

115TH CONGRESS
1ST SESSION

S. 1611

To amend title 38, United States Code, to allow the Secretary of Veterans Affairs to enter into certain agreements with non-Department of Veterans Affairs health care providers if the Secretary is not feasibly able to provide health care in facilities of the Department or through contracts or sharing agreements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 20, 2017

Mr. HOEVEN (for himself and Mr. ROUNDS) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to allow the Secretary of Veterans Affairs to enter into certain agreements with non-Department of Veterans Affairs health care providers if the Secretary is not feasibly able to provide health care in facilities of the Department or through contracts or sharing agreements, 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 “Veterans Access to
5 Long Term Care and Health Services Act”.

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is—

3 (1) to maintain the access of veterans to high-
4 quality hospital care, medical services, and extended
5 care if that care is not available directly from the
6 Department of Veterans Affairs;

7 (2) to continue to allow the use by the Depart-
8 ment of agreements covered by the Federal Acquisi-
9 tion Regulation and agreements that are not covered
10 by such regulation, similar to those agreements used
11 under the original Medicare fee-for-service program
12 (Medicare Parts A and B), if it is not practicable to
13 contract for the care needed by veterans through an
14 agreement covered by such regulation;

15 (3) to address the fact that individual health
16 care providers, especially smaller providers in rural
17 areas, may not be willing to accept veterans as pa-
18 tients when doing so would require the significant
19 time and administrative requirements in connection
20 with entering into agreements with the Department
21 that are covered by such regulation;

22 (4) to address the deficiencies in current law re-
23 garding agreements entered into by the Department
24 that have raised legal issues; and

25 (5) to ensure that agreements that are not cov-
26 ered by such regulation include robust terms and

1 conditions that address the quality of health care for
2 veterans, oversight of the provision of such health
3 care, and protections for taxpayers.

4 **SEC. 3. AUTHORIZATION OF AGREEMENTS BETWEEN THE**
5 **DEPARTMENT OF VETERANS AFFAIRS AND**
6 **NON-DEPARTMENT HEALTH CARE PRO-**
7 **VIDERS.**

8 (a) IN GENERAL.—Subchapter I of chapter 17 of title
9 38, United States Code, is amended by adding after sec-
10 tion 1703 the following new section:

11 **“§ 1703A. Veterans Care Agreements with certain**
12 **health care providers**

13 “(a) AGREEMENTS TO FURNISH CARE.—(1) If the
14 Secretary is not feasibly able to furnish hospital care, med-
15 ical services, or extended care under this chapter at facili-
16 ties of the Department or under contracts or sharing
17 agreements entered into under authorities other than this
18 section, the Secretary may furnish such care and services
19 by entering into agreements under this section with eligi-
20 ble providers that are certified under subsection (c). An
21 agreement entered into under this section may be referred
22 to as a ‘Veterans Care Agreement’.

23 “(2) The Secretary is not feasibly able to furnish care
24 or services as described in paragraph (1) if the Secretary
25 determines that the medical condition of the veteran, the

1 travel involved, the nature of the care or services required,
2 or a combination of those factors make the use of facilities
3 of the Department, contracts, or sharing agreements im-
4 practicable or inadvisable.

5 “(3) Eligibility of a veteran under this section for the
6 care or services described in paragraph (1) shall be deter-
7 mined as if such care or services were furnished in a facil-
8 ity of the Department and provisions of this title applica-
9 ble to veterans receiving such care or services in a facility
10 of the Department shall apply to veterans receiving such
11 care or services under this section.

12 “(b) ELIGIBLE PROVIDERS.—For purposes of this
13 section, an eligible provider is one of the following:

14 “(1) A provider of services that has enrolled
15 and entered into a provider agreement under section
16 1866(a) of the Social Security Act (42 U.S.C.
17 1395cc(a)).

18 “(2) A physician or supplier that has enrolled
19 and entered into a participation agreement under
20 section 1842(h) of such Act (42 U.S.C. 1395u(h)).

21 “(3) A provider of items and services receiving
22 payment under a State plan under title XIX of such
23 Act (42 U.S.C. 1396 et seq.) or a waiver of such a
24 plan.

25 “(4) A provider that is—

1 “(A) an Aging and Disability Resource
2 Center, an area agency on aging, or a State
3 agency (as defined in section 102 of the Older
4 Americans Act of 1965 (42 U.S.C. 3002)); or

5 “(B) a center for independent living (as
6 defined in section 702 of the Rehabilitation Act
7 of 1973 (29 U.S.C. 796a)).

8 “(5) Such other health care providers as the
9 Secretary considers appropriate for purposes of this
10 section.

11 “(c) CERTIFICATION OF ELIGIBLE PROVIDERS.—(1)
12 The Secretary shall establish a process for the certification
13 of eligible providers under this section that shall, at a min-
14 imum, set forth the following:

15 “(A) Procedures for the submittal of applica-
16 tions for certification and deadlines for actions taken
17 by the Secretary with respect to such applications.

18 “(B) Standards and procedures for approval
19 and denial of certification, duration of certification,
20 revocation of certification, and recertification.

21 “(C) Procedures for assessing eligible providers
22 based on the risk of fraud, waste, and abuse of such
23 providers similar to the level of screening under sec-
24 tion 1866(j)(2)(B) of the Social Security Act (42
25 U.S.C. 1395cc(j)(2)(B)) and the standards set forth

1 under section 9.104 of title 48, Code of Federal
2 Regulations, or any successor regulation.

3 “(2) The Secretary shall deny or revoke certification
4 to an eligible provider under this subsection if the Sec-
5 retary determines that the eligible provider is currently—

6 “(A) excluded from participation in a Federal
7 health care program (as defined in section 1128B(f)
8 of the Social Security Act (42 U.S.C. 1320a–7b(f)))
9 under section 1128 or 1128A of the Social Security
10 Act (42 U.S.C. 1320a–7 and 1320a–7a); or

11 “(B) identified as an excluded source on the list
12 maintained in the System for Award Management,
13 or any successor system.

14 “(d) TERMS OF AGREEMENTS.—Each agreement en-
15 tered into with an eligible provider under this section shall
16 include provisions requiring the eligible provider to do the
17 following:

18 “(1) To accept payment for care and services
19 furnished under this section at rates established by
20 the Secretary for purposes of this section, which
21 shall be, to the extent practicable, the rates paid by
22 the United States for such care and services to pro-
23 viders of services and suppliers under the Medicare
24 program under title XVIII of the Social Security Act
25 (42 U.S.C. 1395 et seq.).

1 “(2) To accept payment under paragraph (1) as
2 payment in full for care and services furnished
3 under this section and to not seek any payment for
4 such care and services from the recipient of such
5 care and services.

6 “(3) To furnish under this section only the care
7 and services authorized by the Department under
8 this section unless the eligible provider receives prior
9 written consent from the Department to furnish care
10 or services outside the scope of such authorization.

11 “(4) To bill the Department for care and serv-
12 ices furnished under this section in accordance with
13 a methodology established by the Secretary for pur-
14 poses of this section.

15 “(5) Not to seek to recover or collect from a
16 health-plan contract or third party, as those terms
17 are defined in section 1729 of this title, for any care
18 or services for which payment is made by the De-
19 partment under this section.

20 “(6) To provide medical records for veterans
21 furnished care or services under this section to the
22 Department in a timeframe and format specified by
23 the Secretary for purposes of this section.

1 “(7) To meet such other terms and conditions,
2 including quality of care assurance standards, as the
3 Secretary may specify for purposes of this section.

4 “(e) TERMINATION OF AGREEMENTS.—(1) An eligi-
5 ble provider may terminate an agreement with the Sec-
6 retary under this section at such time and upon such no-
7 tice to the Secretary as the Secretary may specify for pur-
8 poses of this section.

9 “(2) The Secretary may terminate an agreement with
10 an eligible provider under this section at such time and
11 upon such notice to the eligible provider as the Secretary
12 may specify for purposes of this section, if the Secretary—

13 “(A) determines that the eligible provider failed
14 to comply substantially with the provisions of the
15 agreement or with the provisions of this section and
16 the regulations prescribed thereunder;

17 “(B) determines that the eligible provider is—

18 “(i) excluded from participation in a Fed-
19 eral health care program (as defined in section
20 1128B(f) of the Social Security Act (42 U.S.C.
21 1320a–7b(f))) under section 1128 or 1128A of
22 the Social Security Act (42 U.S.C. 1320a–7
23 and 1320a–7a); or

1 “(ii) identified as an excluded source on
2 the list maintained in the System for Award
3 Management, or any successor system;

4 “(C) ascertains that the eligible provider has
5 been convicted of a felony or other serious offense
6 under Federal or State law and determines that the
7 continued participation of the eligible provider would
8 be detrimental to the best interests of veterans or
9 the Department; or

10 “(D) determines that it is reasonable to termi-
11 nate the agreement based on the health care needs
12 of a veteran or veterans.

13 “(f) PERIODIC REVIEW OF CERTAIN AGREE-
14 MENTS.—(1) Not less frequently than once every two
15 years, the Secretary shall review each Veterans Care
16 Agreement of material size entered into during the two-
17 year period preceding the review to determine whether it
18 is feasible and advisable to furnish the hospital care, med-
19 ical services, or extended care furnished under such agree-
20 ment at facilities of the Department or through contracts
21 or sharing agreements entered into under authorities other
22 than this section.

23 “(2)(A) Subject to subparagraph (B), a Veterans
24 Care Agreement is of material size as determined by the
25 Secretary for purposes of this section.

1 “(B) A Veterans Care Agreement entered into after
2 September 30, 2018, for the purchase of extended care
3 services is of material size if the purchase of such services
4 under the agreement exceeds \$1,000,000 annually. The
5 Secretary may adjust such amount to account for changes
6 in the cost of health care based upon recognized health
7 care market surveys and other available data and shall
8 publish any such adjustments in the Federal Register.

9 “(g) TREATMENT OF CERTAIN LAWS.—(1) An agree-
10 ment under this section may be entered into without re-
11 gard to any law that would require the Secretary to use
12 competitive procedures in selecting the party with which
13 to enter into the agreement.

14 “(2)(A) Except as provided in subparagraph (B) and
15 unless otherwise provided in this section or regulations
16 prescribed pursuant to this section, an eligible provider
17 that enters into an agreement under this section is not
18 subject to, in the carrying out of the agreement, any law
19 that an eligible provider described in subsection (b)(1),
20 (b)(2), or (b)(3) is not subject to under the original Medi-
21 care fee-for-service program under parts A and B of title
22 XVIII of the Social Security Act (42 U.S.C. 1395 et seq.)
23 or the Medicaid program under title XIX of such Act (42
24 U.S.C. 1396 et seq.).

1 “(B) The exclusion under subparagraph (A) does not
2 apply to laws regarding integrity, ethics, fraud, or that
3 subject a person to civil or criminal penalties.

4 “(3) Title VII of the Civil Rights Act of 1964 (42
5 U.S.C. 2000e et seq.) shall apply with respect to an eligi-
6 ble provider that enters into an agreement under this sec-
7 tion to the same extent as such title applies with respect
8 to the eligible provider in providing care or services
9 through an agreement or arrangement other than under
10 this section.

11 “(h) MONITORING OF QUALITY OF CARE.—The Sec-
12 retary shall establish a system or systems, consistent with
13 survey and certification procedures used by the Centers
14 for Medicare & Medicaid Services and State survey agen-
15 cies to the extent practicable—

16 “(1) to monitor the quality of care and services
17 furnished to veterans under this section; and

18 “(2) to assess the quality of care and services
19 furnished by an eligible provider for purposes of de-
20 termining whether to renew an agreement under this
21 section with the eligible provider.

22 “(i) DISPUTE RESOLUTION.—(1) The Secretary shall
23 establish administrative procedures for eligible providers
24 with which the Secretary has entered an agreement under

1 this section to present any dispute arising under or related
2 to the agreement.

3 “(2) Before using any dispute resolution mechanism
4 under chapter 71 of title 41 with respect to a dispute aris-
5 ing under an agreement under this section, an eligible pro-
6 vider must first exhaust the administrative procedures es-
7 tablished by the Secretary under paragraph (1).”.

8 (b) REGULATIONS.—The Secretary of Veterans Af-
9 fairs shall prescribe an interim final rule to carry out sec-
10 tion 1703A of such title, as added by subsection (a), not
11 later than one year after the date of the enactment of this
12 Act.

13 (c) CLERICAL AMENDMENT.—The table of sections
14 at the beginning of chapter 17 of such title is amended
15 by inserting after the item related to section 1703 the fol-
16 lowing new item:

“1703A. Veterans Care Agreements with certain health care providers.”.

17 **SEC. 4. MODIFICATION OF AUTHORITY TO ENTER INTO**
18 **AGREEMENTS TO PROVIDE NURSING HOME**
19 **CARE.**

20 (a) USE OF AGREEMENTS.—

21 (1) IN GENERAL.—Paragraph (1) of section
22 1745(a) of title 38, United States Code, is amended,
23 in the matter preceding subparagraph (A), by strik-
24 ing “a contract (or agreement under section

1 1720(e)(1) of this title)” and inserting “an agree-
2 ment”.

3 (2) PAYMENT.—Paragraph (2) of such section
4 is amended by striking “contract (or agreement)”
5 each place it appears and inserting “agreement”.

6 (b) EXCLUSION OF CERTAIN FEDERAL CON-
7 TRACTING PROVISIONS.—Such section is amended by add-
8 ing at the end the following new paragraph:

9 “(4)(A) An agreement under this section may be en-
10 tered into without regard to any law that would require
11 the Secretary to use competitive procedures in selecting
12 the party with which to enter into the agreement.

13 “(B)(i) Except as provided in clause (ii) and unless
14 otherwise provided in this section or regulations prescribed
15 pursuant to this section, a State home that enters into
16 an agreement under this section is not subject to, in the
17 carrying out of the agreement, any law that a provider
18 described in subparagraph (D) is not subject to under the
19 original Medicare fee-for-service program under parts A
20 and B of title XVIII of the Social Security Act (42 U.S.C.
21 1395 et seq.) or the Medicaid program under title XIX
22 of such Act (42 U.S.C. 1396 et seq.).

23 “(ii) The exclusion under clause (i) does not apply
24 to laws regarding integrity, ethics, fraud, or that subject
25 a person to civil or criminal penalties.

1 “(C) Title VII of the Civil Rights Act of 1964 (42
2 U.S.C. 2000e et seq.) shall apply with respect to any State
3 home that enters into an agreement under this section.

4 “(D) A provider described in this subparagraph is
5 one of the following:

6 “(i) A provider of services that has enrolled and
7 entered into a provider agreement under section
8 1866(a) of the Social Security Act (42 U.S.C.
9 1395cc(a)).

10 “(ii) A physician or supplier that has enrolled
11 and entered into a participation agreement under
12 section 1842(h) of such Act (42 U.S.C. 1395u(h)).

13 “(iii) A provider of items and services receiving
14 payment under a State plan under title XIX of such
15 Act (42 U.S.C. 1396 et seq.) or a waiver of such a
16 plan.”.

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to agreements entered into under
19 section 1745 of such title on and after the date that is
20 30 days after the date of the enactment of this Act.

○