

110TH CONGRESS
1ST SESSION

H. R. 3645

To implement recommendations of the President's Commission on Care for
America's Returning Wounded Warriors.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2007

Mr. SPACE (for himself, Ms. SUTTON, Ms. MATSUI, and Mr. RODRIGUEZ) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committees on Veterans' Affairs, Education and Labor, House Administration, and Oversight 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 implement recommendations of the President's Commission on Care for America's Returning Wounded Warriors.

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 "Healthier Heroes Act".

1 **SEC. 2. CLARIFICATION OF OBJECTIVES FOR AND COORDI-**
2 **NATION BETWEEN DOD AND VA PROGRAMS.**

3 (a) SINGLE, COMPREHENSIVE, STANDARDIZED MED-
4 ICAL EXAMINATION.—The Secretary of Defense and the
5 Secretary of Veterans Affairs shall develop a single, com-
6 prehensive, standardized medical examination for mem-
7 bers of the Armed Forces that, while administered by the
8 Department of Defense, will be—

9 (1) used by medical evaluation boards and
10 physical evaluation boards of the Department of De-
11 fense to determine the fitness of a member of the
12 Armed Forces to perform the duties of the member's
13 office, grade, rank, or rating; and

14 (2) used by the Department of Veterans Affairs
15 to establish the disability rating, compensation, and
16 benefits programs for the member if the member is
17 retired or separated because of physical disability.

18 (b) DOD ROLE LIMITED TO DETERMINING FITNESS
19 TO SERVE.—Section 1216 of title 10, United States Code,
20 is amended—

21 (1) in subsection (b)—

22 (A) by striking paragraph (2); and

23 (B) by redesignating paragraphs (3) and
24 (4) as paragraphs (2) and (3), respectively; and

25 (2) by adding at the end the following new sub-
26 section:

1 “(e) The determination under this chapter of the per-
2 centage of disability of a member of the armed forces at
3 the time of the member’s separation from active duty shall
4 be made by the Department of Veterans Affairs.”.

5 (c) SENSE OF CONGRESS.—It is the sense of Con-
6 gress that the use of a single, comprehensive, standardized
7 medical examination by both the Department of Defense
8 and the Department of Veterans Affairs and the clear dif-
9 ferentiation of the roles of the Department of Defense and
10 Department of Veterans Affairs disability programs will
11 eliminate duplicative processes as well as reduce inequities
12 for members of the Armed Forces.

13 **SEC. 3. AVAILABILITY OF POST-TRAUMATIC STRESS DIS-**
14 **ORDER CARE.**

15 Notwithstanding any other provision of law, the Sec-
16 retary of Veterans Affairs shall provide appropriate med-
17 ical care to any veteran of Operation Iraqi Freedom or
18 Operation Enduring Freedom who needs medical care for
19 post-traumatic stress disorder regardless of the length of
20 time the veteran has been separated from active duty serv-
21 ice in the armed forces.

1 **SEC. 4. EXTENDED BENEFITS UNDER TRICARE FOR PRI-**
2 **MARY CAREGIVERS OF MEMBERS OF THE**
3 **UNIFORMED SERVICES WHO INCUR A SERI-**
4 **OUS INJURY OR ILLNESS ON ACTIVE DUTY.**

5 (a) IN GENERAL.—Section 1079(d) of title 10,
6 United States Code, is amended—

7 (1) by redesignating paragraphs (2) and (3) as
8 paragraphs (3) and (4), respectively; and

9 (2) by inserting after paragraph (1) the fol-
10 lowing new paragraph (2):

11 “(2)(A) Subject to such terms, conditions, and excep-
12 tions as the Secretary of Defense considers appropriate,
13 the program of extended benefits for eligible dependents
14 under this subsection shall include extended benefits for
15 the primary caregivers of members of the uniformed serv-
16 ices who incur a serious injury or illness on active duty.

17 “(B) The Secretary of Defense shall prescribe in reg-
18 ulations the individuals who shall be treated as the pri-
19 mary caregivers of a member of the uniformed services
20 for purposes of this paragraph.

21 “(C) For purposes of this section, a serious injury
22 or illness, with respect to a member of the uniformed serv-
23 ices, is an injury or illness that may render the member
24 medically unfit to perform the duties of the member’s of-
25 fice, grade, rank, or rating and that renders a member
26 of the uniformed services dependant upon a caregiver.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) shall take 60 days after the date of the en-
3 actment of this Act.

4 **SEC. 5. FAMILY MEDICAL LEAVE ACT.**

5 (a) SERVICEMEMBER FAMILY LEAVE UNDER THE
6 FAMILY AND MEDICAL LEAVE ACT.—

7 (1) DEFINITIONS.—Section 101 of the Family
8 and Medical Leave Act of 1993 (29 U.S.C. 2611) is
9 amended by adding at the end the following:

10 “(14) ACTIVE DUTY.—The term ‘active duty’
11 means duty under a call or order to active duty
12 under a provision of law referred to in section
13 101(a)(13)(B) of title 10, United States Code.

14 “(15) COVERED SERVICEMEMBER.—The term
15 ‘covered servicemember’ means a member of the
16 Armed Forces, including a member of the National
17 Guard or a Reserve, who is undergoing medical
18 treatment, recuperation, or therapy, is otherwise in
19 medical hold or medical holdover status, or is other-
20 wise on the temporary disability retired list, for a se-
21 rious injury or illness.

22 “(16) MEDICAL HOLD OR MEDICAL HOLDOVER
23 STATUS.—The term ‘medical hold or medical hold-
24 over status’ means—

1 “(A) the status of a member of the Armed
2 Forces, including a member of the National
3 Guard or a Reserve, assigned or attached to a
4 military hospital for medical care; and

5 “(B) the status of a member of a reserve
6 component of the Armed Forces who is sepa-
7 rated, whether pre-deployment or post-deploy-
8 ment, from the member’s unit while in need of
9 health care based on a medical condition identi-
10 fied while the member is on active duty in the
11 Armed Forces.

12 “(17) NEXT OF KIN.—The term ‘next of kin’,
13 used with respect to an individual, means the near-
14 est blood relative of that individual.

15 “(18) SERIOUS INJURY OR ILLNESS.—The term
16 ‘serious injury or illness’, in the case of a member
17 of the Armed Forces, means an injury or illness in-
18 curred by the member in line of duty on active duty
19 in the Armed Forces that results in a serious phys-
20 ical disability, as defined in section 199.2 of title 32,
21 Code of Federal Regulations, or that renders the
22 member medically unfit to perform the duties of the
23 member’s office, grade, rank, or rating.”.

1 (2) ENTITLEMENT TO LEAVE.—Section 102(a)
2 of such Act (29 U.S.C. 2612(a)) is amended by add-
3 ing at the end the following:

4 “(3) SERVICEMEMBER FAMILY LEAVE.—Subject
5 to section 103, an eligible employee who is the
6 spouse, son, daughter, parent, or next of kin of a
7 covered servicemember shall be entitled to a total of
8 26 workweeks of leave during a 12-month period to
9 care for the servicemember. The leave described in
10 this paragraph shall only be available during a single
11 12-month period.

12 “(4) COMBINED LEAVE TOTAL.—During the
13 single 12-month period described in paragraph (3),
14 an eligible employee shall be entitled to a combined
15 total of 26 workweeks of leave under paragraphs (1)
16 and (3). Nothing in this paragraph shall be con-
17 strued to limit the availability of leave under para-
18 graph (1) during any other 12-month period.”.

19 (3) REQUIREMENTS RELATING TO LEAVE.—

20 (A) SCHEDULE.—Section 102(b) of such
21 Act (29 U.S.C. 2612(b)) is amended—

22 (i) in paragraph (1), in the second
23 sentence—

24 (I) by striking “section
25 103(b)(5)” and inserting “subsection

1 (b)(5) or (f) (as appropriate) of sec-
 2 tion 103”; and

3 (II) by inserting “or under sub-
 4 section (a)(3)” after “subsection
 5 (a)(1)”; and

6 (ii) in paragraph (2), by inserting “or
 7 under subsection (a)(3)” after “subsection
 8 (a)(1)”.

9 (B) SUBSTITUTION OF PAID LEAVE.—Sec-
 10 tion 102(d) of such Act (29 U.S.C. 2612(d)) is
 11 amended—

12 (i) in paragraph (1)—

13 (I) by inserting “(or 26 work-
 14 weeks in the case of leave provided
 15 under subsection (a)(3))” after “12
 16 workweeks” the first place it appears;
 17 and

18 (II) by inserting “(or 26 work-
 19 weeks, as appropriate)” after “12
 20 workweeks” the second place it ap-
 21 pears; and

22 (ii) in paragraph (2)(B), by adding at
 23 the end the following: “An eligible em-
 24 ployee may elect, or an employer may re-
 25 quire the employee, to substitute any of

1 the accrued paid vacation leave, personal
2 leave, family leave, or medical or sick leave
3 of the employee for leave provided under
4 subsection (a)(3) for any part of the 26-
5 week period of such leave under such sub-
6 section.”.

7 (C) NOTICE.—Section 102(e)(2) of such
8 Act (29 U.S.C. 2612(e)(2)) is amended by in-
9 serting “or under subsection (a)(3)” after “sub-
10 section (a)(1)”.

11 (D) SPOUSES EMPLOYED BY SAME EM-
12 PLOYER.—Section 102(f) of such Act (29
13 U.S.C. 2612(f)) is amended—

14 (i) by redesignating paragraphs (1)
15 and (2) as subparagraphs (A) and (B),
16 and aligning the margins of the subpara-
17 graphs with the margins of section
18 102(e)(2)(A);

19 (ii) by striking “In any” and inserting
20 the following:

21 “(1) IN GENERAL.—In any”; and

22 (iii) by adding at the end the fol-
23 lowing:

24 “(2) SERVICEMEMBER FAMILY LEAVE.—

1 “(A) IN GENERAL.—The aggregate num-
2 ber of workweeks of leave to which both that
3 husband and wife may be entitled under sub-
4 section (a) may be limited to 26 workweeks
5 during the single 12-month period described in
6 subsection (a)(3) if the leave is—

7 “(i) leave under subsection (a)(3); or

8 “(ii) a combination of leave under
9 subsection (a)(3) and leave described in
10 paragraph (1).

11 “(B) BOTH LIMITATIONS APPLICABLE.—If
12 the leave taken by the husband and wife in-
13 cludes leave described in paragraph (1), the
14 limitation in paragraph (1) shall apply to the
15 leave described in paragraph (1).”.

16 (4) CERTIFICATION.—Section 103 of such Act
17 (29 U.S.C. 2613) is amended by adding at the end
18 the following:

19 “(f) CERTIFICATION FOR SERVICEMEMBER FAMILY
20 LEAVE.—An employer may require that a request for
21 leave under section 102(a)(3) be supported by a certifi-
22 cation issued at such time and in such manner as the Sec-
23 retary may by regulation prescribe.”.

24 (5) FAILURE TO RETURN.—Section 104(c) of
25 such Act (29 U.S.C. 2614(c)) is amended—

1 (A) in paragraph (2)(B)(i), by inserting
2 “or under section 102(a)(3)” before the semi-
3 colon; and

4 (B) in paragraph (3)(A)—

5 (i) in clause (i), by striking “or” at
6 the end;

7 (ii) in clause (ii), by striking the pe-
8 riod and inserting “; or”; and

9 (iii) by adding at the end the fol-
10 lowing:

11 “(iii) a certification issued by the
12 health care provider of the servicemember
13 being cared for by the employee, in the
14 case of an employee unable to return to
15 work because of a condition specified in
16 section 102(a)(3).”.

17 (6) ENFORCEMENT.—Section 107 of such Act
18 (29 U.S.C. 2617) is amended, in subsection
19 (a)(1)(A)(i)(II), by inserting “(or 26 weeks, in a
20 case involving leave under section 102(a)(3))” after
21 “12 weeks”.

22 (7) INSTRUCTIONAL EMPLOYEES.—Section 108
23 of such Act (29 U.S.C. 2618) is amended, in sub-
24 sections (c)(1), (d)(2), and (d)(3), by inserting “or
25 under section 102(a)(3)” after “section 102(a)(1)”.

1 (b) SERVICEMEMBER FAMILY LEAVE FOR CIVIL
2 SERVICE EMPLOYEES.—

3 (1) DEFINITIONS.—Section 6381 of title 5,
4 United States Code, is amended—

5 (A) in paragraph (5), by striking “and” at
6 the end;

7 (B) in paragraph (6), by striking the pe-
8 riod and inserting “; and”; and

9 (C) by adding at the end the following:

10 “(7) the term ‘active duty’ means duty under a
11 call or order to active duty under a provision of law
12 referred to in section 101(a)(13)(B) of title 10,
13 United States Code;

14 “(8) the term ‘covered servicemember’ means a
15 member of the Armed Forces, including a member
16 of the National Guard or a Reserve, who is under-
17 going medical treatment, recuperation, or therapy, is
18 otherwise in medical hold or medical holdover status,
19 or is otherwise on the temporary disability retired
20 list, for a serious injury or illness;

21 “(9) the term ‘medical hold or medical holdover
22 status’ means—

23 “(A) the status of a member of the Armed
24 Forces, including a member of the National

1 Guard or a Reserve, assigned or attached to a
2 military hospital for medical care; and

3 “(B) the status of a member of a reserve
4 component of the Armed Forces who is sepa-
5 rated, whether pre-deployment or post-deploy-
6 ment, from the member’s unit while in need of
7 health care based on a medical condition identi-
8 fied while the member is on active duty in the
9 Armed Forces;

10 “(10) the term ‘next of kin’, used with respect
11 to an individual, means the nearest blood relative of
12 that individual; and

13 “(11) the term ‘serious injury or illness’, in the
14 case of a member of the Armed Forces, means an
15 injury or illness incurred by the member in line of
16 duty on active duty in the Armed Forces that results
17 in a serious physical disability, as defined in section
18 199.2 of title 32, Code of Federal Regulations, or
19 that renders the member medically unfit to perform
20 the duties of the member’s office, grade, rank, or
21 rating.”.

22 (2) ENTITLEMENT TO LEAVE.—Section 6382(a)
23 of such title is amended by adding at the end the
24 following:

1 “(3) Subject to section 6383, an employee who
2 is the spouse, son, daughter, parent, or next of kin
3 of a covered servicemember shall be entitled to a
4 total of 26 administrative workweeks of leave during
5 a 12-month period to care for the servicemember.
6 The leave described in this paragraph shall only be
7 available during a single 12-month period.

8 “(4) During the single 12-month period de-
9 scribed in paragraph (3), an employee shall be enti-
10 tled to a combined total of 26 administrative work-
11 weeks of leave under paragraphs (1) and (3). Noth-
12 ing in this paragraph shall be construed to limit the
13 availability of leave under paragraph (1) during any
14 other 12-month period.”.

15 (3) REQUIREMENTS RELATING TO LEAVE.—

16 (A) SCHEDULE.—Section 6382(b) of such
17 title is amended—

18 (i) in paragraph (1), in the second
19 sentence—

20 (I) by striking “section
21 6383(b)(5)” and inserting “subsection
22 (b)(5) or (f) (as appropriate) of sec-
23 tion 6383”; and

1 (II) by inserting “or under sub-
 2 section (a)(3)” after “subsection
 3 (a)(1)”; and
 4 (ii) in paragraph (2), by inserting “or
 5 under subsection (a)(3)” after “subsection
 6 (a)(1)”.

7 (B) SUBSTITUTION OF PAID LEAVE.—Sec-
 8 tion 6382(d) of such title is amended by adding
 9 at the end the following: “An employee may
 10 elect to substitute for leave under subsection
 11 (a)(3) any of the employee’s accrued or accu-
 12 mulated annual or sick leave under subchapter
 13 I for any part of the 26-week period of leave
 14 under such subsection.”.

15 (C) NOTICE.—Section 6382(e) of such title
 16 is amended by inserting “or under subsection
 17 (a)(3)” after “subsection (a)(1)”.

18 (4) CERTIFICATION.—Section 6383 of such title
 19 is amended by adding at the end the following:
 20 “(f) An employing agency may require that a request
 21 for leave under section 6382(a)(3) be supported by a cer-
 22 tification issued at such time and in such manner as the
 23 Office of Personnel Management may by regulation pre-
 24 scribe.”.

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