

110TH CONGRESS
1ST SESSION

S. 1349

To ensure that the Department of Defense and the Department of Veterans Affairs provide to members of the Armed Forces and veterans with traumatic brain injury the services that best meet their individual needs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 9, 2007

Mr. DURBIN (for himself, Mr. WARNER, Mrs. MURRAY, Mr. OBAMA, Mr. GRAHAM, Mr. WEBB, and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To ensure that the Department of Defense and the Department of Veterans Affairs provide to members of the Armed Forces and veterans with traumatic brain injury the services that best meet their individual needs, 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 “Military and Veterans
5 Traumatic Brain Injury Treatment Act”.

1 **SEC. 2. PROGRAM OF SERVICES FOR TRAUMATIC BRAIN IN-**
2 **JURY FOR MEMBERS OF THE ARMED FORCES**
3 **AND VETERANS.**

4 (a) TRAUMATIC BRAIN INJURY PROGRAM RE-
5 QUIRED.—The Secretary of Defense and the Secretary of
6 Veterans Affairs shall jointly establish a program meeting
7 the requirements of subsections (c) through (f) under
8 which each member of the Armed Forces or veteran who
9 incurs a traumatic brain injury during service in the
10 Armed Forces—

11 (1) is enrolled in the program; and

12 (2) receives, under the program, treatment and
13 rehabilitation meeting the standard of care specified
14 in subsection (b).

15 (b) STANDARD OF CARE.—The standard of care for
16 treatment and rehabilitation specified in this subsection
17 is that each individual who is a member of the Armed
18 Forces or veteran who qualifies for care under the pro-
19 gram established under subsection (a) shall—

20 (1) be provided the highest quality of care pos-
21 sible based on the medical judgment of qualified
22 medical professionals in facilities that most appro-
23 priately meet the specific needs of the individual;
24 and

25 (2) be rehabilitated to the fullest extent possible
26 using the most up-to-date medical technology, med-

1 ical rehabilitation practices, and medical expertise
2 available.

3 (c) REFERRALS.—

4 (1) IN GENERAL.—If a member of the Armed
5 Forces or a veteran participating in the program es-
6 tablished under subsection (a) determines that care
7 provided to such participant by the Department of
8 Defense or the Department of Veterans Affairs, as
9 the case may be, does not meet the standard of care
10 specified in subsection (b), the Secretary of Defense
11 or the Secretary of Veterans Affairs, as the case
12 may be, shall, upon request of the participant, pro-
13 vide to such participant a referral to a public or pri-
14 vate provider of medical or rehabilitative care for
15 consultation regarding the care that would meet the
16 standard of care specified in subsection (b).

17 (2) LIMITATION ON REFERRALS.—The Depart-
18 ment of Defense shall bear the cost of referrals
19 under paragraph (1), except that the Secretary of
20 Defense shall not be required to pay for more than
21 one referral for each participant in any consecutive
22 three month period.

23 (d) SCREENING FOR TRAUMATIC BRAIN INJURY.—

24 (1) PROTOCOLS FOR DETECTION AND DIAG-
25 NOSIS OF TRAUMATIC BRAIN INJURY.—

1 (A) IN GENERAL.—The Secretary of De-
2 fense shall, in cooperation with the Secretary of
3 Veterans Affairs, establish protocols for the de-
4 tection and diagnosis of traumatic brain injury,
5 including the use of various types of screening
6 tools as appropriate.

7 (B) FREQUENCY.—The protocol required
8 by subparagraph (A) shall provide that exami-
9 nations shall be administered at least once to
10 each member of the Armed Forces—

11 (i) before deployment to a combat the-
12 ater; and

13 (ii) during the period beginning on the
14 30th day after the member returns from
15 such deployment and ending on the 90th
16 day after the date on which such member
17 returns to the member's permanent duty
18 station after such deployment.

19 (C) PROTOCOL FOR DETERMINATION OF
20 BASELINE COGNITIVE FUNCTIONING.—The pro-
21 tocols required by subparagraph (A) shall in-
22 clude a protocol—

23 (i) for the assessment and documenta-
24 tion of the cognitive functioning of each
25 member of the Armed Forces before each

1 such member is deployed in a combat the-
2 ater, in order to facilitate the detection
3 and diagnosis of traumatic brain injury of
4 such member upon return from such de-
5 ployment; and

6 (ii) for the comparison of the cognitive
7 functioning determined under clause (i)
8 with the cognitive functioning of the mem-
9 ber upon return from deployment.

10 (D) ADMINISTRATION OF COMPUTER-
11 BASED EXAMINATIONS.—The protocol required
12 by subparagraph (C) shall include the adminis-
13 tration of computer-based examinations to
14 members of the Armed Forces.

15 (2) INCIDENTAL DETECTION.—If, while deliv-
16 ering health care services to a member of the Armed
17 Forces or a veteran who is not a participant in the
18 program established under subsection (a), the Sec-
19 retary of Defense or the Secretary of Veterans Af-
20 fairs, as the case may be, discovers that such mem-
21 ber or veteran may have incurred a service-con-
22 nected traumatic brain injury, the Secretary con-
23 cerned shall test such member or veteran for trau-
24 matic brain injury.

1 (3) REFERRALS.—If the Secretary of Defense
2 or the Secretary of Veterans Affairs receives a refer-
3 ral for the testing of a member of the Armed Forces
4 or a veteran for traumatic brain injury, the Sec-
5 retary concerned shall test such member or veteran
6 for traumatic brain injury expeditiously.

7 (4) ENROLLMENT.—If a member of the Armed
8 Forces or a veteran is diagnosed under this sub-
9 section with a traumatic brain injury that was in-
10 curred during service in the Armed Forces, such
11 member or veteran shall be enrolled in the program
12 required by subsection (a).

13 (e) OUTREACH.—

14 (1) OUTREACH TO MEMBERS OF THE ARMED
15 FORCES AND VETERANS.—The Secretary of Defense
16 and the Secretary of Veterans Affairs shall conduct
17 a program of outreach to members of the Armed
18 Forces and veterans to inform such members and
19 veterans of—

20 (A) the program required by subsection
21 (a);

22 (B) the availability of screening for the di-
23 agnosis of traumatic brain injury under sub-
24 section (d);

1 (C) the consequences, with regard to the
 2 treatment and care of traumatic brain injury, of
 3 separation, discharge, and retirement from the
 4 Armed Forces; and

5 (D) the rights of such members or vet-
 6 erans described in subsection (f).

7 (2) JOINT MANUAL OF BENEFITS.—As part of
 8 the program of outreach under paragraph (1), the
 9 Secretary of Defense and the Secretary of Veterans
 10 Affairs shall annually and jointly publish and dis-
 11 tribute a manual explaining the benefits available to
 12 participants in the program required by subsection
 13 (a) and their families.

14 (f) RIGHTS OF MEMBERS OF THE ARMED FORCES
 15 AND VETERANS WITH TRAUMATIC BRAIN INJURY.—The
 16 Secretary of Defense and the Secretary of Veterans Af-
 17 fairs shall inform members of the Armed Forces and vet-
 18 erans with traumatic brain injury and their families of
 19 their rights with respect to the following:

20 (1) The receipt of medical care from the De-
 21 partment of Defense and the Department of Vet-
 22 erans Affairs.

23 (2) The options available to such members and
 24 veterans for treatment of traumatic brain injury.

1 (3) The options available to such members and
2 veterans for rehabilitation.

3 (4) Referrals under subsection (c)(1).

4 (5) The right to any administrative or judicial
5 appeal of any agency decision with respect to the
6 program established under subsection (a).

7 (6) Reviews of decisions under section 4.

8 (g) COORDINATION OF CASE MANAGEMENT AND
9 HEALTH CARE SERVICES FOR PROGRAM PARTICI-
10 PANTS.—

11 (1) LEAD CASE MANAGERS.—The Secretary of
12 Defense and the Secretary of Veterans Affairs shall
13 assign a qualified lead case manager to each member
14 of the Armed Forces or veteran, as the case may be,
15 that participates in the program required by sub-
16 section (a). Each lead case manager shall, with re-
17 spect to a participant in the program under sub-
18 section (a) to whom the lead case manager has been
19 assigned—

20 (A) coordinate the work of any other case
21 managers associated with such participant;

22 (B) help the participant and the family of
23 such participant manage the stress associated
24 with receiving treatment and rehabilitative serv-
25 ices for traumatic brain injury;

1 (C) present the participant with options
2 for the receipt of medical and rehabilitative
3 care, including options for such care outside the
4 Department of Defense and the Department of
5 Veterans Affairs, that meet the standard of
6 care specified in subsection (b);

7 (D) help the participant find and receive
8 the care, including care from outside the De-
9 partment of Defense and the Department of
10 Veterans Affairs, to which the participant is en-
11 titled under subsection (a); and

12 (E) ensure that providers of care to par-
13 ticipants in the program required by subsection
14 (a) provide consistent guidance to such partici-
15 pants.

16 (2) PRIMARY CARE PHYSICIANS.—The Sec-
17 retary of Defense and the Secretary of Veterans Af-
18 fairs shall assign a lead primary care physician to
19 each member of the Armed Forces or veteran, as the
20 case may be, who participates in the program re-
21 quired by subsection (a). Such lead primary care
22 physician shall coordinate and oversee the care pro-
23 vided to the participant, including all treatment, re-
24 habilitation, and medications.

1 (3) REPORT.—Not later than 6 months after
2 the date of the enactment of this Act, the Secretary
3 of Defense and the Secretary of Veterans Affairs
4 shall report to Congress on the steps taken to co-
5 ordinate care, as required by this subsection, along
6 with recommendations, if any, for legislation to im-
7 prove such coordination.

8 (h) RESOURCES.—

9 (1) FACILITIES.—The Secretary of Defense and
10 the Secretary of Veterans Affairs may provide treat-
11 ment and rehabilitation in accordance with sub-
12 section (a) in any of the facilities as follows:

13 (A) Facilities of the Department of De-
14 fense.

15 (B) Facilities of the Department of Vet-
16 erans Affairs.

17 (C) Public or private medical facilities ac-
18 credited or otherwise qualified to provide treat-
19 ment and rehabilitation.

20 (2) ACCESS TO EQUIPMENT.—The Secretary of
21 Defense and the Secretary of Veterans Affairs shall
22 ensure, by procurement, contract, or agreement, that
23 the program established under subsection (a) has ac-
24 cess to all specialized programs, services, equipment,
25 and medical expertise required to ensure that each

1 participant receives the standard of care specified in
2 subsection (b).

3 (3) COOPERATIVE AGREEMENTS, CONTRACTS,
4 OR PARTNERSHIPS WITH PRIVATE AND PUBLIC MED-
5 ICAL CENTERS.—The Secretary of Defense and the
6 Secretary of Veterans Affairs shall, separately or
7 jointly, enter into cooperative agreements, contracts,
8 or partnerships with private or public medical cen-
9 ters with expertise in the treatment or rehabilitation
10 of individuals with traumatic brain injury to provide
11 consultation, treatment, or rehabilitation to members
12 of the Armed Forces or veterans as required by sub-
13 section (a).

14 (4) TRAINING PROGRAM.—The Secretary of De-
15 fense and the Secretary of Veterans Affairs shall,
16 separately or jointly, provide grants to, or enter into
17 contracts or agreements with, private or public med-
18 ical centers with expertise in the treatment or reha-
19 bilitation of individuals with traumatic brain injury
20 to provide training, education, or other assistance to
21 personnel of the Department of Defense and the De-
22 partment of Veterans Affairs to ensure that such
23 personnel are consistently using the most up-to-date
24 and best practices and procedures for the screening,
25 treatment, and rehabilitation of members of the

1 Armed Forces and veterans with traumatic brain in-
2 jury.

3 (5) OVERLAP OF BENEFITS.—

4 (A) IN GENERAL.—During the 24-month
5 period beginning on the date that a member of
6 the Armed Forces or a veteran is enrolled in
7 the program required by subsection (a), the
8 member or veteran shall be entitled to all of the
9 benefits otherwise available to a veteran (in the
10 case of a member) or member (in the case of
11 a veteran), including participation in the
12 TRICARE program under chapter 55 of title
13 10, United States Code, and care provided in a
14 facility of the Department of Defense, the De-
15 partment of Veterans Affairs, or other public or
16 private facility, regardless of the active duty
17 status of such member or veteran.

18 (B) ALLOCATION OF COSTS.—Costs associ-
19 ated with the provision of care under subpara-
20 graph (A) shall be borne by the Department of
21 Defense.

1 **SEC. 3. FACILITATION OF CONTINUITY OF CARE FROM DE-**
2 **PARTMENT OF DEFENSE TO DEPARTMENT OF**
3 **VETERANS AFFAIRS.**

4 The Secretary of Defense and the Secretary of Vet-
5 erans Affairs shall establish protocols to ensure that mem-
6 bers of the Armed Forces receive, with regard to health
7 care benefits and services from the Department of Vet-
8 erans Affairs and otherwise, a continuity of care and as-
9 sistance during and after the transition from military serv-
10 ice to civilian life, including protocols for the following:

11 (1) The expeditious transfer of medical records
12 from the Department of Defense to the Department
13 of Veterans Affairs.

14 (2) Continuity of health care services, treat-
15 ment, and coverage for members of the Armed
16 Forces who are transitioning to civilian life, with
17 particular emphasis on providing continued health
18 care to participants in the program required by sec-
19 tion 2.

20 (3) The development of a specific, individualized
21 transition plan for each member, prior to discharge
22 or release from the Armed Forces, outlining the
23 member's seamless continuity of care.

1 **SEC. 4. REVIEW OF CERTAIN DECISIONS OF THE DEPART-**
2 **MENT OF DEFENSE AND THE DEPARTMENT**
3 **OF VETERANS AFFAIRS.**

4 (a) REVIEW OF OTHER THAN HONORABLE DIS-
5 CHARGE STATUS FOR FORMER MEMBERS OF THE ARMED
6 FORCES WITH TRAUMATIC BRAIN INJURY.—

7 (1) REVIEW REQUIRED.—The Secretary of De-
8 fense shall, upon the request of any former member
9 of the Armed Forces who served in the Armed
10 Forces after October 6, 2001, and has been dis-
11 charged from the Armed Forces under other than
12 honorable conditions, conduct a review (including a
13 medical evaluation) to determine whether a trau-
14 matic brain injury was a cause of the actions of the
15 member that precipitated the discharge under other
16 than honorable conditions. Such request may also be
17 made by an authorized representative of the mem-
18 ber.

19 (2) RECONSIDERATION.—If the Secretary of
20 Defense determines under this subsection that the
21 traumatic brain injury of a member was a cause of
22 the actions of the member that precipitated the dis-
23 charge under other than honorable conditions, the
24 Secretary shall reconsider the discharge and redesign-
25 nate the status of such discharge if such action is
26 warranted.

1 (b) REVIEW OF DECISIONS OF SECRETARY OF VET-
 2 ERANS AFFAIRS AFFECTING VETERANS WITH TRAU-
 3 MATIC BRAIN INJURY.—Upon the request of any veteran
 4 diagnosed with a traumatic brain injury, the Secretary of
 5 Veterans Affairs shall review and adjust as the Secretary
 6 considers appropriate, the disability rating of such vet-
 7 eran.

8 **SEC. 5. TRAUMATIC BRAIN INJURY RESEARCH.**

9 (a) RESEARCH REQUIRED OF DEPARTMENT OF DE-
 10 FENSE.—The Secretary of Defense shall conduct re-
 11 search—

12 (1) to improve the screening, diagnosis, and
 13 treatment of traumatic brain injury;

14 (2) to improve rehabilitation of members of the
 15 Armed Forces with traumatic brain injury;

16 (3) to improve best practices for the activities
 17 described in paragraphs (1) and (2); and

18 (4) to identify the mechanisms of brain injury
 19 and ways to prevent or ameliorate secondary effects
 20 of brain injuries.

21 (b) RESEARCH REQUIRED OF DEPARTMENT OF VET-
 22 ERANS AFFAIRS.—Section 7303 of title 38, United States
 23 Code, is amended—

1 (1) in subsection (a)(2), by inserting “trau-
2 matic brain injury research,” after “mental illness
3 research,”; and

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

6 “(e) Traumatic brain injury research shall include re-
7 search—

8 “(1) to improve the screening, diagnosis, and
9 treatment of traumatic brain injury;

10 “(2) to improve rehabilitation of veterans with
11 traumatic brain injury;

12 “(3) to improve best practices for the activities
13 described in paragraphs (1) and (2); and

14 “(4) to identify the mechanisms of brain injury
15 and ways to prevent or ameliorate secondary effects
16 of brain injuries.”.

17 (c) GRANTS OR COOPERATIVE AGREEMENTS.—In
18 conducting the research required by subsection (a) or in
19 accordance with section 7303(e) of title 38, United States
20 Code, the Secretary of Defense and the Secretary of Vet-
21 erans Affairs may provide grants to, or enter into coopera-
22 tive agreements with, private or public medical centers
23 with expertise in research on traumatic brain injury, in-
24 cluding the treatment or rehabilitation of individuals with
25 traumatic brain injury.

1 (d) AUTHORIZATION OF APPROPRIATIONS.—There
 2 are authorized to be appropriated—

3 (1) to the Secretary of Defense, \$20,000,000 to
 4 carry out the provisions of subsection (a); and

5 (2) to the Secretary of Veterans Affairs,
 6 \$20,000,00 to carry out the amendments made by
 7 subsection (b).

8 **SEC. 6. REPORT.**

9 Not later than December 15 of each year, the Sec-
 10 retary of Defense shall, in conjunction with the Secretary
 11 of Veterans Affairs, submit to Congress a report that con-
 12 tains, with respect to the fiscal year ending in the year
 13 such report is submitted, the following:

14 (1) Descriptions of the activities, accomplish-
 15 ments, and limitations of the program on traumatic
 16 brain injury established under section 2.

17 (2) Recommendations of the Secretary of De-
 18 fense and the Secretary of Veterans Affairs, if any,
 19 for improving the program established under section
 20 2.

21 (3) Information on the following:

22 (A) The number of members of the Armed
 23 Forces and veterans tested for traumatic brain
 24 injury by the Department of Defense and the

1 Department of Veterans Affairs under section
2 2(d).

3 (B) The number of members of the Armed
4 Forces and veterans diagnosed with a traumatic
5 brain injury.

6 (C) The number of members of the Armed
7 Forces and veterans enrolled in the program on
8 traumatic brain injury established under section
9 2.

10 (D) The types of treatment and rehabilita-
11 tion provided as part of the program estab-
12 lished under section 2.

13 (E) The types of facilities in which services
14 were provided under section 2 and how such fa-
15 cilities were chosen to meet the individual needs
16 of individual patients.

17 (F) The mechanisms used by the Depart-
18 ment of Defense and the Department of Vet-
19 erans Affairs to ensure continuity of care for
20 members of the Armed Forces as they transi-
21 tion from receipt of health care services from
22 the Department of Defense to the receipt of
23 such services from the Department of Veterans
24 Affairs.

1 (G) The number and nature of any cooper-
2 ative agreements engaged in under section 2(h).

3 (H) The outreach activities carried out
4 under subsections (e) and (f) of section 2.

5 (4) A description of the expenditures associated
6 with the outreach, screening, diagnosis, treatment,
7 rehabilitation, and other services provided to mem-
8 bers of the Armed Forces and veterans under sec-
9 tions 2 and 3.

10 **SEC. 7. DEFINITION OF TRAUMATIC BRAIN INJURY.**

11 In this Act, the term “traumatic brain injury” means
12 an acquired injury to the brain. Such term does not in-
13 clude brain dysfunction caused by congenital or degenera-
14 tive disorders, nor birth trauma, but may include brain
15 injuries caused by anoxia due to trauma. The Secretary
16 of Defense and the Secretary of Veterans Affairs may
17 jointly revise the definition of such term as the Secretaries
18 determine necessary, after consultation with the following:

19 (1) The Secretary of Health and Human Serv-
20 ices.

21 (2) Representatives of any organization recog-
22 nized by the Secretary of Veterans Affairs for the
23 representation of veterans under section 5902 of
24 title 38, United States Code.

1 (3) Such public or nonprofit private entities
2 that the Secretary of Defense or the Secretary of
3 Veterans Affairs considers appropriate.

○