

114TH CONGRESS  
1ST SESSION

# H. R. 1129

To amend title 38, United States Code, to establish within the Department of Veterans Affairs an Office of Whistleblower and Patient Protection.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 2015

Mrs. KIRKPATRICK 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 establish within the Department of Veterans Affairs an Office of Whistleblower and Patient Protection.

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’ Whistle-  
5       blower and Patient Protection Act of 2015”.

6       **SEC. 2. ESTABLISHMENT OF OFFICE OF WHISTLEBLOWER**  
7       **AND PATIENT PROTECTION.**

8       (a) IN GENERAL.—Chapter 3 of title 38, United  
9       States Code, is amended by inserting after section 319 the  
10      following new section:

1   **“§ 319A. Office of Whistleblower and Patient Protec-**  
2                                   **tion**

3           “(a) ESTABLISHMENT.—(1) There is in the Depart-  
4   ment an Office of Whistleblower and Patient Protection  
5   (in this section referred to as the ‘Office’). There is at  
6   the head of the Office a Director appointed by the Sec-  
7   retary solely on the basis of integrity and demonstrated  
8   ability in accounting, auditing, financial analysis, law,  
9   management analysis, public administration, or investiga-  
10   tions.

11          “(2) The Director shall be a career appointee in the  
12   Senior Executive Service.

13          “(3) The Director reports directly to the Secretary  
14   concerning matters within the responsibility of the Office.

15          “(b) COMPLAINTS.—(1) The Director shall establish  
16   a dedicated Internet website and toll-free telephone num-  
17   ber for an individual, regardless of whether the individual  
18   is an employee of the Department, to file a covered com-  
19   plaint directly to the Office.

20          “(2)(A) In addition to covered complaints filed di-  
21   rectly with the Office pursuant to paragraph (1), the Sec-  
22   retary shall refer to the Director any covered complaint  
23   that the Secretary receives directly, including pursuant to  
24   the Patient Advocacy Program of the Veterans Health Ad-  
25   ministration or other similar program, or that is trans-  
26   mitted to the Secretary pursuant to section 1213 of title

1 5. In accordance with subsection (c), the Director shall  
2 investigate each such complaint.

3 “(B) The Secretary may not refer a covered com-  
4 plaint that the Secretary receives as described in subpara-  
5 graph (A) to any element of the Department, including  
6 the Office of Medical Inspection, other than the Office.

7 “(C) The Secretary shall ensure that employees of the  
8 Department who are located at a medical facility are able  
9 to efficiently refer to the Director any covered complaints  
10 received at such medical facility.

11 “(3) The identity of any individual who files a covered  
12 complaint may not be disclosed by the Director without  
13 the consent of such individual unless the Director deter-  
14 mines that the disclosure of the identity of the individual  
15 is necessary because of an imminent danger to public  
16 health or safety or imminent violation of any criminal law.

17 “(c) INVESTIGATION AND DETERMINATION.—(1)  
18 The Director shall investigate each covered complaint that  
19 the Office receives directly pursuant to paragraph (1) of  
20 subsection (b) or that the Secretary refers to the Director  
21 as described in paragraph (2)(A) of such subsection to de-  
22 termine whether there is a substantial likelihood that the  
23 covered complaint discloses a violation of any law, rule,  
24 or regulation, or gross mismanagement, gross waste of  
25 funds, abuse of authority, or substantial and specific dan-

ger to public health and safety. The Director shall make such determination not later than 240 days after the date on which the Director receives the covered complaint. The Director is the only official of the Department of Veterans Affairs who may conduct an investigation that is required to be conducted by the Department pursuant to section 1213 of title 5.

“(2) If the Director makes a positive determination under paragraph (1) regarding a covered complaint, the Director shall—

“(A) notify the Secretary of such determination, including the basis for such determination and recommendations for actions to address such covered complaint; and

“(B) as appropriate, refer the covered complaint to the head of the appropriate department or agency of the Federal Government, including the Attorney General, Special Counsel, or the Inspector General of the Department of Veterans Affairs.

“(3)(A) If the Director does not make a positive determination under paragraph (1) regarding a covered complaint, the Director—

“(i) upon the consent of the individual who filed the complaint, may transmit the complaint to the Secretary; and

1           “(ii) if the Director does not transmit the com-  
2       plaint under clause (i), shall inform the individual  
3       of—

4           “(I) the reasons for such determination;  
5       and

6           “(II) other offices of the Federal Govern-  
7       ment available for receiving such complaints if  
8       the individual wishes to pursue the matter fur-  
9       ther.

10       “(B) Within a reasonable time after a covered com-  
11      plaint is transmitted under subparagraph (A)(i), the Sec-  
12      retary shall inform the Director in writing of what action  
13      has been or is being taken and when such action will be  
14      completed. The Director shall inform the individual who  
15      filed the complaint of the report of the Secretary.

16       “(d) STAFF AND RESOURCES.—(1) The Office shall  
17      employ a sufficient number of attorneys, investigators,  
18      and other personnel as are necessary to carry out the func-  
19      tions of the Office, including personnel with expertise in  
20      health care matters. Attorneys shall be compensated at a  
21      level commensurate with attorneys employed by the Office  
22      of the General Counsel.

23       “(2) The Secretary shall ensure that the Director is  
24      furnished sufficient resources in addition to personnel

1 under paragraph (1) to enable the Director to carry out  
2 the functions of the Office in a timely manner.

3 “(e) COORDINATION.—In carrying out the duties of  
4 the Office, the Director shall coordinate with the Inspector  
5 General of the Department and the Special Counsel to en-  
6 sure that the actions of the Director are not duplicative  
7 with the Inspector General or the Special Counsel.

8 “(f) REPORTS.—(1) During each 90-day period, the  
9 Director shall submit to the Secretary a report that in-  
10 cludes the following:

11 “(A) The findings and recommendations made  
12 by the Director to the Secretary during the previous  
13 90-day period.

14 “(B) With respect to such recommendations,  
15 whether the Secretary has made any actions based  
16 on such findings during such period.

17 “(C) During such period—

18 “(i) the number of covered complaints re-  
19 ceived by the Director;

20 “(ii) the number of investigations com-  
21 menced;

22 “(iii) the number of positive determina-  
23 tions made under paragraph (2) of subsection  
24 (c);

1 “(iv) the number of covered complaints for  
2 which a positive determination was not made  
3 pursuant to paragraph (3)(A) of such sub-  
4 section; and

5 “(v) the number of covered complaints  
6 transmitted to the Secretary under such para-  
7 graph.

8 “(2) During each 180-day period, the Secretary shall  
9 submit to the Committees on Veterans’ Affairs of the  
10 House of Representatives and the Senate a report that  
11 includes each report described in paragraph (1) submitted  
12 during the previous 180-day period and any legislative rec-  
13 ommendations of the Secretary to address problems or  
14 concerns regarding the Office.

15 “(g) COVERED COMPLAINT DEFINED.—In this sec-  
16 tion, the term ‘covered complaint’ means a complaint re-  
17 garding—

18 “(1) an alleged prohibited personnel practice  
19 committed by an officer or employee of the Depart-  
20 ment and described in section 2302(b)(8) or  
21 2302(b)(9)(A)(i), (B), (C), or (D) of title 5; or

22 “(2) the safety of a patient at a medical facility  
23 of the Department.”.

24 (b) CLERICAL AMENDMENT.—The table of sections  
25 at the beginning of such chapter is amended by inserting

- 1 after the item relating to section 319 the following new
- 2 item:

“319A. Office of Whistleblower and Patient Protection.”.

