

114TH CONGRESS
1ST SESSION

S. 2179

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

OCTOBER 8, 2015

Mr. BLUMENTHAL 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Veteran Care Agree-
3 ments Rule Enhancement Act” or the “Veteran CARE
4 Act”.

5 **SEC. 2. PURPOSE.**

6 The purpose of this Act is—

7 (1) to maintain the access of veterans to high-
8 quality hospital care, medical services, and extended
9 care if that care is not available directly from the
10 Department of Veterans Affairs;

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

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

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

4 (5) to ensure that agreements that are not cov-
 5 ered by such regulation include robust terms and
 6 conditions that address the quality of health care for
 7 veterans, oversight of the provision of such health
 8 care, and protections for taxpayers.

9 **SEC. 3. AUTHORIZATION OF AGREEMENTS BETWEEN THE**
 10 **DEPARTMENT OF VETERANS AFFAIRS AND**
 11 **NON-DEPARTMENT HEALTH CARE PRO-**
 12 **VIDERS.**

13 (a) IN GENERAL.—Subchapter I of chapter 17 of title
 14 38, United States Code, is amended by adding after sec-
 15 tion 1703 the following new section:

16 **“§ 1703A. Veterans Care Agreements with certain**
 17 **health care providers**

18 “(a) AGREEMENTS TO FURNISH CARE.—(1) If the
 19 Secretary is not feasibly able to furnish hospital care, med-
 20 ical services, or extended care under this chapter at facili-
 21 ties of the Department or under contracts or sharing
 22 agreements entered into under authorities other than this
 23 section, the Secretary may furnish such care and services
 24 by entering into agreements under this section with eligi-
 25 ble providers that are certified under subsection (c). An

1 agreement entered into under this section may be referred
 2 to as a ‘Veterans Care Agreement’.

3 “(2) The Secretary is not feasibly able to furnish care
 4 or services as described in paragraph (1) if the Secretary
 5 determines that the medical condition of the veteran, the
 6 travel involved, the nature of the care or services required,
 7 or a combination of those factors make the use of facilities
 8 of the Department, contracts, or sharing agreements im-
 9 practicable or inadvisable.

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

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

19 “(1) A provider of services that has enrolled
 20 and entered into a provider agreement under section
 21 1866(a) of the Social Security Act (42 U.S.C.
 22 1395cc(a)).

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

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

5 “(4) A provider that is—

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

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

13 “(5) Such other health care providers as the
14 Secretary considers appropriate for purposes of this
15 section.

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

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

23 “(B) Standards and procedures for approval
24 and denial of certification, duration of certification,
25 revocation of certification, and recertification.

1 “(C) Procedures for assessing eligible providers
2 based on the risk of fraud, waste, and abuse of such
3 providers similar to the level of screening under sec-
4 tion 1866(j)(2)(B) of the Social Security Act (42
5 U.S.C. 1395cc(j)(2)(B)) and the standards set forth
6 under section 9.104 of title 48, Code of Federal
7 Regulations, or any successor regulation.

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

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

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

19 “(d) TERMS OF AGREEMENTS.—Each agreement en-
20 tered into with an eligible provider under this section shall
21 include provisions requiring the eligible provider to do the
22 following:

23 “(1) To accept payment for care and services
24 furnished under this section at rates established by
25 the Secretary for purposes of this section, which

1 shall be, to the extent practicable, the rates paid by
2 the United States for such care and services to pro-
3 viders of services and suppliers under the Medicare
4 program under title XVIII of the Social Security Act
5 (42 U.S.C. 1395 et seq.).

6 “(2) To accept payment under paragraph (1) as
7 payment in full for care and services furnished
8 under this section and to not seek any payment for
9 such care and services from the recipient of such
10 care and services.

11 “(3) To furnish under this section only the care
12 and services authorized by the Department under
13 this section unless the eligible provider receives prior
14 written consent from the Department to furnish care
15 or services outside the scope of such authorization.

16 “(4) To bill the Department for care and serv-
17 ices furnished under this section in accordance with
18 a methodology established by the Secretary for pur-
19 poses of this section.

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

1 “(6) To provide medical records for veterans
 2 furnished care or services under this section to the
 3 Department in a timeframe and format specified by
 4 the Secretary for purposes of this section.

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

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

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

17 “(A) determines that the eligible provider failed
 18 to comply substantially with the provisions of the
 19 agreement or with the provisions of this section and
 20 the regulations prescribed thereunder;

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

22 “(i) excluded from participation in a Fed-
 23 eral health care program (as defined in section
 24 1128B(f) of the Social Security Act (42 U.S.C.
 25 1320a–7b(f))) under section 1128 or 1128A of

1 the Social Security Act (42 U.S.C. 1320a–7
2 and 1320a–7a); or

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

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

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

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

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

4 “(B) A Veterans Care Agreement entered into after
5 September 30, 2016, for the purchase of extended care
6 services is of material size if the purchase of such services
7 under the agreement exceeds \$1,000,000 annually. The
8 Secretary may adjust such amount to account for changes
9 in the cost of health care based upon recognized health
10 care market surveys and other available data and shall
11 publish any such adjustments in the Federal Register.

12 “(g) EXCLUSION OF CERTAIN FEDERAL CON-
13 TRACTING PROVISIONS.—(1) An agreement under this
14 section may be entered into without regard to any law that
15 would require the Secretary to use competitive procedures
16 in selecting the party with which to enter into the agree-
17 ment.

18 “(2)(A) Except as provided in subparagraph (B) and
19 unless otherwise provided in this section or regulations
20 prescribed pursuant to this section, an eligible provider
21 that enters into an agreement under this section is not
22 subject to, in the carrying out of the agreement, any law
23 that providers of services and suppliers under the Medi-
24 care program under title XVIII of the Social Security Act
25 (42 U.S.C. 1395 et seq.) are not subject to.

1 “(B) An eligible provider that enters into an agree-
2 ment under this section is subject to—

3 “(i) all laws regarding integrity, ethics, fraud,
4 or that subject a person to civil or criminal pen-
5 alties; and

6 “(ii) all laws that protect against employment
7 discrimination or that otherwise ensure equal em-
8 ployment opportunities.

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

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

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

20 “(i) DISPUTE RESOLUTION.—(1) The Secretary shall
21 establish administrative procedures for eligible providers
22 with which the Secretary has entered an agreement under
23 this section to present any dispute arising under or related
24 to the agreement.

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

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

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

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

15 **SEC. 4. MODIFICATION OF AUTHORITY TO ENTER INTO**
 16 **AGREEMENTS WITH STATE HOMES TO PRO-**
 17 **VIDE NURSING HOME CARE.**

18 (a) USE OF AGREEMENTS.—

19 (1) IN GENERAL.—Paragraph (1) of section
 20 1745(a) of title 38, United States Code, is amended,
 21 in the matter preceding subparagraph (A), by strik-
 22 ing “a contract (or agreement under section
 23 1720(c)(1) of this title)” and inserting “an agree-
 24 ment”.

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

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

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

11 “(B)(i) Except as provided in clause (ii) and unless
 12 otherwise provided in this section or regulations prescribed
 13 pursuant to this section, a State home that enters into
 14 an agreement under this section is not subject to, in the
 15 carrying out of the agreement, any law that providers of
 16 services and suppliers under the Medicare program under
 17 title XVIII of the Social Security Act (42 U.S.C. 1395
 18 et seq.) are not subject to.

19 “(ii) An eligible provider that enters into an agree-
 20 ment under this section is subject to—

21 “(I) all laws regarding integrity, ethics, fraud,
 22 or that subject a person to civil or criminal pen-
 23 alties; and

1 “(II) all laws that protect against employment
2 discrimination or that otherwise ensure equal em-
3 ployment opportunities.”.

4 (c) EFFECTIVE DATE.—

5 (1) IN GENERAL.—The amendments made by
6 this section shall apply to agreements entered into
7 under section 1745 of such title on and after the
8 date on which the regulations prescribed by the Sec-
9 retary of Veterans Affairs to implement such amend-
10 ments take effect.

11 (2) PUBLICATION.—The Secretary shall publish
12 the date described in paragraph (1) in the Federal
13 Register not later than 30 days before such date.

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