

Congress of the United States

Washington, DC 20515

March 6, 2023

Dr. Lester Martinez-Lopez
Assistant Secretary of Defense for Health Affairs
1200 Defense, Pentagon
Room 3E1070
Washington, DC 20301

Lieutenant General Telita Crosland
Director, Defense Health Agency
7700 Arlington Boulevard, Suite 5101
Falls Church, VA 22042-5101

Dear Assistant Secretary Martinez-Lopez and Major General Crosland:

We write regarding our concern that the Department of Defense (DoD, the Department) is dragging its feet in implementing section 702 of the fiscal year 2021 *National Defense Authorization Act*,¹ which allows DoD to waive civilian patients' medical debts incurred at military treatment facilities. We urge the Defense Health Agency to implement this provision and Section 716 of the *National Defense Authorization Act* for fiscal year 2023,² which allows similar accommodations from DoD, as expeditiously as possible to provide these patients the relief they deserve under the law.

The Department's military treatment facilities (MTF) can provide civilians care under limited circumstances through the Secretarial Designee Program, including when doing so enhances medical readiness or when a military hospital is uniquely qualified to handle treatment.³ For example, Brooke Army Medical Center (BAMC), located in San Antonio, Texas, on average treated 5,100 civilian patients per year between 2016-2021 and is the only MTF to routinely use Secretarial Designee authorities to treat civilian emergency patients.⁴ As one of the only Level I Trauma Centers in South Texas, BAMC is often the only option for patients who need trauma care.⁵

However, civilians who receive treatment at BAMC and across the United States are frequently left to deal with onerous billing, collection, and debt management practices. Military treatment

¹ William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283, Section 702, <https://www.govinfo.gov/content/pkg/PLAW-116publ283/pdf/PLAW-116publ283.pdf>.

² James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law 117-263, Section 716.

³ Department of Defense, "Instruction: Health Care Eligibility Under the Secretarial Designee (SECDDES) 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 Authorization Act for Fiscal Year 2017, Public Law 114-328, Section 717.

⁴ Government Accountability Office, "Defense Health Care: Actions Needed to Improve Billing and Collection of Debt for Civilian Emergency Care," July 7, 2022, p. 6, <https://www.gao.gov/assets/gao-22-104770.pdf>.

⁵ Texas Department of State Health Services, "EMS/Trauma Systems Interactive Map," <https://www.dshs.texas.gov/dshs-ems-trauma-systems/ems-trauma-systems-interactive-map#NewBookmark>.

facilities “typically charge the full rate,” and “bill the patient the amount insurance will not cover,”⁶ and DoD regulations require DoD to “aggressively” collect all medical debts.⁷ For patients that cannot pay their medical debts, DoD refers debt collection to the Treasury Department, which can withhold patients’ wages, tax refunds, or up to 15 percent of their Social Security benefits.⁸

These aggressive debt collection practices are particularly pernicious and create an undue hardship for low-income patients. The Government Accountability Office (GAO) found that between 2016 and 2021 the Department of Defense billed over 60,000 civilian patients.⁹ Only 0.1 percent of debt cases reviewed by the GAO were reduced.¹⁰ Two thirds of the patients billed by DoD did not have insurance,¹¹ a clear indicator that paying their medical bill will create undue hardship. Patients who have coverage through Medicare and Medicaid systemically encountered billing issues or had their claims rejected.¹² DoD reports that it was only able to recover 6.2 percent of the amount billed from individual payments, further underscoring many patients’ inability to pay.¹³ To prevent this undue hardship Senator Warren and Representative Castro secured provisions in the *National Defense Authorization Act* for fiscal year 2021 to expand DoD’s authority to waive medical debts when the civilian patient “is unable to pay for the costs of the trauma or other medical care provided to the civilian (including any such costs remaining after the Secretary receives payment from an insurer for such care, as applicable).”¹⁴ Section 716 of the National Defense Authorization Act for fiscal year 2023, which Rep. Castro introduced as an amendment, provided the Director of the Defense Health Agency additional authority to reduce medical debt if a civilian “is underinsured, or has a remaining balance and is at risk of financial harm.”¹⁵

In response to a request from Senator Warren, the Defense Health Agency indicated on January 4, 2023 that the agency is still developing its process to implement Section 702 since DHA “did not previously have any method for conducting an ability-to-pay assessment.”¹⁶ But as the GAO report noted, DoD’s own financial management regulations (FMR) already list factors for determining a debtors’ ability to pay, including current financial statements, income, and credit

⁶ Government Accountability Office, “Defense Health Care: Actions Needed to Improve Billing and Collection of Debt for Civilian Emergency Care,” July 7, 2022, pp. 14-15, <https://www.gao.gov/assets/gao-22-104770.pdf>.

⁷ 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.

⁸ 31 CFR 285.11.

⁹ Government Accountability Office, “Defense Health Care: Actions Needed to Improve Billing and Collection of Debt for Civilian Emergency Care,” July 7, 2022, p. 26, <https://www.gao.gov/assets/gao-22-104770.pdf>.

¹⁰ *Id.*, p. 30.

¹¹ *Id.*, p. 48.

¹² *Id.*, p. 20.

¹³ Email from the Office of the Assistant Secretary of Defense for Legislative Affairs to the Office of Senator Elizabeth Warren, February 1, 2023 [On file with Office of Senator Elizabeth Warren].

¹⁴ Congress.gov, “Conference Report to Accompany H.R. 6395,” December 3, 2020, p. 1654, <https://www.congress.gov/116/crpt/hrpt617/CRPT-116hrpt617.pdf>; William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283, Section 702.

¹⁵ James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law 117-263, Section 716.

¹⁶ Email from the Office of the Assistant Secretary of Defense for Legislative Affairs to the Office of Senator Elizabeth Warren, January 4, 2023 [On file with Office of Senator Elizabeth Warren]

report and other financial information.¹⁷ In fact, the Department has several options to quickly move forward:

- **Adopting DoD’s existing process to assess financial hardship.** Retired members of the military may request a review from the Defense Financial Accounting Service (DFAS) when recoupment of their retired pay “results in an undue financial hardship.”¹⁸ That process includes whether payments “prevents the member from meeting the costs necessarily incurred for essential subsistence expenses” for the member and dependents, including “food, housing, necessary public utilities, clothing, transportation, and medical care.”¹⁹
- **Waiving debts for patients eligible to participate in the Supplemental Nutrition Assistance Program (SNAP).** Independent analysts have identified SNAP “as a reliable data source” that is current, accurate, and complete.²⁰ The data is updated frequently and requires “thorough verification of income.”²¹ It is also used by some states to automatically enroll beneficiaries in other programs, including Medicaid.²²
- **Adopt the Internal Revenue Service (IRS) Collection Financial Standards.** Also known as allowable living expense (ALE) standards,²³ in calculating delinquent taxes the IRS applies a “necessary expense test,”²⁴ which is “defined as expenses that are necessary to provide for a taxpayer’s (and his or her family’s) health and welfare and/or production of income.”²⁵ Those standards “include national and local standards, which are guidelines established by the IRS to provide consistency in certain expense allowances.”²⁶ They also allow for taxpayers to provide documentation when imposing them would “leaves [taxpayers] an inadequate means of providing for basic living expenses.”²⁷ Applying this test would allow DoD to compromise or waive debts that would cause excessive economic hardship to patients.

DoD has no excuse for inaction on this important provision that would release thousands of civilians from burdensome medical debts incurred at military facilities. We ask that you quickly

¹⁷ Government Accountability Office, “Defense Health Care: Actions Needed to Improve Billing and Collection of Debt for Civilian Emergency Care,” July 7, 2022, p. 31, <https://www.gao.gov/assets/gao-22-104770.pdf>.

¹⁸ Department of Defense, “Financial Management Regulation,” DoD 7000.14-R, Volume 7B, Chapter 4, September 2014, 4-13. https://comptroller.defense.gov/Portals/45/documents/fmr/archive/07barch/07b_04_Sep14.pdf.

¹⁹ *Id.*, 4-14.

²⁰ Center on Budget and Policy Priorities, “Using SNAP Data for Medicaid Renewals Can Keep Eligible Beneficiaries Enrolled,” September 9, 2020, <https://www.cbpp.org/research/health/using-snap-data-for-medicaid-renewals-can-keep-eligible-beneficiaries-enrolled>.

²¹ *Id.*

²² Bloomberg Law, “Medicaid Programs Scramble with Coverage for Millions at Risk,” Ganny Belloni, January 20, 2023, <https://news.bloomberglaw.com/health-law-and-business/medicaid-programs-scramble-with-coverage-for-millions-at-risk>.

²³ Taxpayer Advocate Service, “2018 Annual Report to Congress,” Mary Beth Murphy, p. 231, https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/07/ARC18_Volume1_MSP_15_EconomicHardship.pdf.

²⁴ Internal Revenue Service, “Collection Financial Standards,” April 25, 2022, <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards>.

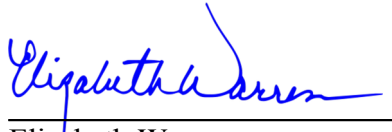
²⁵ *Id.*

²⁶ Taxpayer Advocate Service, “2018 Annual Report to Congress,” Mary Beth Murphy, p. 231, https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/07/ARC18_Volume1_MSP_15_EconomicHardship.pdf.

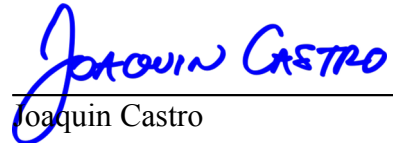
²⁷ Department of Justice, “Means Testing,” October 17, 2022, <https://www.justice.gov/ust/means-testing/20220515>.

implement these provisions and request you provide our offices a briefing on your progress no later than March 31.

Sincerely,



Elizabeth Warren
United States Senator



Joaquin Castro
Member of Congress