

116TH CONGRESS
1ST SESSION

S. 154

To amend title 38, United States Code, to improve oversight of contracts for services and financial processes of the Department of Veterans Affairs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 16, 2019

Mr. TESTER (for himself, Mr. BLUMENTHAL, Ms. BALDWIN, Mrs. MURRAY, Mr. KAINE, Mr. BENNET, and Ms. SINEMA) 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 improve oversight of contracts for services and financial processes of the Department of Veterans Affairs, 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 “Department of Vet-
5 erans Affairs Contract, Leadership, and Ensuring Ac-
6 countability and Reform Act of 2019” or the “VA CLEAR
7 Act of 2019”.

1 **SEC. 2. IMPROVING OVERSIGHT OF CONTRACTS FOR SERV-**
2 **ICES OF THE DEPARTMENT OF VETERANS AF-**
3 **FAIRS.**

4 (a) IN GENERAL.—Section 513 of title 38, United
5 States Code, is amended—

6 (1) in the first sentence, by striking “The Sec-
7 retary may, for” and inserting the following:

8 “(a) IN GENERAL.—The Secretary may, for”; and

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

11 “(b) CONTRACT REQUIREMENTS.—The Secretary
12 shall ensure that each contract for a service into which
13 the Secretary enters under subsection (a) includes the fol-
14 lowing:

15 “(1) Measurable metrics to ascertain the per-
16 formance of the provider of the service, relating to
17 cost, schedule, and fulfillment of contract require-
18 ments.

19 “(2) A plan of action and milestones for the
20 provision of the service, with estimates of the dates
21 on which significant portions of the contract will be
22 completed and a description of the resources the
23 service provider will assign to provide the service.

24 “(3) Safeguards to ensure that the service pro-
25 vided meets a minimum threshold of quality deter-
26 mined by the Secretary, including authority for the

1 Secretary to levy a financial penalty upon the service
2 provider if the service provided fails to meet such
3 threshold.

4 “(4) Measurable metrics relating to the use of
5 award or incentive fees.

6 “(5) A requirement that the service provider
7 documents through information technology systems
8 of the Department the work of the service provider
9 so that the Secretary can review and validate the
10 quality of the service provided using the metrics set
11 forth in the contract under paragraph (1).

12 “(c) REPORTING REQUIREMENTS.—(1) For each
13 contract for a service into which the Secretary enters
14 under subsection (a)—

15 “(A) not later than 45 days after the last day
16 of each quarter for the duration of the contract, the
17 Secretary shall submit to the Committee on Vet-
18 erans’ Affairs of the Senate and the Committee on
19 Veterans’ Affairs of the House of Representatives—

20 “(i) a report on the service provided under
21 the contract and an assessment as to how such
22 service compares with respect to the metrics set
23 forth in the contract under subsection (b)(1);
24 and

1 “(ii) a report that details the significant
2 modifications made to the contract, if any, and
3 a justification for such modifications; and

4 “(B) publish on the internet website of the De-
5 partment information about the contract and the
6 significant modifications made to the contract, if
7 any.

8 “(2) Whenever the Secretary provides notice to a
9 service provider that the service provider is failing to meet
10 obligations pursuant to a contract entered under sub-
11 section (a), the Secretary shall submit to the Committee
12 on Veterans’ Affairs of the Senate and the Committee on
13 Veterans’ Affairs of the House of Representatives a report
14 on such failure that includes the following:

15 “(A) An explanation of the reasons for pro-
16 viding such notice.

17 “(B) A description of the effect of such failure,
18 including with respect to cost, schedule, and require-
19 ments.

20 “(C) A description of the actions taken by the
21 Secretary to mitigate such failure.

22 “(D) A description of the actions taken by the
23 contractor to address such failure.”.

1 (b) EFFECTIVE DATE.—Subsections (b) and (c) of
 2 section 513 of such title, as added by subsection (a), shall
 3 take effect on the date of the enactment of this Act.

4 (c) APPLICABILITY.—

5 (1) IN GENERAL.—Subsections (b) and (c) of
 6 such section, as so added, shall apply with respect
 7 to contracts entered into by the Secretary of Vet-
 8 erans Affairs on or after the date that is one year
 9 before the date of the enactment of this Act.

10 (2) CERTAIN REPORTING REQUIREMENTS.—
 11 Subsection (c)(1)(A) of such section, as so added,
 12 shall apply with respect to quarters that begin after
 13 the date of the enactment of this Act.

14 **SEC. 3. HEIGHTENED OVERSIGHT FOR CONTRACTS FOR**
 15 **SERVICES OF THE DEPARTMENT OF VET-**
 16 **ERANS AFFAIRS OF MORE THAN \$2,000,000,000.**

17 (a) IN GENERAL.—Section 513 of title 38, United
 18 States Code, as amended by section 2, is further amended
 19 by adding at the end the following new subsections:

20 “(d) JUSTIFICATION AND PLAN FOR CERTAIN CON-
 21 TRACTS.—In each case of a contract for a service into
 22 which the Secretary enters under subsection (a) that
 23 would result in the Department incurring an obligation of
 24 more than \$2,000,000,000, not later than 20 days after
 25 the date of the contract award, the Secretary shall submit

1 to the Committee on Veterans' Affairs of the Senate and
2 the Committee on Veterans' Affairs of the House of Rep-
3 resentatives—

4 “(1) a justification of the need for the contract,
5 including an explanation of why the Department is
6 unable to perform the service; and

7 “(2) a plan for how the Department will fund
8 the contract in future years.

9 “(e) REVIEW OF CERTAIN CONTRACTS.—In each
10 case of a contract for a service into which the Secretary
11 enters under subsection (a) that would result in the De-
12 partment incurring an obligation of more than
13 \$2,000,000,000, after the first year of service of such con-
14 tract, the Inspector General of the Department and the
15 Comptroller General of the United States shall each com-
16 plete a review of the contract—

17 “(1) to determine whether the metrics included
18 in the contract were met; and

19 “(2) to review the appropriateness of funds ex-
20 pended for the contract.”.

21 (b) EFFECTIVE DATE.—Subsections (d) and (e) of
22 section 513 of such title, as added by subsection (a), shall
23 take effect on the date of the enactment of this Act.

24 (c) APPLICABILITY.—

1 (1) IN GENERAL.—Subsections (d) and (e) of
2 such section, as so added, shall apply with respect
3 to contracts entered into by the Secretary of Vet-
4 erans Affairs on or after the date that is one year
5 before the date of the enactment of this Act.

6 (2) JUSTIFICATION AND PLAN FOR CERTAIN
7 CONTRACTS.—With respect to contracts described in
8 subsection (d) of such section, as so added, that
9 were entered into by the Secretary on or before the
10 date of the enactment of this Act, the Secretary
11 shall submit the justification and plan required by
12 such subsection not later than 20 days after the date
13 of the enactment of this Act in lieu of 20 days after
14 the date of the contract award as otherwise required
15 by such subsection.

16 **SEC. 4. OVERSIGHT AND ACCOUNTABILITY OF FINANCIAL**
17 **PROCESSES OF THE DEPARTMENT OF VET-**
18 **ERANS AFFAIRS.**

19 (a) INDEPENDENT REVIEW OF FINANCIAL PROC-
20 ESSES.—

21 (1) IN GENERAL.—Not later than 90 days after
22 the date of the enactment of this Act, the Secretary
23 of Veterans Affairs shall enter into a contract with
24 an independent third party—

1 (A) to review and audit the financial proc-
2 esses, including reporting structures, and actu-
3 arial and estimation models of the Department
4 of Veterans Affairs;

5 (B) to develop recommendations for im-
6 proving such structures; and

7 (C) to complete such review and develop-
8 ment not later than 180 days after the date on
9 which the Secretary and the independent third
10 party enter into the contract.

11 (2) IMPLEMENTATION PLAN.—Not later than
12 60 days after the completion of the review and devel-
13 opment required by paragraph (1), the Secretary
14 shall submit to the Committee on Veterans' Affairs
15 of the Senate and the Committee on Veterans' Af-
16 fairs of the House of Representatives a plan to im-
17 plement the recommendations developed under sub-
18 paragraph (B) of such paragraph.

19 (b) PLANS FOR USE OF SUPPLEMENTAL APPROPRIA-
20 TIONS REQUIRED.—Whenever the Secretary submits to
21 Congress, to address a budgetary issue affecting the De-
22 partment of Veterans Affairs, a request for supplemental
23 appropriations or any other appropriation when the re-
24 quest is submitted outside the standard budget process,
25 the Secretary shall, not later than 45 days before the date

1 on which such budgetary issue would start affecting a pro-
2 gram or service, submit to Congress a justification for the
3 request, including—

4 (1) a plan that details how the Secretary in-
5 tends to use the requested appropriation and how
6 long the requested appropriation is expected to meet
7 the needs of the Department; and

8 (2) a certification as to whether the request was
9 made using an updated and sound actuarial anal-
10 ysis.

11 **SEC. 5. TESTIMONIAL SUBPOENA AUTHORITY OF THE IN-**
12 **SPECTOR GENERAL OF THE DEPARTMENT OF**
13 **VETERANS AFFAIRS.**

14 Section 312 of title 38, United States Code, is
15 amended by adding at the end the following new sub-
16 section:

17 “(c)(1)(A) In addition to the authority otherwise pro-
18 vided by the Inspector General Act of 1978 (5 U.S.C.
19 App.) and in accordance with the requirements of this sub-
20 section, the Inspector General, in carrying out the provi-
21 sions of this section, may require by subpoena the attend-
22 ance and testimony of witnesses as necessary in the per-
23 formance of the functions assigned to the Inspector Gen-
24 eral by the Inspector General Act of 1978 (5 U.S.C. App.)
25 and this section, which in the case of contumacy or refusal

1 to obey, such subpoena shall be enforceable by order of
2 any appropriate district court of the United States.

3 “(B) An Inspector General may not require by sub-
4 poena the attendance and testimony of any current Fed-
5 eral employees, but may use other authorized procedures.

6 “(2) The authority to issue a subpoena under para-
7 graph (1) may not be delegated.

8 “(3)(A) If the Inspector General intends to issue a
9 subpoena, the Inspector General shall notify the Attorney
10 General of such intent.

11 “(B) Not later than 10 days after the date on which
12 the Attorney General is notified pursuant to paragraph
13 (1), the Attorney General may object to the issuance of
14 the subpoena if the subpoena will interfere with an ongo-
15 ing investigation and, if the Attorney General makes such
16 an objection, the Inspector General may not issue the sub-
17 poena.

18 “(C) If the Attorney General does not object to the
19 issuance of the subpoena during the 10-day period de-
20 scribed in subparagraph (B), the Inspector General may
21 issue the subpoena.”.

22 **SEC. 6. CENTRALIZED SYSTEMS FOR CERTAIN RECORDS OF**
23 **THE DEPARTMENT OF VETERANS AFFAIRS.**

24 (a) ADMINISTRATIVE INVESTIGATION BOARDS.—The
25 Secretary of Veterans Affairs shall implement a central-

1 ized system in which completed reviews of administrative
2 investigation boards are recorded and maintained.

3 (b) REFERRALS OF CLINICIANS TO LICENSING
4 BOARDS.—The Under Secretary for Health of the Depart-
5 ment of Veterans Affairs shall implement a centralized
6 system for tracking instances in which the Department
7 has referred a clinician to the licensing board of a State
8 because of the behavior of the clinician or clinical out-
9 comes.

○