

105TH CONGRESS
1ST SESSION

H. R. 1456

To amend title 10, United States Code, to improve the access to military treatment facilities for retired members of the uniformed services, and their dependents, who are over 65 years of age, to provide for Medicare reimbursement for health care services provided to such persons, and, as an alternative health care approach, to permit such persons to enroll in the Federal Employees Health Benefits program.

IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 1997

Mr. THORNBERRY introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Commerce, National Security, and Government Reform and Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 10, United States Code, to improve the access to military treatment facilities for retired members of the uniformed services, and their dependents, who are over 65 years of age, to provide for Medicare reimbursement for health care services provided to such persons, and, as an alternative health care approach, to permit such persons to enroll in the Federal Employees Health Benefits program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Uniformed Services Retiree and Dependents Health Care
4 Availability Act”.

5 (b) TABLE OF CONTENTS.—The table of contents of
6 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ENROLLMENT OF RETIREES IN TRICARE PRIME AND
MEDICARE REIMBURSEMENT

Sec. 101. Definitions.

Sec. 102. Availability of TRICARE-prime for Medicare-eligible uniformed services retirees.

Sec. 103. Medicare reimbursement.

Sec. 104. Determination of reimbursement amounts.

Sec. 105. Maintenance of defense health care effort.

Sec. 106. Department of Defense payment of late enrollment penalty under Medicare.

Sec. 107. Medigap special open enrollment period for certain uniformed services retirees and dependents.

TITLE II—FEHBP OPTION FOR RETIREES

Sec. 201. Inclusion of Medicare-eligible uniformed services retirees in Federal Employees Health Benefits program.

Sec. 202. Improved benefits under CHAMPUS and TRICARE standard.

7 **TITLE I—ENROLLMENT OF RE-**
8 **TIREES IN TRICARE PRIME**
9 **AND Medicare REIMBURSE-**
10 **MENT**

11 **SEC. 101. DEFINITIONS.**

12 For purposes of this title:

13 (1) **MEDICARE-ELIGIBLE UNIFORMED SERVICES**
14 **RETIREE.**—The term “Medicare-eligible uniformed
15 services retiree” means a member or former member
16 of a uniformed service who is entitled to retired pay

1 or retainer pay (or equivalent pay), or a dependent
2 covered by section 1076(b) of title 10, United States
3 Code, who is entitled to hospital insurance benefits
4 under part A of title XVIII of the Social Security
5 Act (42 U.S.C. 1395c et seq.).

6 (2) TRICARE PROGRAM.—The term
7 “TRICARE program” means the managed health
8 care program that is established by the Secretary of
9 Defense under the authority of chapter 55 of title
10 10, United States Code, principally section 1097 of
11 such title, and includes the competitive selection of
12 contractors to financially underwrite the delivery of
13 health care services under the Civilian Health and
14 Medical Program of the Uniformed Services.

15 (3) SUBVENTION PROGRAM.—The term “sub-
16 vention program” means the program established
17 under section 103 to reimburse the Department of
18 Defense, from the Medicare program under title
19 XVIII of the Social Security Act (42 U.S.C. 1395 et
20 seq.), for health care services provided to Medicare-
21 eligible uniformed services retirees through the
22 TRICARE program.

23 (4) DEPENDENT.—The term “dependent” has
24 the meaning given the term in section 1072(2) of
25 title 10, United States Code.

1 (5) SECRETARIES.—The term “Secretaries”
2 means the Secretary of Defense and the Secretary of
3 Health and Human Services acting jointly.

4 **SEC. 102. AVAILABILITY OF TRICARE-PRIME FOR Medicare-**
5 **ELIGIBLE UNIFORMED SERVICES RETIREES.**

6 The Secretary of Defense may not prohibit the enroll-
7 ment of Medicare-eligible uniformed services retirees in
8 the managed care option of the TRICARE program
9 (known as TRICARE prime) solely on account of age or
10 the entitlement of such persons to hospital insurance bene-
11 fits under part A of title XVIII of the Social Security Act
12 (42 U.S.C. 1395c et seq.).

13 **SEC. 103. Medicare REIMBURSEMENT.**

14 (a) REIMBURSEMENT REQUIRED.—To increase the
15 number of Medicare-eligible uniformed services retirees
16 able to enroll in the managed care option of the TRICARE
17 program, the Secretary of Defense and the Secretary of
18 Health and Human Services shall jointly establish a pro-
19 gram to provide the department of Defense with reim-
20 bursement, beginning October 1, 1997, from the Medicare
21 program under title XVIII of the Social Security Act (42
22 U.S.C. 1395 et seq.) for health care services provided to
23 Medicare-eligible uniformed services retirees through the
24 TRICARE program. Reimbursement will only be provided
25 in the case of Medicare-eligible uniformed services retirees

1 who are also enrolled in the supplementary medical insur-
2 ance program under part B of title XVIII of the Social
3 Security Act (42 U.S.C. 1395j et seq.).

4 (b) VOLUNTARY ENROLLMENT.—For purposes of the
5 subvention program, enrollment of Medicare-eligible uni-
6 formed services retirees in an option of the TRICARE pro-
7 gram shall be voluntary, except that the total number of
8 Medicare-eligible uniformed services retirees so enrolled
9 shall be subject to the capacity and funding limitations
10 specified in sections 104 and 105.

11 (c) EFFECT OF ENROLLMENT.—In the case of a
12 Medicare-eligible uniformed services retiree who enrolls in
13 an option of the TRICARE program, payments may not
14 be made under title XVIII of the Social Security Act (42
15 U.S.C. 1395 et seq.) other than under the subvention pro-
16 gram for health care services provided through the
17 TRICARE program, except that the Secretaries may pro-
18 vide exceptions for emergencies or other situations as the
19 Secretaries consider appropriate.

20 (d) TRICARE PROGRAM ENROLLMENT FEE WAIV-
21 ER.—The Secretary of Defense shall waive the enrollment
22 fee applicable to any Medicare-eligible uniformed services
23 retiree enrolled in the managed care option of the
24 TRICARE program for whom reimbursement may be
25 made under section 104.

1 (e) MODIFICATION OF TRICARE CONTRACTS.—In
2 carrying out the subvention program, the Secretary of De-
3 fense may amend existing TRICARE program contracts
4 as may be necessary to incorporate provisions specifically
5 applicable to Medicare-eligible uniformed services retirees
6 who enroll in an option of the TRICARE program.

7 (f) COST SHARING.—The Secretary of Defense may
8 establish cost sharing requirements for Medicare-eligible
9 uniformed services retirees who enroll in an option of the
10 TRICARE program and for whom reimbursement may be
11 made under section 104.

12 **SEC. 104. DETERMINATION OF REIMBURSEMENT AMOUNTS.**

13 (a) REIMBURSEMENT OF DEPARTMENT OF DE-
14 FENSE.—Beginning October 1, 1997, monthly payments
15 to the Department of Defense under the subvention pro-
16 gram shall be made from the Medicare program under title
17 XVIII of the Social Security Act (42 U.S.C. 1395 et seq.)
18 on the basis that payments are made under section
19 1876(a) of the Act (42 U.S.C. 1395mm(a)).

20 (b) AMOUNT OF PAYMENTS.—The Secretary of
21 Health and Human Services shall make payments to the
22 Department of Defense from the Federal Hospital Insur-
23 ance Trust Fund and the Federal Supplementary Medical
24 Insurance Trust Fund (allocated by the Secretary of
25 Health and Human Services between each trust fund

1 based on the relative weight that each trust fund contrib-
2 utes to the required payment) at a per capita rate equal
3 to 93 percent of the applicable adjusted average per capita
4 cost for each Medicare-eligible uniformed services retiree
5 enrolled in the TRICARE program in excess of the num-
6 ber of such uniformed services retirees calculated under
7 section 105 for the Department of Defense maintenance
8 of health care effort.

9 **SEC. 105. MAINTENANCE OF DEFENSE HEALTH CARE EF-**
10 **FORT.**

11 (a) MAINTENANCE OF EFFORT REQUIRED.—The
12 Secretary of Defense shall maintain the Department of
13 Defense health care efforts for Medicare-eligible uni-
14 formed services retirees so as to avoid imposing on the
15 Medicare program those costs that the Department of De-
16 fense would be expected to incur to provide health care
17 services to Medicare-eligible uniformed services retirees in
18 the absence of the subvention program.

19 (b) ESTIMATE OF PRIOR EFFORT.—For the first fis-
20 cal year of the subvention program, the Secretaries shall
21 estimate the amount expended by the Department of De-
22 fense for fiscal year 1997 for providing health care items
23 and services (other than pharmaceuticals provided to out-
24 patients) to Medicare-eligible uniformed services retirees.
25 For subsequent fiscal years, the amount so estimated shall

1 be adjusted for inflation, for differences between estimated
2 and actual amounts expended, and for major changes in
3 the Department of Defense health care budget.

4 (c) TARGET FOR DEFENSE EFFORT.—On the basis
5 of the estimate made under subsection (b), the Secretaries
6 shall establish monthly targets of the number of Medicare-
7 eligible uniformed services retirees for whom reimburse-
8 ment will not be provided to the Department of Defense
9 under section 104.

10 (d) PROTECTION OF MEDICARE PROGRAM AGAINST
11 INCREASED COSTS.—

12 (1) PURPOSE.—The purpose of this subsection
13 is to protect the Medicare program against costs in-
14 curred under section 104 in connection with the pro-
15 vision of health care services to Medicare-eligible
16 uniformed services retirees that would not have been
17 incurred by the Medicare program in the absence of
18 the reimbursement requirement.

19 (2) REVIEW BY COMPTROLLER GENERAL.—Not
20 later than December 31 of each year, the Comptrol-
21 ler General shall determine and submit to the Sec-
22 retaries and Congress a report on the extent, if any,
23 to which the costs of the Secretary of Defense under
24 the TRICARE program and the costs of the Sec-
25 retary of Health and Human Services under the

1 Medicare program have increased as a result of the
2 subvention program.

3 (3) ACTIONS TO PREVENT INCREASED COSTS.—

4 If the Secretaries determine that the trust funds
5 under title XVIII of the Social Security Act (42
6 U.S.C. 1395 et seq.) still incur excess costs as a re-
7 sult of the subvention program, the Secretaries shall
8 take such steps as may be necessary to offset those
9 excess costs (and prevent future excess costs), in-
10 cluding suspension or termination of the subvention
11 program, adjustment of the payment rate under sec-
12 tion 104(b), or an adjustment of the maintenance of
13 effort requirements of the Department of Defense
14 under this section.

15 **SEC. 106. DEPARTMENT OF DEFENSE PAYMENT OF LATE**
16 **ENROLLMENT PENALTY UNDER Medicare.**

17 (a) DEPARTMENT OF DEFENSE PAYMENT.—In the
18 case of any Medicare-eligible uniformed services retiree
19 who enrolls under part B of title XVIII of the Social Secu-
20 rity Act and who, because of the date of such enrollment,
21 is subject to the late enrollment penalty imposed pursuant
22 to section 1839(b) of the Social Security Act on the
23 monthly premium under part B of such title, the Secretary
24 of Defense shall reimburse the Medicare-eligible uniformed
25 services retiree for the cost of such penalty by—

1 (1) increasing the amount of a payment other-
 2 wise made by the Department of Defense to the
 3 Medicare-eligible uniformed services retiree, such as
 4 retired or retainer pay; or

5 (2) making a special payment to the Medicare-
 6 eligible uniformed services retiree to cover the cost
 7 of such penalty.

8 (b) **ELIGIBLE MEDICARE-ELIGIBLE UNIFORMED**
 9 **SERVICES RETIREE DESCRIBED.**—A Medicare-eligible
 10 uniformed services retiree referred to in this section is a
 11 Medicare-eligible uniformed services retiree—

12 (1) who is at least 65 years of age and was eli-
 13 gible to enroll under part B of title XVIII of the So-
 14 cial Security Act, and

15 (2) who at the time the individual first satisfied
 16 paragraph (1) or (2) of section 1836 of the Social
 17 Security Act, did not elect to enroll (or to be deemed
 18 enrolled) under section 1837 of the Social Security
 19 Act during the individual’s initial enrollment period.

20 **SEC. 107. MEDIGAP SPECIAL OPEN ENROLLMENT PERIOD**
 21 **FOR CERTAIN UNIFORMED SERVICES RETIR-**
 22 **EES AND DEPENDENTS.**

23 (a) **MEDIGAP SPECIAL OPEN ENROLLMENT PE-**
 24 **RIOD.**—Notwithstanding any other provision of law, in the
 25 case of a Medicare-eligible uniformed services retiree who

1 seeks to enroll in a Medicare supplemental policy (as de-
2 fined in section 1882(g) of the Social Security Act), the
3 issuer of the Medicare supplemental policy—

4 (1) may not deny or condition the issuance or
5 effectiveness of a Medicare supplemental policy; and

6 (2) may not discriminate in the pricing of the
7 policy on the basis of the individual's health status,
8 medical condition (including both physical and men-
9 tal illnesses), claims experience, receipt of health
10 care, medical history, genetic information, evidence
11 of insurability (including conditions arising out of
12 acts of domestic violence), or disability.

13 (b) ~~ELIGIBLE MEDICARE-ELIGIBLE UNIFORMED~~
14 ~~SERVICES RETIREE DESCRIBED.~~—A Medicare-eligible
15 uniformed services retiree referred to in this section is a
16 Medicare-eligible uniformed services retiree—

17 (1) who is at least 65 years of age and was eli-
18 gible to enroll under part B of title XVIII of the So-
19 cial Security Act, and

20 (2) who at the time the individual first satisfied
21 paragraph (1) or (2) of section 1836 of the Social
22 Security Act, did not elect to enroll (or to be deemed
23 enrolled) under section 1837 of the Social Security
24 Act during the individual's initial enrollment period.

1 **TITLE II—FEHBP OPTION FOR**
2 **RETIREES**

3 **SEC. 201. INCLUSION OF Medicare-ELIGIBLE UNIFORMED**
4 **SERVICES RETIREES IN FEDERAL EMPLOY-**
5 **EES HEALTH BENEFITS PROGRAM.**

6 (a) FEHBP OPTION.—Chapter 55 of title 10, United
7 States Code, is amended by adding at the end the follow-
8 ing new section:

9 **“§ 1107. Health care coverage through Federal Em-**
10 **ployees Health Benefits Program**

11 “(a) FEHBP OPTION.—The Secretary of Defense,
12 after consulting with the other administering Secretaries,
13 shall enter into an agreement with the Office of Personnel
14 Management under which a Medicare-eligible uniformed
15 services retiree will be offered an opportunity to enroll in
16 a health benefits plan offered through the Federal Em-
17 ployee Health Benefits program, as an additional option
18 for receiving health care services under this chapter. The
19 agreement may provide for limitations on enrollment of
20 Medicare-eligible uniformed services retirees in the Fed-
21 eral Employee Health Benefits program if the Office of
22 Personnel Management determines the limitations are
23 necessary to allow for adequate planning for access for
24 services under the Federal Employee Health Benefits pro-
25 gram.

1 “(b) MEDICARE-ELIGIBLE UNIFORMED SERVICES
2 RETIREE DEFINED.—In this section, the term ‘Medicare
3 eligible uniformed services retiree’ means a member or
4 former member of a uniformed service who is entitled to
5 retired pay or retainer pay (or equivalent pay), or a de-
6 pendent covered by section 1076(b) of this title, who is
7 entitled to hospital insurance benefits under part A of title
8 XVIII of the Social Security Act (42 U.S.C. 1395c et
9 seq.).

10 “(c) CONTINUED PARTICIPATION IN UNIFORMED
11 SERVICES HEALTH SYSTEM.—A Medicare-eligible uni-
12 formed services retiree who enrolls in a health benefits
13 plan offered through the Federal Employee Health Bene-
14 fits program pursuant to subsection (a) may continue,
15 after such enrollment, to receive health care services
16 through a treatment facility of the uniformed services.
17 Section 1095 of this title, relating to collection from third-
18 party payers, shall apply with respect to the costs of health
19 care services incurred by the United States on behalf
20 of an enrolled uniformed services retiree through a
21 treatment facility of the uniformed services, the Civilian
22 Health and Medical Program of the Uniformed Services,
23 or the TRICARE program.

24 “(d) CONTRIBUTIONS.—(1) In the case of a Medi-
25 care-eligible uniformed services retiree who enrolls in a

1 health benefits plan offered through the Federal Employee
2 Health Benefits program pursuant to subsection (a), the
3 administering Secretary concerned shall be responsible for
4 Government contributions that the Office of Personnel
5 Management determines are necessary to cover all costs
6 in excess of contributions under paragraph (2).

7 “(2) The contribution required from the enrolled uni-
8 formed services retiree shall be equal to the amount that
9 would be withheld from the pay of a similarly situated
10 Federal employee who enrolls in a health benefits plan
11 under chapter 89 of title 5.

12 “(e) MANAGEMENT OF PARTICIPATION.—If the en-
13 rolled uniformed services retiree is a member or former
14 member of the uniformed services described in section
15 1074(b) of this title, the authority responsible for approv-
16 ing retired or retainer pay or equivalent pay for the mem-
17 ber or former member shall manage he participation of
18 the enrolled member or former member in a health bene-
19 fits plan offered through the Federal Employee Health
20 Benefits program pursuant to subsection (a). If the en-
21 rolled uniformed services retiree is a dependent of a mem-
22 ber or former member, the authority that is, or would be,
23 responsible for approving retired or retainer pay or equiva-
24 lent pay for the member or former member shall manage
25 the participation of the enrolled dependent in a health ben-

1 efits plan offered through the Federal Employee Health
2 Benefits program under subsection (a). The Office of Per-
3 sonnel Management shall maintain separate risk pools for
4 enrolled uniformed services retirees until such time as the
5 Director of the Office of Personnel Management deter-
6 mines that complete inclusion of enrolled uniformed serv-
7 ices retirees under chapter 89 of title 5 will not adversely
8 affect Federal employees and annuitants enrolled in health
9 benefits plans under such chapter.

10 “(f) EFFECT OF CANCELLATION.—The cancellation
11 by a Medicare-eligible uniformed services retiree of cov-
12 erage under the Federal Employee Health Benefits pro-
13 gram shall be irrevocable except as provided by the admin-
14 istering Secretaries.

15 “(g) REPORTING REQUIREMENTS.—Not later than
16 November 1 of each year, the administering Secretaries
17 and the Director of the Office of Personnel Management
18 shall jointly submit a report to Congress describing the
19 provision of health care services to Medicare-eligible uni-
20 formed services retirees under this section during the pre-
21 ceding fiscal year. The report shall address or contain the
22 following:

23 “(1) The number of Medicare-eligible uniformed
24 services retirees enrolled in health benefits plans of-
25 fered through the Federal Employee Health Benefits

1 program pursuant to subsection (a), both in terms
2 of total number and as a percentage of all Medicare-
3 eligible uniformed services retirees receiving health
4 care through the health care system of the uni-
5 formed services.

6 “(2) The out-of-pocket cost to enrolled uni-
7 formed services retirees under such health benefits
8 plans.

9 “(3) The cost to the Government (including the
10 Department of Defense, the Department of Com-
11 merce, the Department of Transportation, and the
12 Department of Health and Human Services) of pro-
13 viding care under such health benefits plans as a re-
14 sult of this section.

15 “(4) A comparison of the costs determined
16 under paragraphs (2) and (3) and the costs that
17 would have otherwise been incurred by the Govern-
18 ment and enrolled uniformed services retirees under
19 alternative health care options available to the ad-
20 ministering Secretaries.

21 “(5) The effect of this section on the cost, ac-
22 cess, and utilization rates of other health care op-
23 tions under the health care system of the uniformed
24 services.

1 “(h) TIME FOR OPTION.—The Secretary of Defense
2 shall begin to offer the health benefits option under sub-
3 section (a) not later than January 1, 1999.”.

4 “(b) CLERICAL AMENDMENT.—The table of sections
5 at the beginning of such chapter is amended by adding
6 at the end the following new item:

“1107. Health care coverage through Federal Employees Health Benefits pro-
gram.”.

7 **SEC. 202. IMPROVED BENEFITS UNDER CHAMPUS AND**
8 **TRICARE STANDARD.**

9 (a) COMPARABILITY.—(1) Chapter 55 of title 10,
10 United States Code, is further amended by inserting after
11 section 1107 (as added by section 201) the following new
12 section:

13 **“§ 1108. CHAMPUS and TRICARE Standard benefits:**
14 **comparability with service benefit plan**
15 **of the Federal Employees Health Benefits**
16 **program**

17 “(a) BENEFITS.—The health and dental care benefits
18 provided under CHAMPUS and TRICARE Standard
19 shall be comparable to the highest level of benefits pro-
20 vided under the service benefit plan of the Federal Em-
21 ployees Health Benefits program.

22 “(b) PROVIDER REIMBURSEMENT RATES.—The
23 rates prescribed for the reimbursement of health and den-
24 tal care providers under CHAMPUS and TRICARE

1 Standard shall be the same as those provided for the high-
2 est level of benefits under the service benefit plan of the
3 Federal Employees Health Benefits program.

4 “(c) EFFECT OF FAILURE TO COMPLY.—If the Sec-
5 retary of Defense certifies to Congress that the Secretary
6 is unable to satisfy the requirements of subsections (a)
7 and (b), section 1107 of this title shall apply to covered
8 beneficiaries participating in CHAMPUS and TRICARE
9 Standard so as to permit such covered beneficiaries to en-
10 roll in a service benefit plan of the Federal Employees
11 Health Benefits program.”.

12 (2) The table of sections at the beginning of such
13 chapter is amended by inserting after the item relating
14 to section 1107 (as added by section 201(b)) the following
15 new item:

“1108. CHAMPUS and TRICARE Standard benefits: comparability with serv-
ice benefit plan of the Federal Employees Health Benefits pro-
gram.”.

16 (b) DEFINITIONS.—Section 1072 of title 10, United
17 States Code, is amended—

18 (1) in paragraph (4), by striking out “The term
19 ‘Civilian Health and Medical Program of the Uni-
20 formed Services’ means” and inserting in lieu there-
21 of “The terms ‘Civilian Health and Medical Pro-
22 gram of the Uniformed Services’ and ‘CHAMPUS’
23 mean”; and

24 (2) by adding at the end the following:

1 “(7) The term ‘TRICARE program’ means the
2 managed health care program that is established by
3 the Secretary of Defense under the authority of this
4 chapter, principally section 1097 of this title, and in-
5 cludes the competitive selection of contractors to fi-
6 nancially underwrite the delivery of health care serv-
7 ices under CHAMPUS.

8 “(8) The term ‘TRICARE Standard’ means a
9 CHAMPUS health care benefits option that, subject
10 to the deductibles and cost-sharing requirements
11 under CHAMPUS, pays a share of the cost of cov-
12 ered health care services that are provided by health
13 care providers outside the Federal Government who
14 are not part of the CHAMPUS network of health
15 care providers.

16 “(9) The term ‘Federal Employee Health Bene-
17 fits program’ means the Federal Employee Health
18 Benefits program under chapter 89 of title 5.”.

○