

**AMENDMENT TO THE RULES COMMITTEE PRINT
FOR H.R. 4435
OFFERED BY MR. WALZ OF MINNESOTA**

Page 108, after line 17, insert the following:

1 **SEC. 528. REVIEW BY PHYSICAL DISABILITY BOARD OF RE-**
2 **VIEW OF MILITARY SEPARATION ON BASIS OF**
3 **A MENTAL CONDITION NOT AMOUNTING TO**
4 **DISABILITY.**

5 (a) MEMBERS ENTITLED TO REVIEW BY PHYSICAL
6 DISABILITY BOARD OF REVIEW.—Section 1554a of title
7 10, United States Code, as amended by section 521, is
8 amended—

9 (1) in subsection (a)(1), by striking “disability
10 determinations of covered individuals by Physical
11 Evaluation Boards” and inserting “disability and
12 separation determinations regarding certain mem-
13 bers and former members of the armed forces de-
14 scribed in subsection (b)”; and

15 (2) by striking subsection (b) and inserting the
16 following new subsection:

17 “(b) COVERED INDIVIDUALS.—For purposes of this
18 section, covered individuals are members and former mem-
19 bers of the armed forces who—

1 “(1) during the period beginning on September
2 11, 2001, and ending on December 31, 2014, are
3 separated from the armed forces due to unfitness for
4 duty because of a medical condition with a disability
5 rating of 20 percent disabled or less and are found
6 to be not eligible for retirement; or

7 “(2) before December 31, 2014, are separated
8 from the armed forces due to unfitness for duty be-
9 cause of a mental condition not amounting to dis-
10 ability, including separation on the basis of a per-
11 sonality disorder or adjustment disorder.”.

12 (b) NATURE AND SCOPE OF REVIEW.—Such section
13 is further amended—

14 (1) by redesignating subsections (f), (g), and
15 (h), as designated by section 521(d), as subsections
16 (g), (h), and (i), respectively;

17 (2) by redesignating subsections (d) and (e) as
18 subsection (e) and (f), respectively; and

19 (3) by inserting after subsection (c) the fol-
20 lowing new subsection (d):

21 “(d) REVIEW OF SEPARATIONS DUE TO UNFITNESS
22 FOR DUTY BECAUSE OF A MENTAL CONDITION NOT
23 AMOUNTING TO DISABILITY.—(1) Upon the request of a
24 covered individual described in paragraph (2) of sub-
25 section (b), or a surviving spouse, next of kin, or legal

1 representative of a covered individual described in such
2 paragraph, the Physical Disability Board of Review shall
3 review the findings and decisions of the Physical Evalua-
4 tion Board with respect to such covered individual. In ad-
5 dition, the Physical Disability Board of Review may re-
6 view, upon its own motion, the findings and decisions of
7 the Physical Evaluation Board with respect to a covered
8 individual described in such paragraph.

9 “(2) Whenever a review is conducted under para-
10 graph (1), the members of the Physical Disability Board
11 of Review must include at least one licensed psychologist
12 and one licensed psychiatrist who has not had any fidu-
13 ciary responsibility to the Department of Defense since
14 December 31, 2001.

15 “(3) In conducting the review under paragraph (1),
16 the Physical Disability Board of Review shall consider—

17 “(A) the findings of the psychologist or psychia-
18 trist of the Department of Defense who diagnosed
19 the mental condition;

20 “(B) the findings and decisions of the separa-
21 tion authority with respect to the covered individual;
22 and

23 “(C) whether the separation authority correctly
24 followed the process for separation as set forth in

1 law, including Department of Defense regulations,
2 directives, and policies.

3 “(4) The review by the Physical Disability Board of
4 Review under paragraph (1) shall be based on the records
5 of the Department of Defense and the Department of Vet-
6 erans Affairs and such other evidence as may be presented
7 to the Physical Disability Board of Review. The board
8 shall consider any and all evidence to be considered, in-
9 cluding private mental health records submitted by the
10 covered individual in support of the claim.

11 “(5) If the Physical Disability Board of Review pro-
12 poses, upon its own motion, to conduct a review under
13 paragraph (1) with respect to a covered individual, the
14 board shall notify the covered individual, or a surviving
15 spouse, next of kin, or legal representative of the covered
16 individual, of the proposed review and obtain the consent
17 of the covered individual or a surviving spouse, next of
18 kin, or legal representative of the covered individual before
19 proceeding with the review.

20 “(6) After the Physical Disability Board of Review
21 has completed the review under this subsection with re-
22 spect to the separation of a covered individual, the board
23 must provide the claimant with a statement of reasons
24 concerning the board’s decision. The covered individual

1 has the right to raise with the board a motion for reconsid-
2 eration if—

3 “(A) new evidence can be presented that would
4 address the issues raised in the board’s statement of
5 reasons; or

6 “(B) the board has made a plain error in mak-
7 ing its recommendation.”.

8 (c) CORRECTION OF MILITARY RECORDS.—Sub-
9 section (f) of such section, as redesignated by subsection
10 (b)(2), is amended to read as follows:

11 “(f) CORRECTION OF MILITARY RECORDS.—(1) The
12 Secretary of the military department concerned shall cor-
13 rect the military records of a covered individual in accord-
14 ance with the recommendation made by the Physical Dis-
15 ability Board of Review under subsection (e) unless the
16 Secretary determines that the board has made a clearly
17 erroneous recommendation. Any such correction shall be
18 made effective as of the date of the separation of the cov-
19 ered individual.

20 “(2) In the case of a covered individual previously
21 separated with a lump-sum or other payment of back pay
22 and allowances at separation, the amount of pay or other
23 monetary benefits to which such individual would be enti-
24 tled based on the individual’s military record as corrected
25 shall be adjusted to take into account receipt of such

1 lump-sum or other payment in such manner as the Sec-
2 retary of the military department concerned considers ap-
3 propriate.

4 “(3) If the Physical Disability Board of Review
5 makes a recommendation not to correct the military
6 records of a covered individual, the action taken on the
7 report of the Physical Evaluation Board to which such rec-
8 ommendation relates shall be treated as final as of the
9 date of such action.”.

10 (d) CONFORMING AMENDMENTS.—Such section is
11 further amended—

12 (1) in subsection (c)—

13 (A) by inserting after “REVIEW” the fol-
14 lowing: “OF SEPARATIONS DUE TO UNFITNESS
15 FOR DUTY BECAUSE OF MEDICAL CONDITION
16 WITH A LOW DISABILITY RATING”; and

17 (B) in paragraph (1)—

18 (i) by inserting “described in para-
19 graph (1) of subsection (b)” after “a cov-
20 ered individual” the first place it appears;

21 (ii) by inserting “described in such
22 paragraph” after “a covered individual”
23 the second place it appears; and

24 (iii) by striking the second sentence
25 and inserting the following new sentence:

1 “In addition, the Physical Disability Board
2 of Review may review, upon its own mo-
3 tion, the findings and decisions of the
4 Physical Evaluation Board with respect to
5 a covered individual described in such
6 paragraph.”; and

7 (2) in subsection (e), as redesignated by sub-
8 section (b)(2), by striking “under subsection (c)”
9 and inserting “conducted under subsection (c) or
10 (d)”.

11 (e) NOTIFICATION OF NEW AVAILABILITY OF RE-
12 VIEW.—

13 (1) NOTIFICATION REQUIREMENT.—In the case
14 of individuals described in subsection (b)(2) of sec-
15 tion 1554a of title 10, United States Code, as
16 amended by subsection (a), who have been separated
17 from the Armed Forces during the period beginning
18 on September 11, 2001, and ending on the date of
19 the enactment of this Act or who are separated after
20 that date, the Secretary of Defense shall ensure, to
21 the greatest extent practicable, that such individuals
22 receive oral and written notification of their right to
23 a review of their separation from the Armed Forces
24 under such section 1554a.

1 (2) COMPLIANCE.—The Secretary of the mili-
2 tary department with jurisdiction over the Armed
3 Force in which the individual served immediately be-
4 fore separation shall be responsible for providing to
5 the individual the notification required by paragraph
6 (1). The Secretary of Defense shall monitor compli-
7 ance with this notification requirement and promptly
8 notify Congress of any failures to comply.

9 (3) LEGAL COUNSEL.—The notification re-
10 quired by paragraph (1) shall—

11 (A) inform the individual of the right to
12 obtain legal or non-legal counsel to represent
13 the individual before the Physical Disability
14 Board of Review; and

15 (B) include a list of organizations that
16 may provide such counsel at no cost to the indi-
17 vidual.

18 (f) CLERICAL AMENDMENTS.—

19 (1) SECTION HEADING.—The heading of such
20 section is amended to read as follows:

1 **“§ 1554a. Physical Disability Board of Review: review**
2 **of separations with disability rating of 20**
3 **percent or less and separations on basis**
4 **of mental condition not amounting to dis-**
5 **ability”.**

6 (2) TABLE OF SECTIONS.—The table of sections
7 at the beginning of chapter 79 of such title is
8 amended by striking the item relating to section
9 1554a and inserting the following new item:

“1554a. Physical Disability Board of Review: review of separations with disability rating of 20 percent or less and separations on basis of mental condition not amounting to disability.”.

10 (g) OFFSET.—

11 (1) PROHIBITION ON DISABILITY COMPENSA-
12 TION FOR HEMORRHOIDS.—During the 10-year pe-
13 riod beginning on the date of the enactment of this
14 Act, in determining claims for compensation (as de-
15 fined in section 101 of title 38, United States Code),
16 the Secretary of Veterans Affairs may not—

17 (A) consider hemorrhoids to have been in-
18 curred or aggravated by service in the Armed
19 Forces;

20 (B) provide to a veteran a disability rating
21 for hemorrhoids; or

22 (C) pay compensation for hemorrhoids.

23 (2) APPLICATION.—The prohibition in para-
24 graph (1) shall apply with respect to claims for com-

1 pensation filed on or after the date of the enactment
2 of this Act.

