

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

VIETNAM VETERANS OF AMERICA, et al.,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY, et al.,

Defendants.

Case No. CV 09-0037-CW (EDL)

**DECLARATION OF COLONEL  
BRIAN A. HUGHES**

**DECLARATION OF COLONEL BRIAN A. HUGHES**

I, COL Brian A. Hughes, hereby declare as follows:

1. I am the U.S. Army Medical Command Staff Judge Advocate. As part of my official duties, I lead a specialized headquarters legal office and supervise the delivery of reliable and responsive legal services related to medical care throughout the Army. In addition, I supervise the delivery of specialized legal assistance and representation to wounded, ill, and injured Warriors in Transition throughout the Army. I also provide direct liaison regarding legal matters affecting Army Medicine with the Department of Defense (DoD) Office of the General Counsel, Army Office of the General Counsel, Office of The Judge Advocate General, and legal counsel for other military services and Federal agencies, including the Department of Veterans Affairs (VA). I make this declaration in support of the Defendants' Response to the Court's Order Regarding a Proposed Health Care Injunction. The statements herein are based on my personal knowledge and information available to me in the course of my official duties, including knowledge gained through my liaison with the VA, my review of VA statutory authority, and of publicly available information concerning the VA medical system. The purpose of this

1 declaration is to provide a comparison between Military Treatment Facilities (MTFs) and the VA  
2 medical system with respect to their mission, number of facilities, type of beneficiaries, and  
3 general scope of health care services provided.

4 2. The Military Health System (MHS) is the organization within the DoD that provides  
5 health care to active duty and retired military personnel and their dependents. The MHS was  
6 established with the fundamental purpose of providing medical support to military operations,  
7 making the primary mission of the MHS to maintain the health of military personnel and to  
8 deliver health care during wartime, so the military services can carry out their missions. MTFs  
9 are fixed medical facilities within the MHS, run by the military departments and funded by  
10 Congress with Defense Health Program budget dollars.  
11

12 3. Eligibility for military health care is governed by 10 U.S.C. Chapter 55. Health care  
13 provided under the Secretarial Designee program (SECDES), established pursuant to 10 U.S.C.  
14 § 1074(c), is provided through MTFs.  
15

16 4. The primary mission of the MTFs is to maintain the health of military personnel,  
17 whose average age is 22-30 years. Accordingly, MTF care is largely focused on providing care  
18 to younger active duty individuals and their family members. MTFs are located primarily on  
19 military installations, largely in the Northeast and Southeast United States. See Attachments 1-3  
20 (maps of military and federal medical treatment facilities).  
21

22 5. There are three types of MTFs – Medical Centers, Hospitals, and Clinics. Depending  
23 on the size and type, MTFs offer between three to thirty-five core clinical services<sup>1</sup> to meet the  
24

25  
26 <sup>1</sup> The Core clinical services include: allergy/immunology, audiology, behavioral health, cardiology, chiropractic, dermatology, emergency medicine, endocrinology, family medicine, gastroenterology, hematology and oncology, immunizations, infectious disease, internal medicine, nephrology, neurology, newborn nursery, nutrition, obstetrics and gynecology, occupational therapy, ophthalmology, optometry, orthopedics, otolaryngology, pain management, pediatrics, physical medicine & rehabilitation, physical therapy, podiatry, psychiatry, psychology, rheumatology, speech pathology, general surgery, and urology. For example, in the Army, there are 12 MTFs (Army Medical NO. C 09-37 CW

1 comprehensive health needs of their patients. The largest MTF is a Medical Center, which  
2 provides comprehensive medical care to include most specialty care disciplines. There are 12  
3 Medical Centers in the MHS, located in California, Georgia, Hawaii, Maryland, North Carolina,  
4 Ohio, Texas, Virginia, Washington, and Germany. Hospitals provide primary medical care with  
5 limited specialty care.<sup>2</sup> Clinics provide only outpatient medical care.<sup>3</sup> No MTF of any military  
6 service provides geriatric medical services, which are available through VA medical facilities.  
7  
8 With the exception of psychiatry/psychology clinical services, the care required for the types of  
9 illnesses and injuries that the individual named Plaintiffs raise in their Fourth Amended  
10 Complaint will generally only be available at Medical Centers.<sup>4</sup>

11  
12 6. The MHS, which has current annual appropriations of approximately \$43 billion,  
13 serves a population of approximately 10.26 million beneficiaries. Of those appropriations,  
14 approximately \$9.3 billion is used to operate MTFs – 54 hospitals and 365 outpatient clinics.<sup>5</sup>

15  
16 Centers and Large Army Community Hospitals) which offer 24 or more of the core clinical services. The majority  
of Army MTFs offer fewer than 15 core clinical services. , See attachment 4.

17 <sup>2</sup> Hospitals are characterized as MTFs with fewer than 100 beds. Large hospitals have between 50-100 beds while  
18 small hospitals have up to 50 beds. Large hospitals provide the following 24 core clinical services: audiology,  
19 behavioral health, chiropractic, dermatology, emergency medicine, family medicine, immunizations, internal  
20 medicine, neurology, newborn nursery, nutrition, obstetrics & gynecology, occupational therapy, ophthalmology,  
21 optometry, orthopedics, otolaryngology, pediatrics, physical therapy, podiatry, psychiatry, psychology, general  
surgery, and urology. Small hospitals provide the following 13 services: behavioral health, family medicine,  
immunizations, internal medicine, nutrition, obstetrics & gynecology, optometry orthopedics, pediatrics, physical  
therapy, psychiatry, psychology, and general surgery.

22 <sup>3</sup> Military Health Centers (larger outpatient clinics, see attachment 4) and Clinics provide limited core clinical  
23 services. Those services include family medicine, immunizations, nutrition, optometry, physical therapy,  
psychiatry, and psychology.

24 <sup>4</sup> The class representatives Fourth Amended Complaint describes medical conditions related to: post-traumatic stress  
25 disorder (Dkt No. 486, para. 40, 49, 86), heart/cardio pulmonary problems (Dkt No.486, para. 49, 84),  
gastrointestinal disorders (Dkt No. 486 para. 49); respiratory problems (Dkt No.486, para. 49, 59, 79), neurological  
26 problems (Dkt No. 486, para. 49, 79, 211), and cancer (Dkt No. 486, para. 221).

<sup>5</sup> Approximately \$16 billion is used for purchased care for statutorily entitled TRICARE beneficiaries (of which  
SECDES participants are not included) as part of the military's integrated health care system. The remainder is used  
for procurement; research, development, testing, and evaluation; and DoD Medicare-Eligible Retiree Health Care  
Fund contributions.

1 Priority access to health care in the MTFs is provided to active duty military personnel in  
2 accordance with 10 U.S.C. § 1074. Other individuals entitled to MTF care – family members,  
3 retirees, and secretarial designees – receive such care on a space available basis.

4 7. By comparison, the Veterans Health Administration (VHA) currently has over \$59  
5 billion in annual appropriations, serves a population of 9.2 million veterans<sup>6</sup> in 168 hospitals and  
6 1,221 outpatient clinics. VA medical facilities are located in every state and U.S. territory. See  
7 Attachments 1-3. In addition, through the Veterans' Choice Program, the VA has the authority  
8 to authorize care for veterans outside the VA health care system. The VA provides "a complete  
9 medical and hospital service for the medical treatment of veterans" through the Veterans Health  
10 Administration (VHA).<sup>7</sup> The VHA is a direct service provider of primary and specialized care  
11 and related medical and social support services to veterans through the nation's largest integrated  
12 health care system. In addition to the automatic provision of health care to veterans for service-  
13 connected disabilities, all veterans qualify for the VA "medical benefits package." Further,  
14 several categories of veterans receive no-cost care. To ensure that care is available as needed,  
15 the VA's comprehensive medical benefits package is administered through an annual patient  
16 enrollment system. Unless exempted, veterans are required to enroll in the VA healthcare  
17 system in order to receive the VA "medical benefits package." The VA healthcare system  
18 manages the provision of care to veterans by placing them in priority groups. Upon enrollment,  
19 veterans are placed in the highest priority group for which they are eligible. Currently nearly all  
20 veterans are eligible for enrollment in the VA health care system. The VA's medical benefits  
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22  
23  
24

25 <sup>6</sup> 38 U.S.C. § 101 (2). A "veteran" is defined as "a person who served in the active military, naval, or air service, and  
26 who was discharged or released therefrom under conditions other than dishonorable. 38 C.F.R. § 3.1 (d). Although  
not relevant to the current litigation, individuals who entered active military service after September 7, 1980 must  
meet minimum service period requirements. 38 U.S.C. § 5303A.

<sup>7</sup> 38 U.S.C. § 7301(b).

1 package consists of all necessary inpatient hospital care and outpatient services to promote,  
2 preserve or restore veterans' health. Veterans Affairs medical facilities provide a wide range of  
3 services, including traditional hospital-based services, such as surgery, critical care, mental  
4 health, orthopedics, pharmacy, radiology, and physical therapy. Many facilities also provide  
5 additional medical and surgical specialty services, including audiology and speech pathology,  
6 dermatology, dental, neurology, oncology, podiatry, prosthetics, urology, and vision care. The  
7 VA medical benefits package includes some long-term care services such as a VA nursing home  
8 program, domiciliary care, medical foster home, and State Veterans Homes. Finally, the VA  
9 provides geriatric and extended care services for veterans who are elderly and have complex  
10 needs, and to veterans of any age who need daily support and assistance.  
11  
12

13 8. In sum, in comparison to health care services at MTFs under SECDES authority, the  
14 VA health care system is designed to provide more comprehensive health care services to a  
15 smaller and older population through a greater number of facilities nationwide that receive  
16 greater funding. While military medical centers and certain hospitals in the Military Health  
17 System provide comprehensive health care services comparable to the VA, the Military Health  
18 System overall is focused on serving the health care needs of current military service members  
19 and their dependents, and is not designed to serve an aging veteran population across all regions  
20 of the United States in the comprehensive manner provided by the VHA.  
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1 9. If the Court decides to enter an injunction against the Army to provide medical care pursuant  
2 to A.R. 70-25, the Army intends to carry out such an injunction in accordance with the plan  
3 outlined in attachment 5.

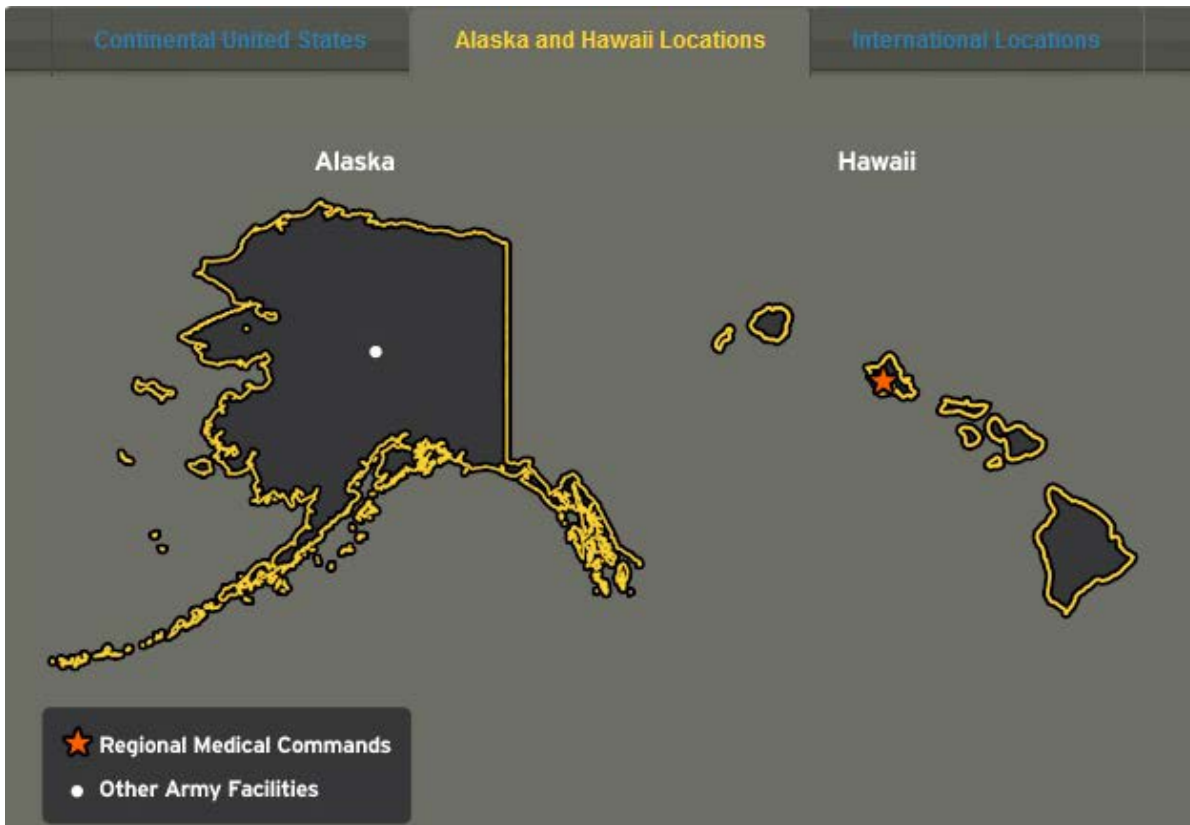
4 I declare under penalty of perjury that the foregoing is true and correct to the best of my  
5 knowledge, information, and belief.

6 DATE: 15 NOV 16  
7

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9  
10 BRIAN A. HUGHES  
11 COLONEL, U.S. Army  
12 Staff Judge Advocate, MEDCOM  
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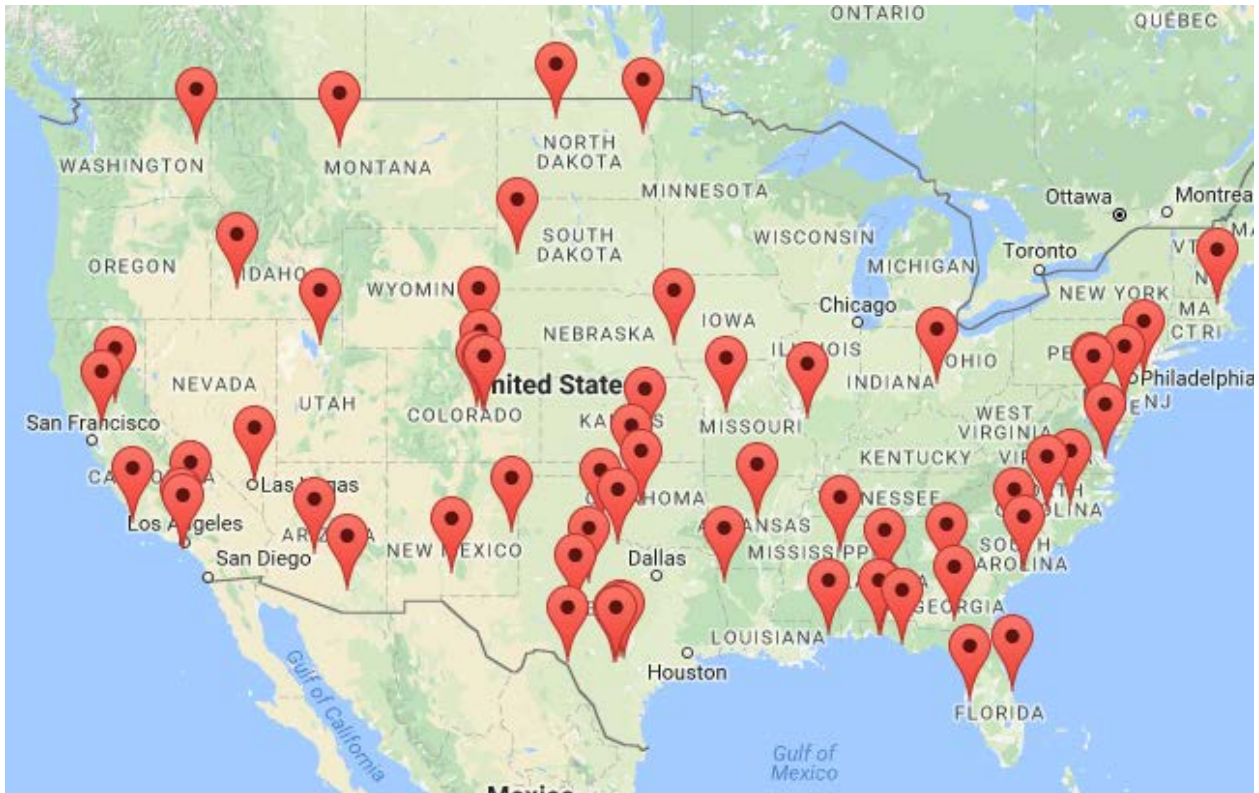
# Attachment 1



The red stars correspond with the location of our Army Medical Centers, where comprehensive medical care is provided. The white dots indicate Army Community Hospitals and Clinics where primary care is available and limited specialty care is available.



# Attachment 2



Air Force MTFs. Indicated are Community Hospitals and Clinics, with one Medical Center at Wright-Patterson AFB, OH

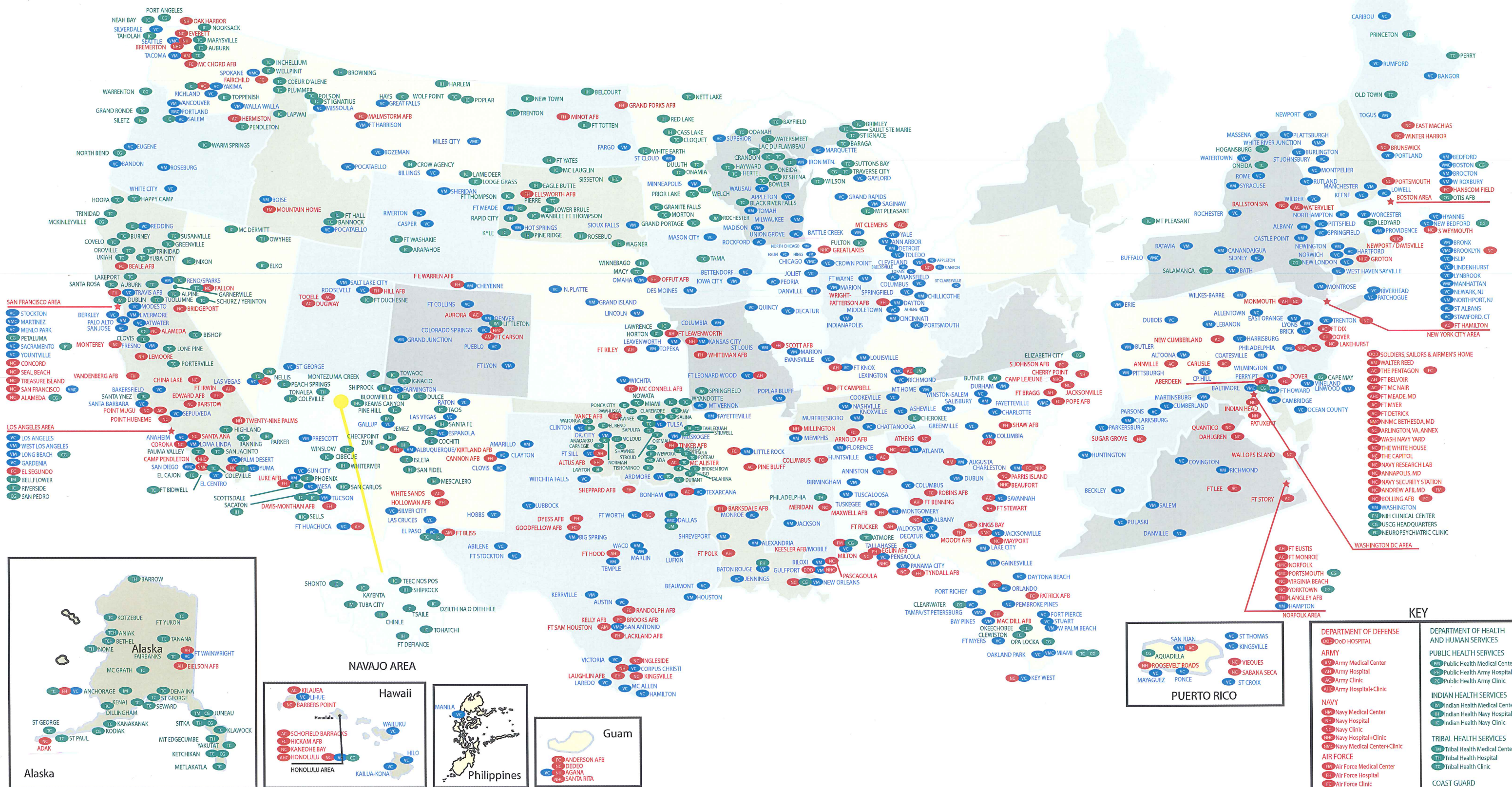


Navy has Hospitals or Clinics in the states highlighted in orange, with Medical Centers at Portsmouth, VA and San Diego, CA

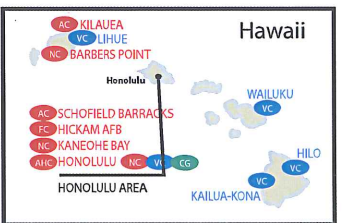
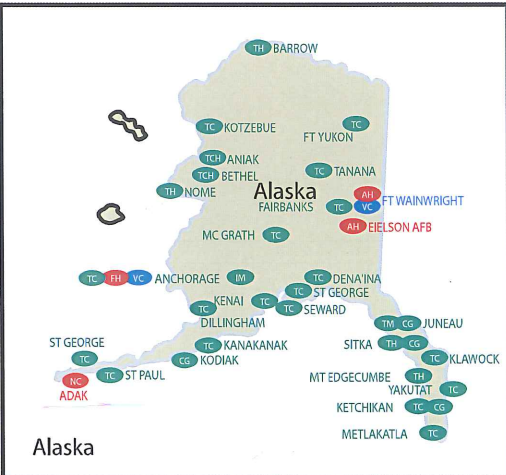
# Attachment 3

# FEDERAL MEDICAL FACILITIES

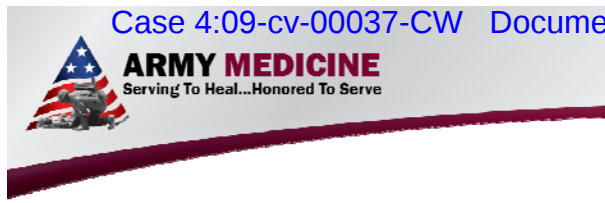
of the Department of Veterans Affairs, Department of Defense and the Department of Health and Human Services



KEY	
<b>DEPARTMENT OF DEFENSE</b>	<b>DEPARTMENT OF HEALTH AND HUMAN SERVICES</b>
<b>ARMY</b>	<b>PUBLIC HEALTH SERVICES</b>
AMC Army Medical Center	PHM Public Health Medical Center
ARH Army Hospital	PHCA Public Health Army Hospital
AC Army Clinic	PHCA Public Health Army Clinic
AH Army Hospital+Clinic	<b>INDIAN HEALTH SERVICES</b>
<b>NAVY</b>	INM Indian Health Medical Center
NMC Navy Medical Center	INH Indian Health Navy Hospital
NH Navy Hospital	INM Indian Health Navy Clinic
NC Navy Clinic	<b>TRIBAL HEALTH SERVICES</b>
NHMC Navy Hospital+Clinic	THM Tribal Health Medical Center
NMNC Navy Medical Center+Clinic	THM Tribal Health Hospital
<b>AIR FORCE</b>	THM Tribal Health Clinic
AFM Air Force Medical Center	<b>COAST GUARD</b>
AH Air Force Hospital	CGC Coast Guard Clinic
AC Air Force Clinic	<b>DEPARTMENT OF JUSTICE</b>
AHMC Air Force Medical Center+Clinic	JMC Justice Medical Center
<b>DEPARTMENT OF VETERANS AFFAIRS</b>	
VM Medical Center	
VA Clinic	
VMC VA Medical Center+Clinic	



# Attachment 4



**CORE SERVICES SUPPORTING A SYSTEM FOR HEALTH**

Our mission is to provide responsive and reliable health services, influencing health to improve readiness, save lives, and advance wellness in support of the Force, Military Families, and all those entrusted to our care.

Core Services are available to Soldiers, Families and Retirees across Army Medicine's six types of Military Treatment Facilities. We want you to expect and receive consistent care across similarly-sized facilities.

Army Medical Centers, Community Hospitals, Health Centers and Health Clinics offer three to thirty-four Core Clinical Services to meet the health needs of our patients. In addition to the Core Services, your healthcare team may offer additional Specialty Services within our medical facilities, from the Tricare network of civilian health care professionals in your community, or through the use of telehealth technology.

Army Medicine provides up to three Core Public Health Services and three Core Ancillary Health Services located within our medical facilities or available in the communities surrounding Army installations. Six Core Dental Services are provided by the Dental Treatment Facility and the Dental Activity co-located with the Military Treatment Facility.

Army Medicine delivers services to improve, promote and protect your overall health.

**Thank you for choosing Army Medicine!**  
We are honored to serve you.



**CORE OPERATING HOURS**

<b>Clinical Services</b> Primary Care	<b>Weekday Hours</b> 0730 to 1630
<b>Public Health Services</b> Public Health	<b>Weekday Hours</b> 0900-1500
<b>Ancillary Services</b> Pharmacy Laboratory Radiology	<b>Weekday Hours</b> 0800 to 1700 0700 to 1630 0700 to 1630
<b>Dental Care Services</b> Dental Services	<b>Weekday Hours</b> 0730 to 1630

**ARMY MEDICAL CENTERS (LARGE)**

- San Antonio Military Medical Center, Fort Sam Houston, Texas
- Madigan Army Medical Center, Fort Lewis, Washington
- Tripler Army Medical Center, Fort Shafter, Hawaii

**Core Clinical Services (35 Services)**

- |                       |                                    |
|-----------------------|------------------------------------|
| Allergy / Immunology  | Obstetrics & Gynecology            |
| Audiology             | Occupational Therapy               |
| Behavioral Health     | Ophthalmology                      |
| Cardiology            | Optometry                          |
| Chiropractic          | Orthopedics                        |
| Dermatology           | Otolaryngology                     |
| Emergency Medicine    | Pain Management                    |
| Endocrinology         | Pediatrics                         |
| Family Medicine       | Physical Medicine & Rehabilitation |
| Gastroenterology      | Physical Therapy                   |
| Hematology & Oncology | Podiatry                           |
| Immunizations         | Psychiatry                         |
| Infectious Disease    | Psychology                         |
| Internal Medicine     | Rheumatology                       |
| Nephrology            | Speech Pathology                   |
| Neurology             | Surgery, General                   |
| Newborn Nursery       | Urology                            |
| Nutrition             |                                    |

**Core Public Health Services**

- Community and Public Health
- Hearing Conservation
- Occupational Health

**Core Ancillary Health Services**

- |            |           |
|------------|-----------|
| Pharmacy   | Radiology |
| Laboratory |           |

**Core Dental Care Services**

- |              |              |
|--------------|--------------|
| Preventative | Diagnostic   |
| Restorative  | Oral Surgery |
| Periodontal  | Endodontic   |

**ARMY MEDICAL CENTERS (SMALL)\***

- Darnall Army Medical Center, Fort Hood, Texas
- Eisenhower Army Medical Center, Fort Gordon, Georgia
- Landstuhl Regional Medical Center, Germany
- William Beaumont Army Medical Center, Fort Bliss, Texas
- Womack Army Medical Center, Fort Bragg, North Carolina

**Core Clinical Services (32 Services)**

- |                       |                                    |
|-----------------------|------------------------------------|
| Allergy / Immunology  | Obstetrics & Gynecology            |
| Audiology             | Occupational Therapy               |
| Behavioral Health     | Ophthalmology                      |
| Cardiology            | Optometry                          |
| Chiropractic          | Orthopedics                        |
| Dermatology           | Otolaryngology                     |
| Emergency Medicine    | Pain Management                    |
| Endocrinology         | Physical Medicine & Rehabilitation |
| Family Medicine       | Pediatrics                         |
| Gastroenterology      | Physical Therapy                   |
| Hematology & Oncology | Podiatry                           |
| Immunizations         | Psychiatry                         |
| Infectious Disease    | Psychology                         |
| Internal Medicine     | Speech Pathology                   |
| Neurology             | Surgery, General                   |
| Newborn Nursery       | Urology                            |
| Nutrition             |                                    |

**Core Public Health Services**

- Community and Public Health
- Hearing Conservation
- Occupational Health

**Core Ancillary Health Services**

- |            |           |
|------------|-----------|
| Pharmacy   | Radiology |
| Laboratory |           |

**Core Dental Care Services**

- |              |              |
|--------------|--------------|
| Preventative | Diagnostic   |
| Restorative  | Oral Surgery |
| Periodontal  | Endodontic   |

**ARMY COMMUNITY HOSPITALS (LARGE)\***

Blanchfield Army Community Hospital, Fort Campbell, Kentucky  
 Evans Army Community Hospital, Fort Carson, Colorado  
 Martin Army Community Hospital, Fort Benning, Georgia  
 Winn Army Community Hospital, Fort Stewart, Georgia

**Core Clinical Services (24 Services)**

Audiology	Occupational
Behavioral Health	Therapy
Chiropractic	Ophthalmology
Dermatology	Optometry
Emergency Medicine	Orthopedics
Family Medicine	Otolaryngology
Immunizations	Pediatrics
Internal Medicine	Physical Therapy
Neurology	Podiatry
Newborn Nursery	Psychiatry
Nutrition	Psychology
Obstetrics & Gynecology	Surgery, General Urology

**Core Public Health Services**

Community and Public Health  
 Hearing Conservation  
 Occupational Health

**Core Ancillary Health Services**

Pharmacy Radiology  
 Laboratory

**Core Dental Care Services**

Preventative	Diagnostic
Restorative	Oral Surgery
Periodontal	Endodontic

**ARMY COMMUNITY HOSPITALS (SMALL)\***

Bassett Army Community Hospital, Fort Wainwright, Alaska  
 Bayne Jones Army Community Hospital, Fort Polk, Louisiana  
 Brian Allgood Army Community Hospital, Korea  
 General Leonard Wood Army Community Hospital, Fort Leonard Wood, Missouri  
 Ireland Army Community Hospital, Fort Knox, Kentucky  
 Irwin Army Community Hospital, Fort Riley, Kansas  
 Keller Army Community Hospital, West Point, New York  
 Moncrief Army Community Hospital, Fort Jackson, South Carolina  
 Reynolds Army Community Hospital, Fort Sill, Oklahoma  
 Weed Army Community Hospital, Fort Irwin, California

**Core Clinical Services (13 Services)**

Behavioral Health	Optometry
Family Medicine	Orthopedics
Immunizations	Pediatrics
Internal Medicine	Physical Therapy
Nutrition	Psychiatry
Obstetrics & Gynecology	Psychology
	Surgery, General

**Core Public Health Services**

Hearing Conservation  
 Occupational Health

**Core Ancillary Health Services**

Pharmacy Radiology  
 Laboratory

**Core Dental Care Services**

Preventative	Diagnostic
Restorative	Endodontic
Periodontal	

**ARMY HEALTH CENTERS**

Kimbrough Army Health Center, Fort Meade, Maryland  
 McDonald Army Health Clinic, Fort Eustis, Virginia  
 Munson Army Health Center, Fort Leavenworth, Kansas  
 Vilseck (Bavaria) Army Health Center, Germany

**Core Clinical Services (7 Services)**

Family Medicine	Physical Therapy
Immunizations	Psychiatry
Nutrition	Psychology
Optometry	

**Core Public Health Services**

Hearing Conservation  
 Occupational Health

**Core Ancillary Health Services**

Pharmacy Radiology  
 Laboratory

**Core Dental Care Services**

Preventative	Diagnostic
Restorative	Endodontic
Periodontal	

**ARMY HEALTH CLINICS**

BG Crawford F. Sams Army Health Clinic, Camp Zama, Japan  
 Fox Army Health Clinic, Redstone Arsenal, Alabama  
 Guthrie Army Health Clinic, Fort Drum, New York  
 Kenner Army Health Clinic, Fort Lee, Virginia  
 Lyster Army Health Clinic, Fort Rucker, Alabama  
 RW Bliss Army Health Clinic, Fort Huachuca, Arizona

**Core Clinical Services (3 Services)**

Family Medicine  
 Optometry  
 Physical Therapy

**Core Public Health Services**

Hearing Conservation  
 Occupational Health

**Core Ancillary Health Services**

Pharmacy Radiology  
 Laboratory

**Core Dental Care Services**

Preventative	Diagnostic
Restorative	Endodontic
Periodontal	

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\* Army Medical Centers (Large) have a bed capacity of greater than 200 beds; Army Medical Centers (Small) have a bed capacity of 100 to 200 beds; Army Community Hospitals (Large) have a bed capacity of greater than 50 beds; Army Community Hospitals (Small) have a bed capacity of up to 50 beds

# Attachment 5



**The Army's Plan for Implementing the Provision  
of Medical Care Pursuant to Army Regulation 70-25**

To fulfill the obligations under Army Regulation 70-25 (AR 70-25) to provide medical care to former members of the armed forces who the Army exposed to a chemical or biological substance as part of their participation in research, for any injury or disease that is the proximate result of their participation in the research, medical care will be provided to requesting class members as set forth below.

If the class member is determined, under the process set forth below, to have any health condition having a sufficiently strong causal link such that a reasonable person could find that the injury or disease was caused by testing exposure or participation in research, the Army will provide the requisite health care at Department of Defense (DoD) medical treatment facilities (MTFs) by using the Secretarial Designee (SECDES) statutory authority. *See, e.g.*, 10 U.S.C. § 1074(c), DoD Instruction 6025.23, AR 40-400.<sup>1</sup>

The Army will implement the following process to determine eligibility for SECDES status:

1. Notice to the Class. The Army will notify individuals who may qualify for research related medical care of the potential availability of Army provided medical care and the process to apply for such care. The Army will provide notice via public media and outreach to the VA and to veteran's service organizations.

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<sup>1</sup> The health care provided through this plan is supplemental to the comprehensive care a plaintiff is entitled to receive through the Department of Veterans Affairs (VA) based on his status as a veteran. *See* 38 CFR 17.36(b). This plan will have no bearing and has no effect on the provision of care or benefits independently performed by the VA under its own statutory and regulatory requirements, separate from this plan.

2. The Army will use a previously established DoD toll-free number for veterans who believe they may qualify for research related medical care to obtain additional information about potential eligibility for medical care and the process for applying for such care. The Army will make reasonable efforts to assist the veteran in determining whether he participated in the relevant research programs by providing an internet and toll-free contact to obtain records of participation in the relevant research programs, in obtaining medical records from the VA concerning a diagnosis (the veteran does not have to use a diagnosis from the VA), and in obtaining a VA determination concerning service connected disability. The Army will also provide application information to veterans eligible for enrollment in the VA's comprehensive healthcare system. Once a veteran obtains records substantiating research participation, a diagnosis, and any pending or complete VA service connection determination, the veteran may apply (electronically or through the mail) for medical treatment in a military treatment facility.

3. Application: To apply for SECDES status, an applicant will submit an application to the Army. The application for SECDES status will consist of a form to be completed by the applicant and treating physician, and documentation to support the applicant's claim, including: any civilian or Army medical records showing a diagnosis the applicant believes is proximately caused by exposure during research, Army personnel records relating to research participation,<sup>2</sup> any VA service connection

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<sup>2</sup> To the extent that former research participants do not have records to show participation, the Army will inform applicants how to apply to the Army Board for the Correction of Military Records (ABCMR). Applicants must then provide the ABCMR will sufficient information to prove research participation in order to have their records corrected to validate their participation in the medical research programs. Upon record correction to indicate research participation, a Veteran can apply for SECDES medical care.

decisions<sup>3</sup>, and a short statement about why the physician believes the injury or illness is caused by the exposure during research. Complete applications will include (1) records of participation in relevant research; (2) a medical diagnosis believed caused by research participation; and (3) any VA service connection decision. Upon receipt of a complete application, the Army will make the determination required in para. 4 below.

4. Review of Application: Complete applications will be reviewed by the Benefits Application Panel. This Panel will be established by the Army Medical Command (MEDCOM). The panel will consist of at least three medical professionals from either the US Army Medical Research Institute of Chemical Defense (for chemical exposure cases) or the US Army Medical Research Institute of Infectious Disease (for biological exposure cases) and may include additional specialty members based on the type of illness or injury being considered. The panel will conduct a record review of the application, extrinsic medical evidence, VA records, and Army records and will determine, by a preponderance of the evidence, whether the applicant's diagnosed condition was a proximate result of his participation in the specific research program. The Panel's decision will be based on a majority vote. A "proximate result" is defined as a sufficiently strong causal link such that a reasonable person could find that the injury or disease was caused by the research. In evaluating medical care claims under this standard, the Panel will reasonably weigh the following evidence:

- (a) the nature of the applicant's participation in the research, to include the type of substance, means of administration, dosage, and frequency of exposure;

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<sup>3</sup> The Army will make independent proximate result determinations and will be informed by but not bound to any VA service connection decision.

- (b) the applicant's health condition during and after his research participation, including timing and severity of the onset of symptoms of medical illness, disease, or injury, as supported by the applicant's medical evidence and available records from the DoD and VA;
- (c) the nature of the applicant's current medical condition, as supported by the applicant's submitted medical evidence and available records from the DoD and VA;
- (d) available scientific evidence concerning the long term health effects of the chemical or biological substance to which the applicant was exposed; and
- (e) all information provided by the applicant, to include documents obtained from Defendants during discovery pertaining to the Chem-Bio Database, the Mustard Gas Database, the Chemical, Biological, Radiological & Nuclear Defense Information Analysis Center ("CBRNIAC") Database and other related databases created in conjunction with Battelle Memorial Institute, and the Defense Technical Information Center ("DTIC") repository.

In making its determination the Panel, in its discretion, may equitably weigh the following: (a) the medical research occurred over 40 years ago; (b) records concerning the research may be limited or incomplete; (c) scientific studies on the long-term health effects of certain chemical or biological substances may be limited or incomplete; and (d) evidence related to the precise proximate cause of a particular diagnosed medical condition may not be definitive.

5. If the Panel determines there is a sufficiently strong causal link such that a reasonable person could find the applicant's condition was caused by his participation in

the specific research program claimed, the Panel will prepare a request for Secretarial Designee status and submit a recommendation to provide the applicant with necessary medical care for the research related medical condition to the Secretary of the Army or his designee.

6. The Secretary of the Army or his designee will review the Panel's request for Secretarial Designee status in accordance with the criteria specified in 32 C.F.R. 108 and DoDI 6025.23. If Secretarial Designee status is granted to the applicant, the applicant will be provided with information for the nearest DoD MTF with the capability to treat the approved condition and given a limited access ID card, as necessary, entitling him to receive treatment at the MTF for the specific medical condition, injury, or disease determined to be the proximate result of the research. In situations where necessary treatment is not available through a MTF, the Army will assist the applicant in requesting health care from the VA.

7. Final Agency Action: When an application to the Army for SECDES status is denied, it is a final decision by the Army subject to judicial review in whatever manner such agency action would ordinarily be reviewable under applicable law and in the appropriate forum established by law.