SEC. 704. EXCLUSION FROM AUTHORIZED MEDICAL CARE FOR DEPENDENTS OF MATERNITY CARE FOR FEE-BASIS SURROGATE PREGNANCIES.

Section 1077(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(4) Maternity care for fee-basis surrogate pregnancies.".

Section-by-Section Analysis

This proposal would exclude from the scope of TRICARE-covered services maternity care for fee-basis surrogate pregnancies. In the context of rapidly rising health care costs in TRICARE over recent years, concern has been expressed over TRICARE paying maternity care expenses for fee-basis surrogate pregnancies of covered beneficiaries. Under current law, the Department of Defense (DoD) has no authority to exclude from the scope of TRICARE-covered services maternity care for fee-basis surrogate pregnancies. Media reports and Internet promotions suggest exploitation of this TRICARE program coverage.

TRICARE has taken the steps available under current law in an attempt to restrain exploitation of TRICARE for fee-basis surrogate pregnancies. Under section 1079(j) of title 10, United States Code, as implemented by 32 Code of Federal Regulations 199.8(a), TRICARE is the second payer whenever a beneficiary has other health insurance or a plan or agreement with a third party to cover a benefit covered by TRICARE. Similarly, under section 1095 of title 10, health care provided in military hospitals may be billed to third-party payers with contractual insurance or other relationships to the covered beneficiaries. Fee-basis surrogacy contracts are a form of third party payment agreements.

As revised in 2002, under the TRICARE Reimbursement Manual and the TRICARE Operations Manual, fee-basis contractual arrangements between a surrogate mother and adoptive parents are considered other coverage for the maternity care. When TRICARE learns of such a surrogacy contractual arrangement, TRICARE undertakes assessment of financial responsibility for maternity care under the surrogacy contract. Because of significant limitations in discovering the existence of such contractual arrangements and the potential for such contracts to be constructed so as to evade financial responsibility for TRICARE costs, the administrative efforts to restrain exploitation of TRICARE for fee-basis surrogate pregnancies have had limited impact.

Section 1077 of title 10 authorizes the type of health care that may be provided under section 1076 of this title. Maternity and infant care, including well-baby care that includes one screening of an infant for the level of lead in the blood of the infant, are covered benefits. However, there is no exclusion for maternity care as a result of fee-basis surrogate pregnancies.

Exclusion of coverage for fee-basis surrogate pregnancies would deter TRICARE beneficiaries from exploiting the current policy and entering into such arrangements.

Budget Implications: The DoD has estimated a cost savings for this proposal as follows:

RESOURCE REQUIREMENTS ($ MILLIONS) REFLECTED IN PRESIDENT'S BUDGET (Savings)								
	FY 2013	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
O&M	($.190)	($.203)	($.217)	($.233)	($.249)	DHP O&M	BA 01	01
Total	($.190)	($.203)	($.217)	($.233)	($.249)			

Cost Methodology: Savings are based on a reasonable primary payment amount per surrogate delivery of $20,300 in fiscal year (FY) 2010. This amount combines the estimated pre-pregnancy costs with the estimated ante-partum, post-partum, and complication costs. For the purposes of this estimate, it is assumed that 10.2 cases annually will continue to be discovered on average in the future. To estimate annual savings, had the policy been in effect in FY10, multiply 10.2 cases by the third-party primary payment amount of $20,300, resulting in annual savings of $206,692. However, we do not expect that all of these funds will be recouped from the TRICARE beneficiary or the new parents. Quite often, TRICARE Management Activity (TMA) discovers surrogate pregnancies have occurred two to three years after delivery. For the purposes of this estimate, it is assumed that 75 percent of the primary payment amounts will be collected, which would have represented a net savings of $155,019 in FY10. To project savings forward, we assume 7 percent annual medical cost inflation. If TMA requires that MCS contractors begin to collect this reasonable amount per discovered surrogate pregnancy, we estimate this will save the government approximately $1.02 million over the five-year period FY13 through FY17. These savings do not include any costs that TRICARE will avoid from beneficiaries being deterred from entering into fee-basis surrogate pregnancies once maternity services are not covered under such arrangements.

Changes to Existing Law: This proposal would make the following changes to section 1077 of title 10, United States Code:

§ 1077. Medical care for dependents: authorized care in facilities of uniformed services

(a) Only the following types of health care may be provided under section 1076 of this title:

(1) Hospitalization.
(2) Outpatient care.
(3) Drugs.
(4) Treatment of medical and surgical conditions.
(5) Treatment of nervous, mental, and chronic conditions.
(6) Treatment of contagious diseases.
(7) Physical examinations, including eye examinations, and immunizations.
(8) Maternity and infant care, including well-baby care that includes one screening of an infant for the level of lead in the blood of the infant.

(9) Diagnostic tests and services, including laboratory and X-ray examinations.

(10) Dental care.

(11) Ambulance service and home calls when medically necessary.

(12) Durable equipment, which may be provided on a loan basis.

(13) Primary and preventive health care services for women (as defined in section 1074d(b) of this title).

(14) Preventive health care screening for colon or prostate cancer, at the intervals and using the screening methods prescribed under section 1074d(a)(2) of this title.

(15) Prosthetic devices, as determined by the Secretary of Defense to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease.

(16) A hearing aid, but only for a dependent of a member of the uniformed services on active duty and only if the dependent has a profound hearing loss, as determined under standards prescribed in regulations by the Secretary of Defense in consultation with the administering Secretaries.

(17) Any rehabilitative therapy to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient when prescribed by a physician.

(b) The following types of health care may not be provided under section 1076 of this title:

(1) Domiciliary or custodial care.

(2) Orthopedic footwear and spectacles, except that, outside of the United States and at stations inside the United States where adequate civilian facilities are unavailable, such items may be sold to dependents at cost to the United States.

(3) The elective correction of minor dermatological blemishes and marks or minor anatomical anomalies.

<u>(4) Maternity care for fee-basis surrogate pregnancies.</u>

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