

106TH CONGRESS
1ST SESSION

H. R. 1067

To amend title 10, United States Code, to improve the access to military treatment facilities for retired members of the uniformed services, and their dependents, who are over 65 years of age, to provide for Medicare reimbursement for health care services provided to such persons, and to permit such persons to enroll in the Federal Employees Health Benefits program.

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 1999

Mr. THORNBERRY introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Commerce, Armed Services, 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

A BILL

To amend title 10, United States Code, to improve the access to military treatment facilities for retired members of the uniformed services, and their dependents, who are over 65 years of age, to provide for Medicare reimbursement for health care services provided to such persons, and to permit such persons to enroll in the Federal Employees Health Benefits program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Uniformed Services Retiree and Dependents Health Care
4 Availability Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—ENROLLMENT OF RETIREES IN TRICARE PRIME AND
MEDICARE REIMBURSEMENT

Sec. 101. Definitions.

Sec. 102. Availability of TRICARE-prime for Medicare-eligible uniformed services retirees.

Sec. 103. Medicare reimbursement.

Sec. 104. Determination of reimbursement amounts.

Sec. 105. Maintenance of defense health care effort.

Sec. 106. Department of Defense payment of late enrollment penalty under Medicare.

Sec. 107. Medigap special open enrollment period for certain uniformed services retirees and dependents.

TITLE II—FEHBP OPTION FOR RETIREES

Sec. 201. Inclusion of Medicare-eligible uniformed services retirees in Federal Employees Health Benefits program.

Sec. 202. Improved benefits under CHAMPUS and TRICARE standard.

7 **TITLE I—ENROLLMENT OF RE-**
8 **TIREES IN TRICARE PRIME**
9 **AND MEDICARE REIMBURSE-**
10 **MENT**

11 **SEC. 101. DEFINITIONS.**

12 For purposes of this title:

13 (1) MEDICARE-ELIGIBLE UNIFORMED SERVICES
14 RETIREE.—The term “Medicare-eligible uniformed
15 services retiree” means a member or former member
16 of a uniformed service who is entitled to retired pay

1 or retainer pay (or equivalent pay), or a dependent
2 covered by section 1076(b) of title 10, United States
3 Code, who is entitled to hospital insurance benefits
4 under part A of title XVIII of the Social Security
5 Act (42 U.S.C. 1395c et seq.).

6 (2) TRICARE PROGRAM.—The term
7 “TRICARE program” means the managed health
8 care program that is established by the Secretary of
9 Defense under the authority of chapter 55 of title
10 10, United States Code, principally section 1097 of
11 such title, and includes the competitive selection of
12 contractors to financially underwrite the delivery of
13 health care services under the Civilian Health and
14 Medical Program of the Uniformed Services.

15 (3) SUBVENTION PROGRAM.—The term “sub-
16 vention program” means the program established
17 under section 103 to reimburse the Department of
18 Defense, from the Medicare program under title
19 XVIII of the Social Security Act (42 U.S.C. 1395 et
20 seq.), for health care services provided to Medicare-
21 eligible uniformed services retirees through the
22 TRICARE program.

23 (4) DEPENDENT.—The term “dependent” has
24 the meaning given the term in section 1072(2) of
25 title 10, United States Code.

1 (5) SECRETARIES.—The term “Secretaries”
2 means the Secretary of Defense and the Secretary of
3 Health and Human Services acting jointly.

4 **SEC. 102. AVAILABILITY OF TRICARE-PRIME FOR MEDI-**
5 **CARE-ELIGIBLE UNIFORMED SERVICES RE-**
6 **TIREES.**

7 The Secretary of Defense may not prohibit the enroll-
8 ment of Medicare-eligible uniformed services retirees in
9 the managed care option of the TRICARE program
10 (known as TRICARE prime) solely on account of age or
11 the entitlement of such persons to hospital insurance bene-
12 fits under part A of title XVIII of the Social Security Act
13 (42 U.S.C. 1395c et seq.).

14 **SEC. 103. MEDICARE REIMBURSEMENT.**

15 (a) REIMBURSEMENT REQUIRED.—To increase the
16 number of Medicare-eligible uniformed services retirees
17 able to enroll in the managed care option of the TRICARE
18 program, the Secretary of Defense and the Secretary of
19 Health and Human Services shall jointly establish a pro-
20 gram to provide the Department of Defense with reim-
21 bursement, beginning October 1, 2000, from the Medicare
22 program under title XVIII of the Social Security Act (42
23 U.S.C. 1395 et seq.) for health care services provided to
24 Medicare-eligible uniformed services retirees through the
25 TRICARE program. Reimbursement will only be provided

1 in the case of Medicare-eligible uniformed services retirees
2 who are also enrolled in the supplementary medical insur-
3 ance program under part B of title XVIII of the Social
4 Security Act (42 U.S.C. 1395j et seq.).

5 (b) VOLUNTARY ENROLLMENT.—For purposes of the
6 subvention program, enrollment of Medicare-eligible uni-
7 formed services retirees in an option of the TRICARE pro-
8 gram shall be voluntary, except that the total number of
9 Medicare-eligible uniformed services retirees so enrolled
10 shall be subject to the capacity and funding limitations
11 specified in sections 104 and 105.

12 (c) EFFECT OF ENROLLMENT.—In the case of a
13 Medicare-eligible uniformed services retiree who enrolls in
14 an option of the TRICARE program, payments may not
15 be made under title XVIII of the Social Security Act (42
16 U.S.C. 1395 et seq.) other than under the subvention pro-
17 gram for health care services provided through the
18 TRICARE program, except that the Secretaries may pro-
19 vide exceptions for emergencies or other situations as the
20 Secretaries consider appropriate.

21 (d) TRICARE PROGRAM ENROLLMENT FEE WAIV-
22 ER.—The Secretary of Defense shall waive the enrollment
23 fee applicable to any Medicare-eligible uniformed services
24 retiree enrolled in the managed care option of the

1 TRICARE program for whom reimbursement may be
2 made under section 104.

3 (e) MODIFICATION OF TRICARE CONTRACTS.—In
4 carrying out the subvention program, the Secretary of De-
5 fense may amend existing TRICARE program contracts
6 as may be necessary to incorporate provisions specifically
7 applicable to Medicare-eligible uniformed services retirees
8 who enroll in an option of the TRICARE program.

9 (f) COST SHARING.—The Secretary of Defense may
10 establish cost sharing requirements for Medicare-eligible
11 uniformed services retirees who enroll in an option of the
12 TRICARE program and for whom reimbursement may be
13 made under section 104.

14 **SEC. 104. DETERMINATION OF REIMBURSEMENT AMOUNTS.**

15 (a) REIMBURSEMENT OF DEPARTMENT OF DE-
16 FENSE.—Beginning October 1, 2000, monthly payments
17 to the Department of Defense under the subvention pro-
18 gram shall be made from the Medicare program under title
19 XVIII of the Social Security Act (42 U.S.C. 1395 et seq.)
20 on the basis that payments are made under section
21 1876(a) of the Act (42 U.S.C. 1395mm(a)).

22 (b) AMOUNT OF PAYMENTS.—The Secretary of
23 Health and Human Services shall make payments to the
24 Department of Defense from the Federal Hospital Insur-
25 ance Trust Fund and the Federal Supplementary Medical

1 Insurance Trust Fund (allocated by the Secretary of
2 Health and Human Services between each trust fund
3 based on the relative weight that each trust fund contrib-
4 utes to the required payment) at a per capita rate equal
5 to 93 percent of the applicable adjusted average per capita
6 cost for each Medicare-eligible uniformed services retiree
7 enrolled in the TRICARE program in excess of the num-
8 ber of such uniformed services retirees calculated under
9 section 105 for the Department of Defense maintenance
10 of health care effort.

11 **SEC. 105. MAINTENANCE OF DEFENSE HEALTH CARE EF-**
12 **FORT.**

13 (a) MAINTENANCE OF EFFORT REQUIRED.—The
14 Secretary of Defense shall maintain the Department of
15 Defense health care efforts for Medicare-eligible uni-
16 formed services retirees so as to avoid imposing on the
17 Medicare program those costs that the Department of De-
18 fense would be expected to incur to provide health care
19 services to Medicare-eligible uniformed services retirees in
20 the absence of the subvention program.

21 (b) ESTIMATE OF PRIOR EFFORT.—For the first fis-
22 cal year of the subvention program, the Secretaries shall
23 estimate the amount expended by the Department of De-
24 fense for fiscal year 2000 for providing health care items
25 and services (other than pharmaceuticals provided to out-

1 patients) to Medicare-eligible uniformed services retirees.
2 For subsequent fiscal years, the amount so estimated shall
3 be adjusted for inflation, for differences between estimated
4 and actual amounts expended, and for major changes in
5 the Department of Defense health care budget.

6 (c) TARGET FOR DEFENSE EFFORT.—On the basis
7 of the estimate made under subsection (b), the Secretaries
8 shall establish monthly targets of the number of Medicare-
9 eligible uniformed services retirees for whom reimburse-
10 ment will not be provided to the Department of Defense
11 under section 104.

12 (d) PROTECTION OF MEDICARE PROGRAM AGAINST
13 INCREASED COSTS.—

14 (1) PURPOSE.—The purpose of this subsection
15 is to protect the Medicare program against costs in-
16 curred under section 104 in connection with the pro-
17 vision of health care services to Medicare-eligible
18 uniformed services retirees that would not have been
19 incurred by the Medicare program in the absence of
20 the reimbursement requirement.

21 (2) REVIEW BY COMPTROLLER GENERAL.—Not
22 later than December 31 of each year, the Comptrol-
23 ler General shall determine and submit to the Sec-
24 retaries and Congress a report on the extent, if any,
25 to which the costs of the Secretary of Defense under

1 the TRICARE program and the costs of the Sec-
2 retary of Health and Human Services under the
3 Medicare program have increased as a result of the
4 subvention program.

5 (3) ACTIONS TO PREVENT INCREASED COSTS.—

6 If the Secretaries determine that the trust funds
7 under title XVIII of the Social Security Act (42
8 U.S.C. 1395 et seq.) still incur excess costs as a re-
9 sult of the subvention program, the Secretaries shall
10 take such steps as may be necessary to offset those
11 excess costs (and prevent future excess costs), in-
12 cluding suspension or termination of the subvention
13 program, adjustment of the payment rate under sec-
14 tion 104(b), or an adjustment of the maintenance of
15 effort requirements of the Department of Defense
16 under this section.

17 **SEC. 106. DEPARTMENT OF DEFENSE PAYMENT OF LATE**
18 **ENROLLMENT PENALTY UNDER MEDICARE.**

19 (a) DEPARTMENT OF DEFENSE PAYMENT.—In the
20 case of any Medicare-eligible uniformed services retiree
21 who enrolls under part B of title XVIII of the Social Secu-
22 rity Act and who, because of the date of such enrollment,
23 is subject to the late enrollment penalty imposed pursuant
24 to section 1839(b) of the Social Security Act on the
25 monthly premium under part B of such title, the Secretary

1 of Defense shall reimburse the Medicare-eligible uniformed
2 services retiree for the cost of such penalty by—

3 (1) increasing the amount of a payment other-
4 wise made by the Department of Defense to the
5 Medicare-eligible uniformed services retiree, such as
6 retired or retainer pay; or

7 (2) making a special payment to the Medicare-
8 eligible uniformed services retiree to cover the cost
9 of such penalty.

10 (b) ~~ELIGIBLE MEDICARE-ELIGIBLE UNIFORMED~~
11 ~~SERVICES RETIREE DESCRIBED.~~—A Medicare-eligible
12 uniformed services retiree referred to in this section is a
13 Medicare-eligible uniformed services retiree—

14 (1) who is at least 65 years of age and was eli-
15 gible to enroll under part B of title XVIII of the So-
16 cial Security Act, and

17 (2) who at the time the individual first satisfied
18 paragraph (1) or (2) of section 1836 of the Social
19 Security Act, did not elect to enroll (or to be deemed
20 enrolled) under section 1837 of the Social Security
21 Act during the individual's initial enrollment period.

1 **SEC. 107. MEDIGAP SPECIAL OPEN ENROLLMENT PERIOD**
2 **FOR CERTAIN UNIFORMED SERVICES RETIR-**
3 **EES AND DEPENDENTS.**

4 (a) MEDIGAP SPECIAL OPEN ENROLLMENT PE-
5 RIOD.—Notwithstanding any other provision of law, in the
6 case of a Medicare-eligible uniformed services retiree who
7 seeks to enroll in a Medicare supplemental policy (as de-
8 fined in section 1882(g) of the Social Security Act), the
9 issuer of the Medicare supplemental policy—

10 (1) may not deny or condition the issuance or
11 effectiveness of a Medicare supplemental policy; and

12 (2) may not discriminate in the pricing of the
13 policy on the basis of the individual's health status,
14 medical condition (including both physical and men-
15 tal illnesses), claims experience, receipt of health
16 care, medical history, genetic information, evidence
17 of insurability (including conditions arising out of
18 acts of domestic violence), or disability.

19 (b) ELIGIBLE MEDICARE-ELIGIBLE UNIFORMED
20 SERVICES RETIREE DESCRIBED.—A Medicare-eligible
21 uniformed services retiree referred to in this section is a
22 Medicare-eligible uniformed services retiree—

23 (1) who is at least 65 years of age and was eli-
24 gible to enroll under part B of title XVIII of the So-
25 cial Security Act, and

1 (2) who at the time the individual first satisfied
2 paragraph (1) or (2) of section 1836 of the Social
3 Security Act, did not elect to enroll (or to be deemed
4 enrolled) under section 1837 of the Social Security
5 Act during the individual's initial enrollment period.

6 **TITLE II—FEHBP OPTION FOR** 7 **RETIREEES**

8 **SECTION. 201. INCLUSION OF MEDICARE-ELIGIBLE UNI-** 9 **FORMED SERVICES RETIREES IN FEDERAL** 10 **EMPLOYEES HEALTH BENEFITS PROGRAM.**

11 (a) IN GENERAL.—Section 1108 of title 10, United
12 States Code, is amended to read as follows:

13 **“§ 1108. Health care coverage through Federal Em-** 14 **ployees Health Benefits program**

15 “(a) FEHBP OPTION.—The Secretary of Defense,
16 after consulting with the other administering Secretaries,
17 shall enter into an agreement with the Office of Personnel
18 Management under which eligible beneficiaries described
19 in subsection (b) may enroll in health benefits plans of-
20 fered through the Federal Employees Health Benefits pro-
21 gram under chapter 89 of title 5.

22 “(b) ELIGIBLE BENEFICIARIES; COVERAGE.—(1) An
23 eligible beneficiary under this subsection is—

24 “(A) a member or former member of the uni-
25 formed services described in section 1074(b) of this

1 title who is entitled to hospital insurance benefits
2 under part A of title XVIII of the Social Security
3 Act (42 U.S.C. 1395c et seq.);

4 “(B) an individual who is an unremarried
5 former spouse of a member or former member de-
6 scribed in section 1072(2)(F) or 1072(2)(G));

7 “(C) an individual who is—

8 “(i) a dependent of a deceased member or
9 former member described in section 1076(b) or
10 1076(a)(2)(B) of this title or of a member who
11 died while on active duty for a period of more
12 than 30 days; and

13 “(ii) a member of family as defined in sec-
14 tion 8901(5) of title 5; or

15 “(D) an individual who is—

16 “(i) a dependent of a living member or
17 former member described in section 1076(b)(1)
18 of this title who is entitled to hospital insurance
19 benefits under part A of title XVIII of the So-
20 cial Security Act, regardless of the member’s or
21 former member’s eligibility for such hospital in-
22 surance benefits; and

23 “(ii) a member of family as defined in sec-
24 tion 8901(5) of title 5.

1 “(2) Eligible beneficiaries may enroll in a Federal
2 Employees Health Benefit plan under chapter 89 of title
3 5 under this section for self-only coverage or for self and
4 family coverage which includes any dependent of the mem-
5 ber or former member who is a family member for pur-
6 poses of such chapter.

7 “(3) A person eligible for coverage under this sub-
8 section shall not be required to satisfy any eligibility cri-
9 teria specified in chapter 89 of title 5 (except as provided
10 in paragraph (1)(C) or (1)(D)) as a condition for enroll-
11 ment in health benefits plans offered through the Federal
12 Employees Health Benefits program under this section.

13 “(4) For purposes of determining whether an individ-
14 ual is a member of family under paragraph (5) of section
15 8901 of title 5 for purposes of paragraph (1)(C) or (1)(D),
16 a member or former member described in section 1076(b)
17 or 1076(a)(2)(B) of this title shall be deemed to be an
18 employee under such section.

19 “(5) An eligible beneficiary who is eligible to enroll
20 in the Federal Employees Health Benefits program as an
21 employee under chapter 89 of title 5 is not eligible to en-
22 roll in a Federal Employees Health Benefits plan under
23 this section.

24 “(c) PROHIBITION AGAINST USE OF MTF'S AND EN-
25 ROLLMENT UNDER TRICARE.—Covered beneficiaries

1 under this chapter who are provided coverage under this
2 section shall not be eligible to receive care at a military
3 medical treatment facility or to enroll in a health care plan
4 under the TRICARE program.

5 “(d) SEPARATE RISK POOLS; CHARGES.—(1) The
6 Director of the Office of Personnel Management shall re-
7 quire health benefits plans under chapter 89 of title 5 that
8 participate under this section to maintain a separate risk
9 pool for purposes of establishing premium rates for eligible
10 beneficiaries who enroll in such a plan in accordance with
11 this section.

12 “(2) The Director shall determine total subscription
13 charges for self only or for family coverage for eligible
14 beneficiaries who enroll in a health benefits plan under
15 chapter 89 of title 5 in accordance with this section. The
16 subscription charges shall include premium charges paid
17 to the plan and amounts described in section 8906(c) of
18 title 5 for administrative expenses and contingency re-
19 serves.

20 “(e) GOVERNMENT CONTRIBUTIONS.—The Secretary
21 of Defense shall be responsible for the Government con-
22 tribution for an eligible beneficiary who enrolls in a health
23 benefits plan under chapter 89 of title 5 in accordance
24 with this section, except that the amount of the contribu-
25 tion may not exceed the amount of the Government con-

“1108. Health care coverage through Federal Employees Health Benefits program.”.

12 **“SEC. 724. COMPREHENSIVE EVALUATION OF IMPLEMEN-**
13 **TATION OF DEMONSTRATION PROJECT AND**
14 **TRICARE PHARMACY REDESIGN.**

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1 (3) Chapter 89 of title 5, United States Code, is
2 amended—

3 (A) in section 8905(d), by striking “, as part of
4 the demonstration project under such section,”;

5 (B) in section 8906(b)(4)—

6 (i) by striking “as part of the demonstra-
7 tion project”; and

8 (ii) by striking “subsection (i)” and insert-
9 ing “subsection (e)”;

10 (C) in section 8906(g)(3)—

11 (i) by striking “as part of the demonstra-
12 tion project”; and

13 (ii) by striking “subsection (i)” and insert-
14 ing “subsection (e)”;

15 (D) in section 8909(g), by striking “the dem-
16 onstration project under”.

17 **SEC. 202. IMPROVED BENEFITS UNDER CHAMPUS AND**
18 **TRICARE STANDARD.**

19 (a) COMPARABILITY.—(1) Chapter 55 of title 10,
20 United States Code, is further amended by inserting after
21 section 1108 the following new section:

1 **“§ 1109. CHAMPUS and TRICARE Standard benefits:**
 2 **comparability with service benefit plan**
 3 **of the Federal Employees Health Benefits**
 4 **program**

5 “(a) BENEFITS.—The health and dental care benefits
 6 provided under CHAMPUS and TRICARE Standard
 7 shall be comparable to the highest level of benefits pro-
 8 vided under the service benefit plan of the Federal Em-
 9 ployees Health Benefits program.

10 “(b) PROVIDER REIMBURSEMENT RATES.—The
 11 rates prescribed for the reimbursement of health and den-
 12 tal care providers under CHAMPUS and TRICARE
 13 Standard shall be the same as those provided for the high-
 14 est level of benefits under the service benefit plan of the
 15 Federal Employees Health Benefits program.”.

16 (2) The table of sections at the beginning of such
 17 chapter is amended by inserting after the item relating
 18 to section 1108 the following new item:

“1109. CHAMPUS and TRICARE Standard benefits: comparability with serv-
 ice benefit plan of the Federal Employees Health Benefits pro-
 gram.”.

19 (b) DEFINITIONS.—Section 1072 of title 10, United
 20 States Code, is amended—

21 (1) in paragraph (4), by striking out “The term
 22 ‘Civilian Health and Medical Program of the Uni-
 23 formed Services’ means” and inserting in lieu there-
 24 of “The terms ‘Civilian Health and Medical Pro-

1 gram of the Uniformed Services’ and ‘CHAMPUS’
2 mean”; and

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

4 “(8) The term ‘TRICARE Standard’ means a
5 CHAMPUS health care benefits option that, subject
6 to the deductibles and cost-sharing requirements
7 under CHAMPUS, pays a share of the cost of cov-
8 ered health care services that are provided by health
9 care providers outside the Federal Government who
10 are not part of the CHAMPUS network of health
11 care providers.

12 “(9) The term ‘Federal Employee Health Bene-
13 fits program’ means the Federal Employee Health
14 Benefits program under chapter 89 of title 5.”.

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