

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5406
OFFERED BY MR. BRADY OF TEXAS**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Helping Ensure Accountability, Leadership, and Trust in
4 Tribal Healthcare Act” or the “HEALTTH Act”.

5 (b) **TABLE OF CONTENTS.**—The table of contents of
6 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

**TITLE I—EXPANDING AUTHORITIES AND IMPROVING ACCESS TO
CARE**

Sec. 101. Service hospital long-term contract pilot program.

Sec. 102. Expanded hiring authority for the Indian Health Service.

Sec. 103. Removal or demotion of employees.

Sec. 104. Improving timeliness of care.

**TITLE II—INDIAN HEALTH SERVICE RECRUITMENT AND
WORKFORCE**

Sec. 201. Exclusion from gross income for certain payments made under Indian Health Service Loan Repayment Program.

Sec. 202. Clarifying that certain degrees qualify individuals for eligibility in the Indian Health Service Loan Repayment Program.

Sec. 203. Cultural competency programs.

Sec. 204. Relocation reimbursement.

Sec. 205. Authority to waive Indian preference laws.

Sec. 206. Streamlining medical volunteer credentialing process.

TITLE III—PURCHASED/REFERRED CARE PROGRAM REFORMS

Sec. 301. Codification of limitation on charges for health care professional services and non-hospital-based care source.

Sec. 302. Allocation of Purchased/Referred Care program funds.

Sec. 303. Purchased/referred care program backlog.

Sec. 304. Report on financial stability of Service hospitals and facilities.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) The United States Government has a treaty
4 obligation to provide health care to American Indi-
5 ans and Alaska Natives.

6 (2) The Indian Health Service is the Federal
7 agency that is entrusted to carry out this obligation.

8 (3) Access to high quality health care is critical
9 for strong and vibrant tribal communities in the
10 Great Plains Area and throughout the United
11 States.

12 (4) In 2010, the Senate Committee on Indian
13 Affairs published a report titled “In Critical Condi-
14 tion: The Urgent Need to Reform the Indian Health
15 Service’s Aberdeen Area”, which detailed defi-
16 ciencies, abuses, and malfeasance within the Aber-
17 deen Area of the Indian Health Service, now called
18 the Great Plains Area.

19 (5) In 2015 and 2016, the Centers for Medi-
20 care & Medicaid Services conducted surveys of In-
21 dian Health Service hospitals in the Great Plains
22 Area and found serious structural deficiencies that
23 put patients’ health and safety in immediate jeop-
24 ardy.

1 (6) The Indian Health Service’s failures in the
2 Great Plains Area have resulted in a severe reduc-
3 tion in access to emergency care, needlessly long
4 wait times, patient suffering, low quality of life, and
5 several tragic deaths.

6 (7) The Indian Health Service is in need of
7 comprehensive reform that will hold its management
8 and employees accountable, foster strong and capa-
9 ble agency leadership, and restore tribal members’
10 trust in the care it delivers.

11 **TITLE I—EXPANDING AUTHORI-**
12 **TIES AND IMPROVING AC-**
13 **CESS TO CARE**

14 **SEC. 101. SERVICE HOSPITAL LONG-TERM CONTRACT**
15 **PILOT PROGRAM.**

16 Title VIII of the Indian Health Care Improvement
17 Act (25 U.S.C. 1671) is amended by adding at the end
18 the following new section:

19 **“SEC. 833. SERVICE HOSPITAL LONG-TERM CONTRACT**
20 **PILOT PROGRAM.**

21 “(a) IN GENERAL.—The Secretary, acting through
22 the Service, shall implement a 7-year pilot program to test
23 the viability and advisability of entering into long-term
24 contracts for the operation of eligible Service hospitals
25 with governance structures that include tribal input.

1 “(b) ELEMENTS.—Under such pilot program, subject
2 to subsection (e), the following shall apply:

3 “(1) The Secretary shall select three eligible
4 Service hospitals in rural areas to participate in the
5 pilot program.

6 “(2) For each such participating hospital, the
7 Secretary shall enter into a long-term contract.

8 “(3) At each such participating hospital, the
9 Secretary, in consultation with the primary Indian
10 tribes served by the hospital, shall install a gov-
11 erning board described in subsection (d), which shall
12 be responsible for overseeing the local operation of
13 the hospital.

14 “(c) ELIGIBLE SERVICE HOSPITAL.—For purposes
15 of this section, the term ‘eligible Service hospital’ means
16 a Service hospital that furnishes services in a rural area
17 to direct services tribes and with respect to which the Sec-
18 retary has obtained the permission of the primary Indian
19 tribes served by the hospital for the hospital to participate
20 under the pilot program under this section.

21 “(d) GOVERNANCE BOARD DESCRIBED.—For pur-
22 poses of subsection (b), a governance board described in
23 this subsection, with respect to a Service hospital partici-
24 pating in the pilot program, is a board that satisfies the
25 following criteria:

1 “(1) COMPOSITION.—

2 “(A) IN GENERAL.—The governance board
3 is composed, in accordance with the best prac-
4 tices specified under paragraph (3), of the fol-
5 lowing individuals:

6 “(i) Representatives of the Service,
7 who shall be selected by the Secretary.

8 “(ii) Representatives of the Service
9 hospital.

10 “(iii) Representatives of each primary
11 Indian tribe served by the hospital, who
12 shall be selected by the respective Indian
13 tribe.

14 “(iv) Experts in health care adminis-
15 tration and delivery, who shall—

16 “(I) be selected by the Secretary
17 and respective Indian tribe; and

18 “(II) to the extent possible, lo-
19 cated in the State in which the hos-
20 pital is located or otherwise familiar
21 with such State.

22 “(B) VOTING RIGHTS.—In determining the
23 composition of the board with respect to voting
24 rights on the board—

1 “(i) the number of voting members
2 representing the Service shall be equal to
3 the number of voting members rep-
4 resenting the Indian tribes involved; and

5 “(ii) the number of voting members
6 representing the hospital may not be great-
7 er than the number of voting members rep-
8 resenting the Service or the Indian tribes
9 involved.

10 “(2) DUTIES.—The governance board shall per-
11 form duties in accordance with the best practices
12 specified under paragraph (3) and shall include de-
13 veloping financial and quality metrics and standards
14 for salaries, recruitment, retention, training, and
15 dismissal of employees of such hospital.

16 “(3) BEST PRACTICES.—The Secretary shall
17 specify best practices for the governance board de-
18 scribed in this subsection, including best practices
19 relating to the number of members of such board,
20 the authorities of the board, and the duties of the
21 board.

22 “(e) TREATMENT OF ELIGIBLE SERVICE HOSPITALS
23 CURRENTLY UNDER CONTRACT.—In the case of an eligi-
24 ble Service hospital that is under a current contract with
25 the Secretary as of the initiation of the selection process

1 period for the pilot program, in order for such hospital
2 to participate in the pilot program the Secretary, with the
3 agreement of the hospital, may—

4 “(1) notwithstanding any other provision of
5 law, modify or terminate such contract and in order
6 for such hospital to enter into a long-term contract
7 under the pilot program; or

8 “(2) enter into a long-term contract under the
9 pilot program (and begin the pilot program) begin-
10 ning on the date after the last date of such current
11 contract.

12 “(f) LONG-TERM CONTRACT DEFINED.—For pur-
13 poses of this section, the term ‘long-term contract’ means
14 a contract for a period of at least 5 years.

15 “(g) CLARIFICATION.—Nothing in this section shall
16 be construed to inhibit a tribe’s authority to enter into
17 a compact or contract under the Indian Self-Determina-
18 tion and Education Assistance Act.

19 “(h) REPORTS.—For each year of the pilot program,
20 the Secretary shall submit a report to Congress on the
21 results of the program demonstrated during the respective
22 year. Each such report shall include the following:

23 “(1) Information related to the financial health
24 of each eligible hospital participating in the pilot
25 program.

1 “(2) Information on the affect the pilot pro-
2 gram has on access to care.

3 “(3) Information on patient satisfaction with
4 services provided at such hospitals.

5 “(4) The number of readmissions at such hos-
6 pitals.

7 “(5) The number of hospital-acquired condi-
8 tions at such hospitals.

9 “(6) Recommendations on the viability and ad-
10 visability of the long-term contracts and hospital
11 governance structure under such pilot program.

12 “(7) Any other information the Secretary con-
13 siders necessary for a proper analysis of the pilot
14 program.”.

15 **SEC. 102. EXPANDED HIRING AUTHORITY FOR THE INDIAN**
16 **HEALTH SERVICE.**

17 Section 601(d) of the Indian Health Care Improve-
18 ment Act (25 U.S.C. 1661(d)) is amended—

19 (1) in paragraph (1)(A), by inserting “and sub-
20 ject to paragraph (4)” after “paragraph (2)”; and

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

22 “(4) EMPLOYMENT AUTHORITY.—

23 “(A) IN GENERAL.—The Secretary may,
24 with respect to any employee described in sub-
25 paragraph (B), provide that one or more provi-

1 sions of chapter 74 of title 38, United States
2 Code (other than subchapter V of such chapter
3 or of regulations promulgated under such chap-
4 ter other than under such subchapter), shall
5 apply—

6 “(i) in lieu of any provision of title 5
7 of the United States Code (other than as
8 applied pursuant to section 834); or

9 “(ii) notwithstanding any lack of spe-
10 cific authority for a matter with respect to
11 which title 5 of the United States Code re-
12 lates.

13 “(B) APPLICABILITY TO EMPLOYEES.—Au-
14 thority under this paragraph may be exercised
15 with respect to any employee in the Service
16 holding a position—

17 “(i) to which chapter 51 of title 5 of
18 the United States Code applies, excluding
19 any senior executive service position; and

20 “(ii) which involves health care re-
21 sponsibilities.

22 “(C) DEFINITION.—For purposes of this
23 paragraph, ‘health care’ means direct patient-
24 care services or services incident to direct pa-
25 tient-care services.”.

1 **SEC. 103. REMOVAL OR DEMOTION OF EMPLOYEES.**

2 (a) IN GENERAL.—Title VIII of the Indian Health
3 Care Improvement Act (25 U.S.C. 1671 et seq.), as
4 amended by section 101, is further amended by adding
5 at the end the following new section:

6 **“SEC. 834. REMOVAL OR DEMOTION OF EMPLOYEES.**

7 “(a) IN GENERAL.—The Secretary may remove or
8 demote an individual who is an employee of the Service
9 if the Secretary determines the performance or misconduct
10 of the individual warrants such removal or demotion. If
11 the Secretary so removes or demotes such an individual,
12 the Secretary may—

13 “(1) remove the individual from the Service; or

14 “(2) demote the individual by means of—

15 “(A) a reduction in grade for which the in-
16 dividual is qualified and that the Secretary de-
17 termines is appropriate; or

18 “(B) a reduction in annual rate of pay
19 that the Secretary determines is appropriate.

20 In the case of an individual who is removed under
21 paragraph (1) or demoted under paragraph (2), the
22 Secretary may require such individual take unpaid
23 administrative leave for not longer than 10 consecu-
24 tive work days.

25 “(b) PAY OF CERTAIN DEMOTED INDIVIDUALS.—(1)

26 Notwithstanding any other provision of law, any individual

1 subject to a demotion under subsection (a)(2)(A) shall, be-
2 ginning on the date of such demotion, receive the annual
3 rate of pay applicable to such grade.

4 “(2) An individual so demoted may not be placed on
5 administrative leave or any other category of paid leave
6 during the period during which an appeal (if any) under
7 this section is ongoing, and may only receive pay if the
8 individual reports for duty. If an individual so demoted
9 does not report for duty, such individual shall not receive
10 pay or other benefits pursuant to subsection (e)(5).

11 “(c) NOTICE TO SECRETARY.—Not later than 30
12 days after removing or demoting an individual under sub-
13 section (a), the Service shall submit to the Secretary no-
14 tice in writing of such removal or demotion and the reason
15 for such removal or demotion.

16 “(d) PROCEDURE.—(1) The procedures under section
17 7513(b) of title 5 and chapter 43 of such title shall not
18 apply to a removal or demotion under this section.

19 “(2)(A) Subject to subparagraph (B) and subsection
20 (e), any removal or demotion under subsection (a) may
21 be appealed to the Merit Systems Protection Board under
22 section 7701 of title 5.

23 “(B) An appeal under subparagraph (A) of a removal
24 or demotion may only be made if such appeal is made not

1 later than seven days after the date of such removal or
2 demotion.

3 “(e) EXPEDITED REVIEW BY ADMINISTRATIVE
4 JUDGE.—(1) Upon receipt of an appeal under subsection
5 (d)(2)(A), the Merit Systems Protection Board shall refer
6 such appeal to an administrative judge pursuant to section
7 7701(b)(1) of title 5. The administrative judge shall expe-
8 dite any such appeal under such section and, in any such
9 case, shall issue a decision not later than 45 days after
10 the date of the appeal.

11 “(2) Notwithstanding any other provision of law, in-
12 cluding section 7703 of title 5, the decision of an adminis-
13 trative judge under paragraph (1) shall be final and shall
14 not be subject to any further appeal.

15 “(3) In any case in which the administrative judge
16 cannot issue a decision in accordance with the 45-day re-
17 quirement under paragraph (1), the removal or demotion
18 is final. In such a case, the Merit Systems Protection
19 Board shall, within 14 days after the date that such re-
20 moval or demotion is final, submit to Congress a report
21 that explains the reasons why a decision was not issued
22 in accordance with such requirement.

23 “(4) The Merit Systems Protection Board or admin-
24 istrative judge may not stay any removal or demotion
25 under this section.

1 “(5) During the period beginning on the date on
2 which an individual appeals a removal from the Service
3 under subsection (d) and ending on the date that the ad-
4 ministrative judge issues a final decision on such appeal,
5 such individual may not receive any pay, awards, bonuses,
6 incentives, allowances, differentials, student loan repay-
7 ments, special payments, or benefits.

8 “(6) To the maximum extent practicable, the Sec-
9 retary shall provide to the Merit Systems Protection
10 Board, and to any administrative judge to whom an appeal
11 under this section is referred, such information and assist-
12 ance as may be necessary to ensure an appeal under this
13 subsection is expedited.

14 “(f) TERMINATION OF INVESTIGATIONS BY OFFICE
15 OF SPECIAL COUNSEL.—Notwithstanding any other provi-
16 sion of law, the Special Counsel (established by section
17 1211 of title 5) may terminate an investigation of a pro-
18 hibited personnel practice alleged by an employee or
19 former employee of the Department after the Special
20 Counsel provides to the employee or former employee a
21 written statement of the reasons for the termination of
22 the investigation. Such statement may not be admissible
23 as evidence in any judicial or administrative proceeding
24 without the consent of such employee or former employee.

1 “(g) RELATION TO TITLE 5.—The authority provided
2 by this section is in addition to the authority provided by
3 subchapter V of chapter 75 of title 5 and chapter 43 of
4 such title.

5 “(h) DEFINITIONS.—In this section:

6 “(1) The term ‘individual’ means an individual
7 occupying a position at the Service but does not in-
8 clude—

9 “(A) an individual, as that term is defined
10 in section 713(g)(1); or

11 “(B) a political appointee.

12 “(2) The term ‘grade’ has the meaning given
13 such term in section 7511(a) of title 5.

14 “(3) The term ‘misconduct’ includes neglect of
15 duty, malfeasance, or failure to accept a directed re-
16 assignment or to accompany a position in a transfer
17 of function.

18 “(4) The term ‘political appointee’ means an in-
19 dividual who is—

20 “(A) employed in a position described
21 under sections 5312 through 5316 of title 5
22 (relating to the Executive Schedule);

23 “(B) a limited term appointee, limited
24 emergency appointee, or noncareer appointee in
25 the Senior Executive Service, as defined under

1 paragraphs (5), (6), and (7), respectively, of
2 section 3132(a) of title 5; or

3 “(C) employed in a position of a confiden-
4 tial or policy-determining character under
5 schedule C of subpart C of part 213 of title 5
6 of the Code of Federal Regulations.”.

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

9 (1) by striking “or” at the end of paragraph
10 (2);

11 (2) by striking the period at the end of para-
12 graph (3) and inserting “, or”; and

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

14 “(4) any removal or demotion under section
15 834 of the Indian Health Care Improvement Act.”.

16 **SEC. 104. IMPROVING TIMELINESS OF CARE.**

17 Title III of the Indian Health Care Improvement Act
18 (25 U.S.C. 1631 et seq.) is amended by adding at the end
19 the following new section:

20 **“SEC. 314. STANDARDS TO IMPROVE TIMELINESS OF CARE.**

21 “(a) IN GENERAL.—The Secretary, acting through
22 the Service, shall—

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

1 “(2) make such standards available to all Serv-
2 ice areas and Service facilities.

3 “(b) DATA COLLECTION.—The Secretary, acting
4 through the Service, shall develop a process for Service
5 facilities to submit to the Secretary data with respect to
6 the standards established under subsection (a).”.

7 **TITLE II—INDIAN HEALTH SERV-**
8 **ICE RECRUITMENT AND**
9 **WORKFORCE**

10 **SEC. 201. EXCLUSION FROM GROSS INCOME FOR CERTAIN**
11 **PAYMENTS MADE UNDER INDIAN HEALTH**
12 **SERVICE LOAN REPAYMENT PROGRAM.**

13 (a) IN GENERAL.—Section 108(f)(4) of the Internal
14 Revenue Code of 1986 is amended to read as follows:

15 “(4) PAYMENTS UNDER NATIONAL HEALTH
16 SERVICE CORPS LOAN REPAYMENT PROGRAM, IN-
17 DIAN HEALTH SERVICE LOAN REPAYMENT PROGRAM,
18 AND CERTAIN STATE LOAN REPAYMENT PRO-
19 GRAMS.—In the case of an individual, gross income
20 shall not include any amount received—

21 “(A) under section 338B(g) of the Public
22 Health Service Act (but only if such amount is
23 received with respect to the type of health pro-
24 fession or specialty for which an individual
25 would have been eligible for participation in the

1 program under section 338B of such Act as
2 such program was in effect on January 1,
3 2016),

4 “(B) under a State program described in
5 section 338I of such Act,

6 “(C) under section 108 of the Indian
7 Health Care Improvement Act (but only in the
8 case of a health profession or specialty de-
9 scribed in subparagraph (A)), or

10 “(D) under any other State loan repay-
11 ment or loan forgiveness program that is in-
12 tended to provide for the increased availability
13 of health care services in underserved or health
14 professional shortage areas (as determined by
15 such State).”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to amounts received in taxable
18 years beginning after December 31, 2016.

19 **SEC. 202. CLARIFYING THAT CERTAIN DEGREES QUALIFY**
20 **INDIVIDUALS FOR ELIGIBILITY IN THE IN-**
21 **DIAN HEALTH SERVICE LOAN REPAYMENT**
22 **PROGRAM.**

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

25 (1) in subsection (b)(1)(B)—

1 (A) in clause (i), by inserting “(including
2 a degree business administration with an em-
3 phasis in health care management, as defined
4 by the Secretary, or a degree in health adminis-
5 tration, hospital administration, or public
6 health)” before the semicolon; and

7 (B) in clause (ii), by inserting “or a license
8 or certification to practice in the field of health
9 administration, hospital administration, busi-
10 ness administration, or public health, as appli-
11 cable, in a State” before the semicolon;

12 (2) in subsection (f)(1)(B)(iii), by striking “2
13 years or such longer period as the individual may
14 agree to serve in the full-time clinical practice of
15 such individual’s profession” and inserting “2 years
16 or such longer period as the individual may agree to
17 serve in the full-time practice of such individual’s
18 profession (or 4 years or such longer period as the
19 individual may agree to serve in the half-time prac-
20 tice of such individual’s profession)”; and

21 (3) in subsection (g)(2)(A), in the first sen-
22 tence—

23 (A) by inserting “, in the case of an indi-
24 vidual agreeing to serve in the full-time practice

1 of such individual's profession," before "up to
2 \$35,000"; and

3 (B) by inserting "(or, in the case of an in-
4 dividual agreeing to serve in the half-time prac-
5 tice of such individual's profession, up to
6 \$17,500)" before "on behalf of".

7 **SEC. 203. CULTURAL COMPETENCY PROGRAMS.**

8 Title I of the Indian Health Care Improvement Act
9 (25 U.S.C. 1611 et seq.) is amended by adding at the end
10 the following new section:

11 **"SEC. 125. CULTURAL COMPETENCY PROGRAMS.**

12 "(a) IN GENERAL.—The Secretary, acting through
13 the Service, shall, not later than one year after the date
14 of the enactment of this section and for each Service area,
15 develop and implement training programs for cultural
16 competency for employees of the Service, locum tenens
17 medical providers, and other contracted employees who
18 work at Service hospitals or other Service facilities and
19 whose employment requires regular direct patient access.

20 "(b) REQUIRED PARTICIPATION.—Notwithstanding
21 any other provision of law, beginning with years beginning
22 after (and for contracts entered into on or after) the date
23 of implementation of the training programs under sub-
24 section (a), annual participation in such a program shall
25 be a condition of employment (or of providing services in

1 the capacity as a locum tenen medical provider or of the
2 terms of the contracted employment, as applicable), and
3 continued employment (or provision of such services in
4 such capacity or contracted employment, as applicable),
5 for each employee of the Service, locum tenens medical
6 provider, and contracted employee described in such sub-
7 section. For purposes of the previous sentence, an indi-
8 vidual shall not be considered as participating in such a
9 program, with respect to a year, unless such individual
10 satisfies such requirements, including testing, included in
11 such program for such year, as specified by the Secretary.

12 “(c) CONSULTATION.—In developing a training pro-
13 gram under subsection (a) for a Service area, the Sec-
14 retary shall consult with representatives of each Indian
15 tribe served in such area.”.

16 **SEC. 204. RELOCATION REIMBURSEMENT.**

17 Title I of the Indian Health Care Improvement Act
18 (25 U.S.C. 1611 et seq.), as amended by section 203, is
19 further amended by adding at the end the following new
20 section:

21 **“SEC. 126. RELOCATION REIMBURSEMENT.**

22 “(a) IN GENERAL.—In the case of an employee of
23 the Service who relocates to serve in a different capacity
24 or position as an employee of the Service, the Secretary
25 shall, subject to subsection (b), offer such employee reim-

1 bursement for reasonable costs associated with such relo-
2 cation, as determined by the Secretary, incurred by such
3 employee if—

4 “(1) such relocation is to fill a position that—

5 “(A) is at a Service facility that is located
6 in a rural area or medically underserved area;
7 and

8 “(B) had not been filled by a full-time non-
9 contractor for a period of at least 6 months; or

10 “(2) such relocation is to fill a position that is
11 for hospital management or administration, as deter-
12 mined by the Secretary.

13 “(b) AMOUNT FOR RELOCATION.—

14 “(1) IN GENERAL.—The amount of reimburse-
15 ment to an employee under subsection (a) shall be
16 in an amount that is at least 50 percent, but not
17 more than 75 percent, of the specified pay amount
18 (as described in paragraph (2)) of the employee.

19 “(2) SPECIFIED PAY AMOUNT.—For purposes
20 of paragraph (1), the specified pay amount, with re-
21 spect to an employee, is the annual rate of basic pay
22 of the employee in effect at the beginning of the
23 service period of such employee multiplied by the
24 number of years (including fractions of a year) in
25 the service period, not to exceed 4 years.

1 “(c) CLARIFICATION.—Nothing in this section shall
2 be construed as limiting the authority of the Secretary,
3 as in existence before the enactment of this section, to
4 offer reimbursement for travel or relocation.”.

5 **SEC. 205. AUTHORITY TO WAIVE INDIAN PREFERENCE**
6 **LAWS.**

7 Title VI of the Indian Health Care Improvement Act
8 (25 U.S.C. 1611 et seq.) is amended by adding at the end
9 the following new section:

10 **“SEC. 605. AUTHORITY TO WAIVE INDIAN PREFERENCE**
11 **LAWS.**

12 “To enhance recruitment and retention of employees
13 of the Service, the Secretary may waive the requirements
14 of the Indian preference laws (as defined in section 2(e)
15 of Public Law 96–135 (25 U.S.C. 472a(e))) with respect
16 to a personnel action with respect to a Service unit with
17 the written request or resolution of an Indian tribe located
18 within the applicable Service unit—

19 “(1) if such personnel action is with respect to
20 a facility that has a personnel vacancy rate of at
21 least 20 percent; or

22 “(2) in the case such personnel action is with
23 respect to a former employee of the Service or
24 former tribal employee who was removed from such
25 former employment or demoted for misconduct that

1 occurred during the five years prior to the date of
2 such personnel action.”.

3 **SEC. 206. STREAMLINING MEDICAL VOLUNTEER**
4 **CREDENTIALING PROCESS.**

5 Title I of the Indian Health Care Improvement Act
6 (25 U.S.C. 1611 et seq.), as amended by sections 203 and
7 204, is further amended by adding at the end the following
8 new section:

9 **“SEC. 128. STREAMLINING MEDICAL VOLUNTEER**
10 **CREDENTIALING PROCESS.**

11 “(a) IN GENERAL.—The Secretary, acting through
12 the Service, shall, in accordance with subsection (b), im-
13 plement a Service-wide centralized credentialing system to
14 credential licensed health professionals who seek to volun-
15 teer at a Service facility.

16 “(b) REQUIREMENTS.—The credentialing system im-
17 plemented under subsection (a) shall be in accordance with
18 the following:

19 “(1) Credentialing of licensed health profes-
20 sionals who seek to volunteer at a Service facility
21 shall occur at the Service level.

22 “(2) Credentialing procedures under such sys-
23 tem shall be uniform throughout the Service.

24 “(3) Under such system, in the case that such
25 a licensed health professional has successfully com-

1 pleted the credentialing procedures under such sys-
2 tem, such professional shall be authorized to treat
3 patients at any Service facility or other facility with-
4 in a Service area.

5 “(c) REGULATIONS.—The Secretary may promulgate
6 regulations to implement this section.

7 “(d) CONSULTATION.—The Secretary may consult
8 with public and private associations of medical providers
9 in the development of the credentialing system under this
10 section.

11 “(e) APPLICATION.—The credentialing system under
12 this section shall apply with respect to licensed health pro-
13 fessionals seeking to volunteer with respect to—

14 “(1) providing direct health care services at a
15 Service facility; and

16 “(2) providing services at facilities operated or
17 contracted by a tribe, tribal organization, or urban
18 Indian organization under the Indian Self-Deter-
19 mination and Education Assistance Act.

20 “(f) CLARIFICATION.—Nothing in this section shall
21 be construed to inhibit a tribe’s authority to enter into
22 a compact or contract under the Indian Self-Determina-
23 tion and Education Assistance Act.”.

1 **TITLE III—PURCHASED/RE-**
2 **FERRED CARE PROGRAM RE-**
3 **FORMS**

4 **SEC. 301. CODIFICATION OF LIMITATION ON CHARGES FOR**
5 **HEALTH CARE PROFESSIONAL SERVICES**
6 **AND NON-HOSPITAL-BASED CARE SOURCE.**

7 (a) **APPLICABILITY.**—The requirements of this sec-
8 tion shall apply to—

9 (1) health programs operated by the Indian
10 Health Service;

11 (2) health programs operated by an urban In-
12 dian organization through a contract or grant under
13 title V of the Indian Health Care Improvement Act,
14 Public Law 94–437, as amended; and

15 (3) health programs operated by an Indian
16 tribe or tribal organization pursuant to a contract or
17 compact with the Indian Health Service under the
18 Indian Self-Determination and Education Assistance
19 Act (25 U.S.C. 450 et seq.), provided that the In-
20 dian tribe or tribal organization has agreed in such
21 contract or compact to be bound by this section pur-
22 suant to section 108 of the Indian Self-Determina-
23 tion and Education Assistance Act (25 U.S.C. 4501)
24 and section 517(e) of such Act (25 U.S.C. 458aaa–
25 16(e)), as applicable.

1 (b) DEFINITIONS.—For purposes of this section, the
2 following definitions apply:

3 (1) The term “notification of a claim” means,
4 the submission of a claim, with respect to services
5 for an individual, that meets the requirements of
6 section 136.24 of title 42, Code of Federal Regula-
7 tions, in accordance with the following:

8 (A) Such claim is submitted within the ap-
9 plicable period specified under such section
10 136.24, or if applicable, section 406 of the In-
11 dian Health Care Improvement Act (25 U.S.C.
12 1646), and includes information necessary to
13 determine the relative medical need for the
14 services and the individual’s eligibility.

15 (B) The information submitted with the
16 claim is sufficient to—

17 (i) identify the individual as eligible
18 for Indian Health Service services (such as
19 name, address, home or referring service
20 unit, tribal affiliation);

21 (ii) identify the medical care provided
22 (such as the date of service and description
23 of services); and

24 (iii) verify prior authorization by the
25 Indian Health Service for services provided

1 (such as the IHS purchase order number
2 or medical referral form) or exemption
3 from prior authorization (such as copies of
4 pertinent clinical information for emer-
5 gency care that was not prior-authorized).

6 (C) To be considered sufficient notification
7 of a claim, a claim submitted by a provider or
8 supplier for payment shall be in a format that
9 complies with the format required for submis-
10 sion of claims under title XVIII of the Social
11 Security Act (42 U.S.C. 1395 et seq.) or recog-
12 nized under section 1175 of such Act (42
13 U.S.C. 1320d-4).

14 (2) The term “provider” means a provider of
15 services not governed by or subject to subpart D of
16 part 136 of title 42, Code of Federal Regulations,
17 and may include a skilled nursing facility, com-
18 prehensive outpatient rehabilitation facility, home
19 health agency, or hospice program.

20 (3) The term “referral” means an authorization
21 for medical care by the appropriate ordering official
22 in accordance with subpart C of part 136 of title 42,
23 Code of Federal Regulations.

24 (4) The term “repricing agent” means an entity
25 that offers the Indian Health Service or a tribe, trib-

1 al organization, or urban Indian organization dis-
2 counted rates from public and private providers that
3 are not the Indian Health Service or a tribe, tribal
4 organization, or urban Indian organization as a re-
5 sult of existing contracts that the public or private
6 provider other than the Indian Health Service or a
7 tribe, tribal organization, or urban Indian organiza-
8 tion may have within the commercial health care in-
9 dustry.

10 (5) The term “supplier” means a physician or
11 other practitioner, a facility, or other entity (other
12 than a provider) not already governed by or subject
13 to subpart D of part 136 of title 42, Code of Fed-
14 eral Regulations, that furnishes items or services
15 under this section.

16 (c) PAYMENT FOR PROVIDER AND SUPPLIER SERV-
17 ICES PURCHASED BY INDIAN HEALTH PROGRAMS.—

18 (1) IN GENERAL.—Payment to providers and
19 suppliers for any level of care authorized under sub-
20 part C of part 136 of title 42, Code of Federal Reg-
21 ulations, by a Purchased/Referred Care program of
22 the Indian Health Service, authorized by a tribe or
23 tribal organization carrying out such a program of
24 the Indian Health Service under the Indian Self-De-
25 termination and Education Assistance Act (25

1 U.S.C. 450 et seq.), authorized for purchase under
2 section 136.31 of such title 42, Code of Federal
3 Regulations, by an urban Indian organization (as
4 that term is defined in 25 U.S.C. 1603(h)) (here-
5 after collectively referred to as the “I/T/U”), shall,
6 subject to subsection (e), be determined based on
7 one of the methods described in the following sub-
8 paragraphs, as applicable:

9 (A) MFC RATE METHOD.—

10 (i) IN GENERAL.—The method de-
11 scribed in this subparagraph is that, sub-
12 ject to clause (ii), in the case a specific
13 amount for an item or service has been ne-
14 gotiated with a specific provider or supplier
15 or its agent by the I/T/U, the I/T/U shall
16 pay that amount for such item or service.

17 (ii) LIMITATION.—The amount ap-
18 plied under clause (i) for an item or service
19 shall be an amount that is at least the
20 amount of the provider’s or supplier’s most
21 favored customer rate, as defined by the
22 Secretary of Health and Human Services,
23 for an item or service, as evidenced by
24 commercial price lists or paid invoices and
25 other related pricing and discount data to

1 ensure that the I/T/U is receiving a fair
2 and reasonable price. The limitation under
3 the previous sentence shall not apply with
4 respect to an item or service if—

5 (I) the amount offered to the I/
6 T/U under the negotiation under
7 clause (i) is fair and reasonable, as
8 determined by the I/T/U, even though
9 comparable discounts were not nego-
10 tiated; and

11 (II) the amount is otherwise in
12 the best interest of the I/T/U, as de-
13 termined by the I/T/U.

14 (B) MEDICARE RATES.—The method de-
15 scribed in this subparagraph is that, in the case
16 that an amount for an item or service has not
17 been negotiated in accordance with subpara-
18 graph (A), the I/T/U will pay the lowest of the
19 following amounts for the item or service:

20 (i) The amount that is the applicable
21 payment amount under the Medicare pro-
22 gram under title XVIII of the Social Secu-
23 rity Act for such item or service, including
24 payment according to a fee schedule, a
25 prospective payment system or based on

1 reasonable cost for the period in which the
2 service was provided, or in the event of a
3 Medicare waiver, the payment amount will
4 be calculated in accordance with such waiv-
5 er. For purposes of this paragraph, the
6 amount described in this clause shall be re-
7 ferred to as the “Medicare rate”.

8 (ii) An amount negotiated by a repric-
9 ing agent if the provider or supplier is par-
10 ticipating within the repricing agent’s net-
11 work and the I/T/U has a pricing arrange-
12 ment or contract with that repricing agent.

13 (iii) An amount not to exceed the pro-
14 vider or supplier’s most favored customer
15 rate described in subparagraph (A)(ii) for
16 such item or service, as evidenced by com-
17 mercial price lists or paid invoices and
18 other related pricing and discount data to
19 ensure that the I/T/U is receiving a fair
20 and reasonable price, but only to the ex-
21 tent such evidence is reasonably accessible
22 and available to the I/T/U.

23 (C) OTHER.—The method described in this
24 subparagraph is that, in the case that a Medi-
25 care rate does not exist for an item or service,

1 and no other method described in a previous
2 subparagraph is accessible or available, the
3 amount shall be deemed to be 65 percent of au-
4 thorized charges for such item or service.

5 (2) COORDINATION OF BENEFITS AND LIMITA-
6 TION ON RECOVERY.—If an I/T/U has authorized
7 payment for items and services provided to an indi-
8 vidual who is eligible for benefits under title XVIII
9 of the Social Security Act, title XIX of such Act, or
10 another third-party payer, the following shall apply:

11 (A) The I/T/U shall be the payer of last
12 resort under section 2901(b) of the Patient
13 Protection and Affordable Care Act (25 U.S.C.
14 1623(b)).

15 (B) If there are any third-party payers, the
16 I/T/U shall pay the amount for which the pa-
17 tient is being held responsible after the provider
18 or supplier of services has coordinated benefits
19 and all other alternate resources have been con-
20 sidered and paid, including applicable copay-
21 ments, deductibles, and coinsurance that are
22 owed by the patient.

23 (C) The maximum payment by the I/T/U
24 shall be only the portion of the payment

1 amount determined under this section not cov-
2 ered by any other payer.

3 (D) The I/T/U payment may not exceed
4 the rate calculated in accordance with para-
5 graph (1) of this section (plus applicable cost
6 sharing).

7 (E) In the case payment is made under
8 such title XIX for an item or service such pay-
9 ment shall be considered payment in full and
10 there shall be no additional payment made by
11 the I/T/U for such item or service.

12 (3) AUTHORIZED SERVICES.—Payment shall be
13 made only for those items and services authorized by
14 an I/T/U consistent with this section or section
15 503(a) of the Indian Health Care Improvement Act
16 (25 U.S.C. 1653(a)).

17 (4) NO ADDITIONAL CHARGES.—

18 (A) If an amount has not been negotiated
19 under paragraph (1)(A) for an item or service,
20 the provider or supplier shall be deemed to have
21 accepted the applicable payment amount under
22 paragraph (1)(B) for such item or service as
23 payment in full if—

24 (i) the item or service was provided
25 based on a referral;

1 (ii) the provider or supplier submits a
2 notification of a claim for payment to the
3 I/T/U; or

4 (iii) the provider or supplier accepts
5 payment for the provision of such item or
6 service from the I/T/U.

7 (B) A payment made and accepted in ac-
8 cordance with this section shall constitute pay-
9 ment in full and the provider or its agent, or
10 supplier or its agent, may not impose any addi-
11 tional charge—

12 (i) on the individual for I/T/U author-
13 ized items and services; or

14 (ii) for information requested by the I/
15 T/U or its agent or fiscal intermediary for
16 the purposes of payment determinations or
17 quality assurance.

18 (5) NOTIFICATION OF CLAIM.—The Indian
19 Health Service shall not adjudicate a notification of
20 a claim that does not contain the information de-
21 scribed in subsection (b)(1) with an approval or de-
22 nial, except that the Service may request further in-
23 formation from the individual, or as applicable, the
24 provider or supplier, necessary to make a decision.

1 A notification of a claim meeting the requirements
2 specified herein does not guarantee payment.

3 (6) RATE AUTHORIZED.—No service shall be
4 authorized and no payment shall be issued under
5 this section in excess of the rate authorized by this
6 section.

7 (d) AUTHORIZATION BY AN URBAN INDIAN ORGANI-
8 ZATION.—An urban Indian organization may authorize for
9 purchase items and services for an eligible urban Indian
10 as those terms are defined in section 4 of the Indian
11 Health Care Improvement Act (25 U.S.C. 1603) according
12 to section 503 of such Act (25 U.S.C. 1653) and applica-
13 ble regulations. Services and items furnished by physicians
14 and other health care professionals and non-hospital-based
15 entities shall be subject to the payment methodology set
16 forth in this section.

17 (e) EXCEPTION.—In the case of a payment described
18 in subsection (c) that is with respect to a rare specialty
19 service, as specified by the Secretary of Health and
20 Human Services, or a service furnished in highly rural and
21 medically underserved areas, as specified by the Secretary,
22 the Indian Health Service or tribe or tribal organization
23 involved may negotiate an amount for such payment for
24 such service that is greater than the payment amount that

1 would be recognized under title XVIII of the Social Secu-
2 rity for such service.

3 (f) REPORT.—Not later than two years after the date
4 of the enactment of this Act, the Secretary of Health and
5 Human Services, acting through the Director of the In-
6 dian Health Service, shall submit to Congress a report on
7 the impact of this section on access to care under the Pur-
8 chased/Referred Care program, including recommenda-
9 tions for such legislative actions as the Secretary deter-
10 mines appropriate.

11 **SEC. 302. ALLOCATION OF PURCHASED/REFERRED CARE**
12 **PROGRAM FUNDS.**

13 (a) IN GENERAL.—Title II of the Indian Health Care
14 Improvement Act is amended by inserting after section
15 226 (25 U.S.C. 1621y) the following new section:

16 **“SEC. 227. PURCHASED/REFERRED CARE PROGRAM DIS-**
17 **BURSEMENT FORMULA.**

18 “(a) IN GENERAL.—The Secretary shall, with respect
19 to the Purchased/Referred Care program (formerly re-
20 ferred to as the ‘contract health services program’) funded
21 by the Indian Health Service and operated by the Indian
22 Health Service, an Indian tribe, or tribal organization, re-
23 view the distribution of funds pursuant to the program
24 and initiate procedures under subchapter III of chapter
25 5 of title 5, United States Code, to negotiate or promul-

1 gate regulations to develop and implement a revised dis-
2 tribution formula in accordance with the subsequent sub-
3 sections of this section.

4 “(b) CONSIDERATIONS.—In developing the revised
5 distribution formula under subsection (a), the Secretary
6 shall consider—

7 “(1) the extent to which services are available
8 at a Service hospital or facility of the Service rather
9 than the mere existence of such a hospital or facility;

10 “(2) population growth and the potential for
11 population growth;

12 “(3) the socioeconomic makeup of the popu-
13 lation of each contract health service delivery area;

14 “(4) the geographic makeup of each contract
15 health service delivery area;

16 “(5) the size of the hospital or facility;

17 “(6) the relative regional cost of purchasing
18 services;

19 “(7) actual counts of Purchased/Referred Care
20 users; and

21 “(8) accreditation problems at the Service hos-
22 pital or facility of the Service.

23 “(c) IMPLEMENTATION DEADLINE.—The revised dis-
24 tribution formula under subsection (a) shall be imple-
25 mented not later than the date that is 3 years after the

1 first October 1 following the date of the enactment of this
2 Act.

3 “(d) TRANSITION.—

4 “(1) IN GENERAL.—Notwithstanding any other
5 provision of law, for the period beginning on the
6 first October 1 following the date of the enactment
7 of this section and ending the day before the imple-
8 mentation date of the revised distribution formula
9 under subsection (a), the Secretary shall provide for
10 the distribution of funds, with respect to direct
11 health care services provided by a Service facility,
12 pursuant to the Purchased/Referred Care program
13 (and with respect to services provided by any other
14 facility under such program, at the option of such
15 facility) be consistent with the following:

16 “(A) During any portion of such period for
17 which a Service area has been designated as a
18 high IHS level area under paragraph (2)(B),
19 such area shall not receive any funds pursuant
20 to such program in addition to the base allot-
21 ment determined under the distribution formula
22 under the program for 2016 with respect to
23 such area.

24 “(B) In the case that during such period
25 the amount of funds made available to the

1 Service for such distribution under such pro-
2 gram is in excess of the total amounts of base
3 allotments for distribution under such program
4 for 2016, the Secretary shall distribute such ex-
5 cess amount, in accordance with a methodology
6 specified by the Secretary, to Service areas
7 which for an applicable portion of such period
8 of excess funding have been designated as a low
9 IHS level area under paragraph (2)(A).

10 “(2) AREA DESIGNATIONS.—For purposes of
11 paragraph (1), the Secretary shall, with respect to
12 each contract health service delivery area—

13 “(A) review the services provided in the
14 area to determine the IHS medical priority level
15 pursuant to section 136.23(e) of title 42, Code
16 of Federal Regulations, of such services; and

17 “(B) in the case majority, as specified by
18 the Secretary, of the services so provided in the
19 area were determined to have—

20 “(i) such a priority level of a I or II,
21 designate such area as a low IHS level
22 area; and

23 “(ii) any other priority level, designate
24 such area as a high IHS level area.

1 “(e) APPLICATION OF REDUCTION CLAUSE.—In the
2 case of a facility that, as of the date of the enactment
3 of this section, is under contract with the Secretary with
4 respect to the Purchased/Referred Care program and such
5 contract applies to a period to which subsection (d) or the
6 revised distribution formula under subsection (a) applies,
7 if application of subsection (d) or the revised distribution
8 formula results in the distribution of an amount of funds
9 to such facility during such period that is less than the
10 amount of funds that would be provided during such pe-
11 riod to such facility under such contract with respect to
12 the Purchased/Referred Care program before application
13 of such subsection (d) or such revised distribution for-
14 mula, respectively, the Secretary may under section
15 106(b) of the Indian Self-Determination and Education
16 Assistance Act (25 U.S.C. 450j–1(b)) reduce such amount
17 accordingly to be consistent with such subsection (d) or
18 revised distribution formula, respectively.

19 “(f) CLARIFICATION.—Nothing in this section shall
20 be construed to supersede a Tribe’s self-governance con-
21 tract under the Indian Self-Determination and Education
22 Assistance Act.

23 “(g) UPDATE.—The Secretary shall periodically, but
24 not more frequently than once every 3 years and not less
25 frequently than once every five years, review and, as nec-

1 essary, update the formula implemented under subsection
2 (a).

3 “(h) CONSULTATION.—In developing the formula
4 under subsection (a) and reviewing and making updates
5 to such formula under subsection (f), the Secretary shall
6 consult with Indian tribes, including such tribes consulted
7 for purposes of carrying out section 226.

8 “(i) REPORTS.—Not later than one year after the
9 date of the enactment of this section, and annually there-
10 after, the Secretary shall submit to Congress a report on
11 the implementation of this section. Each such report shall
12 include information, with respect to the period for such
13 report, on—

14 “(1) the distribution of funds for such period
15 pursuant to the Purchased/Referred Care program
16 among the contract health service delivery area,
17 tribes, tribal organizations, and urban Indian orga-
18 nizations;

19 “(2) whether during such period any contract
20 health service delivery area, tribe, tribal organiza-
21 tion, or urban Indian organization had a shortfall in
22 such funding and, if so, the amount of such short-
23 fall; and

24 “(3) recommendations for such legislative ac-
25 tion as the Secretary deems appropriate.”.

1 (b) CONFORMING AMENDMENTS.—Section 226 of the
2 Indian Health Care Improvement Act (25 U.S.C. 1621y)
3 is amended—

4 (1) in subsection (a)—

5 (A) by striking “As soon as practicable
6 after the date of enactment of the Indian
7 Health Care Improvement Reauthorization and
8 Extension Act of 2009” and inserting “Not
9 later than 2 years after the date of the enact-
10 ment of section 227”;

11 (B) by striking “the study” and inserting
12 “a study”; and

13 (C) by striking “as requested by Congress
14 in March 2009, or pursuant to section 830”
15 and inserting “, including as amended pursuant
16 to section 227”;

17 (2) in subsection (b)—

18 (A) in the matter preceding paragraph (1),
19 by inserting “, and submit, not later than one
20 year after the date of the enactment of section
21 227 and annually thereafter, to Congress a re-
22 port on” after “pursuant to the program”;

23 (B) in paragraph (3), by striking at the
24 end “and”;

1 (C) by redesignating paragraph (4) as
2 paragraph (5);

3 (D) by inserting after paragraph (3) the
4 following new paragraph:

5 “(4) to determine whether during the period of
6 the report any contract health service delivery area,
7 tribe, tribal organization, or urban Indian organiza-
8 tion had a shortfall in such funding and, if so, the
9 amount of such shortfall; and

10 “(5) recommendations for such legislative ac-
11 tion as the Secretary deems appropriate.”; and

12 (E) in paragraph (5), as redesignated by
13 subparagraph (C), by inserting “, including rec-
14 ommendations for such legislative actions as the
15 Secretary determines appropriate” before the
16 period at the end; and

17 (3) by striking subsection (c).

18 **SEC. 303. PURCHASED/REFERRED CARE PROGRAM BACK-**

19 **LOG.**

20 Title II of the Indian Health Care Improvement Act
21 (25 U.S.C. 1621), as amended by section 302, is further
22 amended by adding at the end the following new section:

1 **“SEC. 228. PURCHASED/REFERRED CARE PROGRAM BACK-**
2 **LOG.**

3 “Not later than one year after the date of the enact-
4 ment of this section, the Secretary shall develop and im-
5 plement a system to prioritize any backlog of unpaid bal-
6 ances under the Purchased/Referred Care program for
7 each Service area. In developing such system, the Sec-
8 retary shall consider—

9 “(1) the monetary amount of each such unpaid
10 balance; and

11 “(2) how long such balance has remained un-
12 paid.”.

13 **SEC. 304. REPORT ON FINANCIAL STABILITY OF SERVICE**
14 **HOSPITALS AND FACILITIES.**

15 Not later than one year after the date of the enact-
16 ment of this Act, the Comptroller General of the United
17 States shall submit to Congress a report on issues related
18 to the financial stability of hospitals and facilities of the
19 Indian Health Service that have experienced sanction or
20 threat of sanction by the Centers for Medicare & Medicaid
21 Services. Such report shall focus on the effects of any reve-
22 nues lost as a result of the sanction or threat of sanction
23 and shall include recommendations for legislative action.

