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United States Government Accountability Office
Washington, DC 20548

February 16, 2011

The Honorable Lindsey O. Graham
United States Senate

Subject: *DOD Health Care: Prohibition on Financial Incentives That May Influence Health Insurance Choices for Retirees and Their Dependents under Age 65*

Dear Senator Graham:

From fiscal years 2001 through 2010, the Department of Defense's (DOD) spending for health care increased from about \$19 billion to nearly \$49 billion, representing approximately 6 percent of DOD's total spending in fiscal year 2001 and approximately 9 percent in fiscal year 2010.¹ This health care spending primarily funds TRICARE—DOD's program that provides health care to active duty personnel and other beneficiaries, including retired servicemembers.² According to DOD, the increase in its health care spending can be attributed to factors such as growth in the number of TRICARE beneficiaries. From fiscal years 2001 through 2010, the number of TRICARE beneficiaries increased by nearly 15 percent, from 8.3 million to 9.5 million beneficiaries.

To help reduce DOD's health care costs, Congress passed section 707 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (section 707),³ which went into effect January 1, 2008. Section 707 prohibits employers with 20 or more employees from offering financial or other incentives to their employees who are eligible for TRICARE to not enroll in the employer-sponsored health insurance plan or to terminate such coverage. Historically, some employers offered financial or other incentives, which resulted in shifting much of the cost of providing health care for these employees from the employer to DOD. TRICARE beneficiaries who might have been offered incentives are retirees and their dependents under age 65 who have access to employer-sponsored health insurance in addition to TRICARE.⁴ When these employees accepted the incentives and did not enroll in the employer-sponsored health insurance, TRICARE became the primary payer and paid a

¹In this report, fiscal year 2010 figures for DOD spending and TRICARE beneficiaries are estimates because actual figures were not available at the time we did our work.

²In addition to TRICARE, DOD's total health care spending also includes activities such as research and development.

³Pub. L. No. 109-364, § 707, 120 Stat. 2083, 2283-84 (2006) (codified at 10 U.S.C. § 1097c).

⁴Retirees and their dependents age 65 or older are generally eligible for Medicare and are eligible for TRICARE benefits if they enroll in Medicare Part B. TRICARE is a secondary payer to Medicare. Employers are prohibited from offering incentives to Medicare-eligible employees to not enroll in a group health plan, including an employer-sponsored health plan. For active duty personnel, TRICARE coverage is automatic and is the primary coverage.

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greater share of the health care costs.⁵ As a result of section 707's prohibition on such incentives, DOD projected, in April 2010, that there would be approximately \$436 million in total TRICARE savings for fiscal years 2010 through 2015.⁶

You requested that we examine how DOD developed its savings estimate and evaluated the effect of the law. In this report, we describe (1) DOD's method for projecting TRICARE savings as a result of section 707 for fiscal years 2010 through 2015 and (2) DOD's efforts to determine the effects of section 707 on TRICARE participation and costs after the law went into effect.

To address these objectives, we reviewed the final rule that implemented section 707. We also reviewed relevant documents used to support DOD's projected savings estimate and describe its efforts to determine the effects of section 707 on TRICARE participation and costs after section 707 went into effect. We interviewed DOD officials and contractor staff about the methodology used in developing DOD's projected savings estimate.⁷ We also interviewed DOD officials about their efforts to determine the effects of section 707 after the law went into effect. Additionally, we consulted with analysts from the Congressional Budget Office about our review of DOD's projected savings estimate related to section 707.

We conducted this performance audit from June 2010 through February 2011, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Results in Brief

To project TRICARE savings resulting from section 707, DOD, in April 2010, developed two baseline estimates. One baseline estimate was of the number of retirees and their dependents under age 65 that DOD expected would not participate in TRICARE in fiscal year 2009 in the absence of employer incentives. The other baseline estimate was of the average TRICARE cost per participating retiree and dependent under age 65 for fiscal year 2009. DOD then calculated adjustments to both of the baseline estimates to account for anticipated changes in fiscal years 2010 through 2015. Specifically, DOD projected that there would be no change in the number of retirees and their dependents under age 65 in fiscal year 2010, but a 2 percent annual decrease in fiscal years 2011 through 2015. Additionally, DOD projected that average TRICARE costs would increase by 8 percent in fiscal year 2010 and 7 percent in fiscal years 2011 through 2015 as a result of medical inflation. DOD applied these adjustments to its baseline estimates to project savings for fiscal years 2010 through 2015.

DOD reported that it was not able to determine the effects of section 707 on TRICARE participation and costs after the law went into effect because of data limitations and multiple factors affecting the health insurance choices of retirees and their dependents under age 65. DOD reported that it was unable to link data on TRICARE enrollment to beneficiary survey

⁵When retirees and their dependents under age 65 choose employer-sponsored health insurance, this coverage is primary to TRICARE; however, TRICARE may still pay some of the health care costs, as the program acts as a secondary payer in such circumstances.

⁶DOD did not project savings related to section 707 for fiscal years prior to 2010.

⁷DOD contracted with an outside organization to develop its projected savings estimate.

data on why beneficiaries choose one health insurance plan over another. DOD also reported that many factors affect health insurance choices, such as the costs of participating in TRICARE (compared to the costs of participating in employer-sponsored health insurance), making it difficult to attribute any single factor to changes in TRICARE participation. In commenting on a draft of this report, DOD indicated that it concurred with our report.

Background

DOD's TRICARE program, established in 1995, offers health care benefits to active-duty personnel and other beneficiaries, including retirees and their dependents under age 65. As of December 2009, approximately one-third of those eligible for TRICARE were retirees and their dependents under age 65.

TRICARE Options

TRICARE offers retirees and their dependents under age 65 three primary options in which they may participate: (1) a managed care option called TRICARE Prime, (2) a preferred-provider option called TRICARE Extra, and (3) a fee-for-service option called TRICARE Standard.⁸ To obtain care through TRICARE Prime, these retirees and their dependents must enroll in this option and pay an annual enrollment fee.⁹ If they do not enroll in TRICARE Prime, these beneficiaries can obtain care through TRICARE Extra or TRICARE Standard, both subject to an annual deductible and other cost shares, such as co-payments. When these beneficiaries use providers who are part of the TRICARE network, they are considered to be using TRICARE Extra and pay discounted cost shares for services. When they use providers outside the TRICARE network, they are considered to be using TRICARE Standard and pay higher cost shares than when using TRICARE Extra. (See table 1 for selected characteristics of each primary TRICARE option.)

⁸An additional option, TRICARE for Life, supplements Medicare coverage for eligible retired service members enrolled in Medicare Part B, regardless of age. Some TRICARE beneficiaries under age 65 qualify for Medicare on the basis of disability or end-stage renal disease and enroll in Medicare Part B. TRICARE is a secondary payer to Medicare.

⁹Enrollment in TRICARE Prime is limited to those who live in geographic areas where DOD has established a network of health care providers and in other specified areas. DOD reported that about 68 percent of the eligible non-active-duty population in fiscal year 2009 had access to TRICARE Prime.

Table 1: Selected Characteristics of Primary TRICARE Options Available to Retirees and Their Dependents under Age 65, Fiscal Year 2010

Characteristic	TRICARE Prime	TRICARE Extra	TRICARE Standard
Type of plan	Managed care in designated areas with an established network of providers	Preferred-provider organization with civilian TRICARE network providers	Fee-for-service with TRICARE-authorized civilian non-network providers ^a
Enrollment	Required for participation	Not required	Not required
Annual enrollment fees	\$230 for individual coverage \$460 for family coverage	\$0	\$0
Annual deductible	\$0 ^b	\$150 for individual coverage \$300 for family coverage	\$150 for individual coverage \$300 for family coverage
Selected co-payments/co-insurance	\$0 for preventive services \$12 per outpatient visit	20 percent for preventive services and outpatient visits, after the deductible is met	25 percent for preventive services and outpatient visits, after the deductible is met

Source: GAO analysis of DOD documents.

Note: Retirees and their dependents under age 65 include people retired from the military younger than age 65 and their dependents younger than age 65. An additional option, TRICARE for Life, supplements Medicare coverage for eligible retired service members enrolled in Medicare Part B, regardless of age.

^aTRICARE-authorized civilian non-network providers are health care providers who meet certain licensing requirements as defined by DOD.

^bUnder TRICARE Prime, retirees and their dependents under age 65 also can choose a point-of-service option that allows enrollees to seek non-emergency care from any TRICARE-authorized provider without a referral from a primary care manager. For this option, there is an annual deductible of \$300 per year for individual coverage and \$600 per year for family coverage.

In a fiscal year 2010 evaluation of TRICARE, DOD reported that for each fiscal year since 2001, the percentage of retirees and their dependents under age 65 enrolled in TRICARE Prime has increased, the percentage using TRICARE Standard or Extra has remained about the same, and the percentage who had civilian health insurance—including employer-sponsored health insurance—has declined.¹⁰ The report also noted that although the percentage of these beneficiaries enrolled in TRICARE Prime has increased each year since fiscal year 2001, the rate of increase has slowed since fiscal year 2007. In fiscal year 2009, 49 percent of retirees and their dependents under age 65 were enrolled in TRICARE Prime, and 26 percent used TRICARE Standard or Extra; the remaining 25 percent had civilian health insurance.

Regardless of the TRICARE option selected, TRICARE beneficiaries may obtain prescription drugs through military treatment facility pharmacies, network and non-network retail pharmacies, and the TRICARE mail order pharmacy. These beneficiaries pay co-payments for prescription drugs obtained through retail pharmacies and the TRICARE mail order pharmacy. There are no co-payments for prescription drugs received through military treatment facilities. (See table 2.)

¹⁰DOD, *Evaluation of the TRICARE Program: FY 2010 Report to Congress* (February 28, 2010).

Table 2: TRICARE Pharmacy Co-payments/Co-insurance, Fiscal Year 2010

Type of pharmacy	Type of prescription ^a		
	Formulary generic drugs	Formulary brand name drugs	Non-formulary drugs
Military treatment facility ^b	\$0	\$0	Not offered
TRICARE mail order ^b	\$3	\$9	\$22
Network retail ^c	\$3	\$9	\$22
Non-network retail, ^c TRICARE Prime	50% co-payment after the point-of-service deductible is met	50% co-payment after the point-of-service deductible is met	50% co-payment after the point-of-service deductible is met
Non-network retail, ^c TRICARE Extra and TRICARE Standard	\$9 or 20% of the total, whichever is greater, after the deductible is met	\$9 or 20% of the total, whichever is greater, after the deductible is met	\$22 or 20% of the total, whichever is greater, after the deductible is met

Source: GAO analysis of DOD documents.

^aTRICARE offers formulary and non-formulary drugs. Formulary drugs are those on DOD's list of covered drugs. Non-formulary drugs can be obtained at formulary drug costs if medical necessity is established.

^bPrescriptions filled at a military treatment facility or through the TRICARE mail order pharmacy are limited to a 90-day supply.

^cPrescriptions filled at a network or non-network retail pharmacy are limited to a 30-day supply.

Section 707

Section 707 prohibits employers with 20 or more employees from offering financial or other incentives to retirees and their dependents under age 65 to not enroll in the employer's health insurance plan, or to terminate such coverage, which would be primary to TRICARE. Historically, such incentives included cash payments that these employees could have used to pay TRICARE enrollment fees, deductibles, co-payments, and co-insurance, as well as to pay premiums associated with TRICARE supplemental plans.¹¹ Some employers also provided incentives in the form of direct payment for TRICARE supplemental insurance plans.

According to DOD, the purpose of section 707 is to prevent employers from shifting primary responsibility for their employees' health care costs to DOD, by prohibiting employer incentives that encourage employees to choose TRICARE instead of employers' health insurance plans. However, even when TRICARE-eligible employees choose employer-sponsored health insurance, TRICARE may still pay some of the health care costs, as the program acts as a secondary payer in such circumstances. When TRICARE is a secondary payer, the prohibition against financial incentives applies in the same manner as the provision designating Medicare as a secondary payer. In Medicare, employers are prohibited from offering incentives to Medicare-eligible employees to not enroll (or to terminate enrollment) in a group health plan.¹²

¹¹TRICARE supplemental insurance plans are those for which civilian insurers pay some or all of the patients' costs associated with TRICARE deductibles, co-payments, and co-insurance. Supplemental insurance acts as a secondary payer after TRICARE pays its portion of patients' health care costs.

¹²42 U.S.C. § 1395y(b)(3)(C).

DOD's final rule implementing section 707 provided three exceptions to the prohibition against employers offering retirees and their dependents under age 65 incentives to not enroll in employer-sponsored health insurance:¹³

1. Employers may offer incentives to retirees and their dependents under age 65 who have primary coverage other than TRICARE.
2. Employers may offer benefits under a cafeteria plan¹⁴ if they are available to all similarly situated employees,¹⁵ including employees not eligible for TRICARE.
3. Employers may offer a TRICARE supplemental insurance plan to retirees and their dependents under age 65 under a cafeteria plan if all three of the following conditions are met:
 - a) the employer does not provide payment for the plan or receive any direct or indirect consideration or compensation for offering the plan,
 - b) the employer's only involvement is providing administrative support for the plan, and
 - c) the employee's participation is voluntary.

DOD Projected Savings by Developing Estimates of the Number of Retirees and Their Dependents Expected Not to Participate in TRICARE as a Result of Section 707 and of Average TRICARE Costs

To project TRICARE savings resulting from section 707, DOD, in April 2010, developed two baseline estimates. One baseline estimate was of the number of retirees and their dependents under age 65 that DOD expected would not participate in TRICARE in fiscal year 2009 in the absence of employer incentives. The other baseline estimate was of the average TRICARE cost per participating retiree or dependent under age 65 for fiscal year 2009. DOD then adjusted these baseline estimates for anticipated changes in fiscal years 2010 through 2015.

To develop its baseline estimate of the number of retirees and their dependents under age 65 who would not participate in TRICARE in the absence of employer incentives, DOD used results from a survey of TRICARE beneficiaries to estimate the percentage of retirees and their dependents under age 65 who had access to employer-sponsored health insurance, and

¹³75 Fed. Reg. 18,051-18,055 (April 9, 2010) (codified at 32 C.F.R. § 199.8(d)(6)). Section 707 authorized DOD to adopt exceptions to the prohibition. The regulation implementing the Medicare prohibition does not contain exceptions. See 42 C.F.R. § 411.103 (2010).

¹⁴Under cafeteria plans, employees can choose among two or more benefits, including cash. Cafeteria plans must adhere to section 125 of the Internal Revenue Code to qualify for this exception. See 26 U.S.C. § 125.

¹⁵Similarly situated employees are defined in the final rule implementing section 707 as those who share common attributes or other *bona fide* employment-based classifications consistent with the employer's usual business practices. TRICARE eligibility is not a permissible classification. 32 C.F.R. § 199.8(d)(6)(v)(C) (2010). Similarly situated employees may include, for example, part-time employees.

who received incentives not to use employer-sponsored health insurance.^{16,17} DOD applied this percentage to the total number of TRICARE-eligible retirees and their dependents under age 65 to estimate that, in fiscal year 2009, there would be 14,921 such retirees and dependents who would not participate in TRICARE in the absence of previously available employer-sponsored incentives.¹⁸

To develop its baseline estimate of the average TRICARE cost per retiree and dependent under age 65, DOD officials told us they divided the total fiscal year 2009 costs associated with these beneficiaries in the Military Health System,¹⁹ by the total number of these beneficiaries that participated in TRICARE in that year. These TRICARE participants included retirees and their dependents under age 65 enrolled in TRICARE Prime, regardless of use, plus those retirees and dependents that used TRICARE Standard or Extra at least once during fiscal year 2009, regardless of whether TRICARE was the primary or secondary payer. DOD officials told us that the average TRICARE cost per retiree and dependent under age 65—\$3,975 in fiscal year 2009—included medical care, pharmaceuticals, and administration.

DOD then calculated adjustments to both of the baseline estimates to project savings for fiscal years 2010 through 2015. Specifically, to project the number of retirees and their dependents under age 65 for fiscal years 2010 through 2015, DOD officials told us they used the Managed Care Forecasting and Analysis System—DOD’s tool for estimating the number of TRICARE-eligible individuals in the future.²⁰ Based on its findings, DOD projected that there would be no change in the number of retirees and their dependents under age 65 in fiscal year 2010, but a 2 percent annual decrease in fiscal years 2011 through 2015.²¹ To project the average TRICARE cost per participating retiree and dependent for fiscal years 2010 through 2015, DOD officials told us they developed an estimated rate of medical inflation based on a variety of indices that measure the costs of medical services, such as

¹⁶DOD based its estimate on 2007 survey results that showed that, in the absence of financial incentives, about half of those for whom civilian health insurance was available opted to use the civilian health insurance rather than TRICARE. As a result, DOD concluded that about half of the TRICARE participants who reportedly received a financial incentive would similarly choose civilian health insurance in the absence of an incentive. Further details of DOD’s estimation methodology are found in the supplementary information included with the final rule. 75 Fed. Reg. 18,051-18,055 (April 9, 2010).

¹⁷DOD officials told us employer incentives included both cash incentives and incentives in the form of direct payment for TRICARE supplemental insurance plans, but according to DOD officials, they did not estimate TRICARE savings resulting from these different types of incentives separately. DOD officials told us that the department does not have data on the percentage of retirees and their dependents under age 65 with employer-sponsored TRICARE supplemental insurance. Such policies pay only after TRICARE has processed a claim and DOD is not involved in the processing of supplemental insurance claims.

¹⁸The number of retirees and their dependents under age 65 eligible for TRICARE was based on data from DOD’s Defense Enrollment Eligibility Reporting System. This system contains service-related and demographic data used to determine eligibility for military benefits, including health care, for all active-duty servicemembers, retirees and their dependents, and their survivors.

¹⁹The Military Health System is the section of DOD responsible for providing health care to beneficiaries and consists of component organizations, such as the TRICARE Management Activity, which supports TRICARE.

²⁰The Managed Care Forecasting and Analysis System includes information on the number of active-duty personnel who will be retiring and the number of retirees and their dependents under age 65 who are aging into Medicare eligibility (and therefore no longer eligible for TRICARE Prime, Extra, or Standard).

²¹DOD officials told us that the number of retirees and their dependents under age 65 in these years may be larger than initially predicted due to recent increases in the number of active duty personnel. Additionally, according to DOD, a recent law that makes reservist retirees eligible for TRICARE will likely also lead to a larger number of TRICARE-eligible retirees than initially predicted. See Pub. L. No. 111-84, § 705, 123 Stat. 2190, 2374-75 (2009) (codified at 10 U.S.C. § 1076e).

inpatient and outpatient care, pharmaceuticals, and administration, and on projected changes in the rates of medical utilization.²² DOD officials told us that they projected an 8 percent medical inflation rate for fiscal year 2010 and a 7 percent medical inflation rate for fiscal years 2011 through 2015.

To complete its savings estimate for fiscal years 2010 through 2015, DOD applied these adjustments to its baseline estimates. For fiscal year 2010, DOD multiplied the baseline estimate of the number of retirees and their dependents under age 65 who would no longer participate in TRICARE as a result of section 707 by the average TRICARE cost per retiree and dependent for fiscal year 2010. For fiscal years 2011 through 2015, DOD increased the prior years' estimate by 5 percent. DOD officials told us they calculated this 5 percent increase by offsetting its projection of a 7 percent annual increase in medical costs by a 2 percent annual decrease in the number of retirees and their dependents under age 65. These calculations led DOD to project total TRICARE savings of approximately \$436 million for fiscal years 2010 through 2015.

DOD Reported that It Was Not Able to Attribute Changes in TRICARE Participation and Costs to Section 707

DOD reported that it was not able to determine the effects of section 707 on TRICARE participation and costs after the law went into effect because of data limitations and multiple factors affecting the health insurance choices of retirees and their dependents under age 65. Specifically, DOD officials reported that they were unable to link data on TRICARE enrollment to beneficiary survey data on why retirees and their dependents under age 65 may choose one health insurance plan over another. In addition, a 2007 DOD report summarizing beneficiary survey results found multiple factors affected beneficiaries' health insurance choices.²³ For example, the report stated that cost was the primary consideration in choosing health insurance. The cost of enrolling in TRICARE Prime had not risen since 1995, while a recent survey of employers found that the average annual premium contributions paid by employees for employer-sponsored health insurance more than doubled since 1999.²⁴ Moreover, according to DOD's 2007 report, retirees and their dependents under age 65 may prefer some aspect of TRICARE compared to civilian health insurance, may prefer receiving care from doctors available only through TRICARE, and may prefer TRICARE because it does not have pre-existing coverage restrictions that sometimes exist in civilian health insurance plans. A DOD official also told us that increases in unemployment rates likely would lead to higher participation in TRICARE.

Agency Comments

We provided a draft of this report to DOD for review and comment. In its comments, DOD concurred with our report (see encl. I).

²²DOD officials told us the department's estimated medical inflation for fiscal years 2010 through 2015 was similar to actual medical cost inflation rates that DOD calculated in recent years. Specifically, DOD officials told us that for fiscal years 2006 through 2009, the average rate of medical inflation was approximately 7.5 percent.

²³DOD, *Retirees' Use of Civilian Coverage*, Issue Brief (October 2007).

²⁴Average annual premium contributions for employer-based health insurance coverage paid by covered employees increased from \$318 in 1999 to \$899 in 2010 for single coverage, and increased from \$1,543 in 1999 to \$3,997 in 2010 for family coverage. Henry J. Kaiser Family Foundation and Health Research and Educational Trust, *Survey of Employer Health Benefits 2010* (September 2, 2010).

We plan no further distribution of this report until 30 days from the report date. At that time, we will send copies to the Secretary of Defense and interested congressional committees. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions, please contact me at (202) 512-7114 or draperd@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff members who made key contributions to this report are listed in enclosure II.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Debra A. Draper', with a stylized, cursive script.

Debra A. Draper
Director, Health Care

Enclosures – 2

Comments from the Department of Defense



HEALTH AFFAIRS

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, DC 20301-1200

FEB 1 2011

Ms. Debra A. Draper
Director, Health Care
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Ms. Draper:

This is the Department of Defense's (DoD) response to the Government Accountability Office (GAO) draft report, GAO 11-160R, "DOD HEALTH CARE: DEFENSE HEALTH CARE: Prohibition on Financial Incentives that May Influence Health Insurance Choices for Retirees and Their Dependents under Age 65," dated December 13, 2010 (GAO Code 290865).

Thank you for the opportunity to review and comment on the draft report. Overall, the Department concurs with the report. GAO's assessment provides an invaluable assessment of the hurdles the Department has faced regarding its compliance with Section 707 of the John Warner National Defense Authorization Act for Fiscal Year 2007 and the impact on TRICARE beneficiary participation and costs.

The points of contact on this audit are Ms. Kathleen Larkin (Functional) and Mr. Gunther Zimmerman (Audit Liaison). Ms. Larkin may be reached at (703) 681-0057, and Mr. Zimmerman may be reached at (703) 681-4360.

Sincerely,

A handwritten signature in black ink, which appears to read "George Peach Taylor, Jr.", is located below the "Sincerely," text.

George Peach Taylor, Jr., M.D.
Acting Principal Deputy

Enclosure II

GAO Contact and Staff Acknowledgments

GAO Contact

Debra A. Draper, (202) 512-7114 or draperd@gao.gov

Acknowledgments

In addition to the contact named above, Janina R. Austin, Assistant Director; Jennie F. Apter; Kye Briesath; Matthew Gever; Carolyn Feis Korman; and Lisa Motley made major contributions to this report.

(290865)

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