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Military Health Care: The Issue of "Promised" Benefits

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Summary

Many military health care beneficiaries, particularly military retirees, their dependents, and those representing their interests, state that they were promised "free health care for life at military facilities" as part of their "contractual agreement" when they entered the armed forces. Efforts to locate authoritative documentation of such promises have not been successful. Congressional report language and at least three recent court cases have rejected retiree claims seeking 'free care at military facilities' as a right or entitlement. These have held that the current medical benefit structure made up of military health care facilities, Tricare and Medicare provide lifetime health care to military members, retirees and their respective dependents. Nevertheless, claims continue to be made, particularly by those seeking additional benefits from the Department of Defense, or attempting to prevent an actual or perceived reduction in benefits.

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Introduction

In recent years, numerous efforts have been made to increase, or prevent any decrease, of health care benefits and options available to military retirees. Many military retirees and others seeking these increases, or attempting to prevent any decrease in their benefits, often justify their claims based on assertions that the medical care promised to them is no longer available.[1] These retirees say that the relatively large military medical infrastructure that existed during the cold war provided greater access for retirees. They note that as a result of the reduction of the size of the Department of Defense (DoD), fewer medical facilities are available.[2] In certain instances, organizations representing military retirees have alluded to "broken promises." Some individuals have claimed that these benefits include "free" health care for life, or more liberally, "free care for life in military health care facilities."

Such contentions are not supported by a review of the legislative history of the statutory language related to military health care for retirees and dependents. Nor, with the possible exception of a very few of the literally thousands of different pieces of recruiting literature distributed to prospective recruits and current military members, are these claims supported by written documentation. More recently, a number of bills have been introduced seeking to expand military health care options. In the 106th Congress, at least four of these (H.R. 2966, H.R. 3573, S. 2003 and S. 2013) cite a "promise" or "commitment" as the rationale for provisions that would "restore health care coverage to retired members of the uniformed services."[3] Although none of these became law, Congress substantially expanded the military

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[1]"About 365,000 elderly retirees and dependents-a thousand a day-will be seen by military doctors this year, Defense Department officials say." Adde, Nick, Medical care access not difficult for all, *Army Times*, February 23, 1998: 22.

[2]Burrelli, David F., and Elizabeth A. Dunstan, *Military Retiree Health Care: Base Closures and Realignments*, CRS Report 95-435 F, March 28, 1995.

[3]H.R. 2966, Rep. Shows, October 5, 1999; H.R. 3573, Rep. Shows, February 2, 2000; S. 2003, Sen. Johnson, January 24, 2000; and, S. 2013, Sen. McCain, January 27, 2000. These bills are discussed later in this report. Other legislation seeking to expand military health care benefits include: S. 1335, Sen. Ashcroft, July 1, 1999; H.R. 955, Rep. Collins, March 29, 1999; H.R. 1413, April 14, 1999; H.R. 1547, Rep. Thornberry, April 22, 1999; H.R. 1067, Rep. Thornberry, March 3, 1999; S. 915, Sen. Gramm, April 29, 1999; and, S. 350, Sen. Hutchison, February 3, 1999.

retiree health care benefits via the FY2001 National Defense Authorization Act.[4] H.R. 179 was introduced on January 3, 2001 seeking to "restore health care coverage to military retirees." In introducing this legislation, Rep. Shows noted that "we should keep our promise to America's Military retirees."[5] Interestingly, the legislation would "restore" a "promised" benefit by allowing military retirees to participate, for the first time, in the health care plan available to federal civilian employees: the Federal Employees Health Benefits program (FEHBP).

Background

Under current law, active duty personnel are **entitled** to military health care and have a right or claim to this care. Active duty dependents are also **entitled** to this care, however, this entitlement is limited to space or service availability restrictions. Such an entitlement **obligates** the military to provide this care (subject to any stated restrictions such as space-availability for active duty dependents). As enforced by the Department of Defense, and interpreted by the courts, retirees and their dependents, while eligible for care on a space- or service-available basis, have no entitlement in statute to such care. In other words, they have no right to military health care and the military services have total discretion in when and under what circumstances retirees and their dependents will get care in military treatment facilities or MTFs. Those dependents and retirees (under age 65) who are unable to get care at MTFs can seek care via civilian providers under DoD's Tricare benefit plan.

Tricare is the name of the health benefit plan for all military beneficiaries. Tricare is composed of three types of coverage: Prime, Extra and Standard. Tricare Prime is comparable to a Health Maintenance Organization (HMO) using the MTF as the base of health care services. Tricare Extra is similar to a Preferred Provider Organization or PPO. Finally, Tricare Standard is a fee-for-service plan (formerly known as the Civilian Health and Medical Program of the Uniformed Services, (CHAMPUS[6])). Active duty personnel and their dependents are automatically enrolled in Tricare Prime. Retirees (under age 65) and their dependents must enroll in Tricare Prime or seek care via Tricare Extra or Standard. At age 65, retirees lose eligibility for Tricare and become eligible for Medicare benefits. Thus, military service provides lifetime care from a number of government-sponsored or reimbursable sources.[7]

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[4]P.L. 106-398, Oct. 30, 2000.

[5]*Congressional Record*, January 3, 2001: H23.

[6]P.L. 89-614, 80 Stat. 862, September 30, 1966.

[7]This general benefit structure is not new, nor has its consideration by Congress been a recent phenomenon. For example, see U.S. Congress. House. Committee on Armed Services, CHAMPUS and Military Health Care, Subcommittee 2, Hearings, 93rd Cong., 2nd Sess., HASC No. 93-70, October 8, 1974. Interestingly, claims of "free health care for life" did not surface in these hearings.

With the passage of the FY2001 National Defense Authorization Act, beginning in October 2001, eligible military retirees over age 64 will be allowed to participate in Tricare provided that they are enrolled in Medicare Part B.

"The Promise"

The creation of health care benefits and the rules and regulations pertaining to these benefit are matters for Congress. Under the Constitution, Congress has the authority

> To make Rules for the Government and Regulation of the land and naval Forces.[8]

Without explicit authorization from Congress, such benefits can not be created nor conferred by the military or others. A search of the relevant literature shows that at no time did Congress authorize rules and regulations providing "free health care for life at military facilities" for military retirees. Some have asserted that prior to 1956, the lack of legal language to the contrary allowed the military to be contractually obliged to provide "promised" care. However, under our system of government, the military does not have the constitutional authority to create such a contractual obligation. The courts (as discussed below on pages 5, 6, and 7) have held that only Congress has such authority under the Constitution.

The history of military health care shows that care provided to active duty members was originally paid for by the members as far back as 1799.[9] In that year, Congress enacted legislation for the military establishment to care for the "regimental sick" as well as an act for the "relief of sick and disabled seamen."[10] Later changes provided permissive care to dependents and, later still, to retirees and their dependents. However, at no time were military retirees provided an **entitlement** to care. In 1956, Congress put the permissive nature of this benefit into law:

> ... a member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay may, upon request, be given medical and dental care in any facility of any uniformed service, *subject to the availability of space and facilities and the capabilities of the medical and dental staff*.[11] [Emphasis added.]

In 1966, Congress created Medicare which was designed to provide health care for people over age 65 as well as certain disabled individuals. A problem arose in that military personnel tended to retire at a relatively younger age (in most cases, early- to mid-40s) and could be without guaranteed access to health care until age 65. In

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[8]U.S. Constitution, Art. 1, Sec. 8, cl. 14.

[9]U.S. Congress. House. Committee on Armed Services, Subcommittee No. 2, CHAMPUS and Military Health Care, 93d Cong., 2d Sess., December 20, 1974: 6.

[10]1 Stat. 721 and 1 Stat. 729, March 2, 1799, respectively.

[11]10 United States Code, sec. 1074(b).

other words, these retirees were not entitled to military health care and were too young to participate in Medicare. In an effort to address this inability to gain access, as well as provide for those active duty dependents who could not gain access to military medical facilities, Congress created the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). Modeled after the Blue Cross/Blue Shield high option, CHAMPUS was a fee-for-service benefit. Although it required no premiums, CHAMPUS did require cost sharing on the part of the beneficiary. Thus, CHAMPUS was not free, nor did it relate to care from MTFs. (As noted above, CHAMPUS later became part of Tricare.)

Numerous claims have been made concerning "promises" to military personnel and retirees with regard to health care benefits. Many appear to believe that they were "promised free health care for life at military facilities." Efforts to locate written authoritative documentation of such "promises" have not been successful. However, some military recruiting literature does make general statements about health care. As an example, a recruiting brochure cited by The Retired Officers Association states:

> Health care is provided to you and your family members while you are in the Army, and for the rest of your life if you serve a minimum of 20 years of Federal service to earn your retirement.[12]

This language, of course, does not mention "free" health care. Nor does it mention that such care is to be provided via the military health services system and/or in military facilities. This advertised statement is correct in that military retirees do receive their promised lifetime benefits via MTFs (including space- or service-available care in retirement), Tricare and Medicare—all earned as a result of their federal military service.

The same source quotes a 1991 CRS report as stating that "the 'free health care for life' promise was functionally true and had been used to good advantage for recruiting and retention."[13] The report is much more nuanced, and developed the analysis more deeply than this.[14] It noted that the 1956 legislation did not authorize a legal entitlement for care to be provided to retirees and their dependents, but that the retiree and dependent population, in proportion to the available space in military health care facilities, was so low that as a practical matter, such care was usually available. It also observed that this de facto availability was, without question, a useful tool for recruiters. The end result appears to be that, regardless of the lack of statutory entitlement, many active duty personnel and their dependents, and retirees and their dependents, erroneously came to believe that they were guaranteed free health care in military facilities for life.

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[12]Army brochure cited and reproduced in *The Retired Officers Association Magazine,* April 1996.

[13]The Retired Officers Association, April 1996. This CRS report was also similarly represented in Roberts, C.R., Veterans Call It The Big Lie, The American Legion, October 1995: 18. The article is based on exerts from *The News Tribune*, Tacoma, WA, by the same author.

[14]Best, Dick, Memo to Congress, Promises of Lifetime Medical Care, April 21, 1997.

Other sources have noted that such promises, whether or not actually made, are groundless. For example, in responding to questions from Congress concerning what benefits were promised, Rear Admiral Harold M. Koenig, Deputy Assistant Secretary of Defense for Health Affairs, sought to clarify a statement made by Vice Admiral Hagen concerning these benefits. Rear Admiral Koenig stated in 1993 that:

> There is a problem here of interpretation. [Vice Admiral Donald Hagen, Medical Corps Surgeon General, U.S. Navy] said medical care for life. That is true. We have a medical care program for the life of our beneficiaries, and it is pretty well defined in the law. That easily gets interpreted to, or reinterpreted into, free medical care for the rest of your life. That is a pretty easy transition for people to make in their thinking, and it is pervasive. We spend an incredible amount of effort trying to reeducate people that that is not their benefit.[15]

According to the Department of Defense, "[a]s thus formulated, medical care for retirees in military medical facilities has always been, and to this day remains, a privilege, not an absolute right, as has been assumed by many."[16]

The federal courts have repeatedly held that such claims of a "promise" have no legal standing. In late 1997, a U.S. District Court dismissed a lawsuit by retirees against the U.S. seeking "free health care" from the military. According to the court:

> The court must reject plaintiffs' contention that [10 United States Code sec. 1074(b)] confers authority on the military branches to guarantee free lifetime medical care to retirees and their dependents. First, plaintiffs cite to no regulation under sec. 1074(b) guaranteeing such care, but only cite to recruiting materials that make general representations as to eligibility for continued health care for retirees and their dependents. Even if the military departments had promulgated regulations under sec.1074(b) that make an unequivocal promise of lifetime medical care for retirees and their dependents, the language of sec. 1074(b) itself is clearly conditional. Any regulations purporting to guarantee free and unconditional lifetime health care to retirees and their dependents would be inconsistent with the statute and therefore invalid. *Larionoff*, 431 U.S. at 873 n.13 ("A regulation which ... operates to create a rule out of harmony with the statute ... is a mere nullity.") (citing *Manhatten General Equip. Co. V. Commissioner*, 297 U.S. 129, 134 (1936)).
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> Furthermore, under sec. 1074(b), "a retired member of a uniformed service is not entitled to medical care as a matter of right," *Lord v. United States*, 2 Cl. Ct. 749, 756 (1983), and "retired personnel who fail to receive such care cannot successfully maintain an action for money damages based on such failure." *Id*. At 757; see also *Watt v. United States*, 246 F. Supp.

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[15]U.S. Congress. House. Committee on Armed Services, National Defense Authorization Act for Fiscal Year 1994, H.R. 2401, Hearings, 103rd Cong., 1st Sess., H.Rept. 103-13, April 27, 28, May 10, 11, and 13, 1993: 505.

[16]U.S. Department of Defense, Office of the Secretary of Defense, Military Compensation Background Papers, Fifth Edition, September 1996: 609.

> 386, 388 (E.D.N.Y. 1965) ("furnishing [medical care in a military facility] to a retired soldier is discretionary, not mandatory"). Because the law states that retirees are not entitled to health care as a matter of right, the representations upon which plaintiffs rely are to no effect.[17]

With respect to the contention that recruiters and others allegedly made "promises of free care for life," and that such "promises" must be honored by the government, the court notes:

> Federal officials who by act or word generate expectations in the people they employ, and then disappoint them, do not *ipso facto* create a contract liability running from the Federal Government to the employee ....[18]

In a separate case (Schism and Reinlie v. U.S.), another federal judge found military "retirees 65 and older do not have a binding contract with the Pentagon that guarantees them free health care for life at military hospitals."[19]

More recently, a federal appeals court stated:

> Nothing in these regulations provided for unconditional lifetime free medical care or authorized recruiters to promise such care as an inducement to joining or continuing in the armed forces. While the Retirees argue that the above mentioned section 4132.1 gave those of them who served as officers in the Navy and Marine Corps the right to free unconditional medical care, we cannot agree. The [1922 Manual of the Medical Department of the United States Navy] Manual provided guidelines for the Navy's Medical Department, but did not create any right in such officers to the free unconditional lifetime medical care they claim. It related only to hospital care, not the broader services that these Retirees seek, and covered only the period when it was in effect. In any event, in view of the general pattern of the military regulations that provides medical care to retirees only when facilities and personnel were available, we decline to read into the creation of such an enduring and broad right to unconditional free lifetime medical care.
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> In sum, we conclude that the Retirees have not shown that they have a right to the health care they say was "taken" by the government. Since the basic premise of their claim fails, their taking claim necessarily also fails.[20]

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[17]Coalition of Retired Military Veterans, et al. V. United States of America, U.S. Dist. of South Carolina, C.A.#2:96-3822-23, Dec. 10, 1997: 11-12.

[18]Coalition v. U.S.: 15-16.

[19]Adde, Nick, Judge: lifetime care is no guarantee, *Army Times*, Sept. 21, 1998: 10. An appeal in this case is anticipated. Schism and Reinlie v. U.S. No. #:96cv349/RV United States District Court, N.D. Florida, June 10, 1997.

[20]Sebastain v. United States, 185 F.3d 1368, 1372 (Fed. Cir. 1999). An appeal of this decision is pending.

On December 8, 1999, the Coalition of Retired Military Veterans appealed their case to the Supreme Court.[21]

On February 8, 2001, the U.S. Court of Appeals for the Federal Circuit reversed the lower court ruling (Schism and Reinlie v. U.S.) declaring "... the government breached its implied-in-fact contract with retirees when it failed to provide them with health care benefits."[22] The appeals court reversed the district court decision and remanded the case for a determination of damages. Despite various claims, this finding applied only to the two named plaintiffs (and not to all military retirees), and no determination of damages was made. (Some have erroneously reported that the ruling "would have required the government to pay to three million retirees, widows and dependents up to $10,000 apiece."[23]) On June 13, 2001, the Appeals Court vacated the judgment, withdrew its opinion, and agreed to rehear the appeal en banc. As stated "[t]he court has determined to rehear this case en banc to resolve the question of whether the promises of free lifetime care made to and accepted by Plaintiffs-Appellants should be afforded binding effect."[24]

The claim of "free" or "promised" care is often reported in the media or by lobbying groups. Some media sources have contradicted the notion of free health care for life.[25] Conversely, others appear to accept or support the existence of such "promises." Although these sources have no legal authority to effect such claims, their repetition of these so-called promises may serve to create or reinforce the notion of the existence of such "promises."[26]

Notably, certain former recruiters claim to have made such promises. They may well have. Nevertheless, as pointed out above, unauthorized promises based on mistakes, fraud, etc., do not constitute a contractual obligation on the part of the government/taxpayer.

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[21]Adde, Nick, Retirees head to Supreme Court, *The Times*, January 10, 2000: 14.

[22]Schism and Reinlie v. U.S., 2001 U.S. App., 239 F.3d 1280, Feb. 8, 2001.

[23]Armed Forces News, [http://www.armedforcesnews.com/backissues/2001/062201.htm] June 22, 2001.

[24]Schism and Reinlie v. U.S. 2001 WL 664440 (Fed. Cir. (Fla)), June 13, 2001.

[25]Hamby, James E., Jr., 'Free care for life is a myth,' *Air Force Times*, September 20, 1993: 18.

[26]See, for example, Rich, Spencer, Military Health Care Downsizing Leaves Retirees in a Bind, Washington, Post, July 30, 1996: A11; Editorials, Veterans should not be force to pay for 'free' health care, Kerrville Daily Times, December 8, 1997: 4A; " ... the promise of free health care in their later years was a major enticement to stay for a full career.", AFSA Calls for Tricare Reform, Sergeants, November 1995: 9; Kaczor, Bill, AP, Miami Herald, Military Retirees Appealing Benefits Denial, December 12, 1998: "At the heart of the matter is a 1956 law that permits free care for retirees at military hospitals and clinics but only on a space[-]available basis." and, Joyce, Terry, Network Offers Health Care Answers For Military Families, Charleston Post and Courier, January 9, 2000, "Folks who are upset about care that's no longer available or cash outlays for what was supposed to be free."

In a different vein, others suggest that although no such **legal** entitlement exists, a **moral** obligation or an obligation based on popular opinion is sufficiently compelling to make such a promise a reality. For example, Hon. Stephen Joseph, former Assistant Secretary of Defense (Health Affairs) stated before a congressional subcommittee in 1995:

> The lawyers will tell you that there is no fine print that says free medical care guaranteed for life. I think though it is facetious for anybody to sit up here and say that, that is not what recruits believe when they are talked to by their recruiter. That is a fact of life.[27]

Whether there is or should be a moral obligation is a matter of opinion; as decided by the courts and enforced by the administrators, these claims, like the others, do not create a contractual obligation on the part of the government/taxpayer. The courts, and other analysts, have noted that allowing these claims to create such an obligation would thwart the constitutional role of Congress (i.e., prevent the Congress from determining the compensation and benefits of the armed forces) and create a situation wherein military personnel/retirees (and potentially all other federal employees) could create or expand their own benefits with popular myth or rumor and without review.

Despite extensive documentation, including court decisions, to the contrary, the belief in legally guaranteed "free lifetime care" persists,[28] and such claims continue color debate over the availability of these and other military health care benefits.[29]

Recent Legislation

Though Congress has never authorized "free health care for life at military facilities," various congressional reports have commented on the issue, and there have been recent legislative actions on the subject. For example, the Senate, explaining its support of additional benefits for military retirees, included non-binding language in its report on the fiscal year 1998 National Defense Authorization Act that reiterated its intention with regard to the promise of lifetime care:

> A longstanding priority of the committee has been the improvement of the military health care system ....

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[27]U.S. Congress. House. National Security Committee, Military Personnel Subcommittee, Hearings, Oversight of Previously Authorized Programs, 104th Cong., 1st Sess., H.Rept 104-7, March 28, 1995: 828. The Retired Officer Association also credits Dr. Joseph with testifying (in 1995) "before Congress that DoD has an 'implied moral commitment' to provide health care to all eligible beneficiaries."

[28]See U.S. Congress. House. National Security Committee, Military Personnel Subcommittee, Hearings on National Defense Authorization Act for Fiscal Year 1998-H.R. 1119 and Oversight of Previously Authorized Programs. HNSC No. 105-6, 105th Cong., 1st Sess., Feb. 27, 1997: 1-162, for a lengthy treatment of this issue.

[29]For example, an insert in *The Retired Officer Magazine*, January 1998, seeking FEHBP benefits for military retirees over 65, is entitled, "FEHBP-65: The fix for broken health care promise."

> [T]he committee is concerned that the Department of Defense (DOD) faces significant constraints on its ability to meet the entire range of benefits expected by participants in the Military Health Service System ....
>
> The issue of health care for military retirees over age 65 is of special concern to the committee. The nation has incurred a moral obligation to attempt to provide care to military retirees who believe they were promised lifetime health care in exchange for a lifetime of military service. The nation fulfills its obligation through Medicare.[30]

Here, the Senate is clearly expressing its view that a "promise" to military retirees was made—and that existing statutes and institutions do fulfill that promise.

Later, with the enactment of the FY1998 National Defense Authorization Act, Congress included the following language:

> **SEC. 752. SENSE OF CONGRESS REGARDING QUALITY HEALTH CARE FOR RETIREES**
>
> (a) Findings.-Congress makes the follow findings:
>
> (1) Many retired military personnel believe that they were promised lifetime heath care in exchange for 20 or more years of service.
>
> (2) Military retirees are the only Federal Government personnel who have been prevented from using their employer-provided health care at or after 65 years of age.
>
> (3) Military health care has become increasingly difficult to obtain for military retirees as the Department of Defense reduces its health care infrastructure.
>
> (4) Military retirees deserve to have a health care program that is at least comparable with that of retirees from civilian employment by the Federal Government.
>
> (5) The availability of quality, lifetime health care is a critical recruiting incentive for the Armed Forces.
>
> (6) Quality health care is a critical aspect of the quality of life of the men and women serving in the Armed Forces.
>
> (B) SENSE OF THE CONGRESS.- It is the sense of the Congress that-
>
> (1) the United States has incurred a moral obligation to provide health care to members and former members of the Armed Forces who are entitled to retired or retainer pay (or its equivalent);
>
> (2) it is, therefore, necessary to provide quality, affordable health care to such retirees; and,
>
> (3) Congress and the President should take steps to address the problems associated with the availability of health care for such retirees within two years after the date of the enactment of this Act.[31]

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[30]U.S. Congress. Senate. Committee on Armed Services, National Defense Authorization Act for Fiscal Year 1998, 105th Cong., 1st Sess., S.Rept. 105-29, S. 924, June 17, 1997: 294-5.

[31]P.L. 105-85, sec. 752, November 18, 1997.

Although this language is also non-binding, it does give a sense of the rationale behind creating additional benefits for retirees.[32]

Some in Congress would like to go further in clarifying the issue. On August 6, 1998, Rep. Jo Ann Emerson (R., MO), introduced legislation that would have established a "Medicare eligible military retiree health care consensus task force." Among its proposed duties, this task force would conduct "a comprehensive legal and factual study of ... [p]romises, commitments, or representations made to members of the Uniformed Service by Department of Defense personnel with respect to health care coverage of such members and their families after separation from the Uniformed Services."[33] The twelve-member task force (including representatives of military retiree organizations) would determine what had been promised to military members and to what extent these promises were binding. This legislation was reintroduced in the 107th Congress.[34]

One reported response to this legislation by an unidentified representative of a military retiree organization was somewhat muted, suggesting that "... we are really beyond the point of looking at broken promises. We are at the stage now where Congress knows something has to be done and is just trying to decide what to do."[35] The legislation was referred to committee but was not reported out of committee prior to adjournment.

As noted above, H.R. 2966 was introduced on September 28, 1999. (This legislation was followed by H.R. 3573, S. 2003 and S. 2013 which have very similar, albeit not identical, provisions.) Among their provisions, H.R. 2966, H.R. 3573, S. 2003, and S. 2013 seek to expand military retiree health care options to include access to the Federal Employees Health Benefits Program. In offering these benefits, these bills present a number of "findings" (some of which appear inconsistent with the official history of military medical care). For example, H.R. 2966, H.R. 3573 and S. 2003 find that:

> Statutes enacted in 1956 entitled those who entered service on or after June 7, 1956, and retired after serving a minimum of 20 years or by reason of a service-connected disability, to medical and dental care in any facility of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff.

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[32]These additional benefits include the creation of demonstration projects known as Medicare Subvention and a Federal Employees Health Benefits Program option. In addition, Congress has instructed DoD to insure an improved pharmaceutical benefit for eligible beneficiaries. For additional information, see Best, Richard, *Military Medical Care: Questions and Answers*, CRS Issue Brief IB93103, updated regularly.

[33]H.R. 4464, August 6, 1998: 2.

[34]H.R. 67, January 3, 2001.

[35]Cited as "a representative of a major military organization" lobbying for improved medical care for military retirees; see Maze, Rick, A Broken Promise, *Navy Times*, August 24, 1998: 24.

In addition to not being consistent with the statute, the Department of Defense has always maintained that military retiree health care is, and always has been, permissive in nature and therefore not an entitlement. (See page 5, above.)

As noted above, although none of these bills was enacted, Congress substantially expanded the health care benefits available to military retirees via the FY2001 National Defense Authorization Act. Among its provisions, this legislation provides an enhanced pharmacy benefit and, with certain restrictions, it extends Tricare coverage to those age 65 and older. In an effort to further expand these health care options, H.R. 179 was introduced in the 107th Congress. This bill, as noted, would make FEHBP benefits available to eligible military retirees.

Based on the premise that DoD would provide lifetime medical care for retirees in general (and no cost care to those retirees who entered prior to June 7, 1956), this bill asserts that the "United States should reestablish adequate health care for all retired members of the uniformed services that is at least equivalent to other federal employees by extending to such retired members of the uniformed services the option of coverage under the Federal Employees Health Benefits program [FEHBP], the Civilian Health and Medical Program of the uniformed services, or the TRICARE Program."

FEHBP provides insurance coverage for federal civil service employees, annuitants and beneficiaries. "The Office of Personnel Management contracts annually on a noncompetitive basis with specific fee-for-service plans..., six plans sponsored by federal employee or postal organizations, and six plans for employees of certain federal agencies. The program includes over 250 health maintenance organizations.... In 1999, total annual premiums for self-only policies average $2,590; family premiums average $5,774. The government's share of premiums is determined by a formula set in law, specifically, 72% of the weighted average premium of all plans, not to exceed 75% of any given plan's premium. In 1999, the maximum government contribution for self-only coverage is $1,872, and for family coverage...is $4,170."[36] Under language in this bill, for those retirees who entered the service prior to June 7, 1956, the government's contribution for such care is 100%.

By providing access to FEHBP, coupled with those health care benefits already afforded military retirees, these bills provide an extensive range of health care benefits that go beyond existing benefits for civil servant retirees. As such, this bill would provide benefits that are arguably superior to those available to federal civil servants especially if they are offered at no cost to the beneficiaries.

Currently, DoD is conducting several demonstration projects which provide enhanced benefits or options for military retirees and their dependents. These demonstration projects are scheduled to run for at least two years. Among these is a demonstration project that provides certain retirees with access to FEHBP benefits. For more information on these demonstration projects, see Best, Richard, *Military*

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[36]Merck, Carolyn, *The Federal Employees Health Benefits Program*, CRS Report RL30336, Updated October 12, 1999: Summary.

Medical Care Services: Questions and Answers, CRS Issue Brief IB93103, updated regularly.