

117TH CONGRESS
1ST SESSION

H. R. 3401

To amend title 38, United States Code, to provide for the non-applicability of non-Department of Veterans Affairs covenants not to compete to the appointment of certain Veterans Health Administration personnel, to permit the Veterans Health Administration to make contingent appointments, and to require certain Veterans Health Administration physicians to complete residency training.

IN THE HOUSE OF REPRESENTATIVES

MAY 20, 2021

Mrs. HARTZLER (for herself, Mr. ZELDIN, Mr. DIAZ-BALART, Mr. GALLAGHER, and Mr. ROUZER) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to provide for the non-applicability of non-Department of Veterans Affairs covenants not to compete to the appointment of certain Veterans Health Administration personnel, to permit the Veterans Health Administration to make contingent appointments, and to require certain Veterans Health Administration physicians to complete residency training.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “VA Hiring Enhance-
3 ment Act”.

4 **SEC. 2. NON-APPLICABILITY OF NON-DEPARTMENT OF VET-**
5 **ERANS AFFAIRS COVENANTS NOT TO COM-**
6 **PETE TO APPOINTMENT OF VETERANS**
7 **HEALTH ADMINISTRATION PERSONNEL.**

8 (a) IN GENERAL.—Subchapter I of chapter 74 of title
9 38, United States Code, is amended by adding at the end
10 the following new section:

11 **“§ 7414. Effect of non-Department covenants not to**
12 **compete**

13 “(a) NON-APPLICABILITY.—Except as provided in
14 subsection (b), in the case of an individual who is an appli-
15 cant for appointment to a position in the Veterans Health
16 Administration described in section 7401 of this title, any
17 covenant not to compete into which the individual has en-
18 tered with a non-Department facility or party shall have
19 no force or effect with respect to the appointment of the
20 individual to such a position.

21 “(b) SERVICE OBLIGATION.—(1) Any individual who
22 is appointed to such a position in the Veterans Health Ad-
23 ministration shall, as a condition of such appointment,
24 agree to provide clinical services at a Department medical
25 facility for the duration of the period described in para-
26 graph (2).

1 “(2) The period described in this paragraph is the
2 period that begins on the date on which an individual is
3 appointed to such a position and ends on the latter of the
4 following dates:

5 “(A) The date that is one year after such date
6 of appointment.

7 “(B) The date of the termination of any cov-
8 enant not to compete entered into between the indi-
9 vidual and a non-Department facility or party.

10 “(3) The Secretary may waive the requirement under
11 paragraph (1) with respect to an individual at the discre-
12 tion of the Secretary.

13 “(c) TERMINATION OF DEPARTMENT EMPLOY-
14 MENT.—In the case of an individual who is appointed to
15 such a position in the Veterans Health Administration
16 who has entered into a covenant not to compete that is
17 rendered non-applicable pursuant to subsection (a), if the
18 individual’s employment at the Veterans Health Adminis-
19 tration is terminated for any reason before the specified
20 termination date of such covenant, subsection (a) shall not
21 apply with respect to such covenant after the date of the
22 termination of the individual’s employment at the Vet-
23 erans Health Administration.

24 “(d) COVENANT NOT TO COMPETE.—In this section,
25 the term ‘covenant not to compete’ means an agreement—

1 “(1) between an employee and employer or a
 2 contractor and principal that restricts such employee
 3 or contractor from performing—

4 “(A) any work for another employer for a
 5 specified period of time;

6 “(B) any work in a specified geographical
 7 area; or

8 “(C) work for another employer per-
 9 forming work that is similar to the work such
 10 employee or contractor performed for the em-
 11 ployer or principal, included as a party to the
 12 agreement; and

13 “(2) that is entered into after the date of enact-
 14 ment of this Act.”.

15 (b) CLERICAL AMENDMENT.—The table of sections
 16 at the beginning of such chapter is amended by inserting
 17 after the item relating to section 7413 the following new
 18 item:

“7414. Effect of non-Department covenants not to compete.”.

19 **SEC. 3. RECRUITMENT OF PHYSICIANS ON A CONTINGENT**
 20 **BASIS PRIOR TO COMPLETION OF TRAINING**
 21 **REQUIREMENTS.**

22 Section 7402 of title 38, United States Code, is
 23 amended—

24 (1) in subsection (b)(1)—

1 (A) in the matter preceding subparagraph
2 (A) by inserting “or to be offered an appoint-
3 ment to such position on a contingent basis
4 under subsection (h)” after “position”; and

5 (B) by striking subparagraph (B) and in-
6 serting the following:

7 “(B)(i) have completed a residency leading to
8 board eligibility in a specialty, satisfactory to the
9 Secretary; or

10 “(ii) with respect to an offer for an appoint-
11 ment on a contingent basis under subsection (h),
12 complete such a residency by not later than two
13 years after the date of such offer; and”;

14 (2) by adding at the end the following new sub-
15 section:

16 “(h)(1) The Secretary may appoint an individual
17 under subsection (b)(1) on a contingent basis in accord-
18 ance with this subsection if the Secretary reasonably an-
19 ticipated that the individual will have completed the re-
20 quirements for appointment under such subsection (b)(1)
21 by not later than two years after the date on which the
22 individual is so appointed.

23 “(2) An individual who is appointed to a position on
24 a contingent basis under paragraph (1) shall be appointed
25 to such position on a permanent basis if, by not later than

1 two years after the date of the contingent appointment,
2 the individual completes all the requirements for appoint-
3 ment under subsection (b)(1).

4 “(3) An individual who is appointed on a contingent
5 basis under paragraph (1) who fails to complete the re-
6 quirements for appointment under subsection (b)(1) by
7 not later than two years after the date on which the indi-
8 vidual is so appointed may not be appointed to such posi-
9 tion on a permanent basis.”.

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