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# **TRICARE and VA Health Care: Impact of the Patient Protection and Affordable Care Act (P.L. 111-148)**

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## Summary

The 111<sup>th</sup> Congress recently passed, and the President signed into law, the Patient Protection and Affordable Care Act (P.L. 111-148; PPACA), as amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152; HCERA). In general, PPACA did not make any significant changes to the Department of Defense (DOD) TRICARE program or to the Department of Veterans Affairs (VA) health care system. However, many have sought clarification as to whether certain provisions in PPACA, such as a mandate for most individuals to have health insurance, or extending dependant coverage up to age 26, would apply to TRICARE and VA health care beneficiaries.

To address some of these concerns, Congress has introduced and/or enacted legislation. The TRICARE Affirmation Act (H.R. 4887), passed by both the House and the Senate and received by the President, would affirm that TRICARE satisfies the minimum acceptable coverage requirement in PPACA. Similarly S. 3162 (passed by the Senate on March 26, 2010) and H.R. 5014 (introduced in the House on April 14, 2010) would, if enacted, clarify that the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), Spina Bifida Health Care Program, and the Children of Women Vietnam Veterans Health Care Program meet the “minimum essential coverage” requirement under PPACA. In addition, the TRICARE Dependent Coverage Extension Act (H.R. 4923; S. 3201), if enacted, would extend certain PPACA provisions to TRICARE beneficiaries.

This report addresses key questions concerning how PPACA will likely affect TRICARE and VA health care. This report will be updated if events warrant.

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## Introduction

On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act (P.L. 111-148, PPACA). On March 30, 2010, PPACA was amended by P.L. 111-152, the Health Care and Education Reconciliation Act of 2010 (HCERA, hereafter referring to PPACA as amended by P.L. 111-152). This health reform legislation touched on many aspects of the nation's health care delivery and financing systems. However, in general, PPACA did not make any significant changes to the Department of Defense (DOD) TRICARE program or to the Department of Veterans Affairs (VA) health care system.

Among its numerous provisions, PPACA (when fully implemented in 2014) will require most individuals, large employers, and health plans to meet certain coverage requirements. Beginning in 2014, PPACA includes a mandate for most individuals to have health insurance,<sup>1</sup> or potentially pay a penalty for noncompliance.<sup>2</sup> Individuals will be required to maintain minimum essential coverage for themselves and their dependents. Those who do not meet the mandate will be required to pay a penalty for each month of noncompliance. Under PPACA, private health insurance provisions that take effect prior to 2014 (including some this year) include the following: ending lifetime and unreasonable annual limits on benefits, prohibiting rescissions of health insurance policies, requiring coverage of preventive services and immunizations, extending dependant coverage up to age 26, capping insurance companies' nonmedical administrative expenditures, guaranteeing coverage for preexisting health conditions for enrollees under age 19, and providing assistance for those who are uninsured because of a preexisting condition. Furthermore, PPACA raises revenues to pay for expanded health insurance coverage by imposing excise taxes and fees on industries in the health care sector, limiting tax-advantaged health accounts, and increasing the Medicare payroll tax on upper-income households and adding an additional tax on net investment income on upper-income households.<sup>3</sup>

Since the enactment of PPACA, concerns have been raised by veterans and Veterans Service Organizations (VSOs) on how the new law would affect TRICARE beneficiaries, as well as veterans and certain dependents receiving care through the VA health care system.<sup>4</sup> Moreover, many have sought clarification as to whether certain provisions in PPACA, such as a mandate for most individuals to have health insurance, or extending dependant coverage up to age 26, would apply to TRICARE and VA health care beneficiaries. Although the Obama Administration issued statements assuring that the two health care systems would not be negatively affected, some veterans groups have been demanding statutory clarification.<sup>5</sup> To address some of these concerns,

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<sup>1</sup> §1501(b) as amended by §10106 (b) of P.L. 111-148 and by §1002 of P.L. 111-152.

<sup>2</sup> §1501 of P.L. 111-148 includes congressional findings that address the constitutionality of an individual mandate to obtain health insurance. For more information on this issue, see CRS Report R40725, *Requiring Individuals to Obtain Health Insurance: A Constitutional Analysis*, by Jennifer Staman and Cynthia Brougher.

<sup>3</sup> For further details on provisions in PPACA, see CRS Report R40942, *Private Health Insurance Provisions in PPACA (P.L. 111-148)*, by Hinda Chaikind et al.; CRS Report R41128, *Health-Related Revenue Provisions in the Patient Protection and Affordable Care Act (P.L. 111-148)*, by Janemarie Mulvey; and CRS Report R40943, *Public Health, Workforce, Quality, and Related Provisions in the Patient Protection and Affordable Care Act (P.L. 111-148)*, coordinated by C. Stephen Redhead and Erin D. Williams.

<sup>4</sup> Michael Posner, "Veterans Push For Fixes To New Law," *Congress Daily*, April 6, 2010.

<sup>5</sup> *Ibid.* Also see Department of Veterans Affairs, "Statement from VA Secretary Eric K. Shinseki," press release, March 21, 2010, <http://www1.va.gov/opa/pressrel/pressrelease.cfm?id=1871>; Department of Defense, "Tricare Meets Health Care Bill's Standards, Gates Says," press release, March 22, 2010, <http://www.defense.gov/News/NewsArticle.aspx?ID=58412>, and Letter from Kathleen Sebelius, Secretary of Health and Human Services, to Honorable Max Baucus, (continued...)

Congress has introduced and/or enacted legislation. This report, one of a series of CRS products on PPACA, addresses key questions concerning the impact of enactment of the PPACA on the TRICARE and VA health care programs. To provide some context to this discussion, the report begins with a brief overview of the two health care systems and eligibility for care under each system.

## Background

### TRICARE<sup>6</sup>

The Department of Defense (DOD) administers health care services through a program known as TRICARE to over 9 million eligible beneficiaries that include active duty uniformed personnel and their dependents, eligible members of the Reserve Component and their dependents, and uniformed services retirees and their dependents and survivors. TRICARE provides health care services through both military and nonmilitary hospitals, clinics, and other providers. TRICARE is administered on a regional basis by the TRICARE Management Activity, which uses a regional managed care support contractor to develop networks of civilian providers and process beneficiary claims in each of its North, South, and West regions. TRICARE has three basic options for non-Medicare eligible beneficiaries: TRICARE Prime, which is a managed care option that relies primarily upon military providers and treatment facilities; a fee-for-service option known as TRICARE Standard; and a preferred-provider option known as TRICARE Extra. Individuals who are eligible for Medicare and otherwise eligible for TRICARE may enroll in Medicare Part B and receive “wrap-around” TRICARE coverage through the TRICARE for Life Program, which covers costs not paid by Medicare that would otherwise be incurred by the beneficiary.

### The VA Health Care System and Eligibility for Care<sup>7</sup>

The Department of Veterans Affairs (VA), through the Veterans Health Administration (VHA), operates the nation’s largest integrated direct health care delivery system.<sup>8</sup> While Medicare, Medicaid, and the Children’s Health Insurance Program (CHIP) are also publicly funded programs, most health care services under these programs are delivered by private providers in private facilities. In contrast, the VA health care system could be categorized as a veteran-specific

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(...continued)

Chairman, Senate Committee on Finance, March 24, 2010, <http://www.tricare.mil/downloads/Baucus%20PPACA.PDF>.

<sup>6</sup> For more detailed information on the TRICARE program, see CRS Report RL33537, *Military Medical Care: Questions and Answers*, by Don J. Jansen, and CRS Report RS22402, *Increases in Tricare Costs: Background and Options for Congress*, by Don J. Jansen.

<sup>7</sup> For a complete discussion of eligibility for VA health care, priority groups, and enrollment, see CRS Report R40737, *Veterans Medical Care: FY2010 Appropriations*, by Sidath Viranga Panangala.

<sup>8</sup> U.S. Department of Veterans Affairs, *FY 2008 Performance and Accountability Report*, Washington, DC, November 17, 2008, p. 10. Established on January 3, 1946, as the Department of Medicine and Surgery by P.L. 79-293, succeeded in 1989 by the Veterans Health Services and Research Administration, renamed the Veterans Health Administration in 1991.

national health care system in the sense that the federal government owns the medical facilities and employs the health care providers.<sup>9</sup>

In general, eligibility for VA health care is based on veteran status,<sup>10</sup> presence of service-connected disabilities<sup>11</sup> or exposures,<sup>12</sup> income,<sup>13</sup> and /or other factors, such as status as a former prisoner of war or receipt of a Purple Heart.

The VHA also pays for care provided to veterans by private-sector providers on a fee basis under certain circumstances. Inpatient and outpatient care are also provided in the private sector to eligible dependents of veterans under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA; see discussion below). All enrolled veterans are offered a standard medical benefits package.<sup>14</sup>

Veterans do not pay premiums or enrollment fees. However, under current law most veterans are required to pay copayments for the treatment of nonservice-connected conditions.<sup>15</sup> It should be noted that those veterans who are rated 50% or more service-connected disabled and enrolled in the VA health care system do not pay copayments even for nonservice-connected care. Moreover, VA is required to collect reasonable charges for medical care or services (including prescription drugs) from a third-party insurer to the extent that the veteran or the provider of the care or services would be eligible to receive payment from a third-party insurer for a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health insurance plan.<sup>16</sup>

### **Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA)<sup>17</sup>**

Unlike TRICARE, VA health care covers only a select group of dependents. In 1973, Congress established the Civilian Health and Medical Program of the Department of Veterans Affairs

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<sup>9</sup> Adam Oliver, “The Veterans Health Administration: An American Success Story?” *The Milbank Quarterly*, vol. 85, no. 1 (March 2007), pp. 5-35.

<sup>10</sup> Veteran’s status is established by active-duty status in the U.S. Armed Forces and an honorable discharge or release from active military service. Generally, persons enlisting in one of the armed forces after September 7, 1980, and officers commissioned after October 16, 1981, must have completed two years of active duty or the full period of their initial service obligation to be eligible for VA health care benefits. Service members discharged at any time because of service-connected disabilities are not held to this requirement.

<sup>11</sup> A service-connected disability is a disability that was incurred or aggravated in the line of duty in the U.S. Armed Forces (38 U.S.C. § 101 (16)). VA determines whether veterans have service-connected disabilities, and for those with such disabilities, assigns ratings from 0% to 100% based on the severity of the disability. Percentages are assigned in increments of 10% (38 C.F.R. §§ 4.1-4.31).

<sup>12</sup> For example, veterans who may have been exposed to Agent Orange during the Vietnam War or veterans who may have diseases potentially related to service in the Gulf War may be eligible to receive care.

<sup>13</sup> Veterans with no service-connected conditions and who are Medicaid eligible, or who have an income below a certain VA means-test threshold and below a median income threshold for the geographic area in which they live, are also eligible to enroll in the VA health care system.

<sup>14</sup> A detail listing of VHA’s standardized medical benefits package is available at 38 C.F.R. § 17.38 (2009).

<sup>15</sup> 38 U.S.C. § 1729.

<sup>16</sup> 38 U.S.C. § 1729(a)(2)(D); 38 C.F.R. § 17.101(a)(1)(i).

<sup>17</sup> For more information, see CRS Report RS22483, *Health Care for Dependents and Survivors of Veterans*, by Sidath Viranga Panangala.

(CHAMPVA) as a means of providing health care services to dependents and survivors of certain veterans.<sup>18</sup> CHAMPVA primarily is a fee-for-service program that provides reimbursement for most medical care for certain eligible dependents and survivors of veterans rated permanently and totally disabled from a service-connected condition. CHAMPVA was designed to provide medical care in a manner similar to the care provided to certain eligible beneficiaries under the DOD TRICARE program. Eligibility for CHAMPVA requires inclusion in one of the following categories:<sup>19</sup>

- the individual is the spouse or child of a veteran who has been rated permanently and totally disabled for a service-connected disability;
- the individual is the surviving spouse or child of a veteran who died from a VA-rated service-connected disability;
- the individual is the surviving spouse or child of a veteran who was at the time of death rated permanently and totally disabled from a service-connected disability; or
- the individual is the surviving spouse or child of a military member who died on active duty, not due to misconduct (in most cases, these family members are eligible under TRICARE, not CHAMPVA).

## Questions and Answers

### How Does PPACA Affect TRICARE?

In general, PPACA, does not affect TRICARE administration, health care benefits, eligibility, or cost to beneficiaries.

PPACA does open a special Medicare Part B enrollment window to enable certain individuals to gain coverage under the TRICARE for Life program.<sup>20</sup> TRICARE was extended to Medicare-eligible military retirees, their Medicare-eligible spouses and dependent children, and Medicare-eligible widow/widowers by the Floyd D. Spence National Defense Authorization Act of 2001 (P.L. 106-398). This law established the TRICARE For Life (TFL) program, which acts as a secondary payer to Medicare and provides supplemental coverage to TRICARE-eligible beneficiaries who are entitled to Medicare Part A based on age, disability, or end-stage renal disease (ESRD). In order to participate in TFL, these TRICARE-eligible beneficiaries must enroll in and pay premiums for Medicare Part B. TRICARE-eligible beneficiaries who are entitled to Medicare Part A based on age, disability, or ESRD, but decline Part B, lose eligibility for TRICARE benefits.<sup>21</sup> In addition, individuals who choose not to enroll in Medicare Part B upon becoming eligible may elect to do so later during an annual enrollment period; however, the Medicare Part B late enrollment penalty would apply. PPACA also waives the Medicare Part B late enrollment penalty during the 12-month special enrollment period (SEP) for military retirees, their spouses (including widows/widowers), and dependent children who are otherwise eligible

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<sup>18</sup> Veterans Health Care Expansion Act of 1973 (P.L. 93-82).

<sup>19</sup> 38 U.S.C. § 1781; 38 C.F.R. § 17.270-17.278.

<sup>20</sup> Sec. 3110 of PPACA.

<sup>21</sup> 10 U.S.C. § 1086(d).

for TRICARE and are entitled to Medicare Part A based on disability or ESRD, but have declined Part B. The Secretary of Defense is required to identify and notify individuals of their eligibility for the SEP; the Secretary of Health and Human Services (HHS) and the Commissioner for Social Security must support these efforts. The provision (Sec. 3110 of PPACA) is effective upon enactment. This is the only provision in PPACA that directly affects benefits under the TRICARE program.

## **How Does PPACA Affect VA Health Care?**

In general, PPACA does not appear to affect current VA health care benefits, eligibility, or cost to beneficiaries.

However, PPACA does contain several provisions related to the VA. Specifically, it includes a provision (Sec. 9011) that requires the VA to report to Congress on the effect to VA health care regarding the annual fee imposed by PPACA on certain manufacturers and importers of branded prescription drugs, as well as the a new excise tax imposed on the sale of medical devices by manufacturers, producers, or importers (see question on medical devices below). Furthermore, it requires VA to participate in the Interagency Working Group on Health Care Quality (Sec. 3012), exempts the VA from a fee on all health insurers based on their market share (Sec. 4377), and provides VA access to the National Practitioner Data Bank without a charge (Sec. 6403).

## **Do TRICARE and VA Health Care Meet “Minimum Essential Coverage” Requirements?**

It appears that TRICARE beneficiaries and veterans enrolled in the VA health care system would meet the minimum essential coverage requirements of PPACA.

PPACA requires certain individuals to maintain minimal essential health care coverage and provides a penalty for failure to maintain such coverage beginning in 2014. “Minimum essential coverage” is explicitly defined as coverage under VA Health Care, Medicare Part A, Medicaid, CHIP, the TRICARE for Life program, the Peace Corps program, an eligible employer-sponsored plan (as defined by PPACA), a governmental plan (local, state, federal) including the Federal Employees Health Benefits Program (FEHBP), and any plan established by an Indian tribal government, any plan offered in the individual, small group or large group market, a grandfathered health plan, and any other health benefits coverage, such as a state health benefits risk pool, as recognized by the HHS Secretary in coordination with the Treasury Secretary. The relevant definition<sup>22</sup> of “government plan” includes the TRICARE program beyond the TRICARE for Life program. However, because TRICARE is not explicitly listed as minimum essential coverage, some concern had been expressed by beneficiary groups that regular TRICARE coverage may not meet the requirement. The TRICARE Affirmation Act (H.R. 4887), among other things, amends the Internal Revenue Code to provide that TRICARE coverage satisfies the minimum essential coverage requirements as required by the PPACA. The bill was passed by the House of Representatives on March 22, 2010, and by the Senate on April 12, 2010, and presented to the President.

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<sup>22</sup> See 42 U.S.C. 300gg-91(d)(8).

## **Will VA Coverage of Children with Spina Bifida and Certain Birth Defects Meet the “Minimum Essential Coverage” Requirement?**

It is unclear whether the Spina Bifida Health Care Program and the Children of Women Vietnam Veterans Health Care Program will meet the “minimum essential coverage” requirement under PPACA. However, it should be noted that PPACA grants the Secretary of HHS the discretion to coordinate with the Secretary of the Treasury to recognize health benefits coverage beyond the programs meeting the minimum essential coverage definition in PPACA.

Currently, VA administers the Spina Bifida Health Care Program for those biological children diagnosed with spina bifida of veterans who served in Vietnam, and of veterans who served in Korea during the period September 1, 1967, through August 31, 1971.<sup>23</sup> The program provides reimbursement for comprehensive medical care for those beneficiaries diagnosed with spina bifida except for conditions associated with spina bifida occulta. Similarly, VA administers the Children of Women Vietnam Veterans Health Care Program (CWVV). Under this program, VA reimburses for care of certain birth defects identified by the VA as resulting in permanent physical or mental disability of the biological child of a woman veteran who served in Vietnam between February 28, 1961, and May 7, 1975.<sup>24</sup>

There is concern that the Spina Bifida Health Care Program and Children of Women Vietnam Veterans Health Care Program (CWVV) administered by the VA would not meet the minimum essential coverage requirement of PPACA.<sup>25</sup> On March 24, 2010, S. 3162 was introduced to clarify that CHAMPVA and these two programs meet the minimum essential coverage required by PPACA. The measure was passed by the Senate on March 26, 2010. A companion measure, H.R. 5014, has been introduced in the House.

## **Does PPACA Require TRICARE to Provide Coverage to Dependent Children Up to Age 26?**

The provision extending health insurance coverage to dependent children until age 26 in PPACA does not appear to extend to TRICARE beneficiaries.

In general, eligibility for TRICARE is lost when either a dependent child turns 23 if enrolled in an accredited school as a full-time student, or 21 if not enrolled. Section 1001 of PPACA amends Part A of Title XXVII of the Public Health Service Act (PHSA) to add a new Section 2714 specifying that a group health plan and a health insurance issuer offering group or individual health insurance coverage that provides dependent coverage of children shall continue to make such coverage available for a until the dependent child turns 26 years of age. However, the provisions of title XXVII of the PHSA do not appear to apply to TRICARE.<sup>26</sup>

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<sup>23</sup> 38 U.S.C. §§ 1803; 1821.

<sup>24</sup> 38 U.S.C. §§ 1811; 1812; 1813.

<sup>25</sup> Senator Akaka’s introductory remarks on S. 3162, a bill to clarify the health care provided by the Secretary of Veterans Affairs that constitutes minimum essential coverage, *Congressional Record*, vol. 156 (March 24, 2010), p. S2026.

<sup>26</sup> See 42 U.S.C. § 300gg-21(b), as amended by PPACA (containing limitations on the applicability of the Public Health Services Act provisions).

Moreover, coverage under the TRICARE program is governed by Chapter 55 of Title 10, *United States Code*. Under 10 U.S.C. §1072(2)(D), the term “dependent” only includes a child who has not attained the age of 21 or has not attained the age of 23 and is enrolled in a full-time course of study at an institution of higher learning.

The TRICARE Dependent Coverage Extension Act (H.R. 4923) was introduced on March 24, 2010. A similar bill (S. 3201) was introduced on April 14, 2010. These measures would amend Chapter 55 of Title 10, *United States Code*, to extend TRICARE coverage to dependent children up to age 26.

## **Will PPACA Extend Coverage to Dependent Children Under CHAMPVA Up to Age 26?**

The provision extending health insurance coverage to dependent children until age 26 in PPACA does not appear to extend to CHAMPVA beneficiaries.

In general, eligibility for CHAMPVA is lost when either a child (other than a helpless child)<sup>27</sup> turns 18, unless enrolled in an accredited school as a full-time student; a child, who has been a full-time student, turns 23 or loses full-time student status; a child marries; or a stepchild no longer lives in the household of the sponsor.

Section 1001 of PPACA amends Part A of Title XXVII of the PHS Act to add a new Section 2714 specifying that a group health plan and a health insurance issuer offering group or individual health insurance coverage that provides dependent coverage of children shall continue to make such coverage available for an adult child until the child turns 26 years of age. However, the provisions of Title XXVII of the PHS Act do not appear to apply to CHAMPVA.<sup>28</sup>

## **Will PPACA Affect the Cost of Prescription Drugs and Medical Devices Provided to Veterans?**

It is unclear at this time whether PPACA will affect the cost of prescription drugs and medical devices provided to veterans.

Under current law, there are excise taxes on sales by manufacturers of certain products. Certain sales are exempt from this tax.<sup>29</sup> PPACA will impose an annual fee on certain manufacturers and importers of branded prescription drugs (including biological products and excluding orphan drugs). The fee structure will be based on annual sales and will be set to reach a certain revenue target each year.<sup>30</sup> In addition, under PPACA a new excise tax of 2.3% will be imposed on the

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<sup>27</sup> A helpless child is established after a fact-based analysis completed by a VA Regional Office determines the child to be permanently incapable of self-support by the age of 18. See 38 C.F.R. § 3.356 and <http://www.va.gov/hac/forbeneficiaries/champva/handbook/chandbook.pdf>.

<sup>28</sup> See 42 U.S.C. 300gg-91(b)(1).

<sup>29</sup> See Internal Revenue Code Chapter 32.

<sup>30</sup> CRS Report R40943, *Public Health, Workforce, Quality, and Related Provisions in the Patient Protection and Affordable Care Act (P.L. 111-148)*, coordinated by C. Stephen Redhead and Erin D. Williams.

sale of medical devices by manufacturers, producers, or importers.<sup>31</sup> This provision will exempt eyeglasses, contact lenses, hearing aids, and any device of a type that is generally purchased by the public at retail for individual use. The tax will apply to sales made after December 31, 2012.<sup>32</sup> Section 9011 of PPACA requires the Secretary of Veterans Affairs to conduct a study on the effect of provisions in Title IX of PPACA—in particular the new fees on drug and device manufacturers—on the cost of medical care provided to veterans, and veterans’ access to medical devices and branded prescription drugs. The Secretary is required to report the results of such a study to the House Committee on Ways and Means and the Senate Committee on Finance. The report is required by December 31, 2012.

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<sup>31</sup> Ibid.

<sup>32</sup> CRS Report R41128, *Health-Related Revenue Provisions in the Patient Protection and Affordable Care Act (P.L. 111-148)*, by Janemarie Mulvey