

107TH CONGRESS  
1ST SESSION

# S. 1402

To amend title 10, United States Code, to fully integrate the beneficiaries of the Individual Case Management Program into the TRICARE program, to provide long-term health care benefits under the TRICARE program and otherwise to improve the benefits provided under the TRICARE program, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 4, 2001

Mr. KENNEDY introduced the following bill; which was read twice and referred to the Committee on Armed Services

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## A BILL

To amend title 10, United States Code, to fully integrate the beneficiaries of the Individual Case Management Program into the TRICARE program, to provide long-term health care benefits under the TRICARE program and otherwise to improve the benefits provided under the TRICARE program, 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 “TRICARE Benefits  
5       Modernization Act of 2001”.

1 **TITLE I—INTEGRATION OF INDIVIDUAL CASE MANAGEMENT**  
2 **PROGRAM BENEFITS AND**  
3 **TRICARE BASIC BENEFITS**

4 **SEC. 101. REQUIREMENT FOR INTEGRATION OF BENEFITS.**

5 (a) IN GENERAL.—The Secretary of Defense shall—

6 (1) terminate the Individual Case Management  
7 Program carried out under section 1079(a)(17) of  
8 title 10, United States Code (as in effect on the day  
9 before the effective date specified in section 401);  
10 and

11 (2) integrate the beneficiaries under that pro-  
12 gram, and the furnishing of care to those bene-  
13 ficiaries, into the TRICARE program as modified  
14 pursuant to the amendments made by this title.

15 (b) REPEAL OF SEPARATE AUTHORITY.—Section  
16 1079 of title 10, United States Code, is amended by strik-  
17 ing paragraph (17).

18 (c) SAVINGS PROVISION.—Nothing in this Act title  
19 or the amendments made by this Act shall be construed—

20 (1) to modify any eligibility requirement for any  
21 person receiving benefits under the Individual Case  
22 Management Program before the effective date spec-  
23 ified in section 401; or  
24

1           (2) to terminate any benefits available under  
2           that program before that date.

3           (d) CONSULTATION REQUIREMENT.—The Secretary  
4 of Defense shall consult with the other administering Sec-  
5 retaries referred to in section 1072(3) of title 10, United  
6 States Code, in carrying out this subsection.

7 **SEC. 102. DOMICILIARY AND CUSTODIAL CARE INCIDENT**  
8 **TO MEDICAL CARE.**

9           (a) AUTHORITY.—Section 1077 of title 10, United  
10 States Code, is amended—

11           (1) in subsection (b)(1), by inserting before the  
12           period end the following: “, except as provided in  
13           subsection (e)”;

14           (2) by adding at the end the following new sub-  
15           section:

16           “(e) The prohibition in subsection (b)(1) does not  
17           apply to domiciliary care or custodial care that is provided  
18           to a patient by a physician, nurse, paramedic, or other  
19           health care provider incident to other health care author-  
20           ized under subsection (a), whether or not—

21           “(1) the potential for the patient’s condition of  
22           illness, injury, or bodily malfunction to improve  
23           might be nonexistent or minimal; or

24           “(2) the care is provided for the purposes of  
25           maintaining function and preventing deterioration.”.

1       (b) DOMICILIARY AND CUSTODIAL CARE DE-  
2 FINED.—Section 1072 of title 10, United States Code, is  
3 amended by adding at the end the following new para-  
4 graphs:

5           “(8) The term ‘domiciliary care’ means treat-  
6 ment or services involving assistance with the per-  
7 formance of activities of daily living that is provided  
8 to a patient in a home-like setting because—

9           “(A) the treatment or services are not  
10 available, or are not suitable to be provided, to  
11 the patient in the patient’s home; or

12           “(B) no member of the patient’s family is  
13 willing to provide the treatment or services.

14       “(9) The term ‘custodial care’—

15           “(A) means treatment or services that—

16           “(i) could be provided safely and rea-  
17 sonably by a person not trained as a physi-  
18 cian, nurse, paramedic, or other health  
19 care provider; or

20           “(ii) are provided principally to assist  
21 the recipient of the treatment or services  
22 with the performance of activities of daily  
23 living; and

1 “(B) includes any treatment or service de-  
 2 scribed in subparagraph (A) without regard  
 3 to—

4 “(i) the source of any recommenda-  
 5 tion to provide the treatment or service;  
 6 and

7 “(ii) the setting in which the treat-  
 8 ment or service is provided.”.

9 **SEC. 103. CONFORMING REPEALS.**

10 The following provisions of law are repealed:

11 (1) Section 703 of the National Defense Au-  
 12 thorization Act for Fiscal Year 2000 (Public Law  
 13 106–65; 113 Stat. 682; 10 U.S.C. 1077 note).

14 (2) Section 8118 of the Department of Defense  
 15 Appropriation Act, 2000 (Public Law 106–79; 113  
 16 Stat. 1260).

17 (3) Section 8100 of the Department of Defense  
 18 Appropriation Act, 2001 (Public Law 106–259; 114  
 19 Stat. 696).

20 **TITLE II—LONG TERM HEALTH**  
 21 **BENEFITS**

22 **SEC. 201. LONG TERM CARE.**

23 (a) LIMITATION.—Chapter 55 of title 10, United  
 24 States Code, is amended by inserting after section 1074i  
 25 the following new section:

1 **“§ 1074j. Long term care benefits program**

2 “(a) REQUIREMENT FOR PROGRAM.—The Secretary  
3 of Defense shall provide long term health care benefits  
4 under the TRICARE program in an effective and efficient  
5 manner that integrates those benefits with the benefits  
6 provided on a less than a long term basis under the  
7 TRICARE program.

8 “(b) AUTHORIZED CARE.—The types of health care  
9 authorized to be provided under this section shall include  
10 the following:

11 “(1) The types of health care authorized to be  
12 acquired by contract under section 1079 of this title.

13 “(2) Extended care services.

14 “(3) Post-hospital extended care services.

15 “(4) Comprehensive intermittent home health  
16 services.

17 “(c) DURATION OF POST-HOSPITAL EXTENDED  
18 CARE SERVICES.—The post-hospital extended care serv-  
19 ices provided in a skilled nursing facility to a patient dur-  
20 ing a spell of illness under subsection (b)(3) shall continue  
21 for as long as is medically necessary and appropriate. The  
22 limitation on the number of days of coverage under sub-  
23 sections (a)(2) and (b)(2)(A) of section 1812 of the Social  
24 Security Act (42 U.S.C. 1395d) shall not apply with re-  
25 spect to the care provided that patient.

1       “(d) REGULATIONS.—The Secretary of Defense shall,  
 2 after consultation with the other administering Secre-  
 3 taries, prescribe regulations to carry out this section.

4       “(e) DEFINITIONS.—In this section:

5           “(1) The term ‘extended care services’ has the  
 6 meaning given the term in subsection (h) of section  
 7 1861 of the Social Security Act (42 U.S.C. 1395x).

8           “(2) The term ‘post-hospital extended services’  
 9 has the meaning given the term in subsection (i) of  
 10 section 1861 of the Social Security Act (42 U.S.C.  
 11 1395x).

12          “(3) The term ‘home health services’ has the  
 13 meaning given the term in section 1861(m) of the  
 14 Social Security Act (42 U.S.C. 1395x(m)).

15          “(4) The term ‘skilled nursing facility’ has the  
 16 meaning given the term in section 1819(a) of the  
 17 Social Security Act (42 U.S.C. 1395i–3(a)).

18          “(5) The term ‘spell of illness’ has the meaning  
 19 given the term in section 1861(a) of the Social Secu-  
 20 rity Act (42 U.S.C. 1395x(a)).”.

21       (b) CLERICAL AMENDMENT.—The table of sections  
 22 at the beginning of such chapter is amended by inserting  
 23 after the item relating to section 1074i the following new  
 24 item:

“1074j. Long term care benefits program.”.

1 **SEC. 202. EXTENDED BENEFITS FOR DISABLED BENE-**  
 2 **FICIARIES.**

3 Section 1079 of title 10, United States Code, is  
 4 amended by striking subsections (d), (e), and (f) and in-  
 5 serting the following:

6 “(d)(1) The health care benefits contracted for under  
 7 this section shall include extended benefits for dependents  
 8 referred to in the first sentence of subsection (a) who have  
 9 any of the following qualifying conditions:

10 “(A) Moderate or severe mental retardation.

11 “(B) A serious physical disability.

12 “(C) Any extraordinary physical or psycho-  
 13 logical condition.

14 “(2) The extended benefits shall include comprehen-  
 15 sive health care and case management services, to the ex-  
 16 tent not otherwise provided under this chapter with re-  
 17 spect to a qualifying condition, as follows:

18 “(A) Diagnosis.

19 “(B) Inpatient, outpatient, and comprehensive  
 20 home health supplies and services.

21 “(C) Training and rehabilitation, including spe-  
 22 cial education and assistive technology devices.

23 “(D) Institutional care in private nonprofit,  
 24 public, and State institutions and facilities and,  
 25 when appropriate, transportation to and from such  
 26 institutions and facilities.

1           “(E) Any other services and supplies deter-  
2           mined appropriate under regulations prescribed  
3           under paragraph (6).

4           “(3) The extended benefits shall also include respite  
5           care for the primary caregiver of a dependent eligible for  
6           extended benefits under this subsection.

7           “(4) Home health supplies and services may be pro-  
8           vided to a dependent under paragraph (2)(B) as other  
9           than part-time or intermittent services (as determined in  
10          accordance with the second sentence of section 1861(m)  
11          of the Social Security Act (42 U.S.C. 1395x(m)) only if—

12           “(A) the provision of such supplies and services  
13           in the home of the dependent is medically appro-  
14           priate; and

15           “(B) the cost of the provision of such supplies  
16           and services to the dependent is equal to or less  
17           than the cost of the provision of similar supplies and  
18           services to the dependent in a skilled nursing facil-  
19           ity.

20           “(5) Subsection (a)(13) shall not apply to the provi-  
21           sion of care and services determined appropriate to be pro-  
22           vided as extended benefits under this subsection.

23           “(6) A member of the uniformed services shall pay  
24           a share of the cost of any care and services provided as

1 extended benefits to any of the dependents of the member  
 2 under this subsection as follows:

3 “(A) In the case of a member in the lowest en-  
 4 listed pay grade, the first \$25 of the cumulative  
 5 costs of all care furnished to one or more dependents  
 6 of the member in a month.

7 “(B) In the case of a member in the highest  
 8 commissioned pay grade, the first \$250 of the cumu-  
 9 lative costs of all care furnished to one or more de-  
 10 pendents of the member in a month.

11 “(C) In the case of a member in any other pay  
 12 grade, a fixed amount of the cumulative costs of all  
 13 care furnished to one or more dependents of the  
 14 member in a month, as prescribed for that pay  
 15 grade in regulations prescribed under paragraph (6).

16 “(7) The Secretary of Defense, in consultation with  
 17 the other administering Secretaries, shall prescribe regula-  
 18 tions to carry out this subsection.”.

19 **SEC. 203. REPORT TO CONGRESS ON RELATIONSHIP**  
 20 **AMONG FEDERAL LONG-TERM CARE INITIA-**  
 21 **TIVES.**

22 Not later than April 1, 2002, the Secretary of De-  
 23 fense shall submit to Congress a report on the relationship  
 24 and compatibility of the long term care insurance program  
 25 under chapter 90 of title 5, United States Code (as added

1 by the Federal Long-Term Care Security Act), and other  
 2 initiatives of the Federal Government to provide long term  
 3 care benefits for which members of the uniformed services  
 4 and their dependents are or would be eligible.

5 **TITLE III—IMPROVEMENTS IN**  
 6 **TRICARE BASIC BENEFITS**  
 7 **AND ADMINISTRATION OF**  
 8 **BENEFITS**

9 **SEC. 301. SERVICES OR SUPPLIES DETERMINED NEC-**  
 10 **CESSARY.**

11 (a) DETERMINATIONS OF NECESSITY.—Subsection  
 12 (a)(13) of section 1079 of title 10, United States Code,  
 13 is amended—

14 (1) by inserting “(A)” after “(13)”;

15 (2) by designating the second sentence as sub-  
 16 paragraph (C), realigning that subparagraph flush  
 17 to the left margin, and striking “this paragraph” in  
 18 the text of such subparagraph (as so redesignated)  
 19 and inserting “subparagraph (A)”;

20 (3) by inserting after subparagraph (A), as des-  
 21 ignated by subparagraph (A), the following new sub-  
 22 paragraph:

23 “(B) For the purposes of subparagraph (A), the de-  
 24 termination that a service or supply is medically or psy-  
 25 chologically necessary to prevent, diagnose, or treat a

1 mental or physical illness, injury, or bodily malfunction of  
 2 a patient, or to prevent deterioration of a patient, when  
 3 made by the physician treating the patient, shall be con-  
 4 clusive unless the physician's determination is clearly erro-  
 5 neous, as determined by a higher authority or under the  
 6 CHAMPUS Peer Review Organization program.”.

7 (b) DETERMINATIONS NOT SUBJECT TO PEER RE-  
 8 VIEW.—Subsection (o)(1) of such section is amended by  
 9 inserting “(subject to subsection (a)(13)(B))” after “de-  
 10 termined”.

11 **SEC. 302. PROSTHETICS, ORTHOTICS, AND HEARING AIDS.**

12 Section 1077 of title 10 United States Code, as  
 13 amended by section 102, is further amended—

14 (1) in subsection (a), by striking paragraph  
 15 (15) and inserting the following:

16 “(15) A prosthetic or orthotic device, together  
 17 with related items and services as provided in sub-  
 18 section (e).

19 “(16) A hearing aid, but only for a dependent  
 20 of a member of the uniformed services on active  
 21 duty and only if the dependent has a profound hear-  
 22 ing loss, as determined under standards prescribed  
 23 in regulations by the Secretary of Defense in con-  
 24 sultation with the administering Secretaries.”;

1           (2) in subsection (b)(2), by striking “Hearing  
2       aids, orthopedic footwear,” and inserting “Ortho-  
3       pedic footwear”; and

4           (3) by adding at the end the following new sub-  
5       section:

6       “(f)(1) Authority to provide a prosthetic or orthotic  
7       device under subsection (a)(15) includes authority to pro-  
8       vide the following:

9           “(A) Any accessory or item of supply that is  
10       used in conjunction with the device for the purpose  
11       of achieving therapeutic benefit and proper func-  
12       tioning.

13          “(B) Services necessary to train the recipient of  
14       the device in the use of the device.

15          “(C) Repair of the device for normal wear and  
16       tear or damage.

17          “(D) Replacement of the device if the device is  
18       lost or irreparably damaged or the cost of repair  
19       would exceed 60 percent of the cost of replacement.

20          “(E) Replacement of an orthotic device when  
21       appropriate to accommodate the patient’s growth or  
22       change of condition.

23       “(2) An augmentative communication device may be  
24       provided as a voice prosthesis under subsection (a)(15).

1       “(3) A prosthetic or orthotic device customized for  
2 a patient may be provided under this section only by a  
3 prosthetic or orthotic practitioner, respectively, who is  
4 qualified to customize the device, as determined under reg-  
5 ulations prescribed by the Secretary of Defense in con-  
6 sultation with the administering Secretaries.”.

7 **SEC. 303. DURABLE MEDICAL EQUIPMENT.**

8       (a) ITEMS AUTHORIZED.—Section 1077 of title 10,  
9 United States Code, as amended by section 302, is further  
10 amended—

11           (1) in subsection (a)(12), by striking “such as  
12 wheelchairs, iron lungs, and hospital beds,” and in-  
13 serting “which”; and

14           (2) by adding at the end the following new sub-  
15 section:

16       “(g)(1) Items that may be provided to a patient  
17 under subsection (a)(12) include the following:

18           “(A) Any durable medical equipment that can  
19 improve, restore, or maintain the function of a mal-  
20 formed, diseased, or injured body part, or can other-  
21 wise minimize or prevent the deterioration of the pa-  
22 tient’s function or condition.

23           “(B) Any durable medical equipment that can  
24 maximize the patient’s function and mobility con-

1       sistent with the patient’s physiological or medical  
2       needs.

3               “(C) Wheelchairs.

4               “(D) Iron lungs,

5               “(E) Hospital beds.

6       “(2) In addition to the authority to provide durable  
7       medical equipment under subsection (a)(12), any  
8       customization of equipment owned by the patient that is  
9       durable medical equipment authorized to be provided to  
10      the patient under this section or section 1079(a)(5) of this  
11      title, and any accessory or item of supply for any such  
12      equipment, may be provided to the patient if the  
13      customization, accessory, or item of supply is essential  
14      for—

15              “(A) achieving therapeutic benefit for the pa-  
16      tient;

17              “(B) making the equipment serviceable; or

18              “(C) otherwise assuring the proper functioning  
19      of the equipment.

20       “(3) The eligibility of a patient to receive durable  
21      medical equipment and related services under this section  
22      or section 1079(a)(5) of this title may not be limited on  
23      the basis that a primary purpose of the use of the equip-  
24      ment by the patient is transportation, comfort, or conven-  
25      ience of the patient.”.

1 (b) PROVISION OF ITEMS ON RENTAL BASIS.—Para-  
2 graph (5) of section 1079(a) of such title is amended to  
3 read as follows:

4 “(5) Durable equipment provided under this  
5 section shall be provided on a rental basis.”.

6 **SEC. 304. REHABILITATIVE THERAPY.**

7 Section 1077(a) of title 10, United States Code, as  
8 amended by section 302(1), is further amended by insert-  
9 ing after paragraph (16) the following new paragraph:

10 “(17) Any rehabilitative therapy to improve, re-  
11 store, or maintain function, or to minimize or pre-  
12 vent deterioration of function, of a patient when pre-  
13 scribed by a physician, including the following thera-  
14 pies:

15 “(A) Physical or occupational therapy to  
16 maintain range of motion in a paralyzed ex-  
17 tremity of the patient, without regard to wheth-  
18 er a purpose for providing the therapy is to re-  
19 store a specific loss of function or is related to  
20 the restoration of a specific loss of function.

21 “(B) Occupational therapy for an amputee  
22 or a patient with an orthopedic impairment, in-  
23 cluding gait analysis.

1                   “(C) Respiratory or recreation therapy  
2                   that is included as part of a treatment plan es-  
3                   tablished for the patient by the physician.”.

4 **SEC. 305. MENTAL HEALTH BENEFITS.**

5           Section 1079(i) of title 10, United States Code, is  
6 amended by adding at the end the following new para-  
7 graphs:

8           “(4)(A) To receive outpatient mental health services  
9 under a contract entered into under this section or section  
10 1086 of this title for periods in excess of a limitation on  
11 the availability of outpatient mental health benefit for a  
12 year under the contract, a person may convert any unused  
13 period of inpatient mental health benefit available to the  
14 person for that year under the contract to one or more  
15 additional periods of availability of outpatient mental  
16 health benefit.

17           “(B) The total amount of inpatient mental health  
18 benefit remaining available to a person for a year under  
19 a contract referred to in subparagraph (A) shall be re-  
20 duced to the extent of any conversion of the benefit for  
21 the person for the year under that subparagraph.

22           “(C) For the purposes of this paragraph, one day of  
23 inpatient mental health benefit converts to eight hours of  
24 outpatient mental health benefit.

1       “(5) Mental health services, including substance  
2 abuse services, available to a patient under a contract en-  
3 tered into under this section or section 1086 of this title  
4 shall be furnished to the patient in the least restrictive  
5 environment that is effective and appropriate for meeting  
6 the treatment and rehabilitative needs of the patient.”.

7       **TITLE IV—EFFECTIVE DATE**

8       **SEC. 401. EFFECTIVE DATE.**

9       This Act and the amendments made by this Act shall  
10 take effect on October 1, 2001.

