

117TH CONGRESS
2D SESSION

S. 5348

To amend title 38, United States Code, to expand access to the Veterans Community Care Program of the Department of Veterans Affairs to include certain veterans seeking mental health or substance-use services and toxic-exposed veterans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 21, 2022

Mr. DAINES (for himself and Ms. LUMMIS) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to expand access to the Veterans Community Care Program of the Department of Veterans Affairs to include certain veterans seeking mental health or substance-use services and toxic-exposed veterans, 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 “Protecting Veteran
5 Community Care Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) On June 6, 2018, the John S. McCain III,
2 Daniel K. Akaka, and Samuel R. Johnson VA Main-
3 taining Internal Systems and Strengthening Inte-
4 grated Outside Networks Act of 2018 (Public Law
5 115–182) (in this section referred to as the “VA
6 MISSION Act”) became law.

7 (2) Congressional intent with the VA MISSION
8 Act was to reform and replace the program under
9 section 101 of the Veterans Access, Choice, and Ac-
10 countability Act of 2014 (Public Law 113–146; 38
11 U.S.C. 1701 note) to ensure access of veterans to
12 community health care providers.

13 (3) The eligibility standards established by the
14 VA MISSION Act were not meant to be used to
15 limit health care options for veterans or to be ap-
16 plied to community providers, which would result in
17 reduced health care options.

18 (4) Many veterans do not have access to a med-
19 ical facility of the Department of Veterans Affairs in
20 their community and each medical facility of the De-
21 partment may not be able to adequately address the
22 specific health care needs of a particular veteran.

23 (5) It was the intent of Congress in the VA
24 MISSION Act that all medical services, including
25 mental health treatments and institutional extended

1 care services for mental health, were to be available
 2 to veterans in the community.

3 (6) The Department is limiting access of vet-
 4 erans to community care for mental health treat-
 5 ments.

6 (7) Despite the best efforts of the Department,
 7 veteran suicide remains at significant levels through-
 8 out the United States.

9 (8) No veteran should have to wait 30 days for
 10 mental health services to be approved by the Depart-
 11 ment.

12 (9) Telehealth appointments represent a valu-
 13 able complementary health care option for under-
 14 served veterans, but do not offer the same quality of
 15 care as in-person visits to facilities of the Depart-
 16 ment or in the community.

17 **SEC. 3. EXPANSION OF VETERANS COMMUNITY CARE PRO-**
 18 **GRAM TO INCLUDE ACCESS TO MENTAL**
 19 **HEALTH OR SUBSTANCE-USE SERVICES FOR**
 20 **VETERANS UNABLE TO TIMELY ACCESS MEN-**
 21 **TAL HEALTH RESIDENTIAL TREATMENT PRO-**
 22 **GRAMS.**

23 (a) IN GENERAL.—Section 1703 of title 38, United
 24 States Code, is amended—

25 (1) in subsection (d)—

1 (A) in paragraph (1)—

2 (i) in subparagraph (D), by striking
3 “; or” and inserting a semicolon;

4 (ii) in subparagraph (E), by striking
5 the period at the end and inserting “; or”;
6 and

7 (iii) by adding at the end the fol-
8 lowing new subparagraph:

9 “(F) in the case of residential mental health or
10 substance-use services, the covered veteran—

11 “(i) meets the criteria of the Department
12 for priority admission to a Mental Health Resi-
13 dential Rehabilitation Treatment Program of
14 the Department and the Department is unable
15 to accommodate such priority admission; or

16 “(ii) has contacted the Department to re-
17 quest such services from a Mental Health Resi-
18 dential Rehabilitation Treatment Program of
19 the Department and the Department is not able
20 to furnish such services in a manner than com-
21 plies with the access standards of the Depart-
22 ment for specialty care provided under this sec-
23 tion by a health care provider specified in sub-
24 section (c).”; and

1 (B) by adding at the end the following new
2 paragraph (4):

3 “(4) In the case of a covered veteran entitled to men-
4 tal health or substance-use services under paragraph
5 (1)(F), the Secretary shall ensure that referral of a vet-
6 eran to an alternate Mental Health Residential Rehabilita-
7 tion Treatment Program of the Department does not take
8 precedence over timely access to such services under this
9 section pursuant to such paragraph unless such referral
10 is requested by the covered veteran.”;

11 (2) by redesignating subsection (o) as sub-
12 section (p); and

13 (3) by inserting after subsection (n) the fol-
14 lowing new subsection (o):

15 “(o) MINIMUM STANDARDS FOR RESIDENTIAL MEN-
16 TAL HEALTH OR SUBSTANCE-USE SERVICES.—(1) Sub-
17 ject to paragraph (2), in furnishing residential mental
18 health or substance-use services to covered veterans pursu-
19 ant to subsection (d)(1)(F), the Secretary shall ensure
20 that programs or facilities providing such services under
21 this section meet the following standards:

22 “(A) A treatment program or facility must be
23 licensed and accredited by a State for the provision
24 of the services provided.

1 “(B) A treatment program must be accredited
2 under either the Joint Commission Behavioral
3 Health Standards or the Behavioral Health Stand-
4 ards manual (residential treatment) of the Commis-
5 sion on Accreditation of Rehabilitation Facilities, or
6 any successor standards or manual.

7 “(2) If a program or facility to which a covered vet-
8 eran is to be referred pursuant to subsection (d)(1)(F)
9 does not meet the standards specified under paragraph
10 (1), the Secretary, acting through the director of the facil-
11 ity of the Department carrying out the referral—

12 “(A) shall consider an alternate program or fa-
13 cility; and

14 “(B) may waive such standards on an indi-
15 vidual basis if no other alternate program or facility
16 is available or such waiver is in the best interest of
17 the veteran.”.

18 (b) MODIFICATION OF ACCESS STANDARDS.—Not
19 later than 90 days after the date of the enactment of this
20 Act, the Secretary of Veterans Affairs shall develop or
21 amend existing access standards of the Department of
22 Veterans Affairs to ensure that access to mental health
23 care under the Veterans Community Care Program under
24 section 1703 of title 38, United States Code, as amended

1 by subsection (a), is not more restrictive than the access
 2 standards for specialty care under such section.

3 **SEC. 4. REQUIREMENT TO PROVIDE CARE UNDER VET-**
 4 **ERANS COMMUNITY CARE PROGRAM FOR**
 5 **TOXIC-EXPOSED VETERANS.**

6 Section 1703(d)(1) of title 38, United States Code,
 7 as amended by section 2(a)(1)(A), is further amended—

8 (1) in subparagraph (E), by striking “; or” and
 9 inserting a semicolon;

10 (2) in subparagraph (F), by striking the period
 11 at the end and inserting “; or”; and

12 (3) by adding at the end the following new sub-
 13 paragraph:

14 “(G) the covered veteran is a toxic-exposed vet-
 15 eran.”.

16 **SEC. 5. PROHIBITION ON CERTAIN LIMITATIONS ON AC-**
 17 **CESS OF VETERANS TO CARE.**

18 Section 1703(n) of title 38, United States Code, is
 19 amended by adding at the end the following new para-
 20 graphs:

21 “(3) In applying wait times or access standards
 22 under this section for purposes of determining eligibility
 23 of a covered veteran for care or services under this section,
 24 the Secretary may not determine that the veteran is ineli-
 25 gible for such care or services due solely to the fact that

1 health care providers specified in subsection (c) are unable
 2 to provide such care or services in compliance with such
 3 wait times or access standards.

4 “(4) If multiple options are available to a covered vet-
 5 eran for care or services under this section, the Secretary
 6 shall permit the veteran to elect the option that the vet-
 7 eran prefers.”.

8 **SEC. 6. DEVELOPMENT OF COMMUNITY CARE METRICS.**

9 (a) IN GENERAL.—Section 1703(m)(1) of title 38,
 10 United States Code, is amended by adding at the end the
 11 following new subparagraph:

12 “(C) The review submitted under subparagraph (A)
 13 shall include, for the year covered by the review, the fol-
 14 lowing:

15 “(i) The number of instances of care or services
 16 requested.

17 “(ii) The number of such requests that were ap-
 18 proved.

19 “(iii) The number of such requests that were
 20 denied.

21 “(iv) The number of appeals under subsection
 22 (f) of such requests that were denied, including the
 23 final decision of such appeal.

1 “(v) The eligibility criteria under which each el-
 2 igible veteran has qualified for care or services under
 3 this section.

4 “(vi) Data with respect to the following:

5 “(I) Requests for care or services relating
 6 to mental health.

7 “(II) Authorizations for emergency care,
 8 including whether transportation for such care
 9 was required or whether further care or a hos-
 10 pital stay was required.”.

11 (b) APPLICATION.—The amendment made by sub-
 12 section (a) shall apply to each review conducted under sub-
 13 paragraph (A) of such section after the date of the enact-
 14 ment of this Act.

15 **SEC. 7. LIMITATION ON MODIFICATION OF COMMUNITY**
 16 **CARE ACCESS STANDARDS.**

17 Any modification on or after the date of the enact-
 18 ment of this Act by the Secretary of Veterans Affairs of
 19 the conditions under which care is required to be provided
 20 under section 1703(d) of title 38, United States Code, ei-
 21 ther through a modification of the designated access
 22 standards under paragraph (1)(D) of such section, a
 23 modification of the criteria developed by the Secretary
 24 under paragraph (1)(E) of such section, or otherwise
 25 through regulation, shall not take effect until a joint reso-

- 1 lution is enacted approving such modification to the condi-
- 2 tions under which care is required to be provided under
- 3 such section.

