; and

19 (II) in clause (iii), by striking
20 “should, to the extent practicable,”
21 and inserting “shall”; and

22 (B) in subsection (d)—

23 (i) in paragraph (1)—

24 (I) by inserting “(A)” before
25 “One element”; and

1 (II) by adding at the end the fol-
2 lowing: “The Secretary shall establish
3 a performance appraisal system for
4 physicians and dentists. The perform-
5 ance appraisal system shall provide
6 for annual summary ratings of levels
7 of performance as follows:”

8 “(A) one or more fully successful levels, which
9 indicate the physician or dentist has achieved, at-
10 tained, or exceeded specific goals and performance
11 objectives prescribed by the Secretary;

12 “(B) a minimally satisfactory level; and

13 “(C) an unsatisfactory level.”;

14 (III) by inserting after subpara-
15 graph (A) the following new subpara-
16 graph:

17 “(B) Under the performance appraisal system under
18 subparagraph (A)—

19 “(i) practicing clinicians who do not hold man-
20 agement positions shall be evaluated based on their
21 individual achievement or attainment of clinical
22 standards and health outcomes for veterans, to the
23 extent that such outcomes are within the control of
24 such clinicians; and

1 “(ii) physicians and dentists occupying manage-
2 ment or executive leadership positions shall be evalu-
3 ated on organizational performance, aggregate appli-
4 cable patient care outcomes, and the Department’s
5 overall effectiveness in providing quality health care
6 services.

7 “(C) Under such performance appraisal system, each
8 physician and dentist employed by the Department shall
9 receive an annual review by the Under Secretary of
10 Health. For each year, the Under Secretary shall submit
11 to the Secretary certification that such reviews are con-
12 ducted.”;

13 (ii) by striking paragraph (3) and re-
14 designating paragraph (2) as paragraph
15 (3);

16 (iii) by inserting after paragraph (1)
17 the following new paragraph (2):

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

20 “(A) on or before the beginning of each rating
21 period, performance requirements for each physician
22 or dentist shall be established in consultation with,
23 and communicated to, each physician or dentist;

24 “(B) written appraisals for practicing clinicians
25 who do not hold management positions shall be

1 based on individual achievement or attainment of
2 clinical standards and health outcomes for veterans,
3 to the extent that such outcomes are within the con-
4 trol of such clinicians;

5 “(C) performance for physicians and dentists
6 occupying management or executive leadership posi-
7 tions shall be based on the individual and organiza-
8 tional performance requirements established for the
9 rating period involved; and

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

16 (iv) in paragraph (3), as redesignated
17 by subparagraph (B)—

18 (I) by striking “paid to a physi-
19 cian or dentist who” and inserting
20 “paid when a physician or dentist”;
21 and

22 (II) by striking “on the basis”
23 and all that follows inserting “who re-
24 ceives a level of performance of fully
25 successful under the performance ap-

1 praisal system established under para-
2 graph (1) and whose performance ex-
3 ceeds the specific goals and perform-
4 ance objectives established under such
5 system.”;

6 (v) in paragraph (4), by striking
7 “paragraph (2)” and inserting “this sub-
8 section”;

9 (vi) in paragraph (5)—

10 (I) by redesignating subpara-
11 graphs (A) and (B) as clauses (i) and
12 (ii), respectively;

13 (II) by striking “The amount”
14 and inserting “(A) Except as provided
15 in subparagraph (B), the amount”;
16 and

17 (III) by adding at the end the
18 following new subparagraph (B):

19 “(B) No bonus or award may be given to a phy-
20 sician or dentist who receives a rating of less than
21 fully successful.”; and

22 (vii) by striking paragraph (6); and

23 (C) by adding at the end the following new
24 subsection:

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

4 (2) EFFECTIVE DATES.—The amendments
5 made by this subsection shall take effect as follows:

6 (A) The amendments made by subpara-
7 graph (A) shall take effect on the date of the
8 enactment of this Act.

9 (B) The amendments made by subpara-
10 graph (B) shall take effect on the date of the
11 enactment of this Act and apply with respect to
12 work performed after that date.

13 (C) The amendment made by subsection
14 (C) shall take effect on the date of the enact-
15 ment of this Act and apply with respect to pay
16 for work performed after that date.

17 (c) REPORTS.—Not later than one year after the date
18 of the enactment of this Act, the Secretary shall submit
19 to the Committees on Veterans’ Affairs of the Senate and
20 House of Representatives a report on each of the following
21 aspects of the performance management program of the
22 Department of Veterans Affairs for senior executives:

23 (1) Succession planning and long-term career
24 development plans for senior executives and efforts

1 undertaken by the Department to improve cross-De-
2 partment opportunities for senior executives.

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

6 (3) The adequacy of the collection of data by
7 the Department of Veterans Affairs, as of the date
8 of the enactment of this Act, on recruitment and re-
9 tention of front-line clinicians, including data relat-
10 ing to turnover, vacancies, and exit interviews, and
11 patient alignment care team staffing.

12 (4) The panel composition, types of survey data
13 used, and disparities between new hires and senior
14 employees for market pay determination.

15 (5) The timeliness and opportunity for em-
16 ployee input relating to the definition and issuing of
17 annual performance measures, opportunities for em-
18 ployee input relating to objective setting for such
19 measures, and past history of meeting the require-
20 ment to review and adjust such measures every 24
21 months.

1 **SEC. 2. LIMITATION ON PERFORMANCE AWARDS IN THE**
2 **SENIOR EXECUTIVE SERVICE.**

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

