

Congress of the United States

Washington, DC 20515

September 13, 2023

The Honorable Lloyd J. Austin III
Secretary of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

Dear Secretary Austin:

We write to you today regarding concerns about the implementation of the contract that Department of Defense (“DoD” or “the Department”) awarded to Leidos Partnership for Defense Health (Leidos) for the Military Health System (MHS) Genesis electronic health record system. We are concerned about recent press reports that the use of MHS Genesis may be contributing to delays in the military recruitment process,¹ creating barriers to accessing benefits information, and invading the privacy of service members and military recruits.² Amidst these growing concerns, we request further information about the program’s implementation and urge you to evaluate the impact it is having on recruitment and beneficiaries’ privacy.

Delays in the Recruitment Process

In 2015, the Department of Defense awarded a contract to Leidos to create MHS Genesis, an electronic health record (EHR) system meant to be interoperable between the DoD and the Department of Veterans Affairs (VA).³ DoD and the VA began rolling out this system in 2017 and plans to complete its rollout in a series of 23 waves by the end of 2023.⁴ In February and March 2022, U.S. Military Entrance Processing Command launched MHS Genesis at all of its Military Entrance Processing Stations (MEPS).⁵ Recruits go to MEPS after they undergo initial

¹ MilitaryTimes, “The ‘Genesis’ of today’s recruiting crisis,” Irene Loewenson and Geoff Ziezulewicz, April 10, 2023, <https://www.militarytimes.com/news/your-military/2023/04/10/the-genesis-of-todays-recruiting-crisis/>

² Military.com, “You Now Need a Credit Card in Most Cases to Get Access to DoD, VA Benefits Websites,” Patricia Kime, April 13, 2023, https://www.military.com/daily-news/2023/04/13/you-now-need-credit-card-most-cases-get-access-dod-va-benefits-websites.html?ESRC=eb_230414.nl

³ Congressional Research Service, “MHS Genesis: Background and Issues for Congress,” Bryce H. P. Mendez, October 28, 2019, Executive Summary, <https://crsreports.congress.gov/product/pdf/R/R45987/2>

⁴ U.S. Military Entrance Processing Command, “Military Entrance Processing Stations roll out MHS GENESIS,” Susan VanBoening, March 10, 2022, <https://www.mepcom.army.mil/Media/News-articles/Article-View/Article/2962890/military-entrance-processing-stations-roll-out-mhs-genesis/>; Military Health System, “MHS Genesis: The Electronic Health Record,” <https://www.health.mil/Military-Health-Topics/Technology/MHS-GENESIS#:~:text=MHS%20GENESIS%20is%20deploying%20in,103%20military%20hospitals%20and%20clinics%20>

⁵ U.S. Military Entrance Processing Command, “Military Entrance Processing Stations roll out MHS GENESIS,” Susan VanBoening, March 10, 2022, <https://www.mepcom.army.mil/Media/News-articles/Article-View/Article/2962890/military-entrance-processing-stations-roll-out-mhs-genesis/>

screening with a recruiter, take an aptitude test known as the Armed Services Vocational Aptitude Battery (ASVAB), and select their jobs.⁶

According to the *MilitaryTimes*, however, senior recruiting officials raised concerns that the use of MHS Genesis during this process is “making medical screenings longer,” and “has added an element of complexity to the accessions process for initial entry applicants.”⁷ The program pulls a more comprehensive scope of past health records and has resulted in an increased number of waivers required for the applicants.⁸ While some of these flags merit review, the system is also delaying enlistees with manageable or long-healed injuries. This may delay recruits’ enlistment processes if medical conditions require applicants to obtain medical waivers, which can take weeks or even months to be completed. The DoD Inspector General has flagged concern about lengthy processing requirements, noting that, “the length of time it takes USMEPCOM and the Services to review applicant medical information, as well as other processing requirements, affect whether an applicant remains in the accession pipeline.”⁹ One recruiter indicated that in one case, a healthy applicant tried to enlist but had to wait two extra months to process her application because she had sprained her wrist as a child.¹⁰

The influx of waivers caused by MHS Genesis forced the Army to call up Army Reserve doctors to address the backlog.¹¹ In a memo to Army Secretary Christine Wormuth, Army Training and Doctrine Commanding Officer General Paul Funk stated that, “The under-resourced roll out of [MHS Genesis] generated significant processing backlogs. [Army Recruiting Command] does not have sufficient physician waiver assistants on staff to mitigate the shortfall.”¹² In the face of these and broader recruitment challenges, the Army fell short of its recruiting goals by 25 percent or 15,000 soldiers.¹³ The inability to process these waivers in a timely manner contributes to an ongoing recruiting crisis, and the services should be taking action to address it immediately.

Vice Admiral Rick Cheeseman, Deputy Chief of Naval Operations, Personnel, Manpower and Training, in response to questions for the record Senator Warren submitted, admitted the Navy has experienced processing delays since the introduction of MHS Genesis.¹⁴ According to Vice

⁶ Military.com, “What is MEPS, and How Do I Deal with it?” <https://www.military.com/join-armed-forces/meps-process-requirements.html>

⁷ MilitaryTimes, “The ‘Genesis’ of today’s recruiting crisis,” Irene Loewenson and Geoff Ziezulewicz, April 10, 2023, <https://www.militarytimes.com/news/your-military/2023/04/10/the-genesis-of-todays-recruiting-crisis/>

⁸ MilitaryTimes, “Need for accession waivers soars amid historic recruiting challenges,” Rachel S. Cohen, April 10, 2023, <https://www.militarytimes.com/news/your-air-force/2023/04/10/need-for-accession-waivers-soars-amid-historic-recruiting-challenges/>

⁹ U.S. Department of Defense Inspector General, “Review of the Military Services’ Policies and Procedures on the Medical Waiver Process for Recruiting (DODIG-2023-072),” May 17, 2023, p. 10, <https://media.defense.gov/2023/May/19/2003225819/-1/-1/1/DODIG-2023-072.PDF>

¹⁰ MilitaryTimes, “The ‘Genesis’ of today’s recruiting crisis,” Irene Loewenson and Geoff Ziezulewicz, April 10, 2023, <https://www.militarytimes.com/news/your-military/2023/04/10/the-genesis-of-todays-recruiting-crisis/>

¹¹ ArmyTimes, “Numbers game: Inside the Army’s end strength scramble,” Davis Winkie, July 18, 2022, <https://www.armytimes.com/news/your-army/2022/07/18/numbers-game-inside-the-armys-end-strength-scramble/>

¹² *Id.*

¹³ CNBC, “The U.S. Army is struggling to find the recruits its needs to win the fight over the future,” October 26, 2022, Ian Thomas, <https://www.cnbc.com/2022/10/26/us-army-struggles-to-find-recruits-its-needs-to-win-fight-of-future.html>

¹⁴ Response from the Department of Defense to Senator Elizabeth Warren Questions for the Record, Senate Armed Services Subcommittee on Personnel Hearing “To receive testimony on the status of military recruiting and

Admiral Cheeseman, the Navy's average processing time from the applicant's final interview to their first contract increased from 33.8 days to 63.4 days after MHS Genesis was put in place. Although the Navy has addressed some inefficiencies, the processing period was still delayed to an average of 59.9 days, almost double the average prior to MHS Genesis' implementation. The Navy is working with the Center for Naval Analysis (CNA) to better understand the root cause of these delays.¹⁵ We urge the other services to also evaluate these delays and implement policy changes as soon as possible to address these inefficiencies.

These concerns have also been independently verified. The DoD Inspector General (IG) found that challenges associated with MHS Genesis led to "delays in medical waiver processing times ranging from 9 to 40 days" for the Army, Air Force, and Marine Corps.¹⁶ U.S. Army Recruiting Command analysis found that "it could take up to 70 days or longer for the necessary consultations required to determine a waiver."¹⁷ Although the services overcame these longer review times by prioritizing active duty waiver reviews and reassigning personnel, it is not clear if this is a sustainable solution for the total force.¹⁸ DoD IG also recommended that the Army, Navy, Air Force, and Marine Corps track medically disqualified applicants to ensure they are notified of their options to pursue a medical waiver and to better understand reasons why they may choose not to request a waiver.¹⁹

DoD IG has reported multiple issues within the MHS Genesis system. This includes personnel running into challenges when using the Joint Health Information Exchange (HIE), which MEPS medical technicians use for searching the applicant's medical history in MHS Genesis.²⁰ Although the HIE is intended to allow MEPS personnel to access a recruit's comprehensive medical history from participating providers, that medical history is "often incomplete or contains insufficient information to make a waiver determination, requiring the service waiver authorities to request additional documentation and delaying the medical waiver review."²¹ According to a DoD IG survey, 91.2 percent of respondents identified DoD patient health care information that was "inaccurate or incomplete" in MHS Genesis.²²

DoD is currently conducting a medical accessions review pilot program to determine if service members who enlisted without a waiver for certain medical conditions such as attention deficit

retention efforts across the Department of Defense," November 30, 2022, pg. 3 [On file with the Office of Senator Elizabeth Warren].

¹⁵ *Id.*

¹⁶ U.S. Department of Defense Inspector General, "Review of the Military Services' Policies and Procedures on the Medical Waiver Process for Recruiting," May 17, 2023, p. 11, <https://media.defense.gov/2023/May/19/2003225819/-1/-1/1/DODIG-2023-072.PDF>

¹⁷ *Id.*, p. 13.

¹⁸ *Id.*

¹⁹ *Id.*, pp. 12-15.

²⁰ *Id.*, p. 4.

²¹ *Id.*, p. 11.

²² U.S. Department of Defense Inspector General, "Management Advisory: DoD Health Care Provider Concerns Regarding the Access to Complete and Accurate Electronic Health Records," May 5, 2022, p. 2, <https://media.defense.gov/2022/May/05/2002990752/-1/-1/1/DODIG-2022-090.PDF>

hyperactivity disorder (ADHD) ultimately complete their initial enlistment contract.²³ We look forward to learning the findings of this pilot as the military continues to face a recruiting crisis.

It is essential that recruits are healthy enough to enlist in the military. However, DoD needs to examine the steps it is taking to ensure that the process of enlisting and obtaining waivers does not impede the recruitment process. Not only could these lengthy delays encourage “kids to back out or change their mind before they have signed their contract,”²⁴ but DoD may also be sending the message that recruits should be deterred from applying “for having attended counseling after a difficult life event or being prescribed an EpiPen years ago.”²⁵ If this backlog continues, we may lose our next generation of military leaders who are well-qualified but may be deterred from applying because of long-past and fully addressed medical issues.

Unnecessary Barriers to Accessing Benefits

Beyond these delays, we are also concerned by reports that in order to access MHS Genesis, individuals are being asked to provide credit card information.²⁶ To log into MHS Genesis, service members, veterans, and their families must use their DoD Self-Service Logon (DS Logon) or Common Access Card (CAC) information.²⁷ As part of the process of applying for a DS Logon, users must have their identity authenticated, including potentially through providing a credit card or loan document.²⁸ DS Logon gives service members, veterans, spouses, and other eligible family members access to over twenty portals so that they can manage their benefits.²⁹ This means that in order to access benefits available in DS Logon such as health services, medical records, and the military pay system, service members, veterans, and their families may need to provide the last eight digits of a credit card.³⁰

Providing credit card information is an unnecessary burden on service members, veterans, and families who have the right to access these earned benefits. Among service members between the ages of 18 and 24 years old, 31 percent in the Army, 19 percent in the Air Force, 15 percent in the Marine Corps, and 8 percent in the Navy did not have a credit card.³¹ Individuals who have

²³ Stars and Stripes, “Pentagon reviews whether 38 medical conditions should remain disqualifiers for military service” Rose L. Thayer, March 7, 2023, <https://www.stripes.com/theaters/us/2023-03-07/military-medical-waivers-recruitment-9417905.html>

²⁴ MilitaryTimes, “The ‘Genesis’ of today’s recruiting crisis,” Irene Loewenson and Geoff Ziezulewicz, April 10, 2023, <https://www.militarytimes.com/news/your-military/2023/04/10/the-genesis-of-todays-recruiting-crisis/>

²⁵ *Id.*

²⁶ Military.com, “You Now Need a Credit Card in Most Cases to Get Access to DoD, VA Benefits Websites,” Patricia Kime, April 13, 2023, https://www.military.com/daily-news/2023/04/13/you-now-need-credit-card-most-cases-get-access-dod-va-benefits-websites.html?ESRC=eb_230414.nl

²⁷ Military Health System, “MHS Genesis,” <https://health.mil/news/in-the-spotlight/mhs-genesis>

²⁸ Military.com, “You Now Need a Credit Card in Most Cases to Get Access to DoD, VA Benefits Websites,” Patricia Kime, April 13, 2023, https://www.military.com/daily-news/2023/04/13/you-now-need-credit-card-most-cases-get-access-dod-va-benefits-websites.html?ESRC=eb_230414.nl

²⁹ Military Health System, “MHS Genesis: DS Logon,” <https://www.health.mil/News/Gallery/Dvids-Videos/2023/05/09/video882727>

³⁰ Military.com, “You Now Need a Credit Card in Most Cases to Get Access to DoD, VA Benefits Websites,” Patricia Kime, April 13, 2023, https://www.military.com/daily-news/2023/04/13/you-now-need-credit-card-most-cases-get-access-dod-va-benefits-websites.html?ESRC=eb_230414.nl

³¹ Consumer Financial Protection Bureau, “Financially Fit? Comparing the credit records of young servicemembers and civilians,” James V. Marrone and Susan P. Carter, July 2020, p. 97,

earned these benefits should not have difficulty accessing their benefits for basic healthcare needs if they do not have a credit card.

Privacy Concerns

We also request further information on the steps that DoD is taking to protect the privacy and personal data of those enrolled in MHS Genesis. The Leidos Partnership for Defense Health consists of four core partners—Leidos, Accenture, Oracle Health, and Henry Schein One—in addition to about 30 supporting businesses.³² In June 2022, Oracle purchased the company Cerner.³³ Today, the MHS Genesis system is based on a Cerner Millennium product,³⁴ and the Oracle Cerner electronic health record system is “a key platform used by doctors to access the medical records of current and former military personnel.”³⁵ Oracle’s purchase of Cerner has led to privacy concerns that Cerner’s database of patient data could “be combined with Oracle’s trove of consumer data to create more complete consumer profiles that then could be used to, for example, help companies develop more targeted advertising.”³⁶

Additionally, Oracle faced a class-action lawsuit in 2022 for “deliberate and purposeful surveillance of the general population via their digital and online existence” in its role as a data broker.³⁷ Data brokers collect the personal information of consumers and resell or share it to others, often without the consumers’ knowledge.³⁸ Furthermore, Oracle previously purchased the company BlueKai in 2014, which tracks extensive information on individual’s Internet activities such as the websites they use and emails they open.³⁹ A security researcher found that one of BlueKai’s servers was accessible on the Internet without a password, exposing sensitive purchasing information such as individual’s names, addresses, phone numbers, and emails.⁴⁰

https://files.consumerfinance.gov/f/documents/cfpb_financially-fit_credit-young-servicemembers-civilians_report_2020-07.pdf

³² Leidos, “MHS Genesis,” <https://www.leidos.com/markets/health/military-health/mhs-genesis-program>

³³ Health Data Management, “Oracle’s pending purchase of Cerner raises privacy concerns,” Howard Anderson, February 23, 2022, <https://www.healthdatamanagement.com/articles/oracles-pending-purchase-of-cerner-raises-privacy-concerns?id=129357>

³⁴ U.S. Department of Defense, “Report to the Congressional Defense Committees: Department of Defense Controlled Access to Health Information,” April 2023, p. 5, <https://www.health.mil/Reference-Center/Reports/2023/04/26/DOD-Controlled-Access-to-Health-Information>

³⁵ FedScoop, “Oracle Cerner signs contract with Accenture to provide extra electronic health record training for VA clinicians,” Nihal Krishan, February 14, 2023, <https://fedscoop.com/oracle-cerner-signs-contract-with-accenture-to-provide-extra-electronic-health-record-training-for-va-clinicians/>

³⁶ Health Data Management, “Oracle’s pending purchase of Cerner raises privacy concerns,” Howard Anderson, February 23, 2022, <https://www.healthdatamanagement.com/articles/oracles-pending-purchase-of-cerner-raises-privacy-concerns?id=129357>

³⁷ U.S. District Court Northern District of California San Francisco Division, Class Action Complaint, Michael Katz-Lacabe, Dr. Jennifer Golbeck and Dr. Johnny Ryan, on behalf of themselves and all others similarly situated, Plaintiffs, vs. ORACLE AMERICA, INC., Case No. 3:22-cv-04792, August 19, 2022, <https://www.iccl.ie/wp-content/uploads/2022/08/File-Stamped-2022-08-19-Oracle-Complaint.pdf>

³⁸ U.S. Federal Trade Commission, “Data Brokers: A Call for Transparency and Accountability,” May 2014, p. i, <https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf>

³⁹ Forbes, “Oracle’s BlueKai Spilled ‘Billions of Records’ of Web-Tracking Data,” Jesse Damiani, June 19, 2020, <https://www.forbes.com/sites/jessedamiani/2020/06/19/oracles-bluekai-spilled-billions-of-records-of-web-tracking-data/?sh=401806752c47>

⁴⁰ *Id.*

Under the Health Insurance Portability and Accountability Act (HIPAA) and DoD guidance, “all authorized users of health information must access only data that they are authorized to access, must have a need to know, and must assume only authorized roles and privileges.”⁴¹ DoD is obligated to do all it can to protect the electronic health records of its personnel and DoD beneficiaries. With the past failures of Oracle to properly protect its customers, we urge DoD to take precautions to ensure that the companies involved in MHS Genesis thoroughly protect all customer data.

Questions

Although various DoD entities play a role in the implementation and oversight of MHS Genesis, the Secretary of Defense is ultimately responsible for the program.⁴² In order to better understand the impact that the program is having on military recruitment, access to benefits, and service members’ privacy, we request answers to each of the following questions no later than October 11, 2023:

1. What is the status of the root cause analysis the Navy is conducting with the Center for Analysis regarding the enrollment processing delays?
 - a. If this analysis is not yet completed, when will it be?
 - b. If this analysis has been completed, please share its findings.
 - c. If this analysis has been completed, what steps are the Navy and DoD taking based on these findings to reduce these delays?
2. Have any of the other service branches completed or begun an analysis to determine the root causes of these enrollment processing delays?
 - a. If so, please provide information on when these studies will be completed.
 - b. If any analysis has been completed, please share the findings of these studies.
 - c. If any analysis has been completed, please share the steps that the service branches and DoD are taking based on these findings to reduce the delays.
3. Please provide a breakdown by service branch on the average time period from the date of the recruit’s final interview until their first recorded contract before and after DoD began using MHS Genesis at MEPS in February and March 2022.
4. Please provide a breakdown by service branch on the average number of waivers required for recruits before and after DoD began using MHS at MEPS in February and March 2022.
5. For each military service branch, what is the average length of time to process each medical waiver?
 - a. For each military service branch, what is the average length of time to obtain a medical recommendation from the branch’s waiver authority (e.g., the U.S. Army

⁴¹ Department of Defense Office of Inspector General, “Audit of the Department of Defense’s Controls on Health Information of Well-Known Department of Defense Personnel (DODIG-2021-106),” August 25, 2021, <https://www.dodig.mil/reports.html/Article/2747339/audit-of-the-department-of-defenses-controls-on-health-information-of-well-know/>

⁴² Congressional Research Service, “MHS Genesis: Background and Issues for Congress,” Bryce H. P. Mendez, October 28, 2019, p. 16, <https://crsreports.congress.gov/product/pdf/R/R45987/2>

- Recruiting (USAREC) Command Surgeon's Office)⁴³ or medical staff at the recruiting command?
- b. For each military service branch, what is the average length of time for the recruiting command to make a decision whether to approve the waiver based on the recommendation from the branch's waiver authority or medical staff at the recruiting command?
 - c. For each service military branch, how many recruiting command decisions regarding medical waiver approval have and have not followed the recommendation of the branch's waiver authority or medical staff at the recruiting command?
6. What is the current backlog in each of the service branches for medical waivers for recruits?
 7. What steps are each of the service branches taking to decrease the delays of medical evaluation and waiver processing as part of the recruitment process?
 8. Are any of the services considering or already using artificial intelligence (AI) as part of the MHS Genesis waiver process? If any of the services are using AI, please explain how it is used.
 9. What steps are DoD and each of the services branches taking to evaluate potential revisions to medical disqualifications for accession into the military?
 10. What alternative options do MHS Genesis and DS Logon provide to users to verify their identity if they do not have a credit card?
 - a. How many individuals a year choose to verify their identity through alternate means?
 - b. What information do users receive on these alternative options? Please provide a copy of any text provided to users regarding this.
 11. What measures has DoD taken to protect the data of individuals enrolled in MHS Genesis from being sold or otherwise provided to third parties?
 - a. What requirements has DoD put in place for the companies involved in MHS Genesis to not sell or otherwise provide any data of those enrolled in MHS Genesis to third parties?
 - b. What penalties are in place for the involved companies if they sell or otherwise provide data to third parties?
 - c. How would affected individuals be informed if their data from MHS Genesis was sold or otherwise provided to a third party?
 - d. What remedy or compensation will DoD or the companies provide to those affected in individual's data is sold or otherwise provided to third parties?
 - e. How are all companies involved in MHS Genesis using artificial intelligence in relation to this personal data and otherwise to support the MHS Genesis system?
 12. What measures has DoD taken to protect the data of those enrolled in MHS Genesis from security breaches, cybersecurity attacks, and unauthorized use?
 - a. What penalties are in place for the involved companies if there has been a security breach, cybersecurity attack, or unauthorized use of data?

⁴³ U.S. Department of Defense Inspector General, "Review of the Military Services' Policies and Procedures on the Medical Waiver Process for Recruiting (DODIG-2023-072)," May 17, 2023, pp. 7-8, <https://media.defense.gov/2023/May/19/2003225819/-1/-1/1/DODIG-2023-072.PDF>

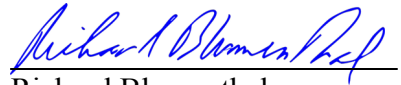
- b. How would affected individuals be informed if a security breach, cybersecurity attack, or unauthorized use of data occurs?
- c. What remedy or compensation will DoD or the companies provide to those affected in the event of a security breach, cybersecurity attack, or unauthorized use of data?

Thank you for your attention to this matter.

Sincerely,



Elizabeth Warren
United States Senator



Richard Blumenthal
United States Senator