

110TH CONGRESS
1ST SESSION

S. 1064

To provide for the improvement of the physical evaluation processes applicable to members of the Armed Forces, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 29, 2007

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

A BILL

To provide for the improvement of the physical evaluation processes applicable to members of the Armed Forces, 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 “Restoring Disability
5 Benefits for Injured and Wounded Warriors Act of 2007”.

6 **SEC. 2. REVIEW AND ACTION ON CERTAIN DETERMINA-**
7 **TIONS OF THE PHYSICAL EVALUATION**
8 **BOARD.**

9 (a) PANEL FOR REVIEWS.—Not later than 90 days
10 after the date of the enactment of this Act, the Secretary

1 of Defense shall appoint, from among individuals in the
2 private sector who are qualified for such purpose, a panel
3 of individuals to conduct the reviews required by sub-
4 section (b).

5 (b) REVIEWS.—

6 (1) IN GENERAL.—The panel appointed under
7 subsection (a) shall—

8 (A) review—

9 (i) each case before the Physical Eval-
10 uation Board of the Department of De-
11 fense in which such board determined to
12 discharge, separate, or release a member of
13 the Armed Forces without assigning a rat-
14 ing of disability to the member; and

15 (ii) each case before the Physical
16 Evaluation Board in which a member of
17 the Armed Forces appealed the determina-
18 tion of such board regarding the rating of
19 disability assigned to the member;

20 (B) for each case so reviewed—

21 (i) determine whether or not a liaison
22 officer was assigned to the member of the
23 Armed Forces concerned for such case;
24 and

1 (ii) determine whether or not an at-
2 torney was assigned to the member of the
3 Armed Forces concerned for such case;
4 and

5 (C) for each case so reviewed, determine
6 whether or not the facts of the case warrant the
7 re-opening of the case for purposes of assigning
8 a rating of disability to the member of the
9 Armed Forces concerned, or increasing a rating
10 of disability previously assigned the member, as
11 applicable, for purposes of the receipt of dis-
12 ability benefits.

13 (2) COVERED CASES.—The review required by
14 paragraph (1) shall be performed for each case de-
15 scribed in that paragraph in which a final deter-
16 mination was made by a board referred to in that
17 paragraph during the period beginning on Sep-
18 tember 11, 2001, and ending on the date of the en-
19 actment of this Act.

20 (3) AVAILABILITY OF INFORMATION.—The Sec-
21 retary shall make available to the panel appointed
22 under subsection (a) such information as the panel
23 shall require in order to conduct the reviews re-
24 quired by paragraph (1), including the case files of
25 the Physical Evaluation Board.

1 (4) REPORTS.—Not later than 60 days after
2 the date of the appointment of the panel required by
3 subsection (a), and every 60 days thereafter until
4 the completion of the reviews required by paragraph
5 (1), the panel shall submit to the Secretary of De-
6 fense and the Secretary of the military department
7 concerned a report on each case reviewed under
8 paragraph (1) during the preceding 60 days, includ-
9 ing the results of each such review and the deter-
10 minations required with respect to such case under
11 subparagraphs (B) and (C) of paragraph (1).

12 (c) RE-EVALUATION OF CASES.—

13 (1) IN GENERAL.—The Secretary of the mili-
14 tary department concerned shall provide for a re-
15 evaluation by the Physical Evaluation Board of each
16 case covered by a report under subsection (b)(4) in
17 which the panel appointed under subsection (a) de-
18 termined, as specified in subsection (b)(1)(C), that
19 the fact of such case warrant the re-opening of such
20 case for purposes of assigning a rating of disability
21 to the member of the Armed Forces concerned, or
22 increasing a rating of disability previously assigned
23 the member, as applicable, for purposes of the re-
24 ceipt of disability benefits.

1 (2) PROHIBITION ON REDUCTION OF RATING OF
2 DISABILITY.—A rating of disability subject to re-
3 evaluation under paragraph (1) may not be reduced
4 as a result of the re-evaluation under that para-
5 graph.

6 (3) GUIDELINES AND PROCEDURES.—The re-
7 evaluation of cases under paragraph (1) shall be
8 governed by such guidelines, and follow such proce-
9 dures, as the Secretary of Defense shall prescribe for
10 purposes of that paragraph. Such guidelines shall
11 prohibit a reduction of rating of disability pursuant
12 to a re-evaluation under that paragraph. Such guide-
13 lines and procedures shall, to the extent practicable,
14 apply uniformly across the military departments.

15 (4) DEADLINE.—The re-evaluation of a case
16 under paragraph (1) shall be completed not later
17 than 180 days after the date of the receipt of a re-
18 port on such case under subsection (b)(4).

19 (d) CORRECTION OF RECORDS.—If a result of the re-
20 evaluation of a case under subsection (c), the Physical
21 Evaluation Board determines to assign a rating of dis-
22 ability to a member of the Armed Forces, or increase the
23 rating previously assigned the member, as applicable, the
24 Secretary of the military department concerned shall cor-
25 rect the record of the member, with the effective date of

1 such correction to be the date of the original determina-
 2 tion under the case by the Physical Evaluation Board re-
 3 garding the disability of the member.

4 **SEC. 3. REVIEW AND ACTION ON DETERMINATIONS ON**
 5 **BENEFITS UNDER TRAUMATIC**
 6 **SERVICEMEMBERS GROUP LIFE INSURANCE.**

7 (a) PANEL.—Not later than 90 days after the date
 8 of the enactment of this Act, the Secretary of Defense
 9 shall appoint, from among individuals in the private sector
 10 who are qualified for such purpose, a panel of individuals
 11 to carry out the actions required by subsection (b).

12 (b) REVIEW AND ASSESSMENT OF DETERMINA-
 13 TIONS.—

14 (1) IN GENERAL.—The panel appointed under
 15 subsection (a) shall—

16 (A) review—

17 (i) each case in which a member of
 18 the Armed Forces was denied traumatic
 19 injury protection under section 1980A of
 20 title 38, United States Code, for a quali-
 21 fying loss claimed by the member; and

22 (ii) each case in which a member of
 23 the Armed Forces appealed a determina-
 24 tion of the amount of traumatic injury pro-
 25 tection awarded the member under that

1 section for a qualifying loss claimed by the
2 member; and

3 (B) for each case so reviewed, determine
4 whether or not the facts of the case warrant the
5 re-opening of the case for purposes of paying
6 traumatic injury protection to the member of
7 the Armed Forces concerned, or increasing the
8 amount of traumatic injury protection pre-
9 viously paid the member, as applicable, under
10 that section for a qualifying loss claimed by the
11 member.

12 (2) COVERED CASES.—The review required by
13 paragraph (1) shall be performed for each case de-
14 scribed in that paragraph in which a final deter-
15 mination on a claim for a qualifying loss under sec-
16 tion 1980A of title 38, United States Code, was
17 made during the period beginning on May 11, 2005,
18 and ending on the date of the enactment of this Act.

19 (3) AVAILABILITY OF INFORMATION.—The Sec-
20 retary of Defense shall make available to the panel
21 appointed under subsection (a) such information as
22 the panel shall require in order to conduct the re-
23 views required by paragraph (1).

24 (4) REPORTS.—Not later than 60 days after
25 the date of the enactment of this Act, and every 60

1 days thereafter until the completion of the reviews
2 required by paragraph (1), the panel appointed
3 under subsection (a) shall submit to the Secretary of
4 Defense a report on each case reviewed under para-
5 graph (1) during the preceding 60 days, including
6 the results of each such review and the determina-
7 tion required with respect to such case under para-
8 graph (1)(B).

9 (c) RE-EVALUATION OF CASES.—

10 (1) IN GENERAL.—The Secretary of Defense
11 shall re-evaluate each case covered by a report under
12 subsection (b)(4) in which the panel appointed under
13 subsection (a) determines, as specified in subsection
14 (b)(1)(B), that the facts of such case warrant the
15 re-opening of such case for purposes of paying trau-
16 matic injury protection for the member of the Armed
17 Forces concerned, or increasing the amount of trau-
18 matic injury protection previously paid the member,
19 as applicable, under section 1980A of title 38,
20 United States Code, for a qualifying loss claimed by
21 the member.

22 (2) PROHIBITION ON REDUCTION OF INSUR-
23 ANCE AWARD.—The amount of insurance awarded
24 under section 1980A of title 38, United States Code,
25 in any case subject to re-evaluation under paragraph

1 (1) may not be reduced as a result of the re-evalua-
2 tion under that paragraph.

3 (3) GUIDELINES AND PROCEDURES.—The re-
4 evaluation of cases under paragraph (1) shall be
5 governed by such guidelines, and follow such proce-
6 dures, as the Secretary of Defense shall prescribe for
7 purposes of that paragraph. Such guidelines and
8 procedures shall, to the extent practicable, apply
9 uniformly across the military departments.

10 (4) DEADLINE.—The reconsideration of a case
11 under paragraph (1) shall be completed not later
12 than 180 days after the date of the receipt of a re-
13 port on such case under subsection (b)(4).

14 (d) CORRECTION OF RECORDS.—If a result of the re-
15 consideration of a case under subsection (c), the Secretary
16 of Defense determines to pay traumatic injury protection
17 to a member of the Armed Forces, or increase the amount
18 of traumatic injury protection previously paid the member,
19 as applicable, under section 1980A of title 38, United
20 States Code, for a qualifying loss claimed by the member,
21 the Secretary shall correct the record of the member, with
22 the effective date of such correction to be the date of the
23 original determination under the case on the qualifying
24 loss claimed by the member.

1 **SEC. 4. ADEQUACY OF ASSIGNMENT OF JUDGE ADVOCATES**
2 **TO PHYSICAL EVALUATION BOARD CASES.**

3 (a) REPORT.—Not later than 60 days after the date
4 of the enactment of this Act, the Secretary of Defense
5 shall submit to Congress a report that includes the fol-
6 lowing:

7 (1) An assessment whether or not the number
8 of judge advocates assigned to cases before the
9 Physical Evaluation Board is adequate to ensure
10 that—

11 (A) the judge advocates assigned such
12 cases bear a reasonable caseload of such cases;
13 and

14 (B) the judge advocates assigned such
15 cases contribute to the efficient and timely dis-
16 position of such cases by the board.

17 (2) A recommendation of the number judge ad-
18 vocates to be assigned to such cases in order to best
19 achieve each of the objectives set forth under para-
20 graph (1).

21 (b) JUDGE ADVOCATE DEFINED.—In this section,
22 the term “judge advocate” has the meaning given that
23 term in section 801 of title 10, United States Code (article
24 1 of the Uniform Code of Military Justice).

1 **SEC. 5. COMPTROLLER GENERAL REPORTS ON DISABILITY**
2 **CLAIMS PROCESSES.**

3 (a) REPORT ON EFFORTS TO ADDRESS CERTAIN DE-
4 FICIENCIES IN DISABILITY EVALUATION SYSTEMS OF THE
5 MILITARY DEPARTMENTS.—

6 (1) REPORT REQUIRED.—Not later than 180
7 days after the date of the enactment of this Act, the
8 Comptroller General of the United States shall sub-
9 mit to Congress a report setting forth the assess-
10 ment of the Comptroller of the efforts of the Depart-
11 ment of Defense to address the deficiencies identi-
12 fied in the report of the Comptroller General entitled
13 “Military Disability System: Improved Oversight
14 Needed to Ensure Consistent and Timely Outcomes
15 for Reserve and Active Duty Service Members”
16 (GAO–06–362; March 2006).

17 (2) ELEMENTS.—The report required by para-
18 graph (1) shall address the efforts of the Depart-
19 ment regarding the following:

20 (A) Harmonizing the procedures and prac-
21 tices of the military departments under their
22 disability evaluation systems.

23 (B) Monitoring the compliance of such dis-
24 ability evaluation systems with the policies and
25 guidelines applicable to such systems.

1 (C) Improving oversight of such disability
2 systems by the Disability Advisory Council, in-
3 cluding—

4 (i) whether the council has reviewed
5 the standardized disability rating system to
6 classify the severity of medical impair-
7 ments; and

8 (ii) whether the council has proposed
9 improvements to or recertification of such
10 systems.

11 (D) Improving the collection and proc-
12 essing of information under such systems.

13 (E) Improving data entry under such sys-
14 tems, including decreasing reported error rates
15 and enhancing training programs for Army
16 data processors.

17 (F) Improving oversight of the training for
18 staff of such systems.

19 (G) Improving the availability of and ac-
20 cess to liaison officers to the Physical Evalua-
21 tion Board of each military department.

22 (H) Improving utilization of line-of-duty
23 determinations for members of the Armed
24 Forces, including members of the regular

1 Armed Forces and members of the National
2 Guard and Reserve.

3 (I) Improving the quality of care and serv-
4 ices for wounded or injured members of the Na-
5 tional Guard and Reserve who are in medical
6 holdover status and receiving medical treatment
7 away from their homes and families.

8 (J) Improving quality assurance mecha-
9 nisms to ensure that disability determination
10 under such systems are consistent.

11 (b) REPORT ON ADEQUACY OF SCHEDULE FOR RAT-
12 ING DISABILITIES OF DEPARTMENT OF VETERANS AF-
13 FAIRS.—Not later than 180 days after the date of the en-
14 actment of this Act, the Comptroller General of the United
15 States shall submit to Congress a report setting forth the
16 assessment of the Comptroller General of the adequacy of
17 the schedule for rating disabilities of the Department of
18 Veterans Affairs in recognizing, and providing for appro-
19 priate compensation for, disabilities incurred or aggra-
20 vated in the Global War on Terror, including the following:

- 21 (1) Traumatic brain injuries.
- 22 (2) Amputations.
- 23 (3) Spinal injuries.
- 24 (4) Post-traumatic stress disorder (PTSD).
- 25 (5) Hearing loss.

1 (c) REPORT ON STANDARDS AND PROCEDURES OF
2 PHYSICAL EVALUATION BOARD.—

3 (1) REPORT REQUIRED.—Not later than 180
4 days after the date of the enactment of this Act, the
5 Comptroller General of the United States shall sub-
6 mit to Congress a report setting forth the review
7 and assessment of the Comptroller General of the
8 standards and procedures of the Physical Evaluation
9 Board of the Department of Defense.

10 (2) ELEMENTS.—The report required by para-
11 graph (1) shall include the following:

12 (A) A description and assessment of the
13 standards and procedures of the Physical Eval-
14 uation Board of the Department of Defense, in-
15 cluding standards and procedures relating to—

16 (i) the qualification and selection of
17 members of the board;

18 (ii) the timeliness of proceedings;

19 (iii) witness participation in pro-
20 ceedings;

21 (iv) the participation of liaison officers
22 in proceedings;

23 (v) the availability of legal assistance
24 for members of the Armed Forces seeking
25 to appeal determinations of the board; and

1 (vi) other appropriate board matters.

2 (B) Recommendations for such improve-
3 ments to such standards and procedures as the
4 Comptroller General considers appropriate to
5 enhance and improve the activities of the Phys-
6 ical Evaluation Board.

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