

mit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the operation of section 101 of Pub. L. 106-117 not later than January 1, 2003.

§ 1710B. Extended care services

(a) The Secretary (subject to section 1710(a)(4) of this title and subsection (c) of this section) shall operate and maintain a program to provide extended care services to eligible veterans in accordance with this section. Such services shall include the following:

- (1) Geriatric evaluation.
- (2) Nursing home care (A) in facilities operated by the Secretary, and (B) in community-based facilities through contracts under section 1720 of this title.
- (3) Domiciliary services under section 1710(b) of this title.
- (4) Adult day health care under section 1720(f) of this title.
- (5) Such other noninstitutional alternatives to nursing home care as the Secretary may furnish as medical services under section 1701(10)¹ of this title.
- (6) Respite care under section 1720B of this title.

(b) The Secretary shall ensure that the staffing and level of extended care services provided by the Secretary nationally in facilities of the Department during any fiscal year is not less than the staffing and level of such services provided nationally in facilities of the Department during fiscal year 1998.

(c)(1) Except as provided in paragraph (2), the Secretary may not furnish extended care services for a non-service-connected disability other than in the case of a veteran who has a compensable service-connected disability unless the veteran agrees to pay to the United States a copayment (determined in accordance with subsection (d)) for any period of such services in a year after the first 21 days of such services provided that veteran in that year.

(2) Paragraph (1) shall not apply—

(A) to a veteran whose annual income (determined under section 1503 of this title) is less than the amount in effect under section 1521(b) of this title;

(B) to a veteran being furnished hospice care under this section;

(C) with respect to an episode of extended care services that a veteran is being furnished by the Department on November 30, 1999; or

(D) to a veteran who was awarded the medal of honor under section 7271, 8291, or 9271 of title 10 or section 491¹ of title 14.

(d)(1) A veteran who is furnished extended care services under this chapter and who is required under subsection (c) to pay an amount to the United States in order to be furnished such services shall be liable to the United States for that amount.

(2) In implementing subsection (c), the Secretary shall develop a methodology for establishing the amount of the copayment for which a veteran described in subsection (c) is liable. That methodology shall provide for—

(A) establishing a maximum monthly copayment (based on all income and assets of the veteran and the spouse of such veteran);

(B) protecting the spouse of a veteran from financial hardship by not counting all of the income and assets of the veteran and spouse (in the case of a spouse who resides in the community) as available for determining the copayment obligation; and

(C) allowing the veteran to retain a monthly personal allowance.

(e)(1) There is established in the Treasury of the United States a revolving fund known as the Department of Veterans Affairs Extended Care Fund (hereinafter in this section referred to as the “fund”). Amounts in the fund shall be available, without fiscal year limitation and without further appropriation, exclusively for the purpose of providing extended care services under subsection (a).

(2) All amounts received by the Department under this section shall be deposited in or credited to the fund.

(Added Pub. L. 106-117, title I, §101(c)(1), Nov. 30, 1999, 113 Stat. 1548; amended Pub. L. 107-14, §8(a)(2), (16), June 5, 2001, 115 Stat. 34, 35; Pub. L. 107-103, title V, §509(b), Dec. 27, 2001, 115 Stat. 997; Pub. L. 108-422, title II, §204, Nov. 30, 2004, 118 Stat. 2382; Pub. L. 114-315, title VI, §603(c), Dec. 16, 2016, 130 Stat. 1570; Pub. L. 115-232, div. A, title VIII, §809(n)(1)(C), Aug. 13, 2018, 132 Stat. 1843.)

Editorial Notes

REFERENCES IN TEXT

Section 1701(10) of this title, referred to in subsec. (a)(5), was repealed by Pub. L. 110-387, title VIII, §801(1), Oct. 10, 2008, 122 Stat. 4140.

Section 491 of title 14, referred to in subsec. (c)(2)(D), was redesignated section 2732 of title 14 by Pub. L. 115-282, title I, §116(b), Dec. 4, 2018, 132 Stat. 4226, and references to section 491 of title 14 deemed to refer to such redesignated section, see section 123(b)(1) of Pub. L. 115-282, set out as a References to Redesignated Sections of Title 14 note preceding section 101 of Title 14, Coast Guard.

AMENDMENTS

2018—Subsec. (c)(2)(D). Pub. L. 115-232 substituted “section 7271, 8291, or 9271 of title 10” for “section 3741, 6241, or 8741 of title 10”.

2016—Subsec. (c)(2)(D). Pub. L. 114-315 added subpar. (D).

2004—Subsec. (c)(2)(B), (C). Pub. L. 108-422 added subpar. (B) and redesignated former subpar. (B) as (C).

2001—Subsec. (c)(2)(B). Pub. L. 107-103 inserted “on” before “November 30, 1999”.

Pub. L. 107-14, §8(a)(2), substituted “November 30, 1999” for “on the date of the enactment of the Veterans Millennium Health Care and Benefits Act”.

Subsec. (e)(1). Pub. L. 107-14, §8(a)(16), substituted “hereinafter” for “hereafter”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115-232, set out as a note preceding section 3001 of Title 10, Armed Forces.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-422, title IV, §411(f), (g), Nov. 30, 2004, 118 Stat. 2390, provided that:

¹ See References in Text note below.

“(f) CONTINGENT EFFECTIVENESS.—Subsection (d) [enacting provisions set out as a note under section 8118 of this title] and the amendments made by subsection (c) [repealing section 8116 of this title] shall take effect at the end of the 30-day period beginning on the date on which the Secretary of Veterans Affairs certifies to Congress that the Secretary is in compliance with subsection (b) of section 1710B of title 38, United States Code.

“(g) ANNUAL UPDATE.—Following a certification under subsection (f), the Secretary shall submit to Congress an annual update on that certification.”

EFFECTIVE DATE

Pub. L. 106-117, title I, §101(h), Nov. 30, 1999, 113 Stat. 1550, provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [enacting this section and section 1710A of this title and amending sections 1701, 1710, 1720, 1720B and 1741 of this title] shall take effect on the date of the enactment of this Act [Nov. 30, 1999].

“(2) Subsection (c) of section 1710B of title 38, United States Code (as added by subsection (b)), shall take effect on the effective date of regulations prescribed by the Secretary of Veterans Affairs under subsections (c) and (d) of such section. The Secretary shall publish the effective date of such regulations in the Federal Register.

“(3) The provisions of section 1710(f) of title 38, United States Code, shall not apply to any day of nursing home care on or after the effective date of regulations under paragraph (2).”

MODIFICATIONS TO VETERAN DIRECTED CARE PROGRAM OF DEPARTMENT OF VETERANS AFFAIRS

Pub. L. 116-136, div. B, title X, §20006, Mar. 27, 2020, 134 Stat. 587, as amended by Pub. L. 116-315, title III, §3001, Jan. 5, 2021, 134 Stat. 4990, provided that:

“(a) TELEPHONE OR TELEHEALTH RENEWALS.—For the Veteran Directed Care program of the Department of Veterans Affairs (in this section referred to as the ‘Program’), during the period specified in subsection (f), the Secretary of Veterans Affairs shall—

“(1) waive the requirement that a covered provider process new enrollments and six-month renewals for the Program via an in-person or home visit; and

“(2) allow new enrollments and sixth-month renewals for the Program to be conducted via telephone or telehealth modality.

“(b) NO SUSPENSION OR DISENROLLMENT.—During the period specified in subsection (f), the Secretary shall not suspend or dis-enroll a veteran or caregiver of a veteran from the Program unless—

“(1) requested to do so by the veteran or a representative of the veteran; or

“(2) a mutual decision is made between the veteran and a health care provider of the veteran to suspend or dis-enroll the veteran or caregiver from the Program.

“(c) WAIVER OF PAPERWORK REQUIREMENT.—During the period specified in subsection (f), the Secretary may waive the requirement for signed, mailed paperwork to confirm the enrollment or renewal of a veteran in the Program and may allow verbal consent of the veteran via telephone or telehealth modality to suffice for purposes of such enrollment or renewal.

“(d) WAIVER OF OTHER REQUIREMENTS.—During the period specified in subsection (f), the Secretary shall waive—

“(1) any penalty for late paperwork relating to the Program; and

“(2) any requirement to stop payments for veterans or caregivers of veterans under the Program if they are out of State for more than 14 days.

“(e) TRANSFER OF CERTAIN VETERANS TO THE PROGRAM.—During the period specified in subsection (f), the Secretary shall allow a veteran residing in an area covered by the Program to be transferred to the Program for the duration of such period if—

“(1) the veteran had been receiving extended care services paid for by the Department, such as adult day services or homemaker or home health aide services, immediately preceding such period; and

“(2) those services are no longer available due to a public health emergency.

“(f) PERIOD SPECIFIED.—The period specified in this subsection is the period beginning on the date on which a public health emergency was first declared and ending on the date that is 60 days after the date on which a public health emergency is no longer in effect.

“(g) COVERED PROVIDER DEFINED.—In this section, the term ‘covered provider’ means a provider participating in the Program, including—

“(1) an Aging and Disability Resource Center, an area agency on aging, or a State agency (as those terms are defined in section 102 of the Older Americans Act of 1965 (42 U.S.C. 3002)); or

“(2) a center for independent living (as defined in section 702 of the Rehabilitation Act of 1973 (29 U.S.C. 796a)).”

[For definition of “public health emergency” as used in section 20006 of Pub. L. 116-136, set out above, see section 20003 of Pub. L. 116-136, set out as a note under section 303 of this title.]

PILOT PROGRAM ON IMPROVEMENT OF CAREGIVER ASSISTANCE SERVICES

Pub. L. 109-461, title II, §214, Dec. 22, 2006, 120 Stat. 3423, as amended by Pub. L. 110-387, §809, Oct. 10, 2008, 122 Stat. 4142, provided that:

“(a) IN GENERAL.—Commencing not later than 120 days after the date of the enactment of this Act [Dec. 22, 2006], the Secretary of Veterans Affairs shall carry out a pilot program to assess the feasibility and advisability of various mechanisms to expand and improve caregiver assistance services.

“(b) DURATION OF PILOT PROGRAM.—The pilot program required by subsection (a) shall be carried out during the three-year period beginning on the date of the commencement of the pilot program.

“(c) CAREGIVER ASSISTANCE SERVICES.—For purposes of this section, the term ‘caregiver assistance services’ means services of the Department of Veterans Affairs that assist caregivers of veterans. Such services including the following:

“(1) Adult-day health care services.

“(2) Coordination of services needed by veterans, including services for readjustment and rehabilitation.

“(3) Transportation services.

“(4) Caregiver support services, including education, training, and certification of family members in caregiver activities.

“(5) Home care services.

“(6) Respite care.

“(7) Hospice services.

“(8) Any modalities of non-institutional long-term care.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Veterans Affairs \$5,000,000 for each of fiscal years 2007 through 2009 to carry out the pilot program authorized by this section.

“(e) ALLOCATION OF FUNDS TO FACILITIES.—The Secretary shall allocate funds appropriated pursuant to the authorization of appropriations in subsection (d) to individual medical facilities of the Department in such amounts as the Secretary determines appropriate, based upon proposals submitted by such facilities for the use of such funds for improvements to the support of the provision of caregiver assistance services. Special consideration should be given to rural facilities, including those without a long-term care facility of the Department.

“(f) REPORT.—Not later than one year after the date of the enactment of this Act [Dec. 22, 2006], the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the implementation of this section. The report shall include—

“(1) a description and assessment of the activities carried out under the pilot program;

“(2) information on the allocation of funds to facilities of the Department under subsection (e); and

“(3) a description of the improvements made with funds so allocated to the support of the provision of caregiver assistance services.”

PILOT PROGRAMS RELATING TO LONG-TERM CARE

Pub. L. 106-117, title I, §102, Nov. 30, 1999, 113 Stat. 1551, as amended by Pub. L. 108-422, title II, §203, Nov. 30, 2004, 118 Stat. 2382, provided that:

“(a) PILOT PROGRAMS.—The Secretary [of Veterans Affairs] shall carry out three pilot programs for the purpose of determining the effectiveness of different models of all-inclusive care-delivery in reducing the use of hospital and nursing home care by frail, elderly veterans.

“(b) LOCATIONS OF PILOT PROGRAMS.—In selecting locations in which the pilot programs will be carried out, the Secretary may not select more than one location in any given health care region of the Veterans Health Administration.

“(c) SCOPE OF SERVICES UNDER PILOT PROGRAMS.—Each of the pilot programs under this section shall be designed to provide participating veterans with integrated, comprehensive services which include the following:

“(1) Adult-day health care services on an eight-hour per day, five-day per week basis.

“(2) Medical services (including primary care, preventive services, and nursing home care, as needed).

“(3) Coordination of needed services.

“(4) Transportation services.

“(5) Home care services.

“(6) Respite care.

“(d) PROGRAM REQUIREMENTS.—In carrying out the pilot programs under this section, the Secretary shall—

“(1) employ the use of interdisciplinary care-management teams to provide the required array of services;

“(2) determine the appropriate number of patients to be enrolled in each program and the criteria for enrollment; and

“(3) ensure that funding for each program is based on the complex care category under the resource allocation system (known as the Veterans Equitable Resource Allocation system) established pursuant to section 429 of Public Law 104-204 (110 Stat. 2929).

“(e) DESIGN OF PILOT PROGRAMS.—To the maximum extent feasible, the Secretary shall use the following three models in designing the three pilot programs under this section:

“(1) Under one of the pilot programs, the Secretary shall provide services directly through facilities and personnel of the Department [of Veterans Affairs].

“(2) Under one of the pilot programs, the Secretary shall provide services through a combination of—

“(A) services provided under contract with appropriate public and private entities; and

“(B) services provided through facilities and personnel of the Department.

“(3) Under one of the pilot programs, the Secretary shall arrange for the provision of services through a combination of—

“(A) services provided through cooperative arrangements with appropriate public and private entities; and

“(B) services provided through facilities and personnel of the Department.

“(f) IN-KIND ASSISTANCE.—In providing for the furnishing of services under a contract in carrying out the pilot program described in subsection (e)(2), the Secretary may, subject to reimbursement, provide in-kind assistance (through the services of Department employees and the sharing of other Department resources) to a facility furnishing care to veterans. Such reimbursement may be made by reduction in the charges to the Secretary under such contract.

“(g) LIMITATION.—In providing for the furnishing of services in carrying out a pilot program described in

subsection (e)(2) or (e)(3), the Secretary shall make payment for services only to the extent that payment for such services is not otherwise covered (notwithstanding any provision of title XVIII or XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.]) by another government or nongovernment entity or program.

“(h) DURATION OF PROGRAMS.—(1) The authority of the Secretary to provide services under a pilot program under this section shall cease on the date that is three years after the date of the commencement of that pilot program.

“(2) In the case of a veteran who is participating in a pilot program under this section as of the end of the three-year period applicable to that pilot program under paragraph (1), the Secretary may continue to provide to that veteran any of the services that could be provided under the pilot program. The authority to provide services to any veteran under the preceding sentence applies during the period beginning on the date specified in paragraph (1) with respect to that pilot program and ending on December 31, 2005.

“(i) REPORT.—(1) Not later than nine months after the completion of all of the pilot programs under this section, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on those programs.

“(2) The report shall include the following:

“(A) A description of the implementation and operation of each such program.

“(B) An analysis comparing use of institutional care and use of other services among enrollees in each of the pilot programs with the experience of comparable patients who are not enrolled in one of the pilot programs.

“(C) An assessment of the satisfaction of participating veterans with each of those programs.

“(D) An assessment of the health status of participating veterans in each of those programs and of the ability of those veterans to function independently.

“(E) An analysis of the costs and benefits under each of those programs.”

PILOT PROGRAM RELATING TO ASSISTED LIVING

Pub. L. 106-117, title I, §103, Nov. 30, 1999, 113 Stat. 1552, as amended by Pub. L. 108-170, title I, §107, Dec. 6, 2003, 117 Stat. 2046, provided that:

“(a) PROGRAM AUTHORITY.—The Secretary [of Veterans Affairs] may carry out a pilot program for the purpose of determining the feasibility and practicability of enabling eligible veterans to secure needed assisted living services as an alternative to nursing home care.

“(b) LOCATIONS OF PILOT PROGRAM.—(1) The pilot program shall be carried out in a designated health care region of the Department [of Veterans Affairs] selected by the Secretary for purposes of this section.

“(2)(A) In addition to the health care region of the Department selected for the pilot program under paragraph (1), the Secretary may also carry out the pilot program in not more than one additional designated health care region of the Department selected by the Secretary for purposes of this section.

“(B) Notwithstanding subsection (f), the authority of the Secretary to provide services under the pilot program in a health care region of the Department selected under subparagraph (A) shall cease on the date that is three years after the commencement of the provision of services under the pilot program in the health care region.

“(c) SCOPE OF PROGRAM.—In carrying out the pilot program, the Secretary may enter into contracts with appropriate facilities for the provision for a period of up to six months of assisted living services on behalf of eligible veterans in the region where the program is carried out.

“(d) ELIGIBLE VETERANS.—A veteran is an eligible veteran for purposes of this section if the veteran—

“(1) is eligible for placement assistance by the Secretary under section 1730(a) of title 38, United States Code;

“(2) is unable to manage routine activities of daily living without supervision and assistance; and

“(3) could reasonably be expected to receive ongoing services after the end of the contract period under another government program or through other means.

“(e) REPORT.—(1) Not later than 90 days before the end of the pilot program under this section, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the program.

“(2) The report under paragraph (1) shall include the following:

“(A) A description of the implementation and operation of the program.

“(B) An analysis comparing use of institutional care among participants in the program with the experience of comparable patients who are not enrolled in the program.

“(C) A comparison of assisted living services provided by the Department through the pilot program with domiciliary care provided by the Department.

“(D) The Secretary's recommendations, if any, regarding an extension of the program.

“(f) DURATION.—The authority of the Secretary to provide services under the pilot program shall cease on the date that is three years after the date of the commencement of the pilot program.

“(g) DEFINITION.—For purposes of this section, the term ‘assisted living services’ means services in a facility that provides room and board and personal care for and supervision of residents as necessary for the health, safety, and welfare of residents.

“(h) STANDARDS.—The Secretary may not enter into a contract with a facility under this section unless the facility meets the standards established in regulations prescribed under section 1730 of title 38, United States Code.”

§ 1710C. Traumatic brain injury: plans for rehabilitation and reintegration into the community

(a) PLAN REQUIRED.—The Secretary shall, for each individual who is a veteran or member of the Armed Forces who receives inpatient or outpatient rehabilitative hospital care or medical services provided by the Department for a traumatic brain injury—

- (1) develop an individualized plan for the rehabilitation and reintegration of the individual into the community with the goal of maximizing the individual's independence; and
- (2) provide such plan in writing to the individual—

(A) in the case of an individual receiving inpatient care, before the individual is discharged from inpatient care or after the individual's transition from serving on active duty as a member of the Armed Forces to receiving outpatient care provided by the Department; or

(B) as soon as practicable following a diagnosis of traumatic brain injury by a Department health care provider.

(b) CONTENTS OF PLAN.—Each plan developed under subsection (a) shall include, for the individual covered by such plan, the following:

(1) Rehabilitation objectives for improving (and sustaining improvement in) the physical, cognitive, behavioral, and vocational functioning of the individual with the goal of maximizing the independence and reintegration of such individual into the community.

(2) Access, as warranted, to all appropriate rehabilitative services and rehabilitative com-

ponents of the traumatic brain injury continuum of care, and where appropriate, to long-term care services.

(3) A description of specific rehabilitative services and other services to achieve the objectives described in paragraph (1), which shall set forth the type, frequency, duration, and location of such services.

(4) The name of the case manager designated in accordance with subsection (d) to be responsible for the implementation of such plan.

(5) Dates on which the effectiveness of such plan will be reviewed in accordance with subsection (f).

(c) COMPREHENSIVE ASSESSMENT.—(1) Each plan developed under subsection (a) shall be based on a comprehensive assessment, developed in accordance with paragraph (2), of—

(A) the physical, cognitive, vocational, and neuropsychological and social impairments of the individual; and

(B) the family education and family support needs of the individual after the individual is discharged from inpatient care or at the commencement of and during the receipt of outpatient care and services.

(2) The comprehensive assessment required under paragraph (1) with respect to an individual is a comprehensive assessment of the matters set forth in that paragraph by a team, composed by the Secretary for purposes of the assessment, of individuals with expertise in traumatic brain injury, including any of the following:

- (A) A neurologist.
- (B) A rehabilitation physician.
- (C) A social worker.
- (D) A neuropsychologist.
- (E) A physical therapist.
- (F) A vocational rehabilitation specialist.
- (G) An occupational therapist.
- (H) A speech language pathologist.
- (I) A rehabilitation nurse.
- (J) An educational therapist.
- (K) An audiologist.
- (L) A blind rehabilitation specialist.
- (M) A recreational therapist.
- (N) A low vision optometrist.
- (O) An orthotist or prosthetist.
- (P) An assistive technologist or rehabilitation engineer.
- (Q) An otolaryngology physician.
- (R) A dietician.
- (S) An ophthalmologist.
- (T) A psychiatrist.

(d) CASE MANAGER.—(1) The Secretary shall designate a case manager for each individual described in subsection (a) to be responsible for the implementation of the plan developed for that individual under that subsection and the coordination of the individual's medical care.

(2) The Secretary shall ensure that each case manager has specific expertise in the care required by the individual for whom the case manager is designated, regardless of whether the case manager obtains such expertise through experience, education, or training.

(e) PARTICIPATION AND COLLABORATION IN DEVELOPMENT OF PLANS.—(1) The Secretary shall involve each individual described in subsection