

109TH CONGRESS
1ST SESSION

S. 13

To amend titles 10 and 38, United States Code, to expand and enhance health care, mental health, transition, and disability benefits for veterans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2005

Mr. AKAKA (for himself, Mr. REID, Ms. MIKULSKI, Ms. STABENOW, Mr. INOUE, Mr. DORGAN, Mr. LAUTENBERG, Mr. LEAHY, Mr. SALAZAR, Mr. Rockefeller, Mrs. MURRAY, Mr. BINGAMAN, Mrs. FEINSTEIN, Mr. DURBIN, Mr. KENNEDY, Mr. CORZINE, Mr. PRYOR, Mr. SCHUMER, Mr. SARBANES, and Mr. DAYTON) introduced the following bill; which was read twice and referred to the Committee on Veterans Affairs

A BILL

To amend titles 10 and 38, United States Code, to expand and enhance health care, mental health, transition, and disability benefits for veterans, 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 “Fulfilling Our Duty
5 to America’s Veterans Act of 2005”.

TITLE I—HEALTH CARE MATTERS

3 SEC. 100. FINDINGS.

4 Congress makes the following findings:

5 (1) The three largest veterans advocacy groups,
6 the Disabled American Veterans, the American Le-
7 gion, and the Veterans of Foreign Wars, have called
8 upon Congress to change veterans funding to a man-
9 datory process, stating, “We believe it is time to
10 guarantee health care funding for all veterans. We
11 believe health care rationing must end. We believe it
12 is time the promise is kept.”.

13 (2) The May 2003 report of The President’s
14 Task Force To Improve Health Care Delivery for
15 Our Nation’s Veterans found that “there is a signifi-
16 cant mismatch in VA between demand and available
17 funding—an imbalance that . . . if unresolved, will
18 delay veterans’ access to care and could threaten the
19 quality of VA health care.”.

20 (3) Under the current funding process, the VA
21 has experienced billion-dollar shortfalls every year
22 for the past several years, resulting in waiting lists
23 several months long for appointments with physi-
24 cians, a substantial disability claims backlog, and

1 policies designed to prevent veterans from obtaining
 2 the health care they were promised.

3 **Subtitle A—Funding Matters**

4 **SEC. 101. FUNDING TO ADDRESS CHANGES IN POPULATION** 5 **AND INFLATION.**

6 (a) IN GENERAL.—Chapter 17 of title 38, United
 7 States Code, is amended by inserting after section 1706
 8 the following new section:

9 **“§ 1706A. Management of health care: funding to ad-** 10 **dress changes in population and inflation**

11 “(a) By the enactment of this section, Congress and
 12 the President intend to ensure access to health care for
 13 all veterans. Upon the enactment of this section, funding
 14 for the programs, functions, and activities of the Veterans
 15 Health Administration specified in subsection (d) to ac-
 16 complish this objective shall be provided through a com-
 17 bination of discretionary and mandatory funds. The dis-
 18 cretionary amount should be equal to the fiscal year 2005
 19 discretionary funding for such programs, functions, and
 20 activities, and should remain unchanged each fiscal year
 21 thereafter. The annual level of mandatory amount shall
 22 be adjusted according to the formula specified in sub-
 23 section (c). While this section does not purport to control
 24 the outcome of the annual appropriations process, it an-
 25 ticipates cooperation from Congress and the President in

1 sustaining discretionary funding for such programs, func-
 2 tions, and activities in future fiscal years at the level of
 3 discretionary funding for such programs, functions, and
 4 activities for fiscal year 2005. The success of that arrange-
 5 ment, as well as of the funding formula, are to be reviewed
 6 after two years.

7 “(b) On the first day of each fiscal year, the Sec-
 8 retary of the Treasury shall make available to the Sec-
 9 retary of Veterans Affairs the amount determined under
 10 subsection (c) with respect to that fiscal year. Each such
 11 amount is available, without fiscal year limitation, for the
 12 programs, functions, and activities of the Veterans Health
 13 Administration specified in subsection (d). There is hereby
 14 appropriated, out of any sums in the Treasury not other-
 15 wise appropriated, amounts necessary to implement this
 16 section.

17 “(c)(1) The amount applicable to fiscal year 2006
 18 under this subsection is the amount equal to—

19 “(A) 130 percent of the amount obligated by
 20 the Department during fiscal year 2004 for the pur-
 21 poses specified in subsection (d); minus

22 “(B) the amount appropriated for those pur-
 23 poses for fiscal year 2005.

24 “(2) The amount applicable to any fiscal year after
 25 fiscal year 2006 under this subsection is the amount equal

1 to the product of the following, minus the amount appro-
2 priated for the purposes specified for subsection (d) for
3 fiscal year 2005:

4 “(A) The sum of—

5 “(i) the number of veterans enrolled in the
6 Department health care system under section
7 1705 of this title as of July 1 preceding the be-
8 ginning of such fiscal year; and

9 “(ii) the number of persons eligible for
10 health care under chapter 17 of this title who
11 are not covered by clause (i) and who were pro-
12 vided hospital care or medical services under
13 such chapter at any time during the fiscal year
14 preceding such fiscal year.

15 “(B) The per capita baseline amount, as in-
16 creased from time to time pursuant to paragraph
17 (3)(B).

18 “(3)(A) For purposes of paragraph (2)(B), the term
19 ‘per capita baseline amount’ means the amount equal to—

20 “(i) the amount obligated by the Department
21 during fiscal year 2005 for the purposes specified in
22 subsection (d); divided by

23 “(ii) the number of veterans enrolled in the De-
24 partment health care system under section 1705 of
25 this title as of September 30, 2004.

1 “(B) With respect to any fiscal year, the Secretary
 2 shall provide a percentage increase (rounded to the near-
 3 est dollar) in the per capita baseline amount equal to the
 4 percentage by which—

5 “(i) the Consumer Price Index (all Urban Con-
 6 sumers, United States City Average, Hospital and
 7 related services, Seasonally Adjusted), published by
 8 the Bureau of Labor Statistics of the Department of
 9 Labor for the 12-month period ending on the June
 10 30 preceding the beginning of the fiscal year for
 11 which the increase is made; exceeds

12 “(ii) such Consumer Price Index for the 12-
 13 month period preceding the 12-month period de-
 14 scribed in clause (i).

15 “(d)(1) Except as provided in paragraph (2), the pur-
 16 poses for which amounts are made available pursuant to
 17 subsection (b) shall be all programs, functions, and activi-
 18 ties of the Veterans Health Administration.

19 “(2) Amounts made available pursuant to subsection
 20 (b) are not available for—

21 “(A) construction, acquisition, or alteration of
 22 medical facilities as provided in subchapter I of
 23 chapter 81 of this title (other than for such repairs
 24 as were provided for before the date of the enact-

1 ment of this section through the Medical Care ap-
 2 propriation for the Department); or

3 “(B) grants under subchapter III of chapter 81
 4 of this title.

5 “(e) Nothing in this section shall be construed to pre-
 6 vent or limit the authority of Congress to reauthorize pro-
 7 visions relating to veterans health care.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
 9 at the beginning of such chapter is amended by adding
 10 at the end the following new item:

 “1706A. Management of health care: funding to address changes in population
 and inflation.”.

11 **SEC. 102. COMPTROLLER GENERAL REPORT.**

12 (a) REQUIREMENT FOR REPORT.—Not later than
 13 January 31, 2008, the Comptroller General of the United
 14 States shall submit to Congress a report on the extent to
 15 which section 1706A of title 38, United States Code (as
 16 added by section 101 of this Act), has achieved the objec-
 17 tive set forth in subsection (a) of such section 1706A dur-
 18 ing fiscal years 2006 and 2007.

19 (b) CONTENT.—The report under subsection (a) shall
 20 set forth the following:

21 (1) The amount appropriated for fiscal year
 22 2005 for the programs, functions, and activities of
 23 the Veterans Health Administration specified in sub-

1 section (d) of section 1706A of title 38, United
2 States Code (as so added).

3 (2) The amount appropriated by annual appro-
4 priations Acts for each of fiscal years 2006 and
5 2007 for such programs, functions, and activities.

6 (3) The amount provided by section 1706A of
7 title 38, United States Code (as so added), for each
8 of fiscal years 2006 and 2007 for such programs,
9 functions, and activities.

10 (4) An assessment whether the amount de-
11 scribed in paragraph (3) for each of fiscal years
12 2006 and 2007 was appropriate to address the
13 changes in costs to the Veterans Health Administra-
14 tion for such programs, functions, and activities that
15 were attributable to changes in population and in in-
16 flation over the course of such fiscal years.

17 (5) An assessment whether the amount pro-
18 vided by section 1706A of title 38, United States
19 Code (as so added), in each of fiscal years 2006 and
20 2007, when combined with amounts appropriated by
21 annual appropriations Acts for each of such fiscal
22 years for such programs, functions, and activities,
23 provided adequate funding of such programs, func-
24 tions, and activities in each such fiscal year.

1 (6) Such recommendations as the Comptroller
 2 General considers appropriate regarding modifica-
 3 tions of the formula under subsection (c) of section
 4 1706A of title 38, United States Code (as so added),
 5 or any other modifications of law, to better ensure
 6 adequate funding of such programs, functions, and
 7 activities.

8 **SEC. 103. CONGRESSIONAL CONSIDERATION OF COMP-**
 9 **TROLLER GENERAL RECOMMENDATIONS.**

10 (a) **APPLICABLE PROCEDURE.**—The procedure pro-
 11 vided under this section shall apply to consideration of a
 12 joint resolution described in subsection (b) in the Senate
 13 and the House of Representatives.

14 (b) **JOINT RESOLUTION DEFINED.**—For purposes of
 15 this section, the term “joint resolution” means only a joint
 16 resolution that is introduced in the House of Representa-
 17 tives by the Speaker of the House of Representatives (or
 18 the Speaker’s designee) or the Minority Leader (or the
 19 Minority Leader’s designee), or in the Senate by the Ma-
 20 jority Leader (or the Majority Leader’s designee) or the
 21 Minority Leader (or the Minority Leader’s designee),
 22 within the 10-day period beginning on the date on which
 23 Congress receives the report of the Comptroller General
 24 of the United States under section 102, and—

25 (1) that does not have a preamble;

1 (2) the matter after the resolving clause of
2 which consists of amendments of title 38, United
3 States Code, or other amendments or modifications
4 of laws administered by the Secretary of Veterans
5 Affairs to implement the recommendations of the
6 Comptroller General in the report under section
7 102(b)(6); and

8 (3) the title of which is as follows: “Joint reso-
9 lution to ensure adequate funding of health care for
10 veterans.”.

11 (c) REFERRAL.—A joint resolution described in sub-
12 section (b) that is introduced in the House of Representa-
13 tives shall be referred to the Committee on Veterans’ Af-
14 fairs of the House of Representatives. A joint resolution
15 described in subsection (b) introduced in the Senate shall
16 be referred to the Committee on Veterans’ Affairs of the
17 Senate.

18 (d) DISCHARGE.—If the committee to which a joint
19 resolution described in subsection (b) is referred has not
20 reported such resolution (or an identical resolution) by the
21 end of the 20-day period beginning on the date on which
22 the Comptroller General submits to Congress the report
23 under section 102, such committee shall be, at the end
24 of such period, discharged from further consideration of

1 such resolution, and such resolution shall be placed on the
2 appropriate calendar of the House involved.

3 (e) CONSIDERATION.—

4 (1) MOTION TO PROCEED TO CONSIDER-
5 ATION.—On or after the third day after the date on
6 which the committee to which such a joint resolution
7 is referred has reported, or has been discharged
8 (under subsection (d)) from further consideration of,
9 such a resolution, it is in order (even though a pre-
10 vious motion to the same effect has been disagreed
11 to) for any Member of the respective House to move
12 to proceed to the consideration of the resolution (but
13 only on the day after the calendar day on which
14 such Member announces to the House concerned the
15 Member's intention to do so). The motion is highly
16 privileged in the House of Representatives and is
17 privileged in the Senate and is not debatable. The
18 motion is not subject to amendment, or to a motion
19 to postpone, or to a motion to proceed to the consid-
20 eration of other business. A motion to reconsider the
21 vote by which the motion is agreed to or disagreed
22 to shall not be in order. If a motion to proceed to
23 the consideration of the resolution is agreed to, the
24 respective House shall immediately proceed to con-
25 sideration of the joint resolution without intervening

1 motion, order, or other business, and the resolution
2 shall remain the unfinished business of the respec-
3 tive House until disposed of.

4 (2) DEBATE.—Debate on the resolution, and on
5 all debatable motions and appeals in connection
6 therewith, shall be limited to not more than 2 hours,
7 which shall be divided equally between those favoring
8 and those opposing the resolution. An amendment to
9 the resolution is not in order. A motion further to
10 limit debate is in order and not debatable. A motion
11 to postpone, or a motion to proceed to the consider-
12 ation of other business, or a motion to recommit the
13 resolution is not in order. A motion to reconsider the
14 vote by which the resolution is agreed to or dis-
15 agreed to is not in order.

16 (3) VOTE ON FINAL PASSAGE.—Immediately
17 following the conclusion of the debate on a joint res-
18 olution described in subsection (b) and a single
19 quorum call at the conclusion of the debate if re-
20 quested in accordance with the rules of the appro-
21 priate House, the vote on final passage of the resolu-
22 tion shall occur.

23 (4) APPEALS FROM DECISIONS OF THE
24 CHAIR.—Appeals from the decisions of the Chair re-
25 lating to the application of the rules of the Senate

1 or the House of Representatives, as the case may be,
 2 to the procedure relating to a joint resolution de-
 3 scribed in subsection (b) shall be decided without de-
 4 bate.

5 (f) CONSIDERATION BY OTHER HOUSE.—

6 (1) PROCEDURE.—If, before the passage by one
 7 House of a joint resolution of that House described
 8 in subsection (b), that House receives from the other
 9 House a joint resolution described in subsection (b),
 10 then the following procedures shall apply:

11 (A) The resolution of the other House shall
 12 not be referred to a committee and may not be
 13 considered in the House receiving it except in
 14 the case of final passage as provided in sub-
 15 paragraph (B)(ii).

16 (B) With respect to a joint resolution de-
 17 scribed in subsection (b) of the House receiving
 18 the resolution—

19 (i) the procedure in that House shall
 20 be the same as if no resolution had been
 21 received from the other House; but

22 (ii) the vote on final passage shall be
 23 on the resolution of the other House.

24 (2) DISPOSITION.—Upon disposition of the res-
 25 olution received from the other House, it shall no

1 longer be in order to consider the resolution that
 2 originated in the receiving House.

3 (g) RULES OF SENATE AND HOUSE.—This section
 4 is enacted by Congress—

5 (1) as an exercise of the rulemaking power of
 6 the Senate and House of Representatives, respec-
 7 tively, and as such it is deemed a part of the rules
 8 of each House, respectively, but applicable only with
 9 respect to the procedure to be followed in that
 10 House in the case of a joint resolution described in
 11 subsection (b), and it supersedes other rules only to
 12 the extent that it is inconsistent with such rules; and

13 (2) with full recognition of the constitutional
 14 right of either House to change the rules (so far as
 15 relating to the procedure of that House) at any time,
 16 in the same manner, and to the same extent as in
 17 the case of any other rule of that House.

18 **Subtitle B—Mental Health Matters**

19 **SEC. 111. FINDINGS.**

20 Congress makes the following findings:

21 (1) A study published in the New England
 22 Journal of Medicine reported that about one in six
 23 soldiers of the Iraq war displays symptoms of post-
 24 traumatic stress disorder.

1 (2) Clinical experts are anticipating an increase
 2 in the number of post-traumatic stress disorder
 3 cases in light of the increasing duration of military
 4 deployment.

5 (3) 86 of 163 Department of Veterans Affairs
 6 Medical Centers have post-traumatic stress disorder
 7 treatment programs.

8 (4) Section 1706 of title 38, United States
 9 Code, requires that the Secretary of Veterans Affairs
 10 ensure, in accordance with that section, that the De-
 11 partment of Veterans Affairs maintains its capacity
 12 to provide for the specialized treatment and rehabili-
 13 tative needs of disabled veterans within distinct pro-
 14 grams or facilities of the Department.

15 **SEC. 112. POST-TRAUMATIC STRESS DISORDER TREAT-**
 16 **MENT FOR VETERANS OF SERVICE IN AF-**
 17 **GHANISTAN AND IRAQ AND THE WAR ON TER-**
 18 **ROR.**

19 (a) ENHANCED CAPACITY FOR DEPARTMENT OF
 20 VETERANS AFFAIRS.—Using funds available to the Sec-
 21 retary of Veterans Affairs for fiscal year 2006 for “Med-
 22 ical Care”, the Secretary shall employ at least one psychia-
 23 trist and a complementary clinical team at each medical
 24 center of the Department of Veterans Affairs in order to
 25 conduct a specialized program for the diagnosis and treat-

1 ment of post-traumatic stress disorder and to employ addi-
2 tional mental health services specialists at the medical cen-
3 ter.

4 (b) OUTREACH AT THE COMMUNITY LEVEL.—

5 (1) PROGRAM.—The Secretary of Veterans Af-
6 fairs shall, within the authorities of the Secretary
7 under title 38, United States Code, carry out a pro-
8 gram to provide outreach at the community level to
9 veterans who participated in Operation Iraqi Free-
10 dom or Operation Enduring Freedom who are or
11 may be suffering from post-traumatic stress dis-
12 order.

13 (2) PROGRAM SITES.—The program shall be
14 carried out on a nation-wide basis through facilities
15 of the Department of Veterans Affairs.

16 (3) PROGRAM CONTENT.—The program shall
17 provide for individualized case management to be
18 conducted on a one-on-one basis, counseling, edu-
19 cation, and group therapy to help participants cope
20 with post-traumatic stress disorder. The program—

21 (A) shall emphasize early identification of
22 veterans who may be experiencing symptoms of
23 post-traumatic stress disorder; and

24 (B) shall include group-oriented, peer-to-
25 peer settings for treatment.

1 **SEC. 113. ARMED FORCES REVIEW OF MENTAL HEALTH**
2 **PROGRAMS.**

3 (a) REVIEW OF MENTAL HEALTH PROGRAMS.—The
4 Secretary of each military department shall conduct a
5 comprehensive review of the mental health care programs
6 of the Armed Forces under the jurisdiction of that Sec-
7 retary in order to determine ways to improve the efficacy
8 of such care, including a review of joint Department of
9 Defense and Department of Veterans Affairs clinical
10 guidelines to ensure a seamless delivery of care during
11 transitions from active duty or reserve status to civilian
12 life.

13 (b) REPORT TO CONGRESS.—The Secretary of De-
14 fense shall submit to Congress a report setting forth the
15 results of such review not later than 90 days after the
16 date of the enactment of this Act.

17 **Subtitle C—Other Matters**

18 **SEC. 121. AUTHORITY OF DEPARTMENT OF VETERANS AF-**
19 **FAIRS PHARMACIES TO DISPENSE MEDICA-**
20 **TIONS TO VETERANS ON PRESCRIPTIONS**
21 **WRITTEN BY PRIVATE PRACTITIONERS.**

22 (a) FINDINGS.—Congress makes the following find-
23 ings:

24 (1) Under longstanding regulations of the De-
25 partment of Veterans Affairs, most veterans who re-
26 ceive prescriptions for medication from private doc-

1 tors are forced to complete physicals conducted by
2 Department of Veterans Affairs physicians before
3 the veterans can have their prescriptions filled by a
4 pharmacy. This bureaucratic red tape can prevent
5 veterans from quickly receiving the medical treat-
6 ment they need.

7 (2) In December 2000, the Inspector General of
8 the Department of Veterans Affairs reported that
9 eliminating this unnecessary red tape would save the
10 underfunded Department of Veterans Affairs over
11 \$1,000,000,000 per year. The report concluded that
12 “a decision to continue the current policies results in
13 inefficiency and waste that we estimate annually
14 costs the Department over \$1,000,000,000 in re-
15 sources that could be better used in the delivery of
16 healthcare services to veterans.”.

17 (3) In 2004, the Department of Justice, in a
18 reversal of an earlier legal opinion, stating that the
19 Secretary of Veterans Affairs has the authority to
20 eliminate this rule without further legislative action.
21 The Secretary has failed to take such a step, thus
22 necessitating action by Congress.

23 (b) **AUTHORITY.**—Section 1712 of title 38, United
24 States Code, is amended—

1 (1) by redesignating subsection (e) as sub-
2 section (f); and

3 (2) by inserting after subsection (d) the fol-
4 lowing new subsection (e):

5 “(e)(1) The Secretary shall furnish to any medicare-
6 eligible veteran on an out-patient basis such drugs and
7 medicines as may be ordered on prescription of a duly li-
8 censed physician as specific therapy in the treatment of
9 any illness or injury suffered by such veteran.

10 “(2) In this subsection, the term ‘medicare-eligible
11 veteran’ means any veteran who—

12 “(A) is entitled to or enrolled in hospital insur-
13 ance benefits under part A of title XVIII of the So-
14 cial Security Act (42 U.S.C. 1395 et seq.); or

15 “(B) is enrolled in the supplementary medical
16 insurance program under part B of such title (42
17 U.S.C. 1395j et seq.).

18 “(3) The furnishing of drugs and medicines under
19 this subsection shall be subject to the provisions of section
20 1722A(b) of this title.”.

21 (c) COPAYMENT REQUIREMENTS.—

22 (1) IN GENERAL.—Section 1722A of such title
23 is amended—

1 (A) in subsection (a)(1), by inserting
2 “(other than a veteran covered by subsection
3 (b))” after “require a veteran”;

4 (B) by redesignating subsections (b) and
5 (c) as subsections (c) and (d), respectively;

6 (C) by inserting after subsection (a) the
7 following new subsection (b):

8 “(b)(1) In the case of a veteran who is furnished
9 medications on an out-patient basis under section 1712(e)
10 of this title, the Secretary shall require the veteran to pay,
11 at the election of the Secretary, one or more of the fol-
12 lowing:

13 “(A) An annual enrollment fee in an amount
14 determined appropriate by the Secretary.

15 “(B) A copayment for each 30-day supply of
16 such medications in an amount determined appro-
17 priate by the Secretary.

18 “(C) An amount equal to the cost to the Sec-
19 retary of such medications, as determined by the
20 Secretary.

21 “(2)(A) In determining the amounts to be paid by
22 a veteran under paragraph (1), and the basis of payment
23 under one or more subparagraphs of that paragraph, the
24 Secretary shall ensure that the total amount paid by vet-
25 erans for medications under that paragraph in a year is

1 not less than the costs of the Department in furnishing
2 medications to veterans under section 1712(e) of this title
3 during that year, including the cost of purchasing and fur-
4 nishing medications, and other costs of administering that
5 section.

6 “(B) The Secretary shall take appropriate actions to
7 ensure, to the maximum extent practicable, that amounts
8 paid by veterans under paragraph (1) in a year are equal
9 to the costs of the Department referred to in subpara-
10 graph (A) in that year.

11 “(3) In determining amounts under paragraph (1),
12 the Secretary may take into account the following:

13 “(A) Whether or not the medications furnished
14 are generic medications or brand name medications.

15 “(B) Whether or not the medications are fur-
16 nished by mail.

17 “(C) Whether or not the medications furnished
18 are listed on the National Prescription Drug For-
19 mulary of the Department.

20 “(D) Any other matters the Secretary considers
21 appropriate.

22 “(4) The Secretary may from time to time adjust any
23 amount determined by the Secretary under paragraph (1),
24 as previously adjusted under this paragraph, in order to
25 meet the purpose specified in paragraph (2).”; and

1 (D) in subsection (d), as so redesignated—
 2 (i) by striking “subsection (a)” and
 3 inserting “subsections (a) and (b)”; and
 4 (ii) by striking “subsection (b)” and
 5 inserting “subsection (c)”.

6 (2) DEPOSIT OF COLLECTIONS IN MEDICAL
 7 CARE COLLECTIONS FUND.—Paragraph (4) of sec-
 8 tion 1729A(b) of such title is amended to read as
 9 follows:

10 “(4) Subsection (a) or (b) of section 1722A of
 11 this title.”.

12 (d) CLERICAL AMENDMENTS.—(1) The heading for
 13 section 1712 of such title is amended by striking “**for**
 14 **certain disabled veterans**”.

15 (2) The table of sections at the beginning of chapter
 16 17 of such title is amended in the item relating to section
 17 1712 by striking “for certain disabled veterans”.

18 **TITLE II—CONCURRENT RE-**
 19 **CEIPT OF RETIRED PAY AND**
 20 **SERVICE-CONNECTED DIS-**
 21 **ABILITY COMPENSATION**

22 **SEC. 201. SHORT TITLE.**

23 This title may be cited as the “Retired Pay Restora-
 24 tion Act of 2005”.

1 **SEC. 202. FINDINGS.**

2 Congress makes the following findings:

3 (1) The United States Government has an es-
4 sential obligation to provide support and care for
5 men and women who have completed honorable mili-
6 tary service in defense of the Nation. In no instance
7 is this obligation more critical than for veterans who
8 were injured or disabled during their military serv-
9 ice.

10 (2) Disability compensation and military retired
11 pay are benefits earned for two distinct reasons.
12 Disability compensation is provided to veterans for
13 disabilities resulting from their military service to
14 the Nation as an expression of the Nation's grati-
15 tude and as recompense for their sacrifice. Military
16 retired pay is earned by members of the Armed
17 Forces for the devotion of 20 or more years of their
18 lives to the military service of the Nation.

19 (3) Until 2002, Federal law prohibited disabled
20 veterans from concurrently receiving both disability
21 compensation and retirement pay. The prohibition
22 against concurrent receipt was a gross violation of
23 the Government's commitment to veterans.

24 (4) Despite recent legislative advances, over
25 1,500,000 disabled veterans continue to be prohib-

1 ited from receiving both military retirement and dis-
2 ability payments concurrently.

3 **SEC. 203. FULL PAYMENT OF BOTH RETIRED PAY AND COM-**
4 **PENSATION TO DISABLED MILITARY RETIR-**
5 **EES.**

6 (a) RESTORATION OF FULL RETIRED PAY BENE-
7 FITS.—Section 1414 of title 10, United States Code, is
8 amended to read as follows:

9 **“§ 1414. Members eligible for retired pay who are also**
10 **eligible for veterans’ disability compensa-**
11 **tion: payment of retired pay and vet-**
12 **erans’ disability compensation**

13 “(a) PAYMENT OF BOTH RETIRED PAY AND COM-
14 PENSATION.—Except as provided in subsection (b), a
15 member or former member of the uniformed services who
16 is entitled to retired pay (other than as specified in sub-
17 section (c)) and who is also entitled to veterans’ disability
18 compensation is entitled to be paid both without regard
19 to sections 5304 and 5305 of title 38.

20 “(b) SPECIAL RULE FOR CHAPTER 61 CAREER RE-
21 TIREES.—The retired pay of a member retired under
22 chapter 61 of this title with 20 years or more of service
23 otherwise creditable under section 1405 of this title at the
24 time of the member’s retirement is subject to reduction
25 under sections 5304 and 5305 of title 38, but only to the

1 extent that the amount of the member's retired pay under
 2 chapter 61 of this title exceeds the amount of retired pay
 3 to which the member would have been entitled under any
 4 other provision of law based upon the member's service
 5 in the uniformed services if the member had not been re-
 6 tired under chapter 61 of this title.

7 “(c) EXCEPTION.—Subsection (a) does not apply to
 8 a member retired under chapter 61 of this title with less
 9 than 20 years of service otherwise creditable under section
 10 1405 of this title at the time of the member's retirement.

11 “(d) DEFINITIONS.—In this section:

12 “(1) The term ‘retired pay’ includes retainer
 13 pay, emergency officers’ retirement pay, and naval
 14 pension.

15 “(2) The term ‘veterans’ disability compensa-
 16 tion’ has the meaning given the term ‘compensation’
 17 in section 101(13) of title 38.”.

18 (b) REPEAL OF COMBAT-RELATED SPECIAL COM-
 19 PENSATION PROGRAM.—Section 1413a of such title is re-
 20 pealed.

21 (c) CLERICAL AMENDMENT.—The table of sections
 22 at the beginning of chapter 71 of such title is amended
 23 by striking the items relating to sections 1413a and 1414
 24 and inserting the following:

“1414. Members eligible for retired pay who are also eligible for veterans’ dis-
 ability compensation: payment of retired pay and veterans’ dis-
 ability compensation.”.

1 **SEC. 204. EFFECTIVE DATE; PROHIBITION ON RETRO-**
 2 **ACTIVE BENEFITS.**

3 (a) IN GENERAL.—The amendments made by section
 4 202 shall take effect on—

5 (1) the first day of the first month that begins
 6 after the date of the enactment of this Act; or

7 (2) the first day of the fiscal year that begins
 8 in the calendar year in which this Act is enacted, if
 9 later than the date specified in paragraph (1).

10 (b) RETROACTIVE BENEFITS.—No benefits may be
 11 paid to any person by reason of section 1414 of title 10,
 12 United States Code, as amended by section 202(a), for
 13 any period before the effective date applicable under sub-
 14 section (a).

15 **TITLE III—SEAMLESS TRANSI-**
 16 **TION FROM MILITARY SERV-**
 17 **ICE TO VETERANS STATUS**

18 **SEC. 301. FINDINGS.**

19 Congress makes the following findings:

20 (1) In its final report, the President’s Task
 21 Force To Improve Health Care Delivery For Our
 22 Nation’s Veterans found that “. . . increased col-
 23 laboration between the Departments [of Defense and
 24 Veterans Affairs] for the transfer of personnel and
 25 health information is needed. Within VA, broader
 26 sharing of the information received from the DOD

1 and individual veterans is required so that veterans
2 are not met at every turn with the question, ‘Who
3 are you and what do you want?’ A ‘seamless transi-
4 tion’ from military service to veteran status is espe-
5 cially critical in the context of health care, where
6 readily available, accurate, and current medical in-
7 formation must be accessible to health care pro-
8 viders’.

9 (2) The Task Force put forward a series of
10 seven recommendations designed to create a seam-
11 less transition from military service to veteran sta-
12 tus. Nearly two years after the submittal of its final
13 report, few of the recommendations have been adopt-
14 ed.

15 (3) Leading nonpartisan veterans’ advocates,
16 including the American Legion, Veterans of Foreign
17 Wars, Disabled American Veterans, and the Military
18 Officers Association of America, support the adop-
19 tion of the recommendations made by the Task
20 Force to create a seamless transition from military
21 service to veteran status.

22 **SEC. 302. REPORT ON DEVELOPMENT OF INTEROPERABLE**
23 **ELECTRONIC MEDICAL RECORDS.**

24 Not later than 60 days after the date of the enact-
25 ment of this Act, the Secretary of Defense and the Sec-

1 retary of Veterans Affairs shall jointly submit to Congress
2 a report on the status of the development of interoperable
3 electronic medical records for members of the Armed
4 Forces and veterans that are utilizable by both the De-
5 partment of Defense and the Department of Veterans Af-
6 fairs.

7 **SEC. 303. EXCHANGE OF MEDICAL RECORDS FOR SEAM-**
8 **LESS TRANSITION IN THE PROVISION OF**
9 **HEALTHCARE SERVICES.**

10 The Secretary of Health and Human Services shall
11 modify section 164.512(k)(1) of title 45, Code of Federal
12 Regulations, to provide that the Department of Defense
13 and the Department of Veterans Affairs may exchange
14 protected health information of members of the Armed
15 Forces and veterans in a manner that, as determined
16 jointly by the Secretary of Health and Human Services,
17 the Secretary of Defense, and the Secretary of Veterans
18 Affairs, facilitates a seamless transition between the provi-
19 sion of health care services by the Department of Defense
20 to members of the Armed Forces and the provision of
21 health care services by the Department of Veterans Affairs
22 to veterans who require such services after their separa-
23 tion or retirement from the Armed Forces.

1 **SEC. 304. ENHANCEMENT OF PRESEPARATION PHYSICAL**
2 **EXAMINATION REQUIREMENTS.**

3 Section 1145 of title 10, United States Code, is
4 amended—

5 (1) in subsection (a), by striking paragraph (4);

6 (2) by redesignating subsections (d) and (e) as
7 subsections (e) and (f), respectively; and

8 (3) by inserting after subsection (c) the fol-
9 lowing new subsection (d):

10 “(d) PRESEPARATION PHYSICAL.—(1) The Secretary
11 concerned shall require a member of the Armed Forces
12 to be separated from active duty to undergo a physical
13 examination before that separation.

14 “(2) The physical examination of a member under
15 this subsection shall be conducted before the member re-
16 ceives preseparation counseling under section 1142 of this
17 title.

18 “(3)(A) The physical examinations conducted under
19 this subsection shall be comprehensive and, to the max-
20 imum extent practicable, uniform throughout the armed
21 forces.

22 “(B) The purpose of a physical examination con-
23 ducted for a member under this subsection shall be—

24 “(i) to determine the immediate health care
25 needs, if any, of the member as of separation and

1 the ongoing health care needs, if any, of the member
 2 after separation; and

3 “(ii) to identify any illness, injury, or other
 4 medical conditions that may make the member eligi-
 5 ble for benefits as a veteran under the laws adminis-
 6 tered by the Secretary of Veterans Affairs.

7 “(C) The Secretary of Defense shall prescribe in reg-
 8 ulations the requirements for physical examinations con-
 9 ducted under this subsection.

10 “(4) The results of the physical examination of a
 11 member under this subsection shall be included on the
 12 Form DD214 of the member (or any successor form).

13 “(5) The Secretary concerned shall transmit in elec-
 14 tronic form to the Secretary of Veterans Affairs the re-
 15 sults of each physical examination conducted by such Sec-
 16 retary under this subsection.”.

17 **SEC. 305. ENHANCEMENT OF PRESEPARATION COUN-**
 18 **SELING REQUIREMENTS.**

19 Section 1142(b) of title 10, United States Code, is
 20 amended—

21 (1) by redesignating paragraphs (3) through
 22 (10) as paragraphs (4) through (11), respectively;
 23 and

24 (2) by striking paragraph (2) and inserting the
 25 following new paragraphs:

1 “(2) A description (to be developed with the as-
2 sistance of the Secretary of Veterans Affairs) of the
3 health care and other benefits to which the member
4 may be entitled under the laws administered by the
5 Secretary of Veterans Affairs, including compensa-
6 tion and vocational rehabilitation benefits in the case
7 of a member being medically separated or being re-
8 tired under chapter 61 of this title, which shall be
9 taken into account the preseparation physical exam-
10 ination of the member conducted under section
11 1145(d) of this title.

12 “(3) In the case of a member who, as deter-
13 mined pursuant to the preseparation physical exam-
14 ination conducted under section 145(d) of this title,
15 may be entitled to compensation or pensions benefits
16 under the laws administered by the Secretary of Vet-
17 erans Affairs, a referral (to be provided with the as-
18 sistance of the Secretary of Veterans Affairs) for a
19 compensation and pension examination by the Sec-
20 retary of Veterans Affairs.”.

21 **SEC. 306. EPIDEMIOLOGICAL STUDIES.**

22 (a) IN GENERAL.—The Secretary of Defense and the
23 Secretary of Veterans Affairs may, during the five-year
24 period beginning on October 1, 2005, jointly carry out
25 such epidemiological studies relating to veterans’ health

1 conditions that develop as a result of occupational expo-
 2 sure during military service as such Secretaries consider
 3 appropriate.

4 (b) FUNDING.—

5 (1) DEPARTMENT OF DEFENSE.—Of the
 6 amount authorized to be appropriated for fiscal year
 7 2006 for the Department of Defense for the Defense
 8 Health Program, \$2,500,000 shall be available for
 9 the epidemiological studies authorized by subsection
 10 (a).

11 (2) DEPARTMENT OF VETERANS AFFAIRS.—Of
 12 the amount appropriated for fiscal year 2006 for the
 13 Department of Veterans Affairs for Medical Care,
 14 \$2,500,000 shall be available for the epidemiological
 15 studies authorized by subsection (a).

16 (3) AVAILABILITY.—Amounts available under
 17 this subsection shall be available without fiscal year
 18 limitation.

19 **SEC. 307. INFORMATION SHARING.**

20 (a) IN GENERAL.—The Secretary of Defense and the
 21 Secretary of Veterans Affairs shall jointly develop proto-
 22 cols to facilitate the sharing of information between the
 23 Department of Defense and the Department of Veterans
 24 Affairs on the matters referred to in subsection (c) with
 25 respect to each member of the Armed Forces.

1 (b) PURPOSE.—The purpose of the protocols is to fa-
 2 cilitate determinations by the Department of Veterans Af-
 3 fairs of the existence and extent of a connection any illness
 4 or injury experienced by a former member of the Armed
 5 Forces after separation from the Armed Forces and the
 6 exposure of the member to toxic or hazardous substances
 7 in the course of the member's duties or assignments as
 8 a member of the Armed Forces.

9 (c) COVERED MATTERS.—The matters referred to in
 10 this subsection with respect to a member of the Armed
 11 Forces are as follows:

12 (1) The duties and assignments of the member,
 13 including the location of such duties and assign-
 14 ments.

15 (2) Any exposures of the member in the course
 16 of such duties and assignments to toxic or hazardous
 17 substances.

18 (3) Any illness or injury of the member in-
 19 curred or aggravated in the course of such duties
 20 and assignments.

21 (d) ELEMENTS OF PROTOCOLS.—The protocols on
 22 the sharing of information developed under subsection (a)
 23 shall include the following:

24 (1) Mechanisms to ensure that the Department
 25 of Veterans Affairs receives information to facilitate

1 the timely and accurate assessment of the illnesses
2 or injuries of a member of the Armed Forces that
3 may have been incurred or aggravated by the
4 members's exposure to toxic or hazardous sub-
5 stances during service in the Armed Forces.

6 (2) Mechanisms that provide, to the maximum
7 extent practicable consistent with the national secu-
8 rity interests of the United States, for the declas-
9 sification of information necessary to achieve the
10 purpose of the protocols.

11 (3) Procedures to ensure that information is
12 shared under the protocols as a matter of routine
13 operations of the Department of Defense and the
14 Department of Veterans Affairs.

15 (e) REPORT.—Not later than one year after the date
16 of the enactment of this Act, the Secretary of Defense and
17 the Secretary of Veterans Affairs shall jointly submit to
18 Congress a report on the protocols developed under sub-
19 section (a). The report shall include such recommenda-
20 tions for legislative or administrative action as the Secre-
21 taries consider appropriate.

22 (f) FUNDING.—

23 (1) DEPARTMENT OF DEFENSE.—Amounts au-
24 thorized to be appropriated for fiscal year 2006 for
25 the Department of Defense for operation and main-

1 tenance, defense-wide, shall be available for the de-
2 velopment of protocols under subsection (a).

3 (2) DEPARTMENT OF VETERANS AFFAIRS.—
4 Amounts authorized to be appropriated for fiscal
5 year 2006 for the Department of Veterans Affairs
6 shall be available for the development of protocols
7 under subsection (a).

8 **SEC. 308. COORDINATION OF LONG-TERM RESEARCH ON**
9 **HEALTH CARE.**

10 (a) DEPARTMENT OF VETERANS AFFAIRS REP-
11 RESENTATIVE ON ARMED FORCE EPIDEMIOLOGICAL
12 BOARD.—

13 (1) IN GENERAL.—The Secretary of Defense
14 shall appoint to the Armed Forces Epidemiological
15 Board, as an ex officio member, an officer of the
16 Department of Veterans Affairs designated by the
17 Secretary of Veterans Affairs for the purpose of this
18 subsection.

19 (2) PURPOSE.—The purpose of the appoint-
20 ment under this subsection is to ensure that the
21 Armed Forces Epidemiological Board considers and
22 takes into account the views and recommendations
23 of the Department of Veterans Affairs in providing
24 advice to the Assistant Secretary of Defense for

1 Health Affairs and the surgeons general of the
2 Armed Forces.

3 (b) DEPARTMENT OF VETERANS AFFAIRS REP-
4 RESENTATIVE ON DEPARTMENT OF DEFENSE SAFETY
5 AND OCCUPATIONAL HEALTH COMMITTEE.—

6 (1) IN GENERAL.—The Secretary of Defense
7 shall appoint to the Department of Defense Safety
8 and Occupational Health Committee, as an ex officio
9 member, an officer of the Department of Veterans
10 Affairs designated by the Secretary of Veterans Af-
11 fairs for the purpose of this subsection.

12 (2) PURPOSE.—The purpose of the appoint-
13 ment under paragraph (1) is to ensure that the De-
14 partment of Defense and the Department of Vet-
15 erans Affairs establish and maintain effective col-
16 laboration on matters relating to occupational safety
17 and health of current and former members of the
18 Armed Forces.

19 (c) ANNUAL REPORT ON FORCE HEALTH PROTEC-
20 TION.—Not later than March 1 each year, the Secretary
21 of Defense and the Secretary of Veterans Affairs shall
22 jointly submit to Congress each year a report on the ef-
23 forts of the Department of Defense and Department of
24 Veterans Affairs, respectively, during the preceding cal-
25 endar year, to accomplish the following:

1 (1) The identification of illnesses and injuries
 2 incurred or aggravated by members of the Armed
 3 Forces during service in the Armed Forces through
 4 exposure to occupational hazards and other toxic
 5 and hazardous substances.

6 (2) The treatment of members of the Armed
 7 Forces and veterans for illnesses and injuries de-
 8 scribed in paragraph (1).

9 (3) The conduct of epidemiological studies on
 10 the health consequences of the exposure of members
 11 of the Armed Forces to occupational hazards and
 12 other toxic and hazardous substances during service
 13 in the Armed Forces.

14 (4) The development of guidance and other in-
 15 formation on policies and practices intended to pre-
 16 vent, reduce, or mitigate the exposure of members of
 17 the Armed Forces to occupational hazards and other
 18 toxic and hazardous substances during service in the
 19 Armed Forces.

20 **TITLE IV—INCREASED GOVERN-**
 21 **MENT COMMITMENT TO VET-**
 22 **ERANS’ EDUCATION**

23 **SEC. 401. SHORT TITLE.**

24 This title may be cited as the “Increased Government
 25 Commitment to Veterans’ Education Act”.

1 **SEC. 402. FINDINGS.**

2 Congress makes the following findings:

3 (1) 2004 marked the 60th anniversary of the
4 Servicemen's Readjustment Act of 1944, better
5 known as the G.I. Bill. Out of an eligible population
6 of 15,500,000 veterans, nearly 8,000,000 received
7 education or training as a result of this legislation,
8 one of the most successful Federal Government pro-
9 grams in United States history.

10 (2) Since Congress first enacted the G.I. Bill,
11 veterans' benefits have been updated to keep pace
12 with changing times. Over 21,000,000 veterans have
13 now received educational assistance through the G.I.
14 Bill and its successors.

15 (3) Congress has a duty to ensure that the VA
16 can continue to offer an education assistance pro-
17 gram that robustly supports veterans' efforts to ob-
18 tain higher education and make a successful transi-
19 tion from military to civilian life.

20 **SEC. 403. EXCLUSION OF BASIC PAY CONTRIBUTIONS FOR**
21 **PARTICIPATION IN BASIC EDUCATIONAL AS-**
22 **SISTANCE IN CERTAIN COMPUTATIONS ON**
23 **STUDENT FINANCIAL AID.**

24 (a) EXCLUSION.—Subchapter II of chapter 30 of title
25 38, United States Code, is amended by adding at the end
26 the following new section:

1 **“§ 3020A. Exclusion of basic pay contributions in cer-**
 2 **tain computations on student financial**
 3 **aid**

4 “(a) IN GENERAL.—The expected family contribution
 5 computed under section 475, 476, or 477 of the Higher
 6 Education Act of 1965 (20 U.S.C. 1087oo, 1087pp,
 7 1087qq) for a covered student shall be decreased by
 8 \$1,200 for the applicable year.

9 “(b) DEFINITIONS.—In this section:

10 “(1) The term ‘academic year’ has the meaning
 11 given the term in section 481(a)(2) of the Higher
 12 Education Act of 1965 (20 U.S.C. 1088(a)(2)).

13 “(2) The term ‘applicable year’ means the first
 14 academic year for which a student uses entitlement
 15 to basic educational assistance under this chapter.

16 “(3) The term ‘covered student’ means any in-
 17 dividual entitled to basic educational assistance
 18 under this chapter whose basic pay or voluntary sep-
 19 aration incentives was or were subject to reduction
 20 under section 3011(b), 3012(c), 3018(c), 3018A(b),
 21 or 3018B(b) of this title.”.

22 (b) CLERICAL AMENDMENT.—The table of sections
 23 at the beginning of such chapter is amended by inserting
 24 after the item relating to section 3020 the following new
 25 item:

“3020A. Exclusion of basic pay contributions in certain computations on student financial aid.”.

1 **SEC. 404. OPPORTUNITY FOR ENROLLMENT IN BASIC EDU-**
 2 **CATIONAL ASSISTANCE PROGRAM OF CER-**
 3 **TAIN INDIVIDUALS WHO PARTICIPATED OR**
 4 **WERE ELIGIBLE TO PARTICIPATE IN POST-**
 5 **VIETNAM ERA VETERANS EDUCATIONAL AS-**
 6 **SISTANCE PROGRAM.**

7 (a) OPPORTUNITY FOR ENROLLMENT.—Section
 8 3018C(e) of title 38, United States Code, is amended—
 9 (1) in paragraph (1), by inserting “or (3)”
 10 after “paragraph (2)”;
 11 (2) by redesignating paragraphs (3), (4), and
 12 (5) as paragraphs (4), (5), and (6), respectively;
 13 (3) by inserting after paragraph (2) the fol-
 14 lowing new paragraph (3):
 15 “(3) A qualified individual referred to in paragraph
 16 (1) is also an individual who meets each of the following
 17 requirements:

18 “(A) The individual is a participant in the edu-
 19 cational benefits program under chapter 32 of this
 20 title as of the date of the enactment of the Mont-
 21 gomery GI Bill for the 21st Century Act, or was eli-
 22 gible to participate in such program, but had not
 23 participated in that program or any other edu-

5 “(C) The individual, when discharged or re-
6 leased from active duty, is discharged or released
7 therefrom with an honorable discharge.”;

(5) in paragraph (6), as so redesignated, by inserting “, or individuals eligible to participate in that program who have not participated in that program or any other educational benefits program under this title,” after “chapter 32 of this title”.

19 **“§ 3018C. Opportunity to enroll: certain VEAP par-**
20 **ticipants; certain individuals eligible for**
21 **participation in VEAP”.**

“3018C. Opportunity to enroll: certain VEAP participants; certain individuals eligible for participation in VEAP.”.

1 **SEC. 405. COMMENCEMENT OF 10-YEAR DELIMITING PE-**
2 **RIOD FOR VETERANS AND DEPENDENTS WHO**
3 **ENROLL IN TRAINING PROGRAM.**

4 (a) VETERANS.—Section 3031 of title 38, United
5 States Code, is amended—

6 (1) in subsection (a), by striking “through (g),
7 and subject to subsection (h)” and inserting
8 “through (h), and subject to subsection (i)”;

9 (2) by redesignating subsection (h) as sub-
10 section (i); and

11 (3) by inserting after subsection (g) the fol-
12 lowing new subsection (h):

13 “(h) In the case of an individual eligible for edu-
14 cational assistance under this chapter who, during the 10-
15 year period described in subsection (a) of this section, en-
16 rolls in a program of training under this chapter, the pe-
17 riod during which the individual may use the individual’s
18 entitlement to educational assistance under this chapter
19 expires on the last day of the 10-year period beginning
20 on the first day of the individual’s pursuit of such program
21 of training.”.

22 (b) ELIGIBLE CHILDREN.—Subsection (a) of section
23 3512 of such title is amended—

24 (1) in paragraph (6)(B), by striking “and” at
25 the end;

1 (2) in paragraph (7), by striking the period at
2 the end and inserting “; and”; and

3 (3) by adding at the end the following new
4 paragraph:

5 “(8) if the person enrolls in a program of spe-
6 cial restorative training under subchapter V of this
7 chapter, such period shall begin on the first day of
8 the person’s pursuit of such program of special re-
9 storative training.”.

○