SEC. ___. GRANTING OF AUTHORITY FOR SECRETARY OF DEFENSE TO MANAGE PROVIDER TYPE REFERRAL AND SUPERVISION REQUIREMENTS UNDER TRICARE PROGRAM.

Section 1079(a)(12) of title 10, United States Code, is amended, in the first sentence, by striking "or certified clinical social worker," and inserting "certified clinical social worker, or other class of provider as designated by the Secretary,".

[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 increases the Department of Defense's (DOD) flexibility in determining which provider types under the TRICARE Program may diagnose or assess a mental or physical illness, injury, or bodily malfunction, and, by extension, the extent to which referrals and supervision are required for these provider types. Under current law, TRICARE beneficiaries must be assessed or diagnosed by a physician, dentist, clinical psychologist, certified marriage and family therapist, optometrist, podiatrist, certified nurse-midwife, certified nurse practitioner, or certified clinical social worker. This requires that one of the listed providers manage the care provided by any other provider under the TRICARE program. This statutory limitation on provider status is unique to TRICARE and not seen in private insurance programs. Significantly, it fails to take into account the increased education and training of other allied health professionals since the statute was enacted and the evolving nature of health care delivery and coverage.

Some current TRICARE-authorized providers operate under State scopes of practice and licensures that permit them to treat patients without supervision by other categories of providers; however, TRICARE's statute prohibits them from doing so when treating TRICARE beneficiaries. These providers may have sufficient education and expertise to assess, diagnose, and treat patients within their scopes of practice. For example, physical therapists were once only required to have a bachelor's degree; this requirement has since been raised to a master's degree and, due to recent changes enacted by the Commission on Accreditation in Physical Therapy Education, new practitioners require a doctorate degree. However, physical therapists working under TRICARE are required to be referred to and supervised by one of the provider types currently listed in the statute. The Defense Health Agency is limited in its ability under existing law to independently assess provider types and determine appropriate supervision and referral requirements when the provider type is not listed in the statute by name.

Current law excludes independent practice by a large number of providers under TRICARE whose scopes of practice and licensure might otherwise allow it. Additionally, referral and supervision requirements may require TRICARE beneficiaries to make extra visits to

primary care providers in order to receive continued care by an allied health professional, and adds to the burden on those providers and expense to beneficiaries. This statutory revision would not change the Defense Health Agency's authority to require supervision or referrals for any type of provider. Adoption of this legislation would not immediately change the supervision and referral requirements for any specific type of provider under TRICARE or eliminate the need for supervision and referrals program-wide; however, once granted this authority, the Defense Health Agency could review existing supervision and referral requirements and initiate changes to regulation if deemed appropriate. Additionally, this legislation would give the Defense Health Agency the ability to set supervision and referral requirements specific to the provider type when adding new types of authorized providers under the regulation.

Budgetary Implications: No budget impact. This assumes no additional costs will be incurred or saved based on this proposal, given that additional regulatory and policy changes would be required in order for costs to be incurred (or saved). While the proposal would permit the Secretary of Defense to exercise additional discretion in supervision and referral requirements for individual provider classes, no such change would automatically occur. Increased access to authorized providers might increase health care costs, but could also decrease health care costs for visits to primary care or other providers that currently must supervise or refer to a provider not listed in section 1079(a)(12) of title 10, United States Code. Any changes to referral and supervision requirements for a particular provider type will require regulatory changes; the Defense Health Agency will evaluate cost impact prior to pursuing any changes to the regulation.

Changes to Existing Law: This proposal would amend section 1079(a)(12) of title 10, United States Code, as follows:

§1079. Contracts for medical care for spouses and children: plans

(a) To assure that medical care is available for dependents, as described in subparagraphs (A), (D), and (I) of section 1072(2) of this title, of members of the uniformed services who are on active duty for a period of more than 30 days, the Secretary of Defense, after consulting with the other administering Secretaries, shall contract, under the authority of this section, for medical care for those persons under such insurance, medical service, or health plans as he considers appropriate. The types of health care authorized under this section shall be the same as those provided under section 1076 of this title, except as follows:

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(12) Any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assessed or diagnosed by a physician, dentist, clinical psychologist, certified marriage and family therapist, optometrist, podiatrist, certified nurse-midwife, certified nurse practitioner, ~~or~~ certified clinical social worker, <u>or other category of provider as approved by the Secretary,</u> as appropriate, may not be provided, except as authorized in paragraph (4). Pursuant to an agreement with the Secretary of Health and Human Services and under such regulations as the Secretary of Defense may prescribe, the Secretary of Defense may waive the operation of this paragraph in connection with clinical trials sponsored or approved by the National Institutes of Health if the Secretary of Defense determines that such a waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments.

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