

114TH CONGRESS
2D SESSION

H. R. 4689

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

MARCH 3, 2016

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; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Timely Payment for Veterans’ Emergency Care Act”.

6 (b) FINDINGS.—Congress finds as follows:

1 (1) There is a need for the Department of Vet-
2 erans Affairs to improve the timeliness of emergency
3 claims processing for non-Department of Veterans
4 Affairs care.

5 (2) Current Veterans Health Administration
6 (hereinafter referred to as the “VHA”) policies re-
7 quire paper medical records be sent to VHA claims
8 processing offices by providers.

9 (3) According to Government Accountability Of-
10 fice testimony to a February 11, 2016, House Vet-
11 erans’ Affairs Subcommittee on Health hearing on
12 Department of Veterans Affairs Choice Program
13 Consolidation:

14 (A) “VHA policy requires that paper
15 claims be manually date-stamped and scanned
16 into the Fee Basis Claims System (FBCS)
17 upon receipt. Electronic claims are imported
18 into the FBCS. If the community provider is
19 required to submit medical documentation for
20 the claim to be processed—which is the case for
21 most types of VA care in the community serv-
22 ices—VA can only accept it in paper form, and
23 the medical documentation must also be
24 scanned into FBCS.”.

1 (B) “A VHA directive states that 90 per-
2 cent of all claims for VA care in the community
3 must be processed (either paid or rejected)
4 within 30 days of receipt.”.

5 (C) “Our preliminary work shows that in
6 fiscal year 2015, VHA’s processing of claims
7 for VA care in the community services was sig-
8 nificantly less timely than Medicare’s and
9 TRICARE’s claims processing. VHA officials
10 told us that the agency’s fiscal year 2015 data
11 show that VHA processed about 66 percent of
12 claims within the agency’s required timeframe
13 of 30 days or less. In contrast, CMS and DHA
14 data show that in fiscal year 2015, Medicare’s
15 and TRICARE’s claims processing contractors
16 processed about 99 percent of claims within 30
17 or fewer days of receipt.”.

18 (D) “However, the difference between
19 VHA’s claims processing timeliness and that of
20 Medicare and TRICARE is likely greater than
21 what VHA’s available data indicate. Specifi-
22 cally, VHA’s data likely overstate the agency’s
23 claims processing timeliness because they do
24 not account for delays in scanning paper claims,
25 which VHA officials told us account for ap-

1 proximately 60 percent of claims for VA care in
2 the community services.”.

3 (E) “Our preliminary review raises ques-
4 tions about whether staff at VHA’s claims proc-
5 essing locations are following the agency’s pol-
6 icy for promptly scanning paper claims.”.

7 (F) “According to CMS and DHA officials,
8 the vast majority of Medicare and TRICARE
9 claims are submitted electronically.”.

10 (4) According to data compiled by the Veterans
11 Health Administration’s Chief Business Office, there
12 is currently a backlog of over \$788,000,000 nation-
13 wide for non-Department of Veterans Affairs emer-
14 gency medical claims.

15 **SEC. 2. AUTHORITY OF SECRETARY OF VETERANS AFFAIRS**
16 **TO ENTER INTO CONTRACTS WITH ADMINIS-**
17 **TRATIVE CONTRACTORS FOR THE PROC-**
18 **ESSING OF CLAIMS FOR HOSPITAL CARE AND**
19 **MEDICAL SERVICES FURNISHED IN NON-DE-**
20 **PARTMENT OF VETERANS AFFAIRS FACILI-**
21 **TIES.**

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

1 **“§ 1725A. Authority to enter into contracts with ad-**
2 **ministrative contractors**

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

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

12 “(A) the entity has demonstrated capability to
13 carry out such function;

14 “(B) the entity complies with such conflict of
15 interest standards as are generally applicable to
16 Federal acquisition and procurement;

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

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

21 “(E) the entity meets such other requirements
22 as the Secretary may impose.

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

1 “(B) With respect to the performance of a particular
2 function in relation to an individual enrolled in the patient
3 enrollment system under section 1705 of this title, the ‘ap-
4 propriate’ administrative contractor is the administrative
5 contractor that has a contract under this section with re-
6 spect to the performance of that function in relation to
7 that individual, or non-Department facility.

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

12 “(A) Determining the amount of the payments
13 required pursuant to this title to be made to a non-
14 Department facility.

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

18 “(C) Providing education and outreach to indi-
19 viduals enrolled in the patient enrollment system
20 under section 1705 of this title and providing assist-
21 ance to those individuals with specific issues, con-
22 cerns, or problems.

23 “(D) Providing consultative services to institu-
24 tions, agencies, and other persons to enable them to

1 establish and maintain fiscal records necessary for
2 purposes of this title.

3 “(E) Communicating to non-Department facili-
4 ties any information or instructions furnished to the
5 administrative contractor by the Secretary, and fa-
6 cilitating communication between such facilities and
7 the Secretary.

8 “(F) Performing the functions relating to non-
9 Department facility education, training, and tech-
10 nical assistance.

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

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

16 “(b) CONTRACTING REQUIREMENTS.—(1)(A) Except
17 as provided in laws with general applicability to Federal
18 acquisition and procurement or in subparagraph (B), the
19 Secretary shall use competitive procedures when entering
20 into contracts with administrative contractors under this
21 section, taking into account performance quality as well
22 as price and other factors.

23 “(B) The Secretary may renew a contract with an
24 administrative contractor under this section from term to
25 term without regard to section 5 of title 41, United States

1 Code, or any other provision of law requiring competition,
2 if the administrative contractor has met or exceeded the
3 performance requirements applicable with respect to the
4 contract and contractor, except that the Secretary shall
5 provide for the application of competitive procedures
6 under such a contract not less frequently than once every
7 5 years.

8 “(C) The Secretary may transfer functions among
9 administrative contractors consistent with the provisions
10 of this paragraph. The Secretary shall ensure that per-
11 formance quality is considered in such transfers. The Sec-
12 retary shall provide public notice (whether in the Federal
13 Register or otherwise) of any such transfer (including a
14 description of the functions so transferred, a description
15 of the non-Department facilities affected by such transfer,
16 and contact information for the contractors involved).

17 “(D) The Secretary shall provide incentives for ad-
18 ministrative contractors to provide quality service and to
19 promote efficiency.

20 “(2) No contract under this section shall be entered
21 into with any administrative contractor unless the Sec-
22 retary finds that such administrative contractor will per-
23 form its obligations under the contract efficiently and ef-
24 fectively and will meet such requirements as to financial

1 responsibility, legal authority, quality of services provided,
2 and other matters as the Secretary finds pertinent.

3 “(3)(A)(i) The Secretary shall develop contract per-
4 formance requirements to carry out the specific require-
5 ments applicable under this title to a function described
6 in subsection (a)(4) and shall develop standards for meas-
7 uring the extent to which a contractor has met such re-
8 quirements. Such requirements shall include specific per-
9 formance duties expected of a medical director of an ad-
10 ministrative contractor, including requirements relating to
11 professional relations and the availability of such director
12 to conduct medical determination activities within the ju-
13 risdiction of such a contractor.

14 “(ii) In developing such performance requirements
15 and standards for measurement, the Secretary shall con-
16 sult with non-Department facilities, veterans service orga-
17 nizations, and organizations and agencies performing
18 functions necessary to carry out the purposes of this sec-
19 tion with respect to such performance requirements.

20 “(iii) The Secretary shall make such performance re-
21 quirements and measurement standards available to the
22 public.

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

1 “(C) All contractor performance requirements shall
2 be set forth in the contract between the Secretary and the
3 appropriate administrative contractor. Such performance
4 requirements—

5 “(i) shall reflect the performance requirements
6 published under subparagraph (A), but may include
7 additional performance requirements;

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

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

12 “(4) The Secretary shall not enter into a contract
13 with an administrative contractor under this section unless
14 the contractor agrees—

15 “(A) to furnish to the Secretary such timely in-
16 formation and reports as the Secretary may find
17 necessary in performing the functions of the Sec-
18 retary under this title; and

19 “(B) to maintain such records and afford such
20 access thereto as the Secretary finds necessary to
21 assure the correctness and verification of the infor-
22 mation and reports under subparagraph (A) and
23 otherwise to carry out the purposes of this title.

24 “(5) A contract with an administrative contractor
25 under this section may require the administrative con-

1 tractor, and any of its officers or employees certifying pay-
2 ments or disbursing funds pursuant to the contract, or
3 otherwise participating in carrying out the contract, to
4 give surety bond to the United States in such amount as
5 the Secretary may deem appropriate.

6 “(c) TERMS AND CONDITIONS.—A contract with any
7 administrative contractor under this section may contain
8 such terms and conditions as the Secretary finds necessary
9 or appropriate and may provide for advances of funds to
10 the administrative contractor for the making of payments
11 by it under subsection (a)(4)(B).

12 “(d) LIMITATION ON LIABILITY OF ADMINISTRATIVE
13 CONTRACTORS AND CERTAIN OFFICERS.—(1) No indi-
14 vidual designated pursuant to a contract under this sec-
15 tion as a certifying officer shall, in the absence of the reck-
16 less disregard of the individual’s obligations or the intent
17 by that individual to defraud the United States, be liable
18 with respect to any payments certified by the individual
19 under this section.

20 “(2) No disbursing officer shall, in the absence of the
21 reckless disregard of the officer’s obligations or the intent
22 by that officer to defraud the United States, be liable with
23 respect to any payment by such officer under this section
24 if it was based upon an authorization (which meets the
25 applicable requirements for such internal controls estab-

1 lished by the Comptroller General of the United States)
2 of a certifying officer designated as provided in paragraph
3 (1) of this subsection.

4 “(3)(A) No administrative contractor shall be liable
5 to the United States for a payment by a certifying or dis-
6 bursing officer unless, in connection with such payment,
7 the administrative contractor acted with reckless disregard
8 of its obligations under its administrative contract or with
9 intent to defraud the United States.

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

14 “(4)(A) Subject to subparagraphs (B) and (D), in the
15 case of an administrative contractor (or a person who is
16 a director, officer, or employee of such a contractor or who
17 is engaged by the contractor to participate directly in the
18 claims administration process) who is made a party to any
19 judicial or administrative proceeding arising from or relat-
20 ing directly to the claims administration process under
21 this title, the Secretary may, to the extent the Secretary
22 determines to be appropriate and as specified in the con-
23 tract with the contractor, indemnify the contractor and
24 such persons.

1 “(B) The Secretary may not provide indemnification
2 under subparagraph (A) insofar as the liability for such
3 costs arises directly from conduct that is determined by
4 the judicial proceeding or by the Secretary to be criminal
5 in nature, fraudulent, or grossly negligent. If indemnifica-
6 tion is provided by the Secretary with respect to a con-
7 tractor before a determination that such costs arose di-
8 rectly from such conduct, the contractor shall reimburse
9 the Secretary for costs of indemnification.

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

14 “(D) A contractor or other person described in sub-
15 paragraph (A) may not propose to negotiate a settlement
16 or compromise of a proceeding described in such subpara-
17 graph without the prior written approval of the Secretary
18 to negotiate such settlement or compromise. Any indem-
19 nification under subparagraph (A) with respect to
20 amounts paid under a settlement or compromise of a pro-
21 ceeding described in such subparagraph are conditioned
22 upon prior written approval by the Secretary of the final
23 settlement or compromise.

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

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

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

7 “(e) REQUIREMENTS FOR INFORMATION SECU-
8 RITY.—(1) An administrative contractor that performs the
9 functions referred to in subparagraphs (A) and (B) of sub-
10 section (a)(4) (relating to determining and making pay-
11 ments) shall implement a contractor-wide information se-
12 curity program to provide information security for the op-
13 eration and assets of the contractor with respect to such
14 functions under this title. An information security pro-
15 gram under this paragraph shall meet the requirements
16 for information security programs imposed on Federal
17 agencies under paragraphs (1) through (8) of section
18 3544(b) of title 44, United States Code (other than the
19 requirements under paragraphs (2)(D)(i), (5)(A), and
20 (5)(B) of such section).

21 “(2)(A) Each year an administrative contractor that
22 performs the functions referred to in subparagraphs (A)
23 and (B) of subsection (a)(4) (relating to determining and
24 making payments) shall undergo an evaluation of the in-

1 formation security of the contractor with respect to such
2 functions under this title. The evaluation shall—

3 “(i) be performed by an entity that meets such
4 requirements for independence as the Inspector Gen-
5 eral of the Department of Health and Human Serv-
6 ices may establish; and

7 “(ii) test the effectiveness of information secu-
8 rity control techniques of an appropriate subset of
9 the contractor’s information systems (as defined in
10 section 3502(8) of title 44, United States Code) re-
11 lating to such functions under this title and an as-
12 sessment of compliance with the requirements of this
13 subsection and related information security policies,
14 procedures, standards and guidelines, including poli-
15 cies and procedures as may be prescribed by the Di-
16 rector of the Office of Management and Budget and
17 applicable information security standards promul-
18 gated under section 11331 of title 40, United States
19 Code.

20 “(B)(i) The results of independent evaluations under
21 subparagraph (A) shall be submitted promptly to the In-
22 spector General of the Department and to the Secretary.

23 “(ii) The Inspector General of the Department shall
24 submit to Congress annual reports on the results of such

1 evaluations, including assessments of the scope and suffi-
2 ciency of such evaluations.

3 “(f) INCENTIVES TO IMPROVE CONTRACTOR PER-
4 FORMANCE IN NON-DEPARTMENT FACILITY EDUCATION
5 AND OUTREACH.—The Secretary shall use specific claims
6 payment error rates or similar methodology of administra-
7 tive contractors in the processing or reviewing of claims
8 in order to give such contractors an incentive to implement
9 effective education and outreach programs for non-De-
10 partment facilities.”.

11 (b) CLERICAL AMENDMENT.—The table of sections
12 at the beginning of such chapter is amended by inserting
13 after the item relating to section 1725 the following new
14 item:

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

○