July 2016
Issue Brief: FY2017 NDAA Items of Interest

The Tricare for Kids (TFK) Coalition is a stakeholder group of children's health care advocacy and professional organizations, disability advocacy groups, military and veterans' service organizations and military families committed to ensuring that TRICARE meets the unique health needs of the more than two million children of military families covered by TRICARE is thankful to Congress for further addressing the needs of children in S. 2943 and HR 4909 the National Defense Authorization Act (NDAA) for Fiscal Year 2017.

As the Coalition has communicated throughout the last three years, we remain concerned about the significant "gaps," "areas for clarification" and considerable deficiencies the Defense Health Agency noted in its July 2014 report, in response to Section 735 of the 2013 NDAA. While that report concluded that the military health system provides adequate coverage for military children, including children with special health care needs, the conclusion was unsubstantiated, lacking meaningful data and comparisons in support of many of its claims. Additionally, even with its broad "conclusions" it still identified concerns with coverage of preventive health services, behavioral health services, determining medical necessity, data collection and data utilization, to name a few. In addition, the report did not make any recommendations or plans to address any of these issues, as required by Congress. That is why we are so pleased that section 762 of the Senate FY 2017 NDAA requires the Department of Defense to issue a report that outlines its plan to improve pediatric care and related services, and that additional provisions in the legislation and accompanying committee reports support and promote addressing the specific needs of children including families impacted by special, chronic and complex health needs.

The TRICARE for Kids Coalition discussion of House and Senate versions of the FY17 NDAA as the two chambers proceed to conference on the bill:

Senate Section 762: Report on Plan to Improve the Pediatric Care and Related Services for Children of Members of the Armed Forces
House Item of Special Interest: Improving Pediatric Coverage Under TRICARE
Section 762 of S. 2943 directs the Secretary of Defense to specifically address points identified in the original Tricare for Kids legislation and submit a report setting forth the plan of the Department of Defense. In particular, the new report would require the Department of Defense to prepare and disclose its plan to align preventive pediatric care under the TRICARE program with preventive standards required by the Patient Protection and Affordable Care Act (AAP's Bright Futures for children), guidelines established for such care by the Early and Periodic Screening, Diagnosis, and Treatment program under the Medicaid program and recommendations by organizations that specialize in pediatrics. Additionally, the provision directs the DoD to develop a uniform definition of ''pediatric medical necessity;" revise certification

requirements for residential treatment centers; develop measures to evaluate and improve access to pediatric care; improve the quality of and access to behavioral health care; mitigate the impact of permanent changes of station and develop and implement pediatric specific reporting, data measures, outcome measures, data collection, pediatric specialty care understanding, and other areas identified as gaps in the Tricare for Kids report.

In addressing key behavioral and mental health concerns, DoD would be required to report on its plans to revise certification requirements for residential treatment centers in order to expand access for children covered by TRICARE, and to improve the quality of and access to additional behavioral health services such as intensive outpatient treatment and partial hospitalization. It is important to retain these requirements in conference, notwithstanding DoD's February 1, 2016 proposed rule on TRICARE Mental Health and Substance Use Disorder Treatment. Until that rule is finalized and implemented, many questions remain about whether access will actually improve. The proposed rule is silent on the extent of standards that will be imposed on residential treatment centers in addition to the required national accreditation, and how compliance with them will be determined. Certification standards and processes under current regulations are the primary access barrier to residential treatment; merely removing them while leaving the door open to later implementing a sub-regulatory version is not an adequate remedy. In addition, the proposed rule limits coverage of intensive outpatient treatment and partial hospitalization to TRICARE beneficiaries 13 years of age or older, which clearly does not improve children's access to behavioral health treatment.

Section 762 includes direction which will improve pediatric care and related services for children of members of the Armed Forces and all children covered by TRICARE, while requiring accountability for DoD plans for and implementation of those improvements, both of which are greatly needed.

H.R. 4909 includes report language similar in spirit to section 762 of the Senate bill, as it shares the concern of the House Armed Services Committee that the Department has not completed addressing the deficiencies noted in the report required by section 735 of the NDAA for FY13. As such, this section directs the Secretary of Defense to provide a briefing to the House Committee on Armed Services on the actions taken and the plan to correct the remaining deficiencies identified in the pediatric health care report. Our coalition is also supportive of this requirement, in tandem with the report required by the Senate bill.

One component included as a provision of Section 735 of the 2013 NDAA but not addressed specifically in section 762 or elsewhere in this year's NDAA relates to the Extended Care Health Option (ECHO). Section 735 of the 2013 NDAA and SASC Report 112-173 asked DoD to report on the adequacy and participation of the ECHO program. Neither report was adequate. The Military Compensation and Retirement Modernization Commission (MCRMC), in its final January 2015 report (and again in December of 2015 as an addendum), noted the deficiencies in the DoD's administration of this program, including the issue as one of their fifteen final recommendations. Since the committees' consideration of their respective NDAA legislation, it has come to our attention that, contrary to the MCRMC recommendation, the Defense Health Agency now intends to survey current ECHO beneficiaries, sometime in late 2017. We are concerned that this process will considerably delay consideration and implementation of these fully vetted MCRMC recommendations. We would encourage conferees to include the following MCRMC proposed legislative language in the final version of the NDAA.

SEC. ___. EXTENDED CARE HEALTH OPTION (ECHO).

Section 1079 of title 10, United States Code, is amended by adding at the end the following: "(q) In carrying out the Extended Care Health Option (ECHO) the Secretary of Defense, after consultation with

the other administering Secretaries, shall ensure that the services provided under such option are an alternative to, and are comparable to, the services provided under the applicable (as determined by the Secretary of Defense) State plans for medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).".

Senate section 762, the related House committee report provision, along with the addition of the recommended ECHO legislative language, are critical to improve pediatric care and related services for children of members of the Armed Forces and all children covered by TRICARE, which is greatly needed. Your attention to the needs of children of military families, and specific direction to the Secretary is much appreciated.

Senate Section 580: Comptroller General of the United States Report on Exceptional Family Member Programs (ECHO)

Section 580 requires the Comptroller General of the United States to submit a report to the Senate and House Committees on Armed Services on the effectiveness of each Exceptional Family Member Program (EFMP) of the Armed Services. These programs are crucial to military children with special healthcare needs, as they provide necessary resources, supports, and case management. The Tricare for Kids Coalition has noted throughout the initiative that connections and navigation among EFMP and Extended Health Care Option (EHCO) and community supports and services such as Medicaid waiver services, must be improved.

Furthermore, this report will assess the implementation of the GAO report on "Military Dependent Students, Better Oversight Needed to Improve Services for Children with Special Needs," which is a step in the right direction to improve integrally connected health and education programs and services for our most vulnerable children.

While all children have unique needs as compared to adults, children in military families face distinct experiences due to the very nature of their parents' service to our nation. The practical difficulties that accompany deployments and frequent relocations must be taken into consideration when fashioning the health, medical and social support systems necessary to serve these families. These considerations take on even greater significance when the family is impacted by chronic, complex or special needs.

Accordingly, the requirement in Section 580 for a Government Accountability Office study of the Exceptional Family Member Program, including very specific elements of access, coverage, coordination, and meaningful implementation of intent, is timely and much appreciated.

Further provisions critical to the health and provision of healthcare to children include:

Senate Section 736: Establishment of high performance military-civilian integrated health delivery systems

Section 736 would require the Secretary of Defense to establish high performance military-civilian integrated health delivery systems through partnerships with other health systems, including local or regional health systems in the private sector and the Veterans Health Administration. The Coalition agrees with the committee that "implementation of this provision would improve health outcomes and enhance the experience of care for beneficiaries as local military treatment facilities create strong synergistic relationships with private sector health systems to form integrated high performance health systems. These formal relationships would foster innovation in military treatment facilities, enhance

operational medical force readiness, improve access to specialized medical care, and strengthen care coordination through integration of all activities of these new health delivery systems."

A longstanding recommendation of the Tricare for Kids Coalition is to allow local military treatment facilities to partner with children's hospitals and other providers to serve the pediatric complex care management and coordination needs of military families. This provision, and other similar ones, would facilitate that and other innovative targeted partnerships that will be beneficial for military and civilian sectors, and most importantly for the families served by both.

Senate Section 577: Reporting on Allegations of Child Abuse in Military Families and Homes
House Section 541: Expedited Reporting of Child Abuse and Neglect to State Protective Services
Senate Section 577 would increase reporting of allegations of child abuse to the Family Advocacy Program. While the Department of Defense (DoD) should continue to analyze and work accordingly on reducing the instances of child abuse, data and information about instances of child abuse is paramount to addressing the problem both holistically and long term.

We also appreciate House Section 541, which requires all military and civilian personnel of the Department of Defense working on military installations to report suspected instances of child abuse and neglect to their DoD chain of command, and to also promptly notify State Child Protective Services. It is very important that DoD works in tandem with the proper civilian jurisdictions on child abuse reporting.

Senate Section 704: Coverage of Medically Necessary Food and Vitamins for Digestive and Inherited Metabolic Disorders Under the TRICARE Program
House Report language: TRICARE Coverage of Medically Necessary Foods
The Senate section directs the TRICARE program to cover medical necessary food and vitamins for digestive and inherited metabolic disorders. Medical foods are necessary for the safe and effective management of many of these disorders. However, coverage of these critical foods that affect digestion, absorption, and metabolism of nutrients have been routinely denied by TRICARE. Additionally, the appeals process to obtain coverage of these foods is often complex and lengthy, and yields varied outcomes. By simply covering medical foods from the outset, patients in need of these foods will be able to access them as medically needed.

The House report provision signals similar intent, and directs the Secretary of Defense to review the adequacy of current TRICARE coverage policy for nutritional therapy and provide a briefing of its findings to the Armed Services Committee of the House of Representatives by July 1, 2017.

Both provisions are appreciated. Similar to several provisions discussed above, medical nutrition was one of the issues included in the original pediatric report (aka Tricare for Kids report) required by Section 735 of the NDAA for 2013; gaps were identified by both stakeholders and the DoD, yet no action has been taken to date to correct the deficiencies. Therefore we appreciate the strong direction by both committees, and request that the specific statutory direction of the Senate bill be retained in conference.

Senate Section 758: Maintenance of Certain Reimbursement Rates for Care and Services to Treat Autism Spectrum Disorder Under Demonstration Program
House Section 734: Applied Behavior Analysis
These sections require maintenance of reimbursement rates for services provided pursuant to the Autism Care Demonstration Project. This provision is needed in order to promote comprehensive access to care, which is the purpose of the demonstration, and the Department's decision to lower rates midway through

the project has had an adverse impact on families' ability to access covered care. As a result of recent reimbursement rate reductions, an increasing number of providers of applied behavior analysis located near military facilities are no longer accepting new TRICARE patients or are terminating services that they previously provided. Reinstating the previous rates for applied behavior analysis therapy through the authorized duration of the demonstration would also allow for the most valid evaluation at its conclusion. The work of both the House and the Senate on this issue is to be applauded.

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While we support and are thankful to the House and Senate Armed Services Committees for the sections listed above, we do feel the need to convey our concerns with the following provisions

Senate Section 752: Implementation of Plan to Eliminate Certain Graduate Medical Education Programs of Department of Defense
Section 730: Program to Eliminate Variability in Health Outcomes and Improve Quality Health Care Services Delivered in Military Treatment Facilities; and
Section 735: Adjustment of Medical Services, Personnel, Authorized Strengths, and Infrastructure in Military Health System to Maintain Readiness and Core Competencies of Health Care Providers
Section 752 is concerning because of the implications it will have for the pediatric workforce and children's access to care. This provision directs the Secretary, "to implement a phased plan to eliminate graduate medical programs of the DoD that do not directly support the operational medical force readiness…" with corresponding report language that identifies pediatrics and obstetrics/gynecology as two specialties slated for elimination. While understanding the linkage between training and military medical readiness, we urge you to move carefully and slowly when considering changes to medical education training programs in areas where shortages exist; and if Congress decides to move forward, to communicate and coordinate with the civilian sector so that unintended consequences that impede access can be avoided.

Sections 730 and 735 contain similar provisions regarding staffing levels that may lead to dramatic reductions in pediatrician and OB/GYNs, which could harm access to care. Unless the demographics of the force change dramatically, there will continue to be a strong and steady need for pediatricians and OB/GYNs to deliver beneficiary care.

One of the main goals cited in the Senate version of the FY17 NDAA is to ensure that the medical professionals in the Armed Forces are better trained and prepared to treat soldiers in combat and operational situations. While the Coalition supports this goal, we are encouraged that there are several NDAA provisions that could enhance and facilitate military and civilian partnerships that we believe will be instrumental in addressing some of the underlying concerns. Meanwhile, the Coalition urges the Conference Committee to carefully consider short and long term ramifications, including access to care, of limiting pediatric and OB/GYN staffing and medical education programs, and rather focus on military and civilian partnerships to tailor solutions to specific staff and training concerns, and to the unique needs of special populations such as children and pregnant women.
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Senate Section 701 Reform of health care plans available under the TRICARE program
Section 701 of S. 2943 contains a provision (on page 322) authorizing DoD to adopt special coverage and reimbursement methods, amounts and procedures to encourage the use of high-value services and products (the "carrot") and discourage the use of low-value services and products (the "stick".) Encouraging the use of high-value services is already being employed in the civilian sector - the elimination of cost shares and copays for preventive care is one example – and we support this concept.

However, we believe changing reimbursement to discourage the use of low-value services (the "stick") is still only conceptual. We are not aware of any commercial or other government payer that has implemented this approach. We oppose this provision within Section 701 as it gives DoD too much latitude in making coverage determinations and makes military families guinea pigs for "stick side" reimbursement policies.

We note these sections as potentially undermining some of the important advances in addressing children's health discussed above, and urge you to consider the negative impact on access issues, quality of care, and research developments for children.

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The TFK Coalition reiterates its appreciation for Congressional oversight committees' leadership and appreciates inclusion of the specific requirements for improvements to children's healthcare coverage, access and accountability in the 2017 NDAA.

The TFK Coalition looks forward to continuing working with Congress, military families and the Department of Defense to ensure that the current and future military health care system truly meets the unique health needs of children of military families.