

117TH CONGRESS
1ST SESSION

S. 2041

To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to enforce the licensure requirement for medical providers of the Department of Veterans Affairs.

IN THE SENATE OF THE UNITED STATES

JUNE 14, 2021

Mr. MANCHIN (for himself, Mr. MORAN, Mr. BOOZMAN, Ms. COLLINS, and Mr. CASSIDY) 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 direct the Secretary of Veterans Affairs to enforce the licensure requirement for medical providers of the Department of Veterans Affairs.

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 “Department of Vet-
5 erans Affairs Provider Accountability Act”.

1 **SEC. 2. COMPLIANCE WITH REQUIREMENTS FOR EXAM-**
 2 **INING QUALIFICATIONS AND CLINICAL ABILI-**
 3 **TIES OF HEALTH CARE PROFESSIONALS OF**
 4 **DEPARTMENT OF VETERANS AFFAIRS.**

5 (a) IN GENERAL.—Subchapter I of chapter 74 of title
 6 38, United States Code, is amended by adding at the end
 7 the following new section:

8 **“§ 7414. Compliance with requirements for examining**
 9 **qualifications and clinical abilities of**
 10 **health care professionals**

11 “(a) COMPLIANCE WITH CREDENTIALING REQUIRE-
 12 MENTS.—The Secretary shall ensure that each medical
 13 center of the Department, in a consistent manner—

14 “(1) compiles, verifies, and reviews documenta-
 15 tion for each health care professional of the Depart-
 16 ment at such medical center regarding, at a min-
 17 imum—

18 “(A) the professional licensure, certifi-
 19 cation, or registration of the health care profes-
 20 sional;

21 “(B) whether the health care professional
 22 holds a Drug Enforcement Administration reg-
 23 istration; and

24 “(C) the education, training, experience,
 25 malpractice history, and clinical competence of
 26 the health care professional; and

1 “(2) continuously monitors any changes to the
2 matters under paragraph (1), including with respect
3 to suspensions, restrictions, limitations, probations,
4 denials, revocations, and other changes, relating to
5 the failure of a health care professional to meet gen-
6 erally accepted standards of clinical practice in a
7 manner that presents reasonable concern for the
8 safety of patients.

9 “(b) REGISTRATION REGARDING CONTROLLED SUB-
10 STANCES.—(1) Except as provided in paragraph (2), the
11 Secretary shall ensure that each covered health care pro-
12 fessional holds an active Drug Enforcement Administra-
13 tion registration.

14 “(2) The Secretary shall—

15 “(A) determine the circumstances in which a
16 medical center of the Department must obtain a
17 waiver under section 303 of the Controlled Sub-
18 stances Act (21 U.S.C. 823) with respect to covered
19 health care professionals; and

20 “(B) establish a process for medical centers to
21 request such waivers.

22 “(3) In carrying out paragraph (1), the Secretary
23 shall ensure that each medical center of the Department
24 monitors the Drug Enforcement Administration registra-
25 tions of covered health care professionals at such medical

1 center in a manner that ensures the medical center is
 2 made aware of any change in status in the registration
 3 by not later than seven days after such change in status.

4 “(4) If a covered health care professional does not
 5 hold an active Drug Enforcement Administration registra-
 6 tion, the Secretary shall carry out any of the following ac-
 7 tions, as the Secretary determines appropriate:

8 “(A) Obtain a waiver pursuant to paragraph
 9 (2).

10 “(B) Transfer the health care professional to a
 11 position that does not require prescribing, dis-
 12 pensing, administering, or conducting research with
 13 controlled substances.

14 “(C) Take appropriate actions under sub-
 15 chapter V of this chapter, with respect to an em-
 16 ployee of the Department, or take appropriate con-
 17 tract administration actions, with respect to a con-
 18 tractor of the Department.

19 “(c) REVIEWS OF CONCERNS RELATING TO QUALITY
 20 OF CLINICAL CARE.—(1) The Secretary shall ensure that
 21 each medical center of the Department, in a consistent
 22 manner, carries out—

23 “(A) ongoing, retrospective, and comprehensive
 24 monitoring of the performance and quality of the
 25 health care delivered by each health care profes-

1 sional of the Department located at the medical cen-
2 ter, including with respect to the safety of such care;
3 and

4 “(B) timely and documented reviews of such
5 care if an individual notifies the Secretary of any po-
6 tential concerns relating to a failure of a health care
7 professional of the Department to meet generally ac-
8 cepted standards of clinical practice in a manner
9 that presents reasonable concern for the safety of
10 patients.

11 “(2) The Secretary shall establish a policy to carry
12 out paragraph (1), including with respect to—

13 “(A) determining the period by which a medical
14 center of the Department must initiate the review of
15 a concern described in subparagraph (B) of such
16 paragraph following the date on which the concern
17 is received; and

18 “(B) ensuring the compliance of each medical
19 center with such policy.

20 “(d) COMPLIANCE WITH REQUIREMENTS FOR RE-
21 PORTING QUALITY OF CARE CONCERNS.—If the Secretary
22 substantiates a concern relating to the clinical competency
23 of, or quality of care delivered by, a health care profes-
24 sional of the Department (including a former health care
25 professional of the Department), the Secretary shall en-

1 sure that the appropriate medical center of the Depart-
 2 ment timely notifies the following entities of such concern,
 3 as appropriate:

4 “(1) The appropriate licensing, registration, or
 5 certification body in each State in which the health
 6 care professional is licensed, registered, or certified.

7 “(2) The Drug Enforcement Administration.

8 “(3) The National Practitioner Data Bank es-
 9 tablished pursuant to the Health Care Quality Im-
 10 provement Act of 1986 (42 U.S.C. 11101 et seq.).

11 “(4) Any other relevant entity.

12 “(e) PROHIBITION ON CERTAIN SETTLEMENT
 13 AGREEMENT TERMS.—(1) Except as provided in para-
 14 graph (2), the Secretary may not enter into a settlement
 15 agreement relating to an adverse action against a health
 16 care professional of the Department if such agreement in-
 17 cludes terms that require the Secretary to conceal from
 18 the personnel file of the employee a serious medical error
 19 or lapse in clinical practice that constitutes a substantial
 20 failure to meet generally accepted standards of clinical
 21 practice as to raise reasonable concern for the safety of
 22 patients.

23 “(2) Paragraph (1) does not apply to adverse actions
 24 that the Special Counsel under section 1211 of title 5 de-
 25 termines constitutes a prohibited personnel practice.

1 “(f) TRAINING.—Not less frequently than annually,
 2 the Secretary shall provide mandatory training on the fol-
 3 lowing duties to employees of the Department who are re-
 4 sponsible for performing such duties:

5 “(1) Compiling, validating, or reviewing the cre-
 6 dentials of health care professionals of the Depart-
 7 ment.

8 “(2) Reviewing the quality of clinical care deliv-
 9 ered by health care professionals of the Department.

10 “(3) Taking adverse privileging actions or mak-
 11 ing determinations relating to other disciplinary ac-
 12 tions or employment actions against health care pro-
 13 fessionals of the Department for reasons relating to
 14 the failure of a health care professional to meet gen-
 15 erally accepted standards of clinical practice in a
 16 manner that presents reasonable concern for the
 17 safety of patients.

18 “(4) Making notifications under subsection (d).

19 “(g) DEFINITIONS.—In this section:

20 “(1) The term ‘controlled substance’ has the
 21 meaning given that term in section 102 of the Con-
 22 trolled Substances Act (21 U.S.C. 802).

23 “(2) The term ‘covered health care professional’
 24 means an individual employed in a position as a
 25 health care professional of the Department, or a

1 contractor of the Department, that requires the indi-
 2 vidual to be authorized to prescribe, dispense, ad-
 3 minister, or conduct research with, controlled sub-
 4 stances.

5 “(3) The term ‘Drug Enforcement Administra-
 6 tion registration’ means registration with the Drug
 7 Enforcement Administration under section 303 of
 8 the Controlled Substances Act (21 U.S.C. 823) by
 9 health care practitioners authorized to dispense, pre-
 10 scribe, administer, or conduct research with, con-
 11 trolled substances.

12 “(4) The term ‘health care professional of the
 13 Department’ means an individual working for the
 14 Department in a position described in section 7401
 15 of this title, including a contractor of the Depart-
 16 ment serving in such a position.”.

17 (b) CLERICAL AMENDMENT.—The table of sections
 18 at the beginning of such chapter is amended by inserting
 19 after the item relating to section 7413 the following new
 20 item:

“7414. Compliance with requirements for examining qualifications and clinical
 abilities of health care professionals.”.

21 (c) DEADLINE FOR IMPLEMENTATION.—The Sec-
 22 retary of Veterans Affairs shall commence the implemen-
 23 tation of section 7414 of title 38, United States Code, as
 24 added by subsection (a), by the following dates:

1 (1) With respect to subsections (a), (c)(2), (d),
 2 and (f) of such section, not later than 180 days after
 3 the date of the enactment of this Act.

4 (2) With respect to subsection (c)(1) of such
 5 section, not later than one year after the date of the
 6 enactment of this Act.

7 (3) With respect to subsection (b)(2) of such
 8 section, not later than 18 months after the date of
 9 the enactment of this Act.

10 (d) AUDITS AND REPORTS.—

11 (1) AUDITS.—

12 (A) IN GENERAL.—The Secretary of Vet-
 13 erans Affairs shall carry out annual audits of
 14 the compliance of medical centers of the De-
 15 partment of Veterans Affairs with the matters
 16 required by section 7414 of title 38, United
 17 States Code, as added by subsection (a).

18 (B) CONDUCT OF AUDITS.—In carrying
 19 out audits under subparagraph (A), the Sec-
 20 retary—

21 (i) may not authorize the medical cen-
 22 ter being audited to conduct the audit; and

23 (ii) may enter into an agreement with
 24 another department or agency of the Fed-

1 eral Government or a nongovernmental en-
2 tity to conduct such audits.

3 (2) REPORTS.—

4 (A) IN GENERAL.—Not later than one year
5 after the date of the enactment of this Act, and
6 annually thereafter for five years, the Secretary
7 of Veterans Affairs shall submit to the Com-
8 mittee on Veterans' Affairs of the Senate and
9 the Committee on Veterans' Affairs of the
10 House of Representatives a report on the audits
11 conducted under paragraph (1).

12 (B) ELEMENTS.—Each report submitted
13 under subparagraph (A) shall include a sum-
14 mary of the compliance by each medical center
15 of the Department of Veterans Affairs with the
16 matters required by section 7414 of title 38,
17 United States Code, as added by subsection (a).

18 (C) INITIAL REPORT.—The Secretary shall
19 include in the first report submitted under sub-
20 paragraph (A) the following:

21 (i) A description of the progress made
22 by the Secretary in implementing section
23 7414 of title 38, United States Code, as
24 added by subsection (a), including any

1 matters under such section that the Sec-
2 retary has not fully implemented.

3 (ii) An analysis of the feasibility, ad-
4 visability, and cost of requiring credential-
5 ing employees of the Department to be
6 trained by an outside entity and to main-
7 tain a credentialing certification.

8 (e) REPORT ON UPDATES TO POLICY OF THE DE-
9 PARTMENT OF VETERANS AFFAIRS FOR REPORTING PA-
10 TIENT SAFETY CONCERNS TO APPROPRIATE STATE AND
11 OTHER ENTITIES.—

12 (1) IN GENERAL.—Not later than 90 days after
13 the date of the enactment of this Act, the Secretary
14 of Veterans Affairs shall submit to the Committee
15 on Veterans' Affairs of the Senate and the Com-
16 mittee on Veterans' Affairs of the House of Rep-
17 resentatives a report on the efforts of the Depart-
18 ment of Veterans Affairs to update policies and
19 practices for employees of medical centers of the De-
20 partment, Veterans Integrated Service Networks,
21 and the Veterans Health Administration to report to
22 State licensing boards, the National Practitioner
23 Data Bank established pursuant to the Health Care
24 Quality Improvement Act of 1986 (42 U.S.C. 11101
25 et seq.), and any other relevant entity health care

1 professionals who are employed by or separated from
2 employment with the Department and whose behav-
3 ior and clinical practice so substantially failed to
4 meet generally accepted standards of clinical practice
5 as to raise reasonable concern for the safety of pa-
6 tients.

7 (2) CONSULTATION.—The report required by
8 paragraph (1) shall include a description of the ef-
9 forts of the Department to consult with—

10 (A) State licensing boards;

11 (B) the Centers for Medicare & Medicaid
12 Services;

13 (C) the National Practitioner Data Bank;
14 and

15 (D) the exclusive representative of employ-
16 ees of the Department appointed under section
17 7401(1) of title 38, United States Code.

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