

July 25, 2023

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

Lieutenant General Telita Crosland
Director
Defense Health Agency
7700 Arlington Blvd
Falls Church, VA 22042

Dear Secretary Austin and Lieutenant General Crosland,

I am writing regarding reports¹ that the Department of Defense (DoD) is failing to prevent price gouging and overpayments in the TRICARE health program. A series of DoD Inspector General (IG) reports revealed overpayments to TRICARE contractors by the Defense Health Agency (DHA), including paying rates above DHA's own pricing policies. These concerns about overpayments are not new: DHA in 2020 recovered almost \$500 million in judgements and settlements related to TRICARE overpayments² – unrelated to the mentioned IG reports – and I wrote to you about my concerns about DoD overpayments of spare parts in May 2023.³ The failure to protect taxpayer funds is unacceptable, particularly given recently imposed Congressional spending caps.⁴ I seek to learn more about what steps DoD and DHA are taking to protect taxpayer dollars.

DoD's Military Health Programs

The Military Health System (MHS) is the DoD's program to deliver health services to military personnel, retirees, and their families. In FY2023, President Biden requested \$55.8 billion to fund MHS.⁵ MHS beneficiaries receive care in military treatment facilities (MTFs) – DoD hospitals and clinics – and through civilian health care providers participating in TRICARE. DoD noted that over half of the Defense Health Program's Operation and Maintenance spending goes to private

¹ U.S. Department of Defense, Office of the Inspector General, "TRICARE Payments for Standard Electric Breast Pumps and Replacement Parts," <https://media.defense.gov/2018/May/01/2001910568/-1/-1/1/DODIG-2018-108.PDF>; <https://www.military.com/daily-news/2018/04/27/pentagon-overspends-16-million-electric-breast-pumps-ig-report.html>

² Defense Health Agency, Program Integrity Division, "Operational Report Calendar Year 2020," <https://www.health.mil/About-MHS/OASDHA/Defense-Health-Agency/DHA-Office-of-the-Inspector-General/Fraud-and-Abuse/Reporting-Fraud-or-Abuse>, p. 4.

³ Letter from Senator Elizabeth Warren to Secretary of Defense Lloyd Austin, May 24, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.05.24%20Letter%20to%20DoD%20on%20refusing%20to%20turn%20over%20cost%20data.pdf>

⁴ The New York Times, "New Details in Debt Limit Deal: Where \$136 billion in cuts will come from," Jim Tankersley and Alan Rappeport, May 29, 2023, <https://www.nytimes.com/2023/05/29/us/politics/debt-ceiling-agreement.html>

⁵ Congressional Research Service, "FY2023 Budget Request for the Military Health System," April 29, 2022, p. 1, <https://crsreports.congress.gov/product/pdf/IF/IF12087/2>

sector care received by servicemembers, families and retirees.⁶ TRICARE is the DoD's administered health-insurance program for servicemembers, retirees, and their families in the U.S. and overseas.⁷ The program is divided into two regions⁸ – East and West – and is managed by private contractors on behalf of DHA.⁹ Currently Health Net Federal Services (West),¹⁰ Humana Military (East),¹¹ and International SOS manage the two TRICARE regions and overseas.¹² DHA also partners with contractors to provide health services and care “beyond what’s available at military hospitals and clinics.”¹³

DHA overpayment of fair and reasonable rates

DHA is supposed to set a maximum reimbursement rate for all health care products and services through TRICARE, but in many cases fails to do so. A briefing I received from DoD IG provided additional information that DHA does not place a reimbursement rate cap on “generic” medical codes because this is used as a catch all category with various priced services and equipment, making it difficult or impossible to audit spending and facilitating DOD overpayments.¹⁴ For such generic medical codes, DHA will instead pay whatever is billed,¹⁵ giving providers an incentive to overcharge.

Two separate DoD IG reports¹⁶ highlighted DHA's failure to prevent provider and contractor-claims processor price gouging in 2016 and 2017. One report found that because DHA policy failed to “require contractors for the three TRICARE regions to use only suppliers that had fixed reimbursement rates,” DHA overpaid \$16.2 million for standard electric breast pumps and replacement parts in 2016, and estimated that without changes the DHA could “overpay an additional \$81.2 million over the next 5 years.”¹⁷ From 2015 to 2016, the amount DHA paid for TRICARE ‘paid-as-billed’ services and equipment for breast pumps increased nearly 122 percent.¹⁸

⁶ Congressional Research Service, “FY2023 Budget Request for the Military Health System,” April 29, 2022, p. 2, <https://crsreports.congress.gov/product/pdf/IF/IF12087/2>

⁷ U.S. Department of Defense, Office of the Inspector General, “TRICARE Payments for Standard Electric Breast Pumps and Replacement Parts,” <https://media.defense.gov/2018/May/01/2001910568/-1/-1/1/DODIG-2018-108.PDF>

⁸ *Id.*

⁹ Military.com, “Tricare,” <https://www.military.com/benefits/tricare>

¹⁰ U.S. Government Accountability Office, “Defense Health Care: Opportunities to Improve Future TRICARE Managed Care Support Contract Transitions,” November, 2019, p. 5, <https://www.gao.gov/assets/gao-20-39.pdf>

¹¹ *Id.*

¹² TRICARE, “Partners,” <https://www.tricare.mil/About/Partners>

¹³ *Id.*

¹⁴ Office of Senator Warren, DoD IG briefing.

¹⁵ U.S. Department of Defense, Office of the Inspector General, “Audit of TRICARE Payments for Health Care Services and Equipment That Were Paid Without Maximum Allowable Reimbursement Rates,” August 20, 2019, p. 2, <https://media.defense.gov/2019/Aug/22/2002173972/-1/-1/1/DODIG-2019-112.PDF>

¹⁶ U.S. Department of Defense, Office of the Inspector General, “TRICARE Payments for Standard Electric Breast Pumps and Replacement Parts,” <https://media.defense.gov/2018/May/01/2001910568/-1/-1/1/DODIG-2018-108.PDF>;

U.S. Department of Defense, Office of the Inspector General, “Audit of TRICARE Payments for Health Care Services and Equipment That Were Paid Without Maximum Allowable Reimbursement Rates,” August 20, 2019, <https://media.defense.gov/2019/Aug/22/2002173972/-1/-1/1/DODIG-2019-112.PDF>

¹⁷ U.S. Department of Defense, Office of the Inspector General, “TRICARE Payments for Standard Electric Breast Pumps and Replacement Parts,” <https://media.defense.gov/2018/May/01/2001910568/-1/-1/1/DODIG-2018-108.PDF>

¹⁸ *Id.* p. 3.

Another report found that DHA is paying higher prices than necessary for TRICARE services and equipment – \$3.1 million¹⁹ for human papillomavirus (HPV) vaccines and \$0.8 million²⁰ for intrauterine devices (IUD) – because it “did not establish or use... maximum allowable reimbursement rates,”²¹ the payment ceiling for reimbursement to providers. Additionally, DHA has failed to be proactive and update maximum allowable reimbursement rates when necessary. For instance, when Medicare stops reimbursing a specific procedure code and switches to a second procedure code, DHA has failed to update its methodology to be in-line with Medicare, meaning that in instances where a maximum rate was in place, it no longer is, leading to overpayment.²² The IG predicted that without changes the DHA could overpay “an additional \$19.5 million... over the next 5 years.”²³

When a maximum allowable charge rate is not used or established, DHA reimburses providers based on the amount billed.²⁴ This resulted in some providers billing as much as seven times the amount that other providers billed for the same health care equipment.²⁵ From 2015 to 2018, the amount DHA paid for TRICARE paid-as-billed services and equipment provided to beneficiaries increased nearly 50 percent.²⁶ Additional examples of gross overpayment by DHA are displayed in the table below.

¹⁹ *Id.* p. 21.

²⁰ *Id.* p. 21.

²¹ *Id.* p. 21.

²² *Id.* p. 20.

²³ *Id.* p. ii.

²⁴ *Id.* p. 2.

²⁵ *Id.* p. iii.

²⁶ *Id.* p. 4.

Table 1: Examples of DHA Overpayments²⁷		
Product/Service	Manufacturer/Medicare/Medicaid/Retail Price	DHA Price Paid
<i>Breast pump:</i> Medela Pump in Style Starter Kit and Spectra S2 ²⁸	< \$200.00	\$1400.00
<i>Breast pump:</i> Medela Pump in Style with On-the-go Tote model ²⁹	\$192.00	\$1500.00
<i>Vaccines:</i> HPV vaccine – GARDASIL9 ³⁰	\$204.87	\$1670.69
<i>Vaccines:</i> Measles, mumps, rubella, varicella – ProQuad ³¹	\$202.41	\$743.00
<i>Vaccines:</i> MenACWY – Menveo ³²	\$126.95	\$1848.00
<i>Contraceptives:</i> Intrauterine device (IUD) – Mirena ³³	\$652.82 – \$1090.76	\$1090.76 – \$6081.00
<i>Contraceptives:</i> Nexplanon implantable contraception ³⁴	\$1086.00	\$5384.00

²⁷ U.S. Department of Defense, Office of the Inspector General, “TRICARE Payments for Standard Electric Breast Pumps and Replacement Parts,” p. 15-16, <https://media.defense.gov/2018/May/01/2001910568/-1/-1/1/DODIG-2018-108.PDF>; U.S. Department of Defense, Office of the Inspector General, “Audit of TRICARE Payments for Health Care Services and Equipment That Were Paid Without Maximum Allowable Reimbursement Rates,” August 20, 2019, p. 8-11, <https://media.defense.gov/2019/Aug/22/2002173972/-1/-1/1/DODIG-2019-112.PDF>

²⁸ U.S. Department of Defense, Office of the Inspector General, “TRICARE Payments for Standard Electric Breast Pumps and Replacement Parts,” p. 15, <https://media.defense.gov/2018/May/01/2001910568/-1/-1/1/DODIG-2018-108.PDF>

²⁹ *Id.* p. 16.

³⁰ U.S. Department of Defense, Office of the Inspector General, “Audit of TRICARE Payments for Health Care Services and Equipment That Were Paid Without Maximum Allowable Reimbursement Rates,” August 20, 2019, p. 8, <https://media.defense.gov/2019/Aug/22/2002173972/-1/-1/1/DODIG-2019-112.PDF>

³¹ *Id.* p. 9.

³² *Id.* p. 10.

³³ *Id.* p. 11.

³⁴ *Id.* p. 11.

In addition to wasting taxpayer dollars, these overpayments harm beneficiaries. As DoD IG noted, “DHA policy requires beneficiaries in certain TRICARE categories to pay cost shares for [durable medical equipment].”³⁵ For example, some beneficiaries have to cover 20 percent of the costs of durable medical equipment. One TRICARE supplier billed \$5,000 for a VascuTherm 2 compression model that other suppliers offered for \$675. As a result, beneficiaries were responsible for paying an extra \$865, making them cover more than what should have been the total cost for renting the device.³⁶ It is especially troubling that in an era when reproductive health care is under attack, the products and services most at-risk for price-gouging are those that can help with family planning (e.g., pumps for nursing mothers and contraceptives).

As a result of these audits, DoD IG recommended³⁷ multiple actions by DHA, including (1) using only suppliers with fixed reimbursement rate agreements; (2) identifying why contractors didn’t use existing TRICARE maximum allowable rates; (3) confirming all claims are paid using the maximum rate, and recouping overpayments when they are not; (4) determining if other health care services used a maximum rate; (5) conducting annual reviews to identify when TRICARE paid higher prices and adjust accordingly; (6) revising TRICARE policy to include specific wording for ‘reasonable cost’ and ‘being a prudent buyer’; and (7) establishing an annual process to identify recent changes to Medicare reimbursement.³⁸ However, according to DoD IG, DHA still has not yet sought a refund of the \$16.2 and \$3.9 million in overpayments for standard and electrical breast pumps and replacement parts and vaccines and IUDs, respectively. DHA also has not fully implemented the recommendation to “conduct annual reviews [where]... TRICARE paid higher prices,” nor to “establish and implement new TRICARE maximum allowable reimbursement rates.”³⁹ It is unacceptable that DHA is not doing the bare minimum to ensure taxpayer dollars are protected.

Additionally, DHA has an office dedicated to focusing on these issues, but has failed to sufficiently address overpayment and update Congress and the public in recent years. DHA’s Program Integrity Division (PID) is responsible for health care anti-fraud activities to safeguard “beneficiaries and [protect] benefit dollars” including contractor oversight, investigations, and identification of areas for cost containment.⁴⁰ From 2018 to 2020, PID released an Annual Fraud and Abuse Report, which provides insight into overpayment and abuse of the TRICARE

³⁵ *Id.* p. 2.

³⁶ *Id.* p. 21-22.

³⁷ U.S. Department of Defense, Office of the Inspector General, “Audit of TRICARE Payments for Health Care Services and Equipment That Were Paid Without Maximum Allowable Reimbursement Rates,” p. ii-iii, <https://media.defense.gov/2019/Aug/22/2002173972/-1/-1/1/DODIG-2019-112.PDF>

³⁸ U.S. Department of Defense, Office of the Inspector General, “Audit of TRICARE Payments for Health Care Services and Equipment That Were Paid Without Maximum Allowable Reimbursement Rates,” August 20, 2019, p. iii-iv, <https://media.defense.gov/2019/Aug/22/2002173972/-1/-1/1/DODIG-2019-112.PDF>

³⁹ *Id.*

⁴⁰ Defense Health Agency, Program Integrity Division, “Operational Report Calendar Year 2020,” p. 2, <https://www.health.mil/About-MHS/OASDHA/Defense-Health-Agency/DHA-Office-of-the-Inspector-General/Fraud-and-Abuse/Reporting-Fraud-or-Abuse>

program.⁴¹ However, DHA has not released this report since 2020,⁴² hindering Congress’s ability to provide oversight and address this waste, fraud, and abuse.

Revolving Door and Conflicts of Interest Concerns at DHA

In addition to DHA overpaying for medical services and equipment, there are other deeply troubling aspects of the DoD IG report. According to the DoD IG, “the [DHA] Director [Raquel Bono] disagreed with the recommendation to seek voluntary refunds from TRICARE providers to whom DHA paid more than other pricing benchmarks identified in this report” and that “voluntary refunds are not realistic or enforceable if payments were paid according to the contract.”⁴³ However, even TransDigm – a notorious abuser of DOD contracting provisions⁴⁴ – provided DoD a \$16 million voluntary refund in 2022.⁴⁵ It is difficult to justify to taxpayers why DoD wouldn’t even attempt to recover funds due to the agency as a result of DHA overpayments.

Ms. Bono also “disagreed with using Medicaid pricing as a benchmark for pricing breast pump replacement parts” without offering an alternative solution, and DoD IG shared that “[t]he Director provided examples of retail sources that the Director believes shows that the Medicaid prices are too low.”⁴⁶ And DoD IG indicated that TRICARE North (Health Net)⁴⁷ and South (Humana)⁴⁸ were the regions overcharged.⁴⁹ But shortly after leaving the government, retired Vice Admiral Bono joined the board of Humana⁵⁰ – a decision that raises serious questions about conflicts of interest and DoD’s efforts to close the revolving door between government service and the private sector. Earlier this year, Humana announced that it will exit the employer-sponsored insurance market over the next 18-24 months, and instead focus exclusively on its contracts with

⁴¹ Defense Health Agency, Program Integrity Division, “Reporting Fraud and Abuse,” <https://www.health.mil/About-MHS/OASDHA/Defense-Health-Agency/DHA-Office-of-the-Inspector-General/Fraud-and-Abuse/Reporting-Fraud-or-Abuse>

⁴² *Id.*

⁴³ U.S. Department of Defense, Office of the Inspector General, “Audit of TRICARE Payments for Health Care Services and Equipment That Were Paid Without Maximum Allowable Reimbursement Rates,” August 20, 2019, p. iii, <https://media.defense.gov/2019/Aug/22/2002173972/-1/-1/1/DODIG-2019-112.PDF>

⁴⁴ Letter from Senator Elizabeth Warren to The TransDigm Group President and CEO Kevin Stein, May 24, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.05.24%20Letter%20to%20TransDigm%20on%20refusing%20to%20turn%20over%20cost%20data.pdf>

⁴⁵ Breaking Defense, “Will TransDigm again pay back the Pentagon ‘It’s not a yes or no answer,’” Andrew Eversden, January 19, 2022, <https://breakingdefense.com/2022/01/will-transdigm-again-pay-back-the-pentagon-its-not-a-yes-or-no-answer/>

⁴⁶ U.S. Department of Defense, Office of the Inspector General, “TRICARE Payments for Standard Electric Breast Pumps and Replacement Parts,” p. 15, <https://media.defense.gov/2018/May/01/2001910568/-1/-1/1/DODIG-2018-108.PDF>.

⁴⁷ U.S. Government Accountability Office, “Defense Health Care: Opportunities to Improve Future TRICARE Managed Care Support Contract Transitions,” November, 2019, p. 5, <https://www.gao.gov/assets/gao-20-39.pdf>.

⁴⁸ Humana, “Humana Awarded Department of Defense TRICARE East Region Contract,” press release, July 21, 2016, <https://press.humana.com/news/news-details/2016/department-of-defense-tricare-east-region-contract/default.aspx#gsc.tab=0>

⁴⁹ U.S. Department of Defense, Office of the Inspector General, “TRICARE Payments for Standard Electric Breast Pumps and Replacement Parts,” p. i, <https://media.defense.gov/2018/May/01/2001910568/-1/-1/1/DODIG-2018-108.PDF>

⁵⁰ Humana, Investor Relations, <https://humana.gcs-web.com/board-member/raquel-bono-md>

the government – including with DoD – ⁵¹ signaling to the public just how lucrative this line of business is for the company.

According to the briefing I received from DoD IG, ⁵² the incentives of claims-processors might not be properly aligned with those of taxpayers. Through DHA contracts, claims-processors (TRICARE contractors) negotiate discounts with providers to generate savings to the government and receive a percentage of the savings, known as Network Provider Discount Incentives. However, it is unclear if this provision is effective due to the opaque nature of the contracts. Because of this rebate payment incentive, claims-processors may want to work with providers that do not use a maximum allowable charge rate but instead charge higher list prices, so that they can increase the rebate they receive from negotiating. Additionally, consolidation makes these threats of misaligned incentives even worse.

Conclusion

DoD and DHA need to improve internal controls and strengthen efforts to prevent overpayment and price gouging. I have and will continue to take action to protect taxpayers and end contractors' rip-offs of DoD. Senator Warren called on the Department to investigate TransDigm for its abuses, ⁵³ and sent letters to Boeing ⁵⁴ and TransDigm ⁵⁵ calling out price gouging in the spare parts space. In June 2023, I reintroduced the bipartisan *Stop Price Gouging the Military Act*, to enhance the DoD's ability to access cost and pricing data. ⁵⁶ This legislation aims to strengthen acquisition laws and enhance the Department's ability to access pricing data to prevent rip-offs. Additionally, I reintroduced the *Department of Defense Ethics and Anti-Corruption Act*, which would prevent abuse by increasing price transparency and shutting the revolving door between DoD and contractors that abuse the rules. ⁵⁷

To better understand how DoD and DHA intend to address this failure and protect taxpayer dollars, I ask that you provide the following information by August 24:

⁵¹ Humana, "Humana to Exit Employer Group Commercial Medical Products Business," press release, February 23, 2023, <https://press.humana.com/news/news-details/2023/Humana-to-Exit-Employer-Group-Commercial-Medical-Products-Business/default.aspx#gsc.tab=0>

⁵² Office of Senator Warren, DoD IG briefing.

⁵³ Letter from Senator Elizabeth Warren to Department of Defense Acting Inspector General Glenn Fine, May 19, 2017, <https://www.warren.senate.gov/imo/media/doc/2017-05-17%20Sen%20Warren%20letter%20to%20DODIG.pdf>.

⁵⁴ Letter from Senator Elizabeth Warren to The Boeing Company CEO David Calhoun, May 24, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.05.24%20Letter%20to%20Boeing%20on%20refusing%20to%20turn%20over%20cost%20data.pdf>.

⁵⁵ Letter from Senator Elizabeth Warren to The TransDigm Group President and CEO Kevin Stein, May 24, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.05.24%20Letter%20to%20TransDigm%20on%20refusing%20to%20turn%20over%20cost%20data.pdf>.

⁵⁶ Office of Senator Elizabeth Warren, "Senators Warren, Braun, Representative Garamendi Reintroduce Bipartisan Stop Price Gouging the Military Act," press release, June 20, 2023, <https://www.warren.senate.gov/newsroom/press-releases/senators-warren-braun-representative-garamendi-reintroduce-bipartisan-stop-price-gouging-the-military-act#:~:text=In%20June%202022%2C%20Senator%20Warren,certified%20cost%20and%20pricing%20data>

⁵⁷ Office of Senator Elizabeth Warren, "Senator Warren, Representative Kim Reintroduce Department of Defense Ethics and Anti-Corruption Act," press release, June 16, 2023, <https://www.warren.senate.gov/newsroom/press-releases/senator-warren-representative-kim-reintroduce-department-of-defense-ethics-and-anti-corruption-act>

Secretary Austin:

DHA/TRICARE OVERSIGHT:

1. What steps is the DoD taking to ensure DHA has the appropriate internal controls in place to prevent price gouging?
2. Is the DoD aware of any other instances over the past 5 years where DHA/TRICARE detected overcharges?
3. In the 2019 DoD IG report, former Director Bono stated “DHA would only recoup on payments that were erroneous.”⁵⁸ Do you agree with former Director’s assessment that overpayments of \$16.2 and \$3.9 million are not erroneous?

CONFLICTS OF INTEREST:

4. If available, please provide me with former Director Bono’s post-government employment guidance and ethics opinion.
5. What information does DoD have on claims-processor contractors owning and working with providers in the TRICARE program?
6. What is DoD and DHA doing to prevent a conflict of interest with providers and claims-processors?

TRICARE CONTRACT INCENTIVES:

7. What incentives exist for the claims-processor contractors to negotiate lower prices with providers?
 - a. Please disclose any rebates sent to claims-processor contractors over the past 5 years, including the names of the provider groups that they negotiated with.
 - b. Do claims-processor contractors negotiate discounts more often with providers who are not subject to fixed reimbursement agreements?
 - c. For the Network Provider Discount Incentives:
 - i. How does DHA determine eligibility?
 - ii. How does DHA calculate the incentive amount?
 - iii. How much has DHA paid out to the contractors through these incentives over the past 5 years?
8. What incentives exist between DHA and the contractors to keep costs and prices low [comparable to Medicare reimbursement rates]?

⁵⁸ U.S. Department of Defense, Office of the Inspector General, “Audit of TRICARE Payments for Health Care Services and Equipment That Were Paid Without Maximum Allowable Reimbursement Rates,” August 20, 2019, p. iii, <https://media.defense.gov/2019/Aug/22/2002173972/-1/-1/1/DODIG-2019-112.PDF>

Lieutenant General Crosland:

DHA OVERSIGHT:

1. What is DHA's plan to detect overcharges and obtain reimbursement when it identifies them?
2. In the DHA PID *Operation Report of 2020*, PID shares that the division is omitted when new policies and benefits in TRICARE are determined, introducing "risk ... by lacking a cohesive 'anti-fraud' review of benefits."⁵⁹ Has DHA changed this approach given this risk? If not, is DHA committed to making this change moving forward?
3. Is DHA PID no longer producing the *Operation Report* on Fraud and Abuse?
 - a. If no, why?
 - b. If yes, why is this not a public facing document?
4. Please provide a list of all DHA IG reports from the past five years.
5. Is DHA still conducting the annual review DoD IG recommended?⁶⁰ If so, what did the most recent review find? Please share a copy of the review.
6. How does DHA coordinate with, or consider best practice anti-fraud tools utilized by, the Health Care Fraud and Abuse Control Program⁶¹ or the Health Care Fraud Prevention and Enforcement Team?⁶²

OVERPAYMENT:

7. Over the past five years, has DHA requested any refunds for overcharges on medical goods or services?
 - a. If so, how much was requested and from what entities?
 - b. How much did DHA receive?
8. How would refunds be granted to DHA? What would the process entail?
9. Over the past five years, which contracting companies received overpayment from DHA? For what items and what was the estimated overpayment for each item?
10. Over the past five years, which provider companies received overpayment from DHA? For what items or services and what was the estimated overpayment for each item or service?
11. In the 2019 DoD IG report, former Director Bono stated "DHA would only recoup on payments that were erroneous."⁶³ Do you agree with former Director's assessment that overpayments of \$16.2 and \$3.9 million are not erroneous?

⁵⁹ Defense Health Agency, Program Integrity Division, "Operational Report Calendar Year 2020," p. 4, <https://www.health.mil/About-MHS/OASDHA/Defense-Health-Agency/DHA-Office-of-the-Inspector-General/Fraud-and-Abuse/Reporting-Fraud-or-Abuse>

⁶⁰ U.S. Department of Defense, Office of the Inspector General, "Audit of TRICARE Payments for Health Care Services and Equipment That Were Paid Without Maximum Allowable Reimbursement Rates," August 20, 2019, p. iii, iv, <https://media.defense.gov/2019/Aug/22/2002173972/-1/-1/1/DODIG-2019-112.PDF>

⁶¹ U.S. Department of Health and Human Services, Office of Inspector General, "Health Care Fraud and Abuse Control Program Report," <https://oig.hhs.gov/reports-and-publications/hcfac/index.asp#:~:text=The%20HCFAC%20program%20is%20designed,the%20source%20of%20such%20deposits>

⁶² U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, "The Health Care Fraud and Abuse Control Program Protect Consumers and Taxpayers by Combating Health Care Fraud," January 18, 2017, <https://www.cms.gov/newsroom/fact-sheets/health-care-fraud-and-abuse-control-program-protects-consumers-and-taxpayers-combating-health-care-0>

⁶³ U.S. Department of Defense, Office of the Inspector General, "Audit of TRICARE Payments for Health Care Services and Equipment That Were Paid Without Maximum Allowable Reimbursement Rates," August 20, 2019, p. iii, <https://media.defense.gov/2019/Aug/22/2002173972/-1/-1/1/DODIG-2019-112.PDF>

12. Are there U.S. Department of Health and Human Services price control authorities that DHA believes would be beneficial in the TRICARE program? If so, please list them.

RATE-SETTING

13. TRICARE is required to follow Medicare rates “to the extent practicable.”⁶⁴ How does DHA establish its own reimbursement rates? What thresholds does DHA use to review claims?

MEDICAL CODING

14. How does DHA coordinate with the Centers for Medicare and Medicaid Services regarding Medicare code changes?
15. Has DHA identified medical codes that are overly broad?
16. What is DHA doing to ensure that specific medical coding is used when available?
17. What internal controls does DHA have to prevent overpayment for generic medical codes?
18. In December 2020, the Federal Register included a proposed rule entitled “TRICARE; Proposed Rates for Reimbursing Durable Medical Equipment... Items Not on the Medicare DMEPOS and PEN Fee Schedule.”⁶⁵ What has DHA done to implement this rulemaking?
19. Is DHA working to propose other rules that create price caps?

Sincerely,



Elizabeth Warren
United States Senator

⁶⁴ 10 U.S.C. 1079(h), 10 U.S.C. 1079(j)(2).

⁶⁵ Federal Register, Vol. 85, No. 249, 85613, <https://www.govinfo.gov/content/pkg/FR-2020-12-29/pdf/2020-28762.pdf>.