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Statement
of
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of the
Department of Defense
to the
House Committee on the Budget
on
Waste, Fraud, and Abuse
Within Department of Defense
Mandatory Programs

Department of Defense
Office of the Inspector General

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to provide the views of the Office of the Inspector General of the Department of Defense (DoD) regarding fraud, waste, and abuse in various mandatory spending programs within the DoD, specifically the TRICARE and the military retirement pay and survivor benefit programs.

TRICARE

Background

For FY 2003 Congress appropriated $14.8 billion for the Defense Health Program. Of that amount approximately $6.9 billion is spent for purchased health care to include pharmacy, TRICARE managed care support contracts, and other purchased health care. In addition to the Defense Health Program appropriation, DoD estimates that it will spend approximately $4.1 billion from the DoD Medicare Eligible Retiree Health Care Fund in FY 2003 for recently enacted benefits, including $3.3 billion for purchased care.

TRICARE, formerly known as the Civilian Health and Medical Program of the Uniformed Service (CHAMPUS), is a regionally managed health care program for active duty and retired military members of the uniformed services, their families, and survivors. TRICARE is administered by the Assistant Secretary of Defense for Health Affairs and governed by Title 32 C.F.R. Section 199. TRICARE consolidates the health care resources of the Army, Navy, Air Force, and Marine Corps and supplements them with networks of civilian healthcare professionals to provide better access and high quality service while maintaining the capability to

support military operations. TRICARE is being implemented throughout the U.S., Europe, Latin America, and the Pacific as a way to:

- Improve overall access to health care for beneficiaries;
- Provide faster, more convenient access to civilian health care;
- Create a more efficient way to receive health care;
- Offer enhanced services, including preventive care;
- Provide choices for health care; and
- Control escalating costs.

The TRICARE program serves over 8.6 million beneficiaries. Those who are eligible for TRICARE benefits are:

- Active duty members and their families;
- Retirees and their families; and
- Survivors of all uniformed services members who are not eligible for Medicare.

Magnitude of Health Care Related Investigations

Since FY 2000 the Defense Criminal Investigative Service (DCIS), the criminal investigative arm of the Office of Inspector General, has initiated 427 health care related investigations. During the same period $45,082,821 in recoveries was returned to TRICARE as a result of DCIS investigative efforts, often in concert with other investigative agencies. During this period of time health care related investigations have comprised approximately 16 percent of the total number of investigations initiated by DCIS.

Nature and History of the Problem

Since 1981, DCIS has participated in many health care fraud investigations, projects and undercover operations within the United States and abroad to thwart a myriad of health care related schemes. DCIS has established a broadband of cooperation with the TRICARE Management Activity and other federal, state and local law enforcement agencies to actively investigate health care related fraud. In many locations, our efforts have resulted in the creation of Joint Healthcare Fraud Task Forces under the direction of the applicable United States Attorney. Our mutual goal is to identify trends, programs, processes, providers and individuals who commit acts that are conducive to fraud, waste, and abuse in the TRICARE program and related health plans.

DCIS has identified several significant areas in which TRICARE has been victimized. Although some systematic schemes have been curtailed, other vulnerable areas of the medical industry still need to be pursued.

A growing concern within the medical industry is the dramatic increase in "harm to patient" cases. With the development of significantly more powerful, highly addictive narcotics, over-prescription of these drugs by TRICARE providers (or any other doctors) could have devastating effects. For example, in February 2002, a TRICARE Provider was convicted of four counts of manslaughter, five counts of drug trafficking, and one count of racketeering, in connection with the deaths of five patients, who overdosed on drugs that had been prescribed by the Provider, who was sentenced to 755 months incarceration. This case generated a great deal of national media attention.

Another area of concern is corruption and kickbacks within the medical arena, which undermine the entire healthcare system and jeopardize the health and safety of TRICARE

recipients. Corruption, in terms of kickbacks, is a serious crime and a major impediment to the proper administration of the TRICARE program. TRICARE has a strict prohibition against the payment for patient referrals. For example, a $486 million global settlement was reached with a medical corporation headquartered in Lexington, Massachusetts. The settlement was the result of a five-year, multi-agency investigation into allegations that the corporation conspired to defraud the United States through the submission of false claims and the payment of kickbacks to healthcare providers for the payment of patient referrals. This remains an area of interest for DCIS.

TRICARE provider fraud continues to be fertile ground for criminal investigators to uncover new systematic ways to commit fraud. Since 1981 DCIS has opened 869 cases involving provider fraud. Those providers that choose to deceive and commit fraud against the DoD will continue to be investigated. Recently a medical doctor was sentenced in U.S. District Court in Kansas City, KS, to 72 months incarceration and 36 months of supervised probation upon release. The scheme to defraud in that case included subjecting TRICARE patients, and others, to: unnecessary surgery; billing for multiple complex surgical procedures that could not have performed; and falsifying tests to justify the surgeries. The Provider was found guilty in a jury trial on 33 counts of health care fraud, 7 counts of mail fraud and three counts of perjury.

A less pronounced area of fraud that has decreased over the years is fraud involving active duty military family members, retirees or ineligible recipients. Since 1981 DCIS has initiated 180 cases involving the aforementioned case categories and represents a fraction of the total case inventory. Beneficiary fraud is typically investigated by the Military Criminal Investigative Organizations (MCIO's), and there is little need for DCIS involvement.

Actions Being Taken to Eliminate or Reduce TRICARE Problems

DCIS has historically taken a proactive approach to the detection, investigation, and prevention of health care fraud impacting DoD. DCIS has aggressively pursued pro-active investigative projects and undercover operations, and has been an active participant in a number of health care fraud task forces as well as the National Healthcare Anti-Fraud Association (NHCAA). DCIS participation in these proactive efforts has been a major factor in the successful resolution of significant health care related investigations impacting the DoD.

Additional Actions Required

Despite returning more than $45 million to TRICARE, DCIS has received little additional funding to further its investigations into allegations of health care fraud impacting the DoD. While other law enforcement organizations have the ability to receive a portion of the monetary recoveries resulting from healthcare fraud investigations,[1] including many conducted by DCIS, DCIS has no direct ability to recover any of these funds. Were Congress to approve a system of sharing investigative recoveries resulting from DCIS investigations with DCIS, this Office of Inspector General would be able to more effectively participate in ongoing and future efforts to combat fraud, waste, and abuse in the TRICARE program.

[1] The Health Insurance Portability and Accountability Act of 1996 (42 USC Sec. 1320a-7c(b), Fraud and abuse control program) provides that the "Inspector General of the Department of Health and Human Services is authorized to receive and retain for current use reimbursement for the costs of conducting investigations and audits and for monitoring compliance plans when such costs are ordered by a court, voluntarily agreed to by the payor, or otherwise."

Military Retirement Pay and the Survivor Benefits Program (SBP)

Background

Military service members who remain on active duty or serve in the Reserves or National Guard for a sufficient period of time may retire and receive retired pay. Generally, members who remain on active duty for 20 or more years are eligible for retirement under Title 10, United States Code, Sections 3911 through 3929. The primary survivor benefit applicable to survivors of military retirees (and, in some situations, active duty members) is the Uniformed Services Survivor Benefit Plan (SBP). The SBP is a benefit program authorized under Title 10, United States Code, Sections 1447 through 1455. The SBP is designed to make-up for retirement income lost by survivors of deceased military retirees as a result of the death of the military retiree.

The Military Retirement Fund has a total liability of $730 Billion as of September 30, 2002. Of this amount $554 Billion is unfunded. For the last five years the Military Retirement Fund has been audited by and has received an unqualified opinion from the public accounting firm of Deloitte & Touche, LLP, under the oversight of this Office of Inspector General. This unqualified opinion is the only unqualified opinion that the Department received during the last fiscal cycle on a major DoD Financial Statement.

Magnitude of the Fraudulent Retirement and SBP Payments Problem

In FY 2002, there were approximately 1.6 million military retirees and 267 thousand individuals receiving survivor benefits. DoD spent approximately $35 billion in FY 2002 for benefits to military retirees and survivors. Since FY 2000, the DCIS has initiated 27 cases and recovered approximately $587,495 in total monetary recoveries relative to investigations

involving allegations of fraudulent military retirement and SBP payments. The average alleged dollar loss concerning these cases was approximately $31,559. As evidenced by the above statistics, the potential impact of fraud in the area of military retirement pay and SBP is relatively small and, accordingly, investigations into these types of allegations represent a very small percentage of the total workload of the DCIS (as measured by dollars received).

Nature and History of the Problem

The Defense Finance and Accounting Service (DFAS) administers retired military pay, including payments under the SBP. As a part of the process of making such payments, DFAS requires that retirees or their survivors complete a Certificate of Eligibility (COE) in order to continue to receive annuity payments without interruption. According to the DFAS guide to survivor benefits, dated November 2002, a COE is sent to annuitants each year prior to their birthday. If the COE is not returned within 90 days, the account will be suspended.

Since 1994, auditors from this Office of Inspector General and DCIS Special Agents have supported Operation Mongoose, an internal control initiative of the then Deputy Secretary of Defense involving the use of computer matching techniques to detect fraud in DoD financial systems, including the area of military retiree pay and the SBP. This initiative uses the combined efforts of the DFAS, the Defense Manpower Data Center, and this Office of Inspector General to develop fraud indicators that can be used to spot discrepancies among various automated systems. For example, Operation Mongoose compared active military retiree pay and SBP annuitant accounts to death indices maintained by the U.S. Social Security Administration (SSA). The comparison of these two automated systems identified numerous instances of potential fraudulent payments and resulted in several DCIS case initiations.

Some cases initiated as a result of this proactive initiative have successfully uncovered large-scale criminal activity and resulted in significant criminal prosecutions. For example, an investigation was initiated based on allegations that a military retiree had continued to receive full retirement benefits for 12 years after his death on January 17, 1987, totaling $186,866. Investigation disclosed that the retiree's daughter continued to receive the full military retirement payment, which was electronically transferred to a joint bank account held by the retiree and his daughter. No death notifications were ever provided to DFAS and the retiree's daughter never removed the retiree's name from the account after his death.

Another investigation was initiated based upon allegations that a military retiree continued to receive his full retirement benefit for many years after his death in March 1990. The investigation determined that DFAS paid the deceased retiree approximately $100,509 after his death. It was later determined that the retiree's daughter had received the payments knowing that she was not entitled to them and she subsequently pleaded guilty and was ordered to pay $100,509 in restitution to the U.S. Government.

However, more often than not, these investigations involve relatively small dollar amounts. Cases initiated between October 1, 1997, and the present involved an average alleged loss of approximately $32,877. Most of these investigations (85%) failed to undercover sufficient evidence of criminal intent to warrant prosecution and many were ultimately settled administratively based on publicly available information. For example, an investigation was initiated based on information received from Operation Mongoose that indicated a retiree had continued to receive full retirement benefits for several months after his death in February 1997. A Certificate of Eligibility was sent to the last known address of the retiree after his death. Information subsequently obtained from the U.S. Department of Treasury revealed that the

checks that had been mailed to the retiree's last known address had never been cashed. The Military Retirement Trust Fund was subsequently credited for the amount of the un-negotiated Treasury checks and the investigation was closed.

While DFAS requires that a COE be completed and returned annually by annuitants who are receiving military retirement or SBP payments, anecdotal evidence uncovered during the course of DCIS investigations suggests that this process does not effectively prevent erroneous or fraudulent payments from being made. For example, an investigation was initiated based upon information received through Operation Mongoose indicating that the spouse of a military retiree had continued to receive payments under the SBP for more than a year after the spouse's death in February 1998. The payments were suspended for several months in 1998 after the spouse failed to return a COE. However, the payments were resumed when a COE was received that ostensibly had been signed by the deceased retiree's SBP annuitant. The investigation ultimately disclosed that the annuitant's son had forged the COE causing DFAS to fraudulently pay an additional $20,096 in benefits that would not have otherwise been paid. This case example is illustrative of a basic flaw in the system that fails to require a positive identification by military retirees and SBP annuitants such as a signature guarantee similar to that which is required by many private financial entities before executing a routine financial transaction relative to a customer's account.

Actions Being Taken to Eliminate or Reduce These Problems

The DCIS continues to maintain effective liaison with Operation Mongoose. Additionally, DCIS continues to investigate allegations of significant fraud in the area of retiree pay and SBP annuities. However, consistent with the DoD's emphasis on the international war

on terror, the DCIS has dedicated significant resources to the prevention, detection, and prosecution of terrorism-related matters impacting the DoD. Consequently, fewer investigative resources are now available to devote to the investigation of criminal conduct with a relatively low monetary impact, such as fraudulent retirement and SBP payments.

Additional Actions Required

Although DFAS regulations require that a COE be completed annually, there are numerous examples in the DCIS case inventory where payments were made for years without the completion of the required COE. Additionally, when COEs were sent to annuitants, there was nothing to prevent an unauthorized person from forging the annuitant's signature, mailing it in, and continuing to receive payments under false pretenses. A statutory requirement that COEs must be completed annually in order to receive benefits would carry more weight than DFAS' current administrative requirement and might ensure that such certifications are accomplished. Additionally, requiring some form of positive identification, such as a signature guarantee, relative to the execution of COEs would likely reduce the number of forged COEs that result in fraudulent payments being made.

Additionally, retiree military identification cards are presently issued without an expiration date. Issuing retirees military identification cards with expiration dates would require retirees to positively confirm their status on a periodic basis and serve as a secondary control to ensure that payments do not continue for years beyond a retiree's death.

DCIS Staffing Levels and Post September 11, 2001 Commitments

After the events of September 11, 2001, the mission of the DCIS, like most federal law enforcement agencies, changed radically. In response to those events, DCIS modified its operational Goals and Objectives to be consistent with those of the department by establishing anti-terrorism efforts as a top priority. Pursuant to a post-9/11 Memorandum of Understanding with the Federal Bureau of Investigation, DCIS has 39 agents assigned full-time and an additional 51 agents assigned part-time to 66 Joint Terrorism Task Forces (JTTF) throughout the country. The realigning of priorities has coincided with an approximate 17 percent decline in authorized and on-board Agent staffing levels. Increased responsibilities combined with a significant decrease in available resources have had a profound impact DCIS operations and our ability to conduct investigations into allegations of fraudulent conduct within the DoD. In order for DCIS to resume its pre-9/11 level of involvement in the detection, investigation, prosecution, and prevention of fraudulent activity impacting the DoD, it is critical that the Congress provide the necessary funding to support additional full-time equivalent positions for the DCIS.

CONCLUSION

In conclusion, I would like to thank the Chairman and the members of this committee for the opportunity to present this testimony here today. Notwithstanding the increased demand on the limited resources available to this Office of Inspector General, we have continued to enjoy a high level of success relative to important issues affecting the Department. Fraud, waste, and abuse continue to pose significant threats to the readiness and capabilities of the DoD, and we remain committed to the detection, investigation, and prevention of any matter posing such significant threats to the Department.