

109TH CONGRESS  
1ST SESSION

# S. 407

To restore health care coverage to retired members of the uniformed services,  
and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 16, 2005

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

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## A BILL

To restore health care coverage to retired members of the  
uniformed services, 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 “Keep Our Promise to  
5 America’s Military Retirees Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) No statutory health care program existed  
9 for members of the uniformed services who entered

1 service prior to December 7, 1956, and retired after  
2 serving a minimum of 20 years.

3 (2) Recruiters, re-enlistment counselors, and of-  
4 ficers at all levels of the uniformed services, and  
5 other government officials, as agents of the United  
6 States Government, used recruiting tactics that al-  
7 lowed members who entered the uniformed services  
8 prior to December 7, 1956, to believe they would be  
9 entitled to fully paid lifetime health care upon retire-  
10 ment.

11 (3) In the United States Court of Appeals for  
12 the Federal Circuit decision of November 18, 2002,  
13 in *Schism v. United States* (No. 99–1402), the  
14 Court said: “Accordingly, we must affirm the dis-  
15 trict court’s judgment and can do no more than  
16 hope Congress will make good on the promises re-  
17 cruited in good faith to plaintiffs and others  
18 of the World War II and Korean War era—from  
19 1941 to 1956, when Congress enacted its first  
20 health care insurance act for military members, ex-  
21 cluding older retirees. . . . We cannot readily imag-  
22 ine more sympathetic plaintiffs than the retired offi-  
23 cers of the World War II and Korean War era in-  
24 volved in this case. They served their country for at  
25 least 20 years with the understanding that when

1       they retired they and their dependents would receive  
 2       full free health care for life. The promise of such  
 3       health care was made in good faith and relied upon.  
 4       Again, however, because no authority existed to  
 5       make such promises in the first place, and because  
 6       Congress has never ratified or acquiesced to this  
 7       promise, we have no alternative but to uphold the  
 8       judgment against the retirees' breach-of-contract  
 9       claim. . . . Perhaps Congress will consider using its  
 10      legal power to address the moral claims raised by  
 11      Schism and Reinlie on their own behalf, and indi-  
 12      rectly for other affected retirees.".

13           (4) Only the United States Congress can make  
 14      good on the promises recruiters made in good faith  
 15      to plaintiffs and others of the World War II and Ko-  
 16      rean War era.

17           (5) Statutes enacted in 1956 allowed those who  
 18      entered service on or after December 7, 1956, and  
 19      retired after serving a minimum of 20 years or by  
 20      reason of a service-connected disability to medical  
 21      and dental care in any facility of the uniformed serv-  
 22      ices, subject to the availability of space and facilities  
 23      and the capabilities of the medical and dental staff.

24           (6) Recruiters, re-enlistment counselors, and of-  
 25      ficers at all levels of the uniformed services, and

1 other government officials, as agents of the United  
2 States Government, continued to allow members who  
3 entered the uniformed services to believe they would  
4 be entitled to fully paid lifetime health care upon re-  
5 tirement, despite enactment of statutes in 1956,  
6 subsequent statutes, and the issuance of regulations  
7 that defined and limited the availability of medical  
8 care to retired members of the uniformed services.

9 (7) After 4 rounds of base closures between  
10 1988 and 1995 and further drawdowns of remaining  
11 military medical treatment facilities, access to  
12 “space available” health care in a military medical  
13 treatment facility is difficult or virtually nonexistent  
14 for many military retirees.

15 (8) The failure to provide adequate health care  
16 upon retirement is preventing the retired members  
17 of the uniformed services from recommending, with-  
18 out reservation, that young men and women make a  
19 career of any military service.

20 (9) Although provisions in the Floyd D. Spence  
21 National Defense Authorization Act for Fiscal Year  
22 2001 (as enacted into law by Public Law 106–398)  
23 extended coverage under the TRICARE program to  
24 medicare eligible military retirees age 65 and older,

1       those provisions did not address the health care  
2       needs of military retirees under the age of 65.

3           (10) The United States should make good on  
4       the promises recruiters made in good faith in the  
5       World War II and Korean War era and reestablish  
6       high quality health care for all retired members of  
7       the uniformed services.

8   **SEC. 3. COVERAGE OF MILITARY RETIREES UNDER THE**  
9                   **FEDERAL EMPLOYEES HEALTH BENEFITS**  
10                  **PROGRAM.**

11       (a) COVERAGE FOR RETIREES AND DEPENDENTS.—

12   (1) Section 1108 of title 10, United States Code, is  
13   amended to read as follows:

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

16       “(a) FEHBP OPTION.—The Secretary of Defense,  
17   after consulting with the other administering Secretaries,  
18   shall enter into an agreement with the Office of Personnel  
19   Management to provide coverage to eligible beneficiaries  
20   described in subsection (b) under the health benefits plans  
21   offered through the Federal Employees Health Benefits  
22   program under chapter 89 of title 5.

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

1           “(A) a member or former member of the uni-  
2           formed services described in section 1074(b) of this  
3           title;

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; and

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

21           “(2) Eligible beneficiaries may enroll in a Federal  
22           Employees Health Benefit plan under chapter 89 of title  
23           5 under this section for self-only coverage or for self and  
24           family coverage which includes any dependent of the mem-

1 ber or former member who is a family member for pur-  
 2 poses of such chapter.

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

9 “(4) For purposes of determining whether an indi-  
 10 vidual is a member of family under paragraph (5) of sec-  
 11 tion 8901 of title 5 for purposes of paragraph (1)(C) or  
 12 (1)(D), a member or former member described in section  
 13 1076(b) or 1076(a)(2)(B) of this title shall be deemed to  
 14 be an employee under such section.

15 “(5) An eligible beneficiary who enrolls in the Federal  
 16 Employees Health Benefits program under this section  
 17 shall not be eligible to receive health care under section  
 18 1086 or section 1097. Such a beneficiary may continue  
 19 to receive health care in a military medical treatment facil-  
 20 ity, in which case the treatment facility shall be reim-  
 21 bursed by the Federal Employees Health Benefits pro-  
 22 gram for health care services or drugs received by the ben-  
 23 eficiary.

24 “(c) CHANGE OF HEALTH BENEFITS PLAN.—An eli-  
 25 gible beneficiary enrolled in a Federal Employees Health

1 Benefits plan under this section may change health bene-  
 2 fits plans and coverage in the same manner as any other  
 3 Federal Employees Health Benefits program beneficiary  
 4 may change such plans.

5 “(d) GOVERNMENT CONTRIBUTIONS.—The amount  
 6 of the Government contribution for an eligible beneficiary  
 7 who enrolls in a health benefits plan under chapter 89 of  
 8 title 5 in accordance with this section may not exceed the  
 9 amount of the Government contribution which would be  
 10 payable if the electing beneficiary were an employee (as  
 11 defined for purposes of such chapter) enrolled in the same  
 12 health benefits plan and level of benefits.

13 “(e) SEPARATE RISK POOLS.—The Director of the  
 14 Office of Personnel Management shall require health bene-  
 15 fits plans under chapter 89 of title 5 to maintain a sepa-  
 16 rate risk pool for purposes of establishing premium rates  
 17 for eligible beneficiaries who enroll in such a plan in ac-  
 18 cordance with this section.

19 “(f) REIMBURSEMENT FOR EXPENSES FOR HEALTH  
 20 CARE SERVICES NORMALLY PROVIDED BY THE DEPART-  
 21 MENT OF DEFENSE UNDER TRICARE STANDARD.—The  
 22 Secretary of Defense shall develop and implement a sys-  
 23 tem to reimburse an eligible beneficiary who enrolls in a  
 24 health benefits plan under chapter 89 of title 5 in accord-  
 25 ance with this section for health care costs incurred by



1 the beneficiary that are not paid under the health benefits  
 2 plan but would have been paid by the Department of De-  
 3 fense under TRICARE Standard.”.

4 (2) The item relating to section 1108 at the begin-  
 5 ning of such chapter is amended to read as follows:

“1108. Health care coverage through Federal Employees Health Benefits pro-  
 gram.”.

6 (b) EFFECTIVE DATE.—The amendments made by  
 7 this section shall take effect on October 1, 2005.

8 **SEC. 4. REIMBURSEMENT FOR TRICARE PHARMACY BENE-**  
 9 **FITS AT TRICARE NETWORK PHARMACY LEV-**  
 10 **ELS TO CERTAIN MILITARY RETIREES AND**  
 11 **DEPENDENTS IN HARDSHIP CASES.**

12 (a) IN GENERAL.—In the case of an eligible person  
 13 who has a certification described in subsection (b), the  
 14 Secretary shall reimburse such person for pharmacy bene-  
 15 fits received from a pharmacy that is not a TRICARE  
 16 network pharmacy in the same manner and in the same  
 17 amounts as the Secretary would reimburse such person  
 18 for such benefits received from pharmacy that is a  
 19 TRICARE network pharmacy.

20 (b) CERTIFICATION.—The certification referred to in  
 21 subsection (a) is a certification from an eligible person’s  
 22 physician—

1           (1) stating that the person does not have access  
 2           to a TRICARE network pharmacy due to physical or  
 3           medical constraints; and

4           (2) meeting such other criteria as the Secretary  
 5           of Defense considers appropriate.

6           (c) ELIGIBLE PERSON.—In this section, an eligible  
 7           person is an eligible beneficiary as described in section  
 8           1108(b) of title 10, United States Code who has another  
 9           insurance plan or program that provides primary coverage  
 10          for health benefits.

11   **SEC. 5. WAIVER OF MEDICARE PART B PREMIUM FOR CER-**  
 12                                   **TAIN MILITARY RETIREES.**

13          (a) IN GENERAL.—Section 1839 of the Social Secu-  
 14          rity Act (42 U.S.C. 1395r) is amended—

15               (1) in subsection (a)(2), by striking “The  
 16               monthly premium” and inserting “Except as pro-  
 17               vided in subsection (j), the monthly premium”; and

18               (2) by adding at the end the following new sub-  
 19               section:

20               “(j)(1) The amount of the monthly premium for an  
 21               eligible individual enrolled under this part is equal to \$0.

22               “(2) For purposes of paragraph (1), the term ‘eligible  
 23               individual’ means—

24                       “(A) an individual who is entitled to retired or  
 25               retainer pay based upon service in the uniformed

1 services (as defined in section 101 of title 10, United  
2 States Code) that began before December 7, 1956;

3 “(B) the spouse (as determined under section  
4 7703 of the Internal Revenue Code of 1986) of an  
5 individual described in subparagraph (A); and

6 “(C) the widow or widower, as the case may be,  
7 of an individual described in subparagraph (A).

8 “(3) With respect to years beginning after the date  
9 of the enactment of this subsection, the monthly premium  
10 rate calculated under subsection (a)(3) for individuals en-  
11 rolled under this part who are not eligible individuals  
12 under this subsection shall be determined without regard  
13 to benefits and administrative costs attributable to such  
14 eligible individuals during such years.”.

15 (b) CONFORMING AMENDMENT.—Section 1839(i) of  
16 the Social Security Act (42 U.S.C. 1395r(i)) is amended  
17 by adding at the end the following new paragraph:

18 “(7) INAPPLICABILITY TO CERTAIN MILITARY  
19 RETIREES.—This subsection shall not apply to eligi-  
20 ble individuals (as defined in subsection (j)(2)).”.

21 (c) EFFECTIVE DATE.—(1) The amendments made  
22 by this section shall apply to premiums for months begin-  
23 ning with January 2005.

24 (2) The Secretary of Health and Human Services  
25 shall use the rebate methodology established pursuant to

1 section 625(a)(2) of the Medicare Prescription Drug, Im-  
2 provement, and Modernization Act of 2003 (Public Law  
3 108–173, 117 Stat. 2318) to provide rebates to eligible  
4 individuals (as defined in subsection (j)(2) of section 1839  
5 of the Social Security Act, as added by subsection (a))  
6 of any premium or premium penalty paid under such sec-  
7 tion for months beginning on or after January 1, 2005.

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