

116TH CONGRESS  
1ST SESSION

# H. R. 3813

To amend title 38, United States Code, to ensure that certain health care contractors of the Department of Veterans Affairs are subject to Federal tort claims laws, to improve the accountability of physicians of the Department, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 17, 2019

Mr. MEADOWS (for himself and Mrs. RADEWAGEN) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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## A BILL

To amend title 38, United States Code, to ensure that certain health care contractors of the Department of Veterans Affairs are subject to Federal tort claims laws, to improve the accountability of physicians of the Department, 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 “Brian Tally VA Med-  
5 ical Care and Liability Improvement Act”.

1 **SEC. 2. ACCOUNTABILITY OF HEALTH CARE PROVIDERS AT**  
2 **FACILITIES OF THE DEPARTMENT OF VET-**  
3 **ERANS AFFAIRS.**

4 (a) TREATMENT OF CONTRACTORS UNDER FEDERAL  
5 TORT CLAIMS LAWS.—Section 7316 of title 38, United  
6 States Code, is amended by adding at the end the fol-  
7 lowing new subsection:

8 “(g)(1)(A) Except as provided by paragraph (2), this  
9 section shall not apply with respect to civil actions or other  
10 proceedings brought by an individual, or the estate of an  
11 individual, for damages for personal injury, including  
12 death, allegedly arising from malpractice or negligence of  
13 a non-Department provider if the Secretary notifies the  
14 individual, or the estate of the individual, of the following:

15 “(i) The involvement of the non-Depart-  
16 ment provider in the health care furnished to  
17 the individual.

18 “(ii) The nature of such health care fur-  
19 nished to the individual by the non-Department  
20 provider.

21 “(iii) The full name of the non-Department  
22 provider.

23 “(iv) The fact that the notification is made  
24 pursuant to this paragraph.

25 “(v) A statement that applicable State law  
26 may provide for a civil action or other pro-

1           ceeding by the individual, or the estate of the  
2           individual, against the non-Department pro-  
3           vider, including information that specifies any  
4           statute of limitations for such applicable State  
5           law.

6           “(B) The Secretary shall make each notification  
7           under subparagraph (A) not later than 30 days after the  
8           date on which an individual or estate files a claim pursu-  
9           ant to section 2675 of title 28, United States Code. The  
10          Secretary shall make such notification using certified mail  
11          (with either return receipt requested or other means of  
12          verification that the notification was sent) to the indi-  
13          vidual or the estate, and to any attorney of the individual  
14          or the estate representing the individual or the estate with  
15          respect to such claim.

16          “(2) If the Secretary does not make the notification  
17          required by paragraph (1) during the period required by  
18          that paragraph with respect to civil actions or other pro-  
19          ceedings brought by an individual, or the estate of an indi-  
20          vidual, for damages for personal injury, including death,  
21          allegedly arising from malpractice or negligence of a non-  
22          Department provider, the non-Department provider shall  
23          be treated as if the provider were a health care employee  
24          of the Administration with respect to the health care or

1 treatment furnished by that provider in a facility of the  
2 Department to the individual.

3 “(3) If a non-Department provider described in para-  
4 graph (2) is the defendant employee of a civil action or  
5 proceeding pursuant to this section, any claim of that pro-  
6 vider for benefits under an insurance policy with respect  
7 to medical malpractice relating to such civil action or pro-  
8 ceeding shall be subrogated to the United States.

9 “(4)(A) If a non-Department provider described in  
10 paragraph (1) or (2) is the defendant employee of at least  
11 three separate covered cases during a five-year period, the  
12 Secretary—

13 “(i) shall revoke the provider’s authoriza-  
14 tion to provide health care or treatment at a fa-  
15 cility of the Department; and

16 “(ii) may not enter into any contract or  
17 agreement that authorizes the provider to pro-  
18 vide health care or treatment at a facility of the  
19 Department.

20 “(B) The Secretary shall establish a process by which  
21 a non-Department provider may appeal an action under  
22 subparagraph (A).

23 “(5) In this subsection:

24 “(A) The term ‘covered case’ means any of the  
25 following:

1           “(i) A civil action or proceeding pursuant  
2           to this section that resulted in a judgment  
3           against the United States, or such an action or  
4           proceeding that the United States compromises  
5           or settles.

6           “(ii) A civil action or proceeding pursuant  
7           to State law for personal injury, including  
8           death, allegedly arising from malpractice or  
9           negligence that resulted in a judgment against  
10          a non-Department provider, or such an action  
11          or proceeding that the non-Department provider  
12          compromises or settles.

13          “(B) The term ‘non-Department provider’  
14          means a health care provider who is not an employee  
15          of the Federal Government but who is authorized by  
16          the Secretary to provide health care or treatment at  
17          a facility of the Department pursuant to a contract  
18          or other agreement.”.

19          (b) NOTIFICATIONS AND OUTREACH REGARDING  
20          FEDERAL TORT CLAIMS.—Such section, as amended by  
21          subsection (a), is further amended by adding at the end  
22          the following new subsections:

23          “(h) Not later than 30 days following the date on  
24          which a judgment is entered against the United States in  
25          a civil action or proceeding pursuant to this section, the

1 Secretary shall notify the following entities with respect  
2 to such judgment:

3 “(1) The appropriate licensing entity of each  
4 State in which a defendant employee is licensed as  
5 a health care professional.

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

9 “(i) The Secretary shall publish in a clear and con-  
10 spicuous manner on the internet website of the Depart-  
11 ment an explanation of the rights of an individual under  
12 this section, including—

13 “(1) an explanation of the procedure to file an  
14 administrative claim pursuant to section 515 of this  
15 title or section 2675 of title 28;

16 “(2) the circumstances under which an indi-  
17 vidual may file a civil action or proceeding pursuant  
18 to this section; and

19 “(3) time limits that can bar recovery under  
20 this section.”.

21 (c) ACCOUNTABILITY OF PHYSICIANS OF THE DE-  
22 PARTMENT.—Section 7461 of such title is amended—

23 (1) in subsection (a), by adding at the end the  
24 following new sentence: “The Under Secretary shall  
25 bring such charges based on professional conduct or

1 competence against a section 7401(1) employee who  
2 is the defendant employee of at least three separate  
3 civil actions or proceedings pursuant to section 7316  
4 of this title that, within a five-year period—

5 “(1) resulted in a judgment against the United  
6 States; or

7 “(2) were compromised or settled by the United  
8 States.”; and

9 (2) in subsection (c)(3), by adding at the end  
10 the following new subparagraph:

11 “(C) The provision of care subject to a civil ac-  
12 tion or proceeding pursuant to section 7316 of this  
13 title that—

14 “(i) resulted in a judgment against the  
15 United States; or

16 “(ii) is compromised or settled by the  
17 United States.”.

18 (d) APPLICABILITY.—The amendments made by this  
19 section shall take effect with respect to actions or omis-  
20 sions covered under section 7316 of title 38, United States  
21 Code, occurring on or after the date of the enactment of  
22 this Act.

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