

114TH CONGRESS
2D SESSION

S. 2953

To promote patient-centered care and accountability at the Indian Health Service, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 19, 2016

Mr. BARRASSO (for himself and Mr. THUNE) introduced the following bill;
which was read twice and referred to the Committee on Indian Affairs

A BILL

To promote patient-centered care and accountability at the
Indian Health Service, 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 “Indian Health Service
5 Accountability Act of 2016” or the “IHS Accountability
6 Act of 2016”.

7 **SEC. 2. FINDINGS.**

8 Congress finds that—

9 (1) in 2010, the Committee on Indian Affairs
10 of the Senate held an oversight hearing entitled “In

1 Critical Condition: The Urgent Need to Reform In-
2 dian Health Service’s Aberdeen Area”, during which
3 members of the Committee listened to testimony de-
4 tailing an investigation led by a former Chairman of
5 the Committee, Byron Dorgan, including his report
6 on the Indian Health Service (referred to in this sec-
7 tion as the “Dorgan Report”);

8 (2) the Dorgan Report found evidence showing
9 the lack of quality of care at Indian Health Service
10 facilities in the Great Plains Area (previously re-
11 ferred to as the “Aberdeen Area”), which is com-
12 prised of South Dakota, North Dakota, Nebraska,
13 and Iowa;

14 (3) in 2015—

15 (A) staff of the Committee on Indian Af-
16 fairs of the Senate investigated claims that con-
17 ditions in the Great Plains Area had not im-
18 proved; and

19 (B) the Committee confirmed that many
20 issues identified in the Dorgan Report had not
21 been resolved and found that some problems
22 had become worse and new problems had devel-
23 oped;

1 (4) a culture of cronyism in the Indian Health
2 Service has further eroded confidence in the health
3 care system of the Indian Health Service;

4 (5) persistent failures by the Indian Health
5 Service to provide tribal citizens access to safe, qual-
6 ity health care have led to multiple innocent patient
7 deaths and the suffering of patients, families, and
8 whole communities;

9 (6) those failures have been extensively docu-
10 mented by Congress, the Indian Health Service, and
11 the Centers for Medicare & Medicaid Services, which
12 confirmed that systemic problems and substandard
13 conditions in Indian Health Service facilities pose an
14 immediate risk to patient safety;

15 (7) the United States has treaty, trust, and
16 statutory obligations to provide health care to Amer-
17 ican Indians and Alaska Natives, which the Indian
18 Health Service is mandated to uphold; and

19 (8) prioritizing patients and restoring faith in
20 the health care system of the Indian Health Service
21 requires greater transparency, accountability, and
22 strong leadership.

1 **SEC. 3. REMOVAL OF INDIAN HEALTH SERVICE EMPLOY-**
2 **EES BASED ON PERFORMANCE OR MIS-**
3 **CONDUCT.**

4 Title VI of the Indian Health Care Improvement Act
5 (25 U.S.C. 1661 et seq.) is amended by adding at the end
6 the following:

7 **“SEC. 605. REMOVAL OF SERVICE EMPLOYEES BASED ON**
8 **PERFORMANCE OR MISCONDUCT.**

9 “(a) DEFINITIONS.—In this section and sections 606
10 through 610:

11 “(1) EMPLOYEE.—The term ‘employee’ has the
12 meaning given the term in section 2105 of title 5,
13 United States Code.

14 “(2) MANAGER.—

15 “(A) IN GENERAL.—The term ‘manager’
16 has the meaning given the term ‘management
17 official’ in section 7103(a) of title 5, United
18 States Code.

19 “(B) INCLUSIONS.—The term ‘manager’
20 includes, as employed at any facility of the
21 Service—

22 “(i) a chief executive officer;

23 “(ii) a chief medical officer; and

24 “(iii) a department director.

25 “(3) MISCONDUCT.—The term ‘misconduct’
26 means neglect of duty, malfeasance, or failure to ac-

1 cept a directed reassignment or to accompany a po-
2 sition in a transfer of function.

3 “(4) PERSONNEL ACTION.—The term ‘per-
4 sonnel action’ means a removal, transfer, or reduc-
5 tion in grade under subsection (b)(2).

6 “(5) SECRETARY.—The term ‘Secretary’ means
7 the Secretary of Health and Human Services, acting
8 through the Director of the Service.

9 “(6) SENIOR EXECUTIVE.—The term ‘senior ex-
10 ecutive’ means a career appointee (as that term is
11 defined in section 3132(a) of title 5, United States
12 Code) that occupies a Senior Executive Service posi-
13 tion.

14 “(7) SENIOR EXECUTIVE SERVICE POSITION.—
15 The term ‘Senior Executive Service position’ has the
16 meaning given the term in section 3132(a) of title
17 5, United States Code.

18 “(8) SUPERVISOR.—The term ‘supervisor’ has
19 the meaning given the term in section 7103(a) of
20 title 5, United States Code.

21 “(b) REMOVAL BASED ON PERFORMANCE OR MIS-
22 CONDUCT.—

23 “(1) IN GENERAL.—Subject to paragraph (4),
24 the Secretary may remove an employee of the Serv-
25 ice from the position the employee occupies if the

1 Secretary determines the performance or misconduct
2 of the employee warrants removal.

3 “(2) ACTION.—If the Secretary removes an em-
4 ployee under paragraph (1), the Secretary may—

5 “(A) remove the employee from the civil
6 service (as defined in section 2101 of title 5,
7 United States Code);

8 “(B) in the case of an individual described
9 in paragraph (3), transfer the individual from
10 the Senior Executive Service position to a Gen-
11 eral Schedule position at any grade of the Gen-
12 eral Schedule for which the individual is quali-
13 fied and that the Secretary determines is appro-
14 priate; or

15 “(C) in the case of a manager or super-
16 visor, reduce the grade of the manager or su-
17 pervisor to any other grade for which the indi-
18 vidual is qualified and that the Secretary deter-
19 mines is appropriate.

20 “(3) INDIVIDUAL DESCRIBED.—An individual
21 referred to in paragraph (2)(B) is a senior executive
22 that—

23 “(A) previously occupied a permanent posi-
24 tion within the competitive service (as that term

1 is defined in section 2102 of title 5, United
2 States Code); or

3 “(B) previously occupied a permanent posi-
4 tion within the excepted service (as that term is
5 defined in section 2103 of title 5, United States
6 Code).

7 “(4) DUE PROCESS.—Before an employee may
8 be subject to a personnel action, the Secretary shall
9 provide to the employee—

10 “(A) not less than 10 days before the per-
11 sonnel action, written notice of the proposed
12 personnel action; and

13 “(B) an opportunity and reasonable time
14 to answer orally or in writing.

15 “(c) PAY OF CERTAIN INDIVIDUALS.—

16 “(1) IN GENERAL.—Notwithstanding any other
17 provision of law, including the requirements of sec-
18 tion 3594 of title 5, United States Code, any indi-
19 vidual transferred to a General Schedule position
20 under subsection (b)(2)(B) or subject to a reduction
21 in grade under subsection (b)(2)(C) shall, beginning
22 on the date of the transfer, receive the annual rate
23 of pay applicable to the position.

24 “(2) REQUIREMENTS.—

1 “(A) IN GENERAL.—An individual trans-
2 ferred to a General Schedule position under
3 subsection (b)(2)(B) or subject to a reduction
4 in grade under subsection (b)(2)(C)—

5 “(i) may not be placed on administra-
6 tive leave or any other category of paid
7 leave during the period during which an
8 appeal (if any) under subsection (e)(2)(A)
9 is ongoing; and

10 “(ii) may only receive pay if the indi-
11 vidual—

12 “(I) reports for duty; and

13 “(II) performs a primary duty or
14 an alternative primary duty, as each
15 term is described in section 551.104
16 of title 5, Code of Federal Regulations
17 (or a successor regulation).

18 “(B) FAILURE TO REPORT.—If an indi-
19 vidual transferred to a General Schedule posi-
20 tion under subsection (b)(2)(B) or subject to a
21 reduction in grade under subsection (b)(2)(C)
22 does not report for duty, pursuant to subsection
23 (f)(5), the individual shall not receive any in-
24 crease in rate of pay or other benefit.

1 “(d) NOTICE TO CONGRESS.—Not later than 30 days
2 after the date on which the Secretary takes a personnel
3 action, the Secretary shall submit, in writing, a notice of
4 the personnel action and the reason for the personnel ac-
5 tion to—

6 “(1) the Committee on Indian Affairs of the
7 Senate;

8 “(2) the Committee on Health, Education,
9 Labor, and Pensions of the Senate;

10 “(3) the Committee on Natural Resources of
11 the House of Representatives;

12 “(4) the Committee on Energy and Commerce
13 of the House of Representatives; and

14 “(5) the Inspector General of the Department.

15 “(e) PROCEDURE.—

16 “(1) INAPPLICABILITY.—The procedures under
17 chapters 43 and 75 of title 5, United States Code,
18 shall not apply to a personnel action.

19 “(2) APPEAL.—

20 “(A) IN GENERAL.—Subject to subpara-
21 graph (B) and subsection (f), an employee sub-
22 ject to a personnel action may appeal the per-
23 sonnel action to the Merit Systems Protection
24 Board under section 7701 of title 5, United
25 States Code.

1 “(B) LIMITATION.—An appeal under sub-
2 paragraph (A) may only be made if the appeal
3 is made not later than 7 days after the date of
4 the personnel action.

5 “(f) EXPEDITED REVIEW BY ADMINISTRATIVE LAW
6 JUDGE.—

7 “(1) IN GENERAL.—

8 “(A) REFERRAL.—On receipt of an appeal
9 under subsection (e)(2)(A), the Merit Systems
10 Protection Board shall refer the appeal to an
11 administrative law judge pursuant to section
12 7701(b)(1) of title 5, United States Code.

13 “(B) EXPEDITION.—The administrative
14 law judge to whom an appeal is referred under
15 subparagraph (A) shall—

16 “(i) expedite the appeal under section
17 7701(b)(1) of title 5, United States Code;
18 and

19 “(ii) issue a decision in each case not
20 later than 21 days after the date of the ap-
21 peal.

22 “(2) FINALITY.—Notwithstanding any other
23 provision of law, including section 7703 of title 5,
24 United States Code, the decision of an administra-
25 tive law judge under paragraph (1) shall be final

1 and shall not be subject to any further administra-
2 tive appeal.

3 “(3) FAILURE TO ISSUE DECISION.—

4 “(A) IN GENERAL.—In any case in which
5 an administrative law judge fails to issue a de-
6 cision in accordance with the 21-day require-
7 ment described in paragraph (1)(B)(ii), the per-
8 sonnel action shall be treated as final.

9 “(B) TRANSPARENCY.—In any case in
10 which a personnel action is treated as final
11 under subparagraph (A), the Merit Systems
12 Protection Board shall, not later than 14 days
13 after the date on which the personnel action be-
14 comes final, submit a letter explaining the rea-
15 sons why a decision was not issued in accord-
16 ance with the 21-day requirement described in
17 paragraph (1)(B)(ii) to—

18 “(i) the Committee on Indian Affairs
19 of the Senate;

20 “(ii) the Committee on Health, Edu-
21 cation, Labor, and Pensions of the Senate;

22 “(iii) the Committee on Natural Re-
23 sources of the House of Representatives;
24 and

1 “(iv) the Committee on Energy and
2 Commerce of the House of Representa-
3 tives.

4 “(4) RESTRICTION.—The Merit Systems Pro-
5 tection Board or an administrative law judge may
6 not stay any personnel action.

7 “(5) CESSATION OF PAY INCREASES AND BENE-
8 FITS.—During the period beginning on the date on
9 which an employee appeals a removal from the civil
10 service under subsection (e)(2)(A) and ending on the
11 date on which the removal becomes final, the em-
12 ployee may not receive any—

13 “(A) increase in rate of pay; or

14 “(B) award, bonus, incentive, allowance,
15 differential, student loan repayment, special
16 payment, or other benefit.

17 “(6) ASSISTANCE.—To the maximum extent
18 practicable, the Secretary shall provide such infor-
19 mation and assistance as may be necessary to ensure
20 an appeal under this subsection is expedited to—

21 “(A) the Merit Systems Protection Board;

22 and

23 “(B) any administrative law judge to
24 whom an appeal under this section is referred.

1 “(g) EMPLOYMENT RECORD TRANSPARENCY.—The
2 Secretary shall ensure that the employment records for
3 any employee subject to a personnel action, regardless of
4 whether that personnel action is final, include—

5 “(1) a notation that the employee was subject
6 to a personnel action; and

7 “(2) a description of the disposition or status of
8 the personnel action or any appeal of the personnel
9 action under this section.

10 “(h) RELATION TO TITLE 5, UNITED STATES
11 CODE.—

12 “(1) ADDITIONAL AUTHORITY.—The personnel
13 action authorities provided to the Secretary under
14 this section are in addition to the authorities pro-
15 vided under chapters 43 and 75 of title 5, United
16 States Code.

17 “(2) REMOVAL OF SENIOR EXECUTIVES.—Sec-
18 tion 3592(b)(1) of title 5, United States Code, shall
19 not apply to a personnel action.”.

20 **SEC. 4. IMPROVEMENTS IN HIRING PRACTICES.**

21 (a) IN GENERAL.—Title VI of the Indian Health
22 Care Improvement Act (25 U.S.C. 1661 et seq.) (as
23 amended by section 3) is amended by adding at the end
24 the following:

1 **“SEC. 606. IMPROVEMENTS IN HIRING PRACTICES.**

2 “(a) DIRECT HIRE AUTHORITY.—The Secretary may
3 appoint, without regard to subchapter I of chapter 33 of
4 title 5, United States Code (other than sections 3303 and
5 3328 of that title), a candidate directly to a position with-
6 in the Service for which the candidate meets Office of Per-
7 sonnel Management qualification standards.

8 “(b) PREFERENCE.—To enhance recruitment and re-
9 tention of employees of the Service, the Secretary may
10 waive the requirements of the Indian preference laws (as
11 defined in section 2(e) of Public Law 96–135 (25 U.S.C.
12 472a(e))) with respect to hiring a candidate to a position
13 in a Service unit on written request or resolution of an
14 Indian tribe located within the applicable Service unit.

15 “(c) TRIBAL CONSULTATION.—

16 “(1) IN GENERAL.—Subject to paragraph (2),
17 before appointing, hiring, promoting, or transferring
18 a candidate to a Senior Executive Service position or
19 the position of a manager at an Area office or Serv-
20 ice unit, the Secretary shall meaningfully and expe-
21 ditiously consult with Indian tribes located within
22 the applicable Service area or Service unit.

23 “(2) EXCEPTION.—

24 “(A) IN GENERAL.—If the Secretary deter-
25 mines that emergency circumstances exist that
26 may negatively impact patient health or safety

1 if the position is not filled, the Secretary may
2 appoint a candidate to a Senior Executive Serv-
3 ice or manager position at an Area office or
4 Service unit for a temporary time period only,
5 not to exceed 180 days.

6 “(B) NOTICE.—The Secretary shall notify,
7 in writing, each Indian tribe located within the
8 applicable Service area or Service unit of the
9 appointment not fewer than 7 days prior to ex-
10 ercising the authority described in subpara-
11 graph (A).

12 “(d) NOTICE OF REMOVAL BASED ON PERFORMANCE
13 OR MISCONDUCT.—Before appointing, hiring, promoting,
14 or transferring a candidate to a Senior Executive Service
15 position or the position of a manager or supervisor at an
16 Area office or Service unit, the Secretary shall provide to
17 Indian tribes located within the applicable Service area the
18 content of an inclusion in an employment record under
19 section 605(g).”.

20 (b) GAO REPORT ON IHS STAFFING NEEDS.—

21 (1) IN GENERAL.—Not later than 1 year after
22 the date of enactment of this Act, the Comptroller
23 General of the United States shall submit to Con-
24 gress a report assessing staffing needs in the Indian
25 Health Service.

1 (2) CONTENTS.—The report described in para-
2 graph (1) shall include—

3 (A) a description of the number and type
4 of full-time equivalent employees needed at each
5 facility of the Indian Health Service and
6 amounts required for those employees;

7 (B) an assessment of the use of inde-
8 pendent contractors instead of full-time equiva-
9 lent employees; and

10 (C) recommendations to address staffing
11 needs in the Indian Health Service.

12 (c) STAFFING PLAN.—Not later than 1 year after the
13 date on which the Comptroller General of the United
14 States submits the report under subsection (b), the Sec-
15 retary shall submit to Congress a written plan to address
16 staffing needs in the Indian Health Service based on the
17 recommendations described in paragraph (2)(C) of that
18 subsection.

19 **SEC. 5. INCENTIVES FOR RECRUITMENT AND RETENTION.**

20 (a) IN GENERAL.—Title VI of the Indian Health
21 Care Improvement Act (25 U.S.C. 1661 et seq.) (as
22 amended by section 4(a)) is amended by adding at the
23 end the following:

1 **“SEC. 607. INCENTIVES FOR RECRUITMENT AND RETEN-**
2 **TION.**

3 “(a) REWARDING QUALITY PERFORMANCE.—

4 “(1) IN GENERAL.—Notwithstanding any other
5 provision of law, the Secretary may grant or rescind
6 bonuses or other benefits to employees of the Serv-
7 ice—

8 “(A) to promote patient safety;

9 “(B) to promote quality of performance of
10 the employees; or

11 “(C) to improve recruitment and retention
12 of employees in the Service.

13 “(2) QUALITY INCENTIVES.—The Secretary
14 may grant a bonus under paragraph (1) to a man-
15 ager or supervisor in the Service who identifies one
16 or more ways—

17 “(A) to improve patient care; or

18 “(B) to reduce waste, fraud, or abuse.

19 “(b) PAY SYSTEM.—The Secretary shall establish a
20 pay system for physicians, dentists, nurses, and other
21 health care professionals employed by the Service that pro-
22 vides pay that, to the maximum extent practicable, is com-
23 parable to the pay provided to physicians, dentists, nurses,
24 and other health care professionals under chapter 74 of
25 title 38, United States Code.

1 “(c) RELOCATION COSTS.—The Secretary may pro-
2 vide to an employee of the Service the costs the employee
3 incurs in the relocation of the employee if, as determined
4 by the Secretary—

5 “(1) the employee relocates to a Service area
6 experiencing a high level of need for employees; and

7 “(2) the employee will accept a position that is
8 likely to be difficult to fill in the absence of an in-
9 centive.

10 “(d) PERFORMANCE-BASED RETENTION BO-
11 NUSES.—To improve retention of employees in the Serv-
12 ice, the Secretary may provide to an employee of the Serv-
13 ice a bonus based on the performance of the employee.

14 “(e) ADMINISTRATION.—

15 “(1) OPM GUIDELINES.—The Secretary shall
16 carry out subsections (a) through (d) in accordance
17 with guidelines of the Office of Personnel Manage-
18 ment for recruitment and retention, including sec-
19 tion 575.109 of title 5, Code of Federal Regulations
20 (as in effect on the date of enactment of this Act).

21 “(2) SERVICE AGREEMENTS.—The Secretary
22 may only provide a bonus, pay increase, relocation
23 cost, or other benefit under subsections (a) through
24 (d) to an employee who agrees to serve for not less
25 than 1 year in the Service.

1 “(f) HOUSING VOUCHERS.—

2 “(1) IN GENERAL.—Subject to paragraph (2),
3 not later than 1 year after the date of enactment of
4 this section, the Secretary may establish a program
5 to provide tenant-based rental assistance to an em-
6 ployee of the Service who—

7 “(A) agrees to serve for not less than 1
8 year at a Service facility designated by the Ad-
9 ministrator of the Health Resources and Serv-
10 ices Administration as a health professional
11 shortage area; and

12 “(B) is a critical employee, as determined
13 by the Secretary.

14 “(2) SUNSET.—Any program established by the
15 Secretary under paragraph (1) shall terminate on
16 the date that is 3 years after the date on which the
17 program is established.”.

18 (b) GAO REPORT ON IHS PROFESSIONAL HOUS-
19 ING.—

20 (1) IN GENERAL.—Not later than 1 year after
21 the date of enactment of this Act, the Comptroller
22 General of the United States shall submit to Con-
23 gress a report identifying professional housing needs
24 for employees of the Indian Health Service.

1 (2) CONTENTS.—The report described in para-
2 graph (1) shall include—

3 (A) an evaluation of any existing assess-
4 ments and projections for the professional hous-
5 ing needs of employees of the Indian Health
6 Service;

7 (B) an accurate and independent assess-
8 ment of the professional housing needs of em-
9 ployees of the Indian Health Service for each
10 Service area (as defined in section 4 of the In-
11 dian Health Care Improvement Act (25 U.S.C.
12 1603));

13 (C) a discussion and conclusion on whether
14 the assessments and projections described in
15 subparagraph (A) accurately reflect the profes-
16 sional housing needs of employees of the Indian
17 Health Service described in subparagraph (B);
18 and

19 (D) recommendations for establishing ap-
20 propriate means for the Indian Health Service
21 to accurately assess professional housing needs
22 in the future.

23 (c) HOUSING PLAN.—Not later than 1 year after the
24 date on which the Comptroller General of the United
25 States submits the report under subsection (b), the Sec-

1 retary shall submit to Congress a written plan to address
 2 the professional housing needs of the Indian Health Serv-
 3 ice based on the recommendations described in paragraph
 4 (2)(D) of that subsection.

5 **SEC. 6. EMPLOYEE PROTECTIONS AGAINST RETALIATION.**

6 (a) IN GENERAL.—Title VI of the Indian Health
 7 Care Improvement Act (25 U.S.C. 1661 et seq.) (as
 8 amended by section 5(a)) is amended by adding at the
 9 end the following:

10 **“SEC. 608. EMPLOYEE PROTECTIONS AGAINST RETALIA-**
 11 **TION.**

12 “(a) EMPLOYEE ACCOUNTABILITY.—

13 “(1) MANDATORY REPORTING.—An employee of
 14 the Service who witnesses retaliation against a whis-
 15 tleblower, a violation of patient safety requirements,
 16 or other similar conduct shall make a report of the
 17 conduct to an official in the Department who—

18 “(A) is designated by the Secretary of
 19 Health and Human Services to receive those re-
 20 ports; and

21 “(B) is not an employee of the Service.

22 “(2) OVERSIGHT.—The Secretary of Health
 23 and Human Services shall provide a copy of each re-
 24 port described in paragraph (1) and any other rel-
 25 evant information to the Inspector General of the

1 Department of Health and Human Services by not
2 later than 3 days after receipt of the report by the
3 designated official described in that paragraph.

4 “(3) REMOVAL.—The Secretary may remove for
5 misconduct from the civil service (as defined in sec-
6 tion 2101 of title 5, United States Code), in accord-
7 ance with section 605, an employee of the Service
8 who retaliates against a whistleblower.

9 “(b) AGENCY ACCOUNTABILITY.—

10 “(1) IN GENERAL.—The Secretary shall for-
11 mally review each claim of—

12 “(A) discrimination against an employee of
13 the Service; or

14 “(B) retaliation against a whistleblower in
15 the Service.

16 “(2) ANNUAL REPORTS TO CONGRESS.—The
17 Secretary shall submit to Congress each year a re-
18 port describing the status or disposition of each
19 claim described in paragraph (1).”.

20 (b) GAO REPORT.—

21 (1) IN GENERAL.—Not later than 1 year after
22 the date of enactment of this Act, the Comptroller
23 General of the United States shall submit to Con-
24 gress a report examining protections for whistle-

1 blowers in the Indian Health Service (referred to in
2 this subsection as the “Service”).

3 (2) CONTENTS.—The report described in para-
4 graph (1) shall include—

5 (A) a follow-up investigation on the inves-
6 tigation of the Committee on Indian Affairs of
7 the Senate entitled “In Critical Condition: The
8 Urgent Need to Reform the Indian Health
9 Service’s Aberdeen Area”;

10 (B) a discussion and conclusion on whether
11 the Service has taken proper steps to ensure
12 that whistleblowers are not retaliated against;

13 (C) recommendations for changes in Serv-
14 ice policy relating to whistleblowers; and

15 (D) a discussion and conclusion on wheth-
16 er the official email accounts of employees of
17 the Service are being monitored.

18 **SEC. 7. RIGHT OF EMPLOYEES TO PETITION CONGRESS.**

19 (a) ACTION FOR VIOLATION OF RIGHT OF FEDERAL
20 EMPLOYEES.—Section 7211 of title 5, United States
21 Code, is amended—

22 (1) by striking “The right of” and inserting
23 “(a) IN GENERAL.—The right of”; and

24 (2) by adding at the end the following:

1 “(b) ADVERSE ACTION.—An employee who interferes
2 with or denies a right protected under this section shall,
3 in accordance with subchapter II of chapter 75, or other
4 applicable procedures, be subject to an adverse action de-
5 scribed in paragraphs (1) through (5) of section 7512.”.

6 (b) ELECTRONIC NOTIFICATION OF RIGHT OF IN-
7 DIAN HEALTH SERVICE EMPLOYEES.—

8 (1) IN GENERAL.—The Secretary of Health and
9 Human Services, acting through the Director of the
10 Indian Health Service (referred to in this subsection
11 as the “Secretary”) shall, in accordance with para-
12 graphs (2) through (6), provide to each employee of
13 the Indian Health Service, and electronically post, a
14 memorandum providing notice of the right of em-
15 ployees under section 7211 of title 5, United States
16 Code (relating to employees’ right to petition Con-
17 gress).

18 (2) CONTENTS.—The memorandum described
19 in paragraph (1) shall include the following state-
20 ment: “It is a violation of section 7211 of title 5,
21 United States Code, for any Federal agency or em-
22 ployee to require a Federal employee to seek ap-
23 proval, guidance, or any other form of input prior to
24 contacting Congress with information, even if that
25 information is in relation to the job responsibilities

1 of the employee. A Federal employee found to have
2 interfered with or denied the right of another Fed-
3 eral employee may be subject to an adverse action
4 described in paragraphs (1) through (5) of section
5 7512 of title 5, United States Code, including sus-
6 pension without pay for a period of more than 14
7 days.”.

8 (3) SUBMISSION.—Not later than 30 days after
9 the date of enactment of this Act, the Secretary
10 shall submit the memorandum described in para-
11 graph (1) to the Inspector General of the Depart-
12 ment of Health and Human Services (referred to in
13 this section as the “Inspector General”) for ap-
14 proval.

15 (4) APPROVAL OR DISAPPROVAL.—Not later
16 than 30 days after the submission of the memo-
17 randum under paragraph (3), or a revised memo-
18 randum under paragraph (6), the Inspector General
19 shall approve or disapprove the memorandum or the
20 revised memorandum.

21 (5) NOTICE.—Not later than 30 days after ap-
22 proval of the memorandum or the revised memo-
23 randum under paragraph (4), the Secretary shall—

1 (A) provide to each employee of the Indian
 2 Health Service an electronic copy of the memo-
 3 randum; and

4 (B) post the memorandum in a clear and
 5 conspicuous place on the website of the Indian
 6 Health Service for a period of not fewer than
 7 120 days.

8 (6) REVISED MEMORANDUM.—If the Inspector
 9 General disapproves the memorandum or a revised
 10 memorandum under paragraph (4), not later than
 11 15 days after the disapproval, the Secretary shall
 12 submit a revised memorandum to the Inspector Gen-
 13 eral for approval under paragraph (4).

14 **SEC. 8. LIABILITY PROTECTIONS FOR HEALTH PROFES-**
 15 **SIONAL VOLUNTEERS IN THE INDIAN**
 16 **HEALTH SERVICE.**

17 Section 224 of the Public Health Service Act (42
 18 U.S.C. 233) is amended by adding at the end the fol-
 19 lowing:

20 “(q) CERTAIN INDIAN HEALTH SERVICE VOLUN-
 21 TEERS DEEMED PUBLIC HEALTH SERVICE EMPLOY-
 22 EES.—

23 “(1) IN GENERAL.—

24 “(A) For purposes of this section, a health
 25 professional volunteer at a Service unit or Serv-

1 ice area (as those terms are defined in section
2 4 of the Indian Health Care Improvement Act
3 (25 U.S.C. 1603)) (referred to in this sub-
4 section as a ‘covered entity’) shall, in providing
5 a health professional service to an individual, be
6 deemed to be an employee of the Public Health
7 Service for a calendar year that begins during
8 a fiscal year for which a transfer was made
9 under paragraph (4)(C).

10 “(B) Subparagraph (A) is subject to this
11 subsection.

12 “(2) CONDITIONS.—In providing a health serv-
13 ice to an individual, a health care practitioner shall
14 for purposes of this subsection be considered to be
15 a health professional volunteer at a covered entity if
16 all of the following conditions are met:

17 “(A) The service is provided to the indi-
18 vidual at the facilities of a covered entity, or
19 through offsite programs or events carried out
20 by the covered entity.

21 “(B) The covered entity is sponsoring the
22 health care practitioner pursuant to paragraph
23 (3)(B).

24 “(C) The health care practitioner does not
25 receive any compensation for the service from

1 the individual or from any third-party payer
2 (including reimbursement under any insurance
3 policy or health plan, or under any Federal or
4 State health benefits program), except that the
5 health care practitioner may receive repayment
6 from the covered entity for reasonable expenses
7 incurred by the health care practitioner in the
8 provision of the service to the individual.

9 “(D) Before the service is provided, the
10 health care practitioner or the covered entity
11 posts a clear and conspicuous notice at the site
12 where the service is provided of the extent to
13 which the legal liability of the health care prac-
14 titioner is limited under this subsection.

15 “(E) At the time the service is provided,
16 the health care practitioner is licensed or cer-
17 tified in accordance with applicable law regard-
18 ing the provision of the service.

19 “(3) APPLICABILITY.—Subsection (g) (other
20 than paragraphs (3) and (5) of that subsection) and
21 subsections (h), (i), and (l) apply to a health care
22 practitioner at a covered entity for purposes of this
23 subsection to the same extent and in the same man-
24 ner as such subsections apply to an officer, gov-
25 erning board member, employee, or contractor of an

1 entity described in subsection (g)(4), subject to
2 paragraph (4) and subject to the following:

3 “(A) Each reference to an entity described
4 in subsection (g)(4) shall be considered to be a
5 reference to a covered entity.

6 “(B) Paragraph (1)(A) applies in lieu of
7 the first sentence of subsection (g)(1)(A).

8 “(C)(i) With respect to a covered entity, a
9 health care practitioner is not a health profes-
10 sional volunteer at the covered entity unless the
11 covered entity sponsors the health care practi-
12 tioner.

13 “(ii) For purposes of this subsection, the
14 covered entity shall be considered to be spon-
15 soring the health care practitioner if—

16 “(I) with respect to the health care
17 practitioner, the covered entity submits to
18 the Secretary an application meeting the
19 requirements of subsection (g)(1)(D); and

20 “(II) the Secretary, pursuant to sub-
21 section (g)(1)(E), determines that the
22 health care practitioner is deemed to be an
23 employee of the Public Health Service.

24 “(D) In the case of a health care practi-
25 tioner who is determined by the Secretary pur-

1 suant to subsection (g)(1)(E) to be a health
2 professional volunteer at the covered entity, this
3 subsection applies to the health care practi-
4 tioner (with respect to services performed on
5 behalf of the covered entity sponsoring the
6 health care practitioner pursuant to subpara-
7 graph (C)) for any cause of action arising from
8 an act or omission of the health care practi-
9 tioner occurring on or after the date on which
10 the Secretary makes that determination.

11 “(E) Subsection (g)(1)(F) applies to a
12 health care practitioner for purposes of this
13 subsection only to the extent that, in providing
14 health services to an individual, each of the con-
15 ditions described in paragraph (2) is met.

16 “(4) FUNDING.—

17 “(A) IN GENERAL.—Amounts in the fund
18 established under subsection (k)(2) shall be
19 available for transfer under subparagraph (C)
20 for purposes of carrying out this subsection.

21 “(B) ANNUAL ESTIMATES.—

22 “(i) IN GENERAL.—Not later May 1
23 of each fiscal year, the Attorney General,
24 in consultation with the Secretary, shall
25 submit to Congress a report providing an

1 estimate of the amount of claims (together
2 with related fees and expenses of wit-
3 nesses) that, by reason of the acts or omis-
4 sions of health professional volunteers, will
5 be paid under this section during the cal-
6 endar year that begins in the following fis-
7 cal year.

8 “(ii) APPLICABILITY.—Subsection
9 (k)(1)(B) applies to the estimate under
10 clause (i) relating to health professional
11 volunteers to the same extent and in the
12 same manner as that subsection applies to
13 the estimate under that subsection relating
14 to officers, governing board members, em-
15 ployees, and contractors of entities de-
16 scribed in subsection (g)(4).

17 “(C) TRANSFERS.—Not later than Decem-
18 ber 31 of each fiscal year, the Secretary shall
19 transfer from the fund under subsection (k)(2)
20 to the appropriate accounts in the Treasury an
21 amount equal to the estimate made under sub-
22 paragraph (B) for the calendar year beginning
23 in that fiscal year, subject to the extent of
24 amounts in the fund.

25 “(5) EFFECTIVE DATES.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), this subsection takes effect
3 on October 1, 2017.

4 “(B) REGULATIONS, APPLICATIONS, AND
5 REPORTS.—Effective on the date of the enact-
6 ment of this subsection—

7 “(i) the Secretary may—

8 “(I) issue regulations for car-
9 rying out this subsection; and

10 “(II) accept and consider applica-
11 tions submitted under paragraph
12 (3)(C); and

13 “(ii) the Attorney General may submit
14 to Congress a report under paragraph
15 (4)(B).”.

16 **SEC. 9. FISCAL ACCOUNTABILITY.**

17 Title VI of the Indian Health Care Improvement Act
18 (25 U.S.C. 1661 et seq.) (as amended by section 6(a))
19 is amended by adding at the end the following:

20 **“SEC. 609. FISCAL ACCOUNTABILITY.**

21 “(a) MANAGEMENT OF FUNDS.—

22 “(1) IN GENERAL.—If the Secretary fails to
23 submit the staffing plan in accordance with section
24 4(c) of the Indian Health Service Accountability Act
25 of 2016 or the housing plan in accordance with sec-

1 tion 5(c) of that Act, the Secretary may not receive,
2 obligate, transfer, or expend any amounts for a sal-
3 ary increase or bonus of an individual described in
4 paragraph (2) before the applicable plan is sub-
5 mitted in accordance with section 4(c) or section
6 5(c) of that Act, as applicable.

7 “(2) INDIVIDUAL DESCRIBED.—An individual
8 referred to in paragraph (1) is—

9 “(A) an individual who—

10 “(i) is employed in a position de-
11 scribed in sections 5312 through 5316 of
12 title 5, United States Code (relating to the
13 Executive Schedule);

14 “(ii) is a limited term appointee, lim-
15 ited emergency appointee, or noncareer ap-
16 pointee in the Senior Executive Service, as
17 defined under paragraphs (5), (6), and (7),
18 respectively, of section 3132(a) of title 5,
19 United States Code; or

20 “(iii) is employed in a position in the
21 executive branch of the Government of a
22 confidential or policy-determining nature
23 under schedule C of subpart C of part 213
24 of title 5, Code of Federal Regulations; or

1 “(B) a senior executive (as defined in sec-
2 tion 3132(a) of title 5, United States Code).

3 “(b) PRIORITIZATION OF PATIENT CARE.—

4 “(1) IN GENERAL.—The Secretary shall use
5 amounts that are not obligated or expended during
6 the fiscal year for which the amounts are made
7 available, and that remain available, only to support
8 patient care, specifically for—

9 “(A) costs of essential medical equipment;

10 “(B) the Purchased/Referred Care pro-
11 gram; or

12 “(C) any other purpose approved by the
13 Secretary after consultation with appropriate
14 Indian tribes.

15 “(2) RESTRICTIONS.—The Secretary shall not
16 use amounts described in paragraph (1) for—

17 “(A) interior decorating or remodeling of a
18 facility of the Service; or

19 “(B) an increase in rate of pay for an em-
20 ployee of an Area office.

21 “(c) SPENDING REPORTS.—The Secretary shall pro-
22 vide a report each quarter of a fiscal year describing the
23 expenditures, outlays, transfers, reprogramming, obliga-
24 tions, and other spending of each level of the Service, in-

1 cluding the headquarters, each Area office, each Service
2 unit, and each facility, to—

3 “(1) Indian tribes;

4 “(2) in the Senate—

5 “(A) the Committee on Indian Affairs;

6 “(B) the Committee on Health, Education,
7 Labor, and Pensions;

8 “(C) the Committee on Appropriations;
9 and

10 “(D) the Committee on the Budget; and

11 “(3) in the House of Representatives—

12 “(A) the Committee on Natural Resources;

13 “(B) the Committee on Energy and Com-
14 merce;

15 “(C) the Committee on Appropriations;
16 and

17 “(D) the Committee on the Budget.

18 “(d) STATUS REPORTS.—

19 “(1) IN GENERAL.—The Secretary shall provide
20 to each entity described in paragraphs (1) through
21 (3) of subsection (c) a report each quarter of a fiscal
22 year, except as provided in paragraph (2), describing
23 the safety, billing, certification, credential, and com-
24 pliance statuses of each facility managed, operated,
25 or otherwise supported by the Service.

1 “(2) UPDATES.—On a change of a status de-
 2 scribed in paragraph (1), the Secretary shall imme-
 3 diately provide to each entity described in para-
 4 graphs (1) through (3) of subsection (c) an update
 5 describing the change.”.

6 **SEC. 10. TRANSPARENCY AND ACCOUNTABILITY FOR PA-**
 7 **TIENT SAFETY.**

8 (a) TRANSPARENCY AND ACCOUNTABILITY.—Title
 9 VI of the Indian Health Care Improvement Act (25 U.S.C.
 10 1661 et seq.) (as amended by section 9) is amended by
 11 adding at the end the following:

12 **“SEC. 610. TRANSPARENCY AND ACCOUNTABILITY FOR PA-**
 13 **TIENT SAFETY.**

14 “(a) TRANSPARENCY.—The Secretary shall ensure
 15 that all surveys, reports, and other materials of the Cen-
 16 ters for Medicare & Medicaid Services relating to patient
 17 safety and compliance are posted on the websites of each
 18 hospital and clinic wholly or partially owned, operated,
 19 managed, or funded by the Service.

20 “(b) ACCOUNTABILITY.—

21 “(1) IN GENERAL.—The Inspector General of
 22 the Department (referred to in this section as the
 23 ‘Inspector General’) shall investigate each patient
 24 death in which the Service is alleged to be involved
 25 by an act or omission.

1 “(2) NOTICE.—The Secretary shall notify the
2 Inspector General of each patient death that oc-
3 curs—

4 “(A) in a facility of the Service; or

5 “(B) under the care of the Service.

6 “(3) REPORTS.—Not less frequently than once
7 each year, the Inspector General shall provide to In-
8 dian tribes in the relevant Service area and Congress
9 a report describing the investigations described in
10 paragraph (1).

11 “(4) DISCLOSURE.—On completion of each in-
12 vestigation described in paragraph (1), the Inspector
13 General shall provide to the family of the deceased
14 patient information relating to—

15 “(A) the findings of the investigation; and

16 “(B) any action taken by the Inspector
17 General, including any criminal referral.

18 “(c) QUALITY MONITORING.—The Secretary, in con-
19 sultation with the Inspector General, shall establish within
20 the Service a program to monitor the quality of patient
21 care in the Service.

22 “(d) REPORTING SYSTEMS.—The Inspector General
23 shall—

1 “(1) conduct an audit of reporting systems of
2 the Service as of the date of enactment of this sec-
3 tion; and

4 “(2) provide to the Service recommendations
5 and technical assistance to implement improved re-
6 porting systems, procedures, standards, and proto-
7 cols.”.

8 (b) COMPLIANCE SURVEYS.—Section 1880 of the So-
9 cial Security Act (42 U.S.C. 1395qq) is amended by add-
10 ing at the end the following:

11 “(g)(1) Not less frequently than once every 2 years,
12 the Administrator of the Centers for Medicare & Medicaid
13 Services shall conduct surveys to assess the compliance of
14 each hospital or skilled nursing facility of the Indian
15 Health Service with—

16 “(A) section 1867; and

17 “(B) conditions of participation in the program
18 under this title.

19 “(2) Each survey completed under this subsection
20 shall be made available on the public Internet website of
21 the Centers for Medicare & Medicaid Services.”.

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