

111TH CONGRESS  
1ST SESSION

# S. 543

To require a pilot program on training, certification, and support for family caregivers of seriously disabled veterans and members of the Armed Forces to provide caregiver services to such veterans and members, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 6, 2009

Mr. DURBIN (for himself, Mrs. HUTCHISON, Mr. BEGICH, and Mr. UDALL of New Mexico) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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## A BILL

To require a pilot program on training, certification, and support for family caregivers of seriously disabled veterans and members of the Armed Forces to provide caregiver services to such veterans and members, 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 “Veteran and Service-  
5   member Caregiver Support Act of 2009”.

### 6   **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

1           (1) Since September 11, 2001, at least 6,800  
2 veterans have been injured and are living with dis-  
3 abilities severe enough to require in-home type care.

4           (2) Even with their disability benefits, the ma-  
5 jority of seriously wounded veterans and their fami-  
6 lies are not in a strong financial position.

7           (3) In testimony before Congress in 2007,  
8 Donna Shalala, cochair of the Dole-Shalala Commis-  
9 sion, stated that “families are unprepared to provide  
10 24/7 care. Those that try, wear out quickly”.

11          (4) The best quality private rehabilitation facili-  
12 ties have expertise in training family members to  
13 provide appropriate care.

14          (5) Current in-home care programs have limited  
15 availability and are severely underutilized. Patients  
16 who obtain in-home care from such programs receive  
17 only about  $\frac{2}{3}$  of the hours of care to which they are  
18 entitled.

19 **SEC. 3. PILOT PROGRAM ON THE TRAINING, CERTIFI-**  
20 **CATION, AND SUPPORT OF FAMILY CARE-**  
21 **GIVERS IN PROVISION OF CAREGIVER SERV-**  
22 **ICES TO CERTAIN DISABLED VETERANS AND**  
23 **MEMBERS OF THE ARMED FORCES.**

24          (a) IN GENERAL.—The Secretary of Veterans Affairs  
25 shall, in collaboration with the Secretary of Defense, carry

1 out a pilot program to assess the feasibility and advis-  
2 ability of providing training, certification, and support for  
3 eligible family caregivers of eligible veterans and members  
4 of the Armed Forces to provide caregiver services to such  
5 veterans and members.

6 (b) DURATION OF PROGRAM.—The Secretary of Vet-  
7 erans Affairs shall commence the pilot program not later  
8 than 180 days after the date of the enactment of this Act  
9 and shall carry out the pilot program during the two-year  
10 period beginning on the date of such commencement.

11 (c) LOCATIONS.—

12 (1) IN GENERAL.—The pilot program shall be  
13 carried out at not fewer than 6 facilities of the De-  
14 partment of Veterans Affairs or the Department of  
15 Defense, or other appropriate entity, selected by the  
16 Secretary of Veterans Affairs for purposes of the  
17 pilot program. Of the facilities so selected—

18 (A) at least one shall be a private facility  
19 with expertise in providing rehabilitative care;  
20 and

21 (B) at least one shall be a Department of  
22 Veterans Affairs Medical Center in a rural area  
23 that serves eligible veterans.

24 (2) EMPHASIS ON POLYTRAUMA CENTERS.—In  
25 selecting locations for the pilot program at facilities

1 of the Department of Veterans Affairs, the Secretary  
2 shall give special emphasis to the polytrauma centers  
3 of the Department designated as Tier I polytrauma  
4 centers.

5 (3) PRIVATE FACILITIES.—The Secretary may  
6 not select a private facility as a location for the pilot  
7 program unless the facility is a licensed inpatient re-  
8 habilitation facility with significant experience in  
9 traumatic brain injury, traumatic spinal cord injury,  
10 burn, and amputee rehabilitation.

11 (4) COLLABORATION.—Private facilities and fa-  
12 cilities of the Department of Defense selected for  
13 purposes of the pilot program shall collaborate with  
14 nearby facilities of the Department of Veterans Af-  
15 fairs.

16 (d) ELIGIBLE FAMILY CAREGIVERS.—

17 (1) IN GENERAL.—For purposes of this section,  
18 an eligible family caregiver of a veteran or member  
19 of the Armed Forces is a family caregiver of an eli-  
20 gible veteran or member of the Armed Forces who—

21 (A) agrees to provide caregiver services to  
22 such eligible veteran or member;

23 (B) is accepted by such eligible veteran or  
24 member as the veteran's or member's provider  
25 of caregiver services; and

1 (C) is determined, under regulations pre-  
2 scribed by the Secretary of Veterans Affairs or  
3 the Secretary of Defense, as applicable, to be  
4 qualified to provide caregiver services under the  
5 pilot program.

6 (2) REPLACEMENT.—If the Secretary of Vet-  
7 erans Affairs or the Secretary of Defense, as appli-  
8 cable, determines that a family caregiver who is de-  
9 termined qualified under paragraph (1)(C) to pro-  
10 vide caregiver services to an eligible veteran or mem-  
11 ber of the Armed Forces, as the case may be, is no  
12 longer qualified to provide such services—

13 (A) such family caregiver shall no longer  
14 be considered an eligible family caregiver for  
15 purposes of the pilot program; and

16 (B) such Secretary may, with the agree-  
17 ment of the veteran or member of the Armed  
18 Forces concerned, designate as a provider of  
19 caregiver services for such veteran or member  
20 for purposes of the pilot program any other in-  
21 dividual who qualifies as an eligible family care-  
22 giver of such veteran or member under this sub-  
23 section.

24 (3) LIMITATION.—The Secretary of Veterans  
25 Affairs and the Secretary of Defense may not qual-

1 ify more than one concurrent family caregiver per el-  
2 ible veteran or member of the Armed Forces under  
3 paragraph (1)(C).

4 (4) CONSTRUCTION.—Nothing in this section  
5 may be construed to limit the authority of the Sec-  
6 retary of Veterans Affairs or the Secretary of De-  
7 fense to deny or discontinue participation of a family  
8 caregiver in the pilot program if such action is in  
9 the best interest of the veteran or member of the  
10 Armed Forces concerned.

11 (e) ELIGIBLE VETERANS AND MEMBERS OF THE  
12 ARMED FORCES.—For purposes of this section, an eligible  
13 veteran or member of the Armed Forces is a veteran or  
14 member of the Armed Forces—

15 (1) who—

16 (A) has a service-connected disability that  
17 was incurred or aggravated on or after Sep-  
18 tember 11, 2001; and

19 (B) requires caregiver services because of  
20 such service-connected disability, as determined  
21 by the Secretary of Veterans Affairs or the Sec-  
22 retary of Defense as applicable;

23 (2) who is otherwise determined to be eligible  
24 for the pilot program by the Secretary of Veterans  
25 Affairs or the Secretary of Defense, as applicable.

1 (f) IDENTIFICATION AND NOTIFICATION OF ELIGI-  
 2 BLE VETERANS AND MEMBERS OF THE ARMED  
 3 FORCES.—

4 (1) IDENTIFICATION AND NOTIFICATION OF EL-  
 5 IGIBLE VETERANS.—

6 (A) IDENTIFICATION.—Not later than 180  
 7 days after the date of the enactment of this  
 8 Act, the Secretary of Veterans Affairs shall con-  
 9 duct a review to identify veterans eligible to  
 10 participate in the pilot program.

11 (B) NOTIFICATION.—The Secretary of  
 12 Veterans Affairs shall notify each veteran who  
 13 is identified as an eligible veteran pursuant to  
 14 the review required by subparagraph (A) of—

15 (i) the eligibility of the veteran to par-  
 16 ticipate in the pilot program; and

17 (ii) the means by which the veteran  
 18 may be accepted for participation in the  
 19 pilot program.

20 (2) IDENTIFICATION AND NOTIFICATIONS OF  
 21 ELIGIBLE MEMBERS OF THE ARMED FORCES.—

22 (A) IDENTIFICATION.—Not later than 180  
 23 days after the date of the enactment of this  
 24 Act, the Secretary of Defense shall conduct a

1 review to identify members of the Armed Forces  
2 eligible to participate in the pilot program.

3 (B) NOTIFICATION.—The Secretary of De-  
4 fense shall notify each member of the Armed  
5 Forces who is identified as an eligible member  
6 of the Armed Forces pursuant to the review re-  
7 quired by subparagraph (A) of—

8 (i) the eligibility of the member to  
9 participate in the pilot program; and

10 (ii) the means by which the member  
11 may be accepted into the pilot program.

12 (g) TRAINING AND CERTIFICATION.—

13 (1) PROVISION OF TRAINING AND CERTIFI-  
14 CATION.—

15 (A) TRAINING.—The Secretary of Veterans  
16 Affairs shall provide training to each eligible  
17 family caregiver participating in the pilot pro-  
18 gram in the provision of family caregiver serv-  
19 ices. The training shall utilize curricula devel-  
20 oped under paragraph (2).

21 (B) CERTIFICATION.—Upon the successful  
22 completion by a family caregiver of training  
23 provided under paragraph (1), the Secretary of  
24 Veterans Affairs shall certify the family care-  
25 giver as a provider of family caregiver services



1 for purposes of the pilot program. Successful  
2 completion of training shall be determined uti-  
3 lizing certification criteria developed under  
4 paragraph (2).

5 (2) TRAINING CURRICULA AND CERTIFICATION  
6 CRITERIA.—

7 (A) IN GENERAL.—The Secretary of Vet-  
8 erans Affairs shall, in consultation with the in-  
9 dividuals specified in subparagraph (B), develop  
10 for purposes of the pilot program the following:

11 (i) Curricula for the training of eligi-  
12 ble family caregivers in the provision of  
13 family caregiver services, including training  
14 on techniques, skills, and strategies for the  
15 provision of such services.

16 (ii) Criteria for the evaluation of suc-  
17 cessful completion of such training for pur-  
18 poses of certification under paragraph  
19 (1)(B).

20 (B) CONSULTATION.—The individuals  
21 specified in this subparagraph are the following:

22 (i) The Secretary of Defense.

23 (ii) A representative of family care-  
24 givers or family caregiver associations.

1 (iii) A health or medical employee of  
2 the Department of Veterans Affairs with  
3 expertise in long-term care for seriously in-  
4 jured veterans.

5 (iv) A health or medical employee of  
6 the Department of Defense with expertise  
7 in long-term care for seriously injured  
8 members of the Armed Forces.

9 (v) A psychologist or other individual  
10 with expertise in the provision of mental  
11 health care to individuals in need of home-  
12 based or nursing home care.

13 (vi) An expert in the development of  
14 training curricula.

15 (vii) A family member of a veteran in  
16 need of home-based or nursing home care.

17 (viii) A family member of a member  
18 of the Armed Forces in need of home-  
19 based or nursing home care.

20 (ix) A representative from a veterans  
21 service organization, as recognized by the  
22 Secretary of Veterans Affairs for the rep-  
23 resentation of veterans under section 5902  
24 of title 38, United States Code.

1                   (x) Such other individuals as the Sec-  
2                   retary of Veterans Affairs, in consultation  
3                   with the Secretary of Defense, considers  
4                   appropriate.

5                   (C) SCOPE OF CURRICULA.—The Secretary  
6                   of Veterans Affairs shall ensure that the cur-  
7                   ricula developed under subparagraph (A)(i)—

8                   (i) is based on empirical research and  
9                   validated techniques; and

10                  (ii) provides for training that permits  
11                  recipients of the training to tailor the pro-  
12                  vision of caregiving services to the unique  
13                  circumstances of the veteran or member of  
14                  the Armed Forces receiving such services.

15                  (D) USE OF EXISTING CURRICULA.—In de-  
16                  veloping curricula under subparagraph (A)(i),  
17                  the Secretary of Veterans Affairs shall, to the  
18                  extent practicable, utilize and expand upon  
19                  training curricula developed pursuant to section  
20                  744(b) of the John Warner National Defense  
21                  Authorization Act for Fiscal Year 2007 (Public  
22                  Law 109–364; 120 Stat. 2309).

23                  (3) TRAVEL EXPENSES.—The Secretary of Vet-  
24                  erans Affairs may provide for necessary travel, lodg-  
25                  ing, and per diem expenses incurred by a family

1 caregiver in undergoing certification and training  
2 under paragraph (1).

3 (h) PAYMENT OF FAMILY CAREGIVERS.—

4 (1) IN GENERAL.—An eligible family caregiver  
5 of an eligible veteran or member of the Armed  
6 Forces certified under subsection (g) in the provision  
7 of caregiver services under the pilot program shall  
8 be paid by the Department of Veterans Affairs for  
9 the provision of caregiver services to such veteran or  
10 member, as the case may be, under the pilot pro-  
11 gram.

12 (2) AMOUNT OF PAYMENT.—Payment provided  
13 a family caregiver under paragraph (1) for care pro-  
14 vided to a veteran or member of the Armed Forces  
15 shall be in amounts the Secretary of Veterans Af-  
16 fairs considers reasonable upon consideration of the  
17 following:

18 (A) The amount of care and the intensity  
19 of the care required by the veteran or member.

20 (B) The cost to the Department of Vet-  
21 erans Affairs of otherwise providing such care  
22 through another noninstitutional care provider.

23 (C) Low-utilization payment adjustment  
24 mechanisms under the prospective payment sys-  
25 tem for home health services established under

1           section 1895 of the Social Security Act (42  
2           U.S.C. 1395fff) calculated for the geographic  
3           area of the family caregiver.

4           (D) Such other factors as the Secretary  
5           considers appropriate.

6           (3) COORDINATION WITH STATE SELF-DI-  
7           RECTED PERSONAL ASSISTANCE SERVICES PRO-  
8           GRAM.—The Secretary of Veterans Affairs may pro-  
9           vide payment under paragraph (1) to an eligible  
10          family caregiver in coordination with the self-di-  
11          rected personal assistance services program of the  
12          State of the family caregiver to the extent the State  
13          has elected to provide medical assistance to an eligi-  
14          ble veteran or member of the Armed Forces under  
15          the State Medicaid program.

16          (i) RESPITE CARE.—

17          (1) REVIEW OF RESPITE CARE PROGRAMS.—  
18          The Secretary of Veterans Affairs shall review the  
19          respite care programs of the Department of Vet-  
20          erans Affairs and the Secretary of Defense shall re-  
21          view the respite care programs of the Department of  
22          Defense that are available to family caregivers to as-  
23          sess the adequacy, flexibility, and age-appropriate-  
24          ness of the facilities under such programs. The re-

1 view shall include a particular focus on respite care  
2 programs for rural areas.

3 (2) STUDY ON ENHANCEMENT OF AVAILABILITY  
4 OF RESPITE CARE.—The Secretary shall carry out a  
5 study to identify appropriate options for enhancing  
6 the availability of respite care for family caregivers.  
7 The study shall include an assessment of the advis-  
8 ability of allowing a veteran’s primary treating phy-  
9 sician to approve respite care in excess of 30 days  
10 to make as-needed respite care more available and  
11 convenient for family caregivers.

12 (3) ENHANCEMENT OF AVAILABILITY OF RES-  
13 PITE CARE.—The Secretary shall take measures to  
14 enhance the availability of respite care for family  
15 caregivers participating in the pilot program, includ-  
16 ing the following:

17 (A) Training and certifying alternate fam-  
18 ily caregivers using the curricula developed  
19 under subsection (g)(2).

20 (B) Paying expenses incidental to training  
21 of alternate family caregivers, including travel  
22 expenses.

23 (C) Such other measures as the Secretary  
24 considers appropriate.

1 (j) PSYCHOLOGICAL AND SOCIAL SUPPORT SERV-  
2 ICES.—

3 (1) IN GENERAL.—The Secretary of Veterans  
4 Affairs shall, in collaboration with the Secretary of  
5 Defense, make available to each eligible family care-  
6 giver participating in the pilot program counseling  
7 and social services related to the provision by the  
8 family caregiver of caregiving services to an eligible  
9 veteran or member of the Armed Forces. Such coun-  
10 seling and social services shall include the following:

11 (A) An assessment of individualized needs  
12 of the family caregiver with respect to the fam-  
13 ily caregiver's role as a family caregiver.

14 (B) Assistance with development of a plan  
15 for long-term care of the veteran or member  
16 concerned.

17 (C) Services and support relevant to any  
18 needs identified under subparagraph (A) pro-  
19 vided through—

20 (i) facilities of the Department of Vet-  
21 erans Affairs or the Department of De-  
22 fense located in the community in which  
23 the family caregiver resides; or

24 (ii) in the case that no such facilities  
25 are available in a timely manner, commu-

1 nity-based organizations or publicly funded  
2 programs.

3 (2) USE OF EXISTING TOOLS.—In developing  
4 and administering assessments under paragraph  
5 (1)(A), the Secretary shall, to the extent practicable,  
6 use and expand upon caregiver assessment tools al-  
7 ready developed and in use by the Department of  
8 Veterans Affairs or the Department of Defense.

9 (k) REPORTS.—

10 (1) TWO-YEAR REPORT.—

11 (A) IN GENERAL.—Not later than two  
12 years after the date of the commencement of  
13 the pilot program, the Secretary shall, in con-  
14 junction with the Secretary of Defense, submit  
15 to the appropriate congressional committees a  
16 report on the pilot program.

17 (B) CONTENTS.—The report required by  
18 paragraph (1) shall include the following:

19 (i) An assessment of the pilot pro-  
20 gram.

21 (ii) An accounting of the costs to the  
22 Department of Veterans Affairs and the  
23 Department of Defense of the pilot pro-  
24 gram.



(iii) A comparison of the costs to the Department of Veterans Affairs and the Department of Defense of the pilot program with the cost to the Departments of otherwise providing caregiver services to the veterans and members of the Armed Forces who received such services under the pilot program, including the cost of providing care to such veterans and members of the Armed Forces who would otherwise require inpatient care.

(iv) The recommendations of the Secretary with respect to—

(I) the feasibility and advisability of extending the pilot program or making the pilot program permanent; and

(II) modifying the pilot program.

(v) An assessment of the effect of the pilot program on—

(I) the health of veterans receiving care under the pilot program; and

(II) the financial burdens of family caregivers caused by the provision of caregiver services to veterans.

1 (vi) Any determinations made by the  
 2 Secretary under subsection (o).

3 (2) BI-ANNUAL REPORTS OF MEDICAL FACILI-  
 4 TIES.—Not later than 180 days after the date on  
 5 which a medical facility is selected as a location for  
 6 the pilot program and not less frequently than once  
 7 every 180 days thereafter, the medical facility shall  
 8 submit to the director of the Veterans Integrated  
 9 Services Network (VISN) in which the facility is lo-  
 10 cated a report that describes—

11 (A) the number of veterans enrolled in the  
 12 pilot program through such facility; and

13 (B) if there is a waiting list to participate  
 14 in the pilot program through such facility—

15 (i) the number of people on such list;

16 and

17 (ii) the average wait time before ad-  
 18 mission into the pilot program.

19 (l) FUNDING.—

20 (1) COSTS OF CARE PROVIDED TO VETERANS.—

21 Any expenditure under the pilot program relating to  
 22 the provision of caregiver services to a veteran shall  
 23 be borne by the Department of Veterans Affairs.

24 (2) COSTS OF CARE PROVIDED TO MEMBERS OF  
 25 THE ARMED FORCES.—

1           (A) IN GENERAL.—The Secretary of De-  
2           fense shall reimburse the Secretary of Veterans  
3           Affairs for any expenditure incurred by the De-  
4           partment of Veterans Affairs under the pilot  
5           program relating to the provision of caregiver  
6           services to members of the Armed Forces.

7           (B) SOURCE OF FUNDS.—Amounts for re-  
8           imbursement under subparagraph (A) shall be  
9           derived from amounts made available to De-  
10          fense Health Program for the TRICARE pro-  
11          gram.

12       (m) LIMITATION ON SPENDING.—In providing for  
13       the provision of services under the pilot program, the Sec-  
14       retary of Veterans Affairs shall make payment for services  
15       only to the extent that payment for such services is not  
16       otherwise covered by another government or nongovern-  
17       ment entity or program.

18       (n) CONSTRUCTION.—

19           (1) EMPLOYMENT.—Nothing in this section  
20           shall be construed to create an employment relation-  
21           ship between a family caregiver and a veteran or  
22           member of the Armed Forces, the Department of  
23           Veterans Affairs, or the Department of Defense.

24           (2) ELIGIBILITY FOR BENEFITS.—Nothing in  
25           this section shall be construed to reduce, alter, or

1 otherwise affect the eligibility or entitlement of a  
2 veteran, member of the Armed Forces, or dependent  
3 thereof, to any health care, disability, or other ben-  
4 efit to which such veteran, member, or dependent  
5 would otherwise be eligible or entitled under laws ad-  
6 ministered by the Secretary of Veterans Affairs or  
7 the Secretary of Defense.

8 (o) NATIONAL EXPANSION OF PILOT PROGRAM.—

9 Not later than the completion of the two-year period de-  
10 scribed in subsection (b), the Secretary of Veterans Affairs  
11 shall, in consultation with the Secretary of Defense, ex-  
12 pand the pilot program to provide training, certification,  
13 and support for eligible family caregivers nationwide un-  
14 less the Secretary of Veterans Affairs, in consultation with  
15 the Secretary of Defense, determines that such revision  
16 would be infeasible or inadvisable.

17 **SEC. 4. SURVEY OF INFORMAL CAREGIVERS.**

18 (a) IN GENERAL.—The Secretary of Veterans Affairs  
19 shall, in collaboration with the Secretary of Defense, con-  
20 duct a national survey of family caregivers of seriously dis-  
21 abled veterans and members of the Armed Forces to better  
22 understand the size and characteristics of the population  
23 of such caregivers and the types of care they provide.

24 (b) REPORT.—Not later than 540 days after the date  
25 of the enactment of this Act, the Secretary of Veterans

1 Affairs shall, in collaboration with the Secretary of De-  
2 fense, submit to Congress a report containing the findings  
3 of the Secretary with respect to the survey conducted  
4 under subsection (a). Results of the survey shall be  
5 disaggregated by the following:

6 (1) Veterans and members of the Armed  
7 Forces.

8 (2) Veterans and members of the Armed Forces  
9 who served in Operation Iraqi Freedom or Operation  
10 Enduring Freedom.

11 (3) Veterans and members of the Armed Forces  
12 who live in rural areas.

13 **SEC. 5. DEFINITIONS.**

14 In this Act:

15 (1) APPROPRIATE CONGRESSIONAL COMMIT-  
16 TEES.—The term “appropriate congressional com-  
17 mittees” means—

18 (A) the Committee on Veterans’ Affairs,  
19 the Committee on Armed Services, and the  
20 Committee on Appropriations of the Senate;  
21 and

22 (B) the Committee on Veterans’ Affairs,  
23 the Committee on Armed Services, and the  
24 Committee on Appropriations of the House of  
25 Representatives.

1           (2) CAREGIVER SERVICES.—The term “care-  
2       giver services” means noninstitutional extended care  
3       (as used in section 1701(6) of title 38, United  
4       States Code), including homemaker and home health  
5       aid services.

6           (3) FAMILY CAREGIVER.—The term “family  
7       caregiver” means, with respect to a disabled veteran  
8       or member of the Armed Forces, a family member  
9       of such veteran or member, or such other individual  
10      of similar affinity to such veteran or member as the  
11      Secretary prescribes, who is providing caregiver serv-  
12      ices to such veteran or member for such disability.

○