

In the Senate of the United States,

June 22, 2006.

Resolved, That the bill from the House of Representatives (H.R. 5122) entitled “An Act to authorize appropriations for fiscal year 2007 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE; FINDINGS.***

2 (a) *SHORT TITLE.*—*This Act may be cited as the*

3 *“John Warner National Defense Authorization Act for Fis-*

4 *cal Year 2007”.*

1 **(b) FINDINGS.**—Congress makes the following findings:

2 (1) Senator John Warner of Virginia was elected
3 a member of the United States Senate on November
4 7, 1978, for a full term beginning on January 3,
5 1979. He was subsequently appointed by the Governor
6 of Virginia to fill a vacancy on January 2, 1979, and
7 has served continuously since that date. He was ap-
8 pointed a member of the Committee on Armed Serv-
9 ices in January 1979, and has served continuously on
10 the Committee since that date, a period of nearly 28
11 years. Senator Warner's service on the Committee
12 represents nearly half of its existence since it was es-
13 tablished after World War II.

14 (2) Senator Warner came to the Senate and the
15 Committee on Armed Services after a distinguished
16 record of service to the Nation, including combat serv-
17 ice in the Armed Forces and high civilian office.

18 (3) Senator Warner enlisted in the United States
19 Navy upon graduation from high school in 1945, and
20 served until the summer of 1946, when he was dis-
21 charged as a Petty Officer 3rd Class. He then at-
22 tended Washington and Lee University on the G.I.
23 Bill. He graduated in 1949 and entered the Univer-
24 sity of Virginia Law School.

1 (4) Upon the outbreak of the Korean War in
2 1950, Senator Warner volunteered for active duty, in-
3 terrupting his education to accept a commission in
4 the United States Marine Corps. He served in combat
5 in Korea as a ground officer in the First Marine Air
6 Wing. Following his active service, he remained in the
7 Marine Corps Reserve for several years, attaining the
8 rank of captain.

9 (5) Senator Warner resumed his legal education
10 upon returning from the Korean War and graduated
11 from the University of Virginia Law School in 1953.
12 He was selected by the late Chief Judge E. Barrett
13 Prettyman of the United States Court of Appeals for
14 the District of Columbia Circuit as his law clerk.
15 After his service to Judge Prettyman, Senator Warner
16 became an Assistant United States Attorney in the
17 District of Columbia, and later entered private law
18 practice.

19 (6) In 1969, the Senate gave its advice and con-
20 sent to the appointment of Senator Warner as Under
21 Secretary of the Navy. He served in this position
22 until 1972, when he was confirmed and appointed as
23 the 61st Secretary of the Navy since the office was es-
24 tablished in 1798. As Secretary, Senator Warner was
25 the principal United States negotiator and signatory

1 *of the Incidents at Sea Executive Agreement with the*
2 *Soviet Union, which was signed in 1972 and remains*
3 *in effect today. It has served as the model for similar*
4 *agreements between states covering the operation of*
5 *naval ships and aircraft in international sea lanes*
6 *throughout the world.*

7 *(7) Senator Warner left the Department of the*
8 *Navy in 1974. His next public service was as Direc-*
9 *tor of the American Revolution Bicentennial Commis-*
10 *sion. In this capacity, he coordinated the celebration*
11 *of the Nation's founding, directing the Federal role in*
12 *all 50 States and in over 20 foreign nations.*

13 *(8) Senator Warner has served as chairman of*
14 *the Committee on Armed Services of the United States*
15 *Senate from 1999 to 2001, and again since January*
16 *2003. He served as ranking minority member of the*
17 *committee from 1987 to 1993, and again from 2001*
18 *to 2003. Senator Warner concludes his service as*
19 *chairman at the end of the 109th Congress, but will*
20 *remain a member of the committee.*

21 *(9) This Act is the twenty-eighth annual author-*
22 *ization act for the Department of Defense for which*
23 *Senator Warner has taken a major responsibility as*
24 *a member of the Committee on Armed Services of the*
25 *United States Senate, and the fourteenth for which he*

1 *has exercised a leadership role as chairman or rank-*
2 *ing minority member of the committee.*

3 (10) *Senator Warner, as seaman, Marine officer,*
4 *Under Secretary and Secretary of the Navy, and*
5 *member, ranking minority member, and chairman of*
6 *the Committee on Armed Services, has made unique*
7 *and lasting contributions to the national security of*
8 *the United States.*

9 (11) *It is altogether fitting and proper that his*
10 *Act, the last annual authorization Act for the na-*
11 *tional defense that Senator Warner manages in and*
12 *for the United States Senate as chairman of the Com-*
13 *mittee on Armed Services, be named in his honor, as*
14 *provided in subsection (a).*

15 **SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF**
16 **CONTENTS.**

17 (a) *DIVISIONS.*—*This Act is organized into three divi-*
18 *sions as follows:*

19 (1) *Division A—Department of Defense Author-*
20 *izations.*

21 (2) *Division B—Military Construction Author-*
22 *izations.*

23 (3) *Division C—Department of Energy National*
24 *Security Authorizations and Other Authorizations.*

1 program shall be treated as an element of the Department
2 of Defense for purposes of the procurement of drugs by Fed-
3 eral agencies under section 8126 of title 38 in connection
4 with the provision by pharmacies in the Network of phar-
5 maceutical services to eligible covered beneficiaries under
6 this section.”.

7 **SEC. 722. RELATIONSHIP BETWEEN THE TRICARE PROGRAM**
8 **AND EMPLOYER-SPONSORED GROUP HEALTH**
9 **CARE PLANS.**

10 (a) *IN GENERAL.*—Chapter 55 of title 10, United
11 States Code, is amended by inserting after section 1097b
12 the following new section:

13 **“§ 1097c. TRICARE program: relationship with em-**
14 **ployer-sponsored group health plans**

15 “(a) *IN GENERAL.*—(1) The **TRICARE** program **is the**
16 **secondary payer for any health care services provided by**
17 **an employer** to a *TRICARE* eligible employee of such em-
18 ployer, and the spouse of such employee, through any group
19 health plan offered by such employer.

20 “(2) An employer shall provide that a **TRICARE eligi-**
21 **ble employee of such employer,** and the spouse of such em-
22 ployee, **is entitled to benefits and services under the group**
23 **health plan offered by such employer in the same manner**
24 **and to the same extent as similarly situated employees of**
25 **such employer who are not TRICARE eligible employees.**

1 “(3) *An employer of a TRICARE eligible employee*
2 *may not establish any condition* applicable to the partici-
3 *ipation of the employee in a group health plan offered by*
4 *such employer in connection with the entitlement of the em-*
5 *ployee for health care services under the TRICARE pro-*
6 *gram, including any condition on—*

7 “(A) *the eligibility* of the employee for participa-
8 *tion in the plan; or*

9 “(B) *benefits or services* available to the em-
10 *ployee under the plan.*

11 “(b) **PROHIBITION ON INCENTIVES FOR TRICARE EL-**
12 **IGIBLE EMPLOYEES NOT TO ENROLL OR TO DISENROLL**
13 **IN GROUP HEALTH PLANS.—(1)** *An employer may not offer*
14 *a TRICARE eligible employee any financial or other benefit*
15 *(including health services coverage that is supplemental to*
16 *health services coverage under the TRICARE program) not*
17 *to enroll, or to disenroll, in the group health plan* offered
18 *by the employer in order to ensure that the TRICARE pro-*
19 *gram, rather than the plan, is the primary payer for health*
20 *care services received by the employee.*

21 “(2)(A) *An employer who violates the prohibition in*
22 *paragraph (1) shall be liable to the United States for a civil*
23 *penalty in an amount not to exceed \$5,000 for each viola-*
24 *tion.*

1 “(B) Any amounts collected under this paragraph
2 shall be credited to the appropriation available for the
3 TRICARE program for the fiscal year in which such
4 amounts are collected.

5 “(3)(A) Except as provided in subparagraph (B), the
6 provisions of section 1128A of the Social Security Act (42
7 U.S.C. 1320a–7a), other than subsections (a) and (b) of
8 such section 1128A, which provisions relate to procedures
9 for the imposition of civil money penalties for viola-
10 tions of the Social Security Act, shall apply to the imposi-
11 tion of penalties under paragraph (2).

12 “(B) The Secretary of Defense may provide in the reg-
13 ulations prescribed under this section for the application
14 to the imposition of penalties under paragraph (2) of proce-
15 dural requirements specified in such regulations rather
16 than the procedural requirements referred to in subpara-
17 graph (A). Any procedural requirements under such regula-
18 tions shall be comparable to the procedural requirements
19 referred to in subparagraph (A).

20 “(c) *ELECTION OF TRICARE ELIGIBLE EMPLOYEES*
21 *TO PARTICIPATE IN GROUP HEALTH PLAN.—A TRICARE*
22 *eligible employee shall have the opportunity to elect to par-*
23 *ticipate in the group health plan offered by the employer*
24 *of the employee and receive primary coverage for health care*
25 *services under the plan in the same manner and to the same*

1 *extent as similarly situated employees of such employer who*
2 *are not TRICARE eligible employees.*

3 “(d) *INAPPLICABILITY TO CERTAIN EMPLOYERS.—The*
4 *provisions of this section do not apply to any employer who*
5 *has fewer than 20 employees.*”

6 “(e) *RETENTION OF ELIGIBILITY FOR COVERAGE*
7 *UNDER TRICARE.—Nothing in this section, including an*
8 *election made by a TRICARE eligible employee under sub-*
9 *section (c), shall be construed to effect, modify, or terminate*
10 *the eligibility of a TRICARE eligible employee or spouse*
11 *of such employee for health care or dental services under*
12 *this chapter in accordance with the other provisions of this*
13 *chapter.*”

14 “(f) *COLLECTION OF INFORMATION.—(1) To improve*
15 *the administration of this section, the Secretary of Defense*
16 *may utilize the authorities on collection of information set*
17 *forth in paragraphs (1) and (2) of section 1095(k) of this*
18 *title, including the authority in the second sentence of para-*
19 *graph (2) of such section.*”

20 “(2) *Information obtained pursuant to the use of the*
21 *authorities in paragraph (1) may not be disclosed for any*
22 *purpose of than to carry out the purpose of this section.*”

23 “(g) *OUTREACH.—The Secretary of Defense shall, in*
24 *coordination with the other administering Secretaries, con-*
25 *duct outreach to inform covered beneficiaries who are enti-*

1 tled to health care benefits under the TRICARE program
2 of the rights and responsibilities of such beneficiaries and
3 employers under this section.

4 “(h) REGULATIONS.—The Secretary of Defense shall
5 prescribe regulations relating to the administration and en-
6 forcement of this section. The regulations shall be prescribed
7 in consultation with the other administering Secretaries
8 and the Attorney General, as appropriate.

9 “(i) DEFINITIONS.—In this section:

10 “(1) The term ‘employer’ includes a State or
11 unit of local government.

12 “(2) The term ‘group health plan’ means a group
13 health plan (as that term is defined in section
14 5000(b)(1) of the Internal Revenue Code of 1986 with-
15 out regard to section 5000(d) of the Internal Revenue
16 Code of 1986).

17 “(3) The term ‘primary payer’ means a group
18 health plan that provides a benefit that would be pri-
19 mary under section 1079(j)(1) or 1086(g) of this title.

20 “(4) The term ‘secondary payer’ means a plan or
21 program whose medical benefits are payable only
22 after a primary payer has provided medical benefits
23 in accordance with applicable law and the plan of the
24 primary payer.

1 “(5) The term ‘TRICARE eligible employee’
2 means a covered beneficiary under section 1086 of
3 this title entitled to health care benefits under the
4 TRICARE program.

5 “(j) *EFFECTIVE DATE.*—This section shall take effect
6 on January 1, 2008.”.

7 (b) *CLERICAL AMENDMENT.*—The table of sections at
8 the beginning of chapter 55 of such title is amended by in-
9 serting after the item relating to section 1097b the following
10 new item:

 “1097c. TRICARE program: relationship with employer-sponsored group health
 plans.”.

11 **SEC. 723. ENROLLMENT IN THE TRICARE PROGRAM.**

12 (a) *SYSTEM OF ENROLLMENT REQUIRED.*—Chapter
13 55 of title 10, United States Code, is amended by inserting
14 after section 1097c, as added by section 722(a) of this Act,
15 the following new section:

16 **“§ 1097d. TRICARE program: system of enrollment**

17 “(a) *ESTABLISHMENT OF SYSTEM.*—Not later than
18 October 1, 2007, the Secretary of Defense shall establish a
19 universal system for enrollment of all beneficiaries who ob-
20 tain health care services from military medical treatment
21 facilities or civilian health care providers under the
22 TRICARE program (in this section referred to as ‘partici-
23 pating beneficiaries’).