

115TH CONGRESS
1ST SESSION

S. 2117

To amend title 10, United States Code, to expand eligibility for the TRICARE program to include certain veterans entitled to benefits under the Medicare program due to conditions or injuries incurred during service in the Armed Forces and to waive the Medicare part B late enrollment penalty for such veterans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 9, 2017

Mr. NELSON (for himself and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 10, United States Code, to expand eligibility for the TRICARE program to include certain veterans entitled to benefits under the Medicare program due to conditions or injuries incurred during service in the Armed Forces and to waive the Medicare part B late enrollment penalty for such veterans, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Access to Insur-
5 ance for Retired (FAIR) Heroes Act of 2017”.

1 **SEC. 2. ELIGIBILITY FOR TRICARE FOR VETERANS ENTI-**
2 **TLED TO MEDICARE BENEFITS DUE TO CON-**
3 **DITIONS OR INJURIES INCURRED DURING**
4 **SERVICE IN THE ARMED FORCES.**

5 (a) TRICARE PROVISIONS.—

6 (1) IN GENERAL.—Paragraph (2) of section
7 1086(d) of title 10, United States Code, is amend-
8 ed—

9 (A) in subparagraph (A), by striking “is
10 enrolled” and inserting “(i) is enrolled”;

11 (B) by redesignating subparagraph (B) as
12 clause (ii);

13 (C) in clause (ii), as redesignated by para-
14 graph (2), by striking the period at the end and
15 inserting “; or”; and

16 (D) by inserting after subparagraph (A)
17 the following new subparagraph (B):

18 “(B) is a person described in subparagraph
19 (A)(ii) who—

20 “(i) is retired for disability under chapter
21 61 of this title as a result of an injury or condi-
22 tion suffered during service in the armed forces;

23 “(ii)(I) is entitled to hospital insurance
24 benefits under part A of title XVIII of the So-
25 cial Security Act pursuant to subparagraph (A)
26 or (C) of section 226(b)(2) of such Act (42

1 U.S.C. 426(b)(2)) and is entitled to a benefit
2 described in subparagraph (A) of such section;
3 or

4 “(II) is entitled to hospital insurance bene-
5 fits under part A of title XVIII of the Social
6 Security Act pursuant to subparagraph (A) or
7 (C) of such section and whose entitlement to a
8 benefit described in subparagraph (A) of such
9 section terminated due to performance of sub-
10 stantial gainful activity; and

11 “(iii) has declined to enroll in the supple-
12 mentary medical insurance program under part
13 B of title XVIII of the Social Security Act (42
14 U.S.C. 1395j et seq.).”

15 (2) ALLOWANCE OF ONE CHANGE OF ENROLL-
16 MENT.—Such section is further amended by adding
17 at the end the following new paragraph:

18 “(6)(A) Except as provided in subparagraph (B),
19 after the end of the special enrollment period provided
20 under section 2(a)(3) of the Fair Access to Insurance for
21 Retired (FAIR) Heroes Act of 2017, an individual de-
22 scribed in paragraph (2)(B) may switch only once from
23 enrollment under the Medicare program under title XVIII
24 of the Social Security Act (42 U.S.C. 1395 et seq.) to en-
25 rollment in a plan contracted for under subsection (a).

1 “(B) The limitation under subparagraph (A) does not
2 apply to enrollment by an individual in a plan contracted
3 for under subsection (a) by reason of termination of the
4 entitlement of the individual to a benefit described in sub-
5 paragraph (A) of section 226(b)(2) of the Social Security
6 Act (42 U.S.C. 426(b)(2)) due to the performance of sub-
7 stantial gainful activity.”.

8 (3) SPECIAL ENROLLMENT PERIOD.—

9 (A) IN GENERAL.—The Secretary of De-
10 fense shall provide for a special enrollment pe-
11 riod during which an individual described in
12 subsection (d)(2)(B) of section 1086 of title 10,
13 United States Code, may enroll in a health care
14 plan under such section. Such period shall
15 begin as soon as possible after the date of the
16 enactment of this Act and shall end 12 months
17 later.

18 (B) COVERAGE PERIOD.—In the case of an
19 individual who enrolls during the special enroll-
20 ment period provided under subparagraph (A),
21 the coverage period under section 1086 of title
22 10, United States Code, shall begin on the first
23 day of the month following the month in which
24 the individual enrolls.

1 (4) CONFORMING AMENDMENTS.—Section
2 1086(d) of title 10, United States Code, is amend-
3 ed—

4 (A) in paragraph (4)(A), in the matter
5 preceding clause (i), by striking “paragraph
6 (2)(B)” and inserting “paragraph (2)(A)(ii)”;
7 and

8 (B) in paragraph (5)—

9 (i) by striking “subparagraph (B)”
10 and inserting “subparagraph (A)(ii)”; and

11 (ii) by striking “subparagraph (A)”
12 and inserting “subparagraph (A)(i)”.

13 (b) MEDICARE PROVISIONS.—

14 (1) WAIVER OF MEDICARE PART B LATE EN-
15 ROLLMENT PENALTY.—

16 (A) IN GENERAL.—Section 1839(b) of the
17 Social Security Act (42 U.S.C. 1395r(b)) is
18 amended by adding at the end the following
19 new sentences: “No increase in the premium
20 shall be effected for a month in the case of an
21 individual who demonstrates to the Secretary
22 that the individual, with respect to such month,
23 is an individual described in section
24 1086(d)(2)(B) of title 10, United States Code.
25 The Secretary of Health and Human Services

1 shall consult with the Secretary of Defense in
2 identifying individuals described in the previous
3 sentence.”.

4 (B) EFFECTIVE DATE.—The amendment
5 made by subparagraph (A) shall apply to pre-
6 miums for months beginning after the date of
7 the enactment of this Act. The Secretary shall
8 establish a method for providing rebates of pre-
9 mium penalties paid for months after the date
10 of the enactment of this Act for which a penalty
11 does not apply under such amendment but for
12 which a penalty was previously collected.

13 (2) MEDICARE PART B SPECIAL ENROLLMENT
14 PERIOD.—

15 (A) IN GENERAL.—In the case of any indi-
16 vidual who, as of the date of the enactment of
17 this Act, is eligible to enroll but is not enrolled
18 under part B of title XVIII of the Social Secu-
19 rity Act and is an individual described in sec-
20 tion 1086(d)(2)(B) of title 10, United States
21 Code, the Secretary of Health and Human
22 Services shall provide for a special enrollment
23 period during which the individual may enroll
24 under such part. Such period shall begin as

1 soon as possible after the date of the enactment
2 of this Act and shall end 12 months later.

3 (B) COVERAGE PERIOD.—In the case of an
4 individual who enrolls during the special enroll-
5 ment period provided under subparagraph (A),
6 the coverage period under part B of title XVIII
7 of the Social Security Act shall begin on the
8 first day of the month following the month in
9 which the individual enrolls.

10 (c) NOTIFICATION AND INFORMATION TO BENE-
11 FICIARIES.—

12 (1) NOTIFICATION REGARDING INSURANCE OP-
13 TIONS.—The Secretary of Defense shall coordinate
14 with the Secretary of Health and Human Services to
15 identify individuals described in section
16 1086(d)(2)(B) of title 10, United States Code, as
17 added by subsection (a), and notify those individuals
18 about their health insurance options under the
19 TRICARE program, as defined in section 1072 of
20 such title, and the Medicare program under title
21 XVIII of the Social Security Act (42 U.S.C. 1395 et
22 seq.).

23 (2) PROVISION OF INFORMATION TO BENE-
24 FICIARIES.—

1 (A) IN GENERAL.—The Secretary of De-
2 fense shall provide to individuals described in
3 paragraph (1) educational materials, informa-
4 tion, and counseling regarding the effects of not
5 enrolling in the supplementary medical insur-
6 ance program under part B of title XVIII of
7 the Social Security Act (42 U.S.C. 1395j et
8 seq.), including information comparing pre-
9 miums, copayments, deductibles, provider net-
10 works, future enrollment opportunities, and
11 penalties for the various health insurance plans
12 available to assist those individuals in making
13 appropriate health insurance choices.

14 (B) TIMING.—The Secretary shall provide
15 the educational materials, information, and
16 counseling described in subparagraph (A) to an
17 individual described in paragraph (1) before the
18 individual elects to change enrollment between
19 the TRICARE program, as defined in section
20 1072 of title 10, United States Code, and the
21 Medicare program under title XVIII of the So-
22 cial Security Act (42 U.S.C. 1395 et seq.).

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