Congress of the United States

Washington, DC 20515

November 2 , 2024

Lieutenant General Telita Crosland
Director, Defense Health Agency
U.S. Department of Defense
7700 Arlington Blvd.
Suite 5101
Falls Church, VA 22042-5101

Dear Director Crosland:

We write to you regarding the Defense Health Agency's (DHA) proposed rule to implement the Military Health System (MHS) Modified Payment and Waiver Program (MPWP) to bill civilian non-beneficiaries for health services provided by military medical treatment facilities (MTF).[1] While we welcome DHA's progress on this issue, we are concerned that this rule narrows the availability of debt relief in a way that is not consistent with the intent of Section 716 of the Fiscal Year (FY) 2023 National Defense Authorization Act (NDAA) and creates a process that will be overly burdensome for patients who are in desperate need of debt relief. We urge the DHA to modify the proposed rule to prioritize waiving civilian medical debt and to streamline the sliding scale process for patients who cannot afford to pay these high costs.

When civilians, who are often unconscious, are treated at an MTF, they have often been taken there by ambulance to receive emergency care since "it is the closest hospital with capabilities needed to treat the patient."[2] From 2017 through June 2024, MTFs treated over 213,000 non-beneficiary civilians, including 72,000 trauma patients.[3] The Department of Defense (DoD) has even pushed back against civilian hospitals expanding their trauma capabilities, arguing that competition would reduce military training opportunities. For example, Brooke Army Medical Center (BAMC) in San Antonio, Texas maintains a special partnership with the local hospital district that allows BAMC to train military medical practitioners by treating emergency patients from the surrounding region.[4] Between fiscal years 2016 and 2021, BAMC provided care for almost half of all the civilian emergency patients who were treated at MTFs.[5] In 2017, Methodist Hospital in San Antonio considered opening a Level 2 trauma center to fill a vital need in a city

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[1] Defense Health Agency, Federal Register Proposed Rule, "Medical Billing for Healthcare Services Provided by Department of Defense Military Medical Treatment Facilities to Civilian Non-Beneficiaries," October 1, 2024, https://www.federalregister.gov/documents/2024/10/01/2024-22584/medical-billing-for-healthcare-services-provided-by-department-of-defense-military-medical-treatment.

[2] Government Accountability Office, "Defense Health Care: Actions Needed to Improve Billing and Collection of Debt for Civilian Emergency Care," July 7, 2022, p. 5, https://www.gao.gov/assets/gao-22-104770.pdf.

[3] Letter from Acting Assistant Secretary of Defense for Health Affairs Seileen M. Mullen to Senator Elizabeth Warren, November 13, 2024, p. 2, [on file with the Office of Senator Elizabeth Warren].

[4] Government Accountability Office, "Defense Health Care: Actions Needed to Improve Billing and Collection of Debt for Civilian Emergency Care," July 7, 2022, p. 11, https://www.gao.gov/assets/gao-22-104770.pdf.

[5] *Id.,* p. 44.

of over 2.2 million people.[6] In testimony before the San Antonio City Council, BAMC's top commander pushed back against the proposal, arguing that "[a]dding additional trauma centers to San Antonio presents a direct threat to medical readiness."[7]

Uninsured or underinsured civilians taken to MTFs often do not have any choice to seek more affordable care, and trauma patients may arrive unconscious or incapacitated without the ability to seek affordable care. Civilian nonprofit hospitals provide uninsured or underinsured patients a pathway for relief through charity care programs, as required by the Affordable Care Act.[8] However, MTFs do not offer such programs and are instead required to "aggressively" collect all debts[9] and to refer delinquent debt to the Treasury Department's offset program after 120 days and to Treasury for collections after it has been delinquent for 180 days. [10] These referrals may result in withholding of Social Security benefits or federal tax refunds from patients.[11]

Prioritizing Waiver Authority

In Section 702 of the FY 2021 NDAA, Congress extended DoD's authority to waive medical costs at MTFs to instances where a civilian is unable to pay for their medical treatment when their care "enhances the knowledge, skills, and abilities [KSA] of health care providers."[12] Congress further expanded this authority under Section 716 of the FY 2023 NDAA, providing DHA waiver authority for *any* non-beneficiary civilian whose care "enhances the knowledge, skills, and abilities of health care providers."[13] Section 716 also requires that DHA reduce the fees according to a sliding scale for patients who are underinsured or who are "at risk of financial harm."[14]

A Government Accountability Office (GAO) report also found that DoD rarely exercised its authority to waive certain civilian medical debt, billing over 60,000 civilian patients between 2016 and 2021 and only reducing 0.1 percent of the debt cases that the GAO reviewed.[15] About two thirds of the patients that DoD billed did not have insurance, indicating they would face hardship as a result of paying these bills.[16] Additionally, DoD failed to credit patients for payments they had made to the Department of Treasury. GAO found that "Treasury collected

[6] My San Antonio, "Army, council agree: new area trauma centers would threaten BAMC's mission," Sig Christenson, December 14, 2017, https://www.mysanantonio.com/news/local/article/Army-council-agree-new-area-trauma-centers-12432290.php.
[7] *Id*.
[8] 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; Dollar For, "The Path to Charity Care," April 2024, p. 6, https://dollarfor.org/wp-content/uploads/2024/04/Dollar_For_Path.pdf.
[9] Government Accountability Office, "Defense Health Care: Actions Needed to Improve Billing and Collection of Debt for Civilian Emergency Care," July 7, 2022, p. 12, https://www.gao.gov/assets/gao-22-104770.pdf.
[10] *Id*., pp. 9-10.
[11] *Id*.
[12] William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283, Sec. 702.
[13] James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law 117-263, Sec. 716.
[14] *Id*.
[15] Government Accountability Office, "Defense Health Care: Actions Needed to Improve Billing and Collection of Debt for Civilian Emergency Care," July 7, 2022, pp. 26 and 30, https://www.gao.gov/assets/gao-22-104770.pdf.
[16] *Id*., p. 48.

civilian debt payments for 39 of the 44 MTFs" it reviewed, and "37 of these MTFs did not consistently update their billing system to accurately reflect payments received."[17]

We are deeply concerned that the proposed rule inappropriately restricts DoD's authority to waive these fees, as intended by Congress. Representative Joaquin Castro, the author of Section 716 in the FY 2023 NDAA, intended for the sliding scale in Section 716 to supplement and expedite relief for civilians, not for DoD to deprioritize its authority to waive these fees. While the law states the DHA may issue a waiver to civilians "if the provisions of such care enhances the knowledge, skills, and abilities of healthcare providers," there is no statutory basis for waivers to be only "use[d] sparingly" [18] as proposed in the rule. The proposed rule indicated that the DoD is improperly narrowing its authority to provide relief to civilians, contrary to Congressional intent. Given that the Treasury Department only recovers 1 percent of delinquent debts that are transferred for collection, [19] it would be more time and cost-effective to simply waive these debts. Section 716 gives DHA expansive authority to waive these debts for civilians, and we urge DHA to modify its proposed rule by prioritizing this waiver authority for civilians whose treatment enhances military medical readiness.

Treating emergency civilian patients at MTFs allows military medical personnel to maintain medical readiness by treating complex cases similar to those seen in a deployed setting at a high volume.[20] One MTF official explained "that becoming a trauma center and treating civilians would likely allow them to annually treat hundreds of penetrating trauma cases—such as gunshot or stab wounds" which provides scenarios that "are particularly useful for training purposes."[21] DoD should update the rule to preemptively waive the fees for injuries analogous to those on the battlefield, such as gunshot wounds, car accident injuries, electrocution, dismemberment, knife wounds, spinal or head injuries, catastrophic falls, burns, crushing accidents, and others.

We also urge the DHA to update the proposed rule to recognize that treating a patient will always enhance a healthcare provider's knowledge, skills, and abilities regardless of their experience and skill level. This change would prevent patients who are treated for similar conditions by similarly situated medical providers from being denied relief arbitrarily and relieves the DoD from having to assess the extent to which the treatment of an emergency patient supports medical readiness. In 2022, GAO found that DoD's knowledge, skills, and abilities framework does not assess how civilian emergency care supports clinical readiness.[22] GAO also reported in 2019 that DoD's KSA metrics relied on flawed data and recommended

[17] *Id*., p. 25.
[18] 10 U.S.C. 1079b.
[19] Letter from Defense Health Agency Director Telita Crosland to Representative Joaquin Castro, September 25, 2024, p. 3, [On file with the offices of Senator Elizabeth Warren and Representative Joaquin Castro].
[20] Government Accountability Office, "Defense Health Care: Actions Needed to Improve Billing and Collection of Debt for Civilian Emergency Care," July 7, 2022, p. 17, https://www.gao.gov/assets/gao-22-104770.pdf.
[21] *Id*.
[22] *Id*., p. 24.

improvements,[23] which remain unaddressed.[24] To meet Congressional intent, DHA must adopt a broad definition of care that enhances clinical readiness in this proposed rule and waive fees for civilian non-beneficiaries.

Expanding Relief Options for Civilians

We also urge the DHA to modify its proposed sliding scale to enact broader relief, which would be in line with several states that provide medical debt relief to low-income individuals. The proposed rule would only waive fees completely for households with an income that is at or below the 100% federal poverty line (FPL), which falls short of practices at the state level.[25] For example, in Washington State, "large hospitals [must] provide free care for uninsured patients at or below 300% FPL" and "[a]ll other hospitals must provide free care for uninsured patients at or below 200% FPL."[26] Vermont has also begun requiring hospitals "to provide cost-free care for uninsured patients below 250% FPL."[27]After a patient pays the first $150, Illinois also requires "hospitals [to] provide a discount to uninsured patients whose income is up to 600% FPL" and to ensure that "[f]ree care is available for uninsured patients whose income is at or below 200% FPL."[28] In Maryland, hospitals must "provide free care for patients whose income is at or below 200% FPL" and in New Jersey and Rhode Island, hospitals must "provide a 100% discount for residents with incomes at or below 200% FPL."[29]

DHA should expand the threshold for a full discount to households whose income is at or below 300% of the FPL and provide reduced costs for patients whose income is up to 600% FPL. The fee scale should be changed accordingly, so that those earning 301-320% FPL pay only a maximum of $750 and so on. The rule should also explicitly give patients the option to select the length of their repayment plan.

Civilians Struggle with Debt after Emergency Care

Civilians treated at MTFs are routinely left with five figure bills and are stuck navigating a complicated debt relief process with often wrong or deceitful information about their right to seek relief. The GAO found that the "DHA and the military departments did not consistently

[23] Government Accountability Office, "Defense Health Care: Actions Needed to Improve Billing and Collection of Debt for Civilian Emergency Care," July 7, 2022, p. 24, https://www.gao.gov/assets/gao-22-104770.pdf; Government Accountability Office, "Defense Health Care: Actions Needed to Determine the Required Size and Readiness of Operational Medical and Dental Forces," February 21, 2019, https://www.gao.gov/products/gao-19-206.
[24] Government Accountability Office, "Defense Health Care: Actions Needed to Determine the Required Size and Readiness of Operational Medical and Dental Forces," February 21, 2019, https://www.gao.gov/products/gao-19-206.
[25] Defense Health Agency, Federal Register Proposed Rule, "Medical Billing for Healthcare Services Provided by Department of Defense Military Medical Treatment Facilities to Civilian Non-Beneficiaries," October 1, 2024, https://www.federalregister.gov/documents/2024/10/01/2024-22584/medical-billing-for-healthcare-services-provided-by-department-of-defense-military-medical-treatment.
[26] National Consumer Law Center, "An Ounce of Prevention: A Review of Hospital Financial Assistance Policies in the States," August 2023, p. 13, https://www.nclc.org/wp-content/uploads/2023/08/202310_Report_An-Ounce-of-Prevention.pdf.
[27] *Id*., p. 12.
[28] *Id*., p. 11.
[29] *Id*., p. 12.

communicate financial relief options to civilians."[30] For example, Army and Air Force documents provided to civilian patients "did not include information on waivers and Navy and DHA documents inconsistently included information on waivers."[31] Additionally, documents from the Air Force and DHA "did not include information on compromises, and Army and Navy inconsistently included information on compromises."[32] Given these disparities across the services, DHA should update the proposed rule to require that standard, specific language on financial relief options be provided to patients across the services, including on patients' invoices upon discharge.

Additionally, DoD must provide support staff to help patients understand their options for seeking relief. The experiences of patients seeking relief at nonprofit hospitals serve as a warning sign that educating patients regarding waivers and the sliding scale program is crucial to ensuring that civilians get the relief they need. For example, under the Affordable Care Act, the charity care program requires nonprofit hospitals to "reduce or waive bills for lower-income patients" so that patients do not fall into poverty.[33] However, patients often struggle to get this care, with the top reasons being "not knowing that financial assistance exists," "thinking they would not qualify," and "confusion."[34] DoD must avoid these pitfalls by providing these support staff to civilian patients about their options to get debt waived.

Given DoD's poor track record with payment transparency and informing patients of their rights, the DoD must ensure that the new forms created by this proposed rule must clearly inform patients of their options to seek relief, and its associated process. In the proposed rule, DHA states that patients who are unable to pay the remaining balance of their medical debt after the sliding scale and catastrophic fee waiver is applied, can seek further relief by completing DD Form 3201-1.[35] However, after requesting a copy of the DD Form 3201-1, "Request for Medical Debt Waiver, Military Health System Modified Payment and Waiver Program" referenced in the proposed rule,[36] Senator Elizabeth Warren's office was told that, "The Office of Management and Budget (OMB) has not approved or formally released the referenced form because the rule is only proposed and remains open for public comment. OMB will issue the form after its approval and the completion of the rulemaking process, which involves the proposed rule, a public comment period, and a final rule, in accordance with OMB, and DoD requirements."[37] We are concerned that commenters cannot properly evaluate the proposed rule without the new forms associated with the proposed rule. Evaluating these forms is instrumental to implementation of the proposed rule, and therefore is necessary to the public comment period.

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[30] 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.
[31] *Id*., p. 32.
[32] *Id*.
[33] Dollar For, "The Path to Charity Care," April 2024, p. 6, https://dollarfor.org/wp-content/uploads/2024/04/Dollar_For_Path.pdf.
[34] *Id*., p. 8.
[35] Defense Health Agency, Federal Register Proposed Rule, "Medical Billing for Healthcare Services Provided by Department of Defense Military Medical Treatment Facilities to Civilian Non-Beneficiaries," October 1, 2024, https://www.federalregister.gov/documents/2024/10/01/2024-22584/medical-billing-for-healthcare-services-provided-by-department-of-defense-military-medical-treatment.
[36] *Id*.
[37] Email from Office of Assistant Secretary of Defense for Legislative Affairs to Office of Senator Elizabeth Warren, October 23, 2024, [On file with the Office of Senator Elizabeth Warren].

We also urge DoD to update DD Form 2569 on "Third Party Collection Program/Medical Services Account/Other Health Insurance." Every patient at an MTF is "asked to complete a DD Form 2569 to collect health insurance information along with the patients' consent for DoD to file a claim on their behalf."[38] This form should be updated to request information from patients to certify if they are unemployed, receiving public benefits, or have no verifiable income. In doing so, DHA should preemptively apply the waiver and then the sliding scale amount owed by the patients before they even receive their first bill.

Wasting DoD Resources: Forcing Civilians to Jump through Hoops to Get Relief

This proposed rule raises additional questions about whether the proposed process and resources used to implement the MPWP will justify the limited funds that DoD may recover. On average each year, the Treasury Department only recovers 1 percent of the delinquent debts that are transferred by the DHA for collection.[39] Dedicating staff and resources to review the multiple forms and financial statements civilians must submit appears to have very little benefit to the DHA and overly burdens patients who are recovering from a life altering event. We believe this arduous process for civilians would be far more effective in deterring patients from applying to the MPWP than granting relief to people. Given that DHA is likely to have challenges in receiving, processing, and granting a fee waiver or debt relief before such debt must be transferred to Treasury, we urge the DHA to update this proposed rule to suspend collections of any debt, and thereby pausing any impending transfer to Treasury, while any application is pending to the MPWP. Once the DHA has rendered a decision on an application, it should reset the clock that requires DoD to transfer debts that are 180 days delinquent to Treasury.

We understand that this policy was informed by the practices of civilian hospitals, but it overlooks how several states have implemented streamlined processes to assess patients' ability to pay through a significantly less bureaucratic process. For example, "[b]oth California and Massachusetts restrict or prohibit sending a bill to collections or credit reporting while the patient is appealing to insurance, applying for financial assistance, negotiating the bill, in a payment plan, or seeking coverage for necessary care."[40] Additionally, both "Massachusetts and Oregon mandate screening of patients for insurance eligibility and financial assistance eligibility."[41]

DHA should also work with the IRS to verify the income of patients by simply requiring the patient to give consent for the IRS to confirm their income data, rather than requiring extensive paperwork to prove financial status. According to Dollar For, a nonprofit that advocates on behalf of patients' access to charity care, identifying eligible patients and verifying their income

[38] Defense Health Agency, Federal Register Proposed Rule, "Medical Billing for Healthcare Services Provided by Department of Defense Military Medical Treatment Facilities to Civilian Non-Beneficiaries," October 1, 2024, https://www.federalregister.gov/documents/2024/10/01/2024-22584/medical-billing-for-healthcare-services-provided-by-department-of-defense-military-medical-treatment.
[39] Letter from Defense Health Agency Director Telita Crosland to Representative Joaquin Castro, September 25, 2024, p. 3, [On file with the offices of Senator Elizabeth Warren and Representative Joaquin Castro].
[40] Lown Institute, "These five states have the lowest rates of medical debt. Here's why…," Imari Daniels, June 18, 2024, https://lowninstitute.org/these-five-states-have-the-lowest-rates-of-medical-debt-heres-why/.
[41] *Id*.

is a large barrier to charity care.[42] To avoid this challenge, DoD should modify the proposed rule to allow the DoD to work with the IRS to access the IRS's income database, something that it "commonly makes…available, with the taxpayer's consent, to government and private entities to verify a person's income to confirm eligibility for a program."[43]

Barriers to Debt Relief for Civilians

We are additionally concerned by whether DHA will be able to process the debt for these civilians at MTFs in a timely manner. As the proposed rule itself acknowledges, if a patient does not pay a bill from an MTF within 180 days of the due date or installment plan due date or if a patient's insurance refuses to work with or is unresponsive to DHA, it is then transferred to the Treasury Department's Cross-Servicing Program.[44] Additionally, agencies also have the option to "refer eligible debts that are less than 180 days delinquent to the Cross-Servicing program."[45] Given DoD's poor track record in addressing the medical debt of these civilians and working with insurances to resolve a patient's medical bill, we are concerned whether this debt waiver and relief process will be completed in a timely manner before DoD is required to send the debts to the Treasury Department for collection. We urge the DoD to work with insurance in a timely manner to create acceptable processes and billing codes that can be processed efficiently. Congress created the authority for DoD to waive these debts because the existing systems to compromise debts had failed, and it is essential that patients do not continue to be left struggling because of DoD failures to properly waive these debts.

We appreciate that DoD has held these debts in abeyance while developing this rule.[46] However, given its poor track record, we urge DoD in its final rule to extend the timeline that debts are being held in abeyance for at least eight months before they are transferred to Treasury during the first three years of implementation so that patients do not face harm due to any errors, challenges, or delays during the beginning of the program's implementation. Additionally, for patients who cannot pay but still have insurance, DHA should encourage the Treasury Department to secure any remaining balance from the insurance companies, rather than the individual beneficiary. DoD should only restart collection of debts after it has sent a notice of MHS MPWP to all individuals with eligible debts and a notice regarding the Federal Claims Collection Standards (FCCS) compromise for patients who owe debt for care they received before June 2023.

[42] Dollar For, "The Path to Charity Care," April 2024, p. 27, https://dollarfor.org/wp-content/uploads/2024/04/Dollar_For_Path.pdf.
[43] *Id*.
[44] Defense Health Agency, Federal Register Proposed Rule, "Medical Billing for Healthcare Services Provided by Department of Defense Military Medical Treatment Facilities to Civilian Non-Beneficiaries," October 1, 2024, https://www.federalregister.gov/documents/2024/10/01/2024-22584/medical-billing-for-healthcare-services-provided-by-department-of-defense-military-medical-treatment.
[45] *Id*.
[46] Letter from Defense Health Agency Director Telita Crosland to Representative Joaquin Castro, September 25, 2024, p. 3, [On file with the offices of Senator Elizabeth Warren and Representative Joaquin Castro].

Preventing Additional Debt Burdens

Beyond existing issues with DoD debt relief program, we urge DoD to work with the IRS to prevent tax obligations on waived medical debt. Currently, when the DHA Director fully waives fees of more than $600, DoD issues a Form 1099-C to the non-beneficiary, causing the IRS to treat the waived debt as income and leading to hardship for patients.[47] In December 2023, after Congressman Castro secured nearly $1,000,000 in debt relief for a BAMC patient, the IRS treated the waived debt as income and issued a $300,000 tax bill.[48] The Joint Committee on Taxation estimated that forgoing taxes on this waived debt would only cost $12 million over a ten-year period,[49] a cost that is minimal to the government but deeply impactful for families suffering under the burden of this debt.

We urge the DHA to modify the proposed rule so that the debt relief is not counted as taxable income by working with the IRS. There are options in which the DoD could waive these harmful fees without resulting in unfair tax penalties on patients, who cannot afford to pay taxes if the IRS considers the waived amount as income. DoD should work with the IRS to have the IRS waive the debt under the "general welfare exclusion," which means that DoD would not have to issue a 1099-C.[50] To qualify for this exclusion, payments "must (1) 'be made from a governmental fund'; (2) 'be for the promotion of the general welfare (i.e., generally based on individual or family need)'; and (3) not represent compensation for the performance of services."[51] DoD's emergency medical care not only constitutes a government payment for an essential service for individuals in need, but also enhances DoD's medical readiness.[52] We urge DoD to update this rule by working with the IRS to have the debt waived under the "general welfare exclusion" so that civilians are not burdened with these harmful fees.

Conclusion

Given the serious harm that MTF medical debt can cause to civilian patients, we urge you to update this proposed rule to waive fees that DoD is unlikely to ever recover and to create a less burdensome process for civilians seeking relief through the following actions:

- **Prioritize using DHA's authority to waive debts for civilians**: Consistent with Congressional intent, the rule should not improperly narrow DHA's authority to provide relief to civilians and instead have the rule broadly apply its discretionary authority to

[47] Defense Health Agency, Federal Register Proposed Rule, "Medical Billing for Healthcare Services Provided by Department of Defense Military Medical Treatment Facilities to Civilian Non-Beneficiaries," October 1, 2024, https://www.federalregister.gov/documents/2024/10/01/2024-22584/medical-billing-for-healthcare-services-provided-by-department-of-defense-military-medical-treatment.
[48] Letter from Senator Elizabeth Warren, Representative Joaquin Castro, and Representative Greg Casar to Assistant Secretary of Defense for Health Affairs Lester Martinez-Lopez, August 5, 2024, https://castro.house.gov/imo/media/doc/warren-castro-casar_letter_re_billing_at_mtfs.pdf.
[49] Letter from Joint Committee on Taxation to Senator Elizabeth Warren, June 6, 2024, Appendix A, [On file with the Office of Senator Elizabeth Warren]
[50] Congressional Research Service, "The IRS's General Welfare Exclusion," February 9, 2023, https://sgp.fas.org/crs/misc/IF12326.pdf.
[51] *Id*., p. 2.
[52] Government Accountability Office, "Actions Needed to Improve Billing and Collection of Debt for Civilian Emergency Care," July 2022, pp. 16-19, https://www.gao.gov/assets/gao-22-104770.pdf.

fully waive medical debt for these civilian non-beneficiaries. The FY 2023 NDAA gave DHA broad authority to issue a waiver "to a civilian provided medical care who is not a covered beneficiary if the provision of such care enhances the knowledge, skills, and abilities of health care providers."[53]

- **Modify the sliding scale to provide broader relief**: In line with many state laws regarding civilian hospitals, DHA should expand the relief granted by its sliding scale. As proposed, the rule only fully waives fees for households with an income at or below the 100% FPL.[54] We urge you to expand the threshold of civilians who receive a full discount to a minimum of those whose income is at or below 300% FPL and discounts to those whose income is up to 600% FPL. The scale of fees should also be changed accordingly, so that those earning 301-320% FPL should only pay $750 and so on.
- **Adopt a broad definition of enhancing skills, knowledge, and abilities for waiving fees**: DHA may issue a waiver "to a civilian provided medical care who is not a covered beneficiary if the provision of such care enhances the knowledge, skills, and abilities of health care providers."[55] DHA should update this rule to define enhancing knowledge, skills, and abilities as occurring continuously with each treated patient regardless of the provider's experience and skill level.
- **Update and provide all documentation for proper evaluation of the rule**: It is not possible to properly evaluate this rule without having all the information available. We request that you provide a copy of DD Form 3201-1, and all proposed forms, to the public before finalizing this rule. We also urge you to update DD Form 2569 to request information from patients up front about their ability to pay so that DHA can preemptively apply the waiver and sliding scale before they receive their first bill. Additionally, DHA should require that the services provide standard, specific language on financial relief options to eliminate any confusion from variations in language or information at the time of a patient's discharge.
- **Implement a less bureaucratic process for assessing patients' ability to pay**: There are several states, such as Massachusetts, California, and Oregon that have simpler processes to assess the ability of patients to pay or limit sending bills to collections for certain low-income patients or patients in the process of seeking relief.[56] Additionally, DHA should work with the IRS to verify the patient's income by requiring the patient to give consent for the IRS to confirm their income data, instead of requiring them to provide several extensive forms to prove they are unable to pay.
- **Hold debts in abeyance while the rule is first implemented**: We appreciate that DHA has held the medical debt of these civilians in abeyance while developing this rule.[57] DHA should suspend collections of any debt while any application is pending for the Military Health System Modified Payment and Waiver Program. Once it has rendered a decision on an application, it should then start the timeline of requiring DoD to transfer

[53] James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law 117-263, Sec. 716.
[54] Defense Health Agency, Federal Register Proposed Rule, "Medical Billing for Healthcare Services Provided by Department of Defense Military Medical Treatment Facilities to Civilian Non-Beneficiaries," October 1, 2024, https://www.federalregister.gov/documents/2024/10/01/2024-22584/medical-billing-for-healthcare-services-provided-by-department-of-defense-military-medical-treatment.
[55] James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law 117-263, Sec. 716.
[56] Lown Institute, "These five states have the lowest rates of medical debt. Here's why…," Imari Daniels, June 18, 2024, https://lowninstitute.org/these-five-states-have-the-lowest-rates-of-medical-debt-heres-why/.
[57] Letter from Defense Health Agency Director Telita Crosland to Representative Joaquin Castro, September 25, 2024, p. 3, [On file with the offices of Senator Elizabeth Warren and Representative Joaquin Castro].

debt that has been delinquent for 180 days to Treasury. For the first three years of the rule's implementation, DHA should extend this timeline by holding these debts in abeyance for at least eight months before they are transferred to Treasury, so that patients do not suffer additional harm from any errors, challenges, or delays during the program's rollout. Additionally, DoD should only restart collection of debts after it has sent a notice of MHS MPWP to all individuals with eligible debts and a notice regarding the FCCS compromise for patients who owe debt for care they received before June 2023.

- **Remove the requirement to issue a 1099-C to patients whose debt is waived**: We urge DHA not to issue a 1099-C to patients whose debt is waived, which would count this debt as taxable income and could result in patients still having to pay an increase in taxes that they cannot afford. DoD should work with the IRS to waive the debt under the "general welfare exclusion" so that DoD would not have to issue a 1099-C and patients would not have to pay these harmful additional costs.[58]

Thank you for your attention to this matter.

Sincerely,

Elizabeth Warren
United States Senator

Joaquin Castro
Member of Congress

Greg Casar
Member of Congress

[58] Congressional Research Service, "The IRS's General Welfare Exclusion," February 9, 2023, https://sgp.fas.org/crs/misc/IF12326.pdf.