

115TH CONGRESS
2D SESSION

H. R. 7105

To amend title 38, United States Code, to ensure that certain health care contractors of the Department of Veterans Affairs are subject to Federal tort claims laws, to improve the accountability of physicians of the Department, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 30, 2018

Mr. BRAT (for himself, Mrs. COMSTOCK, Mrs. RADEWAGEN, and Miss GONZÁLEZ-COLÓN of Puerto Rico) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to ensure that certain health care contractors of the Department of Veterans Affairs are subject to Federal tort claims laws, to improve the accountability of physicians of the Department, 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 “Brian Tally VA Med-
5 ical Care and Liability Improvement Act”.

1 **SEC. 2. ACCOUNTABILITY OF HEALTH CARE PROVIDERS AT**
2 **FACILITIES OF THE DEPARTMENT OF VET-**
3 **ERANS AFFAIRS.**

4 (a) TREATMENT OF CONTRACTORS UNDER FEDERAL
5 TORT CLAIMS LAWS.—Section 7316 of title 38, United
6 States Code, is amended by adding at the end the fol-
7 lowing new subsection:

8 “(g)(1) For purposes of this section, an individual
9 who is not an employee of the Federal Government but
10 who is authorized by the Secretary to provide health care
11 or treatment at a facility of the Department pursuant to
12 a contract or other agreement shall be treated as if the
13 individual were a health care employee of the Administra-
14 tion with respect to the health care or treatment furnished
15 by that individual in such a facility of the Department.

16 “(2) If an individual described in paragraph (1) is
17 the defendant employee of a civil action or proceeding pur-
18 suant to this section, any claim of that individual for bene-
19 fits under an insurance policy with respect to medical mal-
20 practice relating to such civil action or proceeding shall
21 be subrogated to the United States.

22 “(3)(A) If an individual described in paragraph (1)
23 is the defendant employee of at least three separate cov-
24 ered cases during a five-year period, the Secretary—

1 “(i) shall revoke the individual’s authorization
2 to provide health care or treatment at a facility of
3 the Department; and

4 “(ii) may not enter into any contract or agree-
5 ment that authorizes the individual to provide health
6 care or treatment at a facility of the Department.

7 “(B) In this paragraph, the term ‘covered case’
8 means—

9 “(i) a civil action or proceeding pursuant to this
10 section that resulted in a judgment against the
11 United States; or

12 “(ii) such an action or proceeding that the
13 United States compromises or settles and the Sec-
14 retary determines should be treated as a covered
15 case for purposes of this paragraph.”.

16 (b) NOTIFICATIONS AND OUTREACH REGARDING
17 FEDERAL TORT CLAIMS.—Such section, as amended by
18 subsection (a), is further amended by adding at the end
19 the following new subsections:

20 “(h) Not later than 30 days following the date on
21 which a judgment is entered against the United States in
22 a civil action or proceeding pursuant to this section, the
23 Secretary shall notify the following entities with respect
24 to such judgment:

1 “(1) The appropriate licensing entity of each
2 State in which a defendant employee is licensed as
3 a health care professional.

4 “(2) The National Practitioner Data Bank es-
5 tablished pursuant to the Health Care Quality Im-
6 provement Act of 1986 (42 U.S.C. 11101 et seq.).

7 “(i) The Secretary shall publish in a clear and con-
8 spicuous manner on the internet website of the Depart-
9 ment an explanation of the rights of an individual under
10 this section, including—

11 “(1) an explanation of the procedure to file an
12 administrative claim pursuant to section 515 of this
13 title or section 2675 of title 28;

14 “(2) the circumstances under which an indi-
15 vidual may file a civil action or proceeding pursuant
16 to this section; and

17 “(3) time limits that can bar recovery under
18 this section.”.

19 (c) ACCOUNTABILITY OF PHYSICIANS OF THE DE-
20 PARTMENT.—Section 7461 of such title is amended—

21 (1) in subsection (a), by adding at the end the
22 following new sentence: “The Under Secretary shall
23 bring such charges based on professional conduct or
24 competence against a section 7401(1) employee who
25 is the defendant employee of at least three separate

1 civil actions or proceedings pursuant to section 7316
2 of this title that, within a five-year period—

3 “(1) resulted in a judgment against the United
4 States; or

5 “(2)(A) were compromised or settled by the
6 United States; and

7 “(B) the Secretary determines should be count-
8 ed under this sentence for purposes of bringing such
9 charges.”; and

10 (2) in subsection (c)(3), by adding at the end
11 the following new subparagraph:

12 “(C) The provision of care subject to
13 a civil action or proceeding pursuant to
14 section 7316 of this title that—

15 “(i) resulted in a judgment
16 against the United States; or

17 “(ii) is compromised or settled by
18 the United States and the Secretary
19 determines such care should be cov-
20 ered by this paragraph.”.

21 (d) APPLICABILITY.—The amendments made by this
22 section shall take effect with respect to actions or omis-
23 sions covered under section 7316 of title 38, United States

- 1 Code, occurring on or after the date of the enactment of
- 2 this Act.

