

115TH CONGRESS
1ST SESSION

S. _____

To amend the Indian Health Care Improvement Act to improve the recruitment and retention of employees in the Indian Health Service, restore accountability in the Indian Health Service, improve health services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. BARRASSO introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Indian Health Care Improvement Act to improve the recruitment and retention of employees in the Indian Health Service, restore accountability in the Indian Health Service, improve health services, 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 “Restoring Account-
5 ability in the Indian Health Service Act of 2017”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—INDIAN HEALTH SERVICE IMPROVEMENTS

Sec. 101. Incentives for recruitment and retention.

Sec. 102. Medical credentialing system.

Sec. 103. Liability protections for health professional volunteers at Indian Health Service.

Sec. 104. Clarification regarding eligibility for Indian Health Service loan repayment program.

Sec. 105. Improvements in hiring practices.

Sec. 106. Removal or demotion of Indian Health Service employees based on performance or misconduct.

Sec. 107. Standards to improve timeliness of care.

Sec. 108. Tribal culture and history.

Sec. 109. Staffing demonstration project.

Sec. 110. Rule establishing tribal consultation policy.

TITLE II—EMPLOYEE PROTECTIONS

Sec. 201. Right of Federal employees to petition Congress.

Sec. 202. Fiscal accountability.

TITLE III—REPORTS

Sec. 301. Definitions.

Sec. 302. Reports by the Secretary of Health and Human Services.

Sec. 303. Reports by the Comptroller General.

Sec. 304. Inspector General reports.

Sec. 305. Transparency in CMS surveys.

TITLE IV—TECHNICAL AMENDMENTS

Sec. 401. Technical amendments.

1 **TITLE I—INDIAN HEALTH 2 SERVICE IMPROVEMENTS**

3 **SEC. 101. INCENTIVES FOR RECRUITMENT AND RETEN- 4 TION.**

5 Title I of the Indian Health Care Improvement Act
6 (25 U.S.C. 1611 et seq.) is amended by adding at the end
7 the following:

1 **“SEC. 125. INCENTIVES FOR RECRUITMENT AND RETEN-**
2 **TION.**

3 “(a) PARITY IN PAY.—The Secretary shall establish
4 a pay system for physicians, dentists, nurses, and other
5 health care professionals employed by the Service that pro-
6 vides pay that, to the maximum extent practicable, is com-
7 parable to the pay provided to physicians, dentists, nurses,
8 and other health care professionals, respectively, under
9 subchapters III and IV of chapter 74 of title 38, United
10 States Code.

11 “(b) RELOCATION COSTS.—The Secretary may pro-
12 vide to an employee of the Service reimbursement for any
13 relocation costs the employee incurs if—

14 “(1) the employee relocates to a Service area
15 experiencing a high level of need for employees, as
16 determined by the Secretary; and

17 “(2) the employee is filling a position that
18 would otherwise be difficult to fill, as determined by
19 the Secretary, in the absence of an incentive.

20 “(c) HOUSING VOUCHERS.—

21 “(1) IN GENERAL.—Subject to paragraph (2),
22 not later than 1 year after the date of enactment of
23 the Restoring Accountability in the Indian Health
24 Service Act of 2017, the Secretary may establish a
25 program to provide tenant-based rental assistance to
26 an employee of the Service who—

1 “(A) agrees to serve for not less than 1
2 year at a Service unit designated by the Admin-
3 istrator of the Health Resources and Services
4 Administration as a health professional short-
5 age area, as defined in section 332(a) of the
6 Public Health Service Act (42 U.S.C. 254e(a));
7 and

8 “(B) is a critical employee, as determined
9 by the Secretary.

10 “(2) SUNSET.—Any program established by the
11 Secretary under paragraph (1) shall terminate on
12 the date that is 3 years after the date on which any
13 such program is established.

14 “(d) ADMINISTRATION.—

15 “(1) OPM GUIDELINES.—The Secretary shall
16 carry out this section in accordance with any guide-
17 lines of the Office of Personnel Management relating
18 to the recruitment and retention of employees, in-
19 cluding section 575.109 of title 5, Code of Federal
20 Regulations (as in effect on the date of enactment
21 of the Restoring Accountability in the Indian Health
22 Service Act of 2017).

23 “(2) SERVICE AGREEMENTS.—The Secretary
24 may only provide reimbursement for any relocation

1 costs under subsection (b) or any other benefit
2 under subsection (c) to—

3 “(A) a full-time employee who agrees to
4 serve for not less than 1 year in the Service, be-
5 ginning on the date of the agreement; or

6 “(B) a part-time employee who agrees to
7 serve for not less than 2 years in the service be-
8 ginning on the date of the agreement.”.

9 SEC. 102. MEDICAL CREDENTIALING SYSTEM.

10 Title I of the Indian Health Care Improvement Act
11 (25 U.S.C. 1611 et seq.), as amended by section 101, is
12 further amended by adding at the end the following:

13 “SEC. 126. MEDICAL CREDENTIALING SYSTEM.

14 “(a) IN GENERAL.—By not later than 1 year after
15 the date of enactment of the Restoring Accountability in
16 the Indian Health Service Act of 2017, the Secretary, act-
17 ing through the Service and in accordance with the re-
18 quirements described in subsection (b), shall develop and
19 implement a Service-wide centralized credentialing system
20 (referred to in this section as the ‘credentialing system’)
21 to credential licensed health professionals who seek to pro-
22 vide health care services at any Service unit.

23 “(b) REQUIREMENTS.—In developing the
24 credentialing system under subsection (a), the Secretary
25 shall ensure the following:

1 “(1) Credentialing procedures shall be uniform
2 throughout the Service.

3 “(2) With respect to each licensed health pro-
4 fessional who successfully completes the
5 credentialing procedures of the credentialing system,
6 the Secretary shall authorize each such professional
7 to provide health care services at any Service unit.

8 “(c) CONSULTATION.—In developing the
9 credentialing system under subsection (a), the Secretary
10 shall consult with Indian tribes and may also consult with
11 any public or private association of medical providers, any
12 government agency, or other relevant expert, as deter-
13 mined by the Secretary.

14 “(d) APPLICATION.—A licensed health care profes-
15 sional may not provide health care services at any Service
16 unit, unless such professional successfully completes the
17 credentialing procedures of the credentialing system devel-
18 oped under subsection (a).

19 “(e) REGULATIONS.—The Secretary may prescribe
20 such regulations as may be necessary to carry out the pro-
21 visions of this section.

22 “(f) RULE OF CONSTRUCTION.—This section may
23 not be construed to inhibit the authority of an Indian tribe
24 to enter into or maintain a compact or contract under the

1 Indian Self-Determination and Education Assistance Act
2 (25 U.S.C. 5304 et seq.).”.

3 **SEC. 103. LIABILITY PROTECTIONS FOR HEALTH PROFES-**
4 **SIONAL VOLUNTEERS AT INDIAN HEALTH**
5 **SERVICE.**

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

9 “(r) CERTAIN INDIAN HEALTH SERVICE VOLUN-
10 TEERS DEEMED PUBLIC HEALTH SERVICE EMPLOY-
11 EES.—

12 “(1) IN GENERAL.—For purposes of this sec-
13 tion, a health professional volunteer at a Service
14 unit shall, in providing a health service to an indi-
15 vidual, be deemed to be an employee of the Public
16 Health Service for a calendar year that begins dur-
17 ing a fiscal year for which a transfer was made
18 under paragraph (4)(C). The preceding sentence is
19 subject to the provisions of this subsection.

20 “(2) CONDITIONS.—In providing a health serv-
21 ice to an individual, a health care practitioner shall,
22 for purposes of this subsection, be considered to be
23 a health professional volunteer at a Service unit if
24 all of the following conditions are met:

1 “(A) The service is provided to the individual at the facilities of a Service unit, or
2 through offsite programs or events carried out
3 by the Service unit.

5 “(B) The Service unit is sponsoring the
6 health care practitioner pursuant to paragraph
7 (3)(C).

8 “(C) The health care practitioner does not
9 receive any compensation for the service from
10 the individual, the Service unit, or any third-
11 party payer (including reimbursement under
12 any insurance policy or health plan, or under
13 any Federal or State health benefits program),
14 except that the health care practitioner may re-
15 ceive repayment from the Service unit for rea-
16 sonable expenses incurred by the health care
17 practitioner in the provision of the service to
18 the individual.

19 “(D) Before the service is provided, the
20 health care practitioner or the Service unit
21 posts a clear and conspicuous notice at the site
22 where the service is provided of the extent to
23 which the legal liability of the health care prac-
24 titioner is limited under this subsection.

1 “(E) At the time the service is provided,
2 the health care practitioner is licensed or cer-
3 tified in accordance with applicable law regard-
4 ing the provision of the service.

5 “(3) APPLICABILITY.—Subsection (g) (other
6 than paragraphs (3) and (5)) and subsections (h),
7 (i), and (l) apply to a health care practitioner at a
8 Service unit for purposes of this subsection to the
9 same extent and in the same manner as such sub-
10 sections apply to an officer, governing board mem-
11 ber, employee, or contractor of an entity described in
12 subsection (g)(4), subject to paragraph (4) and sub-
13 ject to the following subparagraphs:

14 “(A) Each reference to an entity in sub-
15 sections (g), (h), (i), and (l) shall be considered
16 to be a reference to a Service unit.

17 “(B) The first sentence of paragraph (1)
18 applies in lieu of the first sentence of subsection
19 (g)(1)(A).

20 “(C) With respect to a Service unit, a
21 health care practitioner is not a health profes-
22 sional volunteer at the Service unit unless the
23 Service unit sponsors the health care practi-
24 tioner. For purposes of this subsection, the

1 Service unit shall be considered to be spon-
2 soring the health care practitioner if—

3 “(i) with respect to the health care
4 practitioner, the Service unit submits to
5 the Secretary an application meeting the
6 requirements of subsection (g)(1)(D); and

7 “(ii) the Secretary, pursuant to sub-
8 section (g)(1)(E), determines that the
9 health care practitioner is deemed to be an
10 employee of the Public Health Service.

11 “(D) In the case of a health care practi-
12 tioner who is determined by the Secretary pur-
13 suant to this subsection and subsection
14 (g)(1)(E) to be a health professional volunteer,
15 this subsection applies to the health care practi-
16 tioner (with respect to services performed on
17 behalf of the Service unit sponsoring the health
18 care practitioner pursuant to subparagraph (C))
19 for any cause of action arising from an act or
20 omission of the health care practitioner occur-
21 ring on or after the date on which the Secretary
22 makes that determination.

23 “(E) Subsection (g)(1)(F) applies to a
24 health care practitioner for purposes of this
25 subsection only to the extent that, in providing

1 health services to an individual, each of the con-
2 ditions described in paragraph (2) is met.

3 “(4) FUNDING.—

4 “(A) IN GENERAL.—Amounts in the fund
5 established under subsection (k)(2) shall be
6 available for transfer under subparagraph (C)
7 for purposes of carrying out this subsection.

8 “(B) ANNUAL ESTIMATES.—

9 “(i) IN GENERAL.—Not later than
10 May 1 of each fiscal year, the Attorney
11 General, in consultation with the Sec-
12 retary, shall submit to Congress a report
13 providing an estimate of the amount of
14 claims (together with related fees and ex-
15 penses of witnesses) that, by reason of the
16 acts or omissions of health professional
17 volunteers, will be paid pursuant to this
18 section during the calendar year that be-
19 gins in the following fiscal year.

20 “(ii) APPLICABILITY.—Subsection
21 (k)(1)(B) applies to the estimate under
22 clause (i) relating to health professional
23 volunteers to the same extent and in the
24 same manner as that subsection applies to
25 the estimate under that subsection relating

1 to officers, governing board members, em-
2 ployees, and contractors of entities de-
3 scribed in subsection (g)(4).

4 “(C) TRANSFERS.—Not later than Decem-
5 ber 31 of each fiscal year, the Secretary shall
6 transfer from the fund under subsection (k)(2)
7 to the appropriate accounts in the Treasury an
8 amount equal to the estimate made under sub-
9 paragraph (B) for the calendar year beginning
10 in that fiscal year, subject to the extent of
11 amounts in the fund.

12 “(5) DEFINITION OF SERVICE UNIT.—In this
13 subsection, the term ‘Service unit’ has the meaning
14 given the term in section 4 of the Indian Health
15 Care Improvement Act (25 U.S.C. 1603).

16 “(6) RULE OF CONSTRUCTION.—Nothing in
17 this subsection shall be construed to inhibit the au-
18 thority of an Indian tribe to enter into or maintain
19 a compact or contract under the Indian Self-Deter-
20 mination and Education Assistance Act (25 U.S.C.
21 5304 et seq.).

22 “(7) EFFECTIVE DATES.—

23 “(A) IN GENERAL.—Except as provided in
24 subparagraph (B), this subsection shall take ef-
25 fect on October 1, 2019.

1 “(B) REGULATIONS, APPLICATIONS, AND
2 REPORTS.—Effective on the date of the enact-
3 ment of the Restoring Accountability in the In-
4 dian Health Service Act of 2017, the Secretary
5 may—

6 “(i) prescribe regulations for carrying
7 out this subsection; and
8 “(ii) accept and consider applications
9 submitted under paragraph (3)(C)(i).”.

10 **SEC. 104. CLARIFICATION REGARDING ELIGIBILITY FOR IN-**
11 **DIAN HEALTH SERVICE LOAN REPAYMENT**
12 **PROGRAM.**

13 Section 108 of the Indian Health Care Improvement
14 Act (25 U.S.C. 1616a) is amended—

15 (1) by amending subparagraph (B) of sub-
16 section (b)(1) to read as follows:

17 “(B) have—

18 “(i)(I) a degree in a health profession;
19 and

20 “(II) a license to practice a health
21 profession in a State; or

22 “(ii)(I) a degree in business adminis-
23 tration with an emphasis in health care
24 management (as defined by the Secretary),

1 health administration, hospital administra-
2 tion, or public health; and

3 “(II) a license or certification to prac-
4 tice in the field of business administration,
5 health administration, hospital administra-
6 tion, or public health in a State, if the Sec-
7 retary determines such license or certifi-
8 cation necessary for the Indian health pro-
9 gram to which the individual will be as-
10 signed;”;

11 (2) by amending clause (iii) of subsection
12 (f)(1)(B) to read as follows:

13 “(iii) to serve for a time period (re-
14 ferred to in this section as the ‘period of
15 obligated service’) equal to—

16 “(I) 2 years or such longer pe-
17 riod as the individual may agree to
18 serve in the full-time practice of such
19 individual’s profession in an Indian
20 health program to which the indi-
21 vidual may be assigned by the Sec-
22 retary; or

23 “(II) 4 years or such longer pe-
24 riod as the individual may agree to
25 serve in the half-time practice of such

1 individual's profession in an Indian
2 health program to which the indi-
3 vidual may be assigned by the Sec-
4 retary;"; and

5 (3) in subsection (g)(2)—

6 (A) by redesignating subparagraph (B) as
7 subparagraph (C); and

8 (B) in subparagraph (A)—

9 (i) by striking the first sentence of the
10 matter preceding clause (i) and inserting
11 the following: "In the case of an individual
12 who contracts to serve a period of obli-
13 gated service under subsection
14 (f)(1)(B)(iii)(I), for each year of such obli-
15 gated service, the Secretary may pay up to
16 \$35,000 (or an amount equal to the
17 amount specified in section 338B(g)(2)(A)
18 of the Public Health Service Act (42
19 U.S.C. 254l-1(g)(2)(A)) on behalf of the
20 individual for loans described in paragraph
21 (1). In the case of an individual who con-
22 tracts to serve a period of obligated service
23 under subsection (f)(1)(B)(iii)(II), for each
24 year of such obligated service, the Sec-
25 retary may pay up to \$17,500 on behalf of

1 the individual for loans described in para-
2 graph (1)”; and
3 (ii) by striking “In making a deter-
4 mination” and inserting the following:
5 “(B) In making a determination under this
6 paragraph”.

7 **SEC. 105. IMPROVEMENTS IN HIRING PRACTICES.**

8 (a) IN GENERAL.—Title VI of the Indian Health
9 Care Improvement Act (25 U.S.C. 1661 et seq.) is amend-
10 ed by adding at the end the following:

11 **“SEC. 605. IMPROVEMENTS IN HIRING PRACTICES.**

12 “(a) DIRECT HIRE AUTHORITY.—The Secretary may
13 appoint, without regard to subchapter I of chapter 33 of
14 title 5, United States Code (other than sections 3303 and
15 3328 of such title), a candidate directly to a position with-
16 in the Service for which the candidate meets the job de-
17 scription of the Office of Personnel Management.

18 “(b) TRIBAL NOTIFICATION.—Before appointing,
19 hiring, promoting, transferring, or reassigning a candidate
20 to a Senior Executive Service position or the position of
21 a manager at an Area office or Service unit, the Secretary
22 shall provide notice to each Indian tribe located within the
23 defined geographic area of such Area office or Service
24 unit, as the case may be, of the content of an inclusion
25 in an employment record under section 606(j).”.

1 (b) IN GENERAL.—Subsection (c) of section 2 of the
2 Act of December 15, 1979 (25 U.S.C. 5117) is amended
3 by adding the following:

4 “(3) IHS WAIVERS.—The Secretary of Health
5 and Human Services shall seek from each Indian
6 tribe concerned, a waiver of Indian preference laws
7 for a personnel action that is with respect to—

8 “(A) an Indian Health Service unit in
9 which 20 percent or more of the positions in the
10 Service unit are not filled by a full-time em-
11 ployee of the Indian Health Service for a period
12 of 6 months or longer; or

13 “(B) a former employee of the Indian
14 Health Service or a formal tribal employee who
15 was removed from such former employment
16 within, or demoted for performance or mis-
17 conduct that occurred during, the 5- year pe-
18 riod the date of such personnel action.”.

19 SEC. 106. REMOVAL OR DEMOTION OF INDIAN HEALTH
20 SERVICE EMPLOYEES BASED ON PERFORM-
21 ANCE OR MISCONDUCT.

22 Title VI of the Indian Health Care Improvement Act
23 (25 U.S.C. 1661 et seq.), as amended by section 105, is
24 further amended by adding at the end the following:

1 **“SEC. 606. REMOVAL OR DEMOTION OF SERVICE EMPLOY-**
2 **EES BASED ON PERFORMANCE OR MIS-**
3 **CONDUCT.**

4 “(a) DEFINITIONS.—In this section and section 607:

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

8 “(2) MANAGER.—

9 “(A) IN GENERAL.—The term ‘manager’
10 has the meaning given the term ‘management
11 official’ in section 7103(a) of title 5, United
12 States Code.

13 “(B) INCLUSIONS.—The term ‘manager’
14 includes, as employed at any facility of the
15 Service—

16 “(i) a chief executive officer;
17 “(ii) a chief medical officer; and
18 “(iii) a department director.

19 “(3) MISCONDUCT.—The term ‘misconduct’
20 means neglect of duty, malfeasance, or failure to ac-
21 cept a directed reassignment or to accompany a po-
22 sition in a transfer of function.

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

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

4 “(6) SENIOR EXECUTIVE.—The term ‘senior ex-
5 ecutive’ means a career appointee (as that term is
6 defined in section 3132(a) of title 5, United States
7 Code).

8 “(7) SENIOR EXECUTIVE SERVICE POSITION.—
9 The term ‘Senior Executive Service position’ has the
10 meaning given the term in section 3132(a) of title
11 5, United States Code.

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

15 “(b) REMOVAL BASED ON PERFORMANCE OR MIS-
16 CONDUCT.—

17 “(1) IN GENERAL.—Subject to paragraph (4),
18 the Secretary may remove an employee of the Serv-
19 ice from the position the employee occupies if the
20 Secretary determines the performance or misconduct
21 of the employee warrants removal.

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

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

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

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

16 “(3) INDIVIDUAL DESCRIBED.—An individual
17 referred to in paragraph (2)(B) is a senior executive
18 that—

19 “(A) previously occupied a permanent posi-
20 tion within the competitive service (as that term
21 is defined in section 2102 of title 5, United
22 States Code); or

23 “(B) previously occupied a permanent posi-
24 tion within the excepted service (as that term is

1 defined in section 2103 of title 5, United States
2 Code).

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

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

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

11 “(c) PAY OF CERTAIN INDIVIDUALS.—

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

20 “(2) REQUIREMENTS.—

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

1 “(i) may not be placed on administrative
2 leave or any other category of paid
3 leave during the period during which an
4 appeal (if any) under subsection (e)(2)(A)
5 is ongoing; and

6 “(ii) may only receive pay if the individual—

8 “(I) reports for duty; and

9 “(II) performs a primary duty or
10 an alternative primary duty, as each
11 term is described in section 551.104
12 of title 5, Code of Federal Regulations
13 (or a successor regulation).

14 “(B) FAILURE TO REPORT.—If an individual transferred to a General Schedule position under subsection (b)(2)(B) or subject to a reduction in grade under subsection (b)(2)(C) does not report for duty, pursuant to subsection (f)(3)(B), the individual shall not receive any increase in rate of pay or other benefit.

21 “(d) NOTICE TO CONGRESS.—Not later than 30 days
22 after the date on which the Secretary takes a personnel
23 action, the Secretary shall submit, in writing, a notice of
24 the personnel action and the reason for the personnel ac-
25 tion to—

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

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

5 “(3) the Committee on Natural Resources of
6 the House of Representatives;

7 “(4) the Committee on Energy and Commerce
8 of the House of Representatives; and

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

10 “(e) PROCEDURE.—

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

14 “(2) APPEAL.—

15 “(A) IN GENERAL.—Subject to subparagraph (B) and subsection (f), an employee subject to a personnel action may appeal the personnel action to the Merit Systems Protection Board under section 7701 of title 5, United States Code.

21 “(B) LIMITATION.—An appeal under subparagraph (A) may only be made if the appeal is made not later than 7 days after the date of the personnel action.

1 “(f) EXPEDITED REVIEW BY ADMINISTRATIVE LAW

2 JUDGE.—

3 “(1) IN GENERAL.—

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

9 “(B) EXPEDITION.—The administrative
10 law judge to whom an appeal is referred under
11 subparagraph (A) shall—

12 “(i) expedite the appeal under section
13 7701(b)(1) of title 5, United States Code;
14 and

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

18 “(2) FINALITY.—Notwithstanding any other
19 provision of law, including section 7703 of title 5,
20 United States Code, the decision of an administra-
21 tive law judge under paragraph (1) shall be final
22 and shall not be subject to any further administra-
23 tive appeal.

24 “(3) FAILURE TO ISSUE DECISION.—

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

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

15 “(i) the Committee on Indian Affairs
16 of the Senate;

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

19 “(iii) the Committee on Natural Re-
20 sources of the House of Representatives;
21 and

22 “(iv) the Committee on Energy and
23 Commerce of the House of Representa-
24 tives.

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

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

10 “(A) increase in rate of pay; or
11 “(B) award, bonus, incentive, allowance,
12 differential, student loan repayment, special
13 payment, or other benefit.

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

18 “(A) the Merit Systems Protection Board;
19 and

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

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

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

3 “(2) a description of the disposition or status of
4 the personnel action or any appeal of the personnel
5 action under this section.

6 “(h) RELATION TO TITLE 5, UNITED STATES
7 CODE.—

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

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

16 **SEC. 107. STANDARDS TO IMPROVE TIMELINESS OF CARE.**

17 Title IV of the Indian Health Care Improvement Act
18 (25 U.S.C. 1641 et seq.) is amended by adding at the end
19 the following:

20 **“SEC. 412. STANDARDS TO IMPROVE TIMELINESS OF CARE.**

21 “(a) IN GENERAL.—Not later than 180 days after
22 the date of enactment of the Restoring Accountability in
23 the Indian Health Service Act of 2017, the Secretary, act-
24 ing through the Service, shall—

1 “(1) establish, by regulation, standards to
2 measure the timeliness of the provision of health
3 care services in Service facilities; and

4 “(2) provide such standards to each Service
5 unit.

6 “(b) DATA COLLECTION.—The Secretary, acting
7 through the Service, shall develop a process for each Serv-
8 ice unit to submit to the Secretary data with respect to
9 the standards established under subsection (a)(1).”.

10 **SEC. 108. TRIBAL CULTURE AND HISTORY.**

11 Section 113 of the Indian Health Care Improvement
12 Act (25 U.S.C. 1616f) is amended—

13 (1) in subsection (a)—

14 (A) by striking “a program” and inserting
15 “an annual mandatory training program”; and

16 (B) by striking “appropriate employees of
17 the Service” and inserting “employees of the
18 Service, locum tenens medical providers, and
19 other contracted employees who work at Service
20 hospitals or other Service units and whose em-
21 ployment requires regular direct patient ac-
22 cess”; and

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

24 “(c) Notwithstanding any other provision of law, be-
25 ginning with the year of the date of enactment of the Re-

1 storing Accountability in the Indian Health Service Act
2 of 2017, each employee or provider described in subsection
3 (a) who enters into a contract with the Service on or after
4 the date of such implementation shall, as a condition of
5 employment, annually participate in and complete such
6 training program. For purposes of the preceding sentence,
7 participation in such training program may not be consid-
8 ered complete for the year involved until the individual
9 satisfies each requirement, including testing, if applicable,
10 of the training program for such year, as specified by the
11 Secretary.”.

12 SEC. 109. STAFFING DEMONSTRATION PROJECT.

13 Title VIII of the Indian Health Care Improvement
14 Act (25 U.S.C. 1671 et seq.) is amended by adding at
15 the end the following:

16 “SEC. 833. STAFFING DEMONSTRATION PROJECT.

17 “(a) IN GENERAL.—The Secretary, acting through
18 the Service, shall establish a demonstration project that
19 authorizes the Service to provide federally managed Serv-
20 ice units with additional staffing resources with the goal
21 that the resources become self-sustaining.

22 “(b) SELECTION.—In selecting Service units for par-
23 ticipation, the Secretary shall consider whether a Service
24 unit services an Indian tribe that—

1 “(1) has utilized or contributed substantial trib-
2 al funds to construct a health facility used by the
3 Service or identified in the master plan for the Serv-
4 ice unit;

5 “(2) is located in a State or States with Med-
6 icaid reimbursements plans or policies that will in-
7 crease the likelihood that the staffing resources pro-
8 vided will be self-sustaining; and

9 “(3) is operating a health facility described in
10 paragraph (1) under historical staffing ratios that
11 have not been equalized or updated by the Service
12 or any other Service program to reflect current
13 staffing needs.

14 “(c) DURATION.—Staffing resources provided to a
15 Service unit under this section shall be for a duration that
16 the Secretary, in consultation with the applicable Indian
17 tribe, determines appropriate, except that each staffing
18 position provided shall be for a period of not less than
19 3 fiscal years.

20 “(d) REPORT.—Not later than 5 years after the Sec-
21 retary ends the demonstration project under this section,
22 the Secretary shall prepare and submit a report to the
23 Committee on Indian Affairs and the Committee on
24 Health, Education, Labor, and Pensions of the Senate,
25 and the Committee on Natural Resources and the Com-

1 mittee on Energy and Commerce of the House of Rep-
2 resentatives, regarding the project, including—

3 “(1) whether the staffing resources resulted in
4 additional revenue for the Service unit sufficient to
5 maintain the staff on a permanent basis;

6 “(2) the levels to which the staffing resources
7 reduced the unmet staffing need for the Service unit;
8 and

9 “(3) whether the demonstration project could
10 be deployed to reduce unmet staffing needs through-
11 out the Service.”.

12 **SEC. 110. RULE ESTABLISHING TRIBAL CONSULTATION
13 POLICY.**

14 Title VIII of the Indian Health Care Improvement
15 Act (25 U.S.C. 1671 et seq.), as amended by section 109,
16 is further amended by adding at the end the following:

17 **“SEC. 834. RULE ESTABLISHING TRIBAL CONSULTATION
18 POLICY.**

19 “(a) IN GENERAL.—Not later than 1 year after the
20 date of enactment of the Restoring Accountability in the
21 Indian Health Service Act of 2017, the Secretary shall es-
22 tablish, through the negotiated rulemaking process de-
23 scribed in subsection (b), a rule establishing a tribal con-
24 sultation policy for the Service.

1 “(b) NEGOTIATED RULEMAKING.—Before publishing
2 a proposed rule described in subsection (a), the Secretary
3 shall follow the provisions of subchapter III of chapter 5
4 of title 5, United States Code (commonly known as the
5 ‘Negotiated Rulemaking Act of 1990’).

6 “(c) CONTENTS OF TRIBAL CONSULTATION POL-
7 ICY.—The policy established under the rule described in
8 subsection (a) shall—

9 “(1) update, and replace, the tribal consultation
10 policy established under Circular No. 2006–01 of the
11 Service, or any successor policy; and

12 “(2) include the following:

13 “(A) A process for determining when the
14 Service will notify Indian tribes, and a descrip-
15 tion of how the Indian tribes should be notified.

16 “(B) A determination of what actions or
17 agency decisions by the Service will trigger a re-
18 quirement for meaningful consultation with In-
19 dian tribes.

20 “(C) A determination of what actions con-
21 stitute meaningful consultation with Indian
22 tribes.”.

1 **TITLE II—EMPLOYEE
2 PROTECTIONS**

3 **SEC. 201. RIGHT OF FEDERAL EMPLOYEES TO PETITION**

4 **CONGRESS.**

5 (a) ADVERSE ACTION FOR VIOLATION OF RIGHT TO
6 PETITION CONGRESS.—Section 7211 of title 5, United
7 States Code, is amended—

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

10 (2) by adding at the end the following new sub-
11 section:

12 “(b) ADVERSE ACTION.—An employee who interferes
13 with or denies a right protected under subsection (a) shall
14 be subject to any adverse action described in paragraphs
15 (1) through (5) of section 7512, in accordance with the
16 procedure described in section 7513 and any other appli-
17 cable procedure.”.

18 (b) ELECTRONIC NOTIFICATION OF RIGHT OF EM-
19 PLOYEES OF INDIAN HEALTH SERVICE.—

20 (1) IN GENERAL.—The Secretary of Health and
21 Human Services (referred to in this subsection as
22 the “Secretary”), acting through the Director of the
23 Indian Health Service, shall, in accordance with
24 paragraphs (2) through (6), provide to each em-
25 ployee of the Indian Health Service, and electroni-

1 cally post, a memorandum providing notice of the
2 right to petition Congress under section 7211 of title
3 5, United States Code.

4 (2) CONTENTS.—The memorandum described
5 in paragraph (1) shall include the following state-
6 ment: “It is a violation of section 7211 of title 5,
7 United States Code, for any Federal agency or em-
8 ployee to require a Federal employee to seek ap-
9 proval, guidance, or any other form of input prior to
10 contacting Congress with information, even if that
11 information is in relation to the job responsibilities
12 of the employee. A Federal employee found to have
13 interfered with or denied the right of another Fed-
14 eral employee under such section shall be subject to
15 an adverse action described in paragraphs (1)
16 through (5) of section 7512 of title 5, United States
17 Code, including a suspension for more than 14 days
18 without pay.”.

19 (3) SUBMISSION.—Not later than 30 days after
20 the date of enactment of this Act, the Secretary
21 shall submit the memorandum described in para-
22 graph (1) to the Inspector General of the Depart-
23 ment of Health and Human Services (referred to in
24 this subsection as the “Inspector General”) for ap-
25 probation.

1 (4) APPROVAL OR DISAPPROVAL.—Not later
2 than 30 days after the submission of the memo-
3 randum under paragraph (3), or a revised memo-
4 randum under paragraph (6), the Inspector General
5 shall approve or disapprove the memorandum or re-
6 vised memorandum, as the case may be.

7 (5) NOTICE.—In the case of an approval under
8 paragraph (4), not later than 30 days after such ap-
9 proval, the Secretary shall—

10 (A) provide to each employee of the Indian
11 Health Service an electronic copy of the ap-
12 proved memorandum; and

13 (B) post such memorandum in a clear and
14 conspicuous place on the website of the Indian
15 Health Service for a period not less than 120
16 days.

17 (6) REVISED MEMORANDUM.—In the case of a
18 disapproval under paragraph (4), not later than 15
19 days after such disapproval, the Secretary shall sub-
20 mit a revised memorandum to the Inspector General
21 for approval under paragraph (4).

22 **SEC. 202. FISCAL ACCOUNTABILITY.**

23 Title VI of the Indian Health Care Improvement Act
24 (25 U.S.C. 1661 et seq.), as amended by sections 105 and

1 106, is further amended by adding at the end the fol-
2 lowing:

3 **“SEC. 607. FISCAL ACCOUNTABILITY.**

4 “(a) MANAGEMENT OF FUNDS.—

5 “(1) IN GENERAL.—If the Secretary fails to
6 submit the professional housing plan under section
7 301(a) of the Restoring Accountability in the Indian
8 Health Service Act of 2017 or the staffing plan
9 under section 301(b) of that Act, the Secretary may
10 not receive, obligate, transfer, or expend any
11 amounts for a salary increase or bonus of an indi-
12 vidual described in paragraph (2) until the profes-
13 sional housing plan or staffing plan, as the case may
14 be, is submitted.

15 “(2) INDIVIDUAL DESCRIBED.—An individual
16 described in this paragraph is an individual em-
17 ployed in a position in the Service that is a posi-
18 tion—

19 “(A) described under sections 5312
20 through 5316 of title 5, United States Code;

21 “(B) placed in level IV or V of the Execu-
22 tive Schedule under section 5317 of title 5,
23 United States Code;

24 “(C) as a limited term appointee, limited
25 emergency appointee, or noncareer appointee in

1 the Senior Executive Service, as defined under
2 paragraphs (5), (6), and (7), respectively, of
3 section 3132(a) of title 5, United States Code;

4 or

5 “(D) under section 213.3301 or 213.3302
6 of title 5, Code of Federal Regulations.

7 “(b) PRIORITIZATION OF PATIENT CARE.—

8 “(1) IN GENERAL.—The Secretary shall use
9 amounts available to the Indian Health Service that
10 are not obligated or expended, including base budget
11 funding and third party collections, during the fiscal
12 year for which the amounts are made available, and
13 that remain available, only to support patient care
14 by using such funds for the costs of—

15 “(A) essential medical equipment;

16 “(B) purchased or referred care; or

17 “(C) staffing.

18 “(2) SPECIAL RULE.—In using amounts under
19 paragraph (1), the Secretary shall ensure that, in
20 any case where the amounts were originally made
21 available for a particular Service unit, such amounts
22 are used to benefit Indians served by that Service
23 unit.

24 “(3) RESTRICTIONS.—The Secretary may not
25 use amounts described in paragraph (1)—

1 “(A) to remodel or interior decorate any
2 Area office; or

3 “(B) to increase the rate of pay of any em-
4 ployee of an Area office.

5 “(c) SPENDING REPORTS.—Not later than 90 days
6 after the end of each quarter of a fiscal year, the Secretary
7 shall submit a report describing the authorizations, ex-
8 penditures, outlays, transfers, reprogramming, and obliga-
9 tions of each level of the Service, including the head-
10 quarters, each Area office, each Service unit, and each
11 health clinic or facility, to—

12 “(1) each Indian tribe;

13 “(2) in the Senate—

14 “(A) the Committee on Indian Affairs;

15 “(B) the Committee on Health, Education,
16 Labor, and Pensions;

17 “(C) the Committee on Appropriations;

18 and

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

20 “(3) in the House of Representatives—

21 “(A) the Committee on Natural Resources;

22 “(B) the Committee on Energy and Com-
23 merce;

24 “(C) the Committee on Appropriations;

25 and

1 “(D) the Committee on the Budget.

2 “(d) STATUS REPORTS.—

3 “(1) IN GENERAL.—Subject to paragraph (2),
4 not later than 180 days after the end of each fiscal
5 year, the Secretary shall provide to each entity de-
6 scribed in paragraphs (1) through (3) of subsection
7 (c) a report describing the safety, billing, certifi-
8 cation, credential, and compliance statuses of each
9 facility managed, operated, or otherwise supported
10 by the Service.

11 “(2) UPDATES.—With respect to any change of
12 a status described in paragraph (1), the Secretary
13 shall immediately provide to each entity described in
14 paragraphs (1) through (3) of subsection (c) an up-
15 date describing such change.

16 “(e) RULE OF CONSTRUCTION.—This section may
17 not be construed to inhibit the authority of an Indian tribe
18 to enter into or maintain a compact or contract under the
19 Indian Self-Determination and Education Assistance Act
20 (25 U.S.C. 5304 et seq.).”.

21 **TITLE III—REPORTS**

22 **SEC. 301. DEFINITIONS.**

23 In this title:

24 (1) SECRETARY.—The term “Secretary” means
25 the Secretary of Health and Human Services.

1 (2) SERVICE.—The term “Service” means the
2 Indian Health Service.

3 (3) SERVICE UNIT.—The term “Service unit”
4 has the meaning given the term in section 4 of the
5 Indian Health Care Improvement Act (25 U.S.C.
6 1603).

7 **SEC. 302. REPORTS BY THE SECRETARY OF HEALTH AND**
8 **HUMAN SERVICES.**

9 (a) IHS PROFESSIONAL HOUSING PLAN.—Not later
10 than 90 days after the date of enactment of this Act, the
11 Secretary shall develop, make publicly available, and sub-
12 mit to Congress and the Comptroller General of the
13 United States a written plan to address the professional
14 housing needs of employees of the Service that comports
15 with the practices and recommendations of the Govern-
16 ment Accountability Office relating to professional hous-
17 ing.

18 (b) PLAN RELATING TO IHS STAFFING NEEDS.—
19 Not later than 90 days after the date of the enactment
20 of this Act, the Secretary shall develop, make publicly
21 available, and submit to Congress and the Comptroller
22 General of the United States a written plan to address
23 staffing needs in the Service that comports with the prac-
24 tices of the Government Accountability Office relating to
25 workforce planning.

1 (c) INDIAN HEALTH CARE IMPROVEMENT ACT RE-
2 PORT.—Not later than 1 year after the date of enactment
3 of this Act, and each year thereafter for a period of 5
4 years, the Secretary shall develop, make publicly available,
5 and submit to Congress a report on the data submitted
6 under section 412(b) of the Indian Health Care Improve-
7 ment Act, as amended by section 107.

8 **SEC. 303. REPORTS BY THE COMPTROLLER GENERAL.**

9 (a) IHS HOUSING NEEDS REPORT.—

10 (1) IN GENERAL.—Not later than 1 year after
11 the date on which the Comptroller General of the
12 United States receives the professional housing plan
13 under section 302(a), the Comptroller General shall
14 develop and submit to Congress a report on the pro-
15 fessional housing needs of employees of the Service.

16 (2) CONTENTS.—The report required under
17 paragraph (1) shall include the following:

18 (A) An evaluation of any existing, as of the
19 date of the report, assessments and projections
20 for the professional housing needs of employees
21 of the Service, including discussion and conclu-
22 sion as to whether existing assessments and
23 projections accurately reflect the professional
24 housing needs of employees of the Service.

(B) An assessment of the professional housing needs of employees of the Service for each Service area (as defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603)).

(C) An assessment of the professional housing plan developed by the Secretary under section 302(a).

9 (b) IHS STAFFING NEEDS REPORT.—

10 (1) IN GENERAL.—Not later than 1 year after
11 the date on which the Comptroller General receives
12 the report under section 302(b), the Comptroller
13 General shall prepare and submit to Congress a re-
14 port on the staffing needs of the Service.

15 (2) CONTENTS.—The report required under
16 paragraph (1) shall include the following:

(B) An assessment of the use of independent contractors, including the number of independent contractors hired to fill vacant full-time positions and amounts spent on inde-

1 pendent contractors who provide health care
2 services.

3 (C) An assessment of the staffing plan de-
4 veloped by the Secretary under section 302(b).

5 (c) WHISTLEBLOWER PROTECTIONS REPORT.—

6 (1) IN GENERAL.—Not later than 1 year after
7 the date of enactment of this Act, the Comptroller
8 General shall develop and submit to Congress a re-
9 port on the efficacy of existing protections for whis-
10 tleblowers in the Service.

11 (2) CONTENTS.—The report required under
12 paragraph (1) shall include the following:

13 (A) A discussion and conclusion as to
14 whether the Service has taken proper steps to
15 prevent retaliation against whistleblowers.

16 (B) If applicable, any recommendations for
17 changes to the policy of the Service with respect
18 to whistleblowers.

19 (C) A discussion and conclusion as to
20 whether the official email accounts of employees
21 of the Service are appropriately monitored.

22 **SEC. 304. INSPECTOR GENERAL REPORTS.**

23 (a) PATIENT CARE REPORTS.—

24 (1) IN GENERAL.—Not later than 2 years after
25 the date of enactment of this Act, and every 2 years

1 thereafter, the Inspector General of the Department
2 of Health and Human Services shall develop and
3 submit to Congress and the Service a report on pa-
4 tient harm events occurring in Service units and de-
5 ferrals and denials of care of patients of the Service.

6 (2) CONTENTS.—The report required under
7 paragraph (1) shall include the following:

8 (A) An evaluation of the number and kind
9 of events that contribute to patient deaths in a
10 Service unit and recommendations regarding re-
11 ducing the number of patient deaths.

12 (B) An evaluation of the Service's tracking
13 and reporting of, and response to, patient harm
14 events and recommendations regarding how to
15 improve such tracking, reporting, and response.

16 (C) The effects of deferrals and denials of
17 care on patients of the Service, including pa-
18 tient outcomes, and recommendations regarding
19 how to reduce deferrals and denials of care.

20 (b) REPORTING SYSTEMS AUDIT.—Not later than 2
21 years after the date of enactment of this Act, the Inspector
22 General shall—

23 (1) conduct an audit of reporting systems of the
24 Service, as of the date of enactment of this Act; and

1 (2) provide to the Service recommendations and
2 technical assistance regarding implementation of im-
3 proved reporting systems, procedures, standards,
4 and protocols.

5 SEC. 305. TRANSPARENCY IN CMS SURVEYS.

6 Section 1880 of the Social Security Act (42 U.S.C.

7 1395qq) is amended by adding at the end the following:

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

13 “(A) section 1867; and

14 “(B) conditions of participation in the program
15 under this title.

16 “(2) Each survey completed under this subsection
17 shall be posted on the Internet website of the Centers for
18 Medicare & Medicaid Services. Such posting shall comply
19 with the Federal regulations concerning the privacy of in-
20 dividually identifiable health information promulgated
21 under section 264(c) of the Health Insurance Portability
22 and Accountability Act of 1996.”.

1 **TITLE IV—TECHNICAL
2 AMENDMENTS**

3 **SEC. 401. TECHNICAL AMENDMENTS.**

4 The Indian Health Care Improvement Act (25 U.S.C.
5 1601 et seq.) is amended—

6 (1) by striking “contract health service” each
7 place such term appears (regardless of casing and
8 typeface and including in the headings) and inserting
9 “purchased/referred care” (with appropriate cas-
10 ing and typeface); and

11 (2) by striking “contract health services” each
12 place such term appears (regardless of casing and
13 typeface and including in the headings) and inserting
14 “purchased/referred care” (with appropriate cas-
15 ing and typeface).