

112TH CONGRESS
1ST SESSION

H. R. 159

To direct the Secretary of Defense and the Secretary of Veterans Affairs to carry out a pilot program under which the Secretaries make payments for certain treatments of traumatic brain injury and post-traumatic stress disorder.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 2011

Mr. SESSIONS introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committee on Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To direct the Secretary of Defense and the Secretary of Veterans Affairs to carry out a pilot program under which the Secretaries make payments for certain treatments of traumatic brain injury and post-traumatic stress disorder.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "TBI Treatment Act".

1 **SEC. 2. PILOT PROGRAM ON PAYMENT FOR TREATMENT OF**
2 **MEMBERS OF THE ARMED FORCES AND VET-**
3 **ERANS FOR TRAUMATIC BRAIN INJURY AND**
4 **POST-TRAUMATIC STRESS DISORDER.**

5 (a) PAYMENT PROCESS.—The Secretary of Defense
6 and the Secretary of Veterans Affairs shall carry out a
7 five-year pilot program under which each such Secretary
8 shall establish a process through which each Secretary
9 shall provide payment for treatments (including diagnostic
10 testing) of traumatic brain injury or post-traumatic stress
11 disorder received by members of the Armed Forces and
12 veterans in health care facilities other than military treat-
13 ment facilities or Department of Veterans Affairs medical
14 facilities. Such process shall provide that payment be
15 made directly to the health care facility furnishing the
16 treatment.

17 (b) CONDITIONS FOR PAYMENT.—The approval by a
18 Secretary for payment for a treatment pursuant to sub-
19 section (a) shall be subject to the following conditions:

20 (1) Any drug or device used in the treatment
21 must be approved or cleared by the Food and Drug
22 Administration for any purpose.

23 (2) The treatment or study protocol used in
24 treating the member or veteran must have been ap-
25 proved by an institutional review board operating in

1 accordance with regulations issued by the Secretary
2 of Health and Human Services.

3 (3) The approved treatment or study protocol
4 (including any patient disclosure requirements) must
5 be used by the health care provider delivering the
6 treatment.

7 (4) The patient receiving the treatment or
8 study protocol must demonstrate an improvement as
9 a result of the treatment on one or more of the fol-
10 lowing:

11 (A) Standardized independent pre-treat-
12 ment and post-treatment neuropsychological
13 testing.

14 (B) Accepted survey instruments.

15 (C) Neurological imaging.

16 (D) Clinical examination.

17 (5) The patient receiving the treatment or
18 study protocol must be receiving the treatment vol-
19 untarily.

20 (c) **ADDITIONAL RESTRICTIONS PROHIBITED.**—Ex-
21 cept as provided in this subsection (b), no restriction or
22 condition for reimbursement may be placed on any health
23 care provider that is operating lawfully under the laws of
24 the State in which the provider is located with respect to
25 the receipt of payment under this Act.

1 (d) PAYMENT DEADLINE.—The Secretary of Defense
2 and the Secretary of Veterans Affairs shall make a pay-
3 ment for a treatment or study protocol pursuant to sub-
4 section (a) not later than 30 days after a member of the
5 Armed Forces or veteran (or health care provider on be-
6 half of such member or veteran) submits to the Secretary
7 documentation regarding the treatment or study protocol.
8 The Secretary of Defense and the Secretary of Veterans
9 Affairs shall ensure that the documentation required
10 under this subsection may not be an undue burden on the
11 member of the Armed Forces or veteran or on the health
12 care provider.

13 (e) PAYMENT SOURCE.—Subsection (c)(1) of section
14 1074 of title 10, United States Code, shall apply with re-
15 spect to the payment by the Secretary of Defense for
16 treatment or study protocols pursuant to subsection (a)
17 of traumatic brain injury and post-traumatic stress dis-
18 order received by members of the Armed Forces.

19 (f) PAYMENT AMOUNT.—A payment under this Act
20 shall be made at the equivalent Centers for Medicare and
21 Medicaid Services reimbursement rate in effect for appro-
22 priate treatment codes for the State or territory in which
23 the treatment or study protocol is received. If no such rate
24 is in effect, payment shall be made at a fair market rate,
25 as determined by the Secretary of Defense, in consultation

1 with the Secretary of Health and Human Services, with
2 respect to a patient who is a member of the Armed Forces
3 or the Secretary of Veterans Affairs with respect to a pa-
4 tient who is a veteran.

5 (g) DATA COLLECTION AND AVAILABILITY.—

6 (1) IN GENERAL.—The Secretary of Defense
7 and the Secretary of Veterans Affairs shall jointly
8 develop and maintain a database containing data
9 from each patient case involving the use of a treat-
10 ment under this section. The Secretaries shall en-
11 sure that the database preserves confidentiality and
12 be made available only—

13 (A) for third-party payer examination;

14 (B) to the appropriate congressional com-
15 mittees and employees of the Department of
16 Defense, the Department of Veterans Affairs,
17 the Department of Health and Human Services,
18 and appropriate State agencies; and

19 (C) to the primary investigator of the insti-
20 tutional review board that approved the treat-
21 ment or study protocol, in the case of data re-
22 lating to a patient case involving the use of
23 such treatment or study protocol.

24 (2) ENROLLMENT IN INSTITUTIONAL REVIEW
25 BOARD STUDY.—In the case of a patient enrolled in

1 a registered institutional review board study, results
2 may be publically distributable in accordance with
3 the regulations prescribed pursuant to the Health
4 Insurance Portability and Accountability Act of
5 1996 (Public Law 104–191) and other regulations
6 and practices in effect as of the date of the enact-
7 ment of this Act.

8 (3) QUALIFIED INSTITUTIONAL REVIEW
9 BOARDS.—The Secretary of Defense and the Sec-
10 retary of Veterans Affairs shall each ensure that the
11 Internet website of their respective departments in-
12 cludes a list of all civilian institutional review board
13 studies that have received a payment under this Act.

14 (h) ASSISTANCE FOR MEMBERS TO OBTAIN TREAT-
15 MENT.—

16 (1) ASSIGNMENT TO TEMPORARY DUTY.—The
17 Secretary of a military department may assign a
18 member of the Armed Forces under the jurisdiction
19 of the Secretary to temporary duty or allow the
20 member a permissive temporary duty in order to
21 permit the member to receive treatment or study
22 protocol for traumatic brain injury or post-traumatic
23 stress disorder, for which payments shall be made
24 under subsection (a), at a location beyond reason-

1 able commuting distance of the member's permanent
2 duty station.

3 (2) PAYMENT OF PER DIEM.—A member who is
4 away from the member's permanent station may be
5 paid a per diem in lieu of subsistence in an amount
6 not more than the amount to which the member
7 would be entitled if the member were performing
8 travel in connection with a temporary duty assign-
9 ment.

10 (3) GIFT RULE WAIVER.—Notwithstanding any
11 rule of any department or agency with respect to
12 ethics or the receipt of gifts, any assistance provided
13 to a member of the Armed Forces with a service-
14 connected injury or disability for travel, meals, or
15 entertainment incidental to receiving treatment or
16 study protocol under this Act, or for the provision
17 of such treatment or study protocol, shall not be
18 subject to or covered by any such rule.

19 (i) RETALIATION PROHIBITED.—No retaliation may
20 be made against any member of the Armed Forces or vet-
21 eran who receives treatment or study protocol as part of
22 a registered institutional review board study carried out
23 by a civilian health care practitioner.

24 (j) TREATMENT OF UNIVERSITY AND NATIONALLY
25 ACCREDITED INSTITUTIONAL REVIEW BOARDS.—For

1 purposes of this Act, a university-affiliated or nationally
2 accredited institutional review board shall be treated in the
3 same manner as a Government institutional review board.

4 (k) MEMORANDA OF UNDERSTANDING.—The Sec-
5 retary of Defense and the Secretary of Veterans Affairs
6 shall seek to expeditiously enter into memoranda of under-
7 standing with civilian institutional review boards described
8 in subsection (j) for the purpose of providing for members
9 of the Armed Forces and veterans to receive treatment
10 carried out by civilian health care practitioners under a
11 treatment or study protocol approved by and under the
12 oversight of civilian institutional review boards that would
13 qualify for payment under this Act.

14 (l) OUTREACH REQUIRED.—

15 (1) OUTREACH TO VETERANS.—The Secretary
16 of Veterans Affairs shall notify each veteran with a
17 service-connected injury or disability of the oppor-
18 tunity to receive treatment or study protocol pursu-
19 ant to this Act.

20 (2) OUTREACH TO MEMBERS OF THE ARMED
21 FORCES.—The Secretary of Defense shall notify
22 each member of the Armed Forces with a service-
23 connected injury or disability of the opportunity to
24 receive treatment or study protocol pursuant to this
25 Act.

1 (m) REPORT TO CONGRESS.—Not later than 30 days
2 after the last day of each fiscal year during which the Sec-
3 retary of Defense and the Secretary of Veterans Affairs
4 are authorized to make payments under this Act, the Sec-
5 retaries shall jointly submit to Congress an annual report
6 on the implementation of this Act. Such report shall in-
7 clude each of the following for that fiscal year:

8 (1) The number of individuals for whom the
9 Secretary has provided payments under this Act.

10 (2) The condition for which each such indi-
11 vidual receives treatment for which payment is pro-
12 vided under this Act and the success rate of each
13 such treatment.

14 (3) Treatment methods that are used by enti-
15 ties receiving payment provided under this Act and
16 the respective rate of success of each such method.

17 (4) The recommendations of the Secretaries
18 with respect to the integration of treatment methods
19 for which payment is provided under this Act into
20 facilities of the Department of Defense and Depart-
21 ment of Veterans Affairs.

22 (n) TERMINATION.—The authority to make a pay-
23 ment under this Act shall terminate on the date that is
24 five years after the date of the enactment of this Act.

1 (o) AUTHORIZATION OF APPROPRIATIONS.—There is
2 authorized to be appropriated to carry out this Act
3 \$10,000,000 for each fiscal year during which the Sec-
4 retary of Veterans Affairs and the Secretary of Defense
5 are authorized to make payments under this Act.

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