

114TH CONGRESS
1ST SESSION

H. R. 3320

To amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to enter into contracts with administrative contractors for the processing of claims for hospital care and medical services furnished in non-Department of Veterans Affairs facilities.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2015

Mr. BOUSTANY introduced the following bill; which was referred to the
Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to enter into contracts with administrative contractors for the processing of claims for hospital care and medical services furnished in non-Department of Veterans Affairs facilities.

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 “Timely Payment for
5 Veterans’ Medical Care Act”.

1 **SEC. 2. AUTHORITY OF SECRETARY OF VETERANS AFFAIRS**
2 **TO ENTER INTO CONTRACTS WITH ADMINIS-**
3 **TRATIVE CONTRACTORS FOR THE PROC-**
4 **ESSING OF CLAIMS FOR HOSPITAL CARE AND**
5 **MEDICAL SERVICES FURNISHED IN NON-DE-**
6 **PARTMENT OF VETERANS AFFAIRS FACILI-**
7 **TIES.**

8 (a) IN GENERAL.—Chapter 17 of title 38, United
9 States Code, is amended by inserting after section 1725
10 the following new section:

11 **“§ 1725A. Authority to enter into contracts with ad-**
12 **ministrative contractors**

13 “(a) AUTHORITY.—(1) The Secretary may enter into
14 contracts with any eligible entity to serve as an adminis-
15 trative contractor with respect to the performance of any
16 or all of the functions described in paragraph (4) or parts
17 of those functions (or, to the extent provided in a contract,
18 to secure performance thereof by other entities).

19 “(2) An entity is eligible to enter into a contract with
20 respect to the performance of a particular function de-
21 scribed in paragraph (4) only if—

22 “(A) the entity has demonstrated capability to
23 carry out such function;

24 “(B) the entity complies with such conflict of
25 interest standards as are generally applicable to
26 Federal acquisition and procurement;

1 “(C) the entity has sufficient assets to finan-
2 cially support the performance of such function;

3 “(D) the entity has the ability to accept and
4 process electronic filings of medical records; and

5 “(E) the entity meets such other requirements
6 as the Secretary may impose.

7 “(3)(A) For purposes of this section, the term ‘ad-
8 ministrative contractor’ means an agency, organization, or
9 other person with a contract under this section.

10 “(B) With respect to the performance of a particular
11 function in relation to an individual enrolled in the patient
12 enrollment system under section 1705 of this title, the ‘ap-
13 propriate’ administrative contractor is the administrative
14 contractor that has a contract under this section with re-
15 spect to the performance of that function in relation to
16 that individual, or non-Department facility.

17 “(4) The functions referred to in this paragraph are
18 the following functions relating to the furnishing of med-
19 ical care and hospital services in non-Department facilities
20 under section 1725 or 1728 of this title:

21 “(A) Determining the amount of the payments
22 required pursuant to this title to be made to a non-
23 Department facility.

1 “(B) Making payments described in subpara-
2 graph (A) (including receipt, disbursement, and ac-
3 counting for funds in making such payments).

4 “(C) Providing education and outreach to indi-
5 viduals enrolled in the patient enrollment system
6 under section 1705 of this title and providing assist-
7 ance to those individuals with specific issues, con-
8 cerns, or problems.

9 “(D) Providing consultative services to institu-
10 tions, agencies, and other persons to enable them to
11 establish and maintain fiscal records necessary for
12 purposes of this title.

13 “(E) Communicating to non-Department facili-
14 ties any information or instructions furnished to the
15 administrative contractor by the Secretary, and fa-
16 cilitating communication between such facilities and
17 the Secretary.

18 “(F) Performing the functions relating to non-
19 Department facility education, training, and tech-
20 nical assistance.

21 “(G) Performing such other functions as are
22 necessary to carry out the purposes of this title.

23 “(5) Except to the extent inconsistent with a specific
24 requirement of this section, the Federal Acquisition Regu-
25 lation applies to contracts under this section.

1 “(b) CONTRACTING REQUIREMENTS.—(1)(A) Except
2 as provided in laws with general applicability to Federal
3 acquisition and procurement or in subparagraph (B), the
4 Secretary shall use competitive procedures when entering
5 into contracts with administrative contractors under this
6 section, taking into account performance quality as well
7 as price and other factors.

8 “(B) The Secretary may renew a contract with an
9 administrative contractor under this section from term to
10 term without regard to section 5 of title 41, United States
11 Code, or any other provision of law requiring competition,
12 if the administrative contractor has met or exceeded the
13 performance requirements applicable with respect to the
14 contract and contractor, except that the Secretary shall
15 provide for the application of competitive procedures
16 under such a contract not less frequently than once every
17 5 years.

18 “(C) The Secretary may transfer functions among
19 administrative contractors consistent with the provisions
20 of this paragraph. The Secretary shall ensure that per-
21 formance quality is considered in such transfers. The Sec-
22 retary shall provide public notice (whether in the Federal
23 Register or otherwise) of any such transfer (including a
24 description of the functions so transferred, a description

1 of the non-Department facilities affected by such transfer,
2 and contact information for the contractors involved).

3 “(D) The Secretary shall provide incentives for ad-
4 ministrative contractors to provide quality service and to
5 promote efficiency.

6 “(2) No contract under this section shall be entered
7 into with any administrative contractor unless the Sec-
8 retary finds that such administrative contractor will per-
9 form its obligations under the contract efficiently and ef-
10 fectively and will meet such requirements as to financial
11 responsibility, legal authority, quality of services provided,
12 and other matters as the Secretary finds pertinent.

13 “(3)(A)(i) The Secretary shall develop contract per-
14 formance requirements to carry out the specific require-
15 ments applicable under this title to a function described
16 in subsection (a)(4) and shall develop standards for meas-
17 uring the extent to which a contractor has met such re-
18 quirements. Such requirements shall include specific per-
19 formance duties expected of a medical director of an ad-
20 ministrative contractor, including requirements relating to
21 professional relations and the availability of such director
22 to conduct medical determination activities within the ju-
23 risdiction of such a contractor.

24 “(ii) In developing such performance requirements
25 and standards for measurement, the Secretary shall con-

1 sult with non-Department facilities, veterans service orga-
2 nizations, and organizations and agencies performing
3 functions necessary to carry out the purposes of this sec-
4 tion with respect to such performance requirements.

5 “(iii) The Secretary shall make such performance re-
6 quirements and measurement standards available to the
7 public.

8 “(B) The Secretary shall include, as one of the stand-
9 ards developed under subparagraph (A), non-Department
10 facility and veteran satisfaction levels.

11 “(C) All contractor performance requirements shall
12 be set forth in the contract between the Secretary and the
13 appropriate administrative contractor. Such performance
14 requirements—

15 “(i) shall reflect the performance requirements
16 published under subparagraph (A), but may include
17 additional performance requirements;

18 “(ii) shall be used for evaluating contractor per-
19 formance under the contract; and

20 “(iii) shall be consistent with the written state-
21 ment of work provided under the contract.

22 “(4) The Secretary shall not enter into a contract
23 with an administrative contractor under this section unless
24 the contractor agrees—

1 “(A) to furnish to the Secretary such timely in-
2 formation and reports as the Secretary may find
3 necessary in performing the functions of the Sec-
4 retary under this title; and

5 “(B) to maintain such records and afford such
6 access thereto as the Secretary finds necessary to
7 assure the correctness and verification of the infor-
8 mation and reports under subparagraph (A) and
9 otherwise to carry out the purposes of this title.

10 “(5) A contract with an administrative contractor
11 under this section may require the administrative con-
12 tractor, and any of its officers or employees certifying pay-
13 ments or disbursing funds pursuant to the contract, or
14 otherwise participating in carrying out the contract, to
15 give surety bond to the United States in such amount as
16 the Secretary may deem appropriate.

17 “(c) TERMS AND CONDITIONS.—A contract with any
18 administrative contractor under this section may contain
19 such terms and conditions as the Secretary finds necessary
20 or appropriate and may provide for advances of funds to
21 the administrative contractor for the making of payments
22 by it under subsection (a)(4)(B).

23 “(d) LIMITATION ON LIABILITY OF ADMINISTRATIVE
24 CONTRACTORS AND CERTAIN OFFICERS.—(1) No indi-
25 vidual designated pursuant to a contract under this sec-

1 tion as a certifying officer shall, in the absence of the reck-
2 less disregard of the individual's obligations or the intent
3 by that individual to defraud the United States, be liable
4 with respect to any payments certified by the individual
5 under this section.

6 “(2) No disbursing officer shall, in the absence of the
7 reckless disregard of the officer's obligations or the intent
8 by that officer to defraud the United States, be liable with
9 respect to any payment by such officer under this section
10 if it was based upon an authorization (which meets the
11 applicable requirements for such internal controls estab-
12 lished by the Comptroller General of the United States)
13 of a certifying officer designated as provided in paragraph
14 (1) of this subsection.

15 “(3)(A) No administrative contractor shall be liable
16 to the United States for a payment by a certifying or dis-
17 bursing officer unless, in connection with such payment,
18 the administrative contractor acted with reckless disregard
19 of its obligations under its administrative contract or with
20 intent to defraud the United States.

21 “(B) Nothing in this subsection shall be construed
22 to limit liability for conduct that would constitute a viola-
23 tion of sections 3729 through 3731 of title 31, United
24 States Code.

1 “(4)(A) Subject to subparagraphs (B) and (D), in the
2 case of an administrative contractor (or a person who is
3 a director, officer, or employee of such a contractor or who
4 is engaged by the contractor to participate directly in the
5 claims administration process) who is made a party to any
6 judicial or administrative proceeding arising from or relat-
7 ing directly to the claims administration process under
8 this title, the Secretary may, to the extent the Secretary
9 determines to be appropriate and as specified in the con-
10 tract with the contractor, indemnify the contractor and
11 such persons.

12 “(B) The Secretary may not provide indemnification
13 under subparagraph (A) insofar as the liability for such
14 costs arises directly from conduct that is determined by
15 the judicial proceeding or by the Secretary to be criminal
16 in nature, fraudulent, or grossly negligent. If indemnifica-
17 tion is provided by the Secretary with respect to a con-
18 tractor before a determination that such costs arose di-
19 rectly from such conduct, the contractor shall reimburse
20 the Secretary for costs of indemnification.

21 “(C) Indemnification by the Secretary under sub-
22 paragraph (A) may include payment of judgments, settle-
23 ments (subject to subparagraph (D)), awards, and costs
24 (including reasonable legal expenses).

1 “(D) A contractor or other person described in sub-
2 paragraph (A) may not propose to negotiate a settlement
3 or compromise of a proceeding described in such subpara-
4 graph without the prior written approval of the Secretary
5 to negotiate such settlement or compromise. Any indem-
6 nification under subparagraph (A) with respect to
7 amounts paid under a settlement or compromise of a pro-
8 ceeding described in such subparagraph are conditioned
9 upon prior written approval by the Secretary of the final
10 settlement or compromise.

11 “(E) Nothing in this paragraph shall be construed—

12 “(i) to change any common law immunity that
13 may be available to an administrative contractor or
14 person described in subparagraph (A); or

15 “(ii) to permit the payment of costs not other-
16 wise allowable, reasonable, or allocable under the
17 Federal Acquisition Regulation.

18 “(e) REQUIREMENTS FOR INFORMATION SECU-
19 RITY.—(1) An administrative contractor that performs the
20 functions referred to in subparagraphs (A) and (B) of sub-
21 section (a)(4) (relating to determining and making pay-
22 ments) shall implement a contractor-wide information se-
23 curity program to provide information security for the op-
24 eration and assets of the contractor with respect to such
25 functions under this title. An information security pro-

1 gram under this paragraph shall meet the requirements
2 for information security programs imposed on Federal
3 agencies under paragraphs (1) through (8) of section
4 3544(b) of title 44, United States Code (other than the
5 requirements under paragraphs (2)(D)(i), (5)(A), and
6 (5)(B) of such section).

7 “(2)(A) Each year an administrative contractor that
8 performs the functions referred to in subparagraphs (A)
9 and (B) of subsection (a)(4) (relating to determining and
10 making payments) shall undergo an evaluation of the in-
11 formation security of the contractor with respect to such
12 functions under this title. The evaluation shall—

13 “(i) be performed by an entity that meets such
14 requirements for independence as the Inspector Gen-
15 eral of the Department of Health and Human Serv-
16 ices may establish; and

17 “(ii) test the effectiveness of information secu-
18 rity control techniques of an appropriate subset of
19 the contractor’s information systems (as defined in
20 section 3502(8) of title 44, United States Code) re-
21 lating to such functions under this title and an as-
22 sessment of compliance with the requirements of this
23 subsection and related information security policies,
24 procedures, standards and guidelines, including poli-
25 cies and procedures as may be prescribed by the Di-

1 rector of the Office of Management and Budget and
2 applicable information security standards promul-
3 gated under section 11331 of title 40, United States
4 Code.

5 “(B)(i) The results of independent evaluations under
6 subparagraph (A) shall be submitted promptly to the In-
7 spector General of the Department and to the Secretary.
8 “(ii) The Inspector General of the Department shall
9 submit to Congress annual reports on the results of such
10 evaluations, including assessments of the scope and suffi-
11 ciency of such evaluations.

12 “(f) INCENTIVES TO IMPROVE CONTRACTOR PER-
13 FORMANCE IN NON-DEPARTMENT FACILITY EDUCATION
14 AND OUTREACH.—The Secretary shall use specific claims
15 payment error rates or similar methodology of administra-
16 tive contractors in the processing or reviewing of claims
17 in order to give such contractors an incentive to implement
18 effective education and outreach programs for non-De-
19 partment facilities.”.

20 (b) CLERICAL AMENDMENT.—The table of sections
21 at the beginning of such chapter is amended by inserting
22 after the item relating to section 1725 the following new
23 item:

“1725. Authority to enter into contracts with administrative contractors.”.

