Congressional Research Service
Informing the legislative debate since 1914

FY2015 National Defense Authorization Act: Selected Military Personnel Issues

Updated December 11, 2014

Congressional Research Service
https://crsreports.congress.gov
R43647

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

Military personnel issues typically generate significant interest from many Members of Congress and their staffs. Ongoing operations in Afghanistan, along with the regular use of the reserve component personnel for operational missions, 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 H.R. 4435, the initial House-passed version of the National Defense Authorization Act (NDAA) for Fiscal Year 2015; S. 2410, the version of the NDAA reported by the Senate Committee on Armed Services (S.Rept. 113-176) but not considered by the full Senate; and H.R. 3979, the proposed final version. This report provides a brief synopsis of sections in each bill that pertain to selected personnel policy. These include end strengths, compensation, health care, and sexual assault, 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, topics which are addressed in other CRS products. Some issues were addressed in the FY2014 National Defense Authorization Act and discussed in CRS Report R43184, *FY2014 National Defense Authorization Act: Selected Military Personnel Issues* coordinated by Don J. Jansen. Those issues that were considered previously are designated with a "*****" in the relevant section titles of this report.

Contents

Contacts

Introduction

Each year, the House and Senate Armed Services Committees take up 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 FY2015 NDAA.

The initial House version of the Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, H.R. 4435 (113th Congress), was introduced in the House on April 9, 2014; reported by the House Committee on Armed Services on May 13, 2014 (H.Rept. 113-446); and passed by the House on May 22, 2014. A Senate version, S. 2410 (113th Congress), was introduced in the Senate on June 2, 2014, and reported by the Senate Committee on Armed Services (S.Rept. 113-176) on the same day. However, the Senate did not consider this bill. Instead, members of the House and Senate Armed Services Committees drafted H.R. 3979, a proposed final version of the FY2015 NDAA. On December 4, 2014, the House approved this H.R. 3979.

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

Some issues were addressed in the FY2014 National Defense Authorization Act, and discussed in CRS Report R43184, *FY2014 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Don J. Jansen, or earlier versions of reports on this act. 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[1] for FY2001, enacted in the year prior to the September 11th 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, but Congress began reversing these increases in light of the withdrawal of U.S. forces from Iraq in 2011 and a drawdown of U.S. forces in Afghanistan which began in 2012. In FY2014, the authorized end-strength for the Army was 520,000, while the authorized end-strength for the Marine Corps was 190,200. Given the budgetary outlook, particularly the future impact of the Budget Control Act of 2011 (BCA), the Army plans to reduce its active personnel strength to between 420,000 and 450,000 by FY2017, while the Marine Corps plans to reduce its active personnel strength to between 175,000 to 182,600. End-strength for the Air Force and Navy has decreased gradually since 2001. The authorized end-strength for FY2014 was 327,600 for the Air Force and 323,600 for the Navy.

House-Passed H.R. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
Section 401 authorizes a total FY2015 active duty end strength of 1,308,920 including: 490,000 for the Army 323,600 for the Navy 184,100 for the Marine Corps 311,220 for the Air Force	Section 401 authorizes a total FY2015 active duty end strength of 1,308,600 including: 490,000 for the Army 323,600 for the Navy 184,100 for the Marine Corps 310,900 for the Air Force	Section 401 authorizes a total FY2015 active duty end strength of 1,310,680 including: 490,000 for the Army 323,600 for the Navy 184,100 for the Marine Corps 312,980 for the Air Force

Discussion: In light of the ongoing drawdown in Afghanistan and the budgetary environment, the Administration requested major reductions in Army (-30,000), Air Force (-16,700), and Marine Corps (-6,100) end strengths in comparison to their FY2014 authorized end-strengths. The end-strength request for the Navy remained stable at 323,600 in comparison to FY2014. The figures in H.R. 3979 are identical to the administration's end-strength request except for the Air Force; the proposed final bill recommends an Air Force end-strength slightly higher (+2,080) than the Administration's request. Taken together, the proposed final bill stipulates a total active duty end-strength which is 50,720 lower than the FY2014 level. The committee report which accompanied H.R. 4435 noted that "the services plan for more drastic reductions in end strength and force structure in fiscal year 2016 absent a change in the Budget Control Act of 2011" and expressed concerns that "This continued stress on the force, coupled with potential further reductions as a result of the BCA's discretionary caps, may have serious implications on the capacity and capability of the All-Volunteer Force and the ability for the services to meet the National Defense Strategy."[2]

[1] The term "end-strength" refers to the authorized strength of a specified branch of the military at the end of a given fiscal year, while the term authorized strength means "the largest number of members authorized to be in an armed force, a component, a branch, a grade, or any other category of the armed forces". 10 USC 101(b)(11). As such, end-strengths are maximum strength levels. Congress also sets minimum strength levels for the active component, which may be identical to or lower than the end-strength.

[2] H.Rept. 113-446, p. 135.

Reference(s): Previously discussed in CRS Report R43184, *FY2014 National Defense Authorization Act: Selected Military Personnel Issues*, and similar reports from earlier years.

CRS Point of Contact: Lawrence Kapp

*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 4% over the past twelve years (874,664 in FY2001 versus 842,700 in FY2014). Much of this can be attributed to the reductions 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).[3] Between FY2001 and FY2014, the largest shifts in authorized end strength have occurred in the Army and Navy Reserve (-29,800 or -33.5%), Army National Guard (+3,674 or +1.1%), Air Force Reserve (-3,958 or -5.3%), and Coast Guard Reserve (+1,000 or +12.5%). A smaller change occurred in the Air National Guard (-2,622 or -2.4%), 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. 4435	Senate Committee Reported S. 2410	Proposed Final Version H.R. 3979
Section 411 authorizes the following end strengths for the Selected Reserves: Army National Guard: 350,200 Army Reserve: 202,000 Navy Reserve: 57,300 Marine Corps Reserve: 39,200 Air National Guard: 105,000 Air Force Reserve: 67,100 Coast Guard Reserve: 7,000	Section 411 authorizes the following end strengths for the Selected Reserves: Army National Guard: 350,200 Army Reserve: 202,000 Navy Reserve: 57,300 Marine Corps Reserve: 39,200 Air National Guard: 105,000 Air Force Reserve: 67,100 Coast Guard Reserve: 9,000	Section 411 authorizes the following end strengths for the Selected Reserves: Army National Guard: 350,200 Army Reserve: 202,000 Navy Reserve: 57,300 Marine Corps Reserve: 39,200 Air National Guard: 105,000 Air Force Reserve: 67,100 Coast Guard Reserve: 7,000

Discussion: For FY2015, the Administration requested an authorized Selected Reserve end strength lower than those for FY2014 for all of the reserve components. The reductions in comparison to FY2014 are as follows: Army National Guard (-4,000), Army Reserve (-3,000), Navy Reserve (-1,800), Marine Corps Reserve (-400), Air National Guard (-400), Air Force Reserve (-3,300) and Coast Guard Reserve (-2,000). The recommendations in the proposed final bill are identical with the administration's request.

Reference(s): Previously discussed in CRS Report R43184, *FY2014 National Defense Authorization Act: Selected Military Personnel Issues*, and similar reports from earlier years.

CRS Point of Contact: Lawrence Kapp

[3] P.L. 106-398, Section 411.

*Military Pay Raise

Background: Increasing concern with the overall cost of military personnel, combined with longstanding congressional interest in recruiting and retaining high quality personnel to serve in the all-volunteer military, have continued to focus interest on the military pay raise. Section 1009 of Title 37 provides a permanent formula for an automatic annual increase in basic pay that is indexed to the annual increase in the Employment Cost Index (ECI). The increase in basic pay for 2015 under this statutory formula would be 1.8% unless either: (1) Congress passes a law to provide otherwise; or (2) the President specifies an alternative pay adjustment under subsection (e) of 37 U.S.C. 1009.[4]

The FY2015 President's Budget requested a 1.0% military pay raise, lower than the statutory formula of 1.8%. This is in keeping with Department of Defense (DOD) plans to limit increases in basic pay through FY2017:

> As part of the FY 2014 President's Budget, the Department had already planned on limiting basic pay raises through FY 2017 to levels likely below those called for under the formula in current law, which calls for a raise to equal the annual increase in the wages and salaries of private industry employees as measured by the ECI. This FY 2014 plan called for pay raises of 1.0 percent in FY 2015 and FY 2016, 1.5 percent in FY 2017, and then returned to more likely ECI levels of 2.8 percent in FY 2018 and beyond.
>
> Similar to FY 2014, the FY 2015 President's Budget again seeks a 1.0 percent basic pay raise for military members in FY 2015, which is less generous than the 1.8 percent increase in ECI as of September 30, 2013.[5]

House-passed H.R. 4435	Senate Committee-reported S. 2410	Proposed Final Version H.R. 3979
No provision relating to a general increase in basic pay. Section 602 caps the pay of officers in paygrades O-7 through O-10 (one-star through four-star generals and admirals) at the Executive Schedule Level II rate of pay in effect during 2014.	Sec. 601 (a) waives the statutory formula of 37 USC 1009 and 601(b) specifies a 1.0% increase in basic pay for servicemembers below the O-7 paygrade. Sec. 601(c) caps the pay of officers in paygrades O-7 through O-10 at the Executive Schedule Level II rate of pay in effect during 2014.	No provision relating to a general increase in basic pay. Sec. 601caps the pay of officers in paygrades O-7 through O-10 at the Executive Schedule Level II rate of pay in effect during 2014, and specifies that the basic pay of such officers shall not increase during 2015.

Discussion: The House bill contained no provision to specify the rate of increase in basic pay, although the report accompanying it (H.Rept. 113-446) contained the following statement:

> The committee continues to believe that robust and flexible compensation programs are central to maintaining a high-quality, all-volunteer, combat-ready force. Accordingly, the committee supports a 1.8 percent military pay raise for fiscal year 2015, in accordance with

[4] Last year, Congress did not include a provision specifying an increase in basic pay; typically, that would have meant the automatic formula would have provided an increase equal to the ECI (1.8%). However, the President sent a letter to Congress stating "I have determined it is appropriate to exercise my authority under Section 1009(e) of title 37, United States Code, to set the 2014 monthly basic pay increase at 1.0 percent ... The adjustments described above shall take effect on the first applicable pay period beginning on or after January 1, 2014." Letter available at http://www.whitehouse.gov/the-press-office/2013/08/30/letter-president-regarding-alternate-pay-plan-members-uniformed-services

[5] Department of Defense, Fiscal Year 2015 Defense Budget Overview, March 2014, page 5-5, available here: http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2015/fy2015_Budget_Request_Overview_Book.pdf

> current law, in order for military pay raises to keep pace with the pay increases in the private sector, as measured by the Employment Cost Index.

The Senate committee-reported version contained a provision waiving the automatic adjustment of 37 U.S.C. 1009 and setting the pay increase at 1.0% for servicemembers below the O-7 paygrade. On August 29, President Obama sent a letter to Congress invoking 37 U.S.C. 1009(e) to set the pay raise for 2015 at 1.0%.[6] The proposed final version contains no general pay raise provision, thereby leaving in place the 1.0% increase specified by President Obama under 37 U.S.C. 1009(e), but section 601 freezes the basic pay of generals and admirals at 2014 levels.

Reference(s): Previously discussed in CRS Report R43184, *FY2014 National Defense Authorization Act: Selected Military Personnel Issues*, and similar reports from earlier years.

CRS Point of Contact: Lawrence Kapp

[6] Letter available here: http://www.whitehouse.gov/the-press-office/2014/08/29/letter-president-alternative-pay-plan-uniformed-services

Basic Allowance for Housing (BAH)

Background: The armed services provide funds to assist members of the military to pay for housing when government quarters adequate for themselves and their dependents are not available. Originally known as Basic Allowance for Quarters (BAQ), such compensation was based on rank and whether or not dependents were involved. During the 1970s housing costs began to vary more by location. In 1980, Congress added a Variable Housing Allowance (VHA) as a means to defray high housing costs in certain areas. BAQ/VHA was not intended to defray the entire cost of housing. It was expected that service members would pay approximately 15% of these costs out-of-pocket. By 1997, the increase in housing costs increased this out-of-pocket amount to about 20%. In 1998, Congress combined BAQ and VHA and renamed it BAH. In 2001, Congress enacted language that would increase BAH over successive years to remove the out-of-pocket costs to the service member. Out-of-pocket costs were eliminated by 2005.[7] The President's 2015 budget submission called for a slowing of BAH growth such that service members would pay 5% out-of-pocket by 2019.

House-Passed H.R. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
No provision. The committee report which accompanied the bill expressed concern about the effects of this change on servicemembers. It also noted that the Military Compensation and Retirement Modernization Commission is scheduled to release its report in February, 2015, and suggested that DOD share its analysis of the impact of such a change with the Commission.	Section 603 would allow the Secretary of Defense to reduce monthly BAH payments by up to 5% of the "national average monthly cost of adequate housing in the United States."	Section 604 would allow the Secretary of Defense to reduce monthly BAH payments by up to 1% of the "national average monthly cost of adequate housing in the United States." It also specifies that this change "shall not apply with respect to benefits paid by the Secretary of Veterans Affairs under the laws administered by the Secretary, including pursuant to sections 3108 and 3313 of title 38, United States Code." Thus, VA benefits that are tied to BAH rates, such as the Post-9/11 GI Bill, would continue to use the full BAH rate, not the reduced BAH rate.

Discussion: The language in the proposed final version allows the Secretary of Defense to reduce monthly BAH payments by up to 1% of the "national average monthly cost of adequate housing in the United States." The Joint Explanatory Statement which accompanied the bill also stated the following:

> We note that while the Department of Defense (DOD) legislative proposal included proposed changes to BAH that would have been implemented over the next 3 years, this agreement includes those changes to BAH that the committees understand would have been implemented by DOD in 2015. By adopting changes to BAH beginning in the first year of the proposal, the agreement preserves the option for Congress to achieve the full savings requested by DOD. This approach does not constitute a rejection of the administration proposal, which was endorsed by the Joint Chiefs of Staff. Rather, consideration of further

[7] See pp. 170-173 of this document for more information: http://www.loc.gov/rr/frd/pdf-files/Military_Comp-2011.pdf

> changes to BAH in fiscal years 2016, 2017, and beyond is deferred until after the committees receive the report of the Military Compensation and Retirement Modernization Commission, which is due in February 2015. The two committees commit to consider proposed changes to BAH that are included in the fiscal year 2016 budget request as part of the consideration of the National Defense Authorization Act for Fiscal Year 2016.[8]

References: None.

CRS Point of Contact: Lawrence Kapp

[8] Joint Explanatory Statement to Accompany the National Defense Authorization Act for Fiscal Year 2015, p.86.

*Briefing on Sexual Assault Prevention and Response

Background: Over the past few years, the issue of sexual assault in the military has received a good deal of congressional and media attention. Congress has enacted numerous changes, still problems persist.

House-Passed H.R. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
Page 140 of House Report 113-446 directs the Secretary of Defense to brief the House Armed Services Committee not later than March 1, 2015 on the status of the implementation of sexual assault provision in the NDAA12 through NDAA14, as well as the initiatives announced by the Secretary of Defense on August 14, 2013.	Pages 118-119 of Senate Report 113-176 direct the Secretary of Defense to report to the Committees on Armed Services of the Senate and the House of Representatives not later than July 31, 2014, on the status of DOD's response to section 579 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239) that required the Secretary of Defense to submit a report, no later than January 2, 2013, setting forth a comprehensive policy to prevent and respond to sexual harassment in the Armed Forces and also a plan to collect information and data regarding substantiated incidents of sexual harassment involving servicemembers, including the need to identify cases in which a servicemember is accused of multiple incidents of sexual harassment that was due not later than June 1, 2013.	No similar provision.

Discussion: Congress continues to maintain its oversight responsibilities concerning the matter of sexual assault and the military, as well as its desire to see positive changes in this matter.

References: *Sexual Assaults Under the Uniform Code of Military Justice (UCMJ): Selected Legislative Proposals, by R. Chuck Mason.*

CRS Point of Contact: Don J. Jansen

Department of Defense Hair and Grooming Standards

Background: Military hair and grooming standards as well as the issue of religious accommodations are designed to achieve uniformity. However, changes in styles, religious accommodations, etc., can be at variance with these standards. In at least one case, the issue had reached the Supreme Court.[9] As the military has become more diverse, regulations have been revised and/or updated. In March 2014, the Army released its updated regulation (A.R. 670-1). The update was criticized as "racially biased."[10] On April 29, 2014, on Secretary Hagel's directive, the services had 30 days to "revise any offensive language" in the new regulations and another 90 days to make whatever appropriate adjustments to their policy as necessary, according Rear Adm. John Kirby, the Pentagon's chief spokesman.[11] As a result, A.R. 670-1 was revised on September 15, 2014, to update guidance for authorized and unauthorized hairstyles for females.

House-Passed H.R. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
The House stated that the Secretary of Defense "shall not enforce and shall evaluate the changes to hair standard and grooming policies for female service members ... and report to the congressional defense committees the results of the evaluation. The evaluation shall include the opinions of those who may have religious accommodation requirements and minorities serving in the Armed Forces."	The Senate committee-reported bill contained no similar provision.	No similar provision.

Discussion: Congress and the Army have addressed similar issues. Any policy change regarding attire or grooming standards that appear to affect one group, particularly minorities, or people of religious faith, is viewed as suspect and there has been pressure on the service concerned, in this case the Army, to be more accommodating.

References: Army Regulation (A.R. 670-1), *Wear and Appearance of Army Uniforms and Insignia*, revised September 15, 2014, at http://www.apd.army.mil/pdffiles/r670_1.pdf (See para. 3-2 for authorized and unauthorized hairstyles for females)

CRS Point of Contact: Barbara Salazar Torreon

[9] Goldman v. Weinberger, 475 U.S. 503 (1986); the case was concerned with the question as to whether the Air Force could forbid a service member from wearing a yarmulke while in uniform. The Court ruled against the service member leading Congress to add language in the National Defense Authorization Act for Fiscal Years 1988 and 1989 (section 508) allowing for the wearing of religious apparel that was "neat and conservative," with other restrictions.

[10] Tan, Michelle, "Black female soldiers say new grooming reg is 'racially biased,'" *Army Times*, March 31, 2014

[11] DoD News Transcript, "Department of Defense Press Briefing by Rear Admiral Kirby in the Pentagon Briefing Room," April 29, 2014, at http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=5421

*Protection of the Religious Freedom of Military Chaplains to Close a Prayer Outside of a Religious Service According to the Traditions, Expressions, and Religious Exercises of the Endorsing Faith Group

Background: The free exercise clause in the Bill of Rights is meant to protect individual religious exercise and requires a heightened standard of review for government actions that may interfere with a person's free exercise of religion. The Establishment Clause in the Bill of Rights is meant to stop the government from endorsing a national religion, or favoring one religion over another. Actions taken must be carefully balanced to avoid being in violation of one of these clauses. Sections in Title 10 under the Army, Navy, and Air Force already address chaplains' duties with regard to holding religious services. A provision in the House-passed bill would amend these sections (§§3547, 6031, and 8547). Section 533 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239) required 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.

House-Passed H.R. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
Sec. 525, if called upon to lead a prayer outside of a religious service, a military chaplain may close the prayer according to the traditions, expressions and religious exercises of the endorsing faith group.	The Senate committee-reported bill contained no similar provision.	No similar provision.

Discussion: DOD Instruction 1300.17 acts to accommodate religious practices in the military services. This instruction indicates that DOD places a high value on the rights of military personnel to practice their respective religions. There have been instances where military personnel have become upset because the chaplain closed the prayer at a mandatory ceremony, such as a deployment ceremony, with a specific religious remark, such as "praise be Jesus." In February 2014, an atheist soldier at Fort Sam Houston in San Antonio, TX, threatened the U.S. Army with a lawsuit because a chaplain allegedly prayed to the Heavenly Father during a secular event. However, no personnel are required to recognize the prayer, or participate in it (for example, they do not have to respond). Religious proselytizing is considered by some to be a prominent issue in the Armed Forces. Some believe it could destroy the bonds that keep soldiers together, which could be viewed as a national security threat. The ability for a chaplain to be able to close a prayer outside of a religious service may heighten the tension between soldiers and may worsen the problem. Others disagree and argue that it is inappropriate to curtail a chaplain's activities.

Reference(s): Previously discussed in CRS Report R42651, *FY2013 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by Catherine A. Theohary. See also CRS Report R41171, *Military Personnel and Freedom of Religion: Selected Legal Issues*, by R. Chuck Mason and Cynthia Brown.

CRS Point of Contact: Barbara Salazar Torreon

*Removal of Artificial Barriers to the Service of Women in the Armed Forces, and, Study on Gender integration in Defense Operation Planning and Execution

Background: Section 535 of P.L. 111-383 (enacted Jan. 7, 2011) required the Secretary of Defense to submit a report to Congress to determine if changes in laws, policies, and regulations are needed to ensure that women have an "equitable opportunity" to serve in the Armed Forces. The report, "Review of Laws, policies, and regulations restricting service of female members of the Armed Forces," was submitted on June 1, 2011. In early 2013, then-Secretary of Defense Panetta rescinded the rule that restricted women from serving in combat units. Since Secretary Panetta's decision to rescind the restriction rule, the Army and Marine Corps have taken various steps to further integrate women.

House-Passed H.R. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
Sec. 527 requires the Secretary of Defense to direct the Secretary of each military service, in collaboration with an independent research entity, to validate the gender-neutral standards used by the Armed Forces. This section would require that properly fitted and design combat equipment is available. It calls on the Comptroller General to conduct a review of outreach to women by the Services. Sec. 584 requires the Chairman of the Joint Chiefs of Staff to conduct a study concerning the integration of gender into the planning and execution of foreign operations at all levels.	Sec. 523. Sense of Senate that the Secretaries of the military departments should eliminate gender bias and validate gender-neutral occupational standards for all military occupations. This section calls for the Secretaries to validate gender-neutral occupational standards for every military occupation by no later than September 1, 2015. This section would require that all combat equipment for female members meets required standards for wear and survivability. It also states that "by no later than January 1, 2016, open all military occupations to service by women who can meet such validated gender-neutral occupational standards for the military occupations to which they will be assigned."	No similar provision.

Discussion: In many ways, the report mandated by Section 535 of P.L. 111-383 has been overtaken by events. Nevertheless, some in Congress are concerned that DOD is not taking seriously the review of policies affecting female service members. Some are concerned that the use of the term "equitable," used above, does not mean the same as "equal." The service leadership has already begun assessing the occupational requirements. Section 584 of H.R. 4355 mandates a study of gender integration. There is no study mandate in Sec. 523 of S. 2410 and the focus is on gender-neutral occupational standards.

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

CRS Point of Contact: Barbara Salazar Torreon

*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 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, usually a temporary custody arrangement. Difficulties with child custody could in some cases potentially affect the welfare of military children as well as service members' ability to effectively serve their country.[12] 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. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
Section 547 amends the Servicemembers Civil Relief Act (SCRA) to require courts to render temporary custody orders based on deployments and to reinstate the custody order in effect prior to the deployment, unless the court determines that reinstatement is not in the child's best interest. This language prohibits courts from using the absence of a servicemember due to deployment, or the possibility of a deployment, as the sole factor 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.	Section 566, similar to the House provision, amends the SCRA to require courts which issue temporary custody orders based solely on deployments to require that such orders expire not later than the period justified by the deployment of the servicemember. The language prohibits courts from using the absence of a servicemember due to a deployment, or the possibility of a deployment, as the sole factor 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 would apply.

Discussion: The proposed final version seeks to protect the custodial arrangements of parents who are members of the armed forces by limiting the duration of a temporary custody order, based solely on the deployment of a servicemember parent, to the period justified by the deployment of the servicemember. It also restricts courts from using the absence of a service member due to deployment, or potential deployment, as the sole factor in determining a child's best interests, and directs deference to state law in these matters when the state law is more beneficial to the service member.

Reference(s): Previously discussed in CRS Report R42651, *FY2013 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by Catherine A. Theohary. See also CRS Report R43091, *Military Parents and Child Custody: State and Federal Issues*, by David F. Burrelli and Michael A. Miller.

[12] See U.S. Department of Defense, Instruction No. 1342.19, "Family Care Plans," May 7, 2010.

CRS Point of Contact: Don J. Jansen

*Required Consideration of Certain Elements of Command Climate in Performance Appraisals of Commanding Officers

Background: In recent years, the military services, particularly the Army, have reviewed and broadened what should be considered in evaluating the performance of commanders, including assessing the "command climate" of their unit. This appraisal includes evaluating how the unit is functioning and its "health." Such an appraisal could look at complaints in the unit, as well as issues concerning turnover, morale, leadership, discipline, etc.

House-Passed H.R. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
Sec. 506 requires that in assessing the command climate, allegations of sexual assault and the response to the victim of sexual assault should be taken into account.	Sec. 545 (d) modifies a reporting requirement associated with unrestricted reports of sexual assault, requiring that they include a review of command climate assessments for the units of the suspect and victim, and an assessment of whether another such climate assessment should be conducted.	Sec. 508. Requires consideration of certain elements of command climate in performance appraisals of commanding officers. Under this section, "The Secretary of a military department shall ensure that the performance appraisal of a commanding officer in an Armed Force under the jurisdiction of that Secretary indicates the extent to which the commanding officer has or has not established a command climate in which (1) allegations of sexual assault are properly managed and fairly evaluated; and (2) a victim of criminal activity, including sexual assault, can report the criminal activity without fear of retaliation, including ostracism and group pressure from other members of the command."

Discussion: The language in the proposed final bill would require that performance appraisals of unit commanders indicate the extent to which he or she has established a "command climate" in which sexual assault allegations are properly managed and the person making the allegations is protected from retaliation.

References: CRS Report R43184, *FY2014 National Defense Authorization Act: Selected Military Personnel Issues* coordinated by Don J. Jansen.

CRS Point of Contact: Barbara Salazar Torreon

*Sexual Assault

Background: Sexual assault continues to be an issue in the military. The number of cases reported in FY2014 was 5,983, exceeding the 5,518 cases reported in FY2013. DOD attributes this increase to a greater willingness of alleged victims to come forward and report incidents.

House-Passed H.R. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
Includes the sections listed below concerning sexual assault in Subtitle D of Title V. Sec. 533, this section requires the Secretary of Defense to extend the sexual assault provisions and preventions in the FY14 NDAA to the Service Academies. Sec. 534, "This section would require the Secretary concerned to establish a procedure to ensure a victim of an alleged sexual-related offense is consulted regarding the victim's preference for prosecution authority by court-martial or a civilian court with jurisdiction over the offense." Sec. 535, this section would allow a victim to seek relief from the Military Court of Appeals if he/she believes that a court-martial ruling violated the victim's rights concerning the victim's previous sexual behavior or psychological counseling issues. Sec. 536, "This section would require at a minimum, dismissal or dishonorable discharge and confinement for 2 years for sex-related offenses under the Uniform Code of Military Justice." Sec. 537, "This section would require the Secretary of Defense to modify the Military Rules of Evidence to make clear that the general military character of an accused is not admissible for the purpose of showing the probability of innocence except when the trait of the military character of an accused is relevant to an element for which the accused has been charged and may only be used for specified military-specific offenses." Sec. 538, "This section would require the Secretaries of military departments to establish a confidential process for victims of a sex-related offense to appeal, through boards for the correction of military records, the characterization of discharge or	Includes the sections listed below concerning sexual assault in Subtitle E of Title V. Sec. 543, (similar to House Sec. 534) would require that the Manual for Courts-Martial be modified to provide that when a victim of an alleged sex-related offense has a right to be heard in connection with the prosecution of such offense, the victim may exercise that right through counsel, including through a Special Victims' Counsel, and requires service secretaries to establish policies and procedures to ensure that counsel for the victim of an alleged sex-related offense, including a Special Victims' Counsel, is provided prompt and adequate notice of the scheduling of any hearing, trial, or other proceeding in connection with the prosecution of the offense to permit such counsel the opportunity to prepare for the proceeding. Sec. 544 would amend section 1044e of Title 10, United States Code to authorize the assistance of Special Victim's Counsel for a member of a reserve component who is the victim of an alleged sex-related offense. (No similar House provision). Sec. 546 would require that in any case where a convening authority decides not to refer a charge of a sex-related offense to trial by court martial and the chief prosecutor of the service concerned requests review of the decision, the service secretary must review the decision as a superior authority authorized to exercise general court-martial convening	Includes sections listed below in Subtitle D of Title V. Sec. 543 (similar to Senate Sec. 543 and House Sec. 534) would (1) require the Secretary of Defense to establish a process to ensure consultation with the victim of an alleged sex-related offense that occurs in the United States to solicit the victim's preference regarding whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense; (2) require the convening authority to consider the victim's preference; (3) require the convening authority to ensure that the civilian authority with jurisdiction over the offense is notified of a victim's preference for civilian prosecution; and (4) require the convening authority to ensure that the victim is informed if the convening authority learns of any decision by the civilian authority to prosecute or not prosecute the offense in civilian court. Sec. 533. (similar to Senate Sec. 544) would amend section 1044e of Title 10, United States Code, to authorize the assistance of Special Victims' Counsel for a member of a reserve component who is the victim of an alleged sex-related offense and who is not otherwise eligible for military legal assistance under Section 1044 of Title 10. Sec. 541, (similar to Senate Sec. 546), would require that in any case where a convening authority decides not to refer a charge of a sex-related offense to trial by court martial and the chief prosecutor of the service concerned requests review of the

House-Passed H.R. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
separation of the individual from the Armed Forces." Sec. 540 would authorize the return to the rightful owner of personal property retained as evidence in connection with an incident of sexual assault involving a servicemember after the conclusion of all legal, adverse action, and administrative proceedings related to the sexual assault.	authority. (No similar House provision.) Sec. 547,(similar to House Sec. 540, would authorize the return to the rightful owner of personal property retained as evidence in connection with an incident of sexual assault involving a servicemember after the conclusion of all legal, adverse action, and administrative proceedings related to the sexual assault. Sec. 548, would require the Secretary of Defense to issue policies and procedures for the inclusion of certain information in the Defense Sexual Assault Incident Database obtained from restricted and unrestricted reports of sexual assault, including the following: (1) The name of the alleged assailant, if known; (2) Identifying features of the alleged assailant; (3) The date of the assault; (4) The location of the assault; (5) Information on the means or method used by the alleged assailant to commit the assault. (No similar House provision.) Sec. 550, (similar to House Sec. 533), would require the Secretary of Defense to extend the sexual assault provisions and preventions in the FY14 NDAA to the Service Academies. Sec. 551 would require that the Department of Defense Annual Report on Sexual Assault in the Military include an analysis and assessment of the disposition of the most serious offenses identified in unrestricted reports of sexual assault. (No similar House provision.) Sec. 552, would require the Secretary of Defense to establish and maintain a Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces to advise the Secretary on the investigation, prosecution, and defense of rape, forcible	decision, the service secretary must review the decision as a superior authority authorized to exercise general court-martial convening authority. Sec. 538, similar to Senate section 547, similar to House section 540, would authorize the return to the rightful owner of personal property retained as evidence in connection with an incident of sexual assault involving a servicemember after the conclusion of all legal, adverse action, and administrative proceedings related to the sexual assault. Sec. 543 includes the language in Senate Section 548 that would require the Secretary of Defense to issue policies and procedures for the inclusion of certain information obtained from restricted and unrestricted reports of sexual assault in the Defense Sexual Assault Incident Database. Further, it would require the Secretary of Defense, not later than 1 year after the date of enactment, to submit to the Armed Services committees a plan that will allow an individual who files a restricted report on an incident of sexual assault to elect to permit a military criminal investigative organization, on a confidential basis and without affecting the restricted nature of the report, to access certain information of the alleged perpetrator if available, for the purpose of identifying individuals who are suspected of perpetrating multiple sexual assaults. Sec. 552, (similar to Senate Sec. 550 and House Sec. 533), would require the Secretary of Defense to extend the sexual assault provisions and preventions in the FY14 NDAA to the Academies. Sec. 542,(similar to Senate Sec. 551), would require that the Department of Defense Annual Report on Sexual Assault in the

House-Passed H.R. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
	sodomy, sexual assault, and other sexual misconduct in the Armed Forces and to submit a report on an annual basis to the Secretary and to the Armed Services committees. (No similar House provision.) Sec. 553 would require the Secretary of Defense and the Attorney General to jointly develop a strategic framework for ongoing collaboration between the Department of Defense and the Department of Justice in their efforts to prevent and respond to sexual assault. (No similar House provision.)	Military include an analysis and assessment of the disposition of the most serious offenses identified in unrestricted reports of sexual assault. Sec. 546, (similar to Senate Sec. 552) would require the Secretary of Defense to establish and maintain a Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces to advise the Secretary on the investigation, prosecution, and defense of rape, forcible sodomy, sexual assault, and other sexual misconduct in the Armed Forces not later than 30 days before the termination date of the independent panel established under section 576(a)(2) of the FY2013 NDAA and to submit a report on an annual basis to the Secretary and to the Armed Services committees.

Discussion: Many believe that more can and should be done to address the issue of sexual assault in the military. These provisions require additional efforts by the military related to preventing and reporting sexual assault, providing assistance to victims, and modifying judicial proceedings.

References: CRS Report R43184, *FY2014 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Don J. Jansen; CRS Report R42651, *FY2013 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by Catherine A. Theohary; and CRS Report R41874, *FY2012 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by David F. Burrelli. See also, U.S., Department of Defense, Annual Report on Sexual Assault in the Military, FY2013: http://www.sapr.mil/public/docs/reports/FY13_DoD_SAPRO_Annual_Report_on_Sexual_Assault.pdf

CRS Point of Contact: Don J. Jansen

Medals for Members of the Armed Forces and Civilian Employees of the Department of Defense Who Were Killed or Wounded in an Attack Inspired or Motivated by a Foreign Terrorist Organization

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, Nidal Hasan, opened fire at Ft. Hood, TX, killing 13 and wounding 29. Both the civilian and Army major were charged with murder and other crimes. In 2013, Hasan was convicted and sentenced to death. The shooter in the Little Rock case confessed and was sentence to life in prison.

House-Passed H.R. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
Sec. 571 "would amend the Purple Heart award to include members killed or wounded in attacks inspired or motivated by foreign terrorist organizations since September 11, 2001. Additionally, this section would require a review of the November 5, 2009, attack at Fort Hood, Texas, to determine as to whether the death or wounding of any civilian employee of the Department of Defense or civilian contractor meets the eligibility criteria for the award of the Secretary of Defense Medal for the Defense of Freedom." 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).	Sec. 561. "The committee recommends a provision that would add a new section 1129a to title 10, United States Code, to require that the Secretary concerned treat attacks by a foreign terrorist organization as an attack by an international terrorist organization for the purposes of awarding the Purple Heart in certain circumstances."	Sec. 571 has similar language to Sec. 561to add a new section 1129a to title 10, United States Code, "for the purposes of awarding the Purple Heart and the Defense Medal for the Defense of Freedom... an attack by an individual or entity shall be considered to be an attack by a foreign terrorist organization if— "(A) the individual or entity was in communication with the foreign terrorist organization before the attack; and (B) the attack was inspired or motivated by the foreign terrorist organization."

Discussion: Authorities had considered, and treated, the shootings at Little Rock and Ft. Hood 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. The decision to award medals and other military decorations traditionally rests with the executive branch, so enacting this language would represent a rare legislative initiative in this area.

References: CRS Report R42704, *The Purple Heart: Background and Issues for Congress*, by David F. Burrelli.

CRS Point of Contact: Barbara Salazar Torreon

Retroactive Award of Army Combat Action Badge

Background: The Combat Action Badge (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. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
Sec. 572. 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 administrative 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. However, the Joint Explanatory Statement requests that the Secretary of Defense review this proposal as part of DOD's review of its military decorations and awards program.

Discussion: Section 572 of the House bill would give 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 572 would align the dates of eligibility with those for the CIB and CMB, and effectively allow eligible Army veterans retroactively to be awarded the CAB. Locating records that would justify awarding the CAB might, in some cases, be difficult. Additionally, the language of Section 572 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 Joint Explanatory Statement accompanying the proposed final bill included the following statement:

> On March 20, 2014, the Secretary of Defense directed a comprehensive review of the Department of Defense's military decorations and awards program to ensure that it provides avenues to appropriately recognize the service, sacrifices, and actions of military personnel. We request that this comprehensive review include a review of the proposal for the retroactive award of the Army Combat Action Badge.[13]

References: None.

CRS Point of Contact: Lawrence Kapp and Barbara Salazar Torreon

[13] Joint Explanatory Statement to Accompany the National Defense Authorization Act for Fiscal Year 2015, p.82.

Medal of Honor (MoH) Process

Background: In recent years, critics of the MoH review process have noted it as being lengthy and bureaucratic which may have led to some records being lost and conclusions drawn based on competing eyewitness and forensic evidence. One controversial nomination is that of Sgt. Rafael Peralta, who was nominated by the Marine commandant for allegedly smothering a grenade in Fallujah, Iraq, and saving the lives of several comrades in 2004. Marines who witnessed his actions insisted that although Peralta was gravely wounded, he was able to smother the grenade. However, some forensic experts disagreed, contending that he was already brain-dead and thus unable to voluntarily move on his own. The situation became more confused when Marines serving with Peralta recanted their stories.[14] Also the medals process was tarnished when the Pentagon was alleged to have created false narratives to justify medals awarded in the high-profile cases of Army Ranger Pat Tillman and Army Pfc. Jessica Lynch.[15]

House-Passed H.R. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
Sec. 573 states "No later than 30 days after the date of the enactment of this Act, the Secretary of the Navy shall submit to the Committees on Armed Services of the Senate and House of Representatives a report describing the Navy review, findings, and actions pertaining to the Medal of Honor nomination of Marine Corps Sergeant Rafael Peralta. The report shall account for all evidence submitted with regard to the case."	No provision.	Sec. 572. "Authorization for award of the Medal of Honor to members of the Armed Forces for acts of valor during World War I." This section would waive the time limitations specified in section 3 3744 of title 10, United States Code and to the awarding of certain medals to persons who served in the Armed Forces during World War I. Under this section, the President may consider awarding the Medal of Honor to William Shemin and Henry Johnson for the acts of valor during World War I.

Discussion: Peralta's case bears similarities to that of Marine Cpl. William "Kyle" Carpenter, who jumped on an enemy grenade to save a fellow Marine in Afghanistan. Carpenter, who is medically retired, was awarded the Medal of Honor on June 19, 2014, at the White House for his actions. Advocates for Peralta's nomination may seek to draw parallels between the two cases which may further open the review process for scrutiny.

References: CRS Report 95-519, *Medal of Honor: History and Issues*, by David F. Burrelli and Barbara Salazar Torreon; and

CRS Point of Contact: Barbara Salazar Torreon

[14] Londono, Ernesto, "Comrades say Marine heroism tale of Iraq veteran was untrue," *The Washington Post*, February, 21, 2014.

[15] Zucchino, David, and Tony Perry, "Why so few Medal of Honor awards?," *The Los Angeles Times*, October 4, 2010, at http://articles.latimes.com/print/2010/oct/04/nation/la-na-1004-medal-20101004-1

*TRICARE Beneficiary Cost-Sharing

Background: TRICARE is a health care program serving uniformed service members, retirees, their dependents, and survivors. In its FY2015 budget request, the Administration proposed to replace TRICARE Prime, Standard, and Extra with a consolidated TRICARE plan, increase co-pays for pharmaceuticals, and establishing a new enrollment fee for future enrollees in the TRICARE-for-Life program (that acts like a Medigap supplement plan for Medicare-eligible retirees).

House-Passed H.R. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
No provision.	Only adopted one of the budget proposals, Section 702, concerning pharmacy copayments, discussed separately in next section.	Only adopted one of the budget proposals. Section 702 is a modified version of the Senate Provision (Sec. 702), concerning pharmacy copayments. It is discussed separately in next section.

Discussion: The House Armed Services Committee report states:

> The committee remains focused on making certain that the Department cost-saving measures are centered on achieving the most efficient Military Health System possible before significant cost sharing burdens is placed on TRICARE beneficiaries. The current Department proposal to fundamentally alter the structure of TRICARE and increase associated fees is concerning in light of concurrently proposed reductions in compensation.[16]

The joint explanatory statement for H.R. 3979 states that the Administration cost-sharing proposals have not been rejected, but that additional action is deferred pending the report of the Military Compensation and Retirement Modernization Commission expected in February 2015:

> We note that while the Department of Defense (DOD) legislative proposal included proposed changes to the TRICARE pharmaceutical co-pays for fiscal years 2015 through 2024; this agreement includes changes beginning in fiscal year 2015. By adopting co-payment changes beginning the first year of the proposal, the agreement preserves the option for Congress to achieve most of the savings requested by DOD. This approach does not constitute a rejection of the DOD proposal, which was endorsed by the Joint Chiefs of Staff. Rather, consideration of further changes to co-pays is deferred until after the committees receive the report of the Military Compensation and Retirement Modernization Commission, which is due in February 2015. The two committees commit to consider proposed changes to co-pays that are included in the FY 2016 budget request as part of the consideration of the National Defense Authorization Act for Fiscal Year 2016.We note that if sequestration-level budgets remain in effect for Fiscal Year 2016 and beyond, DOD will need to make painful cuts and achieve substantial savings across its entire budget in order to avoid an unacceptable reduction in readiness of the Armed Forces of the United States.[17]

[16] H.Rept. 113-446 p. 162.

[17] Rules Committee Print 113-58, Joint Explanatory Statement to the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015, page 96. Available at http://rules.house.gov/sites/republicans.rules.house.gov/files/113-2/PDF/113-S1847-JES.pdf

The web site of the Military Compensation and Retirement Modernization Commission is http://mldc.whs.mil/ and an interim report providing detailed information on the military health care program and its costs is available there.

Reference(s): Previously discussed in CRS Report R43184, *FY2014 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Don J. Jansen; CRS Report R42651, *FY2013 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by Catherine A. Theohary; 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

*TRICARE Pharmacy Copayments

Background: TRICARE beneficiaries have access to a pharmacy program that allows outpatient prescriptions to be filled through military pharmacies, TRICARE Pharmacy Home Delivery, and TRICARE retail network and non-network pharmacies. Active duty service members have no pharmacy copayments when using military pharmacies, TRICARE Pharmacy Home Delivery, or TRICARE retail network pharmacies. Military pharmacies will provide free-of-charge a 90-day supply of formulary medications for prescriptions written by both civilian and military providers. Non-formulary medicines generally are not available at military pharmacies. For up to a 90-day supply, there are copayments for brand name and non-formulary medications (currently $13 and $43, respectively), but not for generic medications dispensed through TRICARE Pharmacy Home Delivery. For TRICARE retail network pharmacies the copayments for a 30-day supply currently are $5 for generic, $17 for brand name, and $44 for non-formulary drugs. It is DOD policy to use generic medications instead of brand-name medications whenever possible. The Administration's FY2015 budget request proposed a series of annual increases in the amount of copayments for fiscal years 2015 through 2024.

House-Passed H.R. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
No provision.	Section 702 would specify TRICARE pharmaceutical co-pays for fiscal years 2015 through 2024, similar to the Administration proposal, and would require that non-generic maintenance medications be refilled through military treatment facilities or the TRICARE Pharmacy Home Delivery program.	Section 702 would increase current copayment amounts by $3 and require that non-generic maintenance medications be refilled through military treatment facilities or the TRICARE Pharmacy Home Delivery program. It would also require the Government Accountability Office to report on a previously established mail-order maintenance drug requirement pilot program.

Discussion: Section 716 of the National Defense Authorization Act for Fiscal Year 2013 established a pilot program requiring that maintenance medications for TRICARE for Life beneficiaries be filled through military treatment facilities or TRICARE Pharmacy Home Delivery. Section 702 of H.R. 3979 would terminate the pilot program and expand the requirement to all TRICARE beneficiaries. Maintenance medications are those used on a regular basis for chronic health conditions such as high cholesterol or blood pressure. They do not include medications needed for a sudden illness or infection. Section 702 would also increase existing copayment requirements across-the-board by $3.

The Congressional Budget Office estimated that removing retail pharmacies as an option for refilling prescriptions for maintenance medications would save roughly $375 million per year.

Reference(s): Previously discussed in CRS Report R43184, *FY2014 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Don J. Jansen and CRS Report R42651, *FY2013 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by Catherine A. Theohary. Congressional Budget Office Cost Estimate: S. 2410 dated October 21, 2014, page 12.

CRS Point of Contact: Don Jansen

Mental Health Assessments

Background: Person-to-person mental health assessments are required under current law (10 U.S.C. 1074m) to be provided to each member of the armed forces who is deployed in support of a contingency operation once during the period beginning 120 days before the date of the deployment, once during the period beginning 90 days after the date of redeployment from the contingency operation and ending 180 days after such redeployment date, and not later than once during each of (1) the period beginning 180 days after the date of redeployment from the contingency operation and ending 18 months after such redeployment date; and (2) the period beginning 18 months after such redeployment date and ending 30 months after such redeployment date. The purpose of these mental health assessments is to identify post-traumatic stress disorder, suicidal tendencies, and other behavioral health conditions.

House-Passed H.R. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
Section 701 would require DOD to administer a person-to-person mental health assessment to deployed personnel once every six months.	Section 701 would require DOD to administer a person-to-person mental health assessment to Active Duty and Selected Reserve members each year. It also would require an annual report on the tools and processes used to provide the assessments.	Section 701 would require DOD to administer a person-to-person mental health assessment to Active Duty and Selected Reserve members each year as well as once during each 180-day period in which a member is deployed. It also would require an annual report on the tools and processes used to provide the assessments.

Discussion: Requiring DOD to administer a mental health assessment to deployed personnel every six months would require the deployment of an additional 20 mental health professionals and cost $35 million over the 2015-2019 periods according to Congressional Budget Office (CBO) estimate for H.R. 4435. The CBO's cost estimate for the annual person-to-person mental health assessment required by section states:

> Section 701 would require DoD to administer an annual mental health assessment to all members on active duty and in the selected reserve. Based on information from DoD, most of the services perform annual assessments that would meet the requirements of section 701. However, the Air Force and Air National Guard currently require such assessments at intervals of three and five years, respectively. Based on information from DoD, CBO estimates that implementing section 701 would require the Air Force and Air National Guard to perform an additional 240,000 mental health assessments each year, at a cost of about $35 each (the assessments may be performed over the phone). In total, after accounting for inflation, CBO estimates section 701 would require an increase in spending subject to appropriation of $43 million over the 2015-2019 periods. Costs would be lower in the first year because of the time needed to establish regulations and procedures.

Presumably the estimated cost for the H.R. 3979 provision would not be significantly more than that for S. 2410 because mental health assessments administered to deployed troops would satisfy the annual requirement.

Reference(s): Congressional Budget Office Cost Estimate: H.R. 4435 dated May 16, 2014. Congressional Budget Office Cost Estimate: S. 2410 dated October 21, 2014.

CRS Point of Contact: Don Jansen

Elimination of Inpatient Mental Health Day Limits

Background: The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA, P.L. 110-343) generally prevents group health plans and health insurance issuers that provide mental health or substance use disorder benefits from imposing less favorable limitations on those benefits than on medical/surgical benefits. The MHPAEA originally applied to group health plans and group health insurance coverage and was amended by the Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), to also apply to individual health insurance coverage. None of these provisions are applicable to the TRICARE program. TRICARE currently limits inpatient psychiatric care for patients age 19 and older to 30 days per fiscal year or in any single admission and to 45 days per fiscal year or in any single admission for patients age 18 and younger. Limitations may be waived if determined to be medically or psychologically necessary.

House-Passed H.R. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
No provision.	Section 703 would amend Section 1079 of Title 10 of the United States Code to remove TRICARE's limits on inpatient mental health services.	Section 703 would amend Section 1079 of Title 10 of the United States Code to remove TRICARE limits on inpatient mental health services.

Discussion: The Congressional Budget Office cost estimate for S. 2410 states:

> Section 703 would remove certain limitations on inpatient mental health coverage under TRICARE. Specifically, beneficiaries would no longer be subject to the annual limit on stays at inpatient mental health facilities, which is currently 30 days for adults and 45 days for children. In addition, children would no longer be subject to the 150-day annual limit for stays at Residential Treatment Centers. DoD is currently allowed to issue waivers that allow beneficiaries to exceed the annual limits. However, based on an examination of data from DoD, CBO believes that at least some beneficiaries will have their inpatient stays curtailed because of the current restrictions, and that removal of those restrictions would result in longer stays and an increase in costs to DoD.
>
> Based on data from DoD, CBO estimates that about 650 TRICARE beneficiaries who are not Medicare-eligible would extend their stays at inpatient mental health facilities each year if the current restrictions are eliminated, and that they would extend their stays by about 26 days, on average. With an average cost of about $700 per day, CBO estimates section 703 would increase spending subject to appropriation by about $12 million per year, or $67 million over the 2015-2019 periods after adjustments for annual inflation.

Reference(s): Congressional Budget Office Cost Estimate: H.R. 4435 dated May 16, 2014. Congressional Budget Office Cost Estimate: S. 2410 dated October 21, 2014, page 13.

CRS Point of Contact: Don Jansen

Review of Military Health System Modernization

Background: DOD implemented a reorganization of the military health system on October 1, 2013. This included the creation of a new Defense Health Agency and Enhanced Multi-Service Markets. In reports to Congress, DOD has communicated its intent to consolidate or eliminate some underutilized services offered through certain military treatment facilities.

House-Passed H.R. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
Section 714 would require the Secretary of Defense to submit a report to the congressional defense committees on the military medical treatment facility modernization study directed by the Resource Management Decision of the Department of Defense MP-D–01. The report would be required to include the study data used by the Secretary and the results of the study with regard to recommendations to restructure or realign military medical treatment facilities. It also would require the Comptroller General, not later than 180 days after the Secretary submits the required report, to submit a report to the congressional defense committees. The Comptroller General report would include an assessment of the study methodology and data used by the Secretary. The Secretary would be prohibited from realigning or restructuring a military medical treatment facility until 120 days following the date the Comptroller General is required to submit the report.	Section 736 would require the Comptroller General to submit a report assessing the Military Health System Modernization Study of the Department of Defense to the congressional defense committees no later than 180 days after enactment.	Section 713 would require the Secretary of Defense to submit a report to the congressional defense committees on the military medical treatment facility modernization study directed by the Resource Management Decision of the Department of Defense MP-D–01. The report would include the study data, for a 6-year period, used by the Secretary of Defense and the results of the study with regard to recommendations to restructure or realign military medical treatment facilities. It would also include assessments of whether the military medical treatment facilities included in the modernization study have a helipad capable of receiving medical evacuation airlift patients arriving on the primary evacuation aircraft platform for the military installation served; and whether the Secretary consulted with the appropriate training directorate, training and doctrine command, and forces command of the military department concerned with respect to the frequency of high-tempo, live-fire military operations, and treating battlefield-like injuries, at locations that serve as military training centers. It also would require the Comptroller General, not later than 180 days after the Secretary submits the required report, to submit a report to the congressional defense committees. The Comptroller General would include an assessment of the study methodology and data used by the Secretary. The Secretary would be prohibited from realigning or restructuring a military medical treatment facility until 90 days following the date the Comptroller General is required to submit the report.

Discussion: Section 714 of the House bill would delay DOD's planned changes. The section requires DOD to submit a report to the congressional defense committees on an internal DOD military medical treatment facility modernization study and the Government Accountability

Office to subsequently report upon that report. The Congressional Budget Office estimates that the delays in planned changes would increase costs to DOD by about $135 million over the 2015-2019 period. Assuming the study required by Section 713 of H.R. 3979 would have a similar effect as Section 714 of H.R. 4435 one might assume a similar resulting cost estimate.

Reference(s): Congressional Budget Office Cost Estimate: H.R. 4435 dated May 16, 2014.

CRS Point of Contact: Don Jansen

Authority for Provisional TRICARE Coverage for Emerging Health Care Services and Supplies

Background: In general, by federal law, TRICARE payments are prohibited for "any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction." The purpose of this provision, common in health care payment programs, is to prevent TRICARE beneficiaries from being exposed to less than fully developed and tested drugs, devices and/or medical procedures and to avoid the associated risk of unnecessary or unproven treatment.

House-Passed H.R. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
No provision.	Section 705 would amend section 1073 of Title 10, United States Code, to authorize the Secretary of Defense to provide provisional coverage or authorization of certain health care product and services that do not meet the hierarchy of reliable evidence as prescribed in federal regulations for the TRICARE program.	Section 704 would amend chapter 55 of Title 10 United States Code, to include a new section (1079c) that would authorize the Secretary of Defense, acting through the Assistant Secretary of Defense for Health Affairs, to provide provisional coverage for certain services or supplies if the Secretary determines that such service or supply is widely recognized in the United States as being safe and effective. The Secretary may arrange for an evaluation of a product or service from the Institute of Medicine or another independent entity. The Secretary's determination to approve or disapprove a service or supply would be final.

Discussion: The TRICARE Policy Manual[18] explains how the prohibition on non-medically necessary services and supplies are implemented. It states that regulations and program policies restrict benefits to those drugs, devices, treatments, or procedures for which the safety and efficacy have been proven to be comparable or superior to conventional therapies. Any drug, device, medical treatment, or procedure whose safety and efficacy has not been established is unproven and is excluded from coverage.

A drug, device, medical treatment, or procedure is unproven

- if the drug or device cannot be lawfully marketed without the approval or clearance of the U.S. Food and Drug Administration (FDA) and approval or clearance for marketing has not been given at the time the drug or device is furnished to the patient; or
- if a medical device with an Investigational Device Exemption (IDE) approved by the FDA is categorized by the FDA as experimental/investigational (FDA Category A),

unless reliable evidence shows that any medical treatment or procedure has been the subject of well-controlled studies of clinically meaningful endpoints, which have determined its maximum

[18] See TRICARE Policy Manual 6010.57-M, February 1, 2008. Chapter 1, Section 2.1 "Unproven Drugs, Devices, Medical Treatments, And Procedures" at 1983 http://manuals.tricare.osd.mil/DisplayManualFile.aspx?Manual=TP08&Change=123&Type=AsOf&Filename=C1S2_1.PDF&highlight=xml%3dhttp%3a%2f%2fmanuals.tricare.osd.mil%2fPdfHighlighter.aspx%3fDocId%3d35929%26Index%3dD%253a%255cIndex%255cTP08%26HitCount%3d7%26hits%3d4e%2b229%2b309%2b31f%2b32d%2b34d%2b395%2b.

tolerated dose, its toxicity, its safety, and its efficacy as compared with standard means of treatment or diagnosis.

Cost-sharing may be allowed for services or supplies when there is no logical or causal relationship between the unproven drug, device, treatment, or procedure and the treatment at issue or where such a logical or causal relationship cannot be established with a sufficient degree of certainty. This cost-sharing is authorized when

- treatment that is not related to the unproven drug, device, treatment, or procedure (e.g., medically necessary treatment the beneficiary would have received in the absence of the unproven drug, device, treatment, or procedure);
- treatment which is a necessary follow-up to the unproven drug, device, treatment, or procedure but which might have been necessary in the absence of the unproven treatment.

In making a determination that a drug, device, medical treatment, or procedure has moved from the status of unproven to the position of nationally accepted medical practice; TRICARE uses the following hierarchy of reliable evidence:

Well controlled studies of clinically meaningful endpoints, published in refereed medical literature. These include

- published formal technology assessments,
- the published reports of national professional medical associations,
- published national medical policy organization positions, and
- the published reports of national expert opinion organizations.

TRICARE policy and benefit structure is never based solely that of other government medical programs, including Medicare, because each operates under its own statutes and regulations. TRICARE coverage may only be based on its governing statutes and regulations.

Section 704 presumably would, among other things, allow TRICARE to address situations such as Laboratory Developed Tests (LDTs). These are considered "medical devices" by the FDA. By regulation, TRICARE coverage is limited to FDA approved LDTs. A recent change in medical coding allowed TRICARE to identify when LDTs were being reimbursed when it had previously unknowingly paid for them. The Defense Health Agency (DHA) has stated that it recognizes that some FDA non-approved LDTs may help providers and patients with certain treatment decisions. In order to determine which FDA non-approved LDTs may be appropriate for coverage under TRICARE, the DHA is in the process of designing a new demonstration project. This new effort would expand upon an existing demonstration project, which provides coverage for certain LDTs that inform clinical decision making in cancer diagnosis and treatment.

Potential spending increases associated with this provision might be offset by potential reductions in spending under DOD's Supplemental Care program which is not subject to the TRICARE limitations.[19]

Reference(s): Congressional Budget Office Cost Estimate: H.R. 4435 dated May 16, 2014. Congressional Budget Office Cost Estimate: S. 2410 dated October 21, 2014, page 13.

CRS Point of Contact: Don Jansen

[19] See 32 CFR 199.16 - Supplemental Health Care Program for active duty members.

Availability of Breastfeeding Support, Supplies, and Counseling under the TRICARE Program

Background: Current TRICARE coverage for breastfeeding support supplies is limited to hospital-grade electric breast pumps (including services and supplies related to the use of the pump) for the mother of a premature infant. Electric breast pumps are specifically excluded for reasons of personal convenience, such as to facilitate a mother's return to work, even if prescribed by a physician. Basic electric and manual breast pumps likewise are excluded. This policy contrasts with the regulations promulgated pursuant to the Patient Protection and Affordable Care Act (P.L. 111-148) requiring group health insurance to cover comprehensive prenatal and postnatal lactation support, counseling, and equipment without cost-sharing.

House-Passed H.R. 4435	Senate Committee-Reported S. 2410	Proposed Final Version H.R. 3979
Section 703 would amend section 1079 of Title 10, United States Code, to authorize breastfeeding support, supplies, and counseling during pregnancy and the postpartum period as a covered benefit for TRICARE beneficiaries.	Section 704 is identical to the House provision.	Section 706 is identical to the House provision.

Discussion: The provision would authorize TRICARE coverage of "breastfeeding support, supplies (including breast pumps and associated equipment), and counseling as appropriate during pregnancy and the postpartum period." Normal TRICARE cost-sharing requirements would still apply. CBO did not score this provision.

CRS Point of Contact: Don Jansen

Author Information

Barbara Salazar Torreon, Coordinator
Analyst in Defense Budget and Military Manpower

Don J. Jansen
Specialist in Defense Health Care Policy

Lawrence Kapp
Specialist in Military Manpower Policy

Acknowledgments

David Burrelli, Specialist in Military Manpower Policy, was the previous coordinator for this report.

Disclaimer