

114TH CONGRESS  
2D SESSION

# H. R. 5437

To implement a mandatory random drug testing program for certain employees of the Indian Health Service, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 2016

Mrs. NOEM introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To implement a mandatory random drug testing program for certain employees of the Indian Health Service, 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 “Drug-Free Indian  
5 Health Service Act of 2016”.

6 **SEC. 2. MANDATORY RANDOM DRUG TESTING OF CERTAIN**  
7 **EMPLOYEES OF INDIAN HEALTH SERVICE.**

8 (a) REGULATIONS.—

1           (1) IN GENERAL.—Not later than 90 days after  
2 the date of the enactment of this Act, the Secretary  
3 shall promulgate such regulations as are necessary  
4 to implement a mandatory random drug testing pro-  
5 gram for covered employees of the Indian Health  
6 Service. Except as otherwise provided for in this sec-  
7 tion, the Secretary shall promulgate such regulations  
8 in accordance with the—

9           (A) guidelines promulgated on November  
10           25, 2008, titled “Mandatory Guidelines for  
11           Federal Workplace Drug Testing” (73 Fed.  
12           Reg. 71858); and

13           (B) regulations promulgated under section  
14           264(c) of the Health Insurance Portability and  
15           Accountability Act of 1996 (42 U.S.C. 1320d–  
16           2 note).

17           (2) TESTING OF CERTAIN DRUGS.—In carrying  
18 out the program required under paragraph (1), the  
19 Secretary shall ensure that each covered employee is  
20 tested not less than once per year for each of the  
21 following drugs:

22           (A) Marijuana.

23           (B) Cocaine.

24           (C) Opiates.

25           (D) Amphetamines.

1 (E) Methamphetamine.

2 (F) Phencyclidine.

3 (b) NOTICE OF MANDATORY RANDOM DRUG TEST-  
4 ING PROGRAM.—Not less than 90 days before imple-  
5 menting the program required under subsection (a), the  
6 Secretary shall provide written notice to all covered em-  
7 ployees that—

8 (1) a mandatory random drug testing program  
9 will be implemented; and

10 (2) covered employees will have the opportunity,  
11 and reasonable time, to submit medical documenta-  
12 tion of lawful use of a drug listed under subsection  
13 (a)(2).

14 (c) NOTIFICATION OF SELECTION.—The Secretary  
15 shall—

16 (1) notify a covered employee selected for ran-  
17 dom drug testing under this section on the same  
18 day, but prior to, such testing; and

19 (2) include in the notification an assurance that  
20 the covered employee was selected randomly and is  
21 under no suspicion of illegal drug use.

22 (d) DEFERRAL OF TESTING.—A covered employee se-  
23 lected for random drug testing under this section may ob-  
24 tain a deferral of testing if the covered employee is—

25 (1) in a leave status; or

1           (2) in official travel status away from the test  
2 site or will embark on official travel that was sched-  
3 uled prior to the notification of selection under sub-  
4 section (c).

5           (e) FINDING OF ILLEGAL DRUG USE AND DISCIPLI-  
6 NARY CONSEQUENCES.—

7           (1) FINDING OF ILLEGAL DRUG USE.—The Sec-  
8 retary may determine that a covered employee has  
9 engaged in illegal drug use based on any of the fol-  
10 lowing:

11                   (A) A verified positive test result from a  
12 specimen submitted by the covered employee.

13                   (B) Direct observation by a higher-level su-  
14 pervisor, including observed illegal drug use and  
15 the unlawful possession of a drug listed under  
16 subsection (a)(2).

17                   (C) Evidence obtained from an arrest or  
18 criminal conviction of the covered employee.

19                   (D) The voluntary admission of the cov-  
20 ered employee.

21           (2) MANDATORY ADMINISTRATIVE ACTION.—

22                   (A) IN GENERAL.—If a covered employee  
23 is found to have engaged in illegal drug use  
24 under paragraph (1), the Secretary shall—

1 (i) prohibit the covered employee from  
2 performing any activity related to pro-  
3 viding health care or administrative serv-  
4 ices to patients; and

5 (ii) refer such employee to the Em-  
6 ployee Assistance Program of the Depart-  
7 ment of Health and Human Services.

8 (B) RETURN TO DUTY.—At the discretion  
9 of the Secretary, a covered employee may re-  
10 turn to performing activities related to pro-  
11 viding health care or administrative services to  
12 patients after obtaining counseling or rehabili-  
13 tation through the Employee Assistance Pro-  
14 gram.

15 (3) ADVERSE ACTIONS.—

16 (A) IN GENERAL.—Subject to subsection  
17 (g), in addition to carrying out the required ac-  
18 tions under paragraph (2), the Secretary may  
19 initiate an adverse action, including removal,  
20 against a covered employee who is found to  
21 have engaged in illegal drug use under para-  
22 graph (1).

23 (B) VOLUNTARY ADMISSION EXCEPTION.—  
24 The Secretary may not initiate an adverse ac-

1           tion under subparagraph (A) against a covered  
2           employee who—

3                   (i) voluntarily admits to illegal drug  
4           use;

5                   (ii) ceases such illegal drug use; and

6                   (iii) obtains counseling or rehabilita-  
7           tion through the Employee Assistance Pro-  
8           gram.

9           (f) REFUSAL TO SUBMIT TO RANDOM DRUG TEST-  
10       ING AND DISCIPLINARY CONSEQUENCES.—If a covered  
11       employee refuses to submit to random drug testing under  
12       this section when so required, the Secretary—

13                   (1) shall prohibit the covered employee from  
14       performing any activity related to providing health  
15       care or administrative services to patients; and

16                   (2) subject to subsection (g), may initiate an  
17       adverse action, including removal, against such em-  
18       ployee.

19           (g) DUE PROCESS.—In carrying out an adverse ac-  
20       tion under this section against a covered employee, the  
21       Secretary shall provide the covered employee with notice  
22       and an opportunity to respond.

23           (h) APPEALS.—A covered employee subject to an ad-  
24       ministrative or adverse action under this section may ap-

1 peal such action to the Merit Systems Protection Board  
2 under section 7701 of title 5, United States Code.

3 (i) NO ADDITIONAL FUNDS.—No additional funds  
4 are authorized to be appropriated for the purpose of car-  
5 rying out this section. This section shall be carried out  
6 using amounts otherwise available for such purpose.

7 (j) DEFINITIONS.—For purposes of this section:

8 (1) COVERED EMPLOYEE.—The term “covered  
9 employee”—

10 (A) means an individual who—

11 (i) is employed in a part-time or full-  
12 time position at a health care facility of  
13 the Indian Health Service (excluding tribal  
14 contract or compact health centers and  
15 urban Indian health centers); and

16 (ii) provides health care or adminis-  
17 trative services to patients at such health  
18 care facility; and

19 (B) does not include officers of the Com-  
20 missioned Corps of the United States Public  
21 Health Service.

22 (2) EMPLOYEE ASSISTANCE PROGRAM.—The  
23 term “Employee Assistance Program” means the  
24 Employee Assistance Program of the Department of  
25 Health and Human Services.

1           (3) ILLEGAL DRUG USE.—The term “illegal  
2 drug use” means the unlawful use of a drug listed  
3 under subsection (a)(2) by a covered employee.

4           (4) RANDOM DRUG TESTING.—The term “ran-  
5 dom drug testing” means drug testing that is im-  
6 posed on a covered employee without individualized  
7 suspicion that such employee is engaging, or has en-  
8 gaged, in illegal drug use.

9           (5) SECRETARY.—The term “Secretary” means  
10 the Secretary of Health and Human Services, acting  
11 through the Director of the Indian Health Service.

12           (6) SPECIMEN.—The term “specimen” means  
13 urine collected from a covered employee for the pur-  
14 pose of random drug testing under this section.

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