



PERSONNEL AND  
READINESS

**UNDER SECRETARY OF DEFENSE**  
4000 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-4000

SEP - 9 2020

The Honorable Adam Smith  
Chairman  
Committee on Armed Services  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

The Department's response to House Report 116-120, pages 163-164, accompanying H.R. 2500, the National Defense Authorization Act for Fiscal Year 2020 is enclosed. The Secretary of Defense is directed to provide a report on "Access to Health Care Services for Reserve and National Guard Who Disclose Sexual Assault."

The Department of Defense (DoD) finds that while extension of medical and psychological benefits to Selected Reserve Component (RC) and National Guard members who are sexually assaulted while not in an active status is feasible, this would create a disparate situation in units where Selected Reserve members with identical diagnoses and treatment plans arising from incidents other than sexual assault may not be covered. DoD believes the best way to make coverage available for RC and National Guard members in an inactive status is by extending the availability of TRICARE Reserve Select to all Selected Reserve and National Guard members.

Thank you for your continued strong support for our Service members, civilian workforce, and families.

Sincerely,

A handwritten signature in black ink, reading "Matthew P. Donovan", is centered below the word "Sincerely,".

Matthew P. Donovan

Enclosure:  
As stated



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The Honorable William M. "Mac" Thornberry  
Ranking Member  
Committee on Armed Services  
U.S. House of Representatives  
Washington, DC 20515

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## Report to Congress



House Report 116-120, Pages 163-164, Accompanying H.R. 2500 the National Defense Authorization Act for Fiscal Year 2020

Access to Health Care Services for Reserve and National Guard Who Disclose Sexual Assault

The estimated cost of this report or study for the Department of Defense (DoD) is approximately \$6,600 for the 2020 Fiscal Year. This includes \$0 in expenses and \$6,600 in DoD labor.  
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## I. Summary

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This report is in response to House Report 116-120, pages 163-164, accompanying H.R. 2500, the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 requesting that the Secretary of Defense report to the Committee on the feasibility of providing medical care, to include psychological care, to members of the Reserve Components (RC) who are sexually assaulted while not in an active status.

The Department's fundamental finding is that, if legislation were passed to require the provision of medical treatment and mental health care to a Service member who is not in a period of qualifying duty status, the requirement, while technically executable, is highly inadvisable, as it would create a new category of benefit for sexual assault reporters, but not for other Selected RC and National Guard members who sustain other illness or injuries while not in the line of duty (LOD) or title 10 status. Moreover, the provision of care to a Reserve Component member who sustains an injury or illness not in the LOD or while not in title 10 status, is a significant departure from historical norms of when RC members are eligible for such benefits.

***Conditions Where title 10 benefits apply for Reserve and National Guard Members:***

- Service member on qualifying orders to Active Duty for periods greater than 30 days.
- Service member who has injuries, illnesses or diseases incurred or aggravated during a period of qualifying duty status for periods of 30 days or less.
- Eligible Service members who purchase and maintain TRICARE Reserve Select coverage.\*

*\* Current eligibility excludes those Selected Reserve Component members who are eligible for FEHB through employment as a Federal civilian employee. This exclusion will end in 2030 pursuant to Section 701 of the National Defense Authorization Act for Fiscal Year 2020.*

The Department believes that the best option to provide comprehensive coverage for injuries, illnesses or diseases resulting from sexual assault, whether physical or psychological, is through the currently-available TRICARE Reserve Select (TRS) program, a low-cost premium-based program available to Selected Reserve and National Guard members. TRS is not available to Selected Reserve and National Guard members who are Federal employees eligible for the Federal Employee's Health Benefits Program (FEHB).

Creating a category of treatment for medical and psychological diagnoses for any subset of Reserve Component members, such as sexual assault, would create an inequitable field, where identical diagnoses and treatment plans would be covered for some Selected Reserve or National Guard members, while leaving others without coverage. In the example of sexual assault, a victim of a violent sexual assault who suffered a broken arm and is diagnosed with Post-Traumatic Stress Disorder (PTSD) would potentially be covered for treatment. However, a

victim of a car accident suffering from an identical broken arm and PTSD would not be covered, even though the impact to Readiness may be identical for both victims. Similar disparities would exist between a victim of sexual assault suffering from mental health issues and those needing mental health care because of domestic violence or suicidal ideations stemming from a death in the family.

The perception by Selected Reserve members of an inequitable system, wherein some conditions would be covered at no cost to the beneficiary when suffered outside of the current eligibility parameters of title 10 while other conditions would not be covered at all if the Selected Reserve or National Guard member did not have TRS would lead to additional calls to expand the title 10 benefit fully to Selected Reserve and National Guard members on the same no-cost basis as full-time Active Duty Service members. Congress has previously rejected this option due to the associated costs of such a significant expansion. Additionally, an expansion of no-cost title 10 benefits would erode the significant recruitment and retainment incentive for full-time Active Duty Service members by applying portions of this to people who have elected not to serve full-time on Active Duty.

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## **II. Introduction**

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House Report 116-120, pages 163-164, accompanying H.R. 2500, the NDAA for FY 2020 provides the following:

The Committee is concerned that, if a Reserve Component service member is sexually assaulted while not in an active status, they are ineligible for DoD medical care (to include psychological health care) to treat symptoms from the trauma. Sexual assault, regardless when it occurs, is likely to impact duty performance and degrade mission effectiveness, and Reserve Component service members often execute military missions alongside their Active Duty counterparts. Medical treatment, to include psychological health treatment, can assist in recovery and enhance mission effectiveness and should be available regardless of service member's duty status. The Committee directs the Secretary of Defense to report to the House Committee on Armed Services by January 1, 2020 on the feasibility of providing medical care, to include psychological care, to members of the Reserve Component who are sexually assaulted while not in an active status.

Section III below addresses the feasibility of providing medical care, to include psychological care, to members of the Reserve Component who are sexually assaulted while not in a qualified duty status. This section includes considerations for any inclusions/exclusions and the overall decision points required to scope and resource a benefit outside those currently covered by title 10.

Section IV below addresses current options for Selected Reserve members to either obtain TRICARE coverage for their healthcare needs or seek outside assistance.

Section V below addresses the Department's findings and recommendations for the consideration of Congress.



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### **III. Considerations of Feasibility**

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#### **A. General Considerations**

Expansion of Title 10 benefits to sexual assault cases not incurred in the LOD or while on Active Duty status may be executed through legislation. The primary consideration is whether this creates an inequitable situation for other Selected RC or National Guard members who have psychological or other medical conditions not resulting from a sexual assault but which, if left untreated, impact duty performance and degrade mission effectiveness. If the conceptual legislation were implemented, Selected Reserve or National Guard members with substantively or fully identical diagnoses and treatment plans would have coverage extended or denied due to the cause of the condition. This could undermine unit cohesiveness and morale if some Selected Reserve or National Guard members are receiving a benefit while others are denied that benefit, and would lead to calls to increase the benefit across the board regardless of the member's status at the time the injury or illness is incurred.

The Committee's language referenced enhancing "mission effectiveness," which the Department normally terms Readiness, as a key reason for making such care available. For purposes of Readiness, the catalyst of the medically-not-ready (MNR) condition is not the primary concern; rather, the resolution (if possible) of the condition is the primary concern. For example, a Selected Reserve or National Guard member who is suffering a painful sexually transmitted infection (STI) and is unable to perform their mission is MNR regardless of how they contracted the STI. Differentiating between the source and circumstances of the transmission does not allow the Department to enhance overall Readiness if relief and coverage is extended to one subset of Selected Reserve or National Guard members but not another.

The secondary concern of the Department is that creating this non-duty-related provision does not align with decades of jurisprudence and law on the limits of the liability of the Government, or, indeed, any workforce. It has long been the basic standard that Workman's Compensation and related initiatives limit the liability of the employer to conditions related to service/employment. That is, pre-existing conditions or injuries may not be compensable by the Department of Veterans Affairs or the DoD (if the condition renders the member unfit for continued military service) unless the condition is aggravated by military service. Moreover, treatment by DoD for such a condition is limited to periods where a Service member has full TRICARE coverage (e.g., Active Duty Service under Title 10).

#### **B. Parameters for Determination**

Identification of the parameters of coverage, following the intent of Congress and applicable Statute changes, would be key to designing a program to support the expansion of Title 10 benefits to include a non-LOD illness, injury or disease.

As the case would be handled outside of the normal military reporting channels, due to the member being in a non-duty status, there would also be the potential for variation under laws



based on where the alleged incident occurred and whether the incident constitutes a sexual assault in that jurisdiction. Where the Department institutes a uniform definition of sexual assault as it applies to title 10 benefits, the locality of the assault would determine whether or not a crime was specified as a sexual assault, and may have an impact on both the investigation of the case and the substantiation of the underlying claims.

The Selected Reserve or National Guard member would need to have a diagnosable illness, injury or disease linked to the incident of sexual assault. Creating these boundaries would be challenging, as the most-immediately connected outcomes of STIs or psychological trauma are not the only possible outcomes a victim of a sexual assault may suffer. A victim of a violent sexual assault, in particular, could suffer injuries of broken bones, traumatic brain injury, organ failure, or other injury not generally associated as an outcome of a sexual assault.

Substantiation of the claim of sexual assault would also need to be a consideration by the Department, as this would be a key decision point in providing the benefit. LOD care, for example, provided on an emergent or urgent basis, is subject to later recoupment from the Selected Reserve or National Guard member if the condition was later found not to be in-LOD. Similar constraints would be considered in implementation of a policy to support expansion of the benefit to a non-LOD condition, which may put a Selected Reserve or National Guard member at risk under of both the Uniform Code of Military Justice action and of personal financial liability for any care rendered prior to a claim being found deemed to be unsubstantiated. Most particularly, as the benefit would pertain to cases arising purely in the civilian sector, final resolution of a claim as substantiated or unsubstantiated could be delayed for a significant length of time, exposing the affected Selected Reserve or National Guard member to a significant liability to the government and/or healthcare providers should a finding not be substantiated. As stated earlier, it would be impossible to apply a uniform standard for substantiation causing problems given how sexual assault definitions vary among jurisdictions, since every civilian jurisdiction has a slightly different sexual assault definition, potentially resulting in one Selected Reserve or National Guard member being covered, but a Selected Reserve or National Guard member in the neighboring state not being covered.

Consideration would also have to be given to underlying or pre-existing conditions. Under current LOD policy, treatment of a pre-existing illness, injury or disease is only covered to the extent that it returns a condition to the level prior to the period of qualifying duty status, not necessarily to resolution.

Comparing benefits currently available to Selected Reserve and National Guard members who suffer a LOD illness, injury or disease and determining how this may apply to a sexual assault that happened outside of a period of qualifying duty status would also be necessary. For example, if a victim of sexual assault were suffering from a STI prior to the sexual assault, and the STI may or may not have resulted from the sexual assault, normal LOD rules may prevent coverage if it could not be established that the STI was a result of the sexual assault. Extending a benefit outside of LOD potentially extends care for a beneficiary who is not in a period of qualifying duty status above the benefit available to one who is in a period of qualifying duty status.

Time boundaries would also need to be considered, in part due to the nature of the trauma of sexual assault, which can lead to life-long challenges for the victim. As noted above, a pre-existing condition may only be covered under title 10 while a Selected Reserve member is in receipt of full TRICARE benefits. In FY 2019, 8 percent of sexual assaults reported to the military Services (652 of 7,825) were for sexual assaults which occurred prior to military service.<sup>1</sup>

### **C. Execution of Expanded Benefit**

Upon direction via statutory change to the benefit, the Department would execute any change to title 10 benefits via the federal rule-making regulatory process and through other policy mechanisms. If non-Active Duty/LOD conditions were added to include illnesses, injuries or diseases arising from a sexual assault, DoD stakeholders would identify the appropriate changes to Federal regulations, existing Department of Defense Instructions (DoDI), and other appropriate Agency policies.

Additional DoD resources would be required to execute a program change of this significance. If the prevalence of sexual assault while not in a currently qualifying duty status is presumed to be concurrent with the civilian average of roughly 2.7 cases per 1,000 people<sup>2</sup>, and there is no overlap with current reporting, amongst the ~800,000 Selected Reserve members this could contribute up to an additional ~2,160 cases annually to caseload, an increase of nearly 28 percent over current case volume.

The extent of the benefit expansion being considered would play a significant role depending on the scope and duration of the treatment. Treatment for any illness, injury or disease resulting from a sexual assault that happened at any time may vary in cost and duration. More limited coverage, such as psychological treatment with or without psychotropic medications, may cost less, but may not impact the overall readiness of the Selected Reserve member. Before being able to understand the extent of an expansion of benefits, certain parameters or assumptions would be required before the Department could provide a cost estimate of the potential impacts across the Department. For example, access to the Family Advocacy Program or other resources would potentially add a cascading list of impacted offices with increased resourcing requirements.

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<sup>1</sup> [https://www.sapr.mil/sites/default/files/3\\_Appendix\\_B\\_Statistical\\_Data\\_on\\_Sexual\\_Assault.pdf](https://www.sapr.mil/sites/default/files/3_Appendix_B_Statistical_Data_on_Sexual_Assault.pdf)

<sup>2</sup> <https://www.bjs.gov/content/pub/pdf/cv18.pdf>



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## **IV. Current Access to Title 10 Benefits and other Healthcare Coverage for Selected Reserve and National Guard Members**

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### **A. TRICARE Reserve Select**

TRS was established by Congress in the NDAA for FY 2004 (Public Law 108-136) as a way for Selected Reserve and National Guard (Selected Reserve) members to obtain TRICARE coverage when not in a period of Active Duty. Previously, Selected Reserve and National Guard members only had access to TRICARE coverage while in a period of qualifying duty.

Congress has long reserved the top-level benefit of cost-free healthcare to Active Duty Service members, not only for Readiness of the force, but also as a key recruitment and retention incentive. The expansion of access to the TRICARE benefit, but at a cost, to part-time Service members during a period when they were undergoing a historic change in mobilization patterns, was designed to address gaps in coverage due to coverage disruptions when mobilizing/demobilizing, as well as to address Readiness concerns where uninsured members required significant health concerns addressed in order to be in a deployable condition.

Over the initial years of implementation, the program went through several iterations regarding who was eligible and how much premiums would be. Originally, only Selected Reserve and National Guard members who were ineligible for civilian healthcare coverage through their employer or who were eligible for unemployment compensation qualified to purchase TRS coverage. This was expanded in the Ronald W. Reagan NDAA for FY 2005 (Public Law 108-375) to include Selected Reserve members who had been mobilized for more than 90 continuous days in support of a contingency operation, and further in the NDAA for FY 2006 (Public Law 109-163) to create a 3-tiered premium program which expanded access to all Selected Reserve members, depending on their recent mobilization and deployment status, except those who are eligible for the Federal Employees Health Benefits Program (FEHB) through their Federal employment.

The current state of TRS, enacted in the John Warner NDAA for FY 2007 (Public Law 109-364), sets premiums at 28 percent of program costs for all TRS enrollees, regardless of their tier. NDAA for FY 2020 eliminated the FEHB exclusion; however, this exclusion remains in effect by law until 2030. Thus, in 2030 all Selected Reserve and National Guard members will be eligible for TRS.

Current calendar year 2020 monthly premiums are \$44.17 for a member and \$228.27 for a member with family members, with additional deductibles and cost-shares applicable. This provides for a low-cost access option to the full TRICARE benefit, and has continuous open enrollment, provided the member is not currently in a lockout period. Payment of monthly premiums is required in order to maintain coverage, and TRS enrollees are authorized space-available care at military medical treatment facilities (MTFs).

## B. Line of Duty

In addition to TRS, Selected Reserve and National Guard members are eligible for treatment of injuries, illnesses or diseases incurred in or aggravated during a period of qualified duty.

- Qualifying Duty Status for Line of Duty includes:
- Activation for periods of 30 days or less on Active Duty.
- Inactive Duty, such as weekend training periods.
- Funeral Honors Duty.

When an injury, illness or disease is found to be incurred or aggravated during the periods above, care will be provided either in MTFs or in civilian facilities at no cost to the beneficiary.

It is notable that Congress has created a clear line in title 10 between what can be covered by the Government and what cannot. When a condition is suffered outside of a period of qualifying duty, there is no authority or Government obligation to pay for care.

## C. Non-TRICARE Resources

In accordance with existing Sexual Assault Prevention and Response (SAPR) policy (DoDI 6495.02)<sup>3</sup>, National Guard and Reserve members reporting a sexual assault that occurred prior to or while not performing active service or inactive duty for training are eligible to receive timely access to SAPR advocacy services from a Sexual Assault Response Coordinator (SARC) and a SAPR Victim Advocate (VA), who can facilitate access to community resources for sexual assault victims. Victims are eligible to file a Restricted or Unrestricted Report at any time, and do not have to wait to be performing active service or be in inactive training to file their report with a SARC or SAPR VA and gain access to SAPR advocacy services.

Selected Reserve members who are victims of sexual assault are also able to seek counseling and assistance through a multitude of military-affiliated or civilian agencies.<sup>4</sup> Key military-affiliated resources include the DoD Safe Helpline, Military OneSource, and the National Center for PTSD at the Veterans Health Administration, for qualified members. These

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<sup>3</sup> DoDI 6495.02, "Sexual Assault Prevention and Response (SAPR) Program Procedures,":  
<https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/649502p.pdf?ver=2019-01-29-114731-993>

<sup>4</sup>  
[https://www.cnic.navy.mil/ffr/family\\_readiness/fleet\\_and\\_family\\_support\\_program/sexual\\_assault\\_prevention\\_and\\_response/resources.html](https://www.cnic.navy.mil/ffr/family_readiness/fleet_and_family_support_program/sexual_assault_prevention_and_response/resources.html)



and other non-military resources are available, most often at no cost to the victim, to assist a victim by directing them to available local resources.

Selected Reserve members who are civilian Federal employees may purchase FEHB coverage, and non-Federal employees are eligible for civilian healthcare coverage either through their employer or via the marketplaces. Selected Reserve members who qualify for TRS coverage are not obligated to purchase the coverage, and under multiple scenarios, such as coverage through a spouse's employer, may choose to forgo TRICARE in favor of other health insurance. Through all of these options, no Selected Reserve member should have to forgo coverage that would provide access to medical and psychological care if he or she is sexually assaulted while not in a qualifying duty status for title 10 benefits.

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## **V. Conclusion**

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Due to the access provided through the TRS program to the full TRICARE benefit, particularly if the FEHB exclusion is removed prior to the 2030 timeline, the Department finds that TRS is the most practical way to ensure access to health care needs, whether medical or psychological, for Selected Reserve members who suffer an injury, illness or disease resulting from sexual assault.

Additionally, if enacted, such conceptual legislation would create an entirely new class of benefit that would, at a minimum, create a significant demand from other Selected Reserve members who suffer injuries, illnesses or diseases not related to a sexual assault but similarly outside of a period of qualifying duty status to have their conditions also covered by the Government. Enacting legislation along these lines must be considered with the potential “slippery slope” effects, as the demand for additional considerations of other conditions would be a priority for affected individuals who suffer a similarly Readiness-affecting condition.

The Department continues to strive to eliminate sexual harassment and assaults within its ranks, and provide assistance and care to those eligible beneficiaries who experience these reprehensible acts. However, due to the noted concerns in this Report, the Department believes that a proposal to extend title 10 benefits for any condition not incurred or aggravated in the LOD, regardless of the cause, presents significant perception of fairness, financial and legal risks to the Department.

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## **VI. Glossary**

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### **A. Acronyms and Symbols**

DoD	Department of Defense
DoDI	Department of Defense Instruction
FEHB	Federal Employees Health Benefits Program
LOD	Line-of-Duty
MTF	Military Medical Treatment Facility
MNR	Medically-Not-Ready
NDAA	National Defense Authorization Act
STI	Sexually-Transmitted Infection
TRS	TRICARE Reserve Select

## **B. Definitions**

LOD. Line-of-Duty. Illnesses, injuries or diseases incurred in or aggravated during a period of qualifying duty status, and that are not the result of gross negligence or misconduct of the individual (except in cases of sexual assault), may be covered under title 10, Chapter 55 medical benefits.

TRS. TRICARE Reserve Select is a premium-based program created with NDAA 2004 to extend TRICARE coverage under title 10 to Selected Reserve and National Guard members who otherwise do not qualify for title 10 benefits. Qualified members must enroll and pay monthly premiums in order to maintain coverage.