

112TH CONGRESS  
1ST SESSION

# H. R. 396

To direct the Secretary of Defense and the Secretary of Veterans Affairs to carry out a pilot program under which the Secretaries make payments for certain treatments of traumatic brain injury and post-traumatic stress disorder.

---

## IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 2011

Mr. SESSIONS (for himself, Mr. PLATTS, and Mr. PASCRELL) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committee on Veterans' Affairs, 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

---

## A BILL

To direct the Secretary of Defense and the Secretary of Veterans Affairs to carry out a pilot program under which the Secretaries make payments for certain treatments of traumatic brain injury and post-traumatic stress disorder.

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 “TBI Treatment Act”.

1 **SEC. 2. PILOT PROGRAM ON PAYMENT FOR TREATMENT OF**  
2 **MEMBERS OF THE ARMED FORCES AND VET-**  
3 **ERANS FOR TRAUMATIC BRAIN INJURY AND**  
4 **POST-TRAUMATIC STRESS DISORDER.**

5 (a) PAYMENT PROCESS.—The Secretary of Defense  
6 and the Secretary of Veterans Affairs shall carry out a  
7 five-year pilot program under which each such Secretary  
8 shall establish a process through which each Secretary  
9 shall provide payment for treatments (including diagnostic  
10 testing) of traumatic brain injury or post-traumatic stress  
11 disorder received by members of the Armed Forces and  
12 veterans in health care facilities other than military treat-  
13 ment facilities or Department of Veterans Affairs medical  
14 facilities. Such process shall provide that payment be  
15 made directly to the health care facility furnishing the  
16 treatment.

17 (b) CONDITIONS FOR PAYMENT.—The approval by a  
18 Secretary for payment for a treatment pursuant to sub-  
19 section (a) shall be subject to the following conditions:

20 (1) Any drug or device used in the treatment  
21 must be approved or cleared by the Food and Drug  
22 Administration for any purpose.

23 (2) The treatment must have been approved by  
24 an institutional review board operating in accordance  
25 with regulations issued by the Secretary of Health  
26 and Human Services.

1           (3) The treatment (including any patient disclo-  
2           sure requirements) must be used by the health care  
3           provider delivering the treatment.

4           (4) The patient receiving the treatment must  
5           demonstrate an improvement as a result of the  
6           treatment on one or more of the following:

7                   (A) Standardized independent pre-treat-  
8                   ment and post-treatment neuropsychological  
9                   testing.

10                   (B) Accepted survey instruments.

11                   (C) Neurological imaging.

12                   (D) Clinical examination.

13           (5) The patient receiving the treatment must be  
14           receiving the treatment voluntarily.

15           (6) The patient receiving the treatment may not  
16           be a retired member of the uniformed services or of  
17           the Armed Forces who is over the age of 65 and en-  
18           titled to benefits under part A, or eligible to enroll  
19           under part B, of title XVIII of the Social Security  
20           Act.

21           (c) ADDITIONAL RESTRICTIONS PROHIBITED.—Ex-  
22           cept as provided in this subsection (b), no restriction or  
23           condition for reimbursement may be placed on any health  
24           care provider that is operating lawfully under the laws of

1 the State in which the provider is located with respect to  
2 the receipt of payment under this Act.

3 (d) PAYMENT DEADLINE.—The Secretary of Defense  
4 and the Secretary of Veterans Affairs shall make a pay-  
5 ment for a treatment pursuant to subsection (a) not later  
6 than 30 days after a member of the Armed Forces or vet-  
7 eran (or health care provider on behalf of such member  
8 or veteran) submits to the Secretary documentation re-  
9 garding the treatment. The Secretary of Defense and the  
10 Secretary of Veterans Affairs shall ensure that the docu-  
11 mentation required under this subsection may not be an  
12 undue burden on the member of the Armed Forces or vet-  
13 eran or on the health care provider.

14 (e) PAYMENT AUTHORITY.—

15 (1) DEPARTMENT OF DEFENSE.—The Sec-  
16 retary of Defense shall make payments under this  
17 section for treatments received by members of the  
18 Armed Forces using the authority in subsection  
19 (c)(1) of section 1074 of title 10, United States  
20 Code.

21 (2) DEPARTMENT OF VETERANS AFFAIRS.—  
22 The Secretary of Veterans Affairs shall make pay-  
23 ments under this section for treatments received by  
24 veterans using the authority in section 1728 of title  
25 38, United States Code.

1       (f) PAYMENT AMOUNT.—A payment under this Act  
2 shall be made at the equivalent Centers for Medicare and  
3 Medicaid Services reimbursement rate in effect for appro-  
4 priate treatment codes for the State or territory in which  
5 the treatment is received. If no such rate is in effect, pay-  
6 ment shall be made at a fair market rate, as determined  
7 by the Secretary of Defense, in consultation with the Sec-  
8 retary of Health and Human Services, with respect to a  
9 patient who is a member of the Armed Forces or the Sec-  
10 retary of Veterans Affairs with respect to a patient who  
11 is a veteran.

12       (g) DATA COLLECTION AND AVAILABILITY.—

13           (1) IN GENERAL.—The Secretary of Defense  
14 and the Secretary of Veterans Affairs shall jointly  
15 develop and maintain a database containing data  
16 from each patient case involving the use of a treat-  
17 ment under this section. The Secretaries shall en-  
18 sure that the database preserves confidentiality and  
19 be made available only—

20                   (A) for third-party payer examination;

21                   (B) to the appropriate congressional com-  
22 mittees and employees of the Department of  
23 Defense, the Department of Veterans Affairs,  
24 the Department of Health and Human Services,  
25 and appropriate State agencies; and

(C) to the primary investigator of the institutional review board that approved the treatment, in the case of data relating to a patient case involving the use of such treatment.

(2) ENROLLMENT IN INSTITUTIONAL REVIEW BOARD STUDY.—In the case of a patient enrolled in a registered institutional review board study, results may be publically distributable in accordance with the regulations prescribed pursuant to the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191) and other regulations and practices in effect as of the date of the enactment of this Act.

(3) QUALIFIED INSTITUTIONAL REVIEW BOARDS.—The Secretary of Defense and the Secretary of Veterans Affairs shall each ensure that the Internet Web site of their respective departments includes a list of all civilian institutional review board studies that have received a payment under this Act.

(h) ASSISTANCE FOR MEMBERS TO OBTAIN TREATMENT.—

(1) ASSIGNMENT TO TEMPORARY DUTY.—The Secretary of a military department may assign a member of the Armed Forces under the jurisdiction of the Secretary to temporary duty or allow the

1 member a permissive temporary duty in order to  
2 permit the member to receive treatment for trau-  
3 matic brain injury or post-traumatic stress disorder,  
4 for which payments shall be made under subsection  
5 (a), at a location beyond reasonable commuting dis-  
6 tance of the member's permanent duty station.

7 (2) PAYMENT OF PER DIEM.—A member who is  
8 away from the member's permanent station may be  
9 paid a per diem in lieu of subsistence in an amount  
10 not more than the amount to which the member  
11 would be entitled if the member were performing  
12 travel in connection with a temporary duty assign-  
13 ment.

14 (3) GIFT RULE WAIVER.—Notwithstanding any  
15 rule of any department or agency with respect to  
16 ethics or the receipt of gifts, any assistance provided  
17 to a member of the Armed Forces with a service-  
18 connected injury or disability for travel, meals, or  
19 entertainment incidental to receiving treatment  
20 under this Act, or for the provision of such treat-  
21 ment, shall not be subject to or covered by any such  
22 rule.

23 (i) RETALIATION PROHIBITED.—No retaliation may  
24 be made against any member of the Armed Forces or vet-  
25 eran who receives treatment as part of registered institu-

1 tional review board study carried out by a civilian health  
2 care practitioner.

3 (j) TREATMENT OF UNIVERSITY AND NATIONALLY  
4 ACCREDITED INSTITUTIONAL REVIEW BOARDS.—For  
5 purposes of this Act, a university-affiliated or nationally  
6 accredited institutional review board shall be treated in the  
7 same manner as a Government institutional review board.

8 (k) MEMORANDA OF UNDERSTANDING.—The Sec-  
9 retary of Defense and the Secretary of Veterans Affairs  
10 shall seek to expeditiously enter into memoranda of under-  
11 standings with civilian institutional review boards de-  
12 scribed in subsection (j) for the purpose of providing for  
13 members of the Armed Forces and veterans to receive  
14 treatment carried out by civilian health care practitioners  
15 under a treatment approved by and under the oversight  
16 of civilian institutional review boards that would qualify  
17 for payment under this Act.

18 (l) OUTREACH REQUIRED.—

19 (1) OUTREACH TO VETERANS.—The Secretary  
20 of Veterans Affairs shall notify each veteran with a  
21 service-connected injury or disability of the oppor-  
22 tunity to receive treatment pursuant to this Act.

23 (2) OUTREACH TO MEMBERS OF THE ARMED  
24 FORCES.—The Secretary of Defense shall notify  
25 each member of the Armed Forces with a service-



1 connected injury or disability of the opportunity to  
2 receive treatment pursuant to this Act.

3 (m) REPORT TO CONGRESS.—Not later than 30 days  
4 after the last day of each fiscal year during which the Sec-  
5 retary of Defense and the Secretary of Veterans Affairs  
6 are authorized to make payments under this Act, the Sec-  
7 retaries shall jointly submit to Congress an annual report  
8 on the implementation of this Act. Such report shall in-  
9 clude each of the following for that fiscal year:

10 (1) The number of individuals for whom the  
11 Secretary has provided payments under this Act.

12 (2) The condition for which each such indi-  
13 vidual receives treatment for which payment is pro-  
14 vided under this Act and the success rate of each  
15 such treatment.

16 (3) Treatment methods that are used by enti-  
17 ties receiving payment provided under this Act and  
18 the respective rate of success of each such method.

19 (4) The recommendations of the Secretaries  
20 with respect to the integration of treatment methods  
21 for which payment is provided under this Act into  
22 facilities of the Department of Defense and Depart-  
23 ment of Veterans Affairs.

1       (n) TERMINATION.—The authority to make a pay-  
2 ment under this Act shall terminate on the date that is  
3 five years after the date of the enactment of this Act.

4       (o) AUTHORIZATION OF APPROPRIATIONS.—There is  
5 authorized to be appropriated to carry out this Act  
6 \$10,000,000 for each fiscal year during which the Sec-  
7 retary of Veterans Affairs and the Secretary of Defense  
8 are authorized to make payments under this Act.

○