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Report to the Chairman, Subcommittee on Readiness, Committee on Armed Services, House of Representatives

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MILITARY HEALTH CARE

Recovery of Medical Costs From Liable Third Parties Can Be Improved

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GAO

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National Security and
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The Honorable Earl Hutto
Chairman, Subcommittee on Readiness
Committee on Armed Services
House of Representatives

Dear Mr. Chairman:

This report responds to the former Chairman's request that we evaluate the effectiveness of the Department of Defense's medical cost recovery in third party liability cases.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 15 days from its date. At that time, we will send copies to the Chairmen of the House and Senate Committees on Armed Services and on Appropriations and the Secretaries of Defense, the Army, the Air Force, and the Navy. We will also make copies available to others upon request.

This report was prepared under the direction of Richard Davis, Director, Army Issues, who may be reached on (202) 275-4141 if you or your staff have any questions. Other major contributors are listed in appendix I.

Sincerely yours,

Frank C. Conahan

Frank C. Conahan
Assistant Comptroller General

Executive Summary

Purpose

The Department of Defense's (DOD) military health care system provides medical care to active duty and retired military personnel and their dependents. DOD is entitled to recover the cost of medical care provided or paid for by the military services from liable third parties in accident, negligence, and wrongful act cases. Recovery activities associated with these cases provide the potential for millions of dollars in annual savings to the government.

The former Chairman of the Subcommittee on Readiness, House Committee on Armed Services, asked GAO to examine the systems used by the Army, the Navy, and the Air Force to recover these costs. Specifically, GAO sought to determine whether

- military medical activities are effectively identifying and reporting potential third party liability cases and
- the Judge Advocates General are performing effective recovery efforts on cases determined to have third party liability potential.

Background

Active duty personnel are entitled to receive health care at military medical facilities and at civilian facilities in an emergency. Nonactive beneficiaries are eligible to receive care at military facilities when space and professional services are available. When care is not available, they may use the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). Private organizations are under contract to CHAMPUS to pay claims submitted by civilian health care providers for services provided to beneficiaries under this program.

Military regulations require military service medical facilities, private organizations under contract to CHAMPUS, and military offices authorizing payment for care in civilian facilities to identify and report to Judge Advocates General legal offices those cases that have potential for third party liability recovery. Military service regulations require that all inpatient cases with this potential be reported, but service requirements for reporting outpatient cases vary. After determining which cases actually have recovery potential, the services' legal offices are responsible for asserting claims and recovering medical costs. Approximately 90 percent of all third party liability recoveries involve injuries sustained as the result of motor vehicle accidents.

Results in Brief

GAO believes that third party liability cost recovery could be doubled. In fiscal year 1987, this would have resulted in recoveries totaling about

$50 million. Recoveries could be increased through (1) better identification and reporting of potential cases by medical facilities, (2) improvements in service legal office effectiveness, and (3) better internal controls over third party liability cases.

Principal Findings

Many Third Party Liability Cases Are Not Identified and Reported

At 8 of the 13 medical facilities GAO visited, more than half of the potential third party liability cases GAO reviewed had not been identified and reported to service legal offices for the following reasons:

- Army and Navy medical facilities do not have standard procedures for identifying and reporting third party liability cases, causing wide variation in their identification and reporting effectiveness.
- Military service regulations set minimum cost thresholds for reporting outpatient cases as high as $670. Many lower cost cases therefore go unreported, and some Army and Navy medical facilities report few outpatient cases unless they also involve inpatient care.

Some of the Air Force and Navy installations GAO visited also failed to identify and report cases involving treatments at civilian facilities.

Potentially significant CHAMPUS medical costs are not being reported to service legal offices for the following reasons:

- The CHAMPUS cost threshold for reporting outpatient cases is $500, which excludes many cases with potential for cost recovery.
- Private organizations under contract to CHAMPUS are allowed to exclude cases with certain diagnostic codes from review for third party liability potential. However, GAO found that some excluded diagnostic codes are for injuries that can occur as the result of automobile accidents and therefore have potential for cost recovery.

Inconsistent Regulations and No-Fault Insurance Laws Hamper Recovery

The service legal offices GAO visited appeared to be conducting third party liability recoveries in accordance with regulations. However, military service regulations regarding the minimum cost threshold for attempting recovery on outpatient treatments are inconsistent, causing some services to pursue cases that are discarded in others.

The Federal Medical Care Recovery Act (42 U.S.C. 2651-53) requires that fault be established in order to conduct third party liability recovery. However, some states have subsequently passed no-fault insurance laws that generally allow for recovery by individuals from their own insurance companies irrespective of fault. Since no-fault laws by definition do not establish an at-fault or liable party, DOD's legal ability to conduct recoveries under this statute varies according to the no-fault statutes in these states.

Limited Incentive to Recover Costs

Service legal offices and military medical facilities have little incentive to devote scarce resources to third party liability activities. Recovered funds are deposited into the general fund of the U.S. Treasury. Third party liability activities thus receive limited command emphasis and are often inadequately staffed.

Weak Internal Controls

Six of the 13 facilities GAO visited had inadequate or incomplete records for indicating which potential third party cases had been sent to service legal offices. Private organizations under contract to CHAMPUS are not required to record whether the potential third party cases they identify have been forwarded to service legal offices. The Army and Navy legal offices GAO visited also did not maintain records of the potential third party cases reported to them, and none of the service legal offices were adequately recording the reasons that potential cases had been discarded without asserting claims. This lack of internal controls prevents accurate overall evaluation of service legal office recovery effectiveness.

Recommendations to the Congress

We recommend that the Congress enact legislation to allow DOD to retain a portion of the recovered third party liability medical care costs in circumstances creating a tort liability. This should both provide DOD with the incentive and funding to increase recoveries and result in increased Treasury receipts. However, these funds should be restricted to supporting third party liability activities at military medical facilities and Judge Advocates General claims offices.

GAO further recommends that the Congress enact legislation to enable recovery by the government in states with no-fault automobile insurance laws.

Recommendations

GAO recommends that the Secretaries of the Army, the Navy, and the Air Force take the following actions:

- Modify military service regulations to set a consistent, cost-effective minimum cost threshold for reporting outpatient cases with potential third party liability to service legal offices.
- Direct the service Judge Advocates General to establish better internal controls for third party liability cases. Specifically, in addition to maintaining current records, service legal offices need to record the potential third party liability cases they receive, the cases they discard, and the reasons they are discarded.

GAO recommends that the Secretaries of the Army and the Navy develop and implement standard procedures for medical facilities to identify and quickly report potential third party liability cases.

GAO recommends that the Secretary of Defense direct the Assistant Secretary of Defense (Health Affairs) to take the following actions:

- Determine at what cost CHAMPUS outpatient cases are economical for the government to recover and reach an agreement with the service Judge Advocates General regarding the minimum cost of outpatient cases that private organizations under contract to CHAMPUS should be required to report to service legal offices.
- Determine which diagnostic codes these private organizations should be allowed to exclude in determining which claims should be reviewed for third party liability potential.

Other recommendations, including recommendations to improve internal controls, are contained in chapters 2, 3, and 4.

Agency Comments

DOD orally concurred with the findings and recommendations contained in this report. The Department acknowledged that the administrative improvements and legislative changes recommended by GAO should result an estimated $25 million annual savings to the government.

Contents

Abbreviations

AQCESS	Automated Quality of Care Evaluation Support System
CHAMPUS	Civilian Health and Medical Program of the Uniformed Services
DOD	Department of Defense
GAO	General Accounting Office
JAG	Judge Advocate General

Introduction

The Department of Defense (DOD) health care system provides medical care to active duty military personnel and to nonactive duty beneficiaries, such as dependents of active duty personnel and military retirees and their dependents. Annual expenditures for military medical activities have risen from $4.1 billion in 1979 to $11.5 billion in 1987, an increase of 180 percent.

Sources of Medical Care

Military medical care is provided either directly through the military's own treatment facilities or indirectly through civilian facilities. Active duty personnel are entitled to receive health care at military medical facilities and in some instances at civilian facilities. Nonactive duty beneficiaries are eligible to receive health care at military facilities when space and professional services are available. When care is not available, nonactive duty beneficiaries under age 65 may use the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), a separate program administered by DOD that helps pay for medical care at civilian facilities.

The military's direct care system consists of over 500 medical treatment facilities. These range in size from small clinics with limited capabilities to large hospitals with extensive capabilities and medical teaching programs. The medical facilities include 168 military hospitals, 129 of which are located in the United States.

According to DOD, approximately 9.1 million people are eligible for care in military medical facilities: 2.4 million active duty members, 2.9 million dependents of active duty members, and over 3.8 million retirees and dependents of retired or deceased members. Active duty members do not pay for care obtained in military facilities. Nonactive duty beneficiaries pay a small daily fee for inpatient care received at military facilities but pay nothing for outpatient care.

When nonactive duty beneficiaries under age 65 cannot obtain needed medical care from a military medical facility or do not live within 40 miles of one, they may obtain medical care from civilian providers under CHAMPUS. Beneficiaries older than 65 years are eligible for Medicare and therefore ineligible for CHAMPUS. CHAMPUS pays for a substantial portion of the medical care provided by hospitals, physicians, and other civilian providers. Private organizations called "fiscal intermediaries" are under contract to DOD to pay claims submitted by hospitals, physicians, and other health care providers for services provided to beneficiaries under CHAMPUS. The Office of CHAMPUS, located at Fitzsimmons

Army Medical Center near Denver, Colorado, is responsible for administering CHAMPUS. The Office of CHAMPUS is under the policy direction of the Office of the Assistant Secretary of Defense (Health Affairs). According to a Congressional Budget Office study, annual CHAMPUS outlays for health care have risen even faster than expenditures for the overall military health care system: from $485 million in 1979 to $2.3 billion in 1987. This represents an increase of 374 percent versus 180 percent for the overall system.

Certain Medical Care Costs May Be Recoverable From Liable Third Parties

In certain circumstances, the federal government is entitled by law to recover the cost of the medical care it provides. First, under the Federal Medical Care Recovery Act,[1] DOD may bring tort actions against liable third parties to recover the cost of medical care provided or paid for by DOD in accident, negligence, and wrongful act cases. Recovery of such costs is called "third party liability recovery." When service members or other beneficiaries are injured as the result of the actions of others, the military service Judge Advocates General (JAG) normally attempt to recover medical treatment costs from liable persons or their insurance companies. Amounts recovered are deposited in the Treasury. If these efforts are unsuccessful or the accident was caused by the service member, the JAGs may recover costs through the medical payment and personal injury protection provisions of automobile insurance policies held by service members. The JAGs process these cases as a part of third party liability recovery.

Under the Consolidated Omnibus Budget Reconciliation Act of 1985,[2] DOD may also require beneficiaries who carry health or other insurance to pay for the care covered by their policies. This type of recovery is called "coordination of benefits." Finally, when eligible beneficiaries are injured at private sector places of employment, DOD may sometimes recover the cost of the medical care it provides from state workers' compensation insurance. A recent amendment to this law provides that recovered funds be returned to the appropriation for maintenance and operation of the medical facility.[3]

Military regulations or contracts require service medical commands, CHAMPUS fiscal intermediaries, and military service offices that authorize

[1]42 U.S.C. 2651-53 (1982).

[2]Codified at 10 U.S.C. 1095 (Supp. IV, 1986).

[3]Public Law 101-189, November 29, 1989.

payment for care in civilian facilities to identify and report to JAG offices those cases that may have potential for third party recovery. The JAGs are responsible for determining which of these cases have potential for recovery, asserting claims, and recovering costs. JAG officials told us that approximately 90 percent of all third party liability recoveries involve injuries sustained as a result of motor vehicle accidents.

Identifying and reporting potential third party liability cases are essential to the medical cost recovery process. The JAGs cannot effectively initiate medical recovery claims unless the service medical treatment facilities, CHAMPUS fiscal intermediaries, and military payment offices inform them of cases that might have recovery potential. Effective JAG recovery efforts are equally important to the recovery process. Medical cost recovery is becoming increasingly important due to the rapidly rising levels of DOD health expenditures.

Objective, Scope, and Methodology

The former Chairman of the Subcommittee on Readiness, House Committee on Armed Services, requested that we evaluate the effectiveness of DOD's recovery efforts in third party liability cases. To do this we

- evaluated CHAMPUS and military service procedures and activities for identifying medical treatment cases with third party liability potential and reporting them to the service JAGs,
- evaluated JAG procedures and activities for conducting third party liability recovery, and
- identified changes needed to make third party liability recovery efforts more effective.

We limited our audit to an evaluation of third party liability recovery because (1) DOD's coordination of benefits recovery efforts had not been under way long enough when we began this review to produce sufficient reliable data for evaluation and (2) the potential amounts that can be recovered under workers' compensation appear to be relatively minor compared to those that can be recovered through third party liability or coordination of benefits.

We interviewed officials and reviewed records associated with third party liability identification and recovery activities at Headquarters, U.S. Air Force, U.S. Army, and U.S. Navy; the Army Health Services Command; the Offices of the Army, the Navy, and the Air Force Judge

Advocates General; and the Office of CHAMPUS. We also interviewed officials from DOD's Office of Health Affairs and the American Hospital Association.

We collected and analyzed selected third party liability medical and claims data and reviewed military medical facility, CHAMPUS, and JAG organization and procedures for third party liability case identification and recovery. To evaluate the effectiveness of potential third party liability case identification and recovery efforts, we obtained listings of motor vehicle accident cases that occurred in fiscal year 1987 and resulted in inpatient admissions. These listings were provided by the Automated Quality of Care Evaluation Support System or other systems for the medical facilities we visited. We then tested how well military medical facilities were reporting potential third party liability cases by comparing fiscal year 1987 motor vehicle accident inpatient admission records to medical facility third party liability records and/or reports and JAG records.

We selected fiscal year 1987 data for this analysis so that adequate time would have passed for the reviewed cases to be identified by military medical facilities or CHAMPUS fiscal intermediaries and to be processed by the responsible JAG offices. We also reviewed some aspects of motor vehicle accidents occurring between 1987 and 1989 that involved outpatient treatment at military facilities and DOD-paid inpatient treatment at civilian facilities.

Although potential third party liability cases can result from other causes, we limited our analysis to motor vehicle accidents because JAG officials told us that these accident cases (1) make up about 90 percent of all third party liability recoveries and (2) have greater potential for recovery than other types of cases. Both JAG and military hospital officials concurred that motor vehicle accident cases should always be considered as potentially recoverable and therefore should be reported to the JAGS.

We reviewed the identification and reporting of potential third party liability cases at the following 13 military medical facilities: the Naval Hospital Portsmouth, Portsmouth, Virginia; the Naval Hospital Charleston, Charleston, South Carolina; the Naval Hospital Beaufort, Beaufort, South Carolina; the Naval Hospital Patuxent River, Patuxent River, Maryland; the National Naval Medical Center, Bethesda, Maryland; Kimbrough Army Community Hospital, Ft. Meade, Maryland; Dewitt Army Community Hospital, Ft. Belvoir, Virginia; Darnall Army

Community Hospital, Ft. Hood, Texas; Madigan Army Medical Center, Ft. Lewis, Washington; Walter Reed Army Medical Center, Washington, D.C.; Wilford Hall Medical Center, Lackland Air Force Base, Texas; Robert L. Thompson Hospital, Carswell Air Force Base, Texas; and the 96th Strategic Hospital, Dyess Air Force Base, Texas. We also reviewed CHAMPUS third party liability identification and reporting at Blue Cross/ Blue Shield of South Carolina, Columbia, South Carolina, and Wisconsin Physicians Service, Madison, Wisconsin.

We reviewed JAG third party liability recovery activities at Naval Legal Service Offices at Charleston Navy Base, Charleston, South Carolina; Washington Navy Yard, Washington, D.C., and Norfolk Navy Base, Norfolk, Virginia; and at the Offices of the Staff Judge Advocate at Ft. Meade, Maryland; Ft. Belvoir, Virginia; Ft. Hood, Texas; Ft. Lewis, Washington; Ft. Stewart, Georgia; Walter Reed Army Medical Center, Washington, D.C.; Lackland Air Force Base, Texas; Carswell Air Force Base, Texas; and Dyess Air Force Base, Texas. We conducted this review from July 1988 to July 1989 in accordance with generally accepted government auditing standards.

Weaknesses in Identifying Cases With Recovery Potential

Many potential third party liability cases are not being identified and reported to the JAGs. For example, most of the military treatment facilities we visited were identifying fewer than half of the inpatient cases most likely to have recovery potential. We noted similar problems with third party liability cases involving payments to civilian hospitals by military payment offices. With respect to CHAMPUS, we found that one of the fiscal intermediaries we visited was not submitting many potential third party cases to the JAGs because its selection criteria excluded certain types of cases from consideration. Also, the minimum dollar amounts established by CHAMPUS for reporting outpatient potential third party cases are too high, causing underreporting of these cases.

By not effectively identifying third party liability cases, DOD has lost the opportunity to recover millions of dollars annually. We were unable to project the total value of DOD third party liability cases that had not been identified and reported to the JAGs for recovery action because of the varying work loads and variety of services rendered by military treatment facilities, the wide disparity in the effectiveness of third party liability activities, and internal control weaknesses (these are discussed in chapter 4). However, the consensus among the JAGs we visited was that improvements in third party liability recovery activities could double the approximately $25 million recovered annually from these cases. Our analysis tends to support the JAG estimate.

Many Potential Third Party Cases Are Not Being Reported by Medical Treatment Facilities

Army, Navy, and Air Force regulations require medical treatment facilities to identify cases with potential for cost recovery and to report them to designated JAG offices. However, during fiscal year 1987, 8 of the 13 military hospitals we visited appeared to have identified and reported only about half or fewer of their inpatient cases with third party recovery potential. Many outpatient motor vehicle accident cases were also not reported. Cases were not identified and reported for the following reasons:

- Third party liability activities often receive little command emphasis.
- Military service regulations differ on requirements for reporting outpatient potential third party cases.
- Many military medical facilities lack a systemized approach and do not effectively use computerized data in identifying potential third party cases.

Army, Navy, and Air Force regulations require that all inpatient cases involving potential third party liability be reported to the JAGs. Reporting requirements for outpatient cases involving potential third party liability vary among the services, depending on cost and other factors. Our review focused on inpatient motor vehicle accident cases because (1) about 90 percent of all third party liability cases involve motor vehicle accidents and (2) both JAG and medical facility officials agreed that all inpatient motor vehicle accident cases are potential third party liability cases and should be reported to the JAGs.

DOD currently uses the Automated Quality of Care Evaluation Support System (AQCESS) for hospital administrative purposes. We found that for most locations DOD could program AQCESS to identify and list fiscal year 1987 inpatient admissions to military medical facilities that involved motor vehicle accidents. With assistance from the services, we developed computer programs to extract this information. We developed the same information manually at some military medical facilities. We evaluated how well individual medical facilities were reporting these cases to the JAGs by comparing our AQCESS and manual lists of inpatient admissions involving motor vehicle accidents with medical facility and JAG records of the cases actually reported.

The identification and reporting of inpatient motor vehicle accident cases appeared generally adequate at the three Air Force medical facilities we visited. Air Force regulations require individual clinics within these facilities to report daily to the JAGs all cases treated (both inpatient and outpatient) and to identify which ones might have third party potential. However, we found that 29 inpatient potential third party cases involving $107,940 had been omitted from these reports by the Robert L. Thompson Hospital at Carswell Air Force Base during April 1987 through February 1989. We also found that sometimes these reports had not been submitted. For example, the 96th Strategic Hospital at Dyess Air Force Base did not submit them for 32 days from November 1988 to January 1989. The Robert L. Thompson Hospital also did not submit these reports for 6 days during fiscal years 1987 through 1988. We did not determine how many potential inpatient and outpatient cases had not been reported due to these omitted reports because of the time and resources such an evaluation would have required. Air Force officials could not explain why these reports had not been submitted.

The reporting of inpatient motor vehicle accident cases was less effective at most of the Army and Navy medical facilities we visited. As a

result, many potential third party cases had not been detected or reported. Army and Navy regulations do not specify how their facilities should identify potential third party cases. Consequently, individual medical facilities in these services had designed their own third party identification procedures.

Tables 2.1 and 2.2 show the numbers and costs of the motor vehicle accident inpatient admissions we reviewed and the numbers and costs of those that had been identified and reported during fiscal year 1987 by the Army and Navy medical facilities we visited.

Table 2.1: Motor Vehicle Accident Inpatient Admissions During Fiscal Year 1987

Service/facility	Number of cases we reviewed	Number of cases services identified	Percentage of cases services identified
Navy			
Portsmouth	203	199	98
Charleston	135	39	29
Beaufort	43	15	35
Bethesda	124	58	47
Patuxent	9	3	33
Army			
Ft. Belvoir	50	Unknown[a]	Unknown[a]
Ft. Lewis	253	85	34
Ft. Meade	115	35	30
Ft. Hood	143	116[b]	81
Walter Reed[c]	141	34	23

[a]Dewitt Hospital did not have any records indicating the number and amount of third party liability cases forwarded to the JAG during fiscal year 1987.

[b]We could not determine whether Darnall Hospital had identified an additional 26 cases because hospital records for these cases were missing.

[c]Third party recovery activities at Walter Reed Army Medical Center have been revised and improved over those in effect during fiscal year 1987. Identification rates for this facility are therefore likely to have changed since fiscal year 1987.

Table 2.2: Treatment Costs of Inpatient Motor Vehicle Accident Cases During Fiscal Year 1987

Service/facility	Cost of cases we reviewed	Cost of cases services identified	Percentage of costs services identified
Navy			
Portsmouth	$1,068,685	$1,047,730	98
Charleston	600,920	155,135	26
Beaufort	174,530	46,368	27
Bethesda	1,043,473	592,087	57
Patuxent	12,476	1,451	12
Army			
Ft. Belvoir	192,888	Unknown[a]	Unknown[a]
Ft. Lewis	1,185,592	368,676	31
Ft. Meade	603,692	76,780	13
Ft. Hood	755,874	638,127	84
Walter Reed	2,460,051	474,601	19

Note: We determined case costs by multiplying the number of patient days in the hospital by the fiscal year 1987 inpatient rate of $441 per day.

[a]Dewitt Hospital did not have any records indicating the number and amount of third party liability cases forwarded to the JAG during fiscal year 1987.

Although military medical facilities had primary responsibility for identifying and reporting these cases to the JAGs, some of the cases not reported were subsequently identified by the JAGs through other means. For example, cases involving civilian as well as military treatment costs were sometimes identified as a result of reports submitted by CHAMPUS fiscal intermediaries or military payment offices, and some cases were reported to the JAGs by civilian attorneys, individual service members, and other sources.

The effectiveness of these other efforts varied by installation. Our review of JAG files revealed that from 0 to 28 percent of total reviewed case costs had subsequently been identified as a result of these efforts. For example, at Fort Lewis, Washington, JAG staff identified unreported potential third party liability cases involving $196,430, about 17 percent of the $1,185,592 in inpatient costs for motor vehicle accident cases treated by Madigan Army Medical Center in fiscal year 1987. However, medical facility and JAG records together still could not account for many of the cases we reviewed. Combined JAG and medical facility efforts accounted for more than 75 percent of total case cost at only 2 of the 10 medical facilities and for only 19 percent or less of total case cost at 3 locations.

Third Party Liability Cases Are Given Little Emphasis at Military Medical Facilities

Officials at nearly all the medical facilities we visited said that third party activities received little command emphasis and consequently were assigned a low priority. These officials said that their resources were barely adequate for carrying out their primary mission of providing health care and that therefore only limited support could be given to third party activities. Some military hospital officials also said that they had little incentive to devote scarce resources to third party activities because none of the costs recovered were returned to the medical facilities incurring these costs.

We did not study the adequacy of the staffing and other resources assigned to third party liability activities at the medical facilities we visited. However, officials at 6 of the 13 facilities we visited told us that staffing shortages were hindering third party liability activities. We noted that 6 medical facilities were experiencing case reporting backlogs or difficulty in processing caseloads and that only 4 of the 13 had any staff assigned to third party liability activities on a full-time basis.

We also noted that military medical facilities and JAG offices that place only modest emphasis on third party liability activities tend to have much more effective recovery. For example, at the Naval Hospital Portsmouth, Portsmouth, Virginia, the hospital commander had placed the third party liability clerk in charge of a separate office with one additional full-time and one part-time staff member. This office coordinated closely with the local JAG legal office, was using computers to record third party liability information, and identified and reported about 98 percent of the fiscal year 1987 potential inpatient third party liability cases we reviewed. However, at the National Naval Medical Center, Bethesda, Maryland, where little command emphasis was placed on third party liability activities, the third party clerk was part of the Patient Administration Office staff, worked alone under minimal supervision, was not using computerized records, maintained poor coordination with the JAGs, and identified and reported only 47 percent of the third party liability cases we reviewed.

Systemized Methods and Better Use of Computerized Data Would Improve Recovery Efforts

The Army and Navy medical facilities we visited did not have common, systemized methods for identifying third party cases and reporting them to the JAGs. Conditions varied by service and by installation, but medical facility procedures and the use of computerized information systems for identifying and reporting potential third party cases were limited at many of the installations we visited.

Air Force regulations require treatment clinics within Air Force medical facilities to complete a standard form, which requires that each patient treated be listed and that potential third party liability cases be identified. These regulations also require that these forms be forwarded to the JAG daily. The three Air Force medical facilities we visited were generally complying with the regulations. They were therefore using a timely, consistent, and documented method for identifying, recording, and reporting potential third party cases. This method involved the direct participation of all clinics performing treatments as well as of the third party liability clerk.

Army and Navy regulations do not specify how their medical facilities should identify potential third party cases. The third party liability clerks at Army and Navy medical facilities had designed their own methods of doing this. The effectiveness of third party identification and reporting at these medical facilities was therefore largely dependent on the effectiveness of the third party liability clerk. Individual clinics in Army and Navy medical facilities often did not help identify third party cases, although clinic personnel such as doctors, nurses, and their assistants were in direct contact with patients and therefore often in positions to know whether third party liability was likely to be involved. Instead, Army and Navy third party liability clerks usually identified potential third party cases through their own subsequent review of individual clinic records. They often did not attempt to identify potential third party cases in clinics other than the emergency room because of their work loads, the part-time nature of this work, and the low emphasis placed on third party liability. We believe that the identification of potential third party cases is more effective when clinic personnel identify these cases at the time the treatment is provided.

Army and Navy third party liability clerks also often did not identify and report third party liability cases in a timely fashion. While Air Force potential third party cases were being reported to the JAG on a daily basis, the cases we reviewed at five of the Army and Navy installations required an average of 138 days to reach the JAG. JAG officials told us that delays in processing potential cases often result in reduced recoveries. They said that locating service members and obtaining detailed information from them becomes more difficult with the passage of time and that delays increase the potential for case settlement by the service member and other parties prior to the JAG's involvement in the case. We therefore found that the systemized approach used by the Air Force is generally more effective in identifying and reporting potential third party liability cases.

We also found that most of the medical facilities we visited were making only limited, if any, use of computerized information systems to help identify third party liability cases. Third party clerks usually reviewed clinic treatment records manually. We believe that the failure to use computerized data results in the identification of fewer cases. The large volume of treatments involved and the part-time nature of most third party clerk efforts make manual identification of cases extremely difficult. Even when computerized third party liability information was available, it sometimes was unusable. For example, at one location, medical facility staff had been erroneously entering data into computerized patient information systems in ways that caused the computer to indicate that third party liability was never involved. We believe that more potential third party cases would be identified if procedures were standardized, computerized, and initiated at the clinics.

We believe that DOD could use the AQCESS program we developed or a similar program to help identify potential third party liability cases and to verify whether they are being reported to the JAGs. We provided copies of this program to JAG and medical facility officials. Use of this or a similar program could simplify and improve military medical facilities' efforts to identify and report potential third party liability cases while at the same time reducing third party liability staffing requirements.

DOD officials told us that DOD may replace AQCESS with a new patient information system called the "Composite Health Care System." They believe that one of the functions this system could perform is to identify potential third party cases and serve as an internal control for recovery activities. DOD is currently testing this system at 12 military medical facilities and plans to decide on whether to implement it worldwide in August 1990.

Service Regulations Differ on Requirements for Reporting Outpatient Cases

Our review focused primarily on inpatient third party liability cases. However, we also found that military medical facilities were not consistently reporting potential outpatient third party cases to the JAGs. Outpatient case reporting is limited by variances among the services' reporting regulations as well as by the limited emphasis and lack of systemized and computerized identification and reporting methods that affect third party liability activities in general. Army, Navy, and Air Force regulations establish selection criteria to be used by medical facilities and military payment offices in determining which potential third party cases will be reported to the JAGs. While the services' regulations generally

require all inpatient potential third party liability cases to be reported regardless of cost, they differ on reporting outpatient cases.

For example, Air Force regulations require medical facilities to report all outpatient treatments that result from motor vehicle accidents, faulty products, or the actions of another person. Navy regulations are contradictory. Navy Medical Command regulations do not require medical facilities to report outpatient injuries unless it appears that the patient plans legal action or it appears that 10 or more outpatient treatments (costing $670 or more at the 1989 DOD rate) will result. However, Navy JAG regulations state that outpatient cases will not be reported unless more than seven treatments will result. Army regulations do not address outpatient reporting requirements.

We believe that the overall degree to which medical facilities report outpatient cases has been significantly reduced because of these differences in service regulations. The Air Force facilities we visited were attempting to report all outpatient potential third party cases to the JAGs. The third party clerks at 8 of the 10 Army and Navy facilities we visited told us that they reported few outpatient cases to the JAGs from clinics other than the emergency room. Often, outpatient treatments were reported only if they were known to be associated with inpatient cases. However, some JAG officials told us that recovery attempts on small-dollar-value cases such as those often associated with outpatient care were very successful because insurance companies tended not to resist paying on these cases.

We did not determine the extent to which medical facilities had identified and reported outpatient treatment cases with potential for third party recovery. Outpatient treatment records were far more voluminous and more difficult to evaluate for third party potential than inpatient records, and the time and resources such an evaluation would have required made it impractical. However, the recovery of third party costs associated with outpatient treatments could have a major impact because of the large number of outpatient treatments performed by medical facilities (32.2 million treatments costing over $1.8 billion were performed in fiscal year 1987). DOD therefore needs to set a standard, cost-effective threshold for reporting outpatient third party cases with recovery potential.

Civilian Treatment Cases Not Reported

Problems in identifying and reporting cases in which treatment was received in civilian medical facilities are also hindering third party liability recovery activities. Navy procedures for reporting civilian treatment cases to the JAGs are weak and likely to result in missed recoveries, and two of the Air Force bases we visited were not reporting significant numbers of these cases to the JAGs.

Active duty service members occasionally receive treatment from civilian health care providers. For example, when emergency care is needed, a service member may be treated at a civilian hospital. Civilian hospitals or other health care providers may also be asked to render treatment or conduct tests a military medical facility is unable to perform. The service member's bill for such services is usually paid by a medical facility payment office in the Army and the Air Force and by the Office of Medical Affairs in the Navy. Often these cases involve large dollar amounts.

Officials at the Navy Legal Service Offices (the JAG offices) we visited said that they depend on the Navy Medical Command's Office of Medical Affairs to notify them of civilian treatment cases with third party potential. However, this office's procedures for identifying and reporting potential third party cases to the JAGs are weak and likely to result in missed recoveries.

Upon receipt of civilian care billings from service members, the Office of Medical Affairs sends the service member a questionnaire that requests only limited information, such as the cause of the injury, and—if the care is related to a motor vehicle accident—the name of the driver(s) involved, the insurance company, and the policy number. Upon receiving this information, the office forwards the cases identified as involving motor vehicle accidents to the appropriate JAG office with a copy of the questionnaire attached. However, while the Navy encourages service members to complete and return this questionnaire, it cannot legally require them to do so as a condition of paying their claim. JAG officials also told us that this questionnaire does not provide enough information; it needs to be redesigned or replaced with a more detailed JAG questionnaire.

The lack of sufficient information submitted with cases by the Office of Medical Affairs usually requires the legal services offices to send out their own questionnaires to obtain the information they need to decide whether to pursue these cases. However, JAG officials told us that, by this time, it is often difficult to contact the service members concerned

because they have been reassigned, deployed, or separated from the service.

We reviewed the motor vehicle accident cases that had been referred by the Office of Medical Affairs and were awaiting processing at the three Navy JAG offices we visited. At one JAG office, 32 percent of these cases did not have questionnaires attached. Also, many of the questionnaires submitted to all three JAG offices were missing needed insurance information such as the name of the other insurance company involved and the policy number. Table 2.3 shows data on the number of questionnaires sent and the completeness of the information provided.

Table 2.3: Completeness of Office of Medical Affairs Questionnaires

Navy Legal Service Office	Cases we reviewed	Amount involved	Cases with questionnaires	Insurance company identified	Policy number identified
Norfolk	124	$262,996	84	53	28
Washington	45	70,790	45	28	20
Charleston	22	15,447	21	11	7

We believe that recovery for these types of cases would be more effective if service members were asked to submit more detailed JAG questionnaires with their initial claim packages, rather than being sent questionnaires after claims are filed.

Air Force regulations require medical facility payment offices to report to third party liability clerks all injury cases for which medical treatment payments are made to civilian health care facilities. Third party liability clerks are required to forward these cases to the JAGs for determination of third party liability recovery potential.

At two of the three Air Force facilities we visited, these payment offices were not identifying and reporting to third party liability clerks or to the JAGs all potential third party liability cases involving treatment at civilian health care facilities. For example, at the Air Force's Wilford Hall Medical Center at Lackland Air Force Base, Texas, 85 motor vehicle accident injury cases involving $75,683 in civilian health care reimbursements had not been identified or reported to the JAG during fiscal years 1987 to 1988 because of poor procedures and because medical facility officials were not familiar with the applicable regulations. During the same period, the Robert L. Thompson Hospital at Carswell Air Force Base, Texas, had not identified or reported 103 potential third

party cases costing $124,307 because officials at this hospital were unaware that Air Force regulations required them to do so.

We did not review Civilian Payment Office activities at most of the Army facilities we visited because variances in their procedures made comparison difficult and because of the time and resources such an evaluation would have required.

The Effectiveness of CHAMPUS Third Party Liability Activities Is Unclear

Potentially significant medical costs paid by CHAMPUS are not being identified and reported to the JAGs for collection primarily because the CHAMPUS cost threshold for reporting outpatient cases with potential third party liability precludes recovery in many cases. Also, one fiscal intermediary's exclusion of certain types of inpatient cases from third party review precluded recoveries.

CHAMPUS and How It Works

A substantial portion of DOD's military health care is provided through CHAMPUS. In fiscal year 1987, CHAMPUS paid over $2 billion for medical care provided to beneficiaries. Of this, about $130 million was for claims having the potential for third party liability.

Private organizations called "fiscal intermediaries" are under contract to DOD to pay claims submitted by hospitals, physicians, and other health care providers for services provided to beneficiaries under CHAMPUS and to report to the JAGs those claims that might have potential for third party liability.

JAG officials at nearly all the installations we visited told us that they believed that many CHAMPUS cases with potential for third party liability were not being identified and reported. We reviewed third party identification and reporting at the Office of CHAMPUS and at two of the five CHAMPUS fiscal intermediaries—Blue Cross/Blue Shield of South Carolina and Wisconsin Physicians Service.

High Outpatient Cost Threshold Causes Limited Reporting of Potential Third Party Cases

The Office of CHAMPUS does not require fiscal intermediaries to submit outpatient third party liability claims to JAGs if the amount is less than $500, unless requested by JAG officials. We asked Office of CHAMPUS officials why the threshold had been established at $500 compared to the lower thresholds used by service medical treatment facilities. They told

us that this level had evolved as the result of discussions with representatives of the service JAGs. However, neither CHAMPUS nor JAG officials could provide documentation concerning this agreement, nor could they recall why the threshold had been set at $500. JAG officials told us that they conduct cost-effective recoveries at far lower case cost levels. They believe that the $500 threshold is too high and that potential third party cases are therefore underreported. We agree that the $500 threshold is probably too high because the JAGs are conducting effective recoveries at much lower cost levels for cases treated in military medical facilities and in civilian hospitals when CHAMPUS is not involved. However, we could not determine at what level the CHAMPUS threshold should be set.

A reduction in the $500 threshold could substantially increase CHAMPUS third party liability recoveries. According to CHAMPUS officials, they received 250,000 potential third party claims that were under the $500 threshold during the first 6 months of fiscal year 1988. The value of these claims totaled $18.2 million. CHAMPUS officials believe that most of these claims involve less than $100 each and indicated that the cost-effectiveness of recovering them is questionable. At the time of our review, CHAMPUS was unable to determine accurately the total value of cases falling below $100 or any other dollar breakout below $500.

We believe that CHAMPUS needs to review the cost threshold for reporting potential outpatient third party cases and set it at a level that the JAGs agree is economical for the government to pursue.

Potential Recovery Cases Were Excluded From Review for Third Party Potential

We evaluated the two fiscal intermediaries' reviews of injury cases to determine whether those with third party potential were being identified. We found that both fiscal intermediaries were accurately identifying potential third party cases in accordance with their established criteria. However, Blue Cross/Blue Shield of South Carolina's third party identification criteria excluded many cases with third party potential.

Both fiscal intermediaries determine which CHAMPUS claims to review for third party liability by reviewing the diagnostic codes assigned to cases. Third party review is normally done for claims with codes 800 through 999. These codes represent various types of traumatic injuries. However, the Office of CHAMPUS allows fiscal intermediaries to exclude certain codes within this range that the fiscal intermediaries consider as having limited potential for third party liability. For example, insect

bites are coded within this range but do not normally have potential for third party liability.

Wisconsin Physicians Service excluded 14 diagnostic codes in the 800 to 999 range. We concurred that these codes had little third party potential. However, Blue Cross/Blue Shield of South Carolina was excluding a total of 79 codes, or about 42 percent of the 188 diagnostic codes used in the 800 to 999 range. We believe that many of the excluded codes have high third party potential. For example, one of the excluded codes was for sprains and strains. A JAG official said that automobile accidents not involving broken bones usually resulted in some type of sprain or strain injury. During fiscal year 1987, the government paid $10.9 million on potential third party liability claims processed by Blue Cross/Blue Shield with these excluded diagnostic codes. These unreported claims constituted about 32 percent of the total amount paid on potential third party liability claims processed by this fiscal intermediary.

JAG officials said that they were conducting successful recoveries on cases submitted by Wisconsin Physicians Service that involved the diagnostic codes excluded by Blue Cross/Blue Shield. Of 367 claims we sampled at Wisconsin Physicians, 94, or 26 percent, had the diagnostic codes that were excluded by Blue Cross/Blue Shield. Wisconsin Physicians determined that 40 of the 94 had third party potential and referred them to the JAGs.

We were unable to determine the monetary impact of excluding these diagnostic codes because it is unclear how successful the JAGs might have been in recovering government costs for these claims. We did not review whether similar exclusions were occurring at other fiscal intermediaries. After we informed the Office of CHAMPUS of these exclusions, they instructed all fiscal intermediaries to review all claims with diagnostic codes in the 800 to 999 range pending a change in the CHAMPUS Operations Manual for Fiscal Intermediaries.

Conclusions and Recommendations

The weaknesses we found in the identification and reporting of potential third party liability cases at medical treatment facilities, military payment offices, and CHAMPUS resulted in many cases' not being identified and reported to the JAGs. The JAGs cannot conduct effective recovery activities unless they are informed of which cases have potential for third party liability. Improvements in these areas are therefore critical to DOD medical cost recovery efforts.

We recommend that the Secretaries of the Army, the Navy, and the Air Force take the following actions:

- Modify military service regulations to set a consistent, cost-effective minimum cost threshold for reporting outpatient cases with potential third party liability to the JAGs.
- Instruct medical treatment facilities to make maximum use of computerized patient information systems to help identify potential third party cases and to ensure that these cases are reported to the JAGs. The Automated Quality of Care and Evaluation Support System could be used for this purpose for inpatient motor vehicle accidents until better systems become available.

We recommend that the Secretary of the Navy take the following actions:

- Instruct the Naval Medical Command to develop and implement procedures for medical facilities to identify and report potential third party cases. These procedures should require hospital clinic participation in the identification process.
- Instruct the Naval Medical Command to review the adequacy of Office of Medical Affairs questionnaires and encourage service members to submit them to the Office of Medical Affairs at the same time that they request payment of civilian health care provider charges.

We recommend that the Secretary of the Air Force ensure that regulations are followed regarding the reporting to JAGs of injury cases involving payment for treatment in civilian health care facilities.

We recommend that the Secretary of the Army direct the Health Services Command to develop and implement procedures for medical facilities to use in identifying and reporting potential third party liability cases. These procedures should require hospital clinic participation in the identification process.

We recommend that the Secretary of Defense direct the Assistant Secretary of Defense (Health Affairs) to take the following actions:

- Determine at what cost CHAMPUS outpatient cases are economical for the government to recover and reach an agreement with the JAGs regarding the minimum cost of outpatient cases that CHAMPUS fiscal intermediaries should be required to report to JAG claims offices.

- Determine which diagnostic codes fiscal intermediaries should be allowed to exclude in determining which claims should be reviewed for third party potential.

Agency Comments

DOD generally concurred with the recommendations contained in this chapter. In orally commenting on a draft of this report, it stated that the military services have agreed to eliminate arbitrary minimum cost thresholds for reporting outpatient cases with third party liability potential to JAG offices. New service regulations will require that service medical facilities report all such cases regardless of the monetary amount involved. DOD also agreed that an effective cost level needed to be determined for reporting CHAMPUS outpatient claims with third party potential. DOD suggested that it could perform a cost-benefit analysis to determine this cost level, since a decrease in the cost threshold for reporting these claims will increase the time and cost required for processing and increase the number of cases reported to the Judge Advocates General.

In its comments, DOD also stated that the exclusion criteria used by Blue Cross/Blue Shield of South Carolina for reporting potential third party cases had been established without the knowledge or approval of the Office of CHAMPUS. According to DOD, all fiscal intermediaries have been directed to cease any automated exclusions of procedure codes, and the Program Operations Division of the Office of CHAMPUS has been tasked with monitoring this requirement on an ongoing basis. A review of diagnostic codes that need not be reported is being performed and will be included in the CHAMPUS Operations Manual for Fiscal Intermediaries within 6 months.

JAG Recovery Effectiveness Can Be Improved

JAG offices at the installations we visited appeared to be pursuing third party liability cases in accordance with regulations. However, we found that JAG third party recovery efforts were adversely affected by inconsistencies in military service regulations, a lack of staff, and a legal problem affecting recovery in states with no-fault automobile insurance.

In chapter 2, we discussed the necessity of the proper identification and timely reporting of potential third party claims to the JAGs. Of equal importance to the third party liability recovery process is how well the JAG claims offices assert and recover claims once they become aware of them. Overall, the JAGs recover about half or less of the amounts they assert on third party liability claims they decide to pursue. From fiscal years 1985 through 1988, on average the Air Force recovered 52 percent, the Army 47 percent, and the Navy 37 percent of the amounts asserted on these claims. We could not fully evaluate the JAG's recovery effectiveness due to internal control conditions at the JAGs (see chapter 4). However, JAG officials acknowledged that many medical costs involving third party liability are not being recovered by DOD. They estimated that the resolution of these problems and those affecting the reporting of potential third party cases by medical facilities and CHAMPUS should increase annual recovery from the current level of $25 million to $50 million.

JAG Regulations Differ on Outpatient Claims Recovery

The services' JAG regulations require that all inpatient cases with potential for third party liability be pursued, regardless of cost. However, on outpatient cases, the regulations are not consistent. For example, Navy JAG regulations state that claims involving seven or fewer outpatient treatments (costing $469 or less at the 1989 rate) need not be reported or pursued. Army JAG regulations state that outpatient cases amounting to less than $250 need not be pursued unless collection is economically feasible. Air Force JAG regulations state that outpatient cases under $100 should not be pursued unless there is clear liability and minimal collection efforts will be involved. Chapter 2 identifies similar inconsistencies regarding which potential third party cases should be reported to the JAGs by medical facilities and CHAMPUS fiscal intermediaries.

Some of the JAG offices we visited were pursuing third party claims regardless of the amounts involved. For example, JAG officials at Fort Meade and Walter Reed Army Medical Center told us that recovery was usually economically effective regardless of the amount involved and that many of their recoveries were associated with small-dollar-value cases. JAG officials told us that they believed that the time and cost

involved in asserting claims for the smaller cases were nominal, particularly if form letter assertions were used. JAG officials also said that liable third parties tended to be less resistant to paying small claims than to paying large ones.

We could not determine a minimum cost at which third party recovery efforts would become cost-effective. However, the levels established by service JAG regulations for pursuing third party cases should be both consistent and coordinated with the cost levels used by CHAMPUS and medical facilities for reporting potential third party cases. We believe that, because of the current variety of levels used for identifying, reporting, and attempting recovery on third party liability cases, substantial opportunities for recoveries are as yet unrealized.

Recoveries Are Hindered by Insufficient Staffing

JAG staff at the installations we visited appeared to be conducting third party recovery in accordance with regulations. However, JAG officials told us that their staff resources were limited and that other areas, such as military justice, had a higher priority than third party liability. They also said that there was little incentive to emphasize third party recovery since all recovered costs are deposited into the general fund of the U.S. Treasury. Therefore, JAG officials sometimes make conscious decisions to de-emphasize third party recovery in order to devote adequate resources to activities with higher priorities.

Limited Staffing

At eight of the JAG offices we visited, only one or two people were processing third party claims. Often, these individuals were performing third party duties on a part-time basis. Staffing shortages and caseload levels caused some of the JAG offices we visited to increase the minimum claim amount they would attempt to recover or to curtail recovery efforts. For example, one JAG office that had not previously employed a minimum dollar amount for pursuing third party liability cases recently had established a minimum claim value of $150 for pursuing these cases. Officials at another JAG office told us that they no longer attempted to follow up on unpaid initial assertions against insurance companies or liable parties unless the government's claim involved at least $500. A third JAG office was abandoning recovery attempts on third party cases if difficulties were encountered in obtaining insurance information on the liable third party. As a result, current third party liability recovery levels appeared to have more to do with staff availability and caseload than they did with the cost level at which it was economical for the government to attempt recovery.

JAG officials believe that assigning additional personnel to third party liability would result in significant increases in the amounts recovered. For example, at one installation they estimated that assigning only one additional clerical staff member to third party liability cases would increase that office's annual third party recovery from approximately $1.7 million to $3 million. At another installation, JAG officials estimated that the addition of one additional clerical staff member would double the $374,000 being recovered annually.

Using Recovered Funds to Bolster Third Party Activities Could Increase Recoveries

As previously discussed, third party recovery activities are hindered by a lack of resources and incentive at both the medical facilities and the JAGs. These hindrances occur largely because, in accordance with 31 U.S.C. 3302(b)(1982), JAG third party recoveries are deposited into the general fund of the U.S. Treasury rather than a military account.

We believe that medical cost recoveries could best be increased if the Congress enacted legislation to allow DOD to retain a portion of the recovered funds and earmark them for providing the resources needed to perform effective medical cost recovery activities. These funds would then provide the resources and incentives needed by military medical facilities and JAGs to conduct effective recovery activities.

Alternatively, DOD could contract out medical recovery activities to private contractors. Section 3718(d) of title 31 of the U.S. Code allows government agencies to use a portion of the funds recovered to compensate the contractor. DOD officials told us that DOD has already contracted out workers' compensation recovery activities in one state since 1983 and has recently expanded this effort to include two additional states.

Either method should result in increased deposits to the Treasury. JAG officials estimated that the resolution of problems with staffing recovery efforts and with CHAMPUS and medical facility reporting of potential third party cases should double annual JAG medical cost recoveries. This increase should be sufficient to fund an enhanced military recovery effort or to pay private contractors while still increasing third party liability deposits to the Treasury well above current levels.

Recoveries Are Limited in States With No-Fault Insurance Laws

The Federal Medical Care Recovery Act allows recovery for medical expenses incurred by DOD for the treatment of service members, retirees, and dependents. However, the statute requires the establishment of third party tort liability for conducting recovery actions. This statute was passed before the advent of no-fault insurance laws affecting automobile accidents. Since no-fault laws by definition do not establish an at-fault, or liable, party, recoveries cannot legally be conducted under this statute in some states with no-fault laws.

For example, if a person operated an automobile in a manner that caused a collision with another automobile and both parties received injuries, in a no-fault state each could recover medical costs associated with the accident from his or her own insurance company regardless of which party was at fault. However, if one of the parties involved was a service member, the member's insurance company could refuse to pay the cost of care received in a military hospital on the grounds that the Federal Medical Care Recovery Act entitles the government to recover only when third party tort liability has been established. JAG officials told us that some insurance companies had denied payment on these grounds.

According to Army JAG officials, a total of 21 states, the District of Columbia, and Puerto Rico all have versions of no-fault insurance laws. The impact of these laws on third party recovery varies but particularly inhibits DOD third party liability recovery efforts in six states. In 1985, a bill (H.R. 441) was submitted in the House of Representatives to remove the tort requirement from the Medical Care Recovery Act, but it was not enacted.

We believe that the government should have the same right to recover medical care costs that anyone else has in such situations. A legislative change to remove the tort requirement for recovery in states with no-fault automobile insurance laws would provide the government that right. We believe that this could be best accomplished by enacting legislation that would give DOD separate third party collections authority, which would include no-fault automobile insurance policies and other appropriate payers.

Conclusions and Recommendations

The JAGs we visited appeared to be conducting third party liability activities according to regulations. However, overall JAG effectiveness is limited by inadequate staffing, inconsistent regulations regarding minimum claim cost thresholds for attempting recovery, and the relatively

low priority and incentive often associated with third party liability claims. Amendments to existing statutes are also needed to improve recovery effectiveness. Improvements in these areas are essential to ensuring the maximum recovery of DOD's medical costs.

We recommend that the Secretaries of the Army, the Navy, and the Air Force direct the service Judge Advocates General to modify JAG regulations governing third party recovery so as to establish consistent and cost-effective minimum amounts for claims assertions.

We recommend that the Secretary of Defense either direct the military services to increase the resources (personnel and/or equipment) assigned to conducting third party liability recovery activities at military medical facilities and JAG offices or explore the feasibility of contracting out third party liability recovery activities.

We also recommend that the Congress enact legislation to allow DOD to retain a portion of the recovered medical care costs. This should both provide DOD with the incentive and funding to increase recoveries and result in increased Treasury receipts. However, these funds should be restricted to supporting third party liability activities at military medical facilities and JAG claims offices.

We further recommend that the Congress enact legislation to enable recovery by the government in states with no-fault automobile insurance laws.

Agency Comments

DOD agreed to modify Judge Advocate General regulations so as to establish consistent and cost-effective minimum amounts for claims assertions.

DOD also agreed that the principles embodied in the Federal Medical Care Recovery Act need to be updated to accommodate third party liability recovery involving no-fault automobile insurance and to allow DOD to retain a portion of third party liability recoveries. In commenting on this report, DOD suggested that the needed changes could be accomplished by revising 10 U.S.C. 1095 so as to make DOD's statutory authorities comparable to those of other government agencies. It also suggested that this recovery activity be added to other DOD recovery activities now covered by procedures in place for collecting from third parties.

Third Party Liability Activities Need Better Internal Controls

Internal control weaknesses in both the identification and reporting processes for potential third party liability cases preclude an accurate overall evaluation of the performance of the various offices and activities involved in these activities. Military treatment facilities, payment offices, and fiscal intermediaries often did not keep adequate records of which cases had been identified and which ones had been referred to the JAGs. We also could not fully evaluate JAG recovery effectiveness because the JAGs did not keep records indicating why many potential third party cases had been discarded.

Establishing and maintaining internal controls are important management responsibilities. Good internal controls are essential to proper cost recovery with full accountability for the funds involved. They also serve as checks and balances against undesired actions and provide information needed to make good management decisions. The Federal Managers' Financial Integrity Act of 1982[1] requires the heads of federal executive agencies annually to evaluate their agencies' internal control systems and submit statements on the status of these systems to the President and the Congress.

Army and Navy Medical Facilities Need Better Third Party Liability Records

Many of the Army and Navy facilities we visited could not readily determine which potential third party cases they had identified and sent to the JAGs. However, the cases identified and reported by medical facilities were well documented at all the Air Force installations we visited. Cases were well documented because Air Force regulations require individual military treatment facilities and specialty clinics to log in all treatments on a standard form (AF 1488), indicate on the form whether third party liability might be involved, and submit copies of these forms to the JAGs daily through the third party liability clerk. By retaining copies of these logs, Air Force medical facilities had good records and internal controls over which cases had been identified and reported.

As discussed in chapter 2, Army and Navy regulations do not specify how their medical facilities should identify third party cases. Third party liability clerks at Army and Navy medical facilities consequently had designed their own procedures. The quality and effectiveness of medical facility internal controls for ensuring the adequacy of third party liability case identification and reporting therefore also varied widely. For example, of the 10 Army and Navy facilities we visited, only

[1]31 U.S.C. 3512 (1982), as implemented by Office of Management and Budget Circular No. A-123, August 4, 1986.

7 had some type of log or record for fiscal year 1987 showing which potential third party cases had been sent to the JAGs, and 3 of these either were incomplete, contained omissions, or had other design problems. Six of these facilities therefore could not readily determine which third party cases had been identified or whether they had been reported to the JAGs.

Records of CHAMPUS Cases Sent to JAGs Are Incomplete or Lacking

Internal control weaknesses also limited our evaluation of the performance of CHAMPUS fiscal intermediaries. The fiscal intermediaries we visited did not have complete or accurate records to show that the potential recovery cases they identified had actually been sent to the JAGs.

CHAMPUS regulations do not require fiscal intermediaries to keep records showing which potential third party cases are referred to the JAGs for recovery. The fiscal intermediaries we visited could determine which third party cases had been identified by reviewing their files. However, we were unable to determine whether the fiscal intermediaries were actually reporting all identified cases because they had not maintained adequate records of which cases they actually sent to the JAGs.

For example, Wisconsin Physicians does not keep any log of third party cases reported, making it impossible to determine whether this fiscal intermediary actually sent all of its potential third party cases to the JAGs. Blue Cross/Blue Shield maintains a manual log of potential third party cases sent to the JAGs. We reviewed this log for 148 claims for fiscal year 1987: all 148 involved diagnostic codes 800 through 999 and had billed amounts in excess of $500. We determined that 29 of these claims (20 percent) were potential third party cases. Of the 29, we were able to locate only 14 in the Blue Cross/Blue Shield log. We could not determine whether the log was being improperly maintained or whether the missing cases were never forwarded.

JAG Records Preclude a Detailed Evaluation of Potential Third Party Liability Cases

We attempted to evaluate JAG recovery effectiveness for the inpatient motor vehicle accident cases we reviewed at medical facilities. However, JAG offices normally do not keep records on all the potential third party cases referred to them by medical facilities, CHAMPUS, or other sources. Instead, the JAGs usually opened case files only for cases in which they expected to assert claims. Therefore, we could not determine how many of the cases we reviewed had been received by the JAGs or why they had

not pursued many of these cases. JAG officials told us that many potential third party cases had been discarded because, in their judgment, these cases had little or no potential for recovery. As previously discussed, overall, the JAGs recover about half or less of the amounts they assert on third party liability claims they decide to pursue.

At some JAG offices, case documentation was insufficient to explain important facets of claims resolution, such as why some opened claims had been later discarded or settled for less than the full amount of the medical costs involved. For example, Navy JAG headquarters officials told us that each case file should have a summary or chronology indicating what recovery actions had been taken to resolve the claim. However, many of the files we reviewed at Navy JAG offices did not have adequate summaries. We also found some cases in which all medical costs had not been included in the claim amount asserted. Documentation of what actions JAG officials had taken regarding these cases was often either absent or in the form of informal notes. Determination of what actions the JAGs had taken and the reasons for those actions at these locations was therefore often dependent on the recollection of the JAG officials involved and sometimes could not be determined.

Conclusions and Recommendations

The absence of adequate internal controls at the Army and Navy medical facilities, the CHAMPUS fiscal intermediaries, and the JAG offices we visited prevented an accurate determination of the resolution of many potential third party liability cases. Internal control problems also prevented an accurate determination of the extent to which the government had lost the opportunity to recover medical costs associated with these cases. DOD therefore needs to improve the internal controls associated with third party liability recovery activities.

We recommend that the Secretary of the Army instruct the Health Services Command to establish effective internal controls for monitoring the identification and timely reporting of potential third party liability cases. These controls should include a requirement for medical treatment facilities (including civilian payment offices) to keep standardized logs of all cases identified and reported to the JAGs.

We recommend that the Secretary of the Navy instruct the Navy Medical Command to establish similar internal controls for third party liability identification and reporting to the JAGs by Navy medical activities.

We recommend that the Secretary of Defense direct the Assistant Secretary of Defense (Health Affairs) to require that CHAMPUS fiscal intermediaries maintain logs of potential third party liability cases actually reported to the JAGS.

We recommend that the Secretaries of the Army, the Navy, and the Air Force direct the service Judge Advocates General to establish better internal controls for the evaluation of claims resolution effectiveness. Specifically, JAG claims offices need to record the potential third party liability cases they receive, the cases they discard, and the reasons for discarding them.

Agency Comments

DOD generally agreed with our recommendations. It stated that CHAMPUS fiscal intermediaries will be required to maintain logs of the cases and claims they refer to the Judge Advocates General. Also, the Departments of the Army and the Navy will ensure that standard procedures for medical facility identification and reporting of potential third party cases are implemented and that effective internal controls are established for monitoring these activities. DOD also said that the Secretaries of the Army, the Navy, and the Air Force will ensure that the internal controls we recommend for evaluating claims resolution effectiveness are made operational. We originally recommended that the Secretary of Defense direct these actions. However, DOD stated that the Secretary of Defense need not do so, since the Secretaries of the Army, the Navy, and the Air Force and the service Judge Advocates General would ensure that these procedures and internal controls are made operational. We have modified our recommendations accordingly.

The draft of this report that was submitted to DOD for comment also contained a recommendation that the Secretary of Defense direct the Secretaries of the Army, the Navy, and the Air Force to include reviews of the internal control weaknesses discussed in this report in their next Federal Managers' Financial Integrity Act Assessment. In commenting on this report, DOD stated that these internal control weaknesses would be corrected without resorting to the act. We have consequently withdrawn this recommendation.

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