

# Congress of the United States

Washington, DC 20515

August 9, 2022

The Honorable Lloyd J. Austin III  
Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Dear Secretary Austin,

A Government Accountability Office (GAO) report released last month found that the Department of Defense (DOD, the Department) may be misleading or misinforming civilians about debt they incur when they receive emergency medical care at military health care facilities.<sup>1</sup>

This was a deeply troubling finding. When a civilian receives care from a military treatment facility (MTF) it is for an unexpected emergency.<sup>2</sup> But the GAO found 67 percent of the civilian emergency patients who received treatment did not have insurance,<sup>3</sup> leaving them highly vulnerable to massive medical bills.

No American should struggle to access health care or be forced to take on significant medical debt to get the care they need. One in 10 adults owes medical debt, with 3 million people owing more than \$10,000.<sup>4</sup> This debt is more likely to be held by people with disabilities, those in poor health, and Black adults.<sup>5</sup> Even those who are insured are unlikely to be able to cover a typical private health plan deductible.<sup>6</sup> It is essential that the federal government promote policies to ensure that our nation's health care system provides high-quality, affordable health care that does not lead to debt or bankruptcy or force families to choose between medical care and other necessities.

DOD has 49 hospitals and inpatient facilities that primarily support military service members and beneficiaries.<sup>7</sup> Under certain circumstances, including emergencies or instances when a military hospital is uniquely equipped to handle treatment, these hospitals treat civilian patients.<sup>8</sup>

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<sup>1</sup> Government Accountability Office, "Defense Health Care: Actions Needed to Improve Billing and Collection of Debt for Civilian Emergency Care," July 7, 2022, <https://www.gao.gov/assets/gao-22-104770.pdf>.

<sup>2</sup> *Id.*, p. 14.

<sup>3</sup> *Id.*, p. 48.

<sup>4</sup> Kaiser Family Foundation, "1 in 10 Adults Owe Medical Debt, With Millions Owing More than \$10,000," Craig Palosky, March 10, 2022, <https://www.kff.org/health-costs/press-release/1-in-10-adults-owe-medical-debt-with-millions-owing-more-than-10000/>.

<sup>5</sup> *Id.*

<sup>6</sup> Peterson-KFF Health System Tracker, "How many people have enough money to afford private insurance cost sharing?" Gregory Young, Matthew Rae, Gary Claxton, Emma Wager, and Krutika Amin, March 10, 2022, <https://www.healthsystemtracker.org/brief/many-households-do-not-have-enough-money-to-pay-cost-sharing-in-typical-private-health-plans/>.

<sup>7</sup> Military Health System, "MHS Health Facilities," <https://www.health.mil/I-Am-A/Media/Media-Center/MHS-Health-Facilities>.

<sup>8</sup> Department of Defense, "Instruction: Health Care Eligibility Under the Secretarial Designee (SECDES) Program and Related Special Authorities," updated May 28, 2020, p. 2, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/602523p.pdf>; 32 CFR 108.4; National Defense

Care is provided on a reimbursable basis and DOD regulations require DOD to “aggressively” collect all debts.<sup>9</sup> DOD refers debt collection to the Treasury Department (Treasury), which can withhold a patient’s wages or tax refunds, or up to 15 percent of their Social Security benefits.<sup>10</sup>

Press and congressional reports of unusually aggressive billing practices by MTFs include more than \$28,000 to repair a fractured heel bone, \$1.7 million for life-saving treatment for a burn victim, and \$210,008.07 plus interest for treatment to repair a ruptured bladder.<sup>11</sup> In 2020 Senator Warren wrote to the Department of Defense regarding concerns that the Department’s and Treasury’s collection practices were disproportionately affecting vulnerable Americans, including the uninsured, low-income families, and Social Security beneficiaries.<sup>12</sup> Treasury data provided to Senator Warren indicates that from 2010 to 2019 more than \$502 million were collected from offsets of federal tax refunds, over \$835 million from Social Security benefit payments, nearly \$28 million from garnishing federal employee salaries, and roughly \$6.5 million from the garnishment of non-federal wages.<sup>13</sup>

There are several pathways by which the federal government can provide relief for civilians who have incurred this medical debt. Under the 1996 *Debt Collection Improvement Act*, the Department of Defense, Treasury, and the Department of Justice have the authority to “compromise” or settle debts with individuals for less than the full amount owed.<sup>14</sup> DOD relies on Treasury to settle those debts. Separately, under the Secretarial Designee program the Under Secretary of Defense for Personnel and Readiness or the secretaries of the military departments can waive reimbursement under limited circumstances.<sup>15</sup> To help alleviate this burden on low-income patients, Representative Castro and Senator Warren secured similar provisions in the National Defense Authorization bills for their respective chambers that were reconciled and

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Authorization Act for Fiscal Year 2017, Public Law 114-328, Section 717.

<sup>9</sup> 31 CFR 901.1(a); Department of Defense, “Financial Management Regulation: VOLUME 16, CHAPTER 2: ‘GENERAL INSTRUCTIONS FOR COLLECTION OF DEBT OWED TO THE DOD,’” April 2021, [https://comptroller.defense.gov/Portals/45/documents/fmr/current/16/16\\_02.pdf](https://comptroller.defense.gov/Portals/45/documents/fmr/current/16/16_02.pdf).

<sup>10</sup> 31 CFR 285.11.

<sup>11</sup> Center for Public Integrity, “America’s most powerful medical-debt collector,” Jared Bennett and Olga Khazan, January 21, 2020, <https://publicintegrity.org/inequality-poverty-opportunity/medical-debt-army-hospital/>; CBS News, “U.S. citizen billed \$1.7 million by government for life-saving burn treatment: ‘Completely hopeless,’” Anna Werner, April 7, 2021, <https://www.cbsnews.com/news/us-citizen-bill-government-burn-treatment-alexis-hernandez/>; Letter from Representative Joaquin Castro to the House Armed Services Committee regarding need to overhaul emergency billing practices, March 31, 2020, <https://castro.house.gov/imo/media/doc/Castro%20FY21%20NDAA%20Member%20Request.pdf>.

<sup>12</sup> Letter from Senator Warren to Secretary of Defense Mark Esper regarding collection of medical debt from non-military, low-income patients, January 29, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.01.29%20Letter%20to%20DoD%20re%20military%20hospital%20debt%20collection.pdf>

<sup>13</sup> Letter from Frederick W. Vaughan, Principal Deputy Assistant Secretary for the Department of Treasury Office of Legislative Affairs to Senator Warren, April 29, 2020, pp. 2-3, [on file with the Office of Senator Elizabeth Warren].

<sup>14</sup> 31 U.S.C. 3711; 31 CFR 902; Department of Defense, “Financial Management Regulation: VOLUME 16, CHAPTER 2: ‘GENERAL INSTRUCTIONS FOR COLLECTION OF DEBT OWED TO THE DOD,’” April 2021, [https://comptroller.defense.gov/Portals/45/documents/fmr/current/16/16\\_02.pdf](https://comptroller.defense.gov/Portals/45/documents/fmr/current/16/16_02.pdf).

<sup>15</sup> The Secretarial Designee program provides eligibility for military medical evacuation and care to individuals who aren’t already eligible under TRICARE. Congressional Research Service, “The Secretarial Designee Program,” Bryce H.P. Mendez, September 1, 2021, [on file with the Office of Senator Elizabeth Warren]; Department of Defense, “Instruction: Health Care Eligibility Under the Secretarial Designee (SECDES) Program and Related Special Authorities,” updated May 28, 2020, p. 2, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/602523p.pdf>.

included in the final, passed version of the *National Defense Authorization Act* for fiscal year 2021.<sup>16</sup> The provision expands DOD’s authority to waive medical debt when the civilian is unable to pay the costs of the care provided and the care enhances the knowledge, skills, and abilities of military health care providers.<sup>17</sup>

But the GAO report indicates none of these authorities are being used in an appropriate fashion. Of the 26,696 civilian medical debt cases GAO reviewed, only 0.1 percent were reduced.<sup>18</sup> DOD lacks the data necessary to accurately assess whether treatment for civilians enhances medical readiness, has weak internal controls to accurately track debts collected, and seemingly refuses to exercise these waiver authorities.<sup>19</sup> Only the Navy confirmed approving waivers from fiscal years 2016 through 2021.<sup>20</sup>

The GAO report revealed another troubling reason for the small number of waivers and compromises: it found that DOD military treatment facilities were misleading and misinforming the public about their right to seek relief for this debt. Army and Air Force documents did not include any information about waivers, and disclosure was inconsistent in Navy and Defense Health Agency documentation. The Air Force also failed to include information about compromise options, as did the Defense Health Agency.<sup>21</sup>

For example, rather than informing patients of alternative options for financial relief, the sample letter the Defense Health Agency provided included misleading guidance to tell patients that “Neither the [Uniform Business Office] nor the Military Treatment Facility where you received your services has the authority to grant a waiver to collect the charges related to these services.”<sup>22</sup> Even when publicizing an initiative to alleviate billing concerns, Brooke Army Medical Center reinforced the message that MTFs cannot help guide patients through their relief options.<sup>23</sup>

The GAO report also revealed that some outstanding debts are likely based on false or incomplete information. GAO found that “DOD is unable to reliably identify the volume and type of civilian emergency cases treated at MTFs.”<sup>24</sup> Their review found at least 23 percent of patients had been assigned the wrong category code.<sup>25</sup> Only two of the 39 MTFs reviewed by the GAO consistently updated their billing system to include payments received.<sup>26</sup> MTFs have tried to establish a patchwork of systems to seek reimbursement through Medicare and Medicaid but have repeatedly encountered billing issues or had claims rejected.<sup>27</sup> This problem is exacerbated

<sup>16</sup> Congress.gov, “Conference Report to Accompany H.R. 6395,” December 3, 2020, p. 1654, <https://www.congress.gov/116/crpt/hrpt617/CRPT-116hrpt617.pdf>.

<sup>17</sup> William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283, Section 702.

<sup>18</sup> Government Accountability Office, “Defense Health Care: Actions Needed to Improve Billing and Collection of Debt for Civilian Emergency Care,” July 7, 2022, <https://www.gao.gov/assets/gao-22-104770.pdf>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*, pp. 28-29.

<sup>21</sup> *Id.*, pp. 28-29.

<sup>22</sup> *Id.*, p. 33.

<sup>23</sup> Defense Visual Information Distribution Service, “BAMC launches initiative to help alleviate billing concerns,” Elaine Sanchez, September 1, 2021, <https://www.dvidshub.net/news/404358/bamc-launches-initiatives-help-alleviate-billing-concerns>.

<sup>24</sup> Government Accountability Office, “Defense Health Care: Actions Needed to Improve Billing and Collection of Debt for Civilian Emergency Care,” July 7, 2022, p. 21, <https://www.gao.gov/assets/gao-22-104770.pdf>.

<sup>25</sup> *Id.*, p. 22.

<sup>26</sup> *Id.*, p. 25.

<sup>27</sup> *Id.*, p. 20.

by the varying levels of Medicaid coverage across states creating variation that “will likely prevent a standardized solution for Medicaid billing across MTFs.”<sup>28</sup>

It is unclear how many civilians receive treatment at MTFs and may be carrying excessive medical debt as a consequence. These hospitals can be invaluable resources for their communities, which is why the *National Defense Authorization Act* for fiscal year 2017 included a provision based on Senator Warren’s *Jessica Kensky and Patrick Downes Act* to expand care and prioritize civilian victims of terror.<sup>29</sup> The “717 pilot program” further expanded the ability of MTFs to treat civilians to maintain military readiness.<sup>30</sup> But as the GAO points out, increased financial risk to civilians creates a barrier to further expanding services.<sup>31</sup> MTFs can enhance community relations by clearly communicating available debt relief options to patients and the DOD can help thousands of Americans who have incurred medical debt at these facilities by waiving that debt.<sup>32</sup>

To address our concerns about DOD’s practices for addressing civilian debt incurred at MTFs, we ask that you please provide answers to the following questions no later than August 26:

1. Will the Under Secretary of Defense for Personnel and Readiness and the Director of the Defense Health Agency issue and implement revised guidance for MTFs to clarify financial relief options? If so, what is the timeline for any new guidance?
2. What actions will DOD take to ensure that MTFs provide patients with full, timely, and complete information about debt relief options?
3. How will DOD and MTFs notify patients who already carry debt about their debt relief options?
4. How does DOD plan to assess whether medical care provided to civilians is enhancing medical readiness?
  - a. How will that information be used to assess patients’ eligibility for debt relief?
  - b. How will that information be used to determine whether MTFs should expand the services civilians may receive?
5. How is DOD implementing section 702 of the fiscal year 2021 *National Defense Authorization Act* to expand debt waiver authority?<sup>33</sup>
6. What criteria does DOD provide to Treasury to determine whether a debt should be waived or compromised?
7. How is DOD implementing section 712 of the fiscal year 2017 *National Defense Authorization Act* to expand care and prioritize civilian victims of terror?<sup>34</sup>

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<sup>28</sup> *Id.*, p. 20.

<sup>29</sup> National Defense Authorization Act for Fiscal Year 2018, Public Law 115-91, Section 712; Office of Senator Elizabeth Warren, “Warren and Collins Introduce Bipartisan Legislation to Provide Military Health Care Treatment to Victims of Terrorism,” press release, June 15, 2017, <https://www.warren.senate.gov/newsroom/press-releases/warren-and-collins-introduce-bipartisan-legislation-to-provide-military-health-care-treatment-to-victims-of-terrorism>.

<sup>30</sup> National Defense Authorization Act for Fiscal Year 2017, Public Law 114-328, Section 717, as amended by the National Defense Authorization Act for Fiscal Year 2018, Public Law 115-91, Section 712.

<sup>31</sup> Government Accountability Office, “Defense Health Care: Actions Needed to Improve Billing and Collection of Debt for Civilian Emergency Care,” July 7, 2022, p. 19, <https://www.gao.gov/assets/gao-22-104770.pdf>.

<sup>32</sup> *Id.*, pp. 46-47.

<sup>33</sup> William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283, Section 702.

<sup>34</sup> National Defense Authorization Act for Fiscal Year 2017, Public Law 114-328, Section 717, as amended by the National Defense Authorization Act for Fiscal Year 2018, Public Law 115-91, Section 712.

8. The fiscal year 2021 *National Defense Authorization Act* expanded DOD's ability to waive medical debt for civilians when the civilian is unable to pay the costs of the care provided and the care enhances the knowledge, skills, and abilities of military healthcare providers.<sup>35</sup>
  - a. What guidance is in place to establish which civilians can receive these waivers?
  - b. How many of these debt waivers have been granted since the 2021 *National Defense Authorization Act* was signed into law?

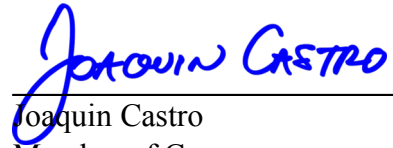
Thank you for your attention to these matters.

Sincerely,



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Elizabeth Warren  
United States Senator



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Joaquin Castro  
Member of Congress

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<sup>35</sup> William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283, Section 702.