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115TH CONGRESS
2D SESSION

H. R. 5874

[Report No. 115–1065, Part I]

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 HOUSE OF REPRESENTATIVES

MAY 18, 2018

Mrs. NOEM (for herself, Mr. BISHOP of Utah, Mr. MULLIN, Mrs. MCMORRIS RODGERS, Mr. COLE, Mr. LAMALFA, Mr. CRAMER, Mrs. RADEWAGEN, and Miss GONZÁLEZ-COLÓN of Puerto Rico) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committees on Energy and Commerce, Ways and Means, and Oversight and Government Reform, 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

DECEMBER 3, 2018

Reported from the Committee on Natural Resources

DECEMBER 3, 2018

Referral to the Committees on Energy and Commerce, Ways and Means, and Oversight and Government Reform extended for a period ending not later than December 28, 2018

DECEMBER 28, 2018

Committees on Energy and Commerce, Ways and Means, and Oversight and Government Reform discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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 2018”.

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. Improved authorities of secretary to improve accountability of senior executives and employees of the Indian Health Service.
- Sec. 107. Tribal culture and history.
- Sec. 108. Staffing demonstration project.
- Sec. 109. Rule establishing tribal consultation policy.
- Sec. 110. Treatment of certain hospitals.

TITLE II—EMPLOYEE PROTECTIONS

- Sec. 201. Employee protections against retaliation.
- Sec. 202. Right of Federal employees to petition Congress.
- Sec. 203. 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:

8 **“SEC. 125. INCENTIVES FOR RECRUITMENT AND RETEN-**
9 **TION.**

10 “(a) **PARITY IN IHS HEALTH CARE WORKFORCE**
11 **PERSONNEL AND PAY SYSTEM.**—The Secretary shall es-
12 tablish a personnel and pay system for physicians, den-
13 tists, nurses, and other health care professionals employed
14 by the Service that provides a personnel and pay system
15 that, to the maximum extent practicable, is comparable
16 to the pay provided to physicians, dentists, nurses, and
17 other health care professionals, respectively, under sub-
18 chapters III and IV of chapter 74 of title 38, United
19 States Code.

20 “(b) **RELOCATION COSTS.**—The Secretary may pro-
21 vide to an employee of the Service reimbursement for any
22 relocation costs the employee incurs if—

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

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

4 “(c) HOUSING VOUCHERS.—

5 “(1) IN GENERAL.—Subject to paragraph (2),
6 not later than 1 year after the date of enactment of
7 the Restoring Accountability in the Indian Health
8 Service Act of 2018, the Secretary may establish a
9 program to provide tenant-based rental assistance to
10 an employee of the Service who—

11 “(A) agrees to serve for not less than 1
12 year at a Service unit designated by the Admin-
13 istrator of the Health Resources and Services
14 Administration as a health professional short-
15 age area, as defined in section 332(a) of the
16 Public Health Service Act (42 U.S.C. 254e(a)),
17 with the greatest staffing need; and

18 “(B) is a critical employee, as determined
19 by the Secretary.

20 “(2) SUNSET.—Any program established by the
21 Secretary under paragraph (1) shall terminate on
22 the date that is 3 years after the date on which any
23 such program is established.

24 “(d) ADMINISTRATION.—

1 “(1) OPM GUIDELINES.—The Secretary shall
2 carry out subsection (b) in accordance with any
3 guidelines of the Office of Personnel Management
4 relating to section 572 of title 5, Code of Federal
5 Regulations (as in effect on the date of enactment
6 of the Restoring Accountability in the Indian Health
7 Service Act of 2018).

8 “(2) SERVICE AGREEMENTS.—The Secretary
9 may only provide reimbursement for any relocation
10 costs under subsection (b) or any other benefit
11 under subsection (c) to—

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

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

18 **SEC. 102. MEDICAL CREDENTIALING SYSTEM.**

19 Title I of the Indian Health Care Improvement Act
20 (25 U.S.C. 1611 et seq.), as amended by section 101, is
21 further amended by adding at the end the following:

22 **“SEC. 126. MEDICAL CREDENTIALING SYSTEM.**

23 “(a) IN GENERAL.—

24 “(1) DEVELOPMENT AND IMPLEMENTATION
25 TIMELINE.—By not later than 1 year after the date

1 of enactment of the Restoring Accountability in the
2 Indian Health Service Act of 2018, the Secretary,
3 acting through the Service and in accordance with
4 the requirements described in subsection (b), shall
5 develop and implement a Service-wide centralized
6 electronic credentialing system (referred to in this
7 section as the ‘credentialing system’) to credential li-
8 censed health professionals who seek to provide
9 health care services at any Service unit, including
10 physicians, nurses and physicians assistants.

11 “(2) IMPLEMENTATION.—In implementing the
12 credentialing system, the Secretary—

13 “(A) shall not require re-credentialing of
14 licensed health professionals who were
15 credentialed using existing Service policy prior
16 to the date of enactment of the Restoring Ac-
17 countability in the Indian Health Service Act of
18 2018; and

19 “(B) shall—

20 “(i) use the credentialing system for
21 all new applications of licensed health pro-
22 fessionals and the migration of credentials
23 data that existed prior to implementation
24 into the system;

1 “(ii) maintain the established timeline
2 for re-credentialing of licensed health pro-
3 fessionals who were credentialed prior to
4 implementation, as defined by Service pol-
5 icy; and

6 “(iii) review credentials for all profes-
7 sionals in the system, based on updated
8 policies, on a not less than yearly basis. Li-
9 censed health professionals whose creden-
10 tials would not have been approved under
11 the updated policies shall have 90 days to
12 meet the new requirements.

13 “(b) REQUIREMENTS.—In developing the
14 credentialing system under subsection (a), the Secretary
15 shall ensure the following:

16 “(1) Credentialing procedures shall be uniform
17 and integrated throughout the Service.

18 “(2) With respect to each licensed health pro-
19 fessional who successfully completes the
20 credentialing procedures of the credentialing system,
21 the Secretary may authorize each such professional
22 to provide health care services at any Service unit.

23 “(3) Credentialing procedures shall include
24 verification of licensure, education, employment his-
25 tory, and criminal background checks and history.

1 “(c) CONSULTATION.—In developing the
2 credentialing system under subsection (a), the Secretary
3 shall consult with Indian Tribes and may also consult with
4 any public or private association of medical providers, any
5 government agency, or other relevant expert, as deter-
6 mined by the Secretary.

7 “(d) APPLICATION.—A licensed health care profes-
8 sional may not provide health care services at any Service
9 unit, unless such professional successfully completes the
10 credentialing procedures of the credentialing system devel-
11 oped under subsection (a).

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

15 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
16 tion may be construed—

17 “(1) to negatively impact the right of an Indian
18 Tribe to enter into a compact or contract under the
19 Indian Self-Determination and Education Assistance
20 Act (25 U.S.C. 5304 et seq.); and

21 “(2) to apply to such a compact or contract un-
22 less expressly agreed to by the Indian Tribe.”.

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

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

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

10 “(1) IN GENERAL.—For purposes of this sec-
11 tion, an employee of an IHS urban Indian health
12 program and a health professional volunteer at a
13 Service unit shall, in providing a health service to an
14 individual, be deemed to be an employee of the Pub-
15 lic Health Service for a calendar year that begins
16 during a fiscal year for which a transfer was made
17 under paragraph (4)(C). The preceding sentence is
18 subject to the provisions of this subsection.

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

24 “(A) The service is provided to the indi-
25 vidual at the facilities of a Service unit, or

1 through offsite programs or events carried out
2 by the Service unit.

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

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

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

23 “(E) At the time the service is provided,
24 the health care practitioner is licensed, certified,
25 credentialed, and privileged in accordance with

1 Service policy and applicable law regarding the
2 provision of the service.

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

13 “(A) Each reference to an entity in sub-
14 sections (g), (h), (i), and (l) shall be considered
15 to be a reference to an IHS urban Indian
16 health program or a Service unit, as applicable.

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 employees of an IHS
17 urban Indian health program or health
18 professional volunteers, will be paid pursu-
19 ant to this section during the calendar year
20 that begins in the following fiscal year.

21 “(ii) APPLICABILITY.—Subsection
22 (k)(1)(B) applies to the estimate under
23 clause (i) relating to employees of an IHS
24 urban Indian health program or health
25 professional volunteers to the same extent

1 and in the same manner as that subsection
2 applies to the estimate under that sub-
3 section relating to officers, governing board
4 members, employees, and contractors of
5 entities described in subsection (g)(4).

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

14 “(5) DEFINITIONS.—

15 “(A) IHS URBAN INDIAN HEALTH PRO-
16 GRAM.—In this subsection, the term ‘IHS
17 urban Indian health program’ means an urban
18 Indian health program operated by an urban
19 Indian organization pursuant to a grant or con-
20 tract with the Indian Health Service under title
21 V of the Indian Health Care Improvement Act
22 (25 U.S.C. 1651 et seq.).

23 “(B) SERVICE UNIT.—In this subsection,
24 the term ‘Service unit’ has the meaning given

1 the term in section 4 of the Indian Health Care
2 Improvement Act (25 U.S.C. 1603).

3 “(6) RULE OF CONSTRUCTION.—Nothing in
4 this subsection may be construed—

5 “(A) to negatively impact the right of an
6 Indian Tribe to enter into a compact or con-
7 tract under the Indian Self-Determination and
8 Education Assistance Act (25 U.S.C. 5304 et
9 seq.); and

10 “(B) to apply to such a compact or con-
11 tract unless expressly agreed to by the Indian
12 Tribe.

13 “(7) EFFECTIVE DATES.—

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

17 “(B) REGULATIONS, APPLICATIONS, AND
18 REPORTS.—Effective on the date of the enact-
19 ment of the Restoring Accountability in the In-
20 dian Health Service Act of 2018, the Secretary
21 may—

22 “(i) prescribe regulations for carrying
23 out this subsection; and

24 “(ii) accept and consider applications
25 submitted under paragraph (3)(C)(i).”.

1 **SEC. 104. CLARIFICATION REGARDING ELIGIBILITY FOR IN-**
2 **DIAN HEALTH SERVICE LOAN REPAYMENT**
3 **PROGRAM.**

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

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

8 “(B) have—

9 “(i)(I) a degree in a health profession;

10 and

11 “(II) a license to practice a health
12 profession in a State; or

13 “(ii)(I) a master’s degree in business
14 administration with an emphasis in health
15 care management (as defined by the Sec-
16 retary), health administration, hospital ad-
17 ministration, or public health; and

18 “(II) a license or certification to prac-
19 tice in the field of business administration,
20 health administration, hospital administra-
21 tion, or public health in a State, if the Sec-
22 retary determines such license or certifi-
23 cation necessary for the Indian health pro-
24 gram to which the individual will be as-
25 signed;

1 “(iii) maintain credentials as deter-
2 mined by the system described in section
3 102; and

4 “(iv) participate in the training de-
5 scribed in section 107;”;

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

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

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

18 “(II) 4 years or such longer pe-
19 riod as the individual may agree to
20 serve in the half-time practice of such
21 individual’s profession in an Indian
22 health program to which the indi-
23 vidual may be assigned by the Sec-
24 retary;” and

25 (3) in subsection (g)(2)—

1 (A) by redesignating subparagraph (B) as
2 subparagraph (C); and

3 (B) in subparagraph (A)—

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

23 (ii) by striking “In making a deter-
24 mination” and inserting the following:

1 “(B) In making a determination under this
2 paragraph”.

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

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

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

8 “(a) DIRECT HIRE AUTHORITY.—The Secretary may
9 appoint, without regard to subchapter I of chapter 33 of
10 title 5, United States Code (other than sections 3303 and
11 3328 of such title), a candidate directly to a position with-
12 in the Service for which the candidate meets the qualifica-
13 tions standard established by the Office of Personnel Man-
14 agement.

15 “(b) TRIBAL NOTIFICATION.—Before appointing,
16 hiring, promoting, transferring, or reassigning a candidate
17 to a Senior Executive Service position or the position of
18 a manager at an Area office or Service unit, the Secretary
19 shall provide notice to each Indian Tribe located within
20 the defined geographic area of such Area office or Service
21 unit, as the case may be, of the content of an inclusion
22 in an employment record. Each such Indian Tribe may
23 submit comment to the Secretary during the 10-day period
24 after the date of such notification regarding such con-
25 tent.”.

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 may, at the request of an In-
6 dian Tribe, seek from each Indian Tribe concerned,
7 a waiver of Indian preference laws for a personnel
8 action that is with respect to—

9 “(A) an Indian Health Service unit in
10 which 15 percent or more of the total positions
11 or specific health professionals in the Service
12 unit are not filled by a full-time employee of the
13 Indian Health Service for a period of 6 months
14 or longer; or

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

1 **SEC. 106. IMPROVED AUTHORITIES OF SECRETARY TO IM-**
2 **PROVE ACCOUNTABILITY OF SENIOR EXECU-**
3 **TIVES AND EMPLOYEES OF THE INDIAN**
4 **HEALTH SERVICE.**

5 (a) IN GENERAL.—Title VI of the Indian Health
6 Care Improvement Act (25 U.S.C. 1661 et seq.), as
7 amended by section 105, is further amended by adding
8 at the end the following:

9 **“SEC. 606. IMPROVED AUTHORITIES OF SECRETARY TO IM-**
10 **PROVE ACCOUNTABILITY OF SENIOR EXECU-**
11 **TIVES OF THE INDIAN HEALTH SERVICE.**

12 “(a) AUTHORITY.—

13 “(1) IN GENERAL.—The Secretary may, as pro-
14 vided in this section, reprimand or suspend, involun-
15 tarily reassign, demote, or remove a covered indi-
16 vidual from a senior executive position at the Service
17 if the Secretary determines that the misconduct or
18 performance of the covered individual warrants such
19 action.

20 “(2) REMOVAL FROM CIVIL SERVICE.—If the
21 Secretary removes an individual pursuant to para-
22 graph (1), the Secretary may remove the individual
23 from the civil service (as defined in section 2101 of
24 title 5, United States Code).

25 “(b) RIGHTS AND PROCEDURES.—

1 “(1) IN GENERAL.—A covered individual who is
2 the subject of an action under subsection (a) is enti-
3 tled to—

4 “(A) advance notice of the action and a file
5 containing all evidence in support of the pro-
6 posed action;

7 “(B) be represented by an attorney or
8 other representative of the covered individual’s
9 choice; and

10 “(C) grieve the action in accordance with
11 an internal grievance process that the Secretary
12 shall establish for purposes of this subsection.

13 “(2) NOTICE.—

14 “(A) AGGREGATE PERIOD FOR NOTICE.—
15 The aggregate period for notice, response, and
16 decision on an action under subsection (a) may
17 not exceed 15 business days.

18 “(B) RESPONSE.—The period for the re-
19 sponse of a covered individual to a notice under
20 paragraph (1)(A) of an action under subsection
21 (a) shall be 7 business days.

22 “(C) DECISION.—A decision under this
23 paragraph on an action under subsection (a)
24 shall be issued not later than 15 business days
25 after notice of the action is provided to the cov-

1 ered individual under paragraph (1)(A). The
2 decision shall be in writing, and shall include
3 the specific reasons for the decision.

4 “(3) GRIEVANCE PROCESS.—The Secretary
5 shall ensure that the grievance process established
6 under paragraph (1)(C) takes fewer than 21 days.

7 “(4) FINAL AND CONCLUSIVE DECISION.—A de-
8 cision under paragraph (2) that is not grieved, and
9 a grievance decision under paragraph (3), shall be
10 final and conclusive.

11 “(5) JUDICIAL REVIEW.—A covered individual
12 adversely affected by a decision under paragraph (2)
13 that is not grieved, or by a grievance decision under
14 paragraph (3), may obtain judicial review of such
15 decision.

16 “(6) COURT REVIEW.—In any case in which ju-
17 dicial review is sought under paragraph (5), the
18 court shall review the record and may set aside any
19 Department action found to be—

20 “(A) arbitrary, capricious, an abuse of dis-
21 cretion, or otherwise not in accordance with a
22 provision of law;

23 “(B) obtained without procedures required
24 by a provision of law having been followed; or

25 “(C) unsupported by substantial evidence.

1 “(c) RELATION TO OTHER PROVISIONS OF LAW.—
2 Section 3592(b)(1) of title 5, United States Code, does
3 not apply to an action under subsection (a).

4 “(d) DEFINITIONS.—In this section:

5 “(1) COVERED INDIVIDUAL.—The term ‘cov-
6 ered individual’ means a career appointee (as that
7 term is defined in section 3132(a) of title 5, United
8 States Code).

9 “(2) MISCONDUCT.—The term ‘misconduct’ in-
10 cludes neglect of duty, malfeasance, or failure to ac-
11 cept a directed reassignment or to accompany a po-
12 sition in a transfer of function.

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

16 “(4) SENIOR EXECUTIVE POSITION.—The term
17 ‘senior executive position’ means a Senior Executive
18 Service position (as that term is defined in section
19 3132(a) of title 5, United States Code).

20 **“SEC. 607. IMPROVED AUTHORITIES OF SECRETARY TO IM-**
21 **PROVE ACCOUNTABILITY OF EMPLOYEES OF**
22 **THE INDIAN HEALTH SERVICE.**

23 “(a) IN GENERAL.—

24 “(1) AUTHORITY.—The Secretary may remove,
25 demote, or suspend a covered individual who is an

1 employee of the Service if the Secretary determines
2 the performance or misconduct of the covered indi-
3 vidual warrants such removal, demotion, or suspen-
4 sion.

5 “(2) ACTIONS.—If the Secretary removes, de-
6 motes, or suspends a covered individual pursuant to
7 paragraph (1), the Secretary may—

8 “(A) remove the covered individual from
9 the civil service (as defined in section 2101 of
10 title 5, United States Code);

11 “(B) demote the covered individual by
12 means of a reduction in grade for which the
13 covered individual is qualified, that the Sec-
14 retary determines is appropriate, and that re-
15 duces the annual rate of pay of the covered in-
16 dividual; or

17 “(C) suspend the covered individual.

18 “(b) PAY OF CERTAIN DEMOTED INDIVIDUALS.—

19 “(1) IN GENERAL.—Notwithstanding any other
20 provision of law, any covered individual subject to a
21 demotion under subsection (a)(2) shall, beginning on
22 the date of such demotion, receive the annual rate
23 of pay applicable to such grade.

24 “(2) RESTRICTIONS.—

1 “(A) PROHIBITION ON ADMINISTRATIVE
2 LEAVE.—A covered individual subject to a de-
3 motion under subsection (a)(2) may not be
4 placed on administrative leave during the period
5 during which an appeal (if any) under this sec-
6 tion is ongoing, and may only receive pay if the
7 covered individual reports for duty or is ap-
8 proved to use accrued unused annual, sick, fam-
9 ily medical, military, or court leave.

10 “(B) RESTRICTION ON PAY AND BENE-
11 FITS.—If a covered individual subject to a de-
12 motion under subsection (a)(2) does not report
13 for duty or receive approval to use accrued un-
14 used leave, such covered individual shall not re-
15 ceive pay or other benefits pursuant to sub-
16 section (d)(5).

17 “(c) PROCEDURES.—

18 “(1) IN GENERAL.—

19 “(A) AGGREGATE PERIOD.—The aggregate
20 period for notice, response, and final decision in
21 a removal, demotion, or suspension under this
22 section may not exceed 15 business days.

23 “(B) PERIOD FOR RESPONSE.—The period
24 for the response of a covered individual to a no-
25 tice of a proposed removal, demotion, or sus-

1 pension under this section shall be 7 business
2 days.

3 “(C) REPRESENTATION BY ATTORNEY OR
4 OTHER REPRESENTATIVE.—Paragraph (3) of
5 subsection (b) of section 7513 of title 5, United
6 States Code, shall apply with respect to a re-
7 moval, demotion, or suspension under this sec-
8 tion.

9 “(D) PROCEDURES SUPERSEDING CBAS.—
10 The procedures in this subsection shall super-
11 sede any collective bargaining agreement to the
12 extent that such agreement is inconsistent with
13 such procedures.

14 “(2) FINAL DECISION.—The Secretary shall
15 issue a final decision with respect to a removal, de-
16 motion, or suspension under this section not later
17 than 15 business days after the Secretary provides
18 notice, including a file containing all the evidence in
19 support of the proposed action, to the covered indi-
20 vidual of the removal, demotion, or suspension. The
21 decision shall be in writing and shall include the spe-
22 cific reasons for the decision.

23 “(3) PERFORMANCE APPRAISAL.—The proce-
24 dures under chapter 43 of title 5, United States

1 Code, shall not apply to a removal, demotion, or sus-
2 pension under this section.

3 “(4) APPEAL TO MERIT SYSTEMS PROTECTION
4 BOARD.—

5 “(A) IN GENERAL.—Subject to subpara-
6 graph (B) and subsection (d), any removal or
7 demotion under this section, and any suspen-
8 sion of more than 14 days under this section,
9 may be appealed to the Merit Systems Protec-
10 tion Board, which shall refer such appeal to an
11 administrative judge pursuant to section
12 7701(b)(1) of title 5, United States Code.

13 “(B) TIME PERIOD.—An appeal under
14 subparagraph (A) of a removal, demotion, or
15 suspension may only be made if such appeal is
16 made not later than 10 business days after the
17 date of such removal, demotion, or suspension.

18 “(d) EXPEDITED REVIEW.—

19 “(1) IN GENERAL.—Upon receipt of an appeal
20 under subsection (c)(4)(A), the administrative judge
21 shall expedite any such appeal under section
22 7701(b)(1) of title 5, United States Code, and, in
23 any such case, shall issue a final and complete deci-
24 sion not later than 180 days after the date of the
25 appeal.

1 “(2) UPHOLDING DECISION.—

2 “(A) IN GENERAL.—Notwithstanding sec-
3 tion 7701(c)(1)(B) of title 5, United States
4 Code, the administrative judge shall uphold the
5 decision of the Secretary to remove, demote, or
6 suspend an employee under subsection (a) if the
7 decision is supported by substantial evidence.

8 “(B) PROHIBITION OF MITIGATION.—Not-
9 withstanding title 5, United States Code, or any
10 other provision of law, if the decision of the
11 Secretary is supported by substantial evidence,
12 the administrative judge shall not mitigate the
13 penalty prescribed by the Secretary.

14 “(3) APPEAL TO MERIT SYSTEMS PROTECTION
15 BOARD.—

16 “(A) IN GENERAL.—The decision of the
17 administrative judge under paragraph (1) may
18 be appealed to the Merit Systems Protection
19 Board.

20 “(B) UPHOLDING DECISION.—Notwith-
21 standing section 7701(c)(1)(B) of title 5,
22 United States Code, the Merit Systems Protec-
23 tion Board shall uphold the decision of the Sec-
24 retary to remove, demote, or suspend an em-

1 ployee under subsection (a) if the decision is
2 supported by substantial evidence.

3 “(C) PROHIBITION OF MITIGATION.—Not-
4 withstanding title 5, United States Code, or any
5 other provision of law, if the decision of the
6 Secretary is supported by substantial evidence,
7 the Merit Systems Protection Board shall not
8 mitigate the penalty prescribed by the Sec-
9 retary.

10 “(4) REPORT.—In any case in which the ad-
11 ministrative judge cannot issue a decision in accord-
12 ance with the 180-day requirement under paragraph
13 (1), the Merit Systems Protection Board shall, not
14 later than 14 business days after the expiration of
15 the 180-day period, submit to the appropriate com-
16 mittees of Congress a report that explains the rea-
17 sons why a decision was not issued in accordance
18 with such requirement.

19 “(5) APPEAL.—A decision of the Merit Systems
20 Protection Board under paragraph (3) may be ap-
21 pealed to the United States Court of Appeals for the
22 Federal Circuit pursuant to section 7703 of title 5,
23 United States Code, or to any court of appeals of
24 competent jurisdiction pursuant to subsection
25 (b)(1)(B) of such section.

1 “(6) PROHIBITION AGAINST STAYS.—The Merit
2 Systems Protection Board may not stay any removal
3 or demotion under this section, except as provided in
4 section 1214(b) of title 5, United States Code.

5 “(7) RESTRICTION ON PAY AND BENEFITS DUR-
6 ING APPEAL.—During the period beginning on the
7 date on which a covered individual appeals a removal
8 from the civil service under subsection (c) and end-
9 ing on the date that the United States Court of Ap-
10 peals for the Federal Circuit issues a final decision
11 on such appeal, such covered individual may not re-
12 ceive any pay, awards, bonuses, incentives, allow-
13 ances, differentials, student loan repayments, special
14 payments, or benefits related to the employment of
15 the individual by the Service.

16 “(8) INFORMATION TO EXPEDITE APPEAL.—To
17 the maximum extent practicable, the Secretary shall
18 provide to the Merit Systems Protection Board such
19 information and assistance as may be necessary to
20 ensure an appeal under this subsection is expedited.

21 “(9) BACKPAY.—If an employee prevails on ap-
22 peal under this section, the employee shall be enti-
23 tled to backpay (as provided in section 5596 of title
24 5, United States Code).

1 “(10) APPLICABLE TIMELINES AND PROCE-
2 DURES.—If an employee who is subject to a collec-
3 tive bargaining agreement chooses to grieve an ac-
4 tion taken under this section through a grievance
5 procedure provided under the collective bargaining
6 agreement, the timelines and procedures set forth in
7 subsection (c) and this subsection shall apply.

8 “(e) ALLEGED PROHIBITED PERSONNEL PRAC-
9 TICE.—In the case of a covered individual seeking correc-
10 tive action (or on behalf of whom corrective action is
11 sought) from the Office of Special Counsel based on an
12 alleged prohibited personnel practice described in section
13 2302(b) of title 5, United States Code, the Secretary may
14 not remove, demote, or suspend such covered individual
15 under subsection (a) without the approval of the Special
16 Counsel under section 1214(f) of title 5, United States
17 Code.

18 “(f) TERMINATION OF INVESTIGATIONS BY OFFICE
19 OF SPECIAL COUNSEL.—

20 “(1) IN GENERAL.—Notwithstanding any other
21 provision of law, the Special Counsel (established by
22 section 1211 of title 5, United States Code) may ter-
23 minate an investigation of a prohibited personnel
24 practice alleged by an employee or former employee
25 of the Service after the Special Counsel provides to

1 the employee or former employee a written state-
2 ment of the reasons for the termination of the inves-
3 tigation.

4 “(2) ADMISSIBILITY.—The statement described
5 in paragraph (1) may not be admissible as evidence
6 in any judicial or administrative proceeding without
7 the consent of the employee or former employee de-
8 scribed in paragraph (1).

9 “(g) VACANCIES.—In the case of a covered individual
10 who is removed or demoted under subsection (a), to the
11 maximum extent feasible, the Secretary shall fill the va-
12 cancy arising as a result of such removal or demotion.

13 “(h) DEFINITIONS.—In this section:

14 “(1) COVERED INDIVIDUAL.—The term ‘cov-
15 ered individual’ means an individual occupying a po-
16 sition at the Service, but does not include—

17 “(A) an individual occupying a senior exec-
18 utive position (as defined in section 606(d));

19 “(B) an individual who has not completed
20 a probationary or trial period; or

21 “(C) a political appointee.

22 “(2) GRADE.—The term ‘grade’ has the mean-
23 ing given such term in section 7511(a) of title 5,
24 United States Code.

1 “(3) MISCONDUCT.—The term ‘misconduct’ in-
2 cludes neglect of duty, malfeasance, or failure to ac-
3 cept a directed reassignment or to accompany a po-
4 sition in a transfer of function.

5 “(4) POLITICAL APPOINTEE.—The term ‘polit-
6 ical appointee’ means an individual who is—

7 “(A) employed in a position described
8 under sections 5312 through 5316 of title 5,
9 United States Code (relating to the Executive
10 Schedule);

11 “(B) a limited term appointee, limited
12 emergency appointee, or noncareer appointee in
13 the Senior Executive Service, as defined under
14 paragraphs (5), (6), and (7), respectively, of
15 section 3132(a) of title 5, United States Code;
16 or

17 “(C) employed in a position of a confiden-
18 tial or policy-determining character under
19 schedule C of subpart C of part 213 of title 5,
20 Code of Federal Regulations, or successor regu-
21 lation.

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

1 “(6) SUSPEND.—The term ‘suspend’ means the
2 placing of an employee, for disciplinary reasons, in
3 a temporary status without duties and pay for a pe-
4 riod in excess of 14 days.”.

5 (b) CONFORMING AMENDMENTS.—Section 4303(f) of
6 title 5, United States Code, is amended—

7 (1) in paragraph (3), by striking “or” at the
8 end;

9 (2) in paragraph (4), by striking the period at
10 the end and inserting “, or”; and

11 (3) by adding at the end the following:

12 “(5) any removal or demotion under section
13 607 of the Indian Health Care Improvement Act.”.

14 (c) REPORT.—Not later than 18 months after the
15 date of enactment of this Act, the Secretary of Health and
16 Human Services or the Inspector General of the Depart-
17 ment of Health and Human Services shall submit a report
18 to Congress that includes the following:

19 (1) The number of employees of the Indian
20 Health Service who were removed, demoted, or sus-
21 pended in the 1-year period before the date of enact-
22 ment of this Act.

23 (2) The number of employees of the Indian
24 Health Service who were removed, demoted, or sus-
25 pended in the 1-year period after the date of enact-

1 ment of this Act using the updated authorities pro-
2 vided in the amendments made by this Act.

3 (3) The appropriate details of removals, demo-
4 tions, and suspensions that lend necessary context.

5 **SEC. 107. TRIBAL CULTURE AND HISTORY.**

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

8 (1) in subsection (a)—

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

11 (B) by striking “appropriate employees of
12 the Service” and inserting “employees of the
13 Service, locum tenens medical providers,
14 healthcare volunteers, and other contracted em-
15 ployees who work at Service hospitals or other
16 Service units and whose employment requires
17 regular direct patient access”; and

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

19 “(c) Notwithstanding any other provision of law, be-
20 ginning with the year of the date of enactment of the Re-
21 storing Accountability in the Indian Health Service Act
22 of 2018, each employee or provider described in subsection
23 (a) who enters into a contract with the Service on or after
24 the date of such implementation shall, as a condition of
25 employment, annually participate in and complete such

1 training program. For purposes of the preceding sentence,
2 participation in such training program may not be consid-
3 ered complete for the year involved until the individual
4 satisfies each requirement, including testing, if applicable,
5 of the training program for such year, as specified by the
6 Secretary.”.

7 **SEC. 108. STAFFING DEMONSTRATION PROJECT.**

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

11 **“SEC. 833. STAFFING DEMONSTRATION PROJECT.**

12 “(a) IN GENERAL.—The Secretary, acting through
13 the Service, shall establish a demonstration project that
14 authorizes the Service to provide federally managed Serv-
15 ice units with additional staffing resources with the goal
16 that the resources become self-sustaining.

17 “(b) SELECTION.—In selecting Service units for par-
18 ticipation, the Secretary shall consider whether a Service
19 unit services an Indian Tribe that—

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

24 “(2) is located in a State or States with Med-
25 icaid reimbursements plans or policies that will in-

1 crease the likelihood that the staffing resources pro-
2 vided will be self-sustaining; and

3 “(3) is operating a health facility described in
4 paragraph (1) under historical staffing ratios that
5 have not been equalized or updated by the Service
6 or any other Service program to reflect current
7 staffing needs.

8 “(c) DURATION.—Staffing resources provided to a
9 Service unit under this section shall be for a duration that
10 the Secretary, in consultation with the applicable Indian
11 Tribe, determines appropriate, except that each staffing
12 position provided shall be for a period of not less than
13 3 fiscal years.

14 “(d) EFFECT OF STAFFING AWARDS.—No staffing
15 resources provided under this section shall reduce the re-
16 curring base funding for staffing for any Indian Tribe or
17 federally managed Service unit.

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

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

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

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

10 **SEC. 109. RULE ESTABLISHING TRIBAL CONSULTATION**
11 **POLICY.**

12 Title VIII of the Indian Health Care Improvement
13 Act (25 U.S.C. 1671 et seq.), as amended by section 108,
14 is further amended by adding at the end the following:

15 **“SEC. 834. RULE ESTABLISHING TRIBAL CONSULTATION**
16 **POLICY.**

17 “(a) IN GENERAL.—Not later than 1 year after the
18 date of enactment of the Restoring Accountability in the
19 Indian Health Service Act of 2018, the Secretary shall es-
20 tablish, after meaningful consultation with representatives
21 of affected Indian Tribes, a rule establishing a tribal con-
22 sultation policy for the Service.

23 “(b) CONTENTS OF TRIBAL CONSULTATION POL-
24 ICY.—The policy established under the rule described in
25 subsection (a) shall—

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

4 “(2) include the following:

5 “(A) A process for determining when the
6 Service will notify Indian Tribes, and a descrip-
7 tion of how the Indian Tribes should be noti-
8 fied.

9 “(B) A determination of what actions or
10 agency decisions by the Service will trigger a re-
11 quirement for meaningful consultation with In-
12 dian Tribes.

13 “(C) A determination of what actions con-
14 stitute meaningful consultation with Indian
15 Tribes.”.

16 **SEC. 110. TREATMENT OF CERTAIN HOSPITALS.**

17 The “Parallel Low-Volume Hospital Payment Adjust-
18 ment Regarding Hospitals Operated by the Indian Health
19 Services (IHS) or a Tribe” provisions described in the
20 final rule published by the Centers for Medicare & Med-
21 icaid Services in the Federal Register on August 14, 2017,
22 and entitled “Medicare Program; Hospital Inpatient Pro-
23 spective Payment Systems for Acute Care Hospitals and
24 the Long-Term Care Hospital Prospective Payment Sys-
25 tem and Policy Changes and Fiscal Year 2018 Rates;

1 Quality Reporting Requirements for Specific Providers;
2 Medicare and Medicaid Electronic Health Record (EHR)
3 Incentive Program Requirements for Eligible Hospitals,
4 Critical Access Hospitals, and Eligible Professionals; Pro-
5 vider-Based Status of Indian Health Service and Tribal
6 Facilities and Organizations; Costs Reporting and Pro-
7 vider Requirements; Agreement Termination Notices” (82
8 Fed Reg. 37990; 38188–38189), shall apply with respect
9 to discharges occurring in fiscal year 2011 and subsequent
10 fiscal years.

11 **TITLE II—EMPLOYEE** 12 **PROTECTIONS**

13 **SEC. 201. EMPLOYEE PROTECTIONS AGAINST RETALIA-** 14 **TION.**

15 (a) IN GENERAL.—Title VI of the Indian Health
16 Care Improvement Act (25 U.S.C. 1661 et seq.), as
17 amended by sections 105 and 106, is further amended by
18 adding at the end the following:

19 **“SEC. 608. EMPLOYEE PROTECTIONS AGAINST RETALIA-** 20 **TION.**

21 “(a) EMPLOYEE ACCOUNTABILITY.—

22 “(1) AGENCY REPORTING PROCESS REQUIRE-
23 MENT.—The Secretary shall designate an official in
24 the Department who is not an employee of the Serv-
25 ice to—

1 “(A) receive reports from an employee of
2 the Service who witnesses retaliation against a
3 whistleblower, a violation of a patient safety re-
4 quirement, or other similar conduct; and

5 “(B) conduct active and ongoing outreach
6 to all employees of the Service about—

7 “(i) Federal and Department systems
8 for reporting retaliation against whistle-
9 blowers; and

10 “(ii) the duty of individual employees
11 of the Service to report violations of pa-
12 tient safety requirements and other similar
13 conduct.

14 “(2) OVERSIGHT.—Not later than 3 days after
15 the date on which the official designated by the Sec-
16 retary under paragraph (1) receives a report under
17 paragraph (1)(A), the Secretary shall—

18 “(A) formally review the report; and

19 “(B) provide a copy of such report and any
20 other relevant information to the Inspector
21 General of the Department.

22 “(3) REMOVAL FOR WHISTLEBLOWER RETALIA-
23 TION.—The Secretary may remove for misconduct
24 from the civil service (as defined in section 2101 of
25 title 5, United States Code), in accordance with sec-

1 tions 606 and 607, an employee of the Service if the
2 Secretary determines, after completing a report re-
3 view described in paragraph (2), that the employee
4 has retaliated against a whistleblower and warrants
5 removal.

6 “(4) ENHANCING PROTECTIONS FOR WHISTLE-
7 BLOWERS.—The Secretary shall carry out any ac-
8 tions determined necessary by the Secretary to en-
9 hance protection for whistleblowers, including identi-
10 fying appropriate Service employees and requiring
11 the employees to complete the Office of Special
12 Counsel’s Whistleblower Certification Program.

13 “(b) DEFINITIONS.—In this section:

14 “(1) RETALIATION.—The term ‘retaliation’—

15 “(A) means an adverse employment action
16 or any significantly adverse action against a
17 whistleblower, such as the refusal or delay of
18 care provided through the Service; and

19 “(B) includes instances where the adverse
20 action described in subparagraph (A) is per-
21 petrated against a family member or friend of
22 the whistleblower because of the whistleblower’s
23 disclosure of information.

1 “(2) WHISTLEBLOWER.—The term ‘whistle-
2 blower’ means an employee of Service who discloses
3 information—

4 “(A) that the employee reasonably believes
5 evidences—

6 “(i) a violation of any law, rule, or
7 regulation; or

8 “(ii) gross mismanagement, a gross
9 waste of funds, an abuse of authority, or
10 a substantial and specific danger to public
11 health or safety; and

12 “(B) if such disclosure is not specifically
13 prohibited by law and if such information is not
14 specifically required by Executive Order to be
15 kept secret in the interest of national defense or
16 the conduct of foreign affairs.”.

17 **SEC. 202. RIGHT OF FEDERAL EMPLOYEES TO PETITION**
18 **CONGRESS.**

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

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

24 (2) by adding at the end the following new sub-
25 section:

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

7 (b) ELECTRONIC NOTIFICATION OF RIGHT OF EM-
8 PLOYEES OF INDIAN HEALTH SERVICE.—

9 (1) IN GENERAL.—The Secretary of Health and
10 Human Services (referred to in this subsection as
11 the “Secretary”), acting through the Director of the
12 Indian Health Service, shall, in accordance with
13 paragraphs (2) through (6), provide to each em-
14 ployee of the Indian Health Service, and electroni-
15 cally post, a memorandum providing notice of the
16 right to petition Congress under section 7211 of title
17 5, United States Code.

18 (2) CONTENTS.—The memorandum described
19 in paragraph (1) shall include the following state-
20 ment: “It is a violation of section 7211 of title 5,
21 United States Code, for any Federal agency or em-
22 ployee to require a Federal employee to seek ap-
23 proval, guidance, or any other form of input prior to
24 contacting Congress with information, even if that
25 information is in relation to the job responsibilities

1 of the employee. A Federal employee found to have
2 interfered with or denied the right of another Fed-
3 eral employee under such section shall be subject to
4 an adverse action described in paragraphs (1)
5 through (5) of section 7512 of title 5, United States
6 Code, including a suspension for more than 14 days
7 without pay.”.

8 (3) SUBMISSION.—Not later than 30 days after
9 the date of enactment of this Act, the Secretary
10 shall submit the memorandum described in para-
11 graph (1) to the Inspector General of the Depart-
12 ment of Health and Human Services (referred to in
13 this subsection as the “Inspector General”) for ap-
14 proval.

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

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

1 (A) provide to each employee of the Indian
2 Health Service an electronic copy of the ap-
3 proved memorandum; and

4 (B) post such memorandum in a clear and
5 conspicuous place on the website of the Indian
6 Health Service for a period not less than 120
7 days.

8 (6) REVISED MEMORANDUM.—In the case of a
9 disapproval under paragraph (4), not later than 15
10 days after such disapproval, the Secretary shall sub-
11 mit a revised memorandum to the Inspector General
12 for approval under paragraph (4).

13 **SEC. 203. FISCAL ACCOUNTABILITY.**

14 Title VI of the Indian Health Care Improvement Act
15 (25 U.S.C. 1661 et seq.), as amended by sections 105,
16 106, and 201, is further amended by adding at the end
17 the following:

18 **“SEC. 609. FISCAL ACCOUNTABILITY.**

19 “(a) MANAGEMENT OF FUNDS.—

20 “(1) IN GENERAL.—If the Secretary fails to
21 submit the professional housing plan under section
22 301(a) of the Restoring Accountability in the Indian
23 Health Service Act of 2018 or the staffing plan
24 under section 301(b) of that Act, the Secretary may
25 not receive, obligate, transfer, or expend any

1 amounts for a salary increase or bonus of an indi-
2 vidual described in paragraph (2) until the profes-
3 sional housing plan or staffing plan, as the case may
4 be, is submitted.

5 “(2) INDIVIDUAL DESCRIBED.—An individual
6 described in this paragraph is an individual em-
7 ployed in a position in the Service that is a posi-
8 tion—

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

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

14 “(C) as a limited term appointee, limited
15 emergency appointee, or noncareer appointee in
16 the Senior Executive Service, as defined under
17 paragraphs (5), (6), and (7), respectively, of
18 section 3132(a) of title 5, United States Code;
19 or

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

22 “(b) PRIORITIZATION OF PATIENT CARE.—

23 “(1) IN GENERAL.—Notwithstanding any other
24 provision of law, the Secretary shall use amounts
25 available to the Indian Health Service that are not

1 obligated or expended, including base budget fund-
2 ing and third party collections, during the fiscal year
3 for which the amounts are made available, and that
4 remain available, only to support patient care by
5 using such funds for the costs of—

6 “(A) essential medical equipment;

7 “(B) purchased or referred care; or

8 “(C) staffing.

9 “(2) SPECIAL RULE.—In using amounts under
10 paragraph (1), the Secretary shall ensure that, in
11 any case where the amounts were originally made
12 available for a particular Service unit, such amounts
13 are used to benefit Indians served by that Service
14 unit.

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

17 “(A) to remodel or interior decorate any
18 Area office; or

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

21 “(c) SPENDING REPORTS.—Not later than 90 days
22 after the end of each quarter of a fiscal year, the Secretary
23 shall submit a report describing the authorizations, ex-
24 penditures, outlays, transfers, reprogramming, and obliga-
25 tions of each level of the Service, including the head-

1 quarters, each Area office, each Service unit, and each
2 health clinic or facility, to—

3 “(1) each Indian Tribe;

4 “(2) in the Senate—

5 “(A) the Committee on Indian Affairs;

6 “(B) the Committee on Health, Education,
7 Labor, and Pensions;

8 “(C) the Committee on Appropriations;
9 and

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

11 “(3) in the House of Representatives—

12 “(A) the Committee on Natural Resources;

13 “(B) the Committee on Energy and Com-
14 merce;

15 “(C) the Committee on Appropriations;
16 and

17 “(D) the Committee on the Budget.

18 “(d) STATUS REPORTS.—

19 “(1) IN GENERAL.—Subject to paragraph (2),
20 not later than 180 days after the end of each fiscal
21 year, the Secretary shall provide to each entity de-
22 scribed in paragraphs (1) through (3) of subsection
23 (c) a report describing the safety, billing, certifi-
24 cation, credential, and compliance statuses of each

1 facility managed, operated, or otherwise supported
2 by the Service.

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

8 “(e) RULE OF CONSTRUCTION.—Nothing in this sec-
9 tion may be construed—

10 “(1) to negatively impact the right of an Indian
11 Tribe to enter into a compact or contract under the
12 Indian Self-Determination and Education Assistance
13 Act (25 U.S.C. 5304 et seq.); and

14 “(2) to apply to such a compact or contract un-
15 less expressly agreed to by the Indian Tribe.”.

16 **TITLE III—REPORTS**

17 **SEC. 301. DEFINITIONS.**

18 In this title:

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

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

23 (3) SERVICE UNIT.—The term “Service unit”
24 has the meaning given the term in section 4 of the

1 Indian Health Care Improvement Act (25 U.S.C.
2 1603).

3 **SEC. 302. REPORTS BY THE SECRETARY OF HEALTH AND**
4 **HUMAN SERVICES.**

5 (a) IHS PROFESSIONAL HOUSING PLAN.—Not later
6 than 1 year after the date the Government Accountability
7 Office releases their ongoing report about Indian Health
8 Service housing needs, the Secretary shall develop, make
9 publicly available, and submit to Congress and the Comp-
10 troller General of the United States a written plan to ad-
11 dress the professional housing needs of employees of the
12 Service that comports with the practices and recommenda-
13 tions of the Government Accountability Office relating to
14 professional housing.

15 (b) PLAN RELATING TO IHS STAFFING NEEDS.—
16 Not later than 1 year after the date the Government Ac-
17 countability Office releases their ongoing report about In-
18 dian Health Service housing needs, the Secretary shall de-
19 velop, make publicly available, and submit to Congress and
20 the Comptroller General of the United States a written
21 plan to address staffing needs in the Service that comports
22 with the practices of the Government Accountability Office
23 relating to workforce planning.

24 (c) INDIAN HEALTH CARE IMPROVEMENT ACT RE-
25 PORT.—Not later than 1 year after the date of enactment

1 of this Act, and each year thereafter for a period of 5
2 years, the Secretary shall develop, make publicly available,
3 and submit to Congress a report on the data submitted
4 under section 412(b) of the Indian Health Care Improve-
5 ment Act, as amended by section 107.

6 (d) **QUALITY OF CARE AND STAFFING REPORT.**—
7 Not later than 1 year after the date of enactment of this
8 Act, and each year thereafter, the Secretary shall develop
9 and submit to Congress a report on the data obtained
10 under section 108, with an emphasis on quality of care
11 and access to care.

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

13 (a) **IHS HOUSING NEEDS REPORT.**—

14 (1) **IN GENERAL.**—Not later than 5 years after
15 the date on which the Comptroller General of the
16 United States receives the professional housing plan
17 under section 302(a), the Comptroller General shall
18 develop and submit to Congress a report.

19 (2) **CONTENTS.**—The report required under
20 paragraph (1) shall include the following:

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

1 projections accurately reflect the professional
2 housing needs of employees of the Service.

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

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

11 (b) IHS STAFFING NEEDS REPORT.—

12 (1) IN GENERAL.—Not later than 5 years after
13 the date on which the Comptroller General receives
14 the report under section 302(b), the Comptroller
15 General shall prepare and submit to Congress a re-
16 port on the staffing needs of the Service.

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

19 (A) A description of the number and type
20 of full-time positions needed at each facility of
21 the Service and the amount of funds necessary
22 to maintain such positions.

23 (B) An explanation of the various meth-
24 odologies that the Service utilizes and has pre-
25 viously utilized to determine the number and

1 type of full-time positions needed at federally
2 managed Service units.

3 (C) An assessment of the use of inde-
4 pendent contractors, including the number of
5 independent contractors hired to fill vacant full-
6 time positions and amounts spent on inde-
7 pendent contractors who provide health care
8 services.

9 (D) An assessment of the staffing plan de-
10 veloped by the Secretary under section 302(b).

11 (c) WHISTLEBLOWER PROTECTIONS REPORT.—

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

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

19 (A) A discussion and conclusion as to
20 whether the Service has taken proper steps to
21 prevent retaliation against whistleblowers.

22 (B) If applicable, any recommendations for
23 changes to the policy of the Service with respect
24 to whistleblowers.

1 (C) A discussion and conclusion as to
2 whether the official email accounts of employees
3 of the Service are appropriately monitored.

4 **SEC. 304. INSPECTOR GENERAL REPORTS.**

5 (a) PATIENT CARE REPORTS.—

6 (1) IN GENERAL.—Not later than 2 years after
7 the date of enactment of this Act, and not less than
8 every 3 years thereafter, the Inspector General of
9 the Department of Health and Human Services shall
10 develop and submit to Congress and the Service a
11 report on patient harm events occurring in Service
12 units and deferrals and denials of care of patients of
13 the Service.

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

16 (A) An evaluation of the number and kind
17 of events that contribute to patient deaths in a
18 Service unit and recommendations regarding re-
19 ducing the number of patient deaths.

20 (B) An evaluation of the Service’s tracking
21 and reporting of, and response to, patient harm
22 events and recommendations regarding how to
23 improve such tracking, reporting, and response.

24 (C) The effects of deferrals and denials of
25 care on patients of the Service, including pa-

1 tient outcomes, and recommendations regarding
2 how to reduce deferrals and denials of care.

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

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

8 (2) provide to the Service recommendations and
9 technical assistance regarding implementation of im-
10 proved reporting systems, procedures, standards,
11 and protocols.

12 **SEC. 305. TRANSPARENCY IN CMS SURVEYS.**

13 Section 1880 of the Social Security Act (42 U.S.C.
14 1395qq) is amended by adding at the end the following:

15 “(g)(1) Not less frequently than once every 2 years,
16 the Administrator of the Centers for Medicare & Medicaid
17 Services shall conduct surveys of participating Indian
18 Health Service facilities to assess the compliance of each
19 hospital or skilled nursing facility of the Indian Health
20 Service with—

21 “(A) section 1867; and

22 “(B) conditions of participation in the program
23 under this title.

24 “(2) Each survey completed under this subsection
25 shall be posted on the Internet website of the Centers for

1 Medicare & Medicaid Services. Such posting shall comply
2 with the Federal regulations concerning the privacy of in-
3 dividually identifiable health information promulgated
4 under section 264(c) of the Health Insurance Portability
5 and Accountability Act of 1996.”.

6 **TITLE IV—TECHNICAL**
7 **AMENDMENTS**

8 **SEC. 401. TECHNICAL AMENDMENTS.**

9 The Indian Health Care Improvement Act (25 U.S.C.
10 1601 et seq.) is amended—

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

16 (2) by striking “contract health services” each
17 place such term appears (regardless of casing and
18 typeface and including in the headings) and insert-
19 ing “purchased/referred care” (with appropriate cas-
20 ing and typeface).

Union Calendar No. 872

115TH CONGRESS
2^D SESSION

H. R. 5874

[Report No. 115-1065, Part I]

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.

DECEMBER 28, 2018

Committees on Energy and Commerce, Ways and Means, and Oversight and Government Reform discharged, committed to the Committee of the Whole House on the State of the Union and ordered to be printed