21. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SESSIONS OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

1R4

AMENDMENT TO H.R. 1540, AS REPORTED

OFFERED BY MR. SESSIONS OF TEXAS

Page 345, after line 8, insert the following:

1 **SEC. 731. PILOT PROGRAM ON PAYMENT FOR TREATMENT**
2 **OF MEMBERS OF THE ARMED FORCES AND**
3 **VETERANS FOR TRAUMATIC BRAIN INJURY**
4 **AND POST-TRAUMATIC STRESS DISORDER.**

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

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

1 (1) Any drug or device used in the treatment
2 must be approved or cleared by the Food and Drug
3 Administration for any purpose.
4 (2) The treatment must have been approved by
5 an institutional review board operating in accordance
6 with regulations issued by the Secretary of Health
7 and Human Services.
8 (3) The treatment (including any patient disclo-
9 sure requirements) must be used by the health care
10 provider delivering the treatment.
11 (4) The patient receiving the treatment must
12 demonstrate an improvement as a result of the
13 treatment on one or more of the following:
14 (A) Standardized independent pre-treat-
15 ment and post-treatment neuropsychological
16 testing.
17 (B) Accepted survey instruments.
18 (C) Neurological imaging.
19 (D) Clinical examination.
20 (5) The patient receiving the treatment must be
21 receiving the treatment voluntarily.
22 (6) The patient receiving the treatment may not
23 be a retired member of the uniformed services or of
24 the Armed Forces who is entitled to benefits under

1 part A, or eligible to enroll under part B, of title
2 XVIII of the Social Security Act.
3 (c) ADDITIONAL RESTRICTIONS PROHIBITED.—Ex-
4 cept as provided in this subsection (b), no restriction or
5 condition for reimbursement may be placed on any health
6 care provider that is operating lawfully under the laws of
7 the State in which the provider is located with respect to
8 the receipt of payment under this section.
9 (d) PAYMENT DEADLINE.—The Secretary of Defense
10 and the Secretary of Veterans Affairs shall make a pay-
11 ment for a treatment pursuant to subsection (a) not later
12 than 30 days after a member of the Armed Forces or vet-
13 eran (or health care provider on behalf of such member
14 or veteran) submits to the Secretary documentation re-
15 garding the treatment. The Secretary of Defense and the
16 Secretary of Veterans Affairs shall ensure that the docu-
17 mentation required under this subsection may not be an
18 undue burden on the member of the Armed Forces or vet-
19 eran or on the health care provider.
20 (e) PAYMENT AUTHORITY.—
21 (1) DEPARTMENT OF DEFENSE.—The Sec-
22 retary of Defense shall make payments under this
23 section for treatments received by members of the
24 Armed Forces using the authority in subsection

1 (c)(1) of section 1074 of title 10, United States
2 Code.
3 (2) DEPARTMENT OF VETERANS AFFAIRS.—
4 The Secretary of Veterans Affairs shall make pay-
5 ments under this section for treatments received by
6 veterans using the authority in section 1728 of title
7 38, United States Code.
8 (f) PAYMENT AMOUNT.—A payment under this sec-
9 tion shall be made at the equivalent Centers for Medicare
10 and Medicaid Services reimbursement rate in effect for ap-
11 propriate treatment codes for the State or territory in
12 which the treatment is received. If no such rate is in effect,
13 payment shall be made at a fair market rate, as deter-
14 mined by the Secretary of Defense, in consultation with
15 the Secretary of Health and Human Services, with respect
16 to a patient who is a member of the Armed Forces or
17 the Secretary of Veterans Affairs with respect to a patient
18 who is a veteran.
19 (g) DATA COLLECTION AND AVAILABILITY.—
20 (1) IN GENERAL.—The Secretary of Defense
21 and the Secretary of Veterans Affairs shall jointly
22 develop and maintain a database containing data
23 from each patient case involving the use of a treat-
24 ment under this section. The Secretaries shall en-

1 sure that the database preserves confidentiality and
2 be made available only—
3 (A) for third-party payer examination;
4 (B) to the appropriate congressional com-
5 mittees and employees of the Department of
6 Defense, the Department of Veterans Affairs,
7 the Department of Health and Human Services,
8 and appropriate State agencies; and
9 (C) to the primary investigator of the insti-
10 tutional review board that approved the treat-
11 ment, in the case of data relating to a patient
12 case involving the use of such treatment.
13 (2) ENROLLMENT IN INSTITUTIONAL REVIEW
14 BOARD STUDY.—In the case of a patient enrolled in
15 a registered institutional review board study, results
16 may be publically distributable in accordance with
17 the regulations prescribed pursuant to the Health
18 Insurance Portability and Accountability Act of
19 1996 (Public Law 104–191) and other regulations
20 and practices in effect as of the date of the enact-
21 ment of this Act.
22 (3) QUALIFIED INSTITUTIONAL REVIEW
23 BOARDS.—The Secretary of Defense and the Sec-
24 retary of Veterans Affairs shall each ensure that the
25 Internet Web site of their respective departments in-

1 cludes a list of all civilian institutional review board
2 studies that have received a payment under this sec-
3 tion.
4 (h) ASSISTANCE FOR MEMBERS TO OBTAIN TREAT-
5 MENT.—
6 (1) ASSIGNMENT TO TEMPORARY DUTY.—The
7 Secretary of a military department may assign a
8 member of the Armed Forces under the jurisdiction
9 of the Secretary to temporary duty or allow the
10 member a permissive temporary duty in order to
11 permit the member to receive treatment for trau-
12 matic brain injury or post-traumatic stress disorder,
13 for which payments shall be made under subsection
14 (a), at a location beyond reasonable commuting dis-
15 tance of the member's permanent duty station.
16 (2) PAYMENT OF PER DIEM.—A member who is
17 away from the member's permanent station may be
18 paid a per diem in lieu of subsistence in an amount
19 not more than the amount to which the member
20 would be entitled if the member were performing
21 travel in connection with a temporary duty assign-
22 ment.
23 (3) GIFT RULE WAIVER.—Notwithstanding any
24 rule of any department or agency with respect to
25 ethics or the receipt of gifts, any assistance provided

1 to a member of the Armed Forces with a service-
2 connected injury or disability for travel, meals, or
3 entertainment incidental to receiving treatment
4 under this section, or for the provision of such treat-
5 ment, shall not be subject to or covered by any such
6 rule.

7 (i) RETALIATION PROHIBITED.—No retaliation may
8 be made against any member of the Armed Forces or vet-
9 eran who receives treatment as part of registered institu-
10 tional review board study carried out by a civilian health
11 care practitioner.

12 (j) TREATMENT OF UNIVERSITY AND NATIONALLY
13 ACCREDITED INSTITUTIONAL REVIEW BOARDS.—For
14 purposes of this section, a university-affiliated or nation-
15 ally accredited institutional review board shall be treated
16 in the same manner as a Government institutional review
17 board.

18 (k) MEMORANDA OF UNDERSTANDING.—The Sec-
19 retary of Defense and the Secretary of Veterans Affairs
20 shall seek to expeditiously enter into memoranda of under-
21 standings with civilian institutional review boards de-
22 scribed in subsection (j) for the purpose of providing for
23 members of the Armed Forces and veterans to receive
24 treatment carried out by civilian health care practitioners
25 under a treatment approved by and under the oversight

1 of civilian institutional review boards that would qualify
2 for payment under this section.
3 (l) OUTREACH REQUIRED.—
4 (1) OUTREACH TO VETERANS.—The Secretary
5 of Veterans Affairs shall notify each veteran with a
6 service-connected injury or disability of the oppor-
7 tunity to receive treatment pursuant to this section.
8 (2) OUTREACH TO MEMBERS OF THE ARMED
9 FORCES.—The Secretary of Defense shall notify
10 each member of the Armed Forces with a service-
11 connected injury or disability of the opportunity to
12 receive treatment pursuant to this section.
13 (m) REPORT TO CONGRESS.—Not later than 30 days
14 after the last day of each fiscal year during which the Sec-
15 retary of Defense and the Secretary of Veterans Affairs
16 are authorized to make payments under this section, the
17 Secretaries shall jointly submit to Congress an annual re-
18 port on the implementation of this section. Such report
19 shall include each of the following for that fiscal year:
20 (1) The number of individuals for whom the
21 Secretary has provided payments under this section.
22 (2) The condition for which each such indi-
23 vidual receives treatment for which payment is pro-
24 vided under this section and the success rate of each
25 such treatment.

1 (3) Treatment methods that are used by enti-
2 ties receiving payment provided under this section
3 and the respective rate of success of each such meth-
4 od.
5 (4) The recommendations of the Secretaries
6 with respect to the integration of treatment methods
7 for which payment is provided under this section
8 into facilities of the Department of Defense and De-
9 partment of Veterans Affairs.
10 (n) TERMINATION.—The authority to make a pay-
11 ment under this section shall terminate on the date that
12 is five years after the date of the enactment of this Act.
13 (o) AUTHORIZATION OF APPROPRIATIONS.—There is
14 authorized to be appropriated to carry out this section
15 $10,000,000 for each fiscal year during which the Sec-
16 retary of Veterans Affairs and the Secretary of Defense
17 are authorized to make payments under this section.
18 (p) FUNDING INCREASE AND OFFSETTING REDUC-
19 TION.—
20 (1) IN GENERAL.—Notwithstanding the
21 amounts set forth in the funding tables in division
22 D, to carry out this section during fiscal year
23 2012—
24 (A) the amount authorized to be appro-
25 priated in section 1406 for the Defense Health

1 Program, as specified in the corresponding
2 funding table in division D, is hereby increased
3 by $10,000,000, with the amount of the in-
4 crease allocated to the Defense Health Pro-
5 gram, as set forth in the table under section
6 4501, to carry out this section; and
7 (B) the amount authorized to be appro-
8 priated in section 101 for other procurement,
9 Army, as specified in the corresponding funding
10 table in division D, is hereby reduced by
11 $10,000,000, with the amount of the reduction
12 to be derived from Joint Tactical Radio System,
13 ground-mobile radio program under Line 039
14 Joint Tactical Radio System as set forth in the
15 table under section 4101.
16 (2) MERIT-BASED OR COMPETITIVE DECI-
17 SIONS.—A decision to commit, obligate, or expend
18 funds referred to in paragraph (1)(A) with or to a
19 specific entity shall—
20 (A) be based on merit-based selection pro-
21 cedures in accordance with the requirements of
22 sections 2304(k) and 2374 of title 10, United
23 States Code, or on competitive procedures; and

1 (B) comply with other applicable provisions

2 of law.