FY2013 National Defense Authorization Act: Selected Military Personnel Policy Issues

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Summary

Military personnel issues typically generate significant interest from many Members of Congress and their staffs. Recent military operations in Iraq and ongoing operations in Afghanistan, along with the operational role of the Reserve Components, further heighten interest in a wide range of military personnel policies and issues.

The Congressional Research Service (CRS) has selected a number of the military personnel issues considered in deliberations on the House and Senate versions of the National Defense Authorization Act for FY2013. This report provides a brief synopsis of sections that pertain to personnel policy. These include end strengths, pay raises, health care, sexual assault, issues related to the repeal of the "Don't Ask, Don't Tell" policy, as well as less prominent issues that nonetheless generate significant public interest.

This report focuses exclusively on the annual defense authorization process. It does not include language concerning appropriations, veterans' affairs, tax implications of policy choices, or any discussion of separately introduced legislation. Some issues were addressed in the FY2012 National Defense Authorization Act and discussed in CRS Report R41874, *FY2012 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by David F. Burrelli. Those issues that were considered previously are designated with a "*" in the relevant section titles of this report.

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Introduction

Each year, the House and Senate Armed Services Committees report their respective versions of the National Defense Authorization Act (NDAA). These bills contain numerous provisions that affect military personnel, retirees, and their family members. Provisions in one version are often not included in another; are treated differently; or, in certain cases, are identical. Following passage of these bills by the respective legislative bodies, a conference committee is usually convened to resolve the various differences between the House and Senate versions.

In the course of a typical authorization cycle, congressional staffs receive many requests for information on provisions contained in the annual NDAA. This report highlights those personnel-related issues that seem likely to generate high levels of congressional and constituent interest, and tracks their status in the House and Senate versions of the FY2013 NDAA.

The House version of the National Defense Authorization Act for Fiscal Year 2013, H.R. 4310 (112th Congress), was introduced in the House on March 29, 2012; reported by the House Committee on Armed Services on May 11, 2012 (H.Rept. 112-479); and passed by the House on May 18, 2012. The entries under the heading "House" in the tables on the following pages are based on language in this bill, unless otherwise indicated.

The Senate version, S. 3254 (112th Congress), was introduced in the Senate on June 4, 2012, and reported by the Senate Committee on Armed Services (S.Rept. 112-173) on the same day. The relevant provisions of S. 3254 have been included in this report. The Senate did not pass S. 3254 as such. Instead, the Senate incorporated this language into an amendment upon receiving H.S. 4310. A conference report was agreed to in both the House and Senate on December 20 and 21, 2012, respectively, and recorded in the Congressional Record as H. Rept. 112-705. The president signed the legislation on January 2, 2013, P.L. 112-239.

Where appropriate, related CRS products are identified to provide more detailed background information and analysis of the issue. For each issue, a CRS analyst is identified and contact information is provided.

Some issues were addressed in the FY2012 National Defense Authorization Act and discussed in CRS Report R41874, *FY2012 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by David F. Burrelli. Those issues that were considered previously are designated with a "*" in the relevant section titles of this report.

*Active Duty End Strengths

Background: The authorized active duty end strengths for FY2001, enacted in the year prior to the September 11 terrorist attacks, were as follows: Army (480,000), Navy (372,642), Marine Corps (172,600), and Air Force (357,000). Over the next decade, in response to the demands of wars in Iraq and Afghanistan, Congress increased the authorized personnel strength of the Army and Marine Corps. Some of these increases were quite substantial, particularly after FY2006. By FY2012, the authorized end strength for the Army was 562,000, with authority for the Secretary of Defense to increase that to 592,400 if needed to meet operational missions and reorganizational objectives (P.L. 111-84, §403), while the authorized end strength for the Marine Corps was 202,100. With the withdrawal of U.S. forces from Iraq in December 2011 and a drawdown of U.S. forces in Afghanistan beginning in 2012, the Army and the Marine Corps have announced plans to reduce their personnel strength to 490,000 and 175,000, respectively, by FY2017. In contrast to the growth of the ground forces in the FY2001-FY2012 time frame, end strength for the Air Force and Navy decreased over this period. The authorized end strength for FY2012 was 332,800 for the Air Force and 325,700 for the Navy.

House-passed (H.R. 4310)	Senate-passed (H.R. 4310)	P.L. 112-239
Section 401 authorizes a total FY2013 active duty end strength of 1,402,483 including:	Section 401 authorizes a total FY2013 active duty end strength of 1,401,697 including:	Section 401 authorizes a total FY2013 active duty end strength of 1,401,697 including:
552,100 for the Army	552,100 for the Army	552,100 for the Army
322,700 for the Navy	322,700 for the Navy	322,700 for the Navy
197,300 for the Marine Corps	197,300 for the Marine Corps	197,300 for the Marine Corps
330,383 for the Air Force	329,597 for the Air Force	329,460 for the Air Force
Section 403 requires that any proposed reductions in Army or Marine Corps end strength in the Administration's FY2014-FY2017 budget requests include a certification by the President that the proposed reductions will not "(1) undermine the ability of the Armed Forces to meet the requirements of the National Security Strategy; (2) increase security risks for the United States; or (3) compel members of the Armed Forces to endure diminished dwell time and repeated deployments." Section 403 also limits strength reductions in the Army to no more than 15,000 per fiscal year, and in the Marine Corps to no more than 5,000 per year, for each year of FY2014-FY2017. Finally, section 403 required that the President's annual budget requests for FY2014-17 be sufficient to support the minimum Army and Marine Corps end strengths specified in 10 USC 691(b) without relying on "any emergency,		Section 403 limits end strength reductions in the Army to no more than 15,000 members during each fiscal year from FY2014 through FY2017 in comparison to the end strength of the preceeding fiscal year. The provision similarly limits end strength reductions for the Marine Corps to no more than 5,000 members during each fiscal year from FY2014 through FY2017 in comparison to the end strength of the preceeding fiscal year. Section 528 requires the Service Secretaries to include a statement in their annual budget justification material "concerning the extent to which the number of members of an Armed Force under the jurisdiction of the Secretary who are within the Integrated Disability Evaluation System impacts—(1) the readiness of that Armed Force to meet on-going mission requirements; and (2) dwell time for other members of that Armed Force." If the statement

House-passed (H.R. 4310)	Senate-passed (H.R. 4310)	P.L. 112-239
supplemental, or overseas contingency operations funding." Section 404 excludes members of the Armed Forces who are in the Integrated Disability Evaluation System from the calculation of end strength for fiscal years 2013-2018.		indicates an adverse impact, the Service Secretary must also include a plan to mitigate the adverse impact.

Discussion: With the end of the war in Iraq, and a planned drawdown in Afghanistan over the next few years, the House bill included reductions for the Army (-9,900) and Marine Corps (-4,800) end strengths in comparison to their FY2012 authorized levels. It also reduced the end strengths for the Air Force (-2,417) and the Navy (-3,000). However, the bill mitigated the impact of these cuts somewhat by specifying that those individuals who are being evaluated for disability be excluded in the calculation of end strength (sec. 404). Excluding such ill or injured service members from the end strength "count" would effectively increase the number of individuals who can remain on active duty. This is particularly relevant for the ground forces, which still have thousands of wounded personnel in the disability evaluation system. Looking to future years, Section 403 of the House bill sought to temper the pace of the drawdown for ground forces by capping the size of future reductions in Army and Marine Corps end strengths, and by requiring the President to certify that any reductions will not have certain negative impacts.

The Senate bill included end-strengths that were identical to the House bill, except that it authorized 786 fewer personnel for the Air Force. The conference report included end-strength levels identical to the House and Senate provisions for the Army, Navy, and Marine Corps, while authorizing an Air Force end-strength slightly lower than the House and Senate provisions. The conference report adopted the House limitations on end-strength reductions in the Army and Marine Corps for FY2014-17, but did not adopt the certification requirement, budgeting restrictions, or the disability exclusion. However, section 528 of the conference report requires the Service Secretaries to provide certain information to the Congress on possible adverse impacts on readiness and dwell time that are related to the presence of service members in the Integrated Disability Evaluation System.

Reference(s): Previously discussed in CRS Report R41874, *FY2012 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by David F. Burrelli, and similar reports from earlier years. See also CRS Report RL32965, *Recruiting and Retention: An Overview of FY2010 and FY2011 Results for Active and Reserve Component Enlisted Personnel*, by Lawrence Kapp.

CRS Point of Contact: Lawrence Kapp, x7-7609.

*Selected Reserves End Strength

Background: Although the Reserves have been used extensively in support of operations since September 11, 2001, the overall authorized end strength of the Selected Reserves has declined by about 2% over the past 10 years (874,664 in FY2001 versus 857,100 in FY2012). Much of this can be attributed to the reduction in Navy Reserve strength during this period. There were also modest shifts in strength for some other components of the Selected Reserve. For comparative purposes, the authorized end strengths for the Selected Reserves for FY2001 were as follows: Army National Guard (350,526), Army Reserve (205,300), Navy Reserve (88,900), Marine Corps Reserve (39,558), Air National Guard (108,022), Air Force Reserve (74,358), and Coast Guard Reserve (8,000).[1] Between FY2001 and FY2012, the largest shifts in authorized end strength have occurred in the Army National Guard (+7,674 or +2%), Coast Guard Reserve (+2,000 or +25%), Air Force Reserve (-2,958 or -4%), and Navy Reserve (-22,700 or -26%). A smaller change occurred in the Air National Guard (-1,322 or -1.2%), while the authorized end strength of the Army Reserve (-300 or -0.15%) and the Marine Corps Reserve (+42 or +0.11%) have been largely unchanged during this period.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Section 411 authorizes the following end strengths for the Selected Reserves:	Section 411 authorizes the following end strengths for the Selected Reserves:	Section 411 authorizes the following end strengths for the Selected Reserves:
Army National Guard: 358,200	Army National Guard: 358,200	Army National Guard: 358,200
Army Reserve: 205,000	Army Reserve: 205,000	Army Reserve: 205,000
Navy Reserve: 62,500	Navy Reserve: 62,500	Navy Reserve: 62,500
Marine Corps Reserve: 39,600	Marine Corps Reserve: 39,600	Marine Corps Reserve: 39,600
Air National Guard: 106,005	Air National Guard: 106,435	Air National Guard: 105,700
Air Force Reserve: 72,428	Air Force Reserve: 72,428	Air Force Reserve: 70,880
Coast Guard Reserve: 9,000	Coast Guard Reserve: 9,000	Coast Guard Reserve: 9,000

Discussion: In both the House and Senate bills, and the conference report, the authorized Selected Reserve end strengths for FY2013 are the same as those for FY2012 for the Army National Guard, the Army Reserve, and the Marine Corps Reserve. The Navy Reserve's authorized end strength was 66,200 in FY2012, but the Administration requested a decrease to 62,500 (-3,700) which the House and Senate approved, as did the conferees. The Coast Guard Reserve's authorized end strength was 10,000 in FY2012, but the Administration requested a decrease to 9,000 (-1,000), which the House and Senate also approved, as did the conferees. The Air National Guard's end strength in FY2012 was 106,700 and the Air Force Reserve's was 71,400. The Administration proposed reducing these to 101,600 (-5,100) and 70,500 (-900), respectively. The proposed reductions were largely based on Air Force plans to divest, transfer, or retire certain aircraft from Air National Guard and Air Force Reserve units. These proposals were quite controversial, and the House and Senate rejected them, authorizing only a small reduction in end strength for the Air National Guard (-695 for the House, -265 for the Senate) and increasing the end strength for the Air Force Reserve (+1,028) in comparison to FY12. The committee report

[1] P.L. 106-398, §411.

accompanying the House bill noted that "the committee's increase to the President's FY13 budget request reflects the corresponding manpower requirements for the committee's limitation on retiring, divesting or transferring any aircraft assigned to the Air Force."[2] The committee report accompanying the Senate bill stated, "The committee supports the Department of Defense fiscal year 2013 request for reserve component end strengths, with the exception of additional Air National Guard and Air Force Reserve end strength to support force structure changes adopted by the committee" and later, "The committee believes that there is little justification for the relative imbalance in the cuts applied to the Air National Guard."[3] The conference report adopted strength levels below the House and Senate provisions, and below the FY12 levels (-1000 Air National Guard, -520 Air Force Reserve) but still substantially higher than the Administration request (+4,100 Air National Guard, +380 Air Force Reserve).[4]

References: None.

CRS Point of Contact: Lawrence Kapp, x7-7609.

[2] H.Rept. 112-479, p. 148. §1076 of the House bill would bar the Army and Air Force from using any FY2013 funds "to divest, retire, or transfer, or prepare to divest, retire, or transfer, any—(1) C–23 aircraft of the Army assigned to the Army as of May 31, 2012; or (2) aircraft of the Air Force assigned to the Air Force as of May 31, 2012."

[3] S. Rept. 112-173, p. 100 and 245. § 1701-1707 of the Senate bill would establish a national commission to study the structure of the Air Force, including its reserve components. With certain exceptions, § 1708 would bar the Air Force from using any FY2013 funds "to divest, retire, or transfer, or prepare to divest, retire, or transfer, any aircraft of the Air Force assigned to units of the Air National Guard or Air Force Reserve as of May 31, 2012."

[4] See sections 141, 361-367, and 1059 of the Conference Report for the legislative provisions related to the restrictions on the transfer and divestment or airframes and a national commission on the structure of the Air Force

*Military Pay Raise

Background: Increasing concern with the overall cost of military personnel, combined with ongoing military operations in Afghanistan, have continued to focus interest on the military pay raise. Section 1009 of Title 37 provides a permanent formula for an automatic annual military pay raise that indexes the raise to the annual increase in the Employment Cost Index (ECI). The President's FY2013 Budget request for a 1.7% military pay raise is consistent with this formula. However, Congress has at times approved pay raises different from the ECI. For example, in fiscal years 2004, 2005, 2006, 2008, 2009, and 2010, the pay raise was equal to the ECI plus 0.5%.

House-passed (H.R. 4310)	Senate-passed (H.R. 4310)	P.L. 112-239
Section 601 specifies that the rate of monthly basic pay for members of the uniformed services is increased by 1.7% effective January 1, 2013.	No similar provision.	Section 601 specifies that the rate of monthly basic pay for members of the uniformed services is increased by 1.7% effective January 1, 2013.

Discussion: Section 601 of the House bill provides an increase identical to that requested by the Administration, which is also the same as the pay raise specified by 37 U.S.C. 1009. The Senate bill contains no statutory language; in the absence of statutory language, the automatic pay increase would be 1.7%. The conference committee adopted the House language, which specifies a 1.7% pay increase effective January 1, 2013. The Congressional Budget Office (CBO) estimates that the total cost of a 1.7% military pay raise would be $1.3 billion in 2013.[5]

Reference(s): Previously discussed in CRS Report R41874, *FY2012 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by David F. Burrelli and earlier versions of this report. See also CRS Report RL33446, *Military Pay and Benefits: Key Questions and Answers*, by Lawrence Kapp.

CRS Point of Contact: Lawrence Kapp, x7-7609.

[5] Congressional Budget Office Cost Estimate, *H.R. 4310: National Defense Authorization Act for Fiscal Year 2013 (As reported by the House Armed Services Committee on May 11, 2012)*, May 15, 2012, p. 11, available at http://www.cbo.gov/sites/default/files/cbofiles/attachments/H.R. 4310.pdf.

*Retirement, Adoption, Care, and Recognition of Military Working Dogs.

Background: In 2000, Congress passed P.L. 106-446, "To require the immediate termination of the Department of Defense practice of euthanizing military working dogs at the end of their useful working life and to facilitate the adoption of retired military working dogs by law enforcement agencies, former handlers of these dogs, and other persons capable of caring for these dogs." Congress included language that limited liability claims arising from the transfer of these dogs. With P.L. 112-81, Section 351, Congress expanded the list of those eligible to adopt these dogs to include the handler (if wounded), or a parent, spouse, child, or sibling of the handler in cases where the handler is deceased. Military working dogs are classified as "equipment." Eligible individuals seeking to adopt one of these dogs must therefore pay for the transportation costs of transferring the dog.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Sec. 361 prohibits the military from classifying these dogs as equipment, requires retired dogs that will not adopted at their current location to be transferred to the 341st Training Squadron, allows the acceptance of Frequent Traveler Miles to facilitate adoption, directs veterinary care be provided, and directs that dogs that are killed in action or perform an "exceptionally meritorious or courageous act" be recognized.	Sec. 1049 allows the Secretary of Defense to transfer retired working dogs to the 341st Training Squadron or to another location for adoption. Permissive authority is also provided for veterinary care as well as recognition for those dogs killed, wounded or missing in action.	Sec. 371 incorporates the Senate language.

Discussion: Those supporting these adoption efforts pushed to have the dogs reclassified as a military "member," which would require the military to transport the dogs back to the United States. Currently, they are classified as "equipment," which means that anyone interested in adopting one of these dogs must pay the transportation costs. Military working dogs are trained to be fearless and aggressive. These traits may not be desired outside of the military or law enforcement. There is public concern for the welfare of these dogs. There are also concerns for any family member of deceased or seriously wounded members of the Armed Forces who care for these dogs. A 2011 article noted that a small percentage of deployed dogs suffer "canine PTSD," which can lead to "troubling behavior."[6]

In 2011, DOD reported that in that calendar year, 444 dogs left the inventory. It was reported that the disposition of dogs that left the inventory included: approximately one-quarter died on duty, 7 were killed in action, 1 is missing in action, approximately 10% were euthanized due to medical conditions, 16 were euthanized because they were unsuitable for law enforcement and too aggressive for adoption, etc. In addition to the 444 that left the inventory, 44 remained pending disposition.

[6] "Some [dogs] undergo sharp changes in temperament, becoming unusually aggressive with their handlers or clingy and timid." Dao, James, After Duty, Dogs Suffer Like Soldiers, *New York Times*, December 2, 2011.

Reference(s): CRS Report R41874, *FY2012 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by David F. Burrelli.

CRS Point of Contact: David F. Burrelli, x7-8033.

Diversity in Military Leadership and Related Reporting Requirements

Background: In a number of respects, the military has been a leader in advancing minorities and women. Minorities and women have served in the military for decades. In the past, limits were placed on the advancement opportunities for women and minorities. These began to change in 1948 when President Truman issued Executive Order 9981 calling for "equal treatment and opportunity" in the military.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Section 507 adds a new section to Title 10, U.S.C., directing the Secretaries of Defense and Homeland Security (in the case of the Coast Guard) to develop and implement a plan to measure the efforts to "achieve dynamic, sustainable level of members of the armed force ... that, ... will reflect the diverse population of the United States." Any measures used in this plan may not undermine merit-based processes nor serve to be identified with a quota based system.	Section 521 contains similar language with regard to reporting requirements to accurately measure diversity as defined for active and reserve component personnel (including the Coast Guard).	Section 519 adds a new section to Title 10 as in the House language with additional modifications included from the Senate language as well as reporting requirements.

Discussion: The United States has made advances in the areas of racial and sexual discrimination; however, issues remain. Diversity advocates view this language as an opportunity to measure progress in this area. Critics are concerned that an emphasis on measuring "diversity" will lead to de facto quotas or "goals," despite a prohibition to the contrary.

Reference(s): CRS Report R42075, *Women in Combat: Issues for Congress*, by David F. Burrelli.

CRS Point of Contact: David F. Burrelli, x7-8033.

Authorized Leave Available for Members of the Armed Forces Upon Birth or Adoption of a Child

Background: According to Title 10, U.S.C., Section 701, the military provides up to 42 days of maternity leave and up to 10 days of paternity leave. A member who adopts is eligible for 21 days of leave to be used in connection with the adoption. In the case of a dual military couple adopting, only one member of the couple can use the adoption leave. This leave may be used in addition to other leave provisions.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Section 524 affords 42 days of leave to a member who gives birth or adopts a child and is the primary caregiver. A member whose wife gives birth is eligible for 10 days of paternity leave. In the case of a dual service couple adopting, the primary care giver would be eligible for 42 days of leave and the spouse receives 10 days of leave, which may be used concurrently.	No similar language.	Section 524 includes the House language.

Discussion: This language leaves maternity leave at 42 days and increases adoption leave for the primary caregiver to 42 days. For dual military couples who adopt, it provides 10 days of leave to the spouse who is not the primary caregiver.

References: None.

CRS Point of Contact: David F. Burrelli, x7-8033.

Report on Feasibility of Developing Gender-Neutral Occupational Standards for Military Occupational Specialties Currently Closed to Women

Background: In February 2012, DOD announced it was opening additional occupations to women. These positions had previously been closed to women due to the combat exclusion rule. Currently, the services are evaluating the role women can play in combatant occupations.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Section 526 requires the Secretary of Defense to submit a report on the feasibility of "incorporating gender-neutral occupational standards for military occupational specialties ... closed to female members of the Armed Forces."	No similar language.	Section 526 incorporates the House language.

Discussion: In announcing the changes in February 2012, Defense officials stated that women would be held to the same standards as men. What was unclear was whether or not the standards would change to accommodate women. As noted in the CRS report referenced below, "The use of the term 'gender-neutral physical standards' raises questions on how it is defined. A plain reading of the term suggests that men and women would be required to meet the same physical standards (e.g., carry the same load, the same distance at the same speed) in order to be similarly assigned. However, in the past, the Services have used this and similar terms to suggest that men and women must exert the same amount of energy (e.g., calories used) in a particular task, regardless of the work that is actually accomplished by either. Hypothetically speaking, if a female soldier carries 70 pounds of equipment five miles and exerts the same effort as a male carrying 100 pounds of equipment the same distance, the differing standards could be viewed as 'gender-neutral' because both exerted the same amount of effort, with differing loads. Such differing loads, in certain scenarios, may or may not matter, particularly in terms of ammunition, medical equipment, communications equipment, and medical supplies, commonly carried by foot soldiers."

Reference(s): CRS Report R42075, *Women in Combat: Issues for Congress*, by David F. Burrelli.

CRS Point of Contact: David F. Burrelli, x7-8033.

Independent Review and Assessment of Uniform Code of Military Justice and Judicial Proceeding of Sexual Assault Cases

Background: The National Defense Authorization Act for Fiscal Year 2012 made a number of changes to the Uniform Code of Military Justice (UCMJ) particularly with regard to sex crimes such as rape.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Section 522 directs the Secretary of Defense to establish a panel to conduct an in-depth review and assessment of judicial proceedings under the UCMJ involving sexual assault and related offenses to develop potential improvements to such proceedings.	Section 532 adds additional reporting requirements on the UCMJ under 10 USC 946 including information on reversed decisions, issues associated with recently implemented legislation and measures to ensure the ability of Judge Advocates to competently participate in such proceedings, among others.	Section 532 incorporates a modified and shortened version of the Senate language.

Discussion: The issue of sexual assault has been a focus of much congressional attention over the past few years. With this language, Congress seeks to improve judicial proceedings under the UCMJ, including the issue of sexual assault and related offenses.

Reference(s): CRS Report R41874, *FY2012 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by David F. Burrelli.

CRS Point of Contact: David F. Burrelli, x7-8033.

Briefing, Plan, and Recommendations Regarding Efforts to Prevent and Respond to Hazing Incidents Involving Members of the Armed Forces

Background: Recent reports of hazing in the military, including cases of hazing-related suicides, notably that of a nephew of Rep. Judy Chu, prompted the House to hold hearings on the matter on March 22, 2012.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Section 535 requires the Secretaries of Defense and Homeland Security to provide HASC & SASC a briefing and plan to prevent hazing and to respond to/resolve alleged hazing incidents. The plan requires the creation of a hazing database. The recommendations shall include potential changes to the UCMJ. Annual reporting requirements are included as well as a review by the Comptroller General.	Section 543 requires each Secretary of a military department to issue a report on hazing to include the policies for preventing and responding to incidents of hazing, methods to track and report hazing, an assessment of the scope of the problem, training on recognizing and preventing hazing, and, additional actions.	Section 534 incorporates language from both the House and Senate bills.

Discussion: This section reflects the concern the House has over the issue of hazing and its desire to better track incidents of hazing. In so doing, it is expected the services will take a closer look at the issue.

References: None.

CRS Point of Contact: David F. Burrelli, x7-8033.

Protection of Rights of Conscience of Members of the Armed Forces and Chaplains of Such Members

Background: P.L. 111-321 put in place the mechanism for repealing 10 U.S.C. 654, which served as the basis for the 1993 policy banning open homosexuality in the military, known as Don't Ask, Don't Tell or DADT. Concerns have been raised over the potential conflicts of DADT and religious expressions against homosexuality. The First Amendment of the U.S. Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…." Various federal laws and regulations also seek to protect religious practices and freedoms, and the Department of Defense has issued regulations concerning religious exercise in the military. The extent to which service members and chaplains can freely exercise their religion while complying with policies related to the repeal of DADT is a topic of ongoing debate.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Section 536 requires the Armed Forces to accommodate the moral principles and religious beliefs of service members concerning appropriate and inappropriate expression of human sexuality and that such beliefs may not be used as a basis for any adverse personnel actions.	No similar language.	Section 533 incorporates the House language.

Discussion: The language in Section 533 would give service members and chaplains broad permission to publicly support or condemn certain sexual practices on the grounds of conscience or religious tenets. Arguably, this is to protect the free speech and religious rights of service members in the wake of the repeal of DADT. The language also ensures that no disciplinary actions may be taken against a chaplain who refuses to comply with a direction or duty that is contrary to either the chaplain's personal or religious beliefs. The section raises some First Amendment issues, particularly whether the repeal of DADT limits what chaplains are able to say within their ministries, and whether, for example, they can be compelled to provide counseling and other services that run counter to denominational doctrine. Although anti-discrimination policies are already in place, some groups argue that with the repeal of DADT, service members are allowed no protections for expressing their religious beliefs regarding same-sex behaviors and this new provision is needed. Others argue that the provision could create a hostile climate for openly homosexual members of the military, and possibly incite harassment or violence. Likewise, concerns exist over the extent that what "equal rights" can be afforded or denied same-sex couples who are wed in States that recognize such marriages.

Reference(s): CRS Report R41171, *Military Personnel and Freedom of Religion: Selected Legal Issues*, by R. Chuck Mason and Cynthia Brougher and CRS Report R40782, *"Don't Ask, Don't Tell": Military Policy and the Law on Same-Sex Behavior*, by David F. Burrelli.

CRS Point of Contact: Catherine Theohary, x7-0844.

Use of Military Installations as Sites for Marriage Ceremonies and Participation of Chaplains and Other Military and Civilian Personnel in Their Official Capacity

Background: In 1996, the Defense of Marriage Act (DOMA) was enacted (P.L. 104-199). Under this law, the federal government does not recognize same-sex marriages, states may refuse to recognize such marriages, and marriage is defined for federal benefit purposes as the union of one man and one woman. A few states have recognized same-sex marriages. According to reports, Navy Chief of Chaplains Rear Admiral M.L. Tidd issued a policy memorandum dated April 13, 2011, allowing same-sex marriages to be performed in Navy Chapels on bases in states that permit same-sex marriages. Following criticism by certain Members of Congress, on May 10, 2011, the policy was "suspended." Section 544 of the FY2012 National Defense Authorization Act, P.L. 112-81, allowed military chaplains to opt out of performing any marriage ceremonies as a matter of conscience or moral principle.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Section 537 precludes marriage and marriage-like ceremonies from being conducted on military installations or other Department of Defense Property, unless the ceremony involves the union of one man and one woman.	No similar provision.	No similar provision.

Discussion: In February of 2011, U.S. Attorney General Eric Holder stated in a letter to Representative Boehner that a key provision of DOMA violates equal protection rights under the Constitution. The matter of DOMA is currently being contested in the courts and will remain in effect until Congress repeals it or a court rules against it. The language in Section 537 reflects the definition of marriage under DOMA and would prevent any same-sex marriage from being conducted under the auspices of the Department of Defense, regardless of conscience or moral principle. This language re-affirms the House's support of the law.

Reference(s): CRS Report RL31994, *Same-Sex Marriages: Legal Issues*, by Alison M. Smith.

CRS Point of Contact: Catherine Theohary, x7-0844.

Transfer of Troops-to-Teachers Program from Department of Education to Department of Defense and Enhancements of Program

Background: The "Troops-to-Teachers" program assists certain retired, separated, and involuntarily discharged service members to obtain certification or licensing as teachers and facilitates their employment by local education agencies or public charter schools, particularly those serving low-income populations and those with shortages of highly qualified teachers.[7] It is a Department of Education program, but the statute requires the Secretary of Education to "enter into a memorandum of agreement with the Secretary of Defense under which the Secretary of Defense, acting through the Defense Activity for Non-Traditional Education Support of the Department of Defense, will perform the actual administration of the Program…."[8] Troops-to-Teachers was at one time a Department of Defense program, originating as a post-Cold War drawdown transition initiative.[9] Responsibility for the program was transferred to the Secretary of Education in 2000, in accordance with Sections 1701-1709 of the National Defense Authorization Act for FY2000.[10] Section 557 of the National Defense Authorization Act for Fiscal Year 2012 required a joint report from the Secretaries of Education and Defense on the status of the program. The report endorsed returning the program to the Department of Defense.

House-passed (H.R. 4310)	Senate-passed (H.R. 4310)	P.L. 112-239
Section 541 transfers "the responsibility and authority for operation and administration" of the program from the Secretary of Education to the Secretary of Defense. It also restructures the program in a number of ways, including servicemember eligibility requirements, participant selection priority, and school eligibility.	Section 563 would require the Secretary of Defense and the Secretary of Education to enter into a memorandum of agreement, pursuant to which the Secretary of Education would disseminate information about the program to eligible schools and advise the Secretary of Defense on certain topics related to the program. It also makes changes in servicemember and school eligibility requirements.	Section 541 largely adopts the House provision, including the transfer of responsibility for the program to the Secretary of Defense, but also incorporates the Senate requirement for a memorandum of agreement between the Secretaries of Defense and Education.

Discussion: In addition to transferring responsibility for the program to the Secretary of Defense, the House provision would make other changes to the program, including (1) reducing the number of years of active or reserve service an individual must complete to be eligible to participate; (2) giving priority for selection into the program to an additional group (those who agree to teach a foreign language); (3) giving greater weight to military experience to qualify as a "career or technical" teacher; (4) modifying the student poverty and disability metrics used to determine the schools in which newly qualified teachers may serve as part of their participation agreement; and (5) adding counseling and referral services for those not eligible for the program.

[7] 20 U.S.C. 6671-77.

[8] 20 U.S.C. 6672(c).

[9] P.L. 102-484, §§4441 et seq.

[10] P.L. 106-65.

The Senate provision does not transfer responsibility to the Secretary of Defense, but requires the Secretary of Education to advise the Secretary of Defense on matters such as teacher eligibility requirements, teacher preparation programs, and academic subject areas and geographic regions with critical shortages. The Senate provision would also reduce the number of years of active or reserve service an individual must complete to be eligible to participate and modify the student poverty and disability metrics used to determine the schools in which newly qualified teachers may serve as part of their participation agreement. The provision in the conference report transfers responsibility for the program to the Secretary of Defense, adopts the House modifications to the program (some of which were the same as Senate modifications), and incorporates the Senate requirement for a memorandum of agreement between the Secretaries of Defense and Education.

References: None.

CRS Point of Contact: Lawrence Kapp, x7-7609.

Award of Purple Heart to Members of the Armed Forces who were Victims of the Attacks at Recruiting Station in Little Rock, Arkansas, and at Fort Hood, Texas

Background: The Purple Heart is awarded to any member of the Armed Forces who has been (1) wounded or killed in action against an enemy, while serving with friendly forces against a belligerent party, as the result of a hostile foreign force, while serving as a member of a peacekeeping force while outside the United States; or (2) killed or wounded by friendly fire under certain circumstances. On June 9, 2009, a civilian who was angry over the killing of Muslims in Iraq and Afghanistan opened fire on two U.S. Army soldiers near a recruiting station in Little Rock, AK. On November 5, 2009, an Army major opened fire at Ft. Hood, TX, killing 13 and wounding 29. Both the civilian and Army Major were charged with murder and other crimes.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Section 552 requires the Secretary of Defense to award a Purple Heart to the military victims of these two attacks. It prohibits the award being presented to a member whose wound was the result of willful misconduct (e.g., the alleged shooter at Ft. Hood, who was wounded by police).	Section 525 requires the Secretary of Defense to review the eligibility of victims of domestic terrorism for the Purple Heart and the Defense Medal of Freedom.	No similar provision.

Discussion: Authorities considered these acts to be crimes and not acts perpetrated by an enemy or hostile force. Because these acts involved Muslim perpetrators angered over U.S. actions in Iraq and Afghanistan, some believe they should be viewed as acts of war. Still others are concerned that awarding the Purple Heart in these situations could have anti-Muslim overtones. Although the decision to award medals and other military decorations traditionally rests with the executive branch, enacting this language would have represented a rare legislative initiative in this area.

Reference(s): None.

CRS Point of Contact: David F. Burrelli, x7-8033.

Retroactive Award of Army Combat Action Badge

Background: The Combat Action Ribbon (CAB) is awarded to any soldier who has actively engaged or been engaged by the enemy in a combat zone or imminent danger area. The CAB was established through Department of the Army Letter 600-05-1, dated June 3, 2005, and was authorized for soldiers who met the requirements after September 18, 2001. As with the coveted Combat Infantryman Badge (CIB) and Combat Medical Badge (CMB), the CAB recognizes soldiers who were actively engaged in combat with the enemy, but its award is not restricted by military occupational specialty.

House-passed (H.R. 4310)	Senate-passed (H.R. 4310)	P.L. 112-239
Section 555 states that "The Secretary of the Army may award the Army Combat Action Badge … to a person who, while a member of the Army, participated in combat during which the person personally engaged, or was personally engaged by, the enemy at any time during the period beginning on December 7, 1941, and ending on September 18, 2001." In order to minimize costs, the Secretary may make arrangements for the newly eligible individuals to procure the CAB directly from the suppliers.	No similar provision.	No similar provision.

Discussion: Section 555 of the House bill would have given the Secretary of the Army permission to retroactively award the CAB to certain individuals. If enacted and utilized by the Secretary of the Army, Section 555 would have aligned the dates of eligibility with those for the CIB and CMB, and effectively permit eligible Army veterans from World War II to the present to be awarded the CAB. Locating records that would justify awarding the CAB might, in some cases, be difficult. Additionally, the language of Section 555 says that the CAB would be awarded to "a person who, while a member of the Army, participated in combat during which the person personally engaged, or was personally engaged by, the enemy." Therefore, survivors of deceased service members seemingly could not acquire the CAB on behalf of the service member. The Senate bill did not have a similar provision, and the conference report did not include the House provision.

References: None.

CRS Point of Contact: Lawrence Kapp, x7-7609.

*Protection of Child Custody Arrangements for Parents Who Are Members of the Armed Forces

Background: Military members who are single parents are subjected to the same assignment and deployment requirements as are other service members. Deployments to areas that do not allow dependents (such as aboard ships or in hostile fire zones) require the service member to have contingency plans to provide for their dependents. (See U.S. Department of Defense, Instruction No. 1342.19, "Family Care Plans," May 7, 2010.) Concerns have been raised that the possibility or actuality of military deployments may encourage courts to deny custodial rights of a service member in favor of a former spouse or others. Also, concerns have been raised that custody changes may occur while the military member is deployed and unable to attend court proceedings.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Section 564 amends the Service Members Civil Relief Act to require courts to render temporary custody orders based on deployments and to reinstate the service member as custodian unless the court determines that reinstatement is not in the child's best interest. This language prohibits courts from using a deployment, or the possibility of a deployment, in determining the child's best interest. In cases where a state provides a higher standard of protection of the rights of the service member, then the state standards apply.	No similar provision.	No similar provision.

Discussion: This House language would allow courts to assign temporary custody of a child for the purposes of deployment without allowing the (possibility of) deployment to be prejudicially considered against the service member in a custody hearing.

Reference(s): None.

CRS Point of Contact: David F. Burrelli, x7-8033.

*Sexual Assault Provisions

Background: In the National Defense Authorization Act for Fiscal Year 2012 (P.L. 112-81), Congress included a number of provisions to address the issues involving sexual assault in the military. In Title V (subtitle H) of H.R. 4310, the National Defense Authorization Act for Fiscal Year 2013, the House is considering numerous additional provisions.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Section 571 requires the Secretaries of the military departments to establish special victim teams for the investigation, prosecution, and victim support in connection with child abuse, serious domestic violence, or sexual offenses under the Uniform Code of Military Justice.	Section 542 directs the Secretary of Defense to modify the sexual assault prevention and response program. These changes include an enhanced investigation, prosecution, and defense of special victim offenses, a requirement for records retention, training requirements for commanders on sexual assault prevention, response and policies, training for new members, unit climate assessments, providing administrative discharges in cases where a punitive discharge is not directed, and the dissemination of information on reporting and responding to sexual assaults.	Section 573 requires the Secretary of Defense to prescribe regulations under which the service secretaries would be required to establish special victim support and defense capabilities.
P.L. 112-81 created training and education programs for the sexual assault and response program. Section 572 of this bill amends that to provide training modules for commanders to foster a command climate that does not tolerate sexual assault. It also encourages others to intervene to prevent sexual assaults, encourages victims to report assaults, and provides for an understanding of the resources available and use of the investigative organizations and disciplinary options. Also, new members will be briefed on service policies with respect to sexual assault and resources available to victims.	The Senate version contains similar provisions in sec. 542(a)(3) and (4).	Section 574 calls for enhanced commanders' training for sexual assault prevention and response.
Section 574 requires the Secretaries of the military departments to include additional information in the case synopsis portion of the report on sexual assaults required by Section 1631 of P.L. 111-383.	Section 546 calls for the enhancement of annual reports on sexual assault via the collection of specific data to include but not limited to: disciplinary actions, rationale for the final disposition, unit and location, whether the accused had a previous substantiated accusation of sexual misconduct, whether the accused was admitted to the military under a moral waiver, whether alcohol was involved in the	In Section 575, the Senate recedes with a clarifying amendment that would require additional information to be included beginning with a report required to be submitted by March 1, 2014.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
	incident, whether the accused was administratively separated or allowed to resign in lieu of a court-martial as well as analyses of trends, change of station requests and specific factors that may have contributed to sexual assault over the past year.	
Section 575 requires the Secretaries of the military departments to include information on sexual harassment in the annual Department of Defense report on sexual assault.	Section 545 calls for a comprehensive policy to prevent and respond incidents of sexual harassment including the collection, retention and disposition of reports on sexual harassment, and, annual reports on sexual harassment.	Section 579, Senate recedes with an amendment for the Secretary of Defense to develop a comprehensive policy to prevent and respond to sexual harassment in the armed forces and to develop a plan to collect information and data regarding substantiated incidents of sexual harassment involving members of the armed forces.
Section 576 requires the Secretary of Defense to submit reports every six months to the Armed Services Committees on the progress to make fully functional the Defense Incident-Based Reporting System (DIBRS) and the Defense Sexual Assault Incident Database. This reporting requirement terminates when the Secretary certifies that DIBRS is fully functional and operating throughout the services and each military department is using DIBRS or providing data for inclusion in the Defense Sexual Assault Incident Database.	No similar provision.	No similar provision.
Section 577 requires DOD to brief the Armed Services Committees in 2012 and 2013 on DOD efforts to implement changes in law concerning sexual assault in P.L. 112-81, the initiatives announced by the Secretary of Defense in April 2012, and any other initiatives, policies, or programs by the military addressing sexual assault.	No similar provision.	No similar provision.
No similar provision.	Section 544 provides for the retention of records in cases of restricted reports.	In section 577, the House recedes with an amendment that would require retention of these reports at the request of a service member who files a restricted report of sexual assault.
Section 578 requires the Armed Forces Workplace and Gender Relations Survey to be conducted in 2014 and 2015 and every two years thereafter and include information in the reports on sexual assault, in	No similar provision.	Section 570 amends title 10 U.S.C. 481 to require the Armed Forces Workplace and Gender Relations Surveys to solicit information on assaults involving service members

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
addition to harassment and discrimination.		and alters the survey timetables.
Section 581 requires a review of all unrestricted reports of sexual assault made by members of the Armed Forces since October 1, 2000, to determine the number of members who were subsequently separated and the circumstances of and grounds for such separation.	No similar provision.	Section 578, the Senate recedes with an amendment to develop a policy requiring a general or flag officer to review the circumstances of, and grounds for, the proposed involuntary separation of any service member who (1) made an unrestricted report of sexual assault: (2) is recommended for involuntary separation from the armed forces within 1 year of making the report; and (3) request a review on the grounds that the member believes the recommendation for involuntary separation was initiated in retaliation for making the report. The concurrence of the general or flag officer conducting the review is required in order to separate a member who requests the review.
Section 582 places limitations on release from active duty or recall to active duty of reserve component members who are victims of sexual assault while on active duty.	Section 541provides the Secretary concerned with the authority to, upon request, retain an alleged victim of sexual assault on duty.	The House recedes with a technical amendment in Section 571, that provides the Secretary with the authority to retain an alleged victim of sexual assault on duty.
Section 583 requires that if a sexual harassment complaint against a member of the Armed Forces is substantiated, a notation to that effect shall be placed in the service record of the member. The definition of substantiated is to be developed for the annual report on sexual assaults involving members of the Armed Forces prepared under Section 1631 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (P.L. 111-383).	Section 542 that each military department initiate and retain a record on the disposition of allegations of sexual assault.	No similar provision.
Section 579 requires unit commanders to conduct an organizational climate assessment "to obtain information about the positive and negative factors that may have an impact on unit effectiveness and readiness by measuring matters relating to human relations climate such as prevention and response to sexual assault and equal opportunity. Section 580 places additional requirements on organizational climate assessments. Section 585 requires a general education campaign to notify members of the Armed Forces regarding the	Section 542 would require additional elements to be included in the Department of Defense comprehensive sexual assault and prevention policy and would provide that the revised comprehensive policy for the Department of Defense sexual assault prevention and response program include a requirement to assign responsibility to receive and investigate complaints for the violation or failure to provide the rights of a crime victim established by title 18 USC 3771, as applicable to members of the armed forces and civilian personnel of the	Similar to sections 534, 573, 579, 580, and 585 of the House Bill and section 542 of the Senate amendment, the House recedes with an amendment in section 572 that would require the Secretary of Defense to modify the revised comprehensive policy for the Department of Defense sexual assault prevention and response program to include the following new requirements: (1) that the service secretaries initiate and retain for a specified period a record on the disposition of allegations of

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
authorities available under chapter 79 of Title 10, U.S.C., for the correction of military records when a member experiences any retaliatory personnel action for making a report of sexual assault or sexual harassment. Section 573 requires the Secretary of Defense to prominently post information on sexual assault prevention and response at specific locations throughout the Department of Defense.	Department of Defense	sexual assault; (2) that commanders of certain commands and units conduct within 120 days of assuming command and at least annually thereafter a climate assessment for the purposes of preventing and responding to sexual assaults; (3) to post and widely disseminate information about resources available to report and respond to sexual assaults; and (4) for a general education campaign to notify service members of the authorities available for the correction of military records when a member experiences any retaliatory personnel action for making a report of sexual assault or sexual harassment
Section 586 would amend chapter 7 of Title 10, U.S.C. to add a section establishing a Sexual Assault and Harassment Oversight and Advisory Council. The Council is to be comprised of experts and professionals in the fields of sexual assault and harassment, including judicial proceedings or treatment, and would include the Director of the Sexual Assault Prevention and Response Office, Judge Advocates from the services, and individuals with relevant experience outside of the DOD system. The members are to be appointed for two-year terms and compensated at a rate equal to the rate of basic pay prescribed for the Senior Executive Service. The section also requires an Annual Report describing the activities and recommendations of the council to be submitted to the Secretary of Defense and congressional defense committees.	No similar provision.	No similar provision.

Discussion: Many believe that more can be done to address sexual assault problems in the military. In some cases, some suggest that legislative and policy changes have already gone too far. A recent news article noted that "Contrary to public and political impression, an extensive McClatchey review of military sexual assault finds plenty of Pentagon and congressional action. Some works. Some falls short. Some goes too far, in a legal arena that's notorious for its complications."[11] These new provisions detail congressional attention to the issues of sexual

[11] Doyle, Michael, and Marisa Taylor, "Bureaucracy has blossomed in military's war on rape," *McClatchy Newspapers,* November 28, 2011, available at http://www.mcclatchydc.com/2011/11/28/v-print/131524/bureaucracy-has-(continued...)

assault, requiring more focus on prevention, reporting, judicial proceedings, and addressing the needs of victims.

Reference(s): CRS Report R41874, *FY2012 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by David F. Burrelli.

CRS Point of Contact: Catherine Theohary, x7-0844, or David F. Burrelli, x7-8033.

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Extension of Authority to Provide Two Years of Commissary and Exchange Benefits After Separation

Background: Section 1146 of U.S.C. 10 allows members who are involuntarily separated during the period beginning October 1, 2007, and ending on December 31, 2012, to continue to use commissary and exchange stores during the two-year period beginning on the date of the involuntary separation.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Section 631 extends this two-year period for those involuntarily separated in the period beginning October 1, 2007 and ending on December 31, 2018.	No similar provision.	Section 631 incorporates the House language.

Discussion: This change would extend the use of commissary and exchange privileges to those involuntarily separated beyond its original termination date in 2012 until 2018. This benefit arguably eases the transition out of the military for those who otherwise would have remained in the service.

Reference(s): None.

CRS Point of Contact: David F. Burrelli, x7-8033.

Repeal of Requirement for Payments of Survivor Benefit Plan Premiums when Participant Waives Retired Pay to Provide a Survivor Annuity Under Federal Employees Retirement System and Terminating Payment of the Survivor Benefit Plan Annuity

Background: The military Survivor Benefit Plan, or SBP, provides annuities to designated survivors (usually the spouses) of military personnel and retirees. Personnel are automatically enrolled and can only reduce or eliminate coverage with the signed consent of the spouse. Under the Civil Service Retirement System, or CSRS, a military retiree who becomes a federal employee can waive their military retired pay and have their military time credited to their civil service retirement. A military retiree who does so can halt participation in the military SBP only if the retiree opts to provide survivor benefits under CSRS. CSRS is a closed retirement system however, and retirees who now enter the civil service are covered by the Federal Employees Retirement System (FERS). Prior to enactment of section 641, the law did not provide a SBP opt out option for retirees under FERS.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Section 651 allows military retirees who waive their military retired pay and who participate in the Federal Employees Retirement System (FERS) to opt out of the military SBP and provide survivor coverage under FERS.	Section 641 allows for the opt out from SBP for those who participate in FERS.	Section 641incorporates the opt out provision.

Discussion: This change would create parity between CSRS and FERS retirees.

Reference(s): CRS Report RL31664, *The Military Survivor Benefit Plan: A Description of Its Provisions*, by David F. Burrelli.

CRS Point of Contact: David F. Burrelli, x7-8033.

*TRICARE Beneficiary Cost-Sharing

Background: TRICARE is a health care program serving uniformed service members, retirees, their dependents, and survivors. H.R. 4310, as passed by the House, does not include the Administration's 2013 budget proposals to raise premiums for military retirees using a three-tier model based on retirement pay brackets, to index the TRICARE catastrophic cap to the National Health Expenditure, and to introduce enrollment fees for TRICARE Standard/Extra and TRICARE for Life. The Administration's proposal would have increased the annual enrollment for working age retirees in the TRICARE Prime family option between $31 and $128 per month, with those in the upper-income bracket seeing the larger increase.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Section 701 expresses the sense of Congress that "career members of the uniformed services and their families endure unique and extraordinary demands and make extraordinary sacrifices over the course of a military career and those decades of sacrifice constitute a significant pre-paid premium for health care during a career member's retirement that is over and above what the member pays with money."	Section 706 expresses the sense of Congress that members of the uniformed services and their families endure unique and extraordinary demands and make extraordinary sacrifices over the course of 20 to 30 years of service in protecting freedom for all Americans, as do those who have been medically retired due to the hardships of military service; and access to quality health care services is an earned benefit during retirement in acknowledgment of their contributions of service and sacrifice.	Section 707 expresses the sense of Congress that members of the uniformed services and their families endure unique and extraordinary demands and make extraordinary sacrifices over the course of 20 to 30 years of service in protecting freedom for all Americans, as do those who have been medically retired due to the hardships of military service; and access to quality health care services is an earned benefit during retirement in acknowledgment of their contributions of service and sacrifice.

Discussion: The enacted bill did not adopt the Administration's proposals. However, section 712 (discussed in the TRICARE Pharmacy Copayment section of this report) did increase certain pharmacy copayments. Unlike in some previous years, the enacted bill does not block any existing statutory authorities to increase TRICARE copayments and enrollment such as the annual TRICARE Prime enrollment fee for military retirees at 10 U.S.C. 1097(e).

Reference(s): Previously discussed in CRS Report R41874, *FY2012 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by David F. Burrelli; CRS Report R40711, *FY2010 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by Don J. Jansen; and CRS Report RL34590, *FY2009 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by Lawrence Kapp.

CRS Point of Contact: Don Jansen, x7-4769.

TRICARE for Involuntarily Separated Reservists

Background: National Guard and Reserve members (collectively known as the "Selected Reserve") are eligible to enroll in the TRICARE Reserve Select (TRS) program and TRICARE Dental Program (TDP). TRS is a health insurance plan administered by the Department of Defense that is similar to the TRICARE Standard and Extra programs available to active duty family members and military retirees and their dependents. TDP offers dental insurance to active duty family members and Selected Reserve members and their families. Both TRS and TDP require the member to pay a monthly premium. Under current law, coverage under both programs terminates when a member is separated from the Selected Reserve. However, continued health coverage can be purchased through the Continued Health Care Benefit Program (CHCBP). CHCBP coverage may be purchased in 90-day increments for up to 36 months. Premiums are $1,138 per quarter for individual coverage and $2,555 per quarter for family coverage through September 30, 2013. CHCBP does not provide dental benefits.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Section 702 provides 180 days of TRICARE Standard and TRICARE Dental coverage to involuntarily separated members of the Selected Reserve during the period beginning on the earlier of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2013 or October 1, 2012, and ending December 31, 2018,	Section 701 provides similar coverage, however, unlike in the House bill, the Senate provision does not expire on December 31, 2018.	Section 701 extends for 180 days TRICARE Reserve Select and TRICARE dental coverage to members of the Selected Reserve who are involuntarily separated without cause through December 31, 2018.

Discussion: Section 701 of the enacted bill would amend Title 10 of the United States Code to authorize the Secretary of Defense to provide TRICARE Reserve Select and TRICARE dental insurance coverage for 180 days from the date of separation to members of the Selected Reserve who are involuntarily separated from the Selected Reserve under other than adverse conditions. By extending the period of TRICARE Reserve Select eligibility by 180 days, the legislation would in effect extend the period of time an involuntarily separated member of the Selected Reserve would be able to continue to purchase health care to 42 months.

References: None.

CRS Point of Contact: Don Jansen, x7-4769.

Autism Treatment

Background: "Applied behavioral analysis" is a method used to modify the behavior of individuals with autism spectrum disorders. Treatment is generally begun by age 3½ and consists of up to 40 hours per week of intensive therapy for two years or longer. It aims to teach social, motor, and verbal behaviors as well as reasoning skills using careful behavioral observation and positive reinforcement and prompting to teach each step of a behavior. Skills are broken down into small tasks, which are taught in a very structured manner, accompanied by praise and reinforcement. Undesirable behaviors are reduced by not reacting to them or introducing more socially acceptable forms of behavior.

An action memo dated October 24, 2010, and approved by the Assistant Secretary of Defense (Health Affairs) found that sufficient reliable evidence does not exist to find that applied behavioral analysis is either medically or psychologically necessary or appropriate medical care for autism spectrum disorders. It further found that sufficient reliable evidence does not exist to find it *is proven* as medically or psychologically necessary or as appropriate medical care, in accordance with the applicable laws and regulations. The memo found that the majority of the reliable evidence indicates that applied behavioral analysis is characterized as an educational intervention and does not meet the TRICARE definition of "medical care."

Although applied behavior analysis has been determined to be unproven as a medical treatment under current DOD policy—and therefore, not reimbursable under TRICARE—it is covered under a TRICARE Extended Health Care Option (ECHO) program demonstration as a non-medical benefit. ECHO is a supplemental program to the basic TRICARE program. ECHO provides financial assistance for services and supplies to active duty family members who qualify based on specific mental or physical disabilities. DOD published a proposed rule in the *Federal Register* on December 29, 2011, that would establish and expand coverage under the ECHO program. There is a $36,000 per year limitation on total reimbursements per enrollee.

In April 2011, the Agency for Healthcare Research and Quality issued *Therapies for Children With Autism Spectrum Disorders. Comparative Effectiveness Review No. 26*.[12] That report found that "evidence supports early intensive behavioral and developmental intervention" such as applied behavioral analysis, "but the lack of consistent data limits our understanding of whether these interventions are linked to specific clinically meaningful changes in functioning."[13] On April 19, 2012, the Office of Personnel Management (OPM) issued letters to Federal Employees Health Benefits Program insurance carriers that issued new guidance on coverage of applied behavioral analysis, stating:

> The OPM Benefit Review Panel recently evaluated the status of Applied Behavior Analysis (ABA) for children with autism. Previously, ABA was considered to be an educational intervention and not covered under the FEHB Program. The Panel concluded that there is

[12]Warren Z, Veenstra-VanderWeele J, Stone W, Bruzek JL, Nahmias AS, Foss-Feig JH, Jerome RN, Krishnaswami S, Sathe NA, Glasser AM, Surawicz T, McPheeters ML. Therapies for Children With Autism Spectrum Disorders. Comparative Effectiveness Review No. 26. (Prepared by the Vanderbilt Evidence-based Practice Center under Contract No. 290-2007-10065-I.) AHRQ Publication No. 11-EHC029-EF. Rockville, MD: Agency for Healthcare Research and Quality. April 2011. Available at http://www.effectivehealthcare.ahrq.gov/reports/final.cfm.

[13] *Ibid.*, p. vi.

> now sufficient evidence to categorize ABA as medical therapy. Accordingly, plans may propose benefit packages which include ABA.[14]

This would allow insurance plans that provided health coverage to federal civilian plans to propose benefits packages for the 2013 contract year that include applied behavioral analysis benefits but would not mandate such benefits. Some observers have suggested that DOD follow OPM's example and deem applied behavioral analysis to be a proven, medical treatment.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Section 704 mandates TRICARE coverage of applied behavioral analysis.	Section 705 is similar.	Section 704 requires the Secretary of Defense to conduct a one-year pilot program to provide for the treatment of autism spectrum disorders, including applied behavioral analysis, under the TRICARE program.

Discussion: Section 704 of the enacted bill would require the Secretary of Defense to conduct a one-year pilot program to provide for the treatment of autism spectrum disorders, including applied behavior analysis, for all TRICARE beneficiaries covered under the basic program. The Joint Explanatory Statement of the Committee of the Conference states:

> The conferees are aware that the Department of Defense (DOD) has been ordered by the District Court for the District of Columbia to provide coverage under the basic TRICARE benefit for applied behavior analysis. The conferees understand that the plaintiffs and DOD have each submitted motions to reconsider the court order. The conferees have provided DOD this 1-year authority in order to allow DOD to assess such coverage independent from litigation proceedings.

References: None.

CRS Point of Contact: Don Jansen, x7-4769.

[14] See page 13 at http://www.opm.gov/carrier/carrier_letters/2012/2012-12.pdf.

*Unified Medical Command

Background: The current organizational structure of the Military Health System (MHS) has long been considered by many observers to present an opportunity to gain efficiencies and save costs by consolidating administrative, management, and clinical functions. Recent Government Accountability Office testimony summarized these views, stating that

> The responsibilities and authorities for the MHS are distributed among several organizations within DoD with no central command authority or single entity accountable for minimizing costs and achieving efficiencies. Under the MHS's current command structure, the Office of the Assistant Secretary of Defense for Health Affairs, the Army, the Navy, and the Air Force each has its own headquarters and associated support functions.
>
> DoD has taken limited actions to date to consolidate certain common administrative, management, and clinical functions within its MHS. To reduce duplication in its command structure and eliminate redundant processes that add to growing defense health care costs, DoD could take action to further assess alternatives for restructuring the governance structure of the military health system. In 2006, if DoD and the services had chosen to implement one of the reorganization alternatives studied by a DoD working group, a May 2006 report by the Center for Naval Analyses showed that DoD could have achieved significant savings. Our adjustment of those savings from 2005 into 2010 dollars indicates those savings could range from $281 million to $460 million annually, depending on the alternative chosen and the numbers of military, civilian, and contractor positions eliminated.[15]

Section 716 of the National Defense Authorization Act for Fiscal Year 2012 (P.L. 112-81) required the Secretary of Defense to submit to the congressional defense committees a report on military health system reorganization options and prevents the Secretary of Defense from implementing any restructuring of the defense health system until 120 days after the Comptroller General submits to Congress a report reviewing the options considered.

DOD reported to Congress on March 2, 2012, on its analysis of options for reorganizing the military health system organization.[16] DOD considered 12 options:

- Option A: Current MHS Governance
- Option B: Defense Health Agency, Geographical Model
- Option C: Defense Health Agency with Service Military Treatment Facilities (MTFs)
- Option D: Unified Medical Command, Geographical Model
- Option E: Unified Medical Command with Service Components
- Option F: Unified Medical Command – HR 1540 Section 711 Model

[15] U.S. Government Accountability Office, *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*, GAO-11-635T, May 25, 2011, pp. 3-4, available at http://www.gao.gov/new.items/d11635t.pdf.

[16] http://tricare.mil/tma/congressionalinformation/downloads/MHSGovernanceRTC-Signed.pdf.

- Option G: Single Service, Geographic Model
- Option H: Single Service with Components
- Option I: Split Unified Medical Command and Military-Led Defense Health Agency
- Geographic Hybrid
- Option J: Unified Medical Command with components and DHA Hybrid
- Option K: Single Service Hybrid with a Unified Medical Command
- Option L: Defense Health Agency Hybrid with MTFs placed under the Agency

The analysis recommended option C reporting that all of the Unified Medical Command options would increase costs. GAO has not yet reported on these options.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Section 711 requires the Secretary of Defense to establish a Unified Medical Command.	No similar provision.	Section 731 requires the Secretary of Defense to develop a detailed plan to implement reforms to the governance of the military health system as described in a March 2012 memorandum summarizing the recommendation in the report to Congress of the same month.

Discussion: Section 731 would require the Secretary of Defense to develop a detailed plan to implement reforms to the governance of the military health system described in the memorandum of the Deputy Secretary of Defense dated March 2012.[17] Initial component of the plan are required to be submitted to the congressional defense committees by March 31, 2013, and the remainder by June 30, 2013. Obligation of specified amounts of authorized funds is prohibited until the Secretary submits the contents of the plan to the congressional defense committees. The Comptroller General is also required to submit a review of the contents of the plan to the congressional defense committees.

Reference(s): Previously discussed in CRS Report R41874, *FY2012 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by David F. Burrelli.

CRS Point of Contact: Don Jansen, x7-4769.

[17]Letter to Senator Daniel K. Inouye from Ashton Carter, Deputy Secretary of Defense, dated March 2, 2102. Available at: http://tricare.mil/tma/congressionalinformation/downloads/MHSGovernanceRTC-Signed.pdf

TRICARE Mail Order Pharmacy Pilot Program

Background: A TRICARE mail order pharmacy option has been available to DOD beneficiaries since the late 1990s; it accounted for 31.8% of total purchased care prescriptions filled as of December 2011.[18] Prescription medications delivered by mail order save money for DOD since DOD negotiates prices that are considerably lower than the prices paid for prescriptions filled through retail pharmacies. Use of the mail order option offers TRICARE beneficiaries a 90-day supply for the same copayment as a 30-day supply at a retail pharmacy. As an additional incentive for beneficiaries to use mail order, TRICARE eliminated copayments for generic drug prescriptions filled by mail order effective October 1, 2011.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Section 717 requires the Secretary of Defense to conduct a pilot program to refill prescription maintenance medications for TRICARE for Life beneficiaries through the TRICARE mail-order pharmacy program.	No similar provision.	Section 716 requires the Secretary of Defense to conduct a 5-year mail order pilot program for TRICARE for Life beneficiaries, but would also authorized these beneficiaries to fill prescriptions at military treatment facilities.

Discussion: Section 716 of the enacted bill would require the Secretary to conduct a five-year mail-order pilot program for TRICARE for Life beneficiaries, but would also authorize beneficiaries to fill both initial and refill prescriptions at military treatment facilities, and authorize the Secretary to promulgate regulations to address instances where a beneficiary attempts to refill prescriptions at a retail pharmacy rather than through the mail-order program or at a military treatment facility. The Congressional Budget Office estimates that medications purchased through the mail-order pharmacy program cost DOD about 19% less than if purchased through retail pharmacies.[19]

References: None.

CRS Point of Contact: Don Jansen, x7-4769.

[18] Please see page 22 at Evaluation of the TRICARE Program, Fiscal Year 2012, Department of Defense. http://tricare.mil/tma/congressionalinformation/downloads/TRICARE%20Evaluation%20Report%20-%20FY12.pdf

[19] Congressional Budget Office, Cost Estimate for H.R. 4310, May 15, 2012, page 20. http://www.cbo.gov/sites/default/files/cbofiles/attachments/hr4310.pdf.

TRICARE Pharmacy Copayments

Background: The President's Budget for 2013 proposes a variety of measures to increase cost-sharing with TRICARE beneficiaries. Among these is a proposal to alter pharmacy copayments to incentivize beneficiaries to use generic medications and to fill prescriptions at military treatment facilities (MTFs) or through mail order. Pharmacy copayments would also be indexed to the National Health Expenditure so that they would reflect changes in the health spending. Prescriptions would continue to be filled at no cost to beneficiaries at MTFs. Active duty service members also would continue to pay no fees for prescriptions. The Administration's proposed co-payments for prescriptions filled through the TRICARE retail and mail order pharmacy are presented in **Table 1**:

Table 1. Administration Proposed TRICARE Pharmacy Copayment Amounts

	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017
Retail (30 day fill)						
Generic	$5	$5	$6	$7	$8	$9
Brand	$12	$26	$28	$30	$32	$34
Non-Formulary[a]	$25	N/A	N/A	N/A	N/A	N/A
Mail Order (90 day fill)						
Generic	$0	$0	$0	$0	$0	$9
Brand	$9	$26	$28	$30	$32	$34
Non-Formulary	$25	$51	$54	$58	$62	$66

a. Access to non-formulary pharmaceuticals would be limited in retail pharmacies

Source: See page 5-4 at http://comptroller.defense.gov/defbudget/fy2013/FY2013_Budget_Request_Overview_Book.pdf

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Section 718 determines the amount of copayments under the TRICARE pharmacy benefits program and limits future increases to the rate of increase in retired pay.	The Senate-passed version does not contain a related provision. The Senate version thus would allow DOD to implement its proposal to index future TRICARE pharmacy copayments to the National Health Expenditure.	Section 712 sets the retail pharmacy copayments for a 30-day supply at $5 for generics, $17 for formulary brand name drugs, and $44 for non-formulary drugs. Mail order copayments for a 90-day supply are set at $0 for generics, $13 for formulary, and $43 for nonformulary. Beginning October 1, 2013, annual increases in pharmacy copayments would be capped at the percentage increase in retired pay for the year, until October 1, 2022, after which the Secretary of Defense may increase copayments "as considered appropriate."

Discussion: Section 712 would set new cost-sharing rates under the TRICARE pharmacy benefits program for fiscal year 2013 in statute, and would in fiscal years 2014 through 2022 limit any annual increases in pharmacy copayments to increases in retiree cost of living adjustments. The provision would also enable the Department of Defense to delay increasing copayments until the aggregate increase amounts to at least 1 dollar. Beyond fiscal year 2022, the Secretary of Defense would be authorized to increase copayments as the Secretary considers appropriate.

References: None.

CRS Point of Contact: Don Jansen, x7-4769.

TRICARE Coverage of Over-the-Counter Drugs

Background: The Department of Defense has been providing selected over-the-counter drugs with no beneficiary copayment under a demonstration project authority for several years.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
No similar provision	Section 702 authorizes the Secretary of Defense to implement procedures to place selected over-the-counter drugs on the uniform formulary and to make such drugs available to eligible covered beneficiaries.	Section 702 authorizes the Secretary of Defense to place selected over-the-counter drugs on the formulary and to make them available to beneficiaries without a copayment.

Discussion: Section 702 of the enacted bill would amend section 1074g of title 10, United States Code, to authorize the Department of Defense to place selected over-the counter drugs on the uniform formulary and make such drugs available to eligible beneficiaries. An over-the-counter drug would only be included on the uniform formulary if the Pharmacy and Therapeutics Committee finds that the drug is cost-effective and clinically effective. The provision would also authorize the Secretary of Defense to establish a copayment amount for these drugs or not, as appropriate. The Joint Explanatory Statement of the Committee of the Conference states:

> The conferees note that the Department of Defense has been providing selected over-the-counter drugs with no beneficiary copayment under demonstration authority for several years, and that the pilot program has resulted in significant savings to the Department. The conferees encourage the Department to continue to implement the authority provided by this section in a similar manner.

The Congressional Budget Office issued a cost estimate that states:

> Section 702 would allow DoD to provide certain over-the-counter (OTC) medications to beneficiaries at little or no charge. Similar authority was provided to DoD as part of a temporary demonstration program under section 705 of the National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364). That authority will expire in November 2012. Certain medications have both OTC and more-expensive prescription versions that achieve similar therapeutic results. Under the demonstration program, DoD has subsidized OTC drugs for beneficiaries in place of prescribed versions of those drugs that are more costly. Based on information from DoD, CBO estimates this authority has reduced spending for drugs by about $8 million per year. About half of those savings accrue to the Defense Health Program, a discretionary account that includes pharmacy spending for active-duty members, working age military retirees, and their dependents. Therefore, CBO estimates that extending this authority indefinitely would initially decrease spending subject to appropriations by $4 million per year and the savings would increase in later years because of inflation. The other half of the savings would accrue to the Medicare-Eligible Retiree Health Care Fund, a mandatory account... [20]

References: None.

CRS Point of Contact: Don Jansen, x7-4769.

[20] Congressional Budget Office, Cost Estimate S. 3254 National Defense Authorization Act for Fiscal Year 2013, June 29, 2012, pages 10-11.

TRICARE Coverage of Infertility Services

Background: Artificial insemination, In-Vitro Fertilization (IVF), Gamete Intrafallopian Transfer (GIFT) and all other noncoital reproductive procedures, including all services and supplies related to, or provided in conjunction with, those technologies are excluded from coverage under the TRICARE Policy Manual.[21] Nevertheless, under the Supplemental Health Care Program[22] for active duty service members under special circumstances for some severely wounded warriors such services have been provided. In addition, some Military Treatment Facilities may offer assisted reproductive technology services as part of their graduate medical education training programs, however, beneficiaries are required to reimburse DOD for the full cost of the procedure.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
No similar provision	Section 712 would provide fertility preservation treatments for service members who have been diagnosed with a condition for which the recommended course of treatment could cause infertility.	No provision enacted.

Discussion: The Joint Explanatory Statement of the Conference Committee states:

> The conferees note that the Assistant Secretary of Defense for Health Affairs issued policy guidance to the military departments and TRICARE Management Activity on April 3, 2012, to make assisted reproductive services available for seriously ill or severely injured active duty service members, and authorized the use of supplemental health care program funds for this purpose. The conferees have been informed that the Department of Defense is also reviewing fertility preservation for service members prior to deployment in support of contingency operations, and conducting an ongoing review of fertility options for service members who have sustained genitourinary injuries.
>
> The conferees direct the Secretary of Defense to submit a report to the Committees on Armed Services of the Senate and the House of Representatives on implementation of the "Policy for Assisted Reproductive Services for the Benefit of Seriously or Severely Ill/Injured (Category II and III) Active Duty Service Members" no later than June 1, 2013. The report shall include data on experience since issuance of the policy, including an analysis of the types of injuries or illness of those who sought the procedures, the procedures that were sought, what procedures or services were provided by both military treatment facilities and civilian providers, and an assessment of issues concerning quality of life and costs. In addition, the report shall provide an assessment of the feasibility and advisability of providing fertility preservation treatment for service members both in relation to deployment in support of contingency operations and as a result of illness or injury. The conferees expect the report to include recommendations for changes in policy or legislation that may be

[21] TRICARE Policy Manual, Chapter 4, Section 17.1.
http://manuals.tricare.osd.mil/DisplayManualFile.aspx?Manual=TP02&Change=172&Type=AsOf&Filename=C4S17_1.PDF&highlight=xml%3dhttp%3a%2f%2fmanuals.tricare.osd.mil%2fPdfHighlighter.aspx%3fDocId%3d51966%26Index%3dD%253a%255cIndex%255cTP02%26HitCount%3d2%26hits%3d69%2b74%2b

[22] See 32 CFR 199.16.

> necessary to provide such services to military service members who, as a consequence of illness or injury, require assistance for procreative ability.

The Congressional Budget Office issued a cost estimate of the Senate-passed bill that states:

> Section 712 would require TRICARE to provide fertility assistance services to active-duty members who, as a result of medical treatment for illnesses, have difficulty conceiving children. CBO's cost estimate for this section comprises two components: the cost of providing the services and the cost to TRICARE for providing the additional child delivery services from the resulting pregnancies.
>
> To estimate the number of active-duty members who might make use of this new benefit, CBO examined the incidence of assisted reproductive technology (ART) services as reported by the Centers for Disease Control (CDC). Based on those data, and making adjustments for the age of the active-duty population, and for the fact that their infertility must be caused by a medical treatment to qualify, CBO estimates that about 1,200 active duty members would utilize this benefit each year. CBO estimates that the cost of those services would be about $15,000 per user, or about $20 million per year; that estimate is based on publicly available pricing information from several fertility clinics, and includes the cost of in vitro fertilization, one of the more popular and accepted procedures.
>
> In addition to the cost of the fertility assistance procedures, CBO also estimates that TRICARE would incur additional costs for the increased number of resulting pregnancies. Based on information from the CDC, CBO estimates that about a third of ART services result in a pregnancy. However, because some military members are currently seeking ART services on their own and TRICARE is already paying for those pregnancies under current law, CBO estimates the number of additional pregnancies created by this provision would be less, about 200 per year. Furthermore, CBO estimates the cost of each pregnancy would be about $50,000, based on information from private sector studies and DoD cost data, for a cost of about $10 million per year. This amount is significantly higher than the average cost of a pregnancy in the United States because it takes into account the higher percentage of multiple births and preterm deliveries associated with fertility assistance procedures.
>
> In total, CBO estimates that implementing section 712 would increase costs to TRICARE by $145 million over the 2013-2017 period. Costs would be lower in the first year because of the time needed to establish rules and regulation.[23]

References: None.

CRS Point of Contact: Don Jansen, x7-4769.

[23] Congressional Budget Office, Cost Estimate S. 3254 National Defense Authorization Act for Fiscal Year 2013, June 29, 2012, pages 9-10.

Report on the Availability of TRICARE Prime

Background: TRICARE is administered on a regional basis (North, South, and West) by regional managed care support contractors. Award of a new round of contracts (known as T-3 contracts) completed this year after lengthy delays resulting from contract award protests. Part of the responsibility of the contractors is the process of establishing service areas in which military retirees are eligible to enroll in TRICARE Prime, the DOD health-maintenance organization style health insurance option.

The new contracts require TRICARE Prime service areas around Military Treatment Facilities (MTF) and Base Realignment and Closure (BRAC) sites. As a result some beneficiaries will no longer be offered Prime. These beneficiaries still retain TRICARE coverage under the Standard or Extra plan. TRICARE Standard is a fee-for-service style health insurance option available everywhere. TRICARE Extra is a discount given to TRICARE Standard beneficiaries when they use a TRICARE network provider

A "Prime Service Area" (PSA) is an area in which the regional managed care support contractor has established a network of civilian medical providers sufficient to meet TRICARE Prime access standards. There are currently about 220 MTF and 60 BRAC PSAs as well as 35 "Additional PSAs" which were established by the previous regional managed care support contracts to serve concentrations of TRICARE beneficiaries. The TRICARE managed care support contractors are only required by DOD to establish the MTF and BRAC PSAs. DOD initially planned to eliminate the Additional PSAs upon commencement of T3 health care delivery on April 1, 2012. However, on January 10, 2013, DOD announced that reductions in Prime Service Areas would be delayed until October 1, 2013.[24]

DOD officials state that elimination of the Additional PSAs would save the government approximately $55M per year because government yearly per capita costs for Prime have become much greater than for Standard (approximately $600 greater) due to years of high medical cost inflation and a Prime annual enrollment fee fixed at the modest 1995 level until 2012. The government has borne all of this cost increase. In contrast, TRICARE Standard beneficiaries have paid a portion of the increased costs in the form of their copayments.

DOD officials state that TRICARE retired beneficiaries who lose access to TRICARE Prime due to the elimination of a PSA will immediately have access to TRICARE Standard or, if they live within 100 miles of another PSA, they may enroll in that Prime area. Beneficiaries who live within 100 miles of a PSA will need to submit a new enrollment form, waive the primary and specialty care travel time standards, and select a new primary care manager in order to remain enrolled in TRICARE Prime. Nevertheless, many congressional offices have heard from constituents regarding the impending changes which may explain the adoption of this provision.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
No similar provision	Section 704 mandates a report setting forth DOD policy on the future availability of TRICARE Prime.	Section 732 requires the Secretary of Defense to submit a report to the armed services committees setting forth policy on the future availability

[24] Amaani Lyle, "Officials Announce TRICARE Prime Service Area Changes" American Forces Press Service, January 10, 2013, http://www.defense.gov/news/newsarticle.aspx?ID=118969 .

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
		of TRICARE Prime in all regions to include a plan to provide assistance to affected individuals in identifying health care providers in their transition from Prime to Standard.

Discussion: Section 732 of the enacted bill requires the Secretary of Defense to submit within 90 days to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the policy of the Department of Defense on the future availability of TRICARE Prime for eligible beneficiaries in all TRICARE regions throughout the United States. The report is to include a description of a plan to provide assistance to affected individuals to identify health care providers in their transition from TRICARE Prime to TRICARE Standard.

References: None.

CRS Point of Contact: Don Jansen, x7-4769.

Military Psychological Health

Background: For several years, certain military mental health issues have been of concern to members of Congress as well as others. The executive branch as well as demonstrated concern about these issues with, for example, the August 31, 2012 issuance of an Executive order entitled "Improving Access to Mental Health Services for Veterans, Service Members, and Military Families."[25]

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
Sections 705, 725, 728, and 729 address military mental health issues.	Sections 702, 722, 731, 732, 733, 735, 751, 752, 754, 756, 757, 759, 760, and 761 address military mental health issues.	Section 703 changes the period for mandatory post-deployment person-to-person mental health assessments from between 180 days and one year after deployment to between 180 days after deployment to 18 months after deployment. Section 706 authorizes a pilot program on enhancing mental health in the National Guard through community partnerships. Section 724 requires the Secretaries of Defense and Veterans Affairs to allow members of the armed forces to volunteer or be considered for employment as peer counselors in VA peer counseling support programs. Section 725 requires the Secretary of Defense to provide for the translation of research on the diagnosis and treatment of mental health conditions into policy on medical practices. A report is also required. Section 726 addresses transparency in mental health care services provided by the Department of Veterans Affairs. Section 727 addresses access of members of the armed forces and their family members to Vet Center counseling programs. Section 728 addresses the organization of the Readjustment Counseling Service in the Department of Veterans Affairs. Section 729 requires the Secretary of

[25] E.O. 13625, https://www.federalregister.gov/articles/2012/09/05/2012-22062/improving-access-to-mental-health-services-for-veterans-service-members-and-military-families.

House-passed (H.R. 4310)	Senate-passed	P.L. 112-239
		Veterans Affairs to conduct a recruitment program for mental health service providers. Section 730 requires the Department of Veterans Affairs to establish a peer support counseling program.

Discussion: The House and Senate bills contained numerous provisions related to efforts by DOD and the Department of Veterans Affairs (VA) to address concerns about military psychological health issues. Additional measures were included in the enacted bill.

In the House-passed bill, section 705 would require a mental health assessment of a member deployed in support of a contingency operation once during each 180-day period of such deployment. It also allows these assessments to be performed by personnel in deployed units whose responsibilities include providing unit health care services if such personnel are available and their use for such purpose would not impair their capacity to perform higher priority tasks. This measure was not adopted in the enacted bill. The Joint Explanatory Statement of the Conference Committee states "The conferees encourage the Secretary of Defense to develop a policy to provide mental health assessments to service members while they are deployed in a contingency operation, if personnel in deployed units whose responsibilities include providing unit health care services are available and the use of those services for this purpose would not impair their capacity to perform higher priority tasks."

Section 725 would authorize the Secretary of Defense, through community partnerships with private nonprofit organizations, to carry out a three-year pilot program assessing the enhancement of DOD efforts in research, treatment, education, and outreach on mental health and substance use disorders and traumatic brain injury (TBI) in members of the National Guard and Reserves and their family members and caregivers. The section allows the Secretary, using a competitive and merit-based process, to award grants to these community partners, provided that the awardee agrees to make matching contributions from nonfederal sources of at least $3 for each $1 provided under the grant.

Section 728 would direct the Secretaries of Defense and Veterans Affairs to carry out a five-year pilot program for third party treatment under which each Secretary establishes a process for providing payments to facilities for treatments of TBI or post-traumatic stress disorder (PTSD) received by members and veterans in facilities other than military or VA medical facilities. The section further requires the VA Secretary to notify each veteran with a service-connected injury or disability of the opportunity to receive such treatment or protocol. The section also requires the Secretaries to jointly: (1) develop and maintain a database containing each patient case involving the use of such treatments; and (2) report annually to Congress on the implementation of this section. This provision was not included in the enacted bill.

Section 729 would promote efforts by the Secretaries to educate members, veterans, their families, and the public about the causes, symptoms, and treatment of PTSD. It also requires the creation of an advisory commission on PTSD to coordinate the efforts of DOD, VA, and other executive departments and agencies for PTSD prevention, diagnosis, and treatment. This provision was not adopted in the enacted bill, however, the enacted bill does express the sense of Congress in support of greater awareness for PTSD.

In the Senate-passed bill , section 722, similarly to section 725 of the House-passed bill, would authorize the Secretary of Defense to carry out a research program to assess the feasibility and advisability of enhancing the efforts of the DOD in research, treatment, education, and outreach on mental health and substance use disorders and TBI in members of the National Guard and Reserves, their family members, and their caregivers.

Sections 731 and 733 would require DOD to report to the Armed Services committees on, respectively, performance data on Warriors in Transition programs, and, a plan to eliminate gaps and redundancies in DOD programs on psychological health and TBI.

Section 735 expresses the sense of Senate that the Secretaries of Defense Veterans Affairs should develop a plan to ensure a sustainable flow of qualified counselors to meet the long-term needs of members of the Armed Forces, veterans, and their families for counselors. The plan should include the participation of accredited schools and universities, health care providers, professional counselors, family service or support centers, chaplains, and other appropriate resources.

Section 751 would require the Secretary of Defense to establish within the Office of the Secretary of Defense a position with responsibility for oversight and management of all suicide prevention and resilience programs and all preventative behavioral health programs within DOD.

Section 752 would require the Secretary of Defense to develop and implement a comprehensive suicide prevention program.

Section 754 would require the Secretary of Defense to, not later than 180 days after enactment of the bill, enter into a contract with an appropriate entity to make an independent assessment whether the mental health care benefits available for members of the Armed Forces and other covered beneficiaries under the TRICARE program are adequate to meet the needs of such members and beneficiaries for mental health care.

Section 756 would require the Secretaries of Defense and Veterans Affairs to jointly enter into a memorandum of understanding providing for members of the Armed Forces to volunteer or be considered for employment as peer counselors under the peer support counseling program under subsection (j) of section 1720F of title 38, United States Code and the peer support counseling program carried out under section 304(a)(1) of the Caregivers and Veterans Omnibus Health Services Act of 2010 (Public Law 111-163).

Section 757 would require the Secretary of Defense to establish within DOD an organization to (1) carry out programs and activities designed to provide for translational research on the diagnosis and treatment of mental health conditions into policy on medical practices; (2) make recommendations to the Assistant Secretary of Defense for Health Affairs on the translation of such research into the policies of the Department of Defense on medical practices with respect to members of the Armed Forces; and (3) discharge such other responsibilities relating to research and medical practices on mental health conditions, and the policies of the Department on such practices with respect to members of the Armed Forces, as the Secretary or the Assistant Secretary shall specify.

Section 759 would require the Secretary of Veterans Affairs to develop and implement a comprehensive set of measures to assess mental health care services furnished by the VA.

Section 760 would expand the population of individuals eligible for counseling services at Vet Center programs to include certain active duty and reserve service members and their families.

Section 761 would authorize the Secretary of Veterans Affairs to furnish mental health care through facilities other than Vet Centers to immediate family members of members of the Armed Forces deployed in connection with a contingency operation.

In the enacted bill, section 580 (similar to section 751 of the Senate-passed bill) requires the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness, to establish within the Office of the Secretary of Defense a position with responsibility for oversight of all suicide prevention and resilience programs of DOD and each of the military departments.

Section 581 (similar to section 512 of the Senate-passed bill) amends chapter 1007 of title 10, United States Code, to codify the Suicide Prevention and Community Health and Response Program for National Guard and reserve component members, to require the Secretary of Defense to provide training on suicide prevention, resilience, and community healing and response at Yellow Ribbon Reintegration Program events and activities, to move the program from within the Office for Reintegration Programs to the Office of the Secretary of Defense, and to repeal subsection (i) of section 582 of the National Defense Authorization Act for Fiscal Year 2008 (10 U.S.C. 10101 note). The program would terminate on October 1, 2017.

Section 582 (similar to section 752 of the Senate-passed bill) requires the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness, to develop within the Department of Defense a comprehensive policy on the prevention of suicide among service members.

Section 583 (similar to section 528 of the Senate-passed bill) requires the Secretary of the Army to conduct a study of resilience programs within the Army that would draw upon professionally accepted measurements and assessments to evaluate the impact of these programs.

Section 703 (similar to section 713 of the Senate-passed bill) amends section 1074m(a) of title 10, United States Code, to align mandatory post-deployment person-to-person mental health assessments for certain service members with other existing health assessments by changing the required assessment period from between 180 days after deployment to 1 year after deployment, to between 180 days after deployment to 18 months after deployment.

Section 706 (similar to section 725 of the House-passed bill) authorizes the Secretary of Defense to carry out a pilot program to enhance the efforts of DOD in research, treatment, education, and outreach on mental health, substance use disorders, and traumatic brain injury in members of the National Guard and reserves, their family members, and their caregivers through agreements with community partners.

Section 723 (similar to section 755 of the Senate-passed bill) requires the Secretary of Defense and the Secretary of Veterans Affairs to jointly enter into a memorandum of understanding providing for the sharing between departments of the results of examinations and other records on members of the armed forces that are retained and maintained with respect to the medical tracking system for members deployed overseas.

Section 724 (similar to section 756 of the Senate-passed bill) requires the Secretary of Defense and the Secretary of Veterans Affairs to jointly enter into a memorandum of understanding providing for certain members of the armed forces to volunteer or be considered for employment as peer counselors under certain peer support counseling programs carried out by the Secretary of Veterans Affairs.

Section 725 (similar to section 757 of the Senate-passed bill) requires the Secretary of Defense to provide for the translation of research on the diagnosis and treatment of mental health conditions into policy on medical practices.

Section 726 (similar to section 759 of the Senate-passed bill) requires the Secretary of Veterans Affairs to develop and implement a comprehensive set of measures to assess mental health care services provided by the Department of Veterans Affairs.

Section 727 (similar to section 760 of the Senate-passed bill authorizes the Secretary of Veterans Affairs to provide counseling and mental health services to certain members of the armed forces and their family members at vet centers.

Section 729 (similar to section 763 of the Senate-passed bill) requires the Secretary of Veterans Affairs to carry out a national program of outreach to societies, community organizations, nonprofit organizations, and government entities in order to recruit mental health providers to provide mental health care services for the Department on a part-time, without compensation basis.

Section 730 (similar to section 764 of the Senate passed-bill) amends section 1720F(j) of title 38, United States Code, to require the Secretary of Veterans Affairs to establish and carry out a peer support counseling program as a part of the existing comprehensive program designed to reduce the incidence of suicide among veterans.

References: None.

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