SEC. ___. MILITARY HEALTH SYSTEM FRAUD AND ABUSE PREVENTION PROGRAM.

(a) IN GENERAL.—Chapter 55 of title 10, United States Code, is amended by inserting after section 1073d the following new section:

"§1073e. Health care fraud and abuse prevention

"(a) AUTHORITY.—(1) The Secretary of Defense is authorized to conduct a program to prevent and remedy fraud and abuse in health care programs of the Department of Defense, including all programs carried out under this chapter.

"(2) At the discretion of the Secretary, the program may be administered jointly by the Inspector General of the Department of Defense and the Director of the Defense Health Agency.

"(b) CIVIL MONETARY PENALTIES.—(1) The authorities granted to the Secretary of Defense and the Inspector General of the Department of Defense under section 1128A(m) of the Social Security Act (42 U.S.C. 1320a-7a(m)) shall be available to the Secretary and the Inspector General in carrying out the program authorized by subsection (a).

"(2) Except to the extent inconsistent with this section, the provisions of such section 1128A apply to civil monetary penalties under this subsection.

"(c) TREATMENT OF AMOUNTS COLLECTED.—(1) Amounts collected under subsection (b) shall be credited to appropriations currently available at the time of collection for expenses of the affected Department of Defense health care program.

"(2) Any such amounts may be used to support the administration of the program authorized by subsection (a), including support for interagency agreements entered into under subsection (d).

"(3) The authority provided under this subsection shall be in addition to the authority provided under section 1079a of this title.

"(d) INTERAGENCY AGREEMENTS.—The Secretary of Defense is authorized to enter into agreements with the Secretary of Health and Human Services, the Attorney General, and heads of other Federal agencies for the effective and efficient implementation of the program authorized by subsection (a).

"(e) RULE OF CONSTRUCTION.—Nothing in this section may be construed as limiting any authority of the Inspector General of the Department of Defense under any other provision of law.

"(f) DEFINITIONS.—In this section:

"(1) The term 'fraud and abuse' means any conduct for which a civil monetary penalty may be assessed under subsection (b).

"(2) The term 'Defense Health Agency' means the organizational entity established by the Secretary of Defense under section 191 of this title for the administration of programs under this chapter.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1073d the following new item:

"1073e. Health care fraud and abuse prevention.".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would insert a new section 1073e in title 10, United States Code (U.S.C.), to specifically authorize an enhanced Department of Defense health care fraud and abuse prevention program and provide means for its effective and efficient operation. This is in recognition that TRICARE has been victimized by health care fraud and abuse. Subsection (a) of the new section specifically authorizes the program and provides that it may be administered jointly by the Inspector General of the Department of Defense and the Director of the Defense Health Agency. Subsection (b) of the new section allows the program to include existing legal authority under the Social Security Act for the heads of Federal agencies and the Inspectors General of those agencies that operate Federal health care programs to assess civil monetary penalties in a manner comparable to the longstanding and successful program of the Department of Health and Human Services (HHS) to combat fraud and abuse against Medicare and

Medicaid. DoD has implemented this authority under the Social Security Act in a proposed regulation at 84 FR 18437, which amends Department of Defense regulations by adding 32 CFR Part 200. Subsection (c) of the new section provides that civil monetary penalty amounts collected will be credited to the appropriation available for the Department of Defense health care program affected for the fiscal year in which the amount is collected. Penalties cannot be imposed or collected until the Final Rule is published at the end of 2019. This extends the current rule under 10 U.S.C. 1079a that refunds and other amounts collected under CHAMPUS/TRICARE are credited to the Defense Health Program appropriation and available for use under that program. Any penalty amounts collected may be used to support the operation of the fraud and abuse prevention program. Under the HHS program and the existing Social Security Act provisions, civil monetary penalty amounts are credited to the Federal Hospital Insurance Trust Fund or applicable Medicaid account and may be used to support health care fraud and abuse prevention. Subsection (d) of the new section authorizes interagency agreements with the Department of Health and Human Services, the Department of Justice, and other agencies for the effective and efficient implementation of the fraud and abuse prevention program. Subsections (e) and (f) of the new section make clear that the section does not limit existing authorities of the DoD Inspector General and provide applicable definitions.

Budgetary Implications: This section would reduce Defense Health Program requirements by $74 million from FY 2021 – FY 2025. The savings estimates were based on recent history of TRICARE fraud and abuse audits and investigations that, for a variety of reasons, did not result in criminal or civil actions by the Department of Justice under other legal authorities. The saving estimates were based on the estimate of 50 cases per year with an average penalty of $600,000 per case and a collection rate of 60%. Additionally, the estimated recovery amount subtracts out appeal costs, full-time equivalent costs, and administrative costs. The initial estimated amount of recovery is limited as it is anticipated that it will take DoD a few years to attain full operational capability. The resources saved are reflected in the table below and are included within the FY 2021 President's Budget.

RESOURCE IMPACT ($MILLIONS)									
	FY 2021	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/ SAG**	**Program Element**
Defense Health	(8)	(16)	(16)	(17)	(18)	Operation and Maintenance, Defense Health Program	01	5_01	-

Changes to Existing Law: This proposal would insert a new section in chapter 55 of title 10, United States Code, as shown in full in the legislative language above.